



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: July 22, 2015

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**PLANNER:** Sean Nicholas, Associate Planner *SN*

**SUBJECT:** Conditional Use Permit 15-160, Tommy's Restaurant Alcohol, a request to consider a full range of alcohol service for indoor and onsite consumption for an existing restaurant located at 1409 South El Camino Real within the Neighborhood Commercial (NC2) zoning designation.

### **REQUIRED FINDINGS**

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution (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 to allow a full range of alcohol for indoor and on-site consumption.***

- 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 the Zoning Ordinance, 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.

### **BACKGROUND**

The applicant/owner, Peter Rock, is proposing to expand their sale of beer and wine for indoor on-site consumption to a full range of alcohol. The site has been Tommy's restaurant for decades and will remain primarily a restaurant that serves a full range of alcohol. There is no live entertainment or amplified sound proposed with this application, nor is there any proposed expansion of the restaurant facility.

#### ***Site Data***

The subject site is a 22,200 square foot lot located in the Neighborhood Commercial (NC 2) zoning designation. The site fronts South El Camino Real and is bordered by Interstate 5 on the east and south, and commercial zoned property on the west and north. Service

of a full range of alcohol associated with a restaurant use is permitted in this zone with the approval of a Conditional Use Permit.

### ***Development Management Team Meeting***

The City's Development Management Team (DMT) reviewed the project and the Building and Engineering Division's had no comments or conditions of approval on the project.

### ***Noticing***

Public notification was completed in accordance with State Law and Municipal Code regulations. Staff has not received public input regarding the proposed request.

### **PROJECT DESCRIPTION**

The applicant requests to add a full range of alcohol service to their menu. The existing 110 seat restaurant has been operating with beer and wine for indoor on-site consumption without issue since 2011. Staff checked with both Orange County Sheriff and Code Compliance, and neither had issue with the proposal. The applicant is proposing to have alcohol sales from 7:00 a.m. to 12:00 a.m. (midnight), seven days a week. The reason for the early start is to allow people to have a morning mimosa with breakfast. The applicant stated that the early morning sale of alcohol was primarily on special occasions like mother's day brunches.

### **PROJECT ANALYSIS**

#### ***Conditional Use Permit***

The applicant is requesting to serve a full range of alcohol during operating hours of 7:00 a.m. until midnight, Monday through Sunday. Tommy's is open until 2:00 a.m. for food service, but only requesting alcohol until midnight. Because the applicant has had the same hours of operation for the sale of beer and wine without issue at this site, and this is a bona fide restaurant and not a bar, staff is supportive of the proposed use, in that:

- The sale of a full range of alcohol is permitted with approval of a Conditional Use Permit.
- The applicant is proposing for indoor consumption only, and no live entertainment or amplified sound.
- The sale of beer and wine has been in operation for the past four years and has not created any known issues.

### **GENERAL PLAN CONSISTENCY**

Table 1 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

**Table 1 - General Plan Consistency**

Policies and Objectives	Consistency Finding
<i>ED-2.03. Existing Businesses. We give high priority to initiatives, investments, and the allocation of municipal resources that help businesses remain and prosper in San Clemente.</i>	Consistent. Tommy's has existed at this location for decades and the applicant is investing in the restaurant to improve his customer's enjoyment at the restaurant.
<i>ED-4.04. El Camino Real. We require initiatives, investments, and development approvals for El Camino Real to contribute to our vision of the area as a mixed-use, multi-modal corridor with historic resources and different commercial nodes that primarily serve the needs of San Clemente residents and businesses.</i>	Consistent. The addition of alcohol to the restaurant will provide residents of San Clemente an opportunity to enjoy an alcoholic beverage while dining at Tommy's Restaurant.

**ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):**

The Planning Division processed and completed an initial environmental assessment for this project in accordance with the California Environmental Quality Act (CEQA). The Planning Division has determined the project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301 because the project consists of negligible expansion and alterations to an existing facility.

**ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES**

1. The Planning Commission can concur with staff and approve the project as conditioned.

*This action would result in the applicant being able to have a full range of alcohol within their restaurant.*

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

*The Planning Commission can add or delete conditions addressing the hours of operation. In particular Planning Commission may feel that 7:00 a.m. start time is too early and require a 10:00 a.m. start time for the service of a full range of alcohol, while allowing beer and wine to be served during the hours of 7:00 a.m. until 10:00 a.m. This action would result in any modifications being incorporated accordingly.*

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

*This action would not allow the applicant to not serve a full range of alcohol on-site and could result in the applicant filing an appeal with the City Council.*

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission approve Conditional Use Permit 15-160, Tommy's Restaurant Alcohol, subject to the attached Resolution and Conditions of Approval.

**Attachments:**

1. Resolution No. PC 15-036  
Exhibit A - Conditions of Approval
2. Location Map  
Plans

RESOLUTION NO. PC 15-036

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF SAN CLEMENTE, APPROVING CONDITIONAL USE PERMIT (CUP) 15-160,  
TOMMY'S RESTAURANT ALCOHOL, A PUBLIC HEARING TO CONSIDER A  
REQUEST TO ALLOW A FULL RANGE OF ALCOHOL FOR ON-SITE INDOORS  
CONSUMPTION FOR AN EXISTING RESTAURANT LOCATED AT  
1409 SOUTH EL CAMINO REAL**

**WHEREAS**, on May 15, 2015, an application was submitted, and deemed complete on July 1, 2015, by Edward Rock, 1409 South El Camino Real, San Clemente, CA, 92672, a public hearing to consider a request to allow a full range of alcohol for on-site indoor consumption. The building is located at 1409 South El Camino Real within the Neighborhood Commercial (NC2) zoning district. The legal description of the property being Lot 1, of Block 6, of Tract 851, Assessor's Parcel Number 692-131-07; and

**WHEREAS**, on June 4, 2015, 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 recommends that the Planning Commission determine the project categorically exempt from CEQA pursuant to Guidelines Section 15301, as a Class 1 exemption because the project consists of minor expansion to an existing facility, involving negligible or no expansion of use beyond that existing at the time of the determination; and

**WHEREAS**, on July 22, 2015, 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.

**NOW THEREFORE**, the Planning Commission 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 exemption because the project consists of minor expansion and alterations to an existing facility, involving negligible or no expansion of use beyond that existing at the time of the determination.

**Section 2:** With regard to Conditional Use Permit 15-160 ("CUP 15-024"), the Planning Commission finds as follows:

- A. The proposed sale of on-site indoor consumption of alcohol at a restaurant is permitted within the subject zone pursuant to the approval of a

Conditional Use Permit. The proposed use complies with all the applicable provisions of the Zoning Ordinance, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed in that the use will be indoors only and the facility is remaining bona fide restaurant. The site has had beer and wine for onsite consumption for four years and has not had any issue.

- B. The site is suitable for the type and intensity of use that is proposed in that the restaurant has existed at the site for decades, and has had beer and wine sales for four years with no issues. With the sale of alcohol the use will remain a restaurant.
- 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 the use will remain a restaurant and the applicant is not proposing any live entertainment.
- D. The proposed use will not negatively impact surrounding land uses in that all ABC requirements will have to be met and there have been no issues associated with the existing alcohol sales onsite.

**Section 3:** The Planning Commission of the City of San Clemente hereby approves CUP 15-160, Tommy's Restaurant Alcohol, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein in full by reference.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of San Clemente on July 22, 2015.

\_\_\_\_\_ Chair

**TO WIT:**

I **HEREBY CERTIFY** that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on July 22, 2015, and carried by the following roll call vote:

**AYES:**           **COMMISSIONERS:**  
**NOES:**           **COMMISSIONERS:**  
**ABSTAIN:**       **COMMISSIONERS:**  
**ABSENT:**       **COMMISSIONERS:**

\_\_\_\_\_  
Secretary of the Planning Commission

EXHIBIT A

CONDITIONS OF APPROVAL\*  
CONDITIONAL USE PERMIT 15-160, Tommy’s Restaurant Alcohol

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]* (PIng.)\_\_\_\_\_
  
2. Thirty (30) days after project approval, the owner or designee shall submit written consent to all of these imposed conditions of approval to the Community Development Director or designee. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)\_\_\_\_\_
  
3. 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]* (PIng.) (Bldg.)\_\_\_\_\_

- 4. The project shall be develop in conformance with the site plan, floor plans, elevations, details, and any other applicable submittals approved by the Planning Commission on July 22, 2015, subject to the Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, details, 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 Zoning Administrator. *[Citation - Section 17.12.180 of the SCMC]* (PIng.)\_\_\_\_\_

- 5. CUP 15-160 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 does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date that the ABC permit is issued. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)\_\_\_\_\_

A use shall be deemed to have lapsed, and CUP 15-160 shall be deemed to have expired 90 days after the use ceases operation. *[Citation - Section 17.12.150.C.1 of the SCMC]* (PIng.)\_\_\_\_\_

- 6. The owner or designee shall have the right to request an extension of CUP 15-160 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]* (PIng.)\_\_\_\_\_

- 7. The operating hours of the restaurant use permitted to serve alcohol shall be 7:00 a.m. until 12:00 a.m. seven days a week. ■■ (PIng.)\_\_\_\_\_

- 8. 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 this Use Permit null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (PIng.)\_\_\_\_\_

- 9. The 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



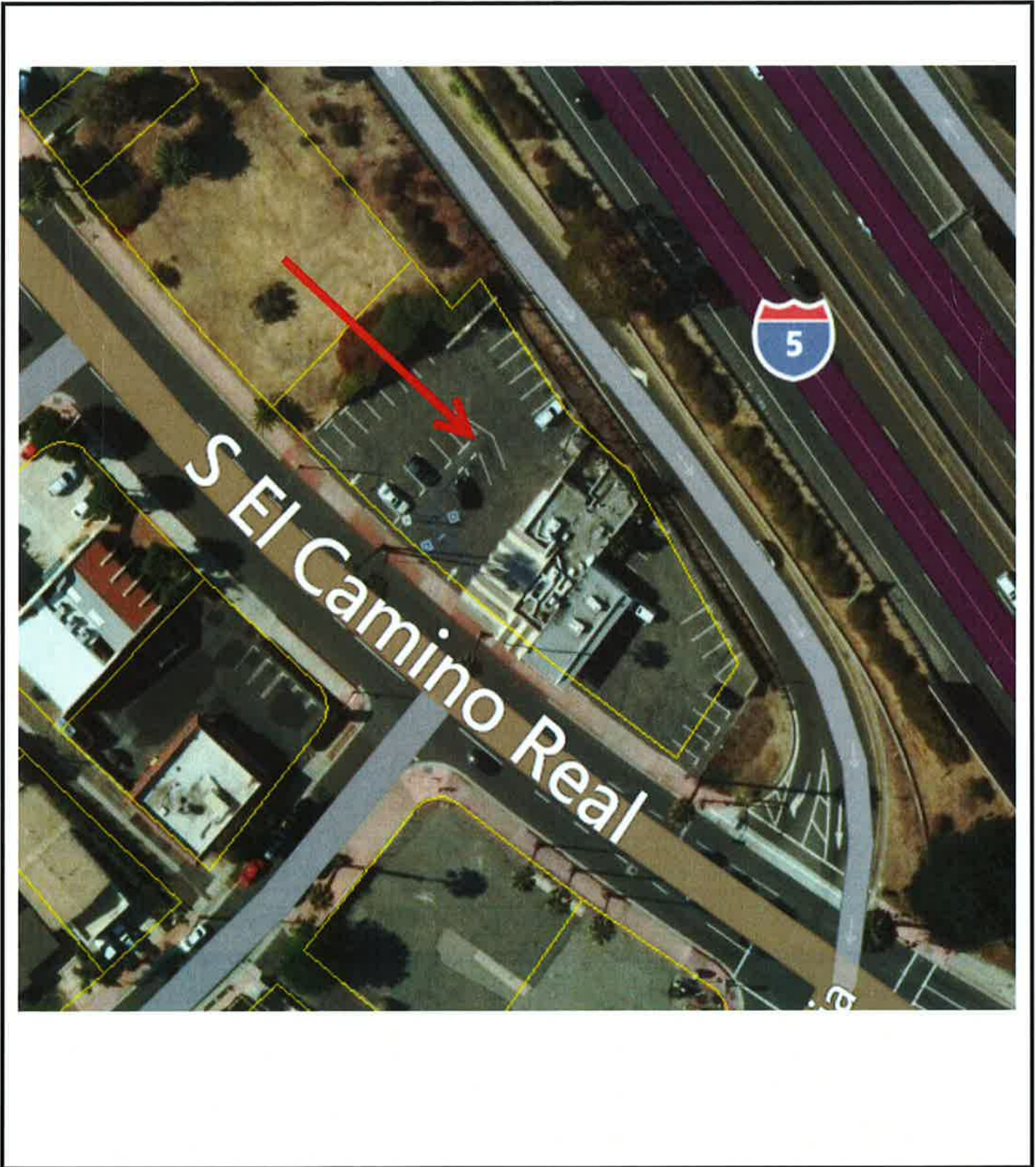
training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]* (PIng.)\_\_\_\_\_

- \* All Conditions of Approval are Standard, unless indicated as follows:
  - Denotes a modified Standard Condition of Approval
  - ■ Denotes a project-specific Condition of Approval



## LOCATION MAP

CUP 15-160, Tommy's Restaurant Alcohol  
1409 South El Camino Real



**GENERAL KEYED NOTES**

- 1 EXISTING EXTERIOR STRUCTURE WALL
- 2 EXISTING CONCRETE CURB & GUTTER
- 3 EXISTING CONCRETE WALK 10'-0" WIDE
- 4 EXISTING CONCRETE DRIVEWAY & APPROACH
- 5 EXISTING TRAFFIC WHITE PARKING STRIPES
- 6 EXISTING HANDICAP PARKING & VAN SPACE WITH ADA SIGNAGE
- 7 EXISTING PATH OF TRAVEL FROM H.C. PARKING TO ENTRANCE
- 8 EXISTING CONCRETE WHEEL STOP
- 9 EXISTING CURB & PLANTER
- 10 EXISTING CMU RETAINING WALL VARY FROM 3'-0" TO 5'-0" HIGH
- 11 EXISTING STORAGE SHED
- 12 EXISTING TRASH CONTAINER LOCATION
- 13 EXISTING CHAIN-LINK FENCE & GATE
- 14 EXISTING 42" HIGH METAL GUARDRAIL
- 15 EXISTING OUTDOOR TABLE SEATING

**BUILDING / SITE DATA**

ZONING ----- NEC  
 OCCUPANCY GROUP ----- A-2  
 TYPE OF CONSTRUCTION ----- V-B  
 NUMBER OF STORIES ----- ONE  
 LAND AREA ----- 21,452 SQ. FT.  
 EASEMENT AREA ----- 2928 SQ. FT.

EXISTING STRUCTURE  
 TOTAL ----- 3890 SQ. FT.

SEATING OCCUPANCY ----- 110  
 OUTDOOR DINING ----- 10

EXISTING PARKING  
 2 HANDICAP SPACES  
 45 PARKING SPACES  
 TOTAL 47 PARKING SPACES



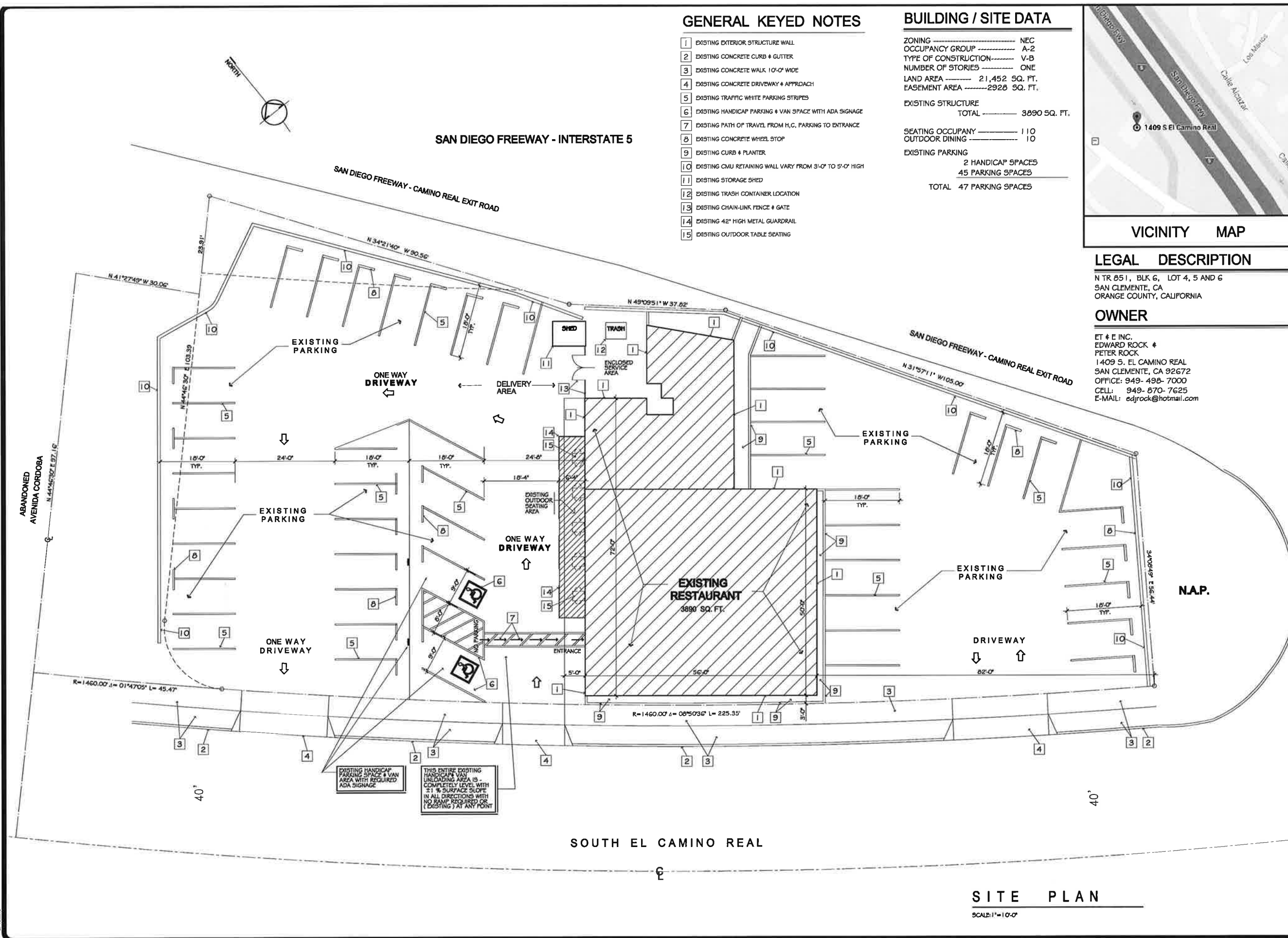
**VICINITY MAP**

**LEGAL DESCRIPTION**

N TR 851, BLK 6, LOT 4, 5 AND 6  
 SAN CLEMENTE, CA  
 ORANGE COUNTY, CALIFORNIA

**OWNER**

ET & E INC.  
 EDWARD ROCK &  
 PETER ROCK  
 1409 S. EL CAMINO REAL  
 SAN CLEMENTE, CA 92672  
 OFFICE: 949-498-7000  
 CELL: 949-870-7625  
 E-MAIL: edjrock@hotmail.com



SOUTH EL CAMINO REAL

**SITE PLAN**

SCALE: 1" = 10'-0"

REVISIONS	BY

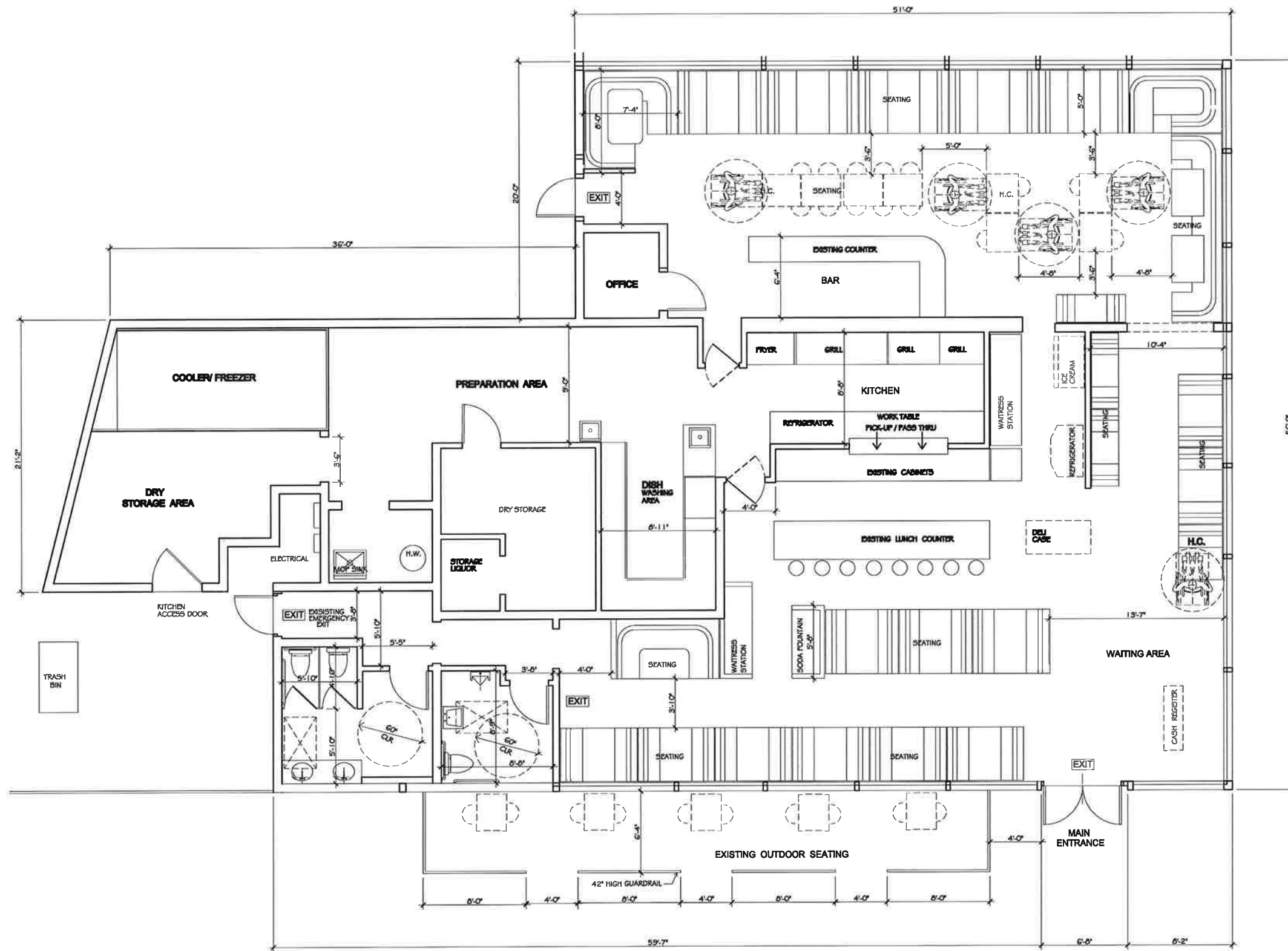
**EXISTING RESTAURANT - C.U.P. APPLICATION**  
 1409 S. EL CAMINO REAL  
 SAN CLEMENTE, CA

DRAWN
CHECKED
V.M.B.
GATE
V.M.B.
SCALE
JOB NO.
SHEET
A-1

MAXIMUM OCCUPANT LOAD OF 110 SHALL BE POSTED IN EACH DINING AND WAITING AREA.

**GENERAL NOTES**

TOTAL SEATING ..... 110  
 TOTAL OUTDOOR SEATING ..... 10  
 TOTAL ADA ACCESSIBLE SEATING ..... 5



**FLOOR PLAN**

SCALE: 1/4" = 1'-0"

REVISIONS	BY

**EXISTING RESTAURANT -  
 C.U.P. APPLICATION**

1409 S. EL CAMINO REAL SAN CLEMENTE, CA.

DRAWN
DESIGNED
V.M.R.
DATE
V.M.R.
SCALE
JOB NO.
SHEET
<b>A-2</b>
OF SHEETS