

REQUEST FOR Planning Commission Action



PLANNING COMMISSION MEETING DATE:

SEPTEMBER 9, 2019

TITLE:

**PUBLIC HEARING – FILED BY MICHAEL CHO
FOR CONDITIONAL USE PERMIT NO. 2019-24
TO ALLOW A TYPE 21 AND TYPE 42 ALCOHOLIC
BEVERAGE CONTROL LICENSE FOR THE WINE
EXCHANGE LOCATED AT 1544 EAST WARNER
AVENUE**

Prepared by Vince Fregoso, AICP

Alvaro Nunez For M.C.
Executive Director

PLANNING COMMISSION SECRETARY

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Set Public Hearing For _____

DENIED

- ☐ Applicant's Request
- ☐ Staff Recommendation

CONTINUED TO _____

[Signature]
Interim Planning Manager

RECOMMENDED ACTION

1. Adopt a resolution approving Conditional Use Permit No. 2019-24.
2. Authorize the Planning Commission to issue a Public Convenience and Necessity (PCN) Letter due to an overconcentration of licenses in the census tract.

Executive Summary

Michael Cho, representing the Wine Exchange, is requesting approval of a conditional use permit for a Type 21 Alcoholic Beverage Control (ABC) license for the off-premise sale of distilled spirits in addition to beer and wine and a Type 42 ABC license for the on-sale (public premise) beer and wine license for the Wine Exchange currently operating at 1544 East Warner Avenue. Establishments that sell alcoholic beverages require a conditional use permit (CUP) pursuant to Section 41-196 of the Santa Ana Municipal Code (SAMC). Additionally, a letter of Public Convenience and Necessity is required as the State's criteria for overconcentration applies to this proposal. Staff is recommending approval as the conditions of approval and standards applicable to ABC licenses will mitigate any potential impact and because the site is not near any sensitive land uses.

Table 1: Project and Location Information

Item	Information	
Project Address	1544 East Warner Avenue	
Nearest Intersection	Warner and Grand Avenues	
General Plan Designation	Professional and Administrative Office (PAO)	
Zoning Designation	Specific Development No. 8 (SD-8)	
Surrounding Land Uses	North	Industrial
	East	Newport-Costa Mesa Freeway (SR-55)
	South	Commercial/Office
	West	Commercial/Office

Item	Information	
Property Size	35-acres	
Existing Site Development	The subject site is currently developed as a multi-tenant office and commercial center known as Brookhollow Office Park	
Unit Size	11,920 square feet	
Use Permissions	Allowed with a conditional use permit (CUP)	
Zoning Code Sections Affected	Uses	SAMC Section 41-196

Project Description

The Wine Exchange is requesting approval to upgrade an existing Type 20 (off-premise beer and wine) ABC license to a Type 21 Alcoholic Beverage Control (ABC) license to allow the off-premise sale of distilled spirits in addition to the beer and wine sales currently occurring at the establishment. In addition, the applicant is proposing to obtain a Type 42 ABC license (food sales not required in conjunction with alcohol sales) to allow wine tastings within the facility. If approved, the applicant is intending to make tenant improvements to the building to accommodate a wine tasting room for wine tasting events. Operating hours for the business will remain from Monday to Saturday from 11:00 a.m. to 6:00 p.m. and on Sunday from 12:00 p.m. to 5:00 p.m.

The sales and storage areas for alcoholic beverages will continue to encompass approximately 10,000 square feet of the existing 11,920 square foot building, or approximately 85 percent of the building. As the building exceeds 10,000 square feet in size, the maximum allowable area for the storage and display for alcohol beverages of five percent is not applicable to this proposal (Exhibits 4 and 5).

Project Background

The Wine Exchange is a retailer and wholesaler of wine that has been operating at this location since October 2012. The existing facility has a Type 17 (Wholesale beer and wine) ABC license, which allows them to sell and ship wine via mail order, phone, internet and wholesale (business to business). The business also has a Type 20 ABC license that was approved in August 2014 that allows retail customers the ability to enter the premises to purchase wine during their operating hours. As the applicant is applying for two new ABC licenses (Type 21 and 42), a CUP is required.

Project Analysis

Conditional use permit requests are governed by Section 41-638 of the SAMC. Conditional use permit requests may be granted when it can be shown that the following can be established:

- That the proposed use will provide a service or facility which will contribute to the general well-being of the neighborhood or community.
- That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

- That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.
- That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.
- That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

If these findings can be made, then it is appropriate to grant the conditional use permit. Conversely, the inability to make these findings would result in a denial. Using this information staff has prepared the following analysis, which, in turn forms the basis for the recommendation contained in this report. In analyzing the conditional use permit request, staff believes that the following findings of fact warrant approval of the conditional use permit.

- The proposed alcohol beverage control licenses will allow the existing establishment to enhance its current operations by allowing retail sales of specialty distilled spirits in addition to the beer and wine currently sold at this location. The conditional use permit for the ABC license will allow the Wine Exchange to expand its operations at this location while allowing it to serve existing and new clientele. Standards that are applicable to the alcoholic beverage control license will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.
- The proposed license for the off-premise consumption of beer, wine and distilled spirits and license to allow on-site tastings at this location will not be detrimental to persons residing or working in the vicinity because alcohol related standards have been placed on the proposed license that will mitigate any potential negative or adverse impacts created by the use. In addition, the sale and consumption of alcoholic beverages will occur within the interior of the premises and will not impact adjacent businesses.
- The proposed use will not adversely affect the economic stability of the area, but will instead allow the facility to compete with other wine merchants in the area that also offer the retail sale of beer, wine and distilled spirits. Further, the establishment is proposing to expand its business by including tasting events for wine and specialty distilled spirits as a component of their business plan, which will assist in identifying the location as an economically viable business and which will improve its economic competitiveness.
- As conditioned, the proposed project will be in compliance with all applicable regulations imposed on a business selling alcoholic beverages pursuant to Chapter 41 of the Santa Ana Municipal Code and the standards adopted by the City for retail uses that sell alcohol.
- The proposed use will not adversely affect the City's General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. A wine merchant provides a retail service to the residents and employees of Santa Ana. Further,

retail and ancillary uses such as off-premise alcohol sales are permitted within the Professional and Administrative Office (PAO) land use designation. The proposed project is not located in a specific plan area in the City. Further, Policy 2.9 of the Land Use Element supports developments that create a business environment that is safe and attractive. The physical improvements to the establishment will create an enhancement to the existing center and promote commercial activity in the area. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. The Wine Exchange business will be located in a commercial and business park area and will be compatible with the surrounding businesses.

The Wine Exchange is proposing to expand their existing operations by adding distilled spirits sales and wine tasting as components to their existing business operations. The site will be in compliance with all standards of SAMC Section 41-196(f) for the off-premise sale of alcoholic beverages. These operational standards will mitigate potential impacts on the adjacent uses and ensure the use does not become an attractive nuisance to the community.

Letter of Public Convenience and Necessity

Due to staff's recommendation of approval, the issuance of a Public Convenience and Necessity (PCN) letter is required. A PCN letter is required per Business and Professions Code Section 23958.4 as the State has determined that an overconcentration of off-premise ABC licensed establishments within the census tract exists.

The City's criteria for overconcentration of off-sale establishments are found in Section 41-196(d) of the SAMC. The overconcentration criteria apply to off-sale establishments that are less than 10,000 square feet in size. As the Wine Exchange occupies an 11,920 square foot building, it is exempt from the City's overconcentration criteria. However, as previously mentioned, the State's criteria for overconcentration still apply.

The State Department of Alcoholic Beverage Control identifies a census tract as overconcentrated if the ratio of off-sale retail licenses to the population of the census tract which the premises is located exceeds the ratio of off-sale retail licenses to the population of the county. Based on this analysis, census tracts in the City are allowed one licensed establishment per 1,650 residents. The Wine Exchange is located in Census Tract No. 740.03, which is allowed one off-sale outlet based on the State's criteria, while six active licenses currently exist. Table 1 and Map 1 on the following page identify the location of the existing licensed premises. As the map shows, the licensed establishments are disbursed throughout the census tract, with the closest licensed premises approximately 2,200 feet from the Wine Exchange.

Although the census tract is overconcentrated per State standards, the sale of wine at the Wine Exchange will not create any adverse impacts or adversely affect persons working or residing in the area. Further, the business model for the Wine Exchange differs from the other off-premise establishments as the Wine Exchange sells wine by the bottle or in larger quantities while the other establishments are smaller neighborhood markets that sell both beer and wine. As a result, staff is

recommending the issuance of a PCN letter for the Wine Exchange. The PCN letter will state that, despite the overconcentration of ABC licenses in the census tract, the issuance of an additional off-sale ABC license at this location is necessary to serve the public convenience, will not create any adverse impacts and will not impact the overall crime rate of the area.

Table 2: Off-Sale Licenses within Census Tract No. 740.03

Premises	Location	Type	Distance
(1) Mobil	1351 East Dyer Road	Type 20	0.50 miles
(2) Quality Suites	2701 South Hotel Terrace Drive	Type 20	2,190 feet
(3) Gerald's Quick Stop Market	3313 South Main Street	Type 20	1.45 miles
(4) Acapulco Super Market	210 East Warner Avenue	Type 20	1.1 miles
(5) Halladay Market	601 East Central Avenue	Type 20	0.75 miles
(6) Hutton Marketplace & Deli	2 East Hutton Centre Drive, Suite 101	Type 20	1.49 miles

Map 1: Off-Sale Licenses within Census Tract No. 740.03



Police Department Analysis

The Police Department reviews conditional use permit applications for the sale of alcoholic beverages because there is a strong correlation between the availability of alcohol and crime. Studies have shown that alcohol is a contributing factor in crimes such as drunk driving, fatal traffic collisions, homicide, assaults, rape, domestic violence, drunk in public and other nuisance type of offenses.

The Police Department considered three factors when reviewing this type of application: crime rate, overconcentration and sensitive land uses. It has been determined that 1544 East Warner Avenue is located in Reporting District No. 209. This reporting district ranks 62nd out of 102 reporting districts in the number of police related calls for service established under Business and Professions Code Section 23958.4. This reporting district is below the 20 percent threshold established by the State for high crime. Further, this business is within a building that is almost 12,000 square feet in size and is therefore not subject to the separation requirements found in SAMC 41-196(d). Additionally, SAMC Section 41-196(d)(3) defines overconcentration as any location that has been determined to be overconcentrated by the State of California. This facility is located in Census Tract No. 740.03, which is allowed one off-sale outlet while six active licenses currently exist. However, as there is not a licensed establishment within 1,000 feet of the site, overconcentration has not been identified as an issue for this request. Finally, a review of the area has found that no sensitive uses are located in the immediate area that might be negatively impacted by this action. As a result, the Police Department has evaluated the applicant's request and believes that the proposed ABC license will not adversely affect the surrounding community. Standards applicable to ABC licensed establishments are included as required by the SAMC that are adequate to address any concerns related to the ABC License.

Table 2: CEQA, Strategic Plan Alignment, and Public Notification & Community Outreach

CEQA, Strategic Plan Alignment, and Public Notification & Community Outreach	
CEQA	
CEQA Type	Categorically Exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities)
Document Type	Notice of Exemption, Environmental Review No. 2019-58.
Reason(s) Exempt or Analysis	In accordance with the California Environmental Quality Act the recommended action is exempt for further review per Section 15301. The Class 1 exemption allows the operating, permitting and licensing of existing private structures with negligible or no expansion of the existing use. The proposed application is to approve an alcoholic beverage control license and allow the sale of beer and wine within an existing commercial building.
Strategic Plan Alignment	
Goal(s), Policy or Policies	Strategic Plan No. 3, 2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies).
Public Notification & Community Outreach	
Public Notice	In compliance with Chapter 41 (Zoning), Article V of the Santa Ana Municipal Code, notice of the hearing was posted and published in the "Orange County Reporter" newspaper and mailed to surrounding property owners and occupants within 500 feet of the subject project at least 10 days before the Public Hearing.

CEQA, Strategic Plan Alignment, and Public Notification & Community Outreach	
Sunshine Ordinance Meeting	The project is not subject to the Sunshine Ordinance.
Additional Measures	The project site is not within an established neighborhood association boundary. However, the management of the Brookhollow Office Park Association was notified of the project and public hearing. At the time this report was printed, no issues of concern were raised regarding the proposed project.

Economic Development

The project will generate unknown sales tax revenue through the establishment of the wine tasting facilities. It is anticipated that the wine tasting events will lead to additional wine sales, thus increasing revenue to the City's general fund. In addition, any tenant improvements for the project will require that permit fees be paid to the City.

Conclusion

Based on the analysis provided within this report, staff recommends that the Planning Commission approve Conditional Use Permit No. 2019-24.



Vince Fregoso, AICP
Interim Planning Manager

VF:jm

s/Planning Commission/9-3-19/CUP 19-24 Wine Exchange.0920919.pc

Attachments:

- Exhibit 1 – Resolution
- Exhibit 2 – Vicinity Map
- Exhibit 3 – Site Photo
- Exhibit 4 – Site Plan
- Exhibit 5 – Floor Plan

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EXHIBIT 1

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RESOLUTION NO. 2019-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2019-24 TO ALLOW A TYPE 21 AND TYPE 42 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR THE PROPERTY LOCATED AT 1544 EAST WARNER AVENUE

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Michael Cho, representing the Wine Exchange (Applicant), is requesting approval of Conditional Use Permit No. 2019-24 to allow an upgrade of a Type 20 Alcoholic Beverage Control (ABC) license to a Type 21 ABC license, as well as approval of a new Type 42 ABC license to allow the sale of beer, wine and distilled spirits for on and off-premises consumption for the property located at 1544 East Warner Avenue.
- B. Conditional Use Permit No. 2014-28 came before the Planning Commission of the City of Santa Ana for a duly noticed public hearing on July 28, 2014. At such meeting, the Planning Commission approved a Type 20 ABC license for the establishment.
- C. The Applicant is now requesting approval of Type 21 and Type 42 ABC licenses in order to allow the sale of upscale distilled spirits, as well as to allow the tasting of beer, wine and distilled spirits within a designated tasting room.
- D. Santa Ana Municipal Code Section 41-196 requires a conditional use permit for the sale of alcoholic beverages.
- E. The Planning Commission determines that the following findings, which must be established in order to grant a Conditional Use Permit pursuant to Santa Ana Municipal Code Section 41-638, have been established:
 1. Will the proposed use provide a service or facility which will contribute to the general well being of the neighborhood or community?

The proposed alcohol beverage control licenses will allow the existing establishment to enhance its current operations by allowing retail sales of beer, wine and distilled spirits at this location. The conditional use permit for the ABC license will

allow the Wine Exchange to expand its operations at this location while allowing it to serve existing and new clientele. Standards that are applicable to the alcoholic beverage control license will mitigate any potential impacts created by the use and ensure that the use will not negatively affect the surrounding community.

2. Will the proposed use under the circumstances of the particular case be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity?

The proposed licenses for the on and off-premises consumption of beer, wine and distilled spirits at this location will not be detrimental to persons residing or working in the vicinity because alcohol related standards have been placed on the proposed license that will mitigate any potential negative or adverse impacts created by the use. In addition, the sale of alcoholic beverages will occur within the interior of the premises and will not impact adjacent businesses.

3. Will the proposed use adversely affect the present economic stability or future economic development of properties surrounding the area?

The proposed use will not adversely affect the economic stability of the area, but will instead allow the facility to compete with other wine merchants in the area that also offer the retail sale of alcoholic beverages. Further, the establishment is proposing to expand its business by including a tasting room as a component of their business plan, which will assist in identifying the location as an economically viable business and which will improve its economic competitiveness.

4. Will the proposed use comply with the regulations and conditions specified in Chapter 41 of the S.A.M.C. for such use?

The proposed project will be in compliance with all applicable regulations and standards imposed on a business selling alcoholic beverages pursuant to Chapter 41 of the Santa Ana Municipal Code and the standards adopted by the City for retail uses that sell alcohol.

5. Will the proposed use adversely affect the General Plan or any specific plan of the City?

The proposed use will not adversely affect the City's General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and

services. A wine merchant provides a retail service to the residents and employees of Santa Ana. Further, retail and ancillary uses such as on and off-premises alcohol sales are permitted within the Professional and Administrative Office (PAO) General Plan land use designation. The proposed project is not located in a specific plan area in the City. Further, Policy 2.9 of the Land Use Element supports developments that create a business environment that is safe and attractive. The physical improvement to the building will create an enhancement to the existing center and promote commercial activity in the area. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. The Wine Exchange retail business is located in a commercial and business park area and is compatible with the surrounding businesses.

- F. A Public Convenience and Necessity (PCN) letter is required per Business and Professions Code Section 23958.4 as the State has determined that an over-concentration of off-premises ABC licensed establishments within the census tract exists. The State Department of Alcoholic Beverage Control identifies a census tract as over-concentrated if the ratio of off-sale retail licenses to the population of the census tract which the premises is located exceeds the ratio of off-sale retail licenses to the population of the county. Based on this analysis, census tracts in the City are allowed one licensed establishment per 1,650 residents. The Wine Exchange is located in Census Tract No. 740.03, which is allowed one off-sale outlet based on the State's criteria, while six active licenses currently exist. Although the census tract is over-concentrated per State standards, the business model for the Wine Exchange differs from the other licensed establishments as the Wine Exchange sells wine by the bottle or in larger quantities while the other establishments are smaller neighborhood markets that sell both beer and wine. Thus, despite the over-concentration of ABC licenses in the census tract, the issuance of an additional off-sale ABC license at this location is necessary to serve the public convenience, will not create any adverse impacts and will not impact the overall crime rate of the area.
- G. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the recommended action is exempt from further review per Section 15301. The Class 1 exemption allows the operating, permitting and licensing of existing private structures with negligible or no expansion of the existing use. The proposed application is to approve an alcoholic beverage control license and allow the sale of beer, wine and distilled spirits within an existing commercial building. Categorical Exemption Environmental Review No. 2019-58 will be filed for this project.

Section 2. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies,

authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 3. The Planning Commission of the City of Santa Ana after conducting the public hearing hereby approves Conditional Use Permit No. 2019-24. In addition, the Planning Commission authorizes the issuance of a Public Convenience and Necessity (PCN) Letter for the project. These decisions are based upon the evidence submitted at the abovesaid hearing, which includes, but is not limited to: the Request for Planning Commission Action dated September 9, 2019, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.

ADOPTED this 9th day of September, 2019.

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTENTIONS: Commissioners:

Mark McLoughlin
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: _____
Lisa Storck
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Secretary of the Planning Commission, do hereby attest to and certify the attached Resolution No. 2019-xx to be the original resolution adopted by the Planning Commission of the City of Santa Ana on September 9, 2019.

Date: _____

Planning Commission Secretary
City of Santa Ana

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EXHIBIT 2

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CONDITIONAL USE PERMIT NO. 2019-24 WINE EXCHANGE
1544 EAST WARNER AVENUE

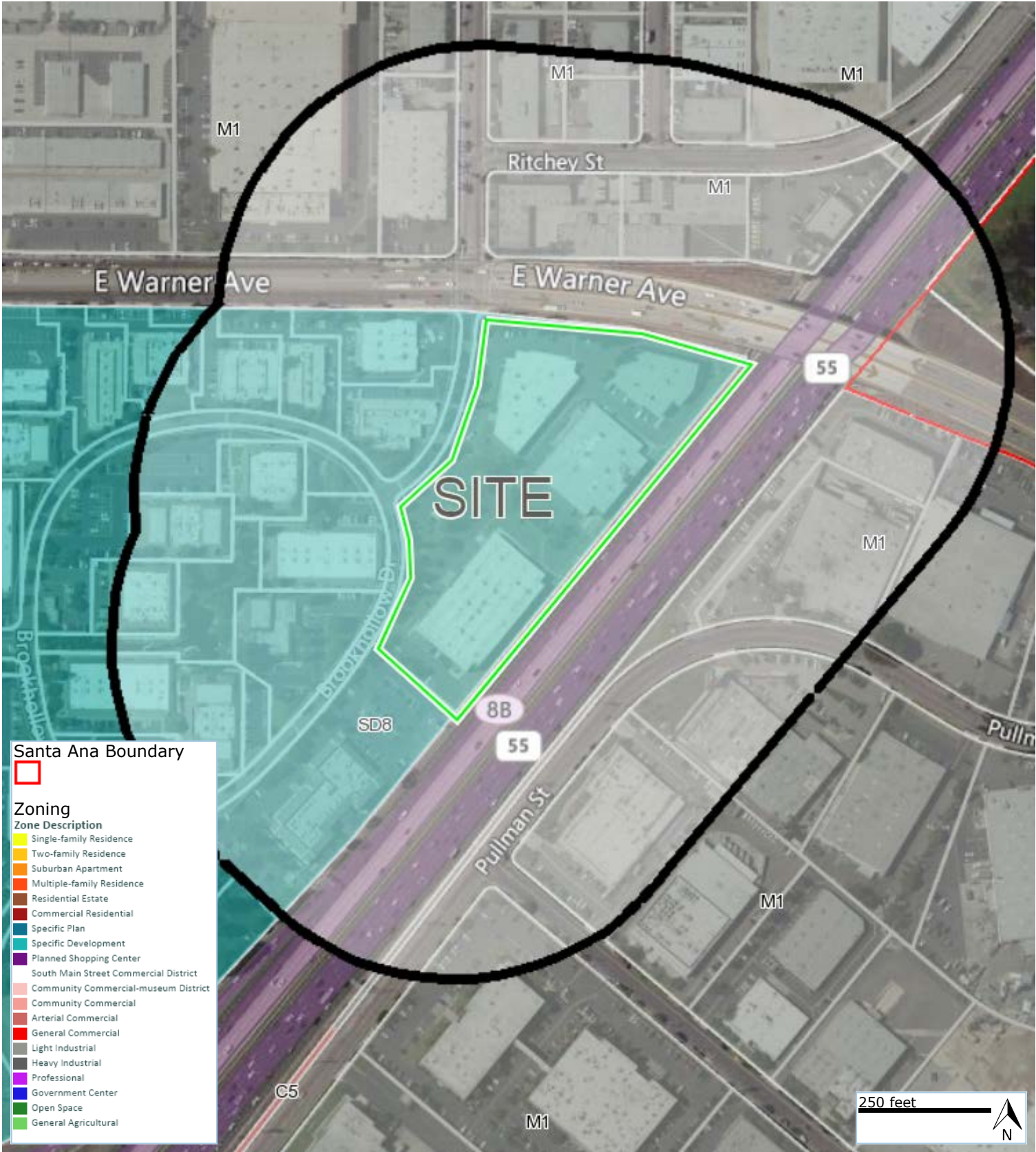


EXHIBIT 2 - VICINITY ZONING AND AERIAL MAP



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EXHIBIT 3

5-21

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CUP 2019-24
WINE EXCHANGE
1544 EAST WARNER AVENUE
SITE PHOTO

EXHIBIT 3

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