



THE CITY OF SAN DIEGO

## REPORT TO THE HEARING OFFICER

HEARING DATE: October 10, 2012                      REPORT NO. HO 12-078

ATTENTION:                      Hearing Officer

SUBJECT:                      EDUARDO'S MARKET - PROJECT NUMBER 268446

LOCATION:                      3175 National Avenue

APPLICANT:                      Michael and Mona Dallo (Owners)

### SUMMARY

Issue(s): Should the Hearing Officer approve a Conditional Use Permit and Site Development Permit for the operation of an alcohol beverage outlet within an existing market located at 3175 National Avenue in the Southeastern San Diego Community Plan area?

Staff Recommendation: APPROVE Conditional Use Permit No. 952387 and Site Development Permit No. 952388.

Community Planning Group Recommendation: On July 7, 2012, the Southeastern San Diego Community Planning Group voted 5-4-0 recommending the project be approved. There were no additional comments or conditions provided by the planning group.

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (existing facility). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on June 1, 2012, and the opportunity to appeal that determination ended July 3, 2012

### BACKGROUND

The existing Eduardo's Market is located at 3175 National Avenue on a 0.48-acre site that includes the 13,248 square-foot market with two, second story residential apartment units, and two separate, two story residential apartment buildings with single units over garages for a total of four units with approximately 3,314 square feet of residential use. The corner lot is at the intersection of National Avenue and 32<sup>nd</sup> Street and includes a dedicated public alley accessed from 32<sup>nd</sup> Street. The market entrance fronts National Avenue and includes 14 off-street parking spaces accessed from a single rolled curb along the frontage. The alley provides access to a

series of individual garages for the residential units as well as a small warehouse area serving the store.

The site is zoned CSR-2 in the Southeastern San Diego Planned District (SESDPDO) and is within the Memorial Neighborhood Element of the Southeastern San Diego Community Plan. The CSR-2 Zone permits the retail sale of general merchandise and an alcoholic beverage outlet is permitted in the zone as a limited use as detailed further in this report. The surrounding neighborhood generally consists of residential development including an older mix of single-family homes and multi-family apartments. The corner of National Avenue and 32<sup>nd</sup> Street is a small neighborhood commercial node with the Eduardo's Market, a Corona Furniture store, a liquor store, and a Mexican restaurant

## DISCUSSION

This project application is seeking to establish a new alcoholic beverage outlet within an existing independent food market. The proposed project requires two discretionary entitlements. A Conditional Use Permit is required pursuant to the San Diego Municipal Code for alcohol sales on any site that does not comply with specific location criteria of the Land Development Code. Also, the Southeastern San Diego Planned District Ordinance requires a Site Development Permit for any new commercial development or use requiring a Conditional Use Permit.

The applicant is proposing to allow the sale of beer and wine through a Type 20 Liquor License within an existing market. The pending Alcohol Beverage Control (ABC) license is defined as "off-sales" which would require all of the alcohol sold at the store to be consumed off of the premises.

### Development Regulations and Location Criteria

Alcoholic beverage outlets are permitted by right as a Limited Use pursuant to San Diego Municipal Code [SDMC] section 141.0502(b). However, alcoholic beverage outlets that do not comply with the locational criteria of this section may still be permitted with a Conditional Use Permit pursuant to SDMC section 141.0502(c).

The Limited Use Regulations of the SDMC section 141.0502(b)(1) do not permit alcoholic beverage outlets by right (i.e. would require a Conditional Use Permit) in the following locations:

- 1. Within a census tract, or within 600 feet of a Census Tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.** The subject property is in Census Tract No. 39.02 which reported a crime rate 231 percent higher than the citywide average based on the statistics provided by the San Diego Police Department. A Census Tract is considered to have "high crime" if the crime rate exceeds 120 percent of the city-wide average. Therefore, a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

2. **Within a Census Tract, or within 600 feet of a Census Tract, where the ratio of alcoholic beverage outlets exceeds the standards established by the California Businesses and Professional Code Section 23958.4.**

The subject property is within Census Tract No. 39.02, which based on the California Businesses and Professional Code Section 23958.4 permits a total of four (4) off-sale alcoholic beverage outlets. There are currently four (4) existing off-sale alcohol beverage outlets within Census Tract 0027.07 therefore the Census Tract would be considered over saturated with the approval of this permit. Therefore a CUP would be required for the off-sale of alcoholic beverages based on this factor.

3. **Within a Redevelopment Area.**

The project site is not within a Redevelopment Project Area. Therefore a CUP would not be required for the off-sale of alcoholic beverages based on this factor.

4. **Within 600 feet of a public or private accredited school, a public park, playground or recreational area, church, hospital or a San Diego County Welfare District Office.**

The project site is not known to be located within 600 feet of these types of facilities.

5. **Within 100 feet of residentially zoned property.**

The project site is within 100 feet of residentially zoned property.

6. **Within 600 feet of a place of religious assembly.**

The project site is not known to be within 600 feet of religious assembly.

#### Alcohol Sales-Project Analysis:

The proposed off-sale alcoholic beverage outlet at this site requires a Conditional Use Permit because the project site does not meet all of the location criteria of the Municipal Code. As demonstrated above, the project site is within a Census Tract that: 1) is defined as having a high crime rate; 2) Is within a Census Tract that would become oversaturated ; and 3) is within 100 feet of residentially zoned property. Any one of these factors establishes the need for the Conditional Use Permit.

The project has been reviewed by City staff and the San Diego Police Department for conformance to the applicable development regulations and land use polices. The staff recommendation to support the project relies on the fact that the primary use of the site is a supermarket and the sale of beer and wine is an accessory to that use. The property is part of a commercial node serving the community and would be consistent with the land use designation of the site. Therefore, the addition of beer and wine for off-site consumption should not adversely impact the community. Accordingly, staff is recommending approval of the project as conditioned by staff and the San Diego Police Department.

## Draft Conditions of Approval

The project approval would allow the sale of liquor to be conditioned so that the alcohol sales would not have a negative impact on the surrounding neighborhood (Attachment 6). The CUP/SDP includes a number of conditions that would limit the hours of sales, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property. Additionally, the CUP provides an opportunity for the San Diego Police Department to petition the State Department of Alcohol Beverage Control (ABC) to include enforceable conditions regulating the type, size, quantities and alcoholic content (proof by volume) of the beverages. Further, both the staff and the Police Department concluded that if the permit were appropriately conditioned, the proposed alcohol sales would not have a negative impact on the surrounding neighborhood.

Specifically, the CUP conditions would limit the hours of alcohol beverage sales from 7:00 AM to 10:00 PM. The CUP would prohibit pinball games, arcade-style video and electronic games, or coin-operated amusement machines on the premises. Exterior and interior public pay phones would not be permitted on the premises, on adjacent public sidewalks, or areas under the control of the owner or operator. Advertising would be limited to interior signs only and "No Loitering" signs would be required to be prominently displayed on the premises. Finally, the Conditional Use Permit would include a 20-year expiration date from the date the CUP was approved. The permit could be extended through the appropriate review and decision process and may be subject to additional conditions at that time.

## Community Planning Group Recommendation

On July 12, 2012, the Southeastern San Diego Planning Group heard the proposed project at their monthly board meeting and voted 5-4-0 to recommend approval of the project with no additional conditions or comments were provided (Attachment 8).

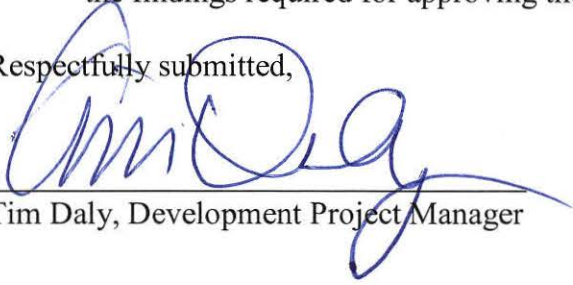
## Conclusion

City staff supports the request for a Conditional Use Permit for the limited and conditional sale of beer and wine. Permit conditions have been added to this discretionary permit that would assure that the business would be a cohesive element of the neighborhood and would not be detrimental to the public health, safety and welfare of the community. The project is consistent with the underlying zone and the applicable land use plans and policies in affect for the site. An environmental initial study performed by the Development Services Department determined that the proposed project was exempt from further CEQA review as an existing facility (Attachment 7) and is supported with proposed conditions and ABC license recommendations by the San Diego Police Department (Attachment 9).

ALTERNATIVES:

1. **Approve** Conditional Use Permit No. 952387 and Site Development Permit No. 952388 with modifications; or
2. **Deny** Conditional Use Permit No. 952387 and Site Development Permit No. 952388, if the findings required for approving the project cannot be affirmed.

Respectfully submitted,



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Tim Daly, Development Project Manager

Attachments:

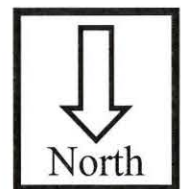
1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Draft Permit Resolution with Findings
6. Draft Permit with Conditions
7. Environmental Exemption
8. Community Planning Group Recommendation
9. San Diego Police Department Conditional Use Permit Recommendations
10. Ownership Disclosure Statement
11. Project Plans (Hearing Officer only)





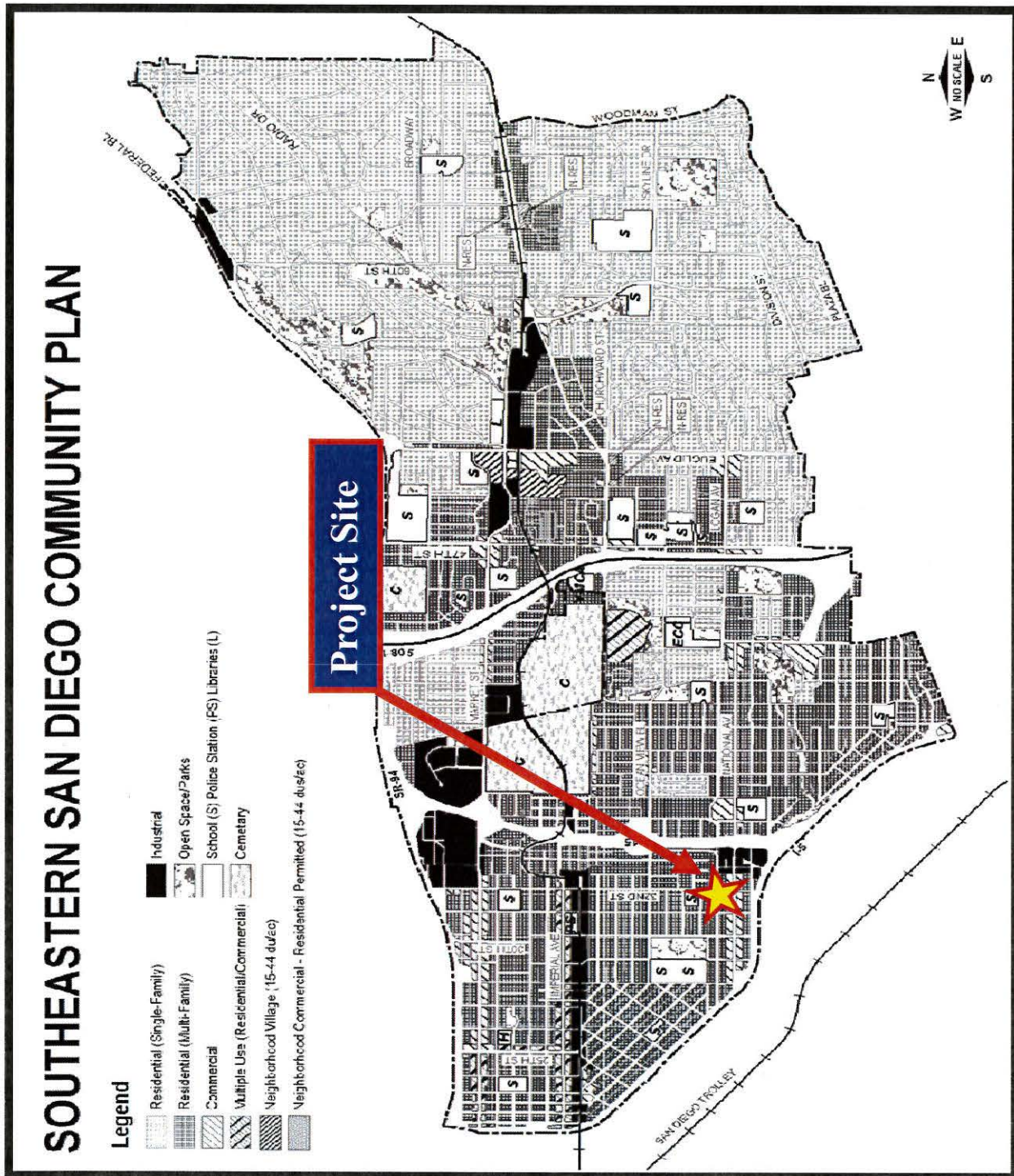
**Aerial Photo**

EDUARDO'S, Project No. 268446  
3175 National Avenue



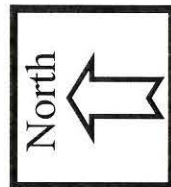




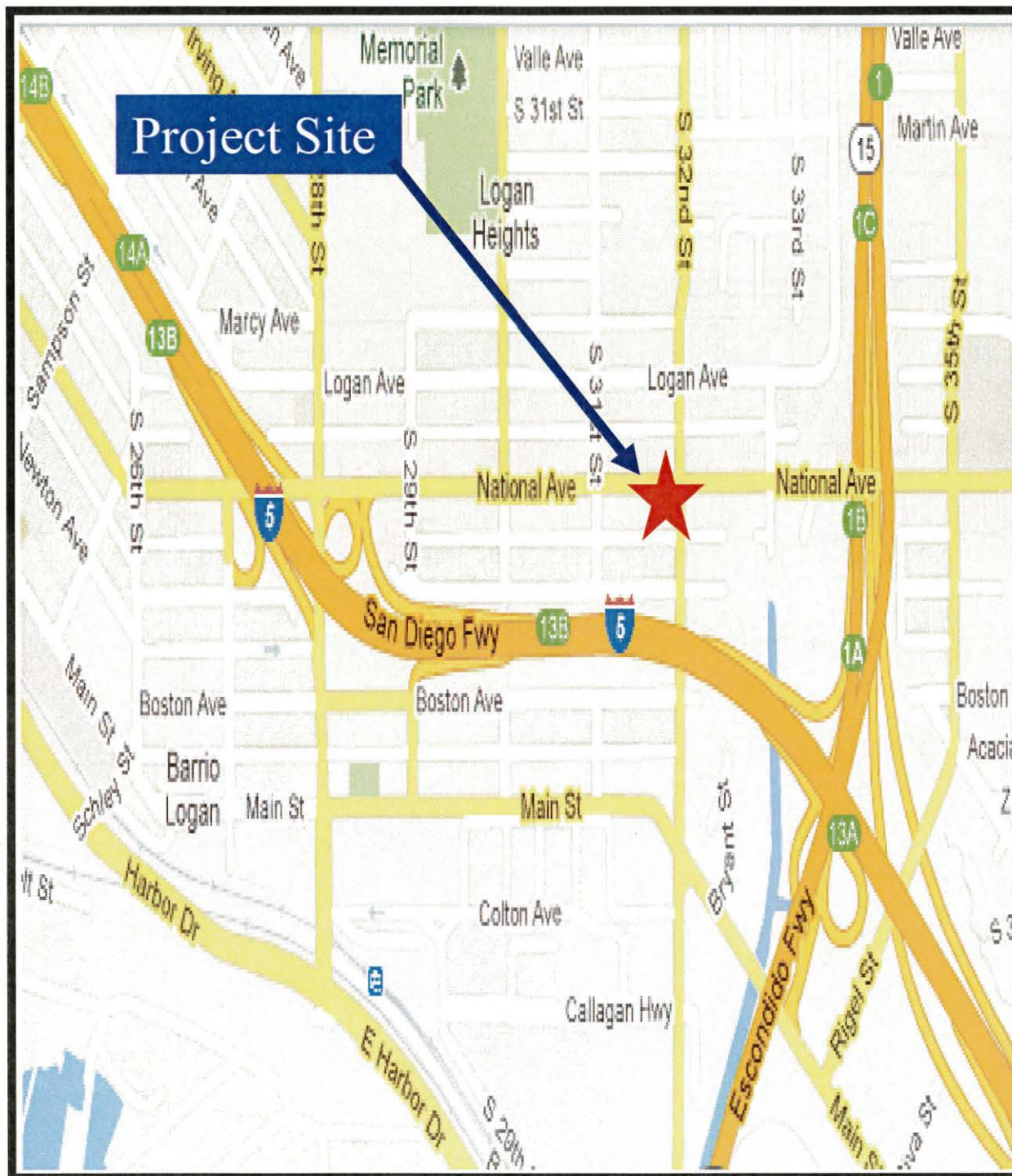


## Southeastern San Diego Land Use Map

EDUARDO'S, Project No. 268446  
3175 National Avenue







## Project Location

EDUARDO'S, Project No. 268446  
3175 National Avenue





## PROJECT DATA SHEET

<b>PROJECT NAME:</b>	Eduardo's	
<b>PROJECT DESCRIPTION:</b>	Create a new alcoholic beverage outlet within an existing independent food market.	
<b>COMMUNITY PLAN AREA:</b>	Southeastern San Diego	
<b>DISCRETIONARY ACTIONS:</b>	Conditional Use Permit and Site Development Permit	
<b>COMMUNITY PLAN LAND USE DESIGNATION:</b>	Commercial	
<b><u>ZONING INFORMATION:</u></b>		
<b>ZONE:</b> Southeastern San Diego Planned District CSR-2		
<b>HEIGHT LIMIT:</b> N/A		
<b>LOT SIZE:</b> Min. 5,000 s.f.		
<b>FLOOR AREA RATIO:</b> Max. 0.75		
<b>SETBACKS:</b> Min. Front Yard: 0 ft Min. Side: 0 ft Min. Rear: 0 ft		
<b>PARKING:</b> 14 parking spaces (1 accessible) required		
<b><u>ADJACENT PROPERTIES:</u></b>	<b>LAND USE DESIGNATION &amp; ZONE</b>	<b>EXISTING LAND USE</b>
<b>NORTH:</b>	Commercial; SESDPD CSR-2	Commercial/Residential
<b>SOUTH:</b>	Multi-family Residential; SESDPD MF-3000	Multi-family
<b>EAST:</b>	Commercial; SESDPD CSR-2	Commercial
<b>WEST:</b>	Commercial; SESDPD CSR-2	Commercial
<b>DEVIATIONS OR VARIANCES REQUESTED:</b>	None	
<b>COMMUNITY PLANNING GROUP RECOMMENDATION:</b>	On July 12, 2012, the Southeastern San Diego Planning Group voted 5-4-0 to recommend approval of the proposed project.	



HEARING OFFICER RESOLUTION NO. HO-(DRAFT)  
CONDITIONAL USE PERMIT NO. 952387  
SITE DEVELOPMENT PERMIT NO. 952388  
**EDUARDO'S - PROJECT NO. 268446**

WHEREAS, MIKE N. DALLO and MONA DALLO, husband and wife as joint tenants, Owners and MD & CD Inc., Permittees, filed an application with the City of San Diego for a permit to allow the sale of alcohol limited to beer and wine within an existing market (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Conditional Use Permit No. 952387 and Site Development Permit No. 952388), on portions of a 0.48 acre site; and

WHEREAS, the project site is located at 3175 National Avenue in CSR-2 Zone of the Southeastern San Diego Planned District Ordinance within the Memorial Neighborhood Element of the Southeastern San Diego Community Plan Area; and

WHEREAS, the project site is legally described as Lots 1 through 6, Block 40, H. P. Whitney's Addition in the City of San Diego, County of San Diego, State of California, according to Map No. 168, filed in the Office of the County Recorder of San Diego County, July 8, 1886; and

WHEREAS, October 10, 2012, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 952387 and Site Development Permit No. 952388 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, on June 1, 2012, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15301 (Existing Facilities) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

NOW, THEREFORE BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That Hearing Officer adopts the following written Findings for Approval of Conditional Use Permit No. 952387 and Site Development Permit No. 952388 pursuant to Land Development Code Section §126.0305, dated October 10, 2012.

FINDINGS:

Conditional Use Permit – SDMC section 126.0305

**(a) The proposed development will not adversely affect the applicable land use plan.**

The proposed development is requesting a Conditional Use Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The Memorial Neighborhood Element of the Southeastern San Diego Community Plan designates the parcel as a Commercial Zone and recommends General Commercial activities be developed on both sides of National Avenue. The proposed development would implement several plan objectives of the Memorial Neighborhood element by improving the general appearance of existing commercial buildings through permit conditions regulating lighting, graffiti control and façade improvements. The community plan

recommends commercial retail activity on the project site but is silent on the issue of alcohol beverage outlets. The underlying CSR-2 Zone allows a variety of community commercial uses by right and alcohol sales as a limited use that would require a Conditional Use Permit. The existing market provides a small-scale community commercial use and would be enhanced with the limited sale of beer and wine. The market would continue to operate primarily as a general store with the limited addition of some alcoholic beverages. Therefore the proposed development would not adversely impact the applicable land use plan.

**(b) The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed development is requesting a Conditional Use Permit and Site Development Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The sale of alcohol would be regulated by a State of California issued Alcohol Beverage Control (ABC) License and the conditions of Conditional Use Permit No. 952387 and Site Development Permit 952388. Specific ABC license conditions would control the packaging, sale quantities and alcoholic content (proof by volume) and the CUP would regulate land use issues such as loitering, lighting, advertizing and hours of sales. Prohibitions on visible exterior advertizing would enhance transparency into the market and would also serve to deter underage drinking. Limitations on the hours of alcohol sales would restrict sales in the high crime area in the late evening. These conditions combined with the enforcement authority of the ABC and San Diego Police Department would ensure that the limited sale of alcohol would not be detrimental to the public health safety and welfare.

**(c) The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.**

The proposed development is requesting a Conditional Use Permit and Site Development Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The property is zoned CSR-2 which permits the retail sale of general merchandise. The market was constructed in 1963 and has previously conforming rights relative to the existing structure including parking, setbacks and landscape. The sale of beer and wine is permitted within the zone with an approved Conditional Use Permit. No variance or deviation is requested as a part of this application. Therefore, the proposed development would comply with the regulations of the Land Development Code.

**(d) The proposed use is appropriate at the proposed location.**

The proposed development is requesting a Conditional Use Permit and Site Development Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The market sells a large variety of food and grocery items and the limited sale of beer and wine would compliment the existing merchandise. The applicable land use plan designates the property for general commercial development and the underlying commercial zone establishes the right to sell retailed merchandise. The San Diego Police Department has concluded that the sale of beer and wine at the market would constitute a public need and convenience and has provided recommendations for the sale of alcohol on the site. Therefore, the proposed use would be appropriate at the proposed location.



Southeastern San Diego Planned District Ordinance – SDMC section 1519.0202

**(a) The proposed use and project design meet the purpose and intent of the Southeastern San Diego Planned District Ordinance; comply with the recommendations of the Southeastern San Diego Community Plan, and will not adversely affect the General Plan or other applicable plans adopted by the City Council.**

The purpose of the Planned District regulations is to provide reasonable development criteria for the construction or alteration of quality residential, commercial and industrial development throughout the Southeastern San Diego community. The intent is to implement the Southeastern San Diego Community Plan through the use of the applied urban design standards contained in this Southeastern San Diego Planned District Ordinance. The proposed development would satisfy the purpose and intent of the ordinance and the community plan by implementing the commercial recommendations of the Plan using conditions to limit the sale of alcohol and the Planned District Ordinance by regulate the use of the property relative to lighting, graffiti, signage and hours of operation. This action would not adversely affect the General Plan or the Southeastern San Diego Community Plan.

**(b) The proposed development shall be compatible with existing and planned land use on adjoining properties and shall not constitute a disruptive element to the neighborhood and community. In addition, architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable.**

The proposed development would add the limited sale of alcohol to an existing independent grocery market. The market has been in operation since 1963 and would continue to provide a local neighborhood shopping alternative to the surrounding community. The addition of beer and wine products would not have any significant adverse affect on the adjacent properties as the store would be maintained primarily as a supermarket and conditions of the permit, including upgrades to the public right-of-way, would enhance the area. The existing structure has previously conforming rights relative to the development regulations of the zone and therefore has itself contributed to the architectural style of the surrounding neighborhood for several decades and would continue to be in harmony with the community.

**(c) The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity.**

The proposed development is requesting a Conditional Use Permit and Site Development Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The sale of alcohol would be regulated by a State of California issued Alcohol Beverage Control (ABC) License and the conditions of Conditional Use Permit No. 952387 and Site Development Permit 952388. Specific ABC license conditions would control the packaging, sale quantities and alcoholic content (proof by volume) and the CUP would regulate land use issues such as loitering, lighting, advertizing and hours of sales. These conditions combined with the enforcement authority of the ABC and San Diego Police Department would ensure that the limited sale of alcohol would not be detrimental to the public health safety and welfare.

**(d) The proposed use will comply with the relevant regulations of the Municipal Code.**

The proposed development is requesting a Conditional Use Permit and Site Development Permit for the limited sale of alcohol within an existing market at 3175 National Avenue. The property is zoned CSR-2 which permits the retail sale of general merchandise. The market was constructed in 1963 and has previously conforming rights relative to the existing structure including parking, setbacks and landscape. The sale of beer and wine is permitted within the zone with an approved Conditional Use Permit. No variance or deviation is requested as a part of this application. Therefore, the proposed development would comply with the regulations of the Land Development Code

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 952387 and Site Development Permit No. 952388 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Conditional Use Permit No. 952387 and Site Development Permit No. 952388, a copy of which is attached hereto and made a part hereof.

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Tim Daly  
Development Project Manager  
Development Services

Adopted on: October 10, 2012

Internal Order No. 24002472

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

INTERNAL ORDER NUMBER: 24002472

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**EDUARDO'S - PROJECT NO. 268446**  
CONDITIONAL USE PERMIT NO. 952387  
SITE DEVELOPMENT PERMIT NO. 952388  
HEARING OFFICER

This Conditional Use Permit No. 952387 and Site Development Permit No. 952388 is granted by the Hearing Officer of the City of San Diego to MIKE N. DALLO and MONA DALLO, husband and wife as joint tenants, Owners and MD & CD INC., Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0305 and 1519.0202. The 0.48-acre site is located at 3175 National Avenue in CSR-2 Zone of the Southeastern San Diego Planned District Ordinance within the Memorial Neighborhood Element of the Southeastern San Diego Community Plan Area. The project site is legally described as Lots 1 through 6, Block 40, H. P. Whitney's Addition in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 168, filed in the Office of the County Recorder of San Diego County, July 8, 1886

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owners and Permittees to operate an alcoholic beverage outlet conditioned upon the issuance of a license from the State Department of Alcoholic Beverage Control and subject to the City's land use regulations] described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated October 10, 2012, on file in the Development Services Department.

The project shall include:

- a. The existing 13,248 square-foot market to include the operation of an alcoholic beverage outlet conditioned upon the issuance of a license from the State Department of Alcoholic Beverage Control.
- b. Existing landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;

- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by October 10, 2015.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on October 10, 2032. Upon expiration of this Permit, the facilities and improvements relative to the sale of alcohol described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit.
3. The utilization of this CUP is contingent upon the approval of a license to sell alcohol at this location by the California Department of Alcoholic Beverage Control [ABC]. The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.
4. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
5. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
6. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**ENGINEERING REQUIREMENTS:**

13. Prior to the issuance of the building permit, the applicant/owner shall assure by permit and bond the upgrade the existing pedestrian ramp at the south west corner of National Avenue and 32nd Street to the current City Standards SDG-134 to the satisfaction of the City Engineer.

**PLANNING/DESIGN REQUIREMENTS:**

14. Owner/Permittee shall maintain a minimum of thirteen (13) off-street parking spaces on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

15. The sales of alcoholic beverage shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m., seven days a week.

16. Exterior advertising of alcoholic beverages or interior advertising of alcoholic beverages that is visible from the exterior of the premises shall be prohibited.

17. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

18. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

**POLICE DEPARTMENT REQUIREMENTS:**

19. The operator shall post and maintain a professional quality sign facing the premises parking area stating: NO LOITERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be a minimum of 24 inches square with 2 inch block lettering in both English and Spanish.

20. Any graffiti painted or marked upon the premises or any adjacent areas under the control of the operator shall be removed or painted over within 48 hours of being applied.

21. There shall be no amusement or video arcade games on the premises at any time.

22. There shall be no pay telephone maintained on the interior or exterior of the premises.

23. There shall be no loitering on the premises and a professional, bonded security guard shall be hired to enforce this provision if necessary.

24. The parking lot shall be illuminated and security cameras will be installed to monitor the exterior of the premises.

25. The area dedicated to the sale and display of alcohol shall not exceed twenty percent (20%) of the square footage of the interior sales area of the market.

**POLICE DEPARTMENT RECOMMENDATIONS FOR ABC LICENSE:**

The following recommendations from the San Diego Police Department are requested to be included on the State of California Department of Alcohol Beverage Control license:

- Wine shall not be sold in containers of less than 750 milliliters, and wine coolers sold in multi-unit containers.
- Beer, Malt beverages and wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
- Wine shall not be sold with an alcoholic content greater than 15 percent by volume with the exception of “dinner wines” aged two or more years.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Officer of the City of San Diego on October 10, 2012 pursuant to Hearing Officer Resolution No. [DRAFT].

Permit Type/PTS Approval No.:

Date of Approval:

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

\_\_\_\_\_  
Tim Daly  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

MIKE N. DALLO or MONA DALLO  
Owner

By \_\_\_\_\_  
NAME  
TITLE

MD & CD INC.  
Permittee

By \_\_\_\_\_  
NAME  
TITLE

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**



NOTICE OF EXEMPTION

(Check one or both)

TO:  X  RECORDER/COUNTY CLERK  
P.O. BOX 1750, MS A-33  
1600 PACIFIC HWY, ROOM 260  
SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT  
1222 FIRST AVENUE, MS 501  
SAN DIEGO, CA 92101

           OFFICE OF PLANNING AND RESEARCH  
1400 TENTH STREET, ROOM 121  
SACRAMENTO, CA 95814

PROJECT NO.: 268446

PROJECT TITLE: Eduardo's

PROJECT LOCATION-SPECIFIC: 3175 National Avenue, San Diego, CA 92113

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: The project is a Conditional Use Permit and Site Development Permit to sell beer and wine in an existing market.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Dallo Enterprises  
Michael and Mona Dallo  
303 Highland Avenue  
National City, California 91950  
(619) 572-3385

EXEMPT STATUS: (CHECK ONE)

- ( ) MINISTERIAL (SEC. 21080(b)(1); 15268);
- ( ) DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));
- ( ) EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))
- (X) CATEGORICAL EXEMPTION: CEQA EXEMPTION 15301 (EXISTING FACILITIES)
- ( ) STATUTORY EXEMPTIONS:

REASONS WHY PROJECT IS EXEMPT: The proposed project is exempt from CEQA pursuant to Section 15301 which allows for the operation, repair maintenance, permitting, leasing, licensing, or minor alteration of existing facilities (public or private) involving negligible or no expansion of use beyond that existing at the time of the determination. The proposed project, a Conditional Use Permit and Site Development Permit to sell beer and wine in an existing market, is a negligible expansion of use. No environmental impacts were identified for the proposed project. Additionally, none of the exceptions described in CEQA Guidelines Section 15300.2 apply.

LEAD AGENCY CONTACT PERSON: Anna L. McPherson

TELEPHONE: (619) 446-5276

IF FILED BY APPLICANT:

- 1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
- 2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?  
( ) YES      ( ) NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA

Anna L. McPherson AICP/Senior Planner  
SIGNATURE/TITLE

June 1, 2012  
DATE

- CHECK ONE:
- (X) SIGNED BY LEAD AGENCY
  - ( ) SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:





THE CITY OF SAN DIEGO

City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101

## Community Planning Committee Distribution Form Part 2

<b>Project Name:</b> Eduardo's Market		<b>Project Number:</b> 268446		<b>Distribution Date:</b>	
<b>Project Scope/Location:</b> CUP Application and a Site Development Permit, 3175 National Avenue, Memorial Neighborhood, for alcoholic beverage sales Project Manager, Tim Daly, Development Services. Presenter Attorney Ronson J. Shamoun, A.P.C. (Counsel for MD&CD, Inc.					
<b>Applicant Name:</b> MD&CD, Inc.				<b>Applicant Phone Number:</b>	
<b>Project Manager:</b> Tim Daly		<b>Phone Number:</b> (619) 446-5356	<b>Fax Number:</b> (619) 446-5245	<b>E-mail Address:</b> TDaly@sandiego.gov	
<b>Committee Recommendations (To be completed for Initial Review):</b> Approve the CUP Application and a Site Development Permit.					
<input checked="" type="checkbox"/> <b>Vote to Approve</b>		<b>Members Yes</b> 5	<b>Members No</b> 4	<b>Members Abstain</b> 0	
<input type="checkbox"/> <b>Vote to Approve</b> With Conditions Listed Below		<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>	
<input type="checkbox"/> <b>Vote to Approve</b> With Non-Binding Recommendations Listed Below		<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>	
<input type="checkbox"/> <b>Vote to Deny</b>		<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>	
<input type="checkbox"/> <b>No Action (Please specify, e.g., Need further information, Split vote, Lack of quorum, etc.)</b>				<input type="checkbox"/> <b>Continued</b>	
<b>CONDITIONS:</b>					
<b>NAME:</b> Maria Riveroll, Southeastern San Diego Planning Group			<b>TITLE:</b> Chair		
<b>SIGNATURE:</b>			<b>DATE:</b> 7/12/12		
<i>Attach Additional Pages If Necessary.</i>		<b>Please return to:</b> Project Management Division City of San Diego Development Services Department 1222 First Avenue, MS 302 San Diego, CA 92101			
Printed on recycled paper. Visit our web site at <a href="http://www.sandiego.gov/development-services">www.sandiego.gov/development-services</a> . Upon request, this information is available in alternative formats for persons with disabilities.					



### SAN DIEGO POLICE DEPARTMENT CONDITIONAL USE PERMIT RECOMMENDATION

PREMISE ADDRESS: 3175 National Ave, San Diego

TYPE OF BUSINESS: Grocery Store-MD & CD Inc.-Eduardos Mercado

FEDERAL CENSUS TRACT: 39.02

NUMBER OF ALCOHOL LICENSES ALLOWED: 4

NUMBER OF ALCOHOL LICENSES EXISTING: 4

CRIME RATE IN THIS CENSUS TRACT: 231.7%  
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR  YES  NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY  YES  NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY  YES  NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR  YES  NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY  YES  NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,  
AND WELFARE OF THE COMMUNITY AND CITY  YES  NO

COMMENTS/OTHER FACTORS CONSIDERED: The applicant is applying for Type 20 Beer & Wine Off Sale license. During inspection of the premises, I found the grocery store clean and well kept. There is a liquor store across the street and residents on the back alley portion of the building.

The store would add convenience too many of the residents who would like to purchase beer & wine with their groceries. Because many of the residents in the area do not own cars, the only other alternative to buy beer & wine would be to purchase from a traditional style liquor store (Base Liquor) which is located on the corner.

SUGGESTED CONDITIONS: Although the convenience store would be good for the community in a general sense, there are issues that would need to be controlled. Due to its location in a high crime area, proximity to the freeway, and a demographic including families, special considerations should be taken with conditions placed on the off-sale privileges. The following recommended conditions should be incorporated into the regulatory licenses and land use for this location:

The San Diego Police Department agrees to the issuance of the CUP as long as the following conditions are included in the Alcoholic Beverage Control License, and any other language both agencies believe will benefit the community.

1. Sales of alcoholic beverages shall be permitted only between the hours of 7:00 AM and 10:00 each day of the week.

2. Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers or beer coolers must be sold in manufacturer pre-packaged multi-unit quantities.
3. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
4. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
5. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
7. There shall be no amusement machines or video game devices on the premises at any time.
8. No pay telephone will be maintained on the interior or exterior of the premises.
9. No loitering on the premises and if necessary a security guard to control enforcement of this provision.
10. Illumination in the parking lot. Security camera covering both interior and exterior premises.
11. No more than 20-percent of the square footage of the premises will be used for the display of alcoholic beverages.

Including any additional conditions that may be appropriate as a result of an establishment being located within a high crime area.

**SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:**

APPROVE  \_\_\_\_\_

DENY \_\_\_\_\_

S. RAPALJE ALBRECHTSEN

Name of SDPD Vice Sergeant (Print)

619 531 2349

Telephone Number

*S. Rapalje AlbrechtSEN*

Signature of SDPD Vice Sergeant

3/20/12

Date of Review



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-5000

# Ownership Disclosure Statement

**Approval Type:** Check appropriate box for type of approval (s) requested:  Neighborhood Use Permit  Coastal Development Permit  
 Neighborhood Development Permit  Site Development Permit  Planned Development Permit  Conditional Use Permit  
 Variance  Tentative Map  Vesting Tentative Map  Map Waiver  Land Use Plan Amendment •  Other CUP

**Project Title**  
Eduardo's CUP

**Project No. For City Use Only**  
268446

**Project Address:**  
3175 National Ave., San Diego, California 92113

**Part I - To be completed when property is held by individual(s)**

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached  Yes  No

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_

Owner  Tenant/Lessee  Redevelopment Agency

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Project Title:

EDUARDO'S CUP

Project No. (For City Use Only)

268446

Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

Corporation (checked) Limited Liability -or- General) What State? Corporate Identification No. 199615510020 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property.. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. Additional pages attached Yes No

Corporate/Partnership Name (type or print): MD & CD INC.
Owner (checked) Tenant/Lessee
Street Address: 5075 FEDERAL BLVD.
City/State/Zip: SAN DIEGO CA. 92102
Phone No: 619-527-3385 Fax No: 619-527-3395
Name of Corporate Officer/Partner (type or print): MIKE DALLO
Title (type or print): DIRECTOR
Signature: [Signature] Date:

Corporate/Partnership Name (type or print): MD & CD INC
Owner (checked) Tenant/Lessee
Street Address: 5075 FEDERAL BLVD.
City/State/Zip: SAN DIEGO CA 92102
Phone No: 619-527-3385 Fax No: 619-527-3395
Name of Corporate Officer/Partner (type or print): ED KASAWDISH
Title (type or print): CEO/CFO
Signature: [Signature] Date:

Corporate/Partnership Name (type or print): MD & CD INC.
Owner (checked) Tenant/Lessee
Street Address: 5075 FEDERAL BLVD.
City/State/Zip: SAN DIEGO CA. 92102
Phone No: 619-527-3385 Fax No: 619-527-3395
Name of Corporate Officer/Partner (type or print): MAY KASAWDISH
Title (type or print): SECRETARY
Signature: [Signature] Date:

Corporate/Partnership Name (type or print):
Owner Tenant/Lessee
Street Address:
City/State/Zip:
Phone No: Fax No:
Name of Corporate Officer/Partner (type or print):
Title (type or print):
Signature : Date:

Corporate/Partnership Name (type or print):
Owner Tenant/Lessee
Street Address:
City/State/Zip:
Phone No: Fax No:
Name of Corporate Officer/Partner (type or print):
Title (type or print):
Signature : Date:

Corporate/Partnership Name (type or print):
Owner Tenant/Lessee
Street Address:
City/State/Zip:
Phone No: Fax No:
Name of Corporate Officer/Partner (type or print):
Title (type or print):
Signature : Date:



Recorded at the request of:

DOC # 1997-0607100

Dec 02, 1997 10:49 AM

**FIDELITY NATIONAL TITLE**

and when recorded mail this deed  
and unless otherwise shown below  
mail tax statements to:

551

Mr. & Mrs. Mike N. Dallo  
3589 Jamul Vista Drive  
Jamul, CA 91935

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 835.00  
DC: DC

*Floral (SD)*

the space above is for recorder's use only

Escrow No. 97-38146-M  
Title Order No. 97098461

Tax Parcel #  
550-150-08

GRANT DEED

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$ 825.00

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale.
- Unincorporated area
- City of San Diego,

BY THIS INSTRUMENT DATED October 9, 1997 FOR A VALUABLE CONSIDERATION,

JULIUS H. SCHNEIDER, Trustee under Declaration of Trust dated February 8, 1989

HEREBY GRANTS TO:

MIKE N. DALLO and MONA DALLO,  
husband and wife as joint tenants

the following described real property in the City of San Diego, County of San Diego, State of California,

Lots 1 through 6 in Block 40, H.P. WHITNEY'S ADDITION, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 168, filed in the Office of the County Recorder of San Diego County, July 8, 1886.

*Julius H. Schneider*  
JULIUS H. SCHNEIDER, TRUSTEE

ALL PURPOSE ACKNOWLEDGEMENT

State of California )  
 ) ss.  
County of San Diego )

552

On October 13, 1997, before me Michele Pope, a notary public, personally appeared

JULIUS H. SCHNEIDER\*\*

( ) personally known to me (X) or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~/subscribed to the within instrument and acknowledged to me that he/~~she/they~~/executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Michele Pope*

Signature of Notary

