

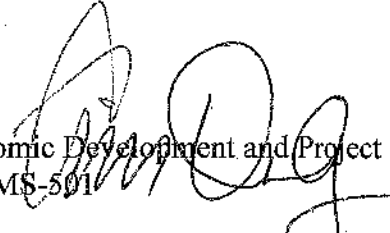


THE CITY OF SAN DIEGO

MEMORANDUM

DATE: February 19, 2013

TO: City of San Diego Planning Commissioners

FROM: Tim Daly, Development Project Manager, DSD/Economic Development and Project Management Division, Project Management Section, MS-501 

SUBJECT: Planning Commission Meeting, February 28, 2013, Agenda Item No. 7, Eduardo's - Project No. 268446; Continued from December 13, 2012.

- REFERENCE:
1. City Memorandum dated December 11, 2012, Planning Commission Meeting, December 13, 2012, Agenda Item No. 9, Eduardo's - Project No. 268446; San Diego Police Department recommendation for denial of Conditional Use Permit and Site Development Permit.
 2. Planning Commission Report No. PC-12-117, Eduardo's - Project No. 268446.

On December 13, 2012, the subject project was continued by the Planning Commission to allow the Mayor's Office and City staff the opportunity to meet with the applicant, appellants, and community to discuss possible resolution of community concerns with the Conditional Use and Site Development Permit application. The Mayor's Office and City staff met with the applicant's representative attorneys and the appellants, along with the community leaders separately. The meeting with applicant's attorneys resulted in the applicant considering an offer of additional restrictions on the proposed permits. However, the meeting with the appellants and community leaders resulted in their continued desire to deny the permit, regardless of any additional concessions offered by the applicant.

On February 11, 2013, the Southeastern San Diego Planning Group reconsidered their approval recommendation on July 9, 2012 and voted 9-1-0 to recommend denial of the Conditional Use Permit and Site Development Permit (Attachment 1).

Based upon the results of the meetings, City staff continues to recommend the Planning Commission consider upholding the appeal and denying the project based upon detriments to the public health, safety, and welfare, inappropriate location, and a disruptive element to the

neighborhood and community as noted in the City Memorandum to the Planning Commissioners dated December 11, 2012 (Attachment 2).

Should you have any questions, City staff, including SDPD, will be available during the public hearing to respond.

Tim Daly

- Attachments:
1. Southeastern San Diego Planning Group Recommendation, Feb. 11, 2013
 2. City Memorandum dated December 11, 2012, Planning Commission Meeting, December 13, 2012, Agenda Item No. 9, Eduardo's - Project No. 268446; San Diego Police Department recommendation for denial of Conditional Use Permit and Site Development Permit.
 3. Planning Commission Report No. PC-12-117, Eduardo's - Project No. 268446

TPD/td

cc: Lee Burdick, Office of the Mayor, Director of Special Projects and Legal Affairs
Deputy City Attorney, MS-59
Sgt. John Szakara, SDPD Investigations I, Police Permits and Licensing
Planning Commission Secretary, MS-501



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

Community Planning Committee Distribution Form Part 1

Project Name: Eduardo's Market		Project Number: 268446	Distribution Date: 02/11/13	
Project Scope/Location: 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.)				
Applicant Name: MD&CD, Inc.			Applicant Phone Number:	
Project Manager: Tim Daly	Phone Number: (619) 446-5356	Fax Number: (619) 446-5245	E-mail Address: TDaly@sandiego.gov	
Project Issues (To be completed by Community Planning Committee for initial review):				
<i>Attach Additional Pages If Necessary.</i>			Please return to: 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 www.sandiego.gov/development-services Upon request, this information is available in alternative formats for persons with disabilities.				



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

Community Planning Committee

Distribution Form Part 2

Project Name: Eduardo's Market		Project Number: 268446	Distribution Date: 02/11/13
Project Scope/Location: 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.)			
Applicant Name: MD&CD, Inc.		Applicant Phone Number:	
Project Manager: Tim Daly	Phone Number: (619) 446-5356	Fax Number: (619) 446-5245	E-mail Address: TDaly@sandiego.gov
Committee Recommendations (To be completed for Initial Review): Approve the CUP Application and a Site Development Permit.			
<input type="checkbox"/> Vote to Approve	Members Yes	Members No	Members Abstain
<input type="checkbox"/> Vote to Approve With Conditions Listed Below	Members Yes	Members No	Members Abstain
<input type="checkbox"/> Vote to Approve With Non-Binding Recommendations Listed Below	Members Yes	Members No	Members Abstain
<input checked="" type="checkbox"/> Vote to Deny	Members Yes 9	Members No 1	Members Abstain 0
<input type="checkbox"/> No Action (Please specify, e.g., Need further information, Split vote, Lack of quorum, etc.)			<input type="checkbox"/> Continued
CONDITIONS: No conditions....Please see attached.			
NAME: Maria Riveroil, Southeastern San Diego Planning Group		TITLE: Chair	
SIGNATURE:		DATE: February 12, 2013	
<i>Attach Additional Pages If Necessary.</i>		Please return to: 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 www.sandiego.gov/development-services Upon request, this information is available in alternative formats for persons with disabilities.			

REASONS FOR DENIAL

1. The San Diego Police Department is now recommending denial of the CUP – and the Planning Group had based their previous recommendation on the SDPD conditions;
2. The Census Tract is over-saturated with liquor licenses;
3. Proximity to places of worship;
4. Proximity to residential; and,
5. The Planning Department is also recommending denial of the CUP.

Motion was made to reconsider the item and Seconded: MSC 9-0-1

Discussion ensued.

Motion was made to Recommend Denial for issuance of the CUP for Eduardo's Market, and Seconded.

MSC 9-0-1

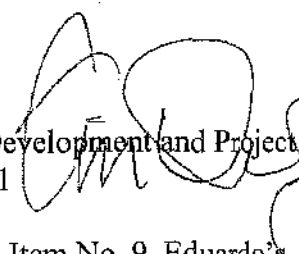


THE CITY OF SAN DIEGO

MEMORANDUM

DATE: December 11, 2012

TO: City of San Diego Planning Commissioners

FROM: Tim Daly, Development Project Manager, DSD/Economic Development and Project Management Division, Project Management Section, MS-501 

SUBJECT: Planning Commission Meeting, December 13, 2012, Agenda Item No. 9, Eduardo's Project No. 268446; San Diego Police Department recommendation for denial of Conditional Use Permit and Site Development Permit

During the October 10, 2012, Hearing Officer's public hearing meeting for the Eduardo's project, the San Diego Police Department (SDPD) was present and heard, for the first time, a large amount of negative feedback from members of the community protesting the issuance of a Conditional Use Permit and Site Development Permit (CUP/SDP) for the limited sale of alcohol or a State of California issued Alcohol Beverage Control (ABC) License at the Eduardo's Market located at 3175 National Avenue. Since the Hearing Officer meeting, the SDPD has received numerous protests in opposition from the community including the Greater Works Empowerment Center, Bayview Baptist Church, Palavra Tree Recovery Center, Southeastern Alano Club, San Diego Compassion Project, and the Greater Works Ministries. To date, the SDPD has determined that the issuance of a CUP/SDP or ABC Type 20 (Beer and Wine) License at this location, regardless of conditions, would not be acceptable to the community and the SDPD. Based on this new information, the SDPD can no longer support conditions for a CUP/SDP or the issuance of the ABC Type 20 License.

Therefore, should the Planning Commissioners decide to uphold the appeal and deny the project, City staff has prepared the attached draft resolution with findings for the denial of the CUP/SDP based upon detriments to the public health, safety, and welfare; inappropriate location; and a disruptive element to the neighborhood and community. Any other additional or revised findings provided by the Planning Commissioners during the hearing may be included as well.

Should you have any questions, City staff, including SDPD, will be available during the public hearing to respond.

Tim Daly

Attachment: Planning Commission Resolution, Deny Conditional Use Permit No. 952387 and Site Development Permit No. 952388.

TPD/td

cc: Deputy City Attorney, MS-59
Sgt. Thomas Underwood, SDPD Investigations I, Police Permits and Licensing
Planning Commission Secretary, MS-501

PLANNING COMMISSION RESOLUTION NO. XXXXXX

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, on October 12, 2012, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 952387 and Site Development Permit No. 952388, and pursuant to Resolution No. HO-6560, approved the Permits; and

WHEREAS, Ninus Malan and Denise R. Reed appealed the Hearing Officer decision to the Planning Commission of the City of San Diego; and

WHEREAS, December 13, 2012, the Planning Commission of the City of San Diego considered the appeal of the Hearing Officer's decision to approve 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 Planning Commission of the City of San Diego as follows:

That Planning Commission adopts the following written Findings for Denial of Conditional Use Permit No. 952387 and Site Development Permit No. 952388 pursuant to Land Development Code Sections 126.0305 and 1519.020, dated December 13, 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 a Conditional Use Permit and Site Development Permit. However, after the Hearing Officer's public hearing meeting on October 12, 2012, the San Diego Police Department (SDPD) has received numerous protests of denial from the community including the Greater Works Empowerment Center, Bayview Baptist Church, Palavra Tree Recovery Center, Southeastern Alano Club, San Diego Compassion Project, and the Greater Works Ministries. Therefore and based upon SDPD's public hearing testimony, the issuance of a Type 20 License at this location, regardless of conditions, is not acceptable to the community and the SDPD. Therefore, allowing the limited sale of alcohol and issuance of a Type 20 License at 3175 National Avenue would be detrimental to the public health, safety, and welfare.

(c) The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to 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. However, after the Hearing Officer's public hearing meeting on October 12, 2012, the San Diego Police Department (SDPD) has received numerous protests of denial from the community including the Greater Works Empowerment Center, Bayview Baptist Church, Palavra Tree Recovery Center, Southeastern Alano Club, San Diego Compassion Project, and the Greater Works Ministries. Therefore and based upon SDPD's public hearing testimony, the issuance of a Type 20 License at this location, regardless of conditions, is not acceptable to the community and the SDPD. Therefore, allowing the limited sale of alcohol and issuance of a Type 20 License at 3175 National Avenue is not an appropriate use at this 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 could 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. However, after the Hearing Officer's public hearing meeting on October 12, 2012, the San Diego Police Department (SDPD) has received numerous protests of denial from the community including the Greater Works Empowerment Center, Bayview Baptist Church, Palavra Tree Recovery Center, Southeastern Alano Club, San Diego Compassion Project, and the Greater Works Ministries. Therefore and based upon SDPD's public hearing testimony, the issuance of a Type 20 License at this location, regardless of conditions, is not acceptable to the community and the SDPD. Therefore, allowing the limited sale of alcohol and issuance of a Type 20 License at 3175 National Avenue would be a disruptive element to the neighborhood and 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 a Conditional Use Permit and Site Development Permit. However, after the Hearing Officer's public hearing meeting on October 12, 2012, the San Diego Police Department (SDPD) has received numerous protests of denial from the community including the Greater Works Empowerment Center, Bayview Baptist Church, Palavra Tree Recovery Center, Southeastern Alano Club, San Diego Compassion Project, and the Greater Works Ministries. Therefore and based upon SDPD's public hearing testimony, the issuance of a Type 20 License at this location, regardless of conditions, is not acceptable to the community and the SDPD. Therefore, allowing the limited sale of alcohol and issuance of a Type 20 License at 3175 National Avenue would be detrimental to the public health, safety and welfare of persons residing or working in the area.

(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 could comply with the regulations of the Land Development Code.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted the Planning Commission, approves the appeal of the Hearing Officer's decision to approve Conditional Use Permit No. 952387 and Site Development Permit No. 952388, and hereby DENIES these approvals to the referenced Owner/Permittee.

Tim Daly
Development Project Manager
Development Services

Adopted on: December 13, 2012

Internal Order No. 24002472



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: December 6, 2012 **REPORT NO.** PC-12-117

ATTENTION: Planning Commission, Agenda of December 13, 2012

SUBJECT: EDUARDO'S - Project No. 268446.
Process 3

**OWNER/
APPLICANT:** Michael and Mona Dallo, Owner
Jim Symons, JGS and Associates, Applicant

SUMMARY

Issue: Should the Planning Commission approve or deny the appeals of a Conditional Use Permit and Site Development Permit for the limited sale of alcoholic beverages at 3175 National Avenue in the Southeastern San Diego Community Plan area?

Staff Recommendation: **DENY** the appeals and **APPROVE** Conditional Use Permit No. 952387 and Site Development Permit No. 952388.

Community Planning Group Recommendation: On July 9, 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 (Attachment 8).

San Diego Police Department: On March 20, 2012, the San Diego Police Department provided a written recommendation in support of the sale of beer and wine at the existing market with a number of conditions to be applied to the Conditional Use Permit and recommendations for restrictions to be placed on the Alcohol Beverage Control (ABC) license (Attachment 9).

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301, Existing facility (Attachment 7). 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.

Fiscal Impact Statement: There is no fiscal impact to the City of San Diego that would

be associated with this application. All of the cost of processing the application is paid for by the owner and applicant.

Code Enforcement Impact: None. There is no known past or current code enforcement actions related to this property.

Housing Impact Statement: None. There is no residential development proposed with this application.

BACKGROUND

Project Description:

The project site is located at 3175 National Avenue (Attachment 1) within the Memorial Neighborhood Element of the Southeastern San Diego Community Plan (Attachment 2). The community plan recommends the 0.48-acre parcel for General Commercial land use. The site is zoned CSR-2 in the Southeastern San Diego Planned District (SESDPDO) which permits the retail sale of general merchandise. The CSR Zone is intended to allow for commercial strip development with parking to the rear or side of the building. An alcoholic beverage outlet is permitted in the zone as a limited use as detailed further in this report.

The project site is developed with the existing Eduardo's Market and four residential apartment units (Attachment 3). The 13,248 square-foot market faces National Avenue with off-street parking in front of the store. The four residential units are located at the rear of the property and accessed from 32nd Street. The residential element consists of two, second story residential apartment units, and two separate, two-story residential apartment buildings with single units over garages. An alley provides access to a series of individual garages for the residential units as well as a small warehouse area serving the store.

The surrounding neighborhood includes a variety of commercial uses along National Avenue, but generally consists of residential development in the outlying blocks surrounding the project site. The residential development is a mix of single-family homes and multi-family apartments. The corner of National Avenue and 32nd Street is a small neighborhood commercial node with the Eduardo's Market, a Corona Furniture store, a liquor store, and a Mexican restaurant.

Hearing Officer Decision:

On October 10, 2012, the Eduardo's permit application was presented to the Hearing Officer of the City of San Diego at a noticed public hearing. The Hearing Officer was provided with a staff report and recommendations from the Development Services Department, the San Diego Police Department, and the Southeastern San Diego Community Planning Group to approve the project. After hearing public testimony, both in support and opposition, the Hearing Officer approved the proposed project with modifications further limiting the hours alcohol product could be sold between 10:00 A.M. and 10:00 P.M. and clarifying the permitted area of alcohol display to ten-percent (10%) of the sales floor area.

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 (CUP) 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 (SDP) for any new commercial development or use requiring a CUP.

The applicant is proposing to allow the sale of beer and wine through a Type 20 Liquor License within the existing market. The pending 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 CUP 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 CUP) 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, pursuant to SDMC section 141.0502(c), 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 (Attachment 10). There are currently four (4) existing off-sale alcohol beverage outlets within Census Tract 0027.07 and the Census Tract would be considered over saturated with the approval of this permit. Therefore, pursuant to SDMC section 141.0502(c), a CUP is required for the off-sale of alcoholic beverages at this location 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 within 600 feet of a church, Iglesia Mission De Jesucristo, located at 3162 Newton Avenue. Therefore, pursuant to SDMC section 141.0502(c), a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

5. Within 100 feet of residentially zoned property.

The project site is within 100 feet of residentially zoned property. Therefore, pursuant to SDMC section 141.0502(c), a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

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

The project site is within 600 feet of a place of religious assembly, Iglesia Mission De Jesucristo, located at 3162 Newton Avenue. Therefore, pursuant to SDMC section 141.0502(c), a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

Alcohol Sales-Project Analysis:

The proposed off-sale alcoholic beverage outlet at this site requires a CUP because the project site does not meet all of the location criteria of the SDMC. 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; 3) is within 600 feet of a church or religious assembly location; and 3) is within 100 feet of residentially zoned property. Any one of these factors establishes the need for the CUP.

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 City's 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 would be 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 and the underlying commercial zone. Along with these factors, the permit includes several conditions that limit or restrict the manner in which alcohol is presented and sold. Therefore, City staff determined the addition of beer and wine for off-site consumption would not adversely impact the community. Accordingly, City staff is recommending approval of the project as conditioned by the 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 and 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 City 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 10:00 A.M. to 10:00 P.M. 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 CUP 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.

Appeal Issues:

Two appeals of the Hearing Officer decision were filed with the Development Services Department on October 22, 2012 (Attachment 13). The separate appellants, but identical appeals, assert that the Hearing Officer decision to approve the CUP and SDP were not supported by the required findings. Specifically, the appeal suggests the finding regarding the public health, safety and welfare and the finding regarding the appropriateness of the use at the proposed location were not supported by the administrative record including the Hearing Officer report, documentation and public testimony. The appeal documents the Grounds for the Appeal (Section IV) citing the following:

- The applicant failed to show how the project was not detrimental to the public health, safety and welfare;
- The appeal states the use is not a permitted use at this site due to the defined high crime rate;
- The appeal suggests the staff recommendation to support the project was inadequate because the report did not show evidence the use would not be detrimental to the public; and
- The appeal further provides in bullet point fashion that the community does not want the alcohol outlet due to: 1) the uncertainty of the permit conditions; 2) the potential impact of this use on at-risk youth within the community; 3) the community does not support beer and wine sales; 4) current oversaturation of outlets in the community; 5) The community has a high rate of domestic violence; and 6) the San Diego Police rotate staff, they are not aware of the conditions within the community.

City staff has reviewed the appeals and provides the following comments and clarifications:

1. The appeal inaccurately states that an alcoholic beverage outlet is “*not permitted*” within a Census Tract that has high crime, is oversaturated or within proximity to residential development or other incompatible uses. As referenced above in the discussion on Development Regulations and Location Criteria, those factors merely determine whether or not an alcoholic beverage outlet can be permitted by right or requires a CUP. The location criteria are thresholds the SDMC utilizes to determine what permit review process is appropriate and necessary based on existing community factors. The fact that the market is within a Census Tract with high crime only triggers the requirement to obtain a CUP, and does not prohibit the use at that location. Further, the location criteria provide City staff and the Police Department reviewing an application with a means of assessing off-site alcohol sales and determining appropriate permit conditions on a case-by-case basis.
2. The appeal states the applicant and City staff failed to demonstrate that alcohol sales would not be detrimental to the public health, safety and welfare. The appellants incorrectly assume the applicant and City staff affirms the noted findings. Rather, the City’s decision maker, the Hearing Officer, affirmed the finding of public health, safety and welfare. Regardless, City staff continues to recommend that there was ample evidence provided to the decision maker that concludes there would be no apparent adverse impacts created by the sale of beer and wine in an existing market.

The market is a full service grocery store and City staff believes there are fundamental differences between this type of retail outlet as compared to a liquor store or convenience store. The most significant difference is the fact the market offers a wide variety of groceries and household products, and meaning store revenues are not dominated by the sale of alcohol. A permit condition ensures that this characteristic of the market would remain by limiting the amount of sales area to ten percent (10%) of the existing sales floor. Further, City staff notes that the review of the Eduardo’s application was conducted based on the case-by-case requirement established by the SDMC and that the conditions applied to the permit were fashioned specifically to address the public’s health, safety and welfare at this site.

In addition, permit conditions include limiting the hours of sales thereby limiting accessibility during late night and early morning hours. Restrictions on the type, proof and packaging would avoid the sale of single cans of alcohol which would help alleviate accessibility to at-risk youths. Sign and advertising limitations are intended to reduce visual clutter, and to enhance transparency into the store allow police patrols to have better views into the store’s interior. Finally, the permit includes requirements to provide a well lighted and clean environment, in and around the market, so customers and pedestrians are provided a safe environment.

Lastly, City staff notes that an environmental review was conducted that found no adverse environmental impacts associated with the sale of alcohol within the existing

grocery store. Therefore, when considering that the current use of the site is a 13,248 square-foot grocery store with consumer sales of meat, produce, prepackaged food products, and household goods, City staff believes the limited sale of beer and wine conditioned in a manner intended to reduce impacts to the surrounding neighborhood will not adversely affect the public health, safety and welfare.

3. The appellant's assertion that this particular outlet would foster domestic violence or promote underage drinking is not supported by any factual evidence. There has been no evidence to suggest the Eduardo's ownership, management or staff would somehow contribute to any unlawful activity in this neighborhood with the limited sale of beer and wine. In fact, the owner/permittee of the market would be held to the enforceable standards of both the CUP restrictions and the ABC license conditions thereby ensuring the operation would not adversely affect the public health, safety and welfare.
4. The appellant's assertion is that the proposed conditions are not provided in writing or only verbally agreed to by the applicant is not accurate. City staff notes the approved CUP and SDP contains all of the conditions addressing land use issues and details the recommendations the City would recommend the ABC license to include. The CUP and SDP, and resolution of findings to approve the permit would be recorded against the property and remain a covenant running with the land until it expired in 2032. Therefore, all of the considerations and conditions of this application are memorialized in writing.

Community Plan Analysis:

The Southeastern San Diego Community Plan Commercial Element begins with, "The Southeastern San Diego community has few community commercial facilities and has few definable commercial centers which could serve as community focal points. The central focal points of many communities in San Diego are established by their commercial centers. Southeastern San Diego does not enjoy this feature because the strip nature of most of the commercial land use in the community does not lend itself to centralized commercial activity except in limited area." The Plan further states, "Markets, pharmacies and other convenience stores are provided by small neighborhood commercial centers ("corner markets") or strip commercial facilities located throughout the community."

The Commercial Element also states, "In the western portion of the community, commercial development is characterized by discontinuous strips of small storefronts interspersed with residential units and vacant parcels. These commercial properties are difficult to patronize for motorists in that they front on busy streets and for the most part do not have off-street parking. In addition, the kinds of goods and services available and the distances between establishments make them less efficient to the shopper than a consolidated commercial center, and are too spread out for pedestrians."

The Community Plan recognizes the deficiency of larger commercial retail centers and understands the need for smaller markets to provide critical commercial services throughout the community's various neighborhoods. The plan also concedes many of the existing stores in the western portion of the community where Eduardo's is located, are not conducive to efficient

shopping due to a lack of parking and overall selection. The Eduardo's Market is an example of a medium to large grocery store with adequate access and parking serving the broader commercial needs of the neighborhood, and the inclusion of beer and wine to the existing inventory would seem to provide additional convenience for the store's customers.

The Community Plan includes a number of commercial objectives including limiting the establishment of new liquor outlets in neighborhoods experiencing high levels of crime. However, other objectives include: providing attractive quality community and neighborhood commercial facilities that offer a variety of goods and services to meet community needs, the rehabilitation of existing commercial centers and improvements to both vehicular and pedestrian access and enhancing the perception of safety through the use of crime-detering materials and design, including the thoughtful use of landscaping, screening materials, lighting and building siting, and materials and parking locations.

The Eduardo's Market would be a new alcohol outlet, but limited due to restrictions placed on the premises by the CUP and ABC license. The market would fulfill the community goals to enhance existing commercial services, make available a wide variety of retail goods and provide a safe, clean and well lit environment. Therefore, the proposed use would not adversely affect the Southeastern San Diego Community Plan.

Conclusion:

City staff has reviewed the appeals of the Eduardo's project and continues to support the request for a CUP and SDP for the limited and conditional sale of beer and wine. Staff believes that the appeals cannot be supported because the administrative record supports the required findings to approve the project. CUP and SDP conditions have been added to this discretionary entitlement 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, the applicable land use plans, and policies in affect for the site and therefore, the proposed use would be appropriate at the proposed location. An environmental review performed by the Development Services Department determined that the proposed project was exempt from further CEQA review as an existing facility and is supported with proposed conditions and ABC license recommendations by the San Diego Police Department.

ALTERNATIVES:

- 1. Deny the appeal and Approve Conditional Use Permit No. 952387 and Site Development Permit No. 952388, with modifications.**
- 2. Approve the appeal and Deny Conditional Use Permit No. 952387 and Site Development Permit No. 952388, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,



Mike Westlake
Assistant Deputy Director
Development Services Department

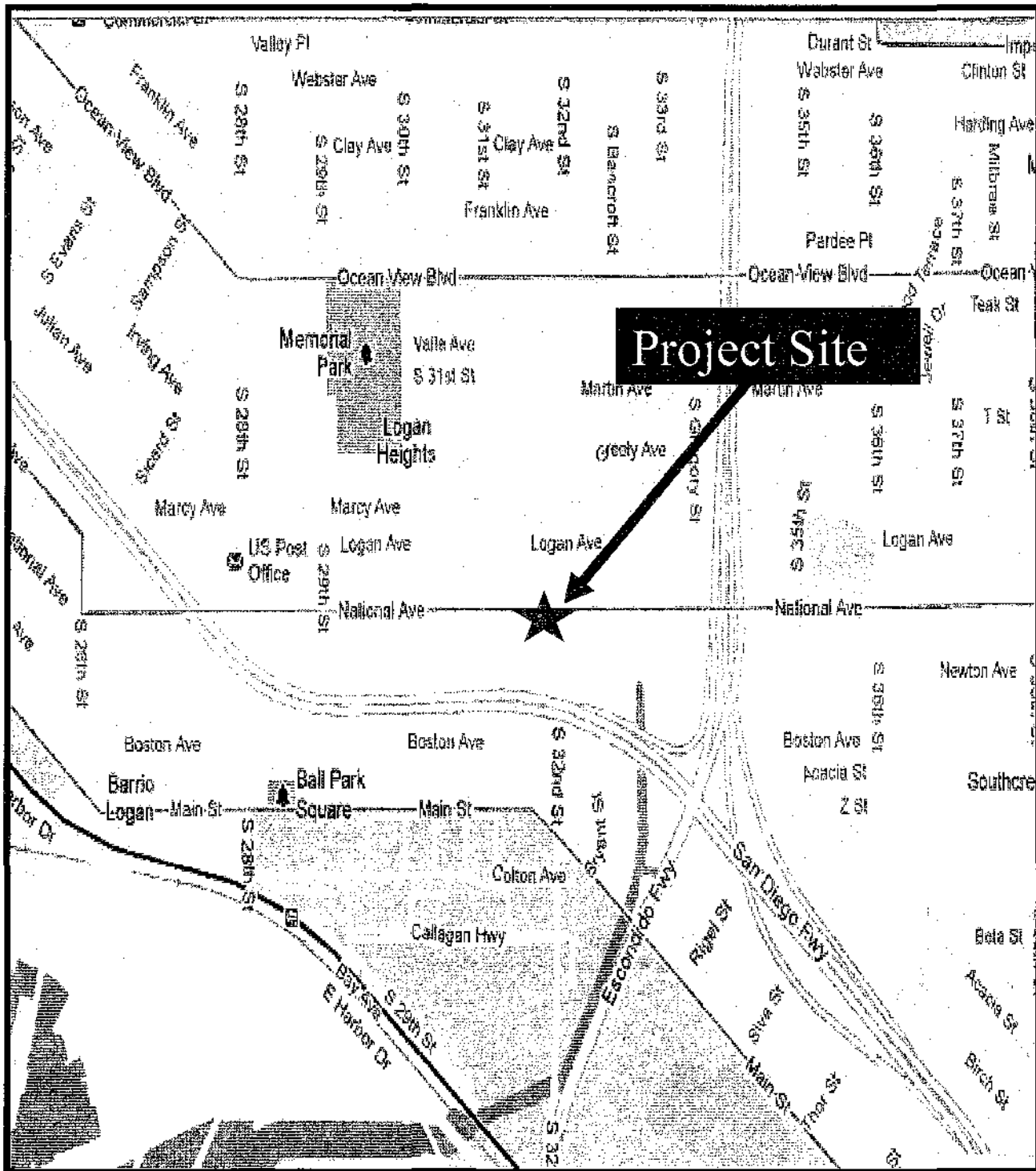


Tim Daly
Development Project Manager
Development Services Department

WESTLAKE/tpd

Attachments:

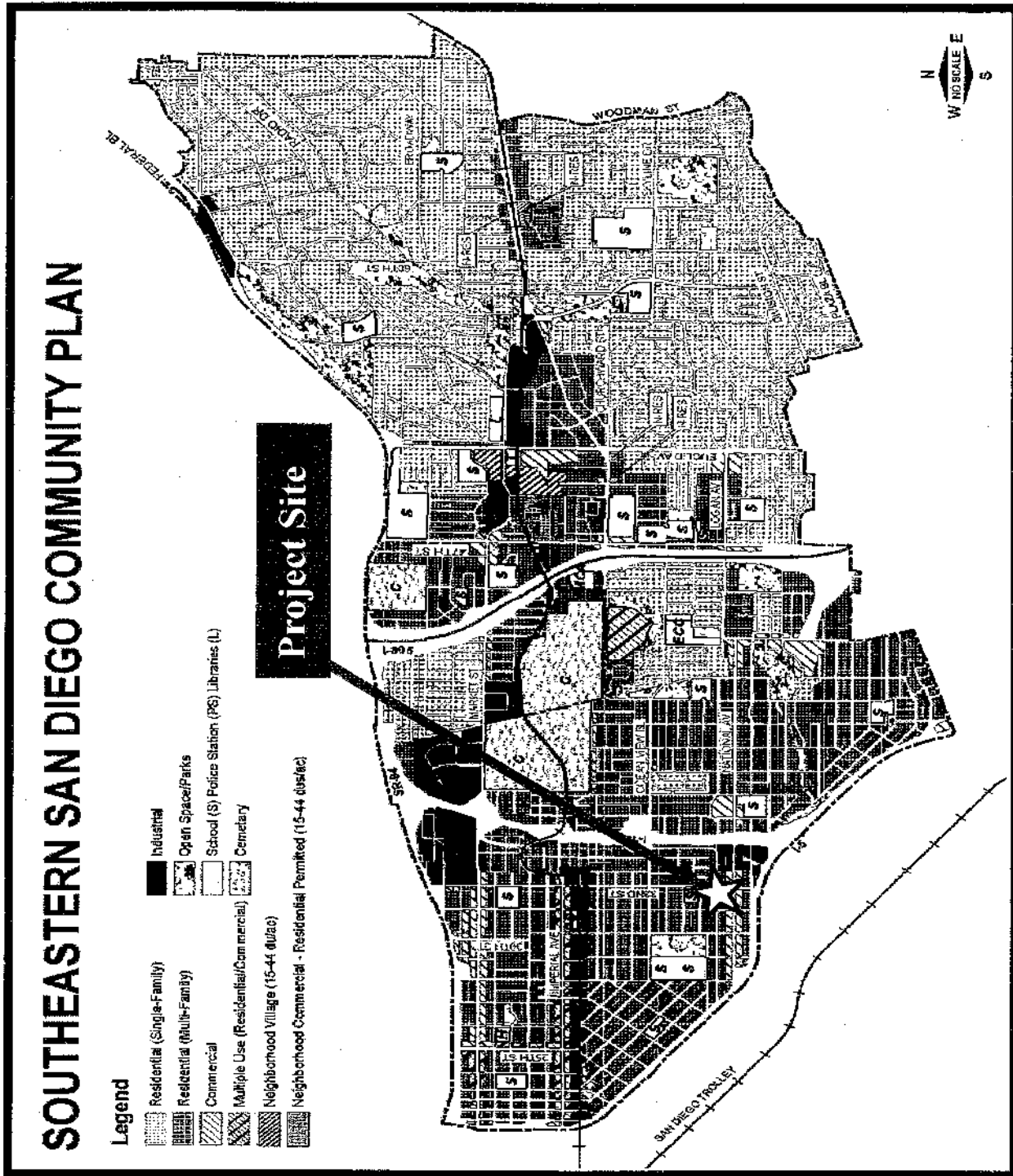
1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Project Data Sheet
5. Draft Permit Resolution with Findings
6. Draft Permit with Conditions
7. Environmental Exemption
8. Community Planning Group Recommendation
9. San Diego Police Department Conditional Use Permit Recommendations
10. Census Tract Map and the distribution of Liquor Licenses.
11. Ownership Disclosure Statement
12. Project Plans (11 X 17 reduction)
13. Appeal Applications
14. Appeal Application Exhibits (separate)



Project Location

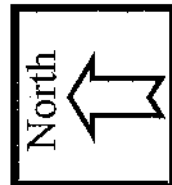
EDUARDO'S, 3175 NATIONAL AVENUE
Project No. 268446





Southeastern San Diego Land Use Map

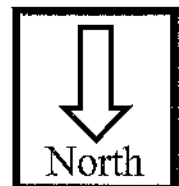
EDUARDO'S, Project No. 268446
3175 National Avenue





Aerial Photo

EDUARDO'S, Project No. 268446
3175 National Avenue



PROJECT DATA SHEET

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

PLANNING COMMISSION RESOLUTION NO. XXXXXX
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, on October 12, 2012, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 952387 and Site Development Permit No. 952388, and pursuant to Resolution No. HO-6560, approved the Permits; and

WHEREAS, Ninus Malan and Denise R. Reed appealed the Hearing Officer decision to the Planning Commission of the City of San Diego; and

WHEREAS, December 13, 2012, the Planning Commission of the City of San Diego considered the appeal of the Hearing Officer's decision to approve 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 Planning Commission of the City of San Diego as follows:

That Planning Commission adopts the following written Findings for Approval of Conditional Use Permit No. 952387 and Site Development Permit No. 952388 pursuant to Land Development Code Sections 126.0305 and 1519.020, dated December 13, 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 with the regulations of the Land Development Code including any allowable deviations pursuant to 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 the Planning Commission, denies the appeal of the Hearing Officer's decision to approve Conditional Use Permit No. 952387 and Site Development Permit No. 952388, and hereby GRANTS these approvals 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.

Tim Daly
Development Project Manager
Development Services

Adopted on: December 13, 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
PLANNING COMMISSION

This Conditional Use Permit No. 952387 and Site Development Permit No. 952388 is granted by the Planning Commission 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 December 13, 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 December 13, 2015.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on December 13, 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 beverages shall be permitted only between the hours of 10:00 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.

19. The Owner/Permittee shall provide professional, bonded security guard personnel on the premises at all times during the open customer operating hours of the commercial market facility.

POLICE DEPARTMENT REQUIREMENTS:

20. 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.

21. 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.

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

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

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

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

26. The area dedicated to the sale and display of alcohol shall not exceed ten percent (10%) 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 or beer coolers must be 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 Planning Commission of the City of San Diego on December 13, 2012 pursuant to Planning Commission Resolution No. XXXXXXXX

Permit Type/PTS Approval No.: CUP No. 952387
SDP No. 952388
Date of Approval: December 13, 2012

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.**

Southeastern San Diego Community Planning Group

The Community Planning Group meets the second Monday of the month at Neighborhood House, 841 South 41st Street, San Diego CA 92113. Meetings time is 6 pm to 8 pm.

July 9, 2012

1. **CALL TO ORDER, ROLL CALL, AND INTRODUCTIONS**
2. **APPROVAL OF TODAY'S AGENDA (ADDITIONS, CHANGES, OR OMISSIONS)**
 - The agenda was amended to clarify Ekco Metals action items into a) projects component and b) Appeal of Environmental Determination. Motion to amend 9/0/0
3. **APPROVAL OF April 9th and May 12th, 2012 MINUTES**
 - No action taken. Minutes will be tabled until the next meeting
4. **PUBLIC COMMENTS (two minutes per public speaker, on non-agenda items only)**
 - Local educator commented on the unsafe pedestrian and traffic condition on Oceanview Blvd between 40th and 45th Streets. Urges the planning group to look at traffic control options.
5. **STAFF REPORTS:**
 - CD4-Bruce Williams. Council President's Young's weekly update
 - CD 8 -Martha Zapata. Sherman Heights Pot Hole repair day. Comm 22 project to start work Monday July 16th.
 - Susan Davis- Ricardo Flores. July newsletter and update on the activities of Congresswoman Davis.
6. **CONSENT ITEMS: Informational discussion: SEDC/Southeastern San Diego Successor Agency Update –**
 - Sherry Brooks. Civic San Diego to consist of
 - Redevelopment = 2 Staff
 - CCDC= 25 staff
 - SEDC= 4 staff (Nancy, Sherry, Chris, and Maria)
 - State/County audit due this week on list of enforceable obligations.
7. **ACTION ITEMS:**
 - A. **Election of Jerry Guzman-Verara to the Board of the Southeastern San Diego Planning Group**
 - Acceptance of the application and election of Jerry Guzman-Verara to an open even year seat. Mr. Guzman has not been out of office for more than a year so his maximum 8-year term does not restart.

B. EKCO METALS, Project No. 241664, 2830-2846 Commercial St.

0.56 acre, Zoned I-1, Logan Heights Neighborhood. Application for a Neighborhood Use Permit and Neighborhood Development Permit for a recycling facility with a rear yard and side yard 9' over-height fences. 2 separate deviations. Applicant is Donnis Eninger. Project Manager is Renee Mezo, Development Services. Presenter is Steve Laub.

- NUP/NDP presentation by the applicant team stressed the Large Collection facility, operational improvements; General Plan and Council Policy consistency on recycling, solid waste diversion and reduction of green house gas; City code divides recycling into 11 categories – 4 collection types, and 7 processing types; strict interpretation to deny recycling will also prohibit other collection facilities such as boy scouts, Father Joe's, reverse vending, ect. **Motion to deny Pisano/Carter 6/3/0**
- Environmental Determination Appeal-Chair Riveroll submitted an appeal to the Environmental Determination prior to item being heard by the planning group. The an affirmative action by the planning group would codify the Chair' appeal submittal. The appeal was filed on the grounds that:

This is not an existing facility. The facility prior to the recycling use proposed by Ekco Metals was a trucking company. The Development Services Department is determining that Ekco Metals' illegal (unpermitted) use made it an existing facility, we challenge that premise. This will create a precedent of defining "existing facilities" as facilities that have been established illegally and need to file for a permit. We want a more inclusive environmental analysis since the spirit of the Southeastern San Diego Community Plan is to remove recycling and auto dismantling yards out of our community. Reference: page 66, of the 1987 Southeastern San Diego Community Plan, Approved by the Planning Commission, on June 4, 1987 Resolution No. 7046 Adopted by the City Council July 13, 1987, resolution No. R-268847, Document Number: RR-268857). Under "Industrial Element", page 66, Item 3b. Ekco Metals was cited and given the opportunity to apply for a NUP and a NDP those documents were not existent at the time of citation. Therefore it was previously non-existent.

Motion to codify appeal filing by the Chair. 8/0/0

C. Eduardo's Market, Project No.268446, CUP Application and a Site Development Permit, 3175 National Avenue, Memorial Neighborhood, for alcoholic beverage sales

Project Manager, Tim Daly, Development Services. Presenter Attorney Shamoun.

- Presentation by applicant team. Family owned and managed grocery, one of a series of facilities. Store includes a kitchen, bakery and 13,000+ SF of grocery. Beer and wine sales will consist of less than 10% of the square footage. **Motion to approve 5/4/0**

8. SUBCOMMITTEE REPORTS AND ANNOUNCEMENTS (two minutes per Board member)

- None

9. PLANNER'S REPORT

- Advanced CEQA Training, September 27, 2012

10. CHAIR'S REPORT

- None

11. BOARD MEMBER COMMENTS (2 minutes per Board member on non-agenda items only)

- None

ADJOURNMENT: by 7:55 p.m.

Community Planner

Karen Bucey

City Planning Division

1222 First Avenue, MS 413

San Diego, CA 92101

KBucey@SanDiego.gov

619-533-6404

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

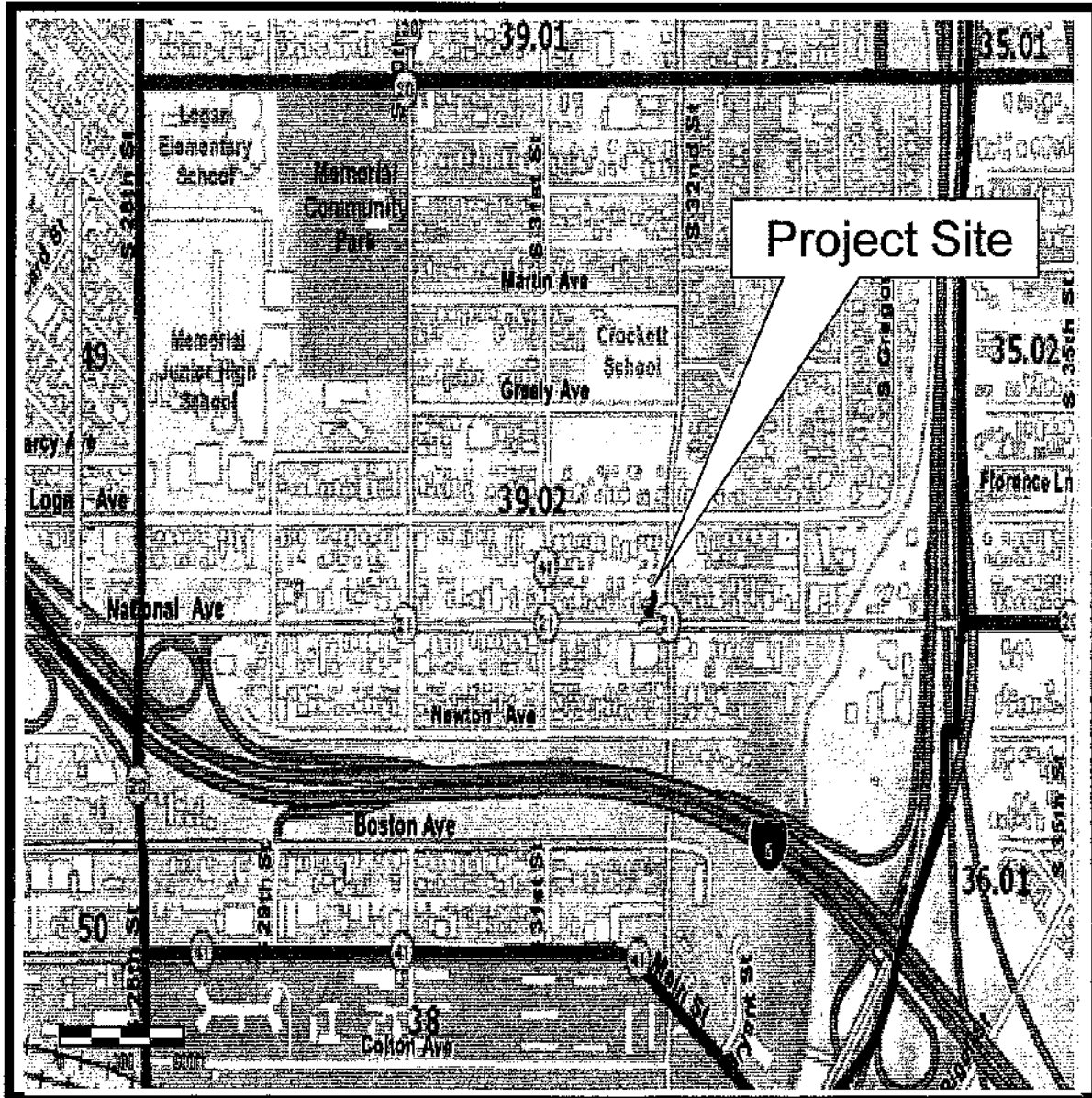
DENY

S. PAPALEE ALBRECHTSEN
Name of SDPD Vice Sergeant (Print)

619 531 2349
Telephone Number

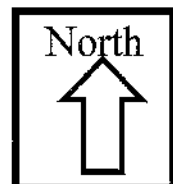
S. Papalee Albrechtsen
Signature of SDPD Vice Sergeant

3/20/12
Date of Review



Census Tract 39.02 Licenses

EDUARDO'S, Project No. 268446
3175 National Avenue





THE CITY OF SAN DIEGO

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) 268444
--	--

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

Legal Status (please check):

Corporation 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 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 DALIO

Title (type or print):
DIRECTOR

Signature: *[Signature]* Date: _____

Corporate/Partnership Name (type or print):
MD & CD INC.

Owner 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 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
QC: 00

Real (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

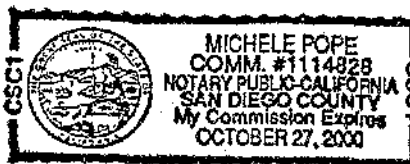
JULIUS H. SCHNEIDER**

() 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/it executed the same in his/hers/their authorized capacity(ies), and that by his/hers/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



PROJ. NO. 21-117
 CLIENT
 DESIGN
 DATE
 DRAWN BY

Architect
 Eduardo's Mercado
 3175 National Ave.
 San Diego, CA 92113
 619.232.1480

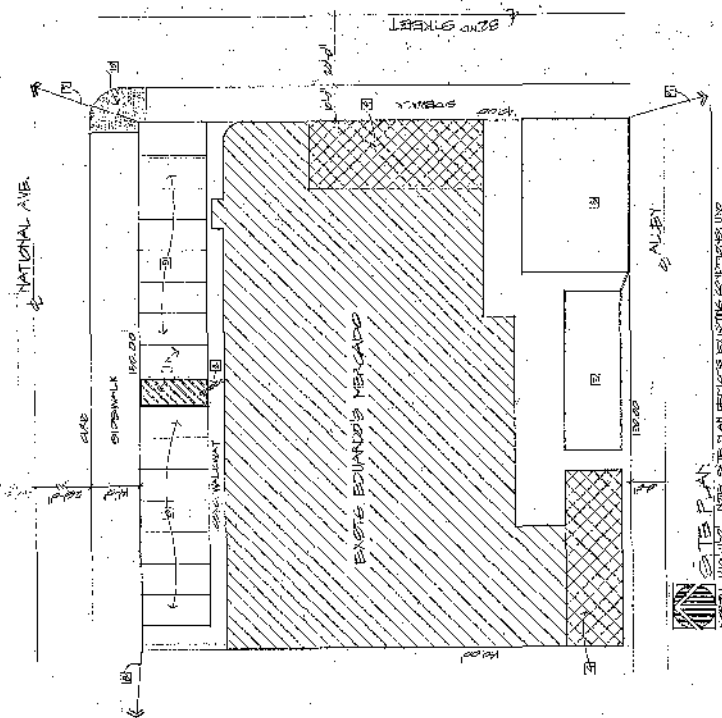
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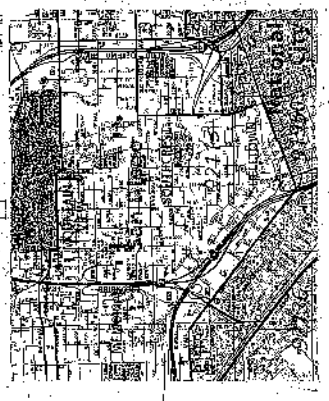
sheet index

T. TITLE SHEET & SITE PLAN
 FLOOR PLAN & PHOTO BENCHMARKS

- SITE PLAN NOTES**
1. ACCESSIBLE ROUTING AND LAYOUT
 2. UTILIZATION OF EXISTING UTILITIES
 3. EXISTING UTILITIES AND UTILITIES
 4. EXISTING UTILITIES AND UTILITIES
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vicinity map



SITE PLAN GENERAL NOTES
 1. THIS SITE PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO APPROVAL BY THE CITY OF SAN DIEGO.
 2. THE CITY OF SAN DIEGO IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS SITE PLAN.
 3. THE CITY OF SAN DIEGO IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS SITE PLAN.

project data

Project Summary:
 The proposed scope of work is to provide a Conditional Use Permit for the construction of a new building on the site located at 3175 National Ave., San Diego, CA 92113. The project is located in the City of San Diego, County of San Diego, State of California. The project is located in the City of San Diego, County of San Diego, State of California. The project is located in the City of San Diego, County of San Diego, State of California.

Project Team:
 Architect: Eduardo's Mercado
 Project Manager: Eduardo's Mercado
 3175 National Ave., San Diego, CA 92113
 619.232.1480

Site Data:
 Site Area: 11,000 sq. ft.
 Floor Area: 11,240 sq. ft.

Occupancy:
 Type of Construction: V-6
 Property Owner: Eduardo's Mercado
 3175 National Ave., San Diego, CA 92113
 619.232.1480

Map Data:
 Map Scale: 1" = 100'
 Map Date: 11/11/11
 Map Author: Eduardo's Mercado
 3175 National Ave., San Diego, CA 92113
 619.232.1480

~~PSA 268446~~

PSA 268446

 <p>City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 (619) 446-5210</p>	<p>Development Permit/ Environmental Determination Appeal Application</p>	<p>FORM DS-3031 MAY 2010</p>
	<p>See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.</p>	

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Four Decision - Appeal to City Council
- Environmental Determination - Appeal to City Council
- Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Nancy Nelson E-mail Address: Nynelson@yahoo.com
 Address: 622 Cooker Rd. City: San Diego State: CA Zip Code: 92114 Telephone: (619) 750-2024

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Schwarz's Market - Parcel No. 268 446

4. Project Information Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
<u>COP 952387 / Site Redevelopment Permit 952388</u>	<u>10/10/2012</u>	<u>Tim Poly</u>

Decision (describe the permit/approval decision): Hearing Officer approved a Conditional Use Permit and Site Development Permit for the ~~state~~ operation of an alcohol beverage outlet within an existing market located at 3175 National Avenue in the Southern San Diego Community Plan Area

- 5. Grounds for Appeal** (Please check all that apply)
- Factual Error (Process Three and Four decisions only)
 - Conflict with other matters (Process Three and Four decisions only)
 - Findings Not Supported (Process Three and Four decisions only)
 - New Information (Process Three and Four decisions only)
 - City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 8 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Please see attached

RECEIVED


OCT 23 2012

DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: [Signature] on behalf of Nancy Nelson Date: 10-23-2012

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

 <p>City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 (619) 446-5210</p>	Development Permit/ Environmental Determination Appeal Application	FORM DS-3031 MAY 2010
	<p>See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.</p>	

1. Type of Appeal:

<input type="checkbox"/> Process Two Decision - Appeal to Planning Commission	<input type="checkbox"/> Environmental Determination - Appeal to City Council
<input checked="" type="checkbox"/> Process Three Decision - Appeal to Planning Commission	<input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit
<input type="checkbox"/> Process Four Decision - Appeal to City Council	

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0109)

Name: Denise R. Reed E-mail Address: _____
 Address: 1212 So. 43rd St. City: San Diego State: CA Zip Code: 92113 Telephone: 619.261.7888

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.
Edwards's Me Lt - Project Number 268446

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
<u>CDP 952387 / Site Development Permit 952388</u>	<u>10/10/2012</u>	<u>Tim Daly</u>

Decision (describe the permit/approval decision): Hearing Officer approved a Conditional Use Permit and file Development Permit for the operation of an alcohol beverage outlet within an existing market located at 3175 National Avenue in the Southern San Diego Community Plan Area see

5. Grounds for Appeal (Please check all that apply)

<input type="checkbox"/> Factual Error (Process Three and Four decisions only)	<input type="checkbox"/> New Information (Process Three and Four decisions only)
<input type="checkbox"/> Conflict with other matters (Process Three and Four decisions only)	<input type="checkbox"/> City-wide Significance (Process Four decisions only)
<input checked="" type="checkbox"/> Findings Not Supported (Process Three and Four decisions only)	

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Please see attached


OCT 23 2012

RECEIVED

OCT 23 2012

DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: 10-23-2012

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

Christopher S. Morris, Esq.
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October 22, 2012

City of San Diego
3rd Floor
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101

RE: Supplement to Development Permit/Environmental Determination Appeal
Application

To Whom It May Concern:

Our firm has been retained by a coalition of community members,¹ including Palavra Tree,² to file the attached Development Permit/ Environmental Determination Appeal Application Form DS-3031. This letter serves to supplement the Form D-DS-3031, Development Permit / Environmental Determination Appeal Application filed by the coalition. The focus of this appeal is to request that the Planning Commission deny Conditional Use Permit No. 952387 and Site Development Permit No. 952388 (collectively "Permits").

I. STANDING TO APPEAL

The Permits granted by the Hearing Officer on 10 October 2012 should not be upheld by the San Diego Planning Commission because, as explained in greater detail below, the findings which the Hearing Officer cited to approve and/or conditionally approve the permit are not

¹ The coalition includes, in part, Charles Alexander, Pastor Brian Buggs, Salam Razuki, Denise Reed and William Penick.

² The Palavra Tree Inc is an Alcohol, Tobacco, and Other Drugs (ATOD) Prevention, Intervention, Treatment and Recovery Center is a Community-Social Model (COM-SOC) program. The primary focus is to reduce the availability and accessibility of alcohol, tobacco, and other drugs in the City and County of San Diego. The Palavra Tree's objectives include developing community based alcohol, tobacco, and other drugs prevention, recovery and treatment programs, that promotes healthier behaviors, decisions and to create an environment that reduces, postpones or eliminates the problematic use of legal and illegal drugs. The Palavra Tree's objectives also include being a "launching pad" from which local citizens and community organizations plan, develop, implement, evaluate and duplicate successful activities that reduce local ATOD problems.

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supported by the documentary, factual or testimonial information provided, thereby meeting the standards for appeal as stated in San Diego Municipal Code (“SDMC”) sec. 112.0506(c)(3).³

According to SDMC sec. 126.0301 there are a specific set of purposes for a Conditional Use Permit Procedures. SDMC sec. 126.0301 states:

The purpose of these procedures it to establish a review process for the *development* of uses that may be desirable under appropriate circumstances, but are not permitted by right in the applicable zone.⁴

This code section, in particular, points out that the procedures are set to protect the health and safety of the community. Specifically, the code states, “the intent is that each use be developed so as to fully protect the public health, safety, and welfare of the community.”⁵

In granting a Conditional Use Permit, SDMC sec. 126.0305(b) states, “[a]n application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the following findings . . . The proposed *development* will not be detrimental to the public health, safety, and welfare . . .”⁶ Additionally SDMC sec. 126.0305(d) provides, “[a]n application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the following findings . . . The proposed use is appropriate at the proposed location.”⁷ As discussed in greater detail below, the Hearing Officer does not have sufficient evidentiary or factual support to sufficiently show that approval of the CUP complies with SDMC secs. 126.0305(b) and 126.0305(d).

The Hearing Officer’s decision to approve the Permits qualifies as a Process Three decision per SDMC sec. 126.0303(a) which states, in pertinent part, “[a]n application for the following types of uses in certain zones may require a Conditional Use Permit . . . Conditional Use Permits Decided by Process Three . . . Alcoholic beverage outlets (under circumstances describes in Section 141.0502).”⁸ As clarified in greater detail below, the alcohol license sought in the instant matter falls underneath SDMC sec. 126.0303(a) because the applicant’s proposed license falls within the designation as defined by SDMC section 141.0502 which states:

§ 141.0502 Alcoholic Beverage Outlets

³ San Diego Municipal Code sec. 112.0506(c)(3) states: “Process Three Appeals – The Hearing Officer’s decision may be appealed to the Planning Commission, as specified in Chapter 12, Article 6 for the type of *development* and review required. An appeal from a Hearing Officer’s decision that involves applications consolidated in accordance with Section 112.0103 shall be heard by the Planning Commission. An appeal from a Process Three decision shall be made in the following manner . . . (c) Grounds for Appeal. A Process Three decision may be appealed on any of the following grounds: (3) *Findings* Not Supported. The decision maker’s stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker. . .” (Exhibit 1)

⁴ San Diego Municipal Code sec. 126.0301. (Exhibit 2)

⁵ *Id.* (Exhibit 2)

⁶ San Diego Municipal Code sec. 126.0301(b). (Exhibit 2)

⁷ San Diego Municipal Code sec. 126.0301(d). (Exhibit 2)

⁸ San Diego Municipal Code sec. 126.0303. (Exhibit 3)

Any establishment for which a Type 20 Beer and Wine License or a Type 21 General Liquor License have been obtained from, or for which an application has been submitted to, the California Department of Beverage Control for permission to sell alcoholic beverages for off-site consumption shall be regulated as an alcoholic beverage outlet subject to this section.

- (b) Limited Use Regulations. Alcoholic beverage outlets are permitted as a limited use subject to the following regulations.
 - (1) Alcoholic beverage outlets are not permitted in any of the following locations:
 - (A) 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;
 - (B) Within a census tract, or within 600 feet of a census tract, where the ratio of alcohol beverage outlets exceeds the standards established by California Business and Professional Code section 13958.4. . .
 - (E) Within 100 feet of a residentially zoned property.⁹

As will be discussed in the greater detail below, the applicant license falls within the areas defined by SDMC secs. 141.0502(b)(1)(A), 141.0502(b)(1)(B), and 141.0502(b)(1)(E).¹⁰ Therefore, the review for the license application falls within a Process Three hearing.

Denise Reed meets the requirement of SDMC sec. 112.0506 which defines the process for appealing a hearing officer decision and states: "The Hearing Officer's decision may be appealed to the Planning Commission"¹¹ and SDMC sec. 112.0506(a)(2) which states, "A

⁹ San Diego Municipal Code sec. 141.0502(b)(1)(A)-(E). (Exhibit 4)

¹⁰ The standards set forth in SDMC 141.0502(b)(1)(A)-(E) are taken from Cal. Bus. & Prof. Code sec. 23958.4(a)(1)-(3) which lays out the standards for "undue concentration" of liquor licenses and states: "For purposes of Section 23958, 'undue concentration' means the case in which the application premises for original or premises-to-premises transfer of any retail license are location in an area where any of the following conditions exist: (1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes . . . than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency. (2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant's premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located. (3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located. (Exhibit 4)

¹¹ San Diego Municipal Code sec. 112.0506. (Exhibit 1)

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Process Three decision may be appealed by the following persons . . . [a]n *interested person*.¹² SDMC sec. 113.0103 defines an "*Interested person*" as "a person who was present at a public hearing from which an appeal arose and who had filed a speaker slip with the decision maker at the public hearing or a person who expressed an interest in the decision in writing to that decision maker before the close of the public hearing."¹³ In this case, all members of the coalition referenced in this appeal submitted a speaker slip at the public hearing.¹⁴

Finally, SDMC sec. 112.0506 requires, "[a] Process Three decision may be appealed by filing an application with the City Manager no later than 10 *business days* after the date of the Hearing Officer's decision."¹⁵ Here, the Hearing Officer decision was made at the Hearing Officer Meeting on 10 October 2012.¹⁶

Therefore, Ms. Reed, representative of the Palavra Tree, has standing to file the instant appeal to the San Diego Planning Commission.

II. BACKGROUND OF APPLICANT EFFORT TO OBTAIN LIQUOR LICENSE

In 1990, Mike Dallo filed a corporation with the California Secretary of State titled Dallo & Co., Inc. Mike Dallo was listed as the registered agent for the company at 5075 Federal Boulevard, San Diego CA.

More than 15 years later, in 2005, Dallo & Co., Inc. was assessed for the ownership of the parcel of land located at 3175 National Avenue, San Diego. Dallo had listed a "doing business as," or DBA, titled "Gigante IGA Market," according to the assessment records with San Diego County.¹⁷ At about this time, an application by Rafid Dallo for a "20 – Off-Sale Beer and Wine" license was filed with the California Department of Alcoholic Beverage Control. The application was filed for Gigante Super Market and was listed as withdrawn, according to the California Department of Alcoholic Beverage Control.¹⁸

In 2004, Mike Gallo filed a corporation with the California Secretary of State titled MD & CD, Inc. Mike Dallo was listed as the registered agent for the company at 5075 Federal Blvd, San Diego CA. In 2011, MD & CD, Inc. was assessed property taxes for the property at 3175 National Avenue, San Diego.¹⁹ Dallo had listed a "doing-business as," or DBA, titled "Eduardos Mercado," according to the assessment records with San Diego.²⁰ This would be the business entity that engaged in efforts to secure a liquor license.

¹² San Diego Municipal Code sec. 112.0506(a)(2). (Exhibit 1)

¹³ San Diego Municipal Code sec. 113.0103. (Exhibit 5)

¹⁴ The coalition includes, in part, Charles Alexander, Pastor Brian Buggs, Denise Reed and William Penick.

¹⁵ San Diego Municipal Code sec. 112.0506(b). (Exhibit 1)

¹⁶ City of San Diego Hearing Officer – Docket for Hearing Officer Meeting – October 10, 2012. (Exhibit 6)

¹⁷ Assessment Record for San Diego County: Dallo & Co., Inc., DBA Gigante IGA Market. (Exhibit 7)

¹⁸ California Department of Alcoholic Beverage Control - License Query System Summary. (Exhibit 8)

¹⁹ Assessment Record for San Diego County: MC & CD Inc., DBA Eduardo's Mercado.(Exhibit 9)

²⁰ *Id.*(Exhibit 9)

On March 9, 2001, Mike Dallo submitted a request to the San Diego Police Department for a Public Convenience or Necessity evaluation of the store at 3175 National Avenue to secure a Type 20 Off-Sale Beer & Wine License.²¹ The San Diego Police Department undertook the evaluation of Mr. Dallo's store located at 3175 National Avenue.²² Linda Griffin, a sergeant with the San Diego Police Department's Vice Admin Unit, conducted the investigation and wrote:

I conducted a site inspection of the premises and the surrounding areas. Although the business is well within 100 feet of several residentially-zoned properties, it appears that the proposed business will benefit the area with appropriate restrictive conditions placed on the Alcoholic & Control License.²³

The conditions listed by Sergeant Griffin included "appropriate hours, no single sales of beer, malt beverages and/or wine coolers and floor space dedicated to refrigerate product" and a series of additional requirements.²⁴ Further, Sergeant Griffin notified Mr. Dallo that the project will require a Conditional Use Permit and wrote:

In accordance with Business and Professions Code, section 23958.4 your application is required to meet standards for public convenience and necessity. After consulting with the City of San Diego Development Services Department, I learned that your client will still need to obtain a Conditional Use Permit in order to conduct the type of business planned for this location.²⁵

Griffin concluded the letter by stating "your application for Public Convenience or Necessity has been approved."²⁶

Shortly thereafter, MD & CD, Inc. applied for a Type 20-Off-Sale Beer and Wine with the California Department of Alcoholic Beverage Control.²⁷ The license for Eduardo's Mercado is listed as pending as of 11 November 2011, according to the California Department of Alcoholic Beverage Control License Query System.

Mr. Dallo continued to collect approvals from the San Diego Police Department. On 20 March 2012, the San Diego Police Department issued a "Conditional Use Permit Recommendation" for Eduardo's Market. The permit recommendation noted the "number of alcohol licenses allowed" in the census tract was "4" and the "number of alcohol licenses

²¹ 30 June 2011 letter from Linda Griffin, sergeant with the San Diego Police Department's Vice Admin Unit, to Mike Dallo, Subject: "Reference: PCN Application." (Exhibit 10)

²² *Id.* (Exhibit 10)

²³ *Id.* (Exhibit 10)

²⁴ *Id.* (Exhibit 10)

²⁵ *Id.* (Exhibit 10)

²⁶ *Id.* (Exhibit 10)

²⁷ California Department of Alcoholic Beverage Control: MD & CD, Inc., DBA Eduardos Mercado.(Exhibit

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existing” in the census tract was “4.”²⁸ In other words, at the time the San Diego Police Department issued recommendation for the conditional permit, the number of alcohol licenses existing was at its limit. The Police Department also noted the “Crime Rate In This Census Tract” was “231.7% more than the average crime rate in the City of San Diego.” The recommendation also noted that an area is “Considered High Crime if [the Crime Rate] Exceeds 120% of City-wide Average.” Shockingly, in the form recommendation, the Police Department answered “No” to the question: “Will this Business be detrimental to the public health, safety, and welfare of the community and City.”²⁹

MEETINGS HELD THROUGH VARIOUS PLANNING GROUPS

The Southeastern San Diego Planning Group (“SSDPG”) was the first public body that reviewed the issuance of a CUP and site development permit to Eduardo’s for the sale of alcohol. The minutes of the 25 June 2012 meeting indicate that a presentation was provided to the SSDPG Board by “Attorney Shamoun.” According to the meeting minutes, Mr. Shamoun told the Board:

- “Markets over 15,000sf can bypass the Community Plan and get beer and wine licenses. This market is 12-13,000 sf . . .
- “In the community (Census Tract 39.02), there are 4 liquor licenses, 3 markets and 1 gas station . . .
- “The saturation of liquor licenses in the area, we know, is an issue . . .
- “It will make the community a safer place . . .”³⁰

The Project Committee Summary reflected the members of the committee’s concern that the community is already “over-saturated with beer and wine licenses,” that “[d]omestic violence is high in our area,” and concern over “the at-risk youth and the availability of alcohol.”³¹ The committee expressed concern that this was not the first application for alcohol at this location and that previous attempts were not successful.³² The committee pointed out that, “Saturation of licenses IS STILL A BASIS for denial by the ABC. ALSO, this is a high crime area (over 120% of City-wide average).”³³ Finally, the committee noted that the applicant, Eduardo’s Marketplace, has provided nothing in writing to obligate them to the safety measures they have promised.³⁴ Despite, these concerns, the committee recommended “to take the request to the full Planning Group with the Police Department Recommendation and guarantee of implementation.”³⁵

²⁸ San Diego Police Department Conditional Use Permit Recommendation for 3175 National Ave. San Diego. (Exhibit 12)

²⁹ *Id.* (Exhibit 12)

³⁰ Southeastern San Diego Planning Group (SSDPG) Project Committee Summary: June 25, 2012 – 6 p.m. (Exhibit 13)

³¹ *Id.* (Exhibit 13)

³² *Id.* (Exhibit 13)

³³ *Id.* [emphasis original] (Exhibit 13)

³⁴ *Id.* (Exhibit 13)

³⁵ *Id.* (Exhibit 13)

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The Southeastern San Diego Planning Group (SSDPG) held a meeting on 9 July 2012 where the CUP and site development permit were discussed.³⁶ The Planning Group approved the permits by a vote of 5-4.³⁷ The minutes are sparse on details and stated only:

Presentation by applicant team. Family owned and managed grocery, one a series of facilities. Store includes a kitchen, bakery and 13,000+ SF grocery. Beer and wine sales will consist of less than 10% of the square footage. **Motion to approve 5/4/0.**³⁸

Just days after the Planning Group approved the CUP and development permit, Maria Riveroll, chair of the Southeastern San Diego Planning Group submitted a Community Planning Committee Distribution Form Part 2 to the San Diego City Development Services Department.³⁹ The Form, dated 12 July 2012, does not include any of the recommendations that were included in the Southeastern San Diego Planning Group (SSDPG) listed in its meeting of 25 June 2012.

III. CITY OF SAN DIEGO HEARING OFFICER APPROVAL

The issue of Eduardo's Market appeared before the City of San Diego Hearing Officer at the Hearing Officer Meeting of 10 October 2012.⁴⁰ At the hearing, Chris Larson, hearing officer for the City of San Diego Development Services Department approved the CUP and Site Development Permit to sell beer and wine in an existing market at 3175 National Avenue, San Diego. In approving the Conditional Use Permit and the Development Permit, the Hearing Officer relied on Report No. HO-12-078. The report was authored by Tim Daly, development project manager for the Development Services Department (hereinafter referred to as the "Daly Report.")

In the Daly Report, Daly recommended that the Hearing Officer, Chris Larson, "APPROVE Conditional Use Permit No. 952387 and Site Development Permit No. 952388."⁴¹ The Daly Report also stated "the Southeastern San Diego Community Planning Group voted 5-4-0 recommending the project be approved. There were no additional comments or conditions

³⁶ Agenda of the 9 July 2012 meeting of the Southeastern San Diego Planning Group. The Agenda listed Tim Daly as the project manager at the City's Development Services Department. (Exhibit 14)

³⁷ *Id.* (Exhibit 14)

³⁸ *Id.* (Exhibit 14)

³⁹ Community Planning Committee Distribution Form Part 2 – City of San Diego Development Services: for Eduardo's Market, Project Number: 268446. The Community Planning Committee Distribution Form Part 2 states that the Applicant Name of the project is MD&CD, Inc. (Exhibit 15)

⁴⁰ City of San Diego Hearing Officer Docket for Hearing Officer Meeting, October 10, 2012, "Item – 6: Eduardo's – Project No. 268446." (Exhibit 6)

⁴¹ 10 October 2012, City of San Diego Development Services Department Report to the Hearing Officer, Report No. HO 12-078, Subject: Eduardo's Market – Project Number 268446. P. 1 of 5. (Exhibit 16)

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provided by the planning group.⁴² Notably, the Daly Report did not include the list of nine concerns and recommendations of the Southeastern San Diego Planning Group (“SSDPG”).⁴³

The Daly Report stated that the site of Eduardo’s Market has a zoning designation of CSR-2 which “permits the retail sales of general merchandise and an alcoholic beverage outlet is permitted in the zone as a limited use . . .”⁴⁴ The Daly Report clarified that the project required “two discretionary entitlements.”⁴⁵

- “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.”⁴⁶
- “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.”⁴⁷

The Daly Report stated that Eduardo’s Market is proposing the sale of beer and wine through a Type 20 Liquor License within the market.⁴⁸ As the Daly Report stated, the SDMC defines alcohol beverage outlets as a limited use under SDMC sec. 141.0502(b) but cautions that outlets which don’t comply with that section may still be granted the permits under SDMC sec. 141.0502(c). Seeking to address these concerns, the Daly Report stated that SDMC section 141.0502(b)(1) does not permit alcoholic beverage outlets by right and would require a CUP in different locations.⁴⁹

As stated in the Daly Report, SDMC sec. 141.0502(b)(1)(A) provides that “Alcoholic beverage outlets are not permitted in any of the following locations . . . Within a census tract, or

⁴² *Id.* (Exhibit 16)

⁴³ The list of concerns listed at the SSDPG Project Committee included: “(1) The conditions imposed by the Police Department are only suggestions. Even though the Applicant has assured us that they will go above and beyond any of these suggestions, they are asking us to accept their word. We have nothing in writing. (2) Concerned (sic) was expressed about the at-risk youth in the community and availability of alcohol. A remark was made that liquor can be acquired anywhere. (3) Traditionally, our community is over-saturated with beer and wine licenses. We do not support the sales of beer and wine. (4) There is a very high saturation of licenses for off-sale alcohol in our community. (5) Domestic violence is high in our area. (6) The Police Department rotates Vice staff every 6 months, they may not be aware of the conditions in our community. We cannot support this because of the social implication to our community. (7) This is NOT the first time the owner of this site had asked for a license. They previous owner was not successful. (8) There were 3 comments of support and 3 comments for denial. (9) Saturation of licenses IS STILL A BASIS for denial by the ABC. ALSO, this is a high crime area (over 120% of City-wide average) This Census Tract’s crime rate is 231.7%.” (Exhibit 13)

⁴⁴ 10 October 2012, City of San Diego Development Services Department Report to the Hearing Officer, Report No. HO 12-078, Subject: Eduardo’s Market – Project Number 268446. P. 2 of 5. (Exhibit 16)

⁴⁵ *Id.* (Exhibit 16)

⁴⁶ *Id.* (Exhibit 16)

⁴⁷ *Id.* (Exhibit 16)

⁴⁸ *Id.* (Exhibit 16)

⁴⁹ *Id.* (Exhibit 16)

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within 600 feet of a Census Tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.⁵⁰

The Daly Report stated the crime rate in the census tract where Eduardo's Market is locate, in Census Tract No. 39.02, has a reported "crime rate 231 percent higher than the citywide average based on the statistics provided by the San Diego Police Department" and that a "Census Tract is considered to have 'high crime' if the crime rate exceeds 120 percent of the city-wide average."⁵¹ The Daly Report concluded that these statistics require a CUP for the sale of alcohol.⁵²

As stated in the Daly Report, SDMC sec. 141.0502(b)(1)(B) provides that "Alcoholic beverage outlets are not permitted in any of the following locations . . . 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 Business and Professional Code Section 23958.4"⁵³

The Daly Report stated that currently four (4) alcohol permits exist within Census Tract No. 39.02 and that "based on the California Business and Professional (sic) Code Section 23958.4 permits a total of four (4) off-sale alcoholic beverage outlets."⁵⁴ The Daly Report observed, based on the number of existing licenses, "a CUP would be required for the off-sale of alcoholic beverages based on this factor."⁵⁵

As stated in the Daly Report, SDMC sec. 141.0502(b)(1)(E) provides that "Alcoholic beverage outlets are not permitted in any of the following locations . . . Within 100 feet of a residentially zoned property."

Pertaining to this issue, the Daly Report observed, "The project city is within 100 feet of a residentially zoned property."⁵⁶

In taking into account the requirements set forth in SDMC 141.0502(b)(1), the Daly Report stated:

[T]he project sight 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 the 100 feet of residentially zoned property. Any one of these factors established the need for the Conditional Use Permit.⁵⁷

⁵⁰ *Id.* (Exhibit 16)

⁵¹ *Id.* (Exhibit 16)

⁵² *Id.* (Exhibit 16)

⁵³ *Id.* at p. 3 of 5. (Exhibit 16)

⁵⁴ *Id.* (Exhibit 16)

⁵⁵ *Id.* (Exhibit 16)

⁵⁶ *Id.* (Exhibit 16)

⁵⁷ *Id.* (Exhibit 16)

In the "Analysis" section of the Daly Report, the recommendation is based almost entirely on the idea that because there is an existing market, the sale of beer would not have a detrimental impact on the community. Specifically, the Daly Report stated:

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 the commercial node serving the community and would be consistent with the land use designation on the site. Therefore, the additional of beer and wine for off-site consumption should not adversely impact the community.⁵⁸

Again, it appears the staff recommendation in the Daly Report is based on the premise that because the sale of alcohol is not the primary business purpose of the market, then it will not have a negative impact on the community.

The Daly Report stated, "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."⁵⁹ The following conditions were included in the Daly Report:

- Regulate advertising⁶⁰
- 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,
- Provide 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.⁶¹

The Daly Report also included a series of prohibitions:

- No pinball games or arcade-style video and electronic games, or coin-operated amusement machines on the premises;
- No exterior or interior public pay phones on the premises, on adjacent 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;⁶²

The Daly Report concluded, "City staff supports the request for a Conditional Use Permit for the limited use and conditional sale of beer and wine. Permit conditions have been added to this

⁵⁸ *Id.* (Exhibit 16)

⁵⁹ *Id.* (Exhibit 16)

⁶⁰ *Id.* (Exhibit 16)

⁶¹ *Id.* at p. 4 of 5. (Exhibit 16)

⁶² *Id.* (Exhibit 16)

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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.”⁶³

IV. GROUNDS FOR APPEAL

Applicant failed to show the project will not be detrimental to the public, health, safety and welfare sufficient to overcome the limitations of SDMC sec. 141.0502.

As stated above, the Daly Report stated that SDMC sec. 141.0502(b)(1) specifically provides that “Alcoholic beverage outlets are not permitted in any of the following locations . . . Within a census tract, or within 600 feet of a census tract, where the general crime rate exceeds the citywide average by more than 20 percent.”

The Daly Report and the Hearing Officer approval of the CUP “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.”⁶⁴ The Daly Report and Hearing Officer simply conclude, “[t]herefore the addition of beer and wine for off-site consumption should not adversely impact the community.”

This reasoning is bare of any support to meet the requirements of SDMC sec. 126.0305 which requires a showing that “the proposed *development* will not be detrimental to the public health, safety, and welfare.”

What’s more, the Hearing Officer at the 10 October 2012 meeting heard testimony from more than 20 community representatives who stated concern that the crime rate in the neighborhood is 231 percent higher than the citywide average based on the statistics provided by the San Diego Police Department.⁶⁵

Community members in a prior community meeting also expressed concerns that more liquor licenses in the community would be detrimental to the public health, safety, and welfare because of problems that stem from the easier availability of alcohol. Specifically, the Southeastern San Diego Planning Group listed the following concerns in the Projects Committee Summary: “(1) The conditions imposed by the Police Department are only suggestions. Even though the Applicant has assured us that they will go above and beyond any of these suggestions, they are asking us to accept their word. We have nothing in writing. (2) Concerned (sic) was expressed about the at-risk youth in the community and availability of alcohol. A remark was made that liquor can be acquired anywhere. (3) Traditionally, our community is over-saturated with beer and wine licenses. We do not support the sales of beer and wine. (4) There is a very high saturation of licenses for off-sale alcohol in our community. (5) Domestic violence is high in our area. (6) The Police Department rotates Vice staff every 6 months, they may not be aware of the conditions in our community. We cannot support this because of the social implication to

⁶³ *Id.* (Exhibit 16)

⁶⁴ *Id.* (Exhibit 16)

⁶⁵ Hall, Matthew, T., “Liquor license request stirs up anger,” *UT San Diego*, 10 October 2012. (Exhibit 17)

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our community. (7) This is NOT the first time the owner of this site had asked for a license. These previous owner was not successful. (8) There were 3 comments of support and 3 comments for denial. (9) Saturation of licenses IS STILL A BASIS for denial by the ABC. ALSO, this is a high crime area (over 120% of City-wide average) This Census Tract's crime rate is 231.7%.⁶⁶

Further, Applicant failed to show the project will not be detrimental to the public, health, safety and welfare sufficient to overcome the limitation of alcoholic beverage outlets 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 Business and professional Code Section 23958.4.

As stated above, the Daly Report stated, "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."⁶⁷ The following conditions were included in the Daly Report:

- Regulate advertising⁶⁸
- 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,
- Provide 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.⁶⁹

The Daly Report also included a series of prohibitions:

- No pinball games or arcade-style video and electronic games, or coin-operated amusement machines on the premises;
- No exterior or interior public pay phones on the premises, on adjacent 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;⁷⁰

The Daly Reports failed to show any nexus to how these conditions would meet the standards set forth in SDMC sec. 126.0305 in the Daly Report's conclusion which stated, "Permit conditions have been added to this discretionary permit that would assure that the business would be a

⁶⁶ Southeastern San Diego Planning Group (SSDPG) Project Committee Summary: June 25, 2012 – 6 p.m. (Exhibit 13)

⁶⁷ 10 October 2012, City of San Diego Development Services Department Report to the Hearing Officer, Report No. HO 12-078, Subject: Eduardo's Market – Project Number 268446. P. 4 of 5. (Exhibit 16)

⁶⁸ *Id.* (Exhibit 16)

⁶⁹ *Id.* at p. 4 of 5. (Exhibit 16)

⁷⁰ *Id.* (Exhibit 16)

cohesive element of the neighborhood and would not be detrimental to the public health, safety and welfare of the community.”

None of the community concerns about neighborhood violence, the ease of accessibility to alcohol to minors and adults, and the high rates of domestic violence were raised or addressed in the materials that the Hearing Officer relied upon. The Daly Report and the Hearing Officer failed to make the proper showing that the community, in terms of these concerns, would not be affected by the issuance of another liquor license in this community.

Further, the Hearing Officer appeared to ignore the concerns of the community as communicated in the PowerPoint presentation given at the meeting. Specifically, the PowerPoint addressed the amount of liquor licenses present in the census tract and stated, “CT 39.02 is already overconcentrated (sic) – ABC website shows 5 active licenses, not 4 as stated in the the report.”⁷¹ The report also points out: “High Crime – CT 39.02 has a crime rate that is 231% of the City Average,” the store is “Adjacent [to] residential use,” and there is “School within 1000 feet.”⁷² These concerns were not even addressed by any evidentiary, factual, or testimonial information.

The Hearing Officer further ignored information presented in the PowerPoint which showed that more than one quarter of the crimes committed within a 1 mile radius of 3175 National Avenue is alcohol and drug related crimes.⁷³ The following information was provided:

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⁷¹ PowerPoint, “Eduardo’s Market – 3175 National Ave., San Diego CA – CUP/SDP for Off-Site Beer and Wine – October 10, 2012” p. 3. (Exhibit 18)

⁷² *Id.* (Exhibit 18)

⁷³ *Id.* at p. 6. (Exhibit 18)

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Crime Type Summary	
Type of Crime	Number of Instances
Drugs/Alcohol Violations	162
Motor Vehicle Theft	86
Assault	84
Theft/Larceny	48
Vandalism	37
Vehicle Break-In/Theft	33
Burglary	33
DUI	28
Robbery	26
Sex Crimes	25
Fraud	17
Weapons	10
Arson	2
Homicide	1 ⁷⁴

The information in the table – which was presented to the Hearing Officer – illustrates that nearly 30 percent of all crime that occurs within a one mile radius of applicant store are drug/alcohol related crimes. About 5 percent of all crimes were driving under the influence arrests. The report presented to the Hearing Officer stated: “Finding B – Alcohol sales are detrimental to Health, Safety and Welfare.”⁷⁵

Since the approval of the Conditional Use Permit by the Hearing Officer from City of San Diego Development Services Department on 10 October 2012, more than 176 members of the community have signed a petition which stated:

Statement in opposition to a Type 20 Beer and Wine License for Proposed Eduardo’s at 3175 National Avenue San Diego CA 92113

As residents, community members and business owners in San Diego, we take pride in a safe, friendly, community oriented neighborhood and we believe the proliferation of stores selling beer and wine, jeopardizes the health, safety and welfare of our citizens, our youth and community at large. We, the undersigned, are asking for your support in our efforts to protect our children and families and to preserve our quality of life in San Diego. Specifically, we request your serious consideration to deny the request of the proposed type 20 Beer and Wine application for 3175 National Avenue San Diego CA 92113. This proposed retail outlet is not compatible with neighborhood character. The proposed store is

⁷⁴ *Id.* (Exhibit 18)

⁷⁵ *Id.* at p. 7. (Exhibit 18)

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located near youth sensitive area, residential areas, next to an apartment unit and near a church and other facilities serving young people. There are two liquor stores in each corner selling beer and wine in the immediate area, including one located across the street from the proposed location. Other nearby businesses already sell similar goods and services, therefore, this beer license application is not needed for public convenience and necessity.⁷⁶

Meanwhile, members of the community are currently working to plan a "safe passage" for young members of the community on the very street that Eduardo's Marketplace is seeking the CUP in order to sell alcoholic beverages. A Safe Passage, coordinates with school security officers, city police and firefighters, but employs parents and neighborhood residents to canvass the neighborhood.

V. CONCLUSION

For the foregoing reasons, the Hearing Officer did not have sufficient evidentiary or factual support to show that the "proposed *development* will not be detrimental to the public health, safety, and welfare.

Very truly yours,



Christopher S. Morris, Esq.

⁷⁶ See 174 signed "Statement of Opposition to a Type 20 Beer and Wine License for Proposed Eduardo's at 3175 National Avenue San Diego CA 92113. (Exhibit 19)

