

## PLANNING COMMISSION

Agenda Item No.: I.1  
Date: July 26, 2011

DATE: July 21, 2011

TO: Planning Commissioners

FROM: Rozanne Cherry, Principal Planner 

SUBJECT: Swap Meet / World Marketplace Operations, 635 W. Mission Avenue (Case No. 95-12-CUP)

ACTION: Determine whether or not to hold a public hearing upon the question of revoking or modifying the Conditional Use Permit (CUP) for the Escondido Swap Meet

The approved CUP includes properties under two separate ownerships, as shown on Exhibit A. The swap meet (renamed as the "World Marketplace") is currently operating on a reduced footprint, on properties under a single ownership. The Planning Commission received two letters as Written Communication at the June 28, 2011 meeting concerning the current operations at this site. The Commission voted 5-0 (McQuead and Winton absent) to place the item for discussion on this agenda.

The first letter the Planning Commission received was from C. Samuel Blick, representing property owners and those with financial interests in parcels included within the CUP boundaries, adjacent to the World Marketplace operations. He requested a hearing before the Planning Commission pursuant to Escondido Municipal Code (EMC) 33-1207, to consider revocation of Conditional Use Permit Case No. 95-12-CUP or to order an immediate cessation of business activities on the site. He claimed that the current operation of the World Marketplace was not in conformance with certain conditions of approval related to traffic circulation and emergency vehicle access. He also was concerned that the current operation did not include all of the parcels that were approved for a swap meet use under 95-12-CUP.

Pursuant to Section 33-1207, the Planning Commission may determine on its own motion to hold a public hearing to review a conditional use permit for possible modification or revocation. The CUP may be modified or revoked if the Commission finds that one or more of six findings apply to the operation of the CUP. These findings are listed in Section 33-1207 of the attached copy of the code dealing with conditional use permits, Division 1 of Article 61-Administration and Enforcement.

The second letter was from David W. Ferguson, representing Escondido Drive-Inn, LP (EDILP), the owner of several parcels underlying the Swap Meet /World Marketplace. This letter addressed three points presented in Mr. Blick's letter. The letter also noted that EDILP submitted on 5/31/11 an administrative request (Case No. ADM 11-0091) for minor adjustments to the original development plans, pursuant to EMC Section 33-1208 (see attachment). This request is currently in the review process. However, the applicant chose to open for business prior to any formal approval of the modification. Staff has worked with the applicant to maintain appropriate access and circulation to all parcels while the request is under review.

Following the Planning Commission meeting on June 28<sup>th</sup>, Mr. Blick submitted another letter dated June 29, 2011. This letter challenging staff's interpretation regarding Section 33-1208, wherein it was determined that

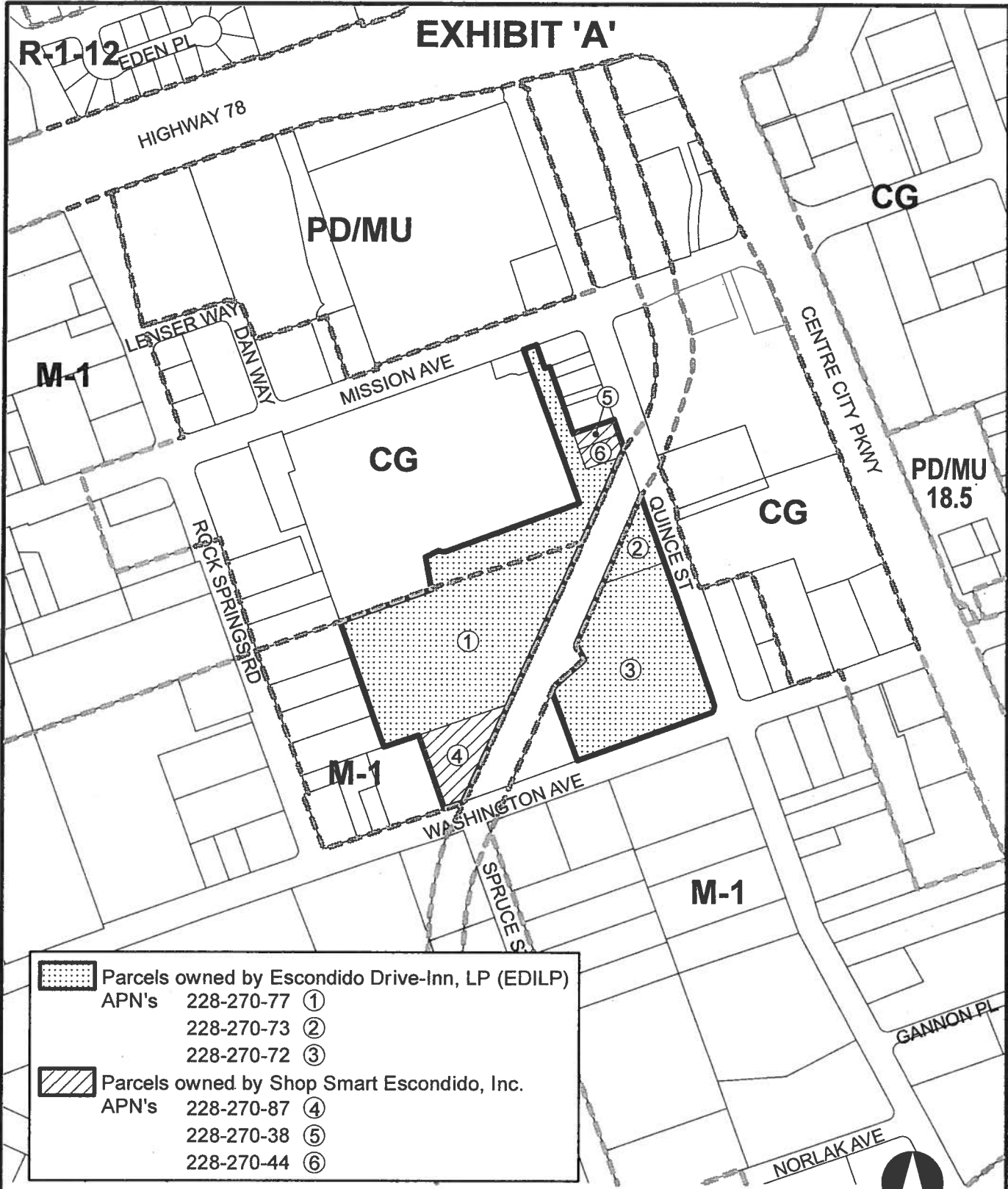
the proposed modification qualified as a minor adjustment to the original CUP, thereby enabling the application to be processed administratively. Staff feels that rather than appeal the procedure itself, the appropriate action is to appeal the final determination on the minor CUP adjustment.



Staff has received another letter from Mr. Ferguson dated July 18, 2011, responding to Mr. Blick's claims.

**OPTIONS:**

1. Determine not to hold a public hearing to review the Conditional Use Permit.
2. Determine to hold a public hearing and set the date for September 27, 2011, in order to allow time for research, preparation of a staff report, and mailing notices.
3. As there are two requests being processed concurrently, the Commission could direct staff to report back on the status of the Administrative Modification ADM 11-0091 by August 23, 2011, and then decide whether or not to hold a revocation/modification hearing regarding 95-12-CUP.

# EXHIBIT 'A'



	Parcels owned by Escondido Drive-Inn, LP (EDILP)
APN's	228-270-77 ①
	228-270-73 ②
	228-270-72 ③
	Parcels owned by Shop Smart Escondido, Inc.
APN's	228-270-87 ④
	228-270-38 ⑤
	228-270-44 ⑥

Portions of this DERIVED PRODUCT contains geographic information copyrighted by SanGis. All rights reserved.

## UNDERLYING PARCELS FOR CONDITIONAL USE PERMITS 95-12-CUP/97-06-CUP/98-38-CUP

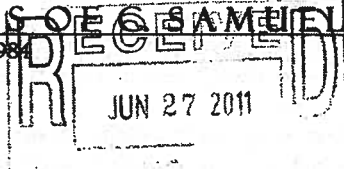


LOCATION/ZONING

**LAW OFFICES OF SAMUEL BLICK**

LAND USE LAWYERS - EST. 1984

RANCHO SANTA FE OFFICE  
16915 Avenida de Acacias  
Post Office Box 9477  
Rancho Santa Fe, CA 92067  
www.SamBlickLaw.com



Telephone (858) 395-1554  
Facsimile (858) 225-0220  
blicklaw@dc.rr.com

Via Email Attachment and Hand Delivered

June 27, 2011

Honorable Darol Caster  
Chairman, Planning Commission  
City of Escondido  
201 North Broadway  
Escondido, CA 92025

**Notice of Violation by Escondido World Marketplace, 635 W. Mission Avenue -  
Conditional Use Permit #95-12-CUP**

**Request for Hearing before Planning Commission, pursuant to Escondido Municipal Code  
Section 33-1207**

Honorable Chairman Caster:

This firm represents certain property owners and those with financial interests in land parcels surrounding and adjacent to the Escondido World Marketplace (Marketplace) located at 635 W. Mission Avenue, Escondido, California.

We respectfully request a hearing before the Escondido Planning Commission (PC), pursuant to the authority granted under *Escondido Municipal Code (EMC) Section 33-1207*, to consider revocation of Conditional Use Permit (CUP) #95-121-CUP, or, in the alternative, to order an immediate cessation of business activities on the site.

**The Operation of Business by Escondido World Marketplace (Marketplace) is not authorized by CUP #95-121-CUP**

The lawful operation of a specifically described swap meet on the site was authorized in 1995 by the PC, pursuant to #95-121-CUP. This CUP contains voluminous conditions of approval and mandatory provisions for the function of the business.

Several of these conditions have not been satisfied by Marketplace, some of the conditions are subject to a modification request and others cannot be complied with as a matter of fact and law.

C. Samuel Blick  
Attorney at Law

*Escondido Municipal Code, Section 33-1206. Expiration*, prohibits this attempt by Marketplace to circumvent the original CUP and specifically provides the following, *inter alia*:

*Once any portion of a conditional use permit is utilized, the other conditions thereof become immediately operative and must be strictly complied with. (Zoning Code, Ch. 109, § 1094.13) [Emphasis Added]*

**Marketplace has Ignored the Conditions of the CUP, which Provide for Specific Traffic Circulation and Emergency Vehicle Access**

When the PC approved the CUP in 1995, it thoroughly considered the operation of the business at this particular site and imposed certain conditions of approval. These conditions of approval have not and cannot be met by Marketplace, due to the revised and abbreviated configuration of the parcels of land at site.

For example, the City Fire Department stated in its review of the site circulation during the 1995 CUP approval process, that the bridge over the flood control channel provides inadequate and dangerous access. Although the bridge may be usable in the face of a dire emergency, it presents risk to the aging bridge structure as the modern fire equipment increases in size and weight.

While the Fire Department may reluctantly accept some alternate access route, the City sets a dangerous precedent in waiving the valid fire access conditions of the original CUP in order to facilitate the defects in the Marketplace operation.

**The Pending Application for Modification by Marketplace Admits Non Compliance**

Marketplace representatives submitted an application on May 31, 2011, requesting the operation of an "open air market." This submittal admits that not all the parcels of land considered by the PC for the CUP are available and that they now need to "...adjust the fire lanes and change the access points..." in order to "operate." [See correspondence to Rozanne Cherry, May 31, 2011]

The application also requests "...modification to the Sign Program and the addition of a fence to separate..." the parcels originally contemplated by the PC in its 1995 approval of the swap meet.

These requests are in direct conflict with the approved CUP.

**The Modifications Requested by Marketplace are Substantive, not "Minor," and Do Not Conform to the Definitions of the EMC.**

The Director of Community Development, in correspondence to Marketplace of May 12, 2011, indicated that the changes in the operation of the new swap meet are "minor," and, as such, may be administratively approved by her, without consideration by the PC.

This disrespect for the appropriateness of review by the PC is not consistent with the intent or spirit of the Escondido Municipal Code.

Escondido Planning Commission Appeal

C. Samuel Blick  
Attorney at Law

*Escondido Municipal Code Section 33-1208*, the section upon which the Director relies, contemplates changes to a conditionally permitted use of “...*less than one thousand (1,000) square feet of [sic] ten (10) percent of the facility, whichever is less...*”. Although this section addresses “expansion,” it is clear that the legislative intent in defining “minor” did not include the modifications contemplated by the Marketplace application.

Furthermore, the provisions of *EMC Section 33-1208* prohibit the Director from approving “adjustments” to the CUP that conflict with the “...*concept or intent of the development plans originally approved by the planning commission...*”. (*Zoning Code, Ch. 109, § 1094.16; Ord. No. 2001-08, § 8, 5-9-01*)

The record of the PC hearing wherein they considered the CUP specifically reflects the Commissioners’ concern that the circulation elements of the project honor the requirements of the traffic study. [*See Minutes of 1995 PC hearing, SSEI application for #95-12-CUP*]

It is difficult to imagine those Commissioners cavalierly waiving the emergency and delivery truck access requirements in order to accommodate a future applicant’s interest in cutting costs and functioning on a smaller, less adequate site.

The modifications requested by Marketplace are not “minor” within any definition of the word and certainly were not envisioned by the authors of this legislation. This provision was intended to permit small improvements, in the nature of maintenance, and not substantial ones such as the major changes in function and emergency access requested in the application.

A change in the site size, from six (6) parcels to three (3) parcels, is certainly not “minor” within the definition of the Municipal Code or the vision of the Planning Commissioners.

**Marketplace’s Operation of a Swap Meet pending approvals by the PC, is a Flagrant Violation of City Law and Procedure**

Although Marketplace admits it needs a modification of the CUP to function lawfully, it continues to operate a swap meet or “open air market” without such a modification, or any legally approved license transfer whatsoever.

None of the changes in the operation have been approved by the PC, or even the City Planning Division, and yet Marketplace flagrantly conducts its business in full view of City Code Enforcement staff.

This tactic of “seeking forgiveness” from the City rather than “permission,” sets a precedent of lawlessness that must not be tolerated.

Escondido Planning Commission Appeal

C. Samuel Blick  
Attorney at Law

**The Current Operation of the Marketplace is an Attempt to operate a New Swap Meet and, as such, is an Abandonment of the Swap Meet Use authorized by Conditional Use Permit (CUP) #95-121-CUP.**

Once Marketplace closed the legally permitted swap meet, it was deemed abandoned, pending a 12 month time period, according to City law. [*See Sec. 33-1206. Expiration.*]

The attempt to reopen a new business under a new name, with contrary business practices, on different parcels of land, pursuant to abbreviated circulation and emergency access, and countless other violations of the original CUP, does not constitute revivification of the authorized business use.

Although the renewal of the swap meet on the original site, including all conditions and parcels contemplated by the PC at the time of approval in 1995, would not violate the abandonment provisions, this new operation does trigger the abandonment provisions of *EMC Section 33-1206*.

**The Original (1995) Conditional Use Permit [#95-12-CUP] for approval of a swap meet, reflected a site consisting of six contiguous land parcels.**

As stated above, the PC specifically contemplated the operation of a swap meet on six (6) adjacent parcels, all working together to provide optimum traffic and emergency circulation.

Notwithstanding the reasonable availability of these parcels, Marketplace has elected to physically separate the parcels by blocking access with unpermitted eight-foot high fencing and pedestrian barriers.

This abbreviated approach to the operation, described by the applicant as an "open air market," is not consistent with the PC's vision, concept or intent in approving the CUP, and is, therefore, not subject to approval by the Director as a minor adjustment.

**The Current Escondido Municipal Code Does not Authorize the Operation of a Swap Meet.**

The Escondido Municipal Code no longer specifies "swap meets" or "open air markets" as permitted uses, subject to a CUP or otherwise. Therefore, the swap meet approved by the 1995 PC, with its configuration of six parcels and complex traffic circulation element, is allowed only as a non conforming land use.

Without an amendment to the Escondido Zoning Code, no new such businesses may be approved. Therefore, the Marketplace application should be denied on its face as an unpermitted land use.

Escondido Planning Commission Appeal

C. Samuel Blick  
Attorney at Law

**The Director's Expedited Approval of the Applicant's "Open Air Market" would Severely Damage the Value of Neighboring Properties.**

The properties included within the approved swap meet CUP were purchased for the specific purpose of facilitating the operation of the pre-1995 swap meet. These parcels were designed to address the City Staff's concerns over traffic circulation and the orderly operation of the facility.

If the City permits this abbreviated use and allows the continued blockage of adjacent land parcels, these lands will continue to diminish in value and the owners and those with encumbrances on those parcels will be irreparably harmed.

Financing was provided, in some cases, in specific, justified reliance on the approved CUP and, if the City were to allow the CUP to operate without the inclusion of these parcels, significant damage would occur to these owners and lenders.

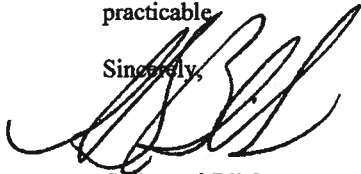
**Summary:**

We respectfully request the City of Escondido Planning Commission schedule a hearing, pursuant to *Escondido Municipal Code Section 33-1207*, to consider the unlawful operation of the Escondido World Marketplace swap meet at 635 W. Mission Avenue.

We further urge the Planning Commission and City Code Enforcement to order the Escondido World Marketplace to cease and desist its operation until the City either approves or denies its application for an "open air market."

This matter is urgent and we ask that the Planning Commission set this hearing as soon as practicable.

Sincerely,



C. Samuel Blick  
Attorney at Law

Cc: All Members of the Planning Commission  
Mr. Sam Abed, Mayor  
Mr. Ty Paulson, Minutes Clerk  
Mr. Jeffrey R. Epp, City Attorney  
Ms. Corrine L. Neuffer, Deputy City Attorney  
Ms. Barbara Redlitz, Director of Community Development  
Ms. Rozanne Cherry, Principal Planner  
Mr. Dennis O'Dorisio, Litigation Counsel

CSB: sh

Escondido Planning Commission Appeal



**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

ATTORNEYS AT LAW

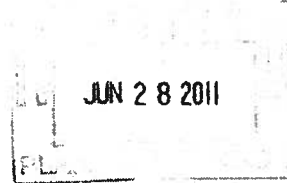
960 Canterbury Place, Suite 300  
Escondido, California 92025-3870  
Telephone (760) 743-1201  
Facsimile (760) 743-9926  
www.LFAP.com

OF COUNSEL:  
JAMES P. LOUGH  
GARTH O. REID

SPECIAL COUNSEL:  
JOHN W. WITT

June 28, 2011

City of Escondido Planning Commission  
Escondido City Hall  
201 N. Broadway, 1st Floor  
Escondido, CA 92025



Re: Escondido Drive-Inn, LP

Honorable Commissioners:

This firm represents Escondido Drive-Inn, LP (EDILP), the owner of APN's 228-270-77; 228-270-73; 228-270-72 on the corner of Washington Avenue and N. Quince Street in the City of Escondido. I have been provided with a copy of Mr. Blick's letter on behalf of unnamed property owners dated June 27, 2011 requesting a hearing before the Planning Commission to revoke the CUP applying to the EDILP parcels.

At the appropriate time I will provide a detailed response to Mr. Blick's letter. Initially, however, I would like to correct three misimpressions created by the letter:

1. That EDILP "has ignored" the conditions of the current CUP, and
2. The bridge is being substituted as an inadequate and dangerous access, and
3. That the Community Development Director does not have the authority to approve the proposed adjustments.

1. EDILP took over possession of the premises on April 18, 2011 because the former lessee had ceased paying rent and had declared bankruptcy. Prior to taking possession, EDILP consulted with the Fire Department, Police Department, Planning Department and City Attorneys office to determine what changes would have to be made to the operation to comply with the current conditions.

Upon taking possession on April 18, 2011, EDILP closed the swap meet for renovations and made the changes necessary to comply with the conditions. Specifically, it reopened the access onto Mission Avenue, it removed an unpermitted structure that blocked the pre-existing access across the bridge from Quince, it removed unpermitted structures that blocked the internal fire lanes, and it widened the internal fire lanes so that they meet current code for width and turning radius.

LOUNSBERY FERGUSON ALTONA & PEAK LLP

Escondido Drive-Inn, LP  
June 28, 2011  
Page 2

After completing the required changes, and after the changes were inspected by the Fire Department, EDILP submitted a revised plot plan to the Planning Department for review and approval under Municipal Code Section 33-1208.

In summary, we did not "ignore" the conditions of the CUP. Rather, EDILP consulted with all relevant City Departments ahead of time to determine their requirements, obtained the necessary demolition and building permits, constructed the improvements prior to continuing operations, had the improvements inspected, and submitted documentation of the improvements to the Planning Department with an official request for review and approval. Because EDILP chose not to ignore the conditions, the swap meet property now meets the Fire Department requirements for the first time in years.

2. Condition #13 of the 1995 CUP (attached) states that vehicle weight limits shall be posted on the bridge "and alternative access provided to the satisfaction of the Fire Marshal." Nothing is being changed with respect to the bridge (except for the removal of an unpermitted structure that blocked access to the bridge). Nevertheless, EDILP has arranged for the bridge to be inspected by a certified structural engineer so that the previously unreadable sign can be verified and replaced. More importantly, EDILP has reopened the blocked access point to Mission Avenue after receiving confirmation from the Fire Department that this would constitute "alternative access provided to the satisfaction of the Fire Marshal."

In summary, the bridge issue is a red herring. Although EDILP is using this opportunity to re-inspect the bridge, no change of use is being proposed for it. The new access point is the northern entrance onto Mission, which meets Fire Department approval.

3. Contrary to the partial and paraphrased quotes in Mr. Blick's letter, Escondido Municipal Code Section 33-1208 does not restrict the Community Development Director to considering "changes" of 1000 square feet or less. In full the section reads:

"Expansion of existing conditional uses of less than one thousand (1,000) square feet or ten (10) percent of the facility, whichever is less may be excepted by the director of planning and building from the condition use permit requirements. The director of planning and building may approve or conditionally approve minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use, provided that such adjustments do not conflict with the concept or intent of the development plan originally approved by the planning commission or city council."

As can be seen, the 1000 square foot limitation only applies to expansions and the Director is given the authority to approve "minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use."

LOUNSBERY FERGUSON ALTONA & PEAK LLP

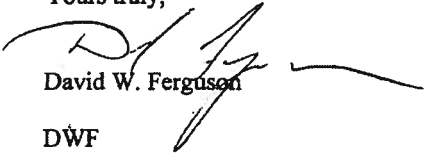
Escondido Drive-Inn, LP  
June 28, 2011  
Page 3

In this case EDILP has not proposed any expansion and has only sought to modify the fire lanes and fire access as recommended by the Fire Department. Further, although EDILP has changed the name of the business and has spent hundreds of thousands of dollars cleaning up the premises and fixing the disrepair, the Escondido World Marketplace remains an open air market with essentially the same vendors and the same hours of operation as the original swap meet.

In summary, EDILP has invested considerable time and money determining the requirements of the City, making improvements to meet those requirements and submitting engineered plans for review and approval by the Community Planning Director. To date, the Community Planning Director is still reviewing and considering EDILP's application. The proper course of action for Mr. Blick, and his unnamed clients, is to await the Director's decision and renew his request if he doesn't like the outcome.

Thank you for your consideration.

Yours truly,

  
David W. Ferguson

DWF

Enclosure:

11. An inspection by the Planning Division will be required prior to occupancy of the project. Items subject to inspection include, but are not limited to parking layout and striping (double-stripe), identification of handicap parking stalls and required tow-away signs, lighting, landscaping, as well as any outstanding condition(s) of approval. Everything should be installed prior to calling for an inspection, although preliminary inspections may be requested. Contact the project planner at (619) 741-4671 to arrange a final inspection.
12. Additional fire hydrants will be required; the number and locations will be based on the needed fire flow. Access for use of heavy fire fighting equipment, as required by the Fire Marshal, shall be provided to the job site at the start of any construction and maintained until all construction is complete. Also, there shall be no stockpiling of combustible materials. There shall be no foundation inspections until adequate fire suppression requirements are in place to the satisfaction of the Fire Marshal.
13. The applicant shall be required to demonstrate that the construction of the access bridge from the parking lot into the swap meet over the flood control channel, will support heavy fire fighting equipment (80,000 lbs.), or vehicle weight limits shall be posted and alternative access provided to the satisfaction of the Fire Marshal.
14. A minimum of 20-foot wide fire lane with 13'-6" vertical height clearance shall be provided and permanently maintained within the swap meet retail area and along the project access from Mission Avenue, to the satisfaction of the Fire Department. The boundary of said fire lane shall be clearly marked on site and there shall be no display or sale of merchandise within the fire lane nor any other obstruction of the fire lane.
15. A turn around area for emergency vehicles shall be provided and permanently maintained at the terminus of the access road from Mission Avenue. The turn around area shall maintain a minimum of 13'-6" vertical height clearance and shall be marked on-site and kept clear at all times to the satisfaction of the Fire and the Engineering Departments.
16. Prior to the issuance of building permits for any new structure constructed in Phase # 1 (excluding permits issued for the purpose of code compliance for existing structures), a Sign Program, which details the sign design in terms of size, height, colors, materials, and text copy for directional signs and business signs, as well as the locations of signs on site and the changes to the existing sign, shall be submitted for review by the Design Review Board and be in compliance with the Sign Ordinance (Article 66) to the satisfaction of the Planning Division.
17. A separate sign permit from the Planning and Building Divisions will be required prior to the installation of any sign, in accordance with the Sign Program Criteria to the satisfaction of the Planning Division. All proposed signage associated with the project must comply with the City of Escondido Sign Ordinance (Ord. 92-47).
18. Colors, materials and design of the project shall conform to the exhibits and references in the staff report to the satisfaction of the Planning Division. The project's site plan, floor plans, elevations, operation hours and uses of the project shall be substantially consistent with the Details of Request and exhibits approved by the Planning Commission to the satisfaction of the Planning Division.
19. All new utilities shall be underground.
20. All rooftop equipment must be fully screened from all public view utilizing materials and colors which match the building to the satisfaction of the Planning Division.
21. Within a 120-day period from the effective date of the Conditional Use Permit and prior to the issuance of building permits for any new structure in the expanded retail area (APN # 228-270-48) as well as the swap meet entry structures (excluding permits issued for the purpose of code compliance for existing structures), the applicant shall upgrade the existing movie screen to improve its appearance and establish adequate structural integrity (replacing missing structural members) to the satisfaction of the Building and Planning Divisions. The upgrade may include, but not be limited to, re-facing or repainting the screen and any necessary structural retrofitting to the satisfaction of the Planning and Building Divisions. Any proposal to

# **Law Offices of C. Samuel Blick**

Land Use Lawyers - Est. 1984

## **Rancho Santa Fe Office**

16915 Avenida de Acacias  
Post Office Box 9477  
Rancho Santa Fe, CA 92067  
www.SamBlickLaw.com

Telephone (858) 395-1554  
Facsimile (858) 225-0220  
[blicklaw@dc.rr.com](mailto:blicklaw@dc.rr.com)

---

Via Email Attachment and/or U. S. Mail

June 29, 2011

Honorable Darol Caster  
Chairman, Planning Commission  
City of Escondido  
201 North Broadway  
Escondido, CA 92025

**Notice of Violation by Escondido World Marketplace, 635 W. Mission Avenue -  
Conditional Use Permit #95-12-CUP**

**Request for Hearing before Planning Commission, pursuant to Escondido Municipal Code  
Section 33-1207**

Honorable Chairman Caster:

As you are aware from our prior correspondence, this firm represents certain property owners and those with financial interests in land parcels surrounding and adjacent to the Escondido World Marketplace (Marketplace) located at 635 W. Mission Avenue, Escondido, California.

On June 27, 2011, we requested a hearing before the Escondido Planning Commission (PC), pursuant to the authority granted under *Escondido Municipal Code (EMC) Section 33-1207*, to consider revocation of Conditional Use Permit (CUP) #95-121-CUP, or, in the alternative, to order an immediate cessation of business activities on the site.

Yesterday, we received a copy of a letter addressed to you from the representative of the operator of the unauthorized operation of the swap meet referenced above. That letter offers the legal opinion that the Community Development Director [Director] has the authority to "...approve the proposed adjustments," [*Emphasis Added*] which is his definition of the new "open air market" doing business on the site.

Whether the Director possesses that authority in this case is a matter of law and fact.

C. Samuel Blick  
Attorney at Law

The law states that the Director “may approve...minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use, provided that such adjustments do not conflict with the concept or intent of the development plan originally approved by the planning commission or city council.” [*Emphasis Added*]

The factual determination of whether or not the new business is a “minor adjustment” and if it conflicts with the “concept or intent” of the use “originally approved” in the 1995 decision of the planning commission, is properly within the purview of the planning commission and city council. These matters of fact cannot be properly decided by the self-serving representations of the new operator or even the Director herself.

In the interim, the new business continues to operate outside the authority and constraints of the 1995 CUP, a fact tacitly admitted by the submission of an application, and should be ordered to cease and desist at once.

Furthermore, we continue to urge the City of Escondido Planning Commission to schedule a hearing, pursuant to *Escondido Municipal Code Section 33-1207*, to consider factual issues defining “minor” under *Escondido Municipal Code Section 33-1208*.

This matter is urgent and we again ask that the Planning Commission set this hearing as soon as practicable.

Sincerely,

C. Samuel Blick  
Attorney at Law

Cc: All Members of the Planning Commission  
Mr. Sam Abed, Mayor  
Mr. Jeffrey R. Epp, City Attorney  
Ms. Corrine L. Neuffer, Deputy City Attorney  
Ms. Barbara Redlitz, Director of Community Development  
Ms. Rozanne Cherry, Principal Planner  
Mr. Dennis O’Dorisio, Litigation Counsel

CSB: sh

*file*

**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

ATTORNEYS AT LAW

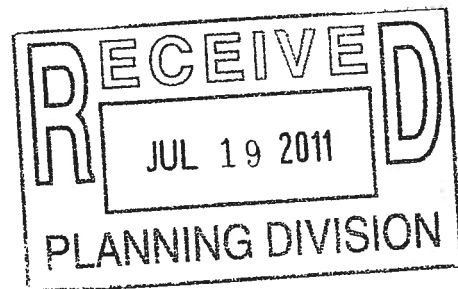
960 Canterbury Place, Suite 300  
Escondido, California 92025-3870  
Telephone (760) 743-1201  
Facsimile (760) 743-9926  
www.LFAP.com

OF COUNSEL:  
JAMES P. LOUGH  
GARTH O. REID

SPECIAL COUNSEL:  
JOHN W. WITT

July 18, 2011

Barbara Redlitz, AICP  
Director of Community Development  
City of Escondido  
City Hall, First Floor  
201 North Broadway  
Escondido, CA 92025



Re: Escondido Drive-Inn, LP

Dear Ms. Redlitz:

As you know, this firm represents Escondido Drive-Inn, LP (EDI), the owner of 11.62 acres on the corner of Washington Avenue and N. Quince Street in the City of Escondido (APN's 228-270-77; 228-270-73; 228-270-72). Until recently, EDI leased its three properties to Shop Smart Escondido, Inc. (SSEI) for use as a swap meet. In 1995, SSEI applied to modify the use permit to include SSEI's three adjacent properties totaling approximately 1.09 acres, one on Washington Avenue (APN 228-270-46, now -87) and two parcels on Quince Street (APNs 228-270-38, 228-270-44). Currently, all six properties are subject to Conditional Use Permit # 95-12-CUP.

On April 18, 2011, EDI took over possession of its three parcels from SSEI as lessee because SSEI had ceased paying rent and had declared bankruptcy. Prior to taking possession, EDI consulted with the Fire Department, Police Department, Planning Department and City Attorneys office to determine what changes, if any, would have to be made to continue the swap meet operation in compliance with the current conditions. EDI was advised that it needed to reopen the access onto Mission Avenue, remove an unpermitted structure that blocked the pre-existing access across the bridge from Quince, remove unpermitted structures that blocked the internal fire lanes and widen the internal fire lanes so that they meet current Fire Department standards for width and turning radius.

Upon taking possession, EDI closed the swap meet for cleaning and repairs. During this time, EDI made the changes described above.

On May 31, 2011, after completing the required changes and after the changes were inspected by the Fire Department, EDI submitted a plot plan application for administrative approval under Municipal Code Section 33-1208 for minor modifications to 95-12-CUP. The

Escondido Drive-Inn, LP  
June 28, 2011  
Page 2

plot plan depicted the removal of the 0.9 acre Washington parcel from EDI's operation of the swap meet and the reconfiguration of the fire lanes described above.

Mr. Blick, on behalf of unnamed property owners, has submitted a number of letters in opposition to EDI's application, including a June 27, 2011 letter requesting a hearing before the Planning Commission to revoke the CUP's application to the EDI parcels and a Notice of Violation of Conditional Use permit #95-12-CUP.

The purpose of this letter is to respond to Mr. Blick's claims, which appear to be: (1) EDI is not entitled to submit its application under Municipal Code section 33-1208 because the requested modifications are not minor and (2) EDI is not entitled to operate the EWM pending approval of the proposed modifications to 95-12-CUP. Mr. Blick correctly notes that the decision whether to hold a hearing on EDI's application depends on consideration of facts and law. Unfortunately, Mr. Blick relies on inaccurate facts and fails to cite any legal authority in support of his position.

**EDI'S APPLICATION IS PROPERLY DETERMINED BY THE DIRECTOR OF COMMUNITY DEVELOPMENT UNDER ESCONDIDO ZONING CODE SECTION 33-1208.**

Escondido Municipal Code Section 33-1208 authorizes the Director to approve "minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use". Specifically, the section states:

Expansion of existing conditional uses of less than one thousand (1,000) square feet or ten (10) percent of the facility, whichever is less may be excepted by the director of planning and building from the condition use permit requirements. The director of planning and building may approve or conditionally approve minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use, provided that such adjustments do not conflict with the concept or intent of the development plan originally approved by the planning commission or city council.

In this case EDI has not proposed any expansion to the conditionally permitted use. Although EDI has changed the name of the business and has spent hundreds of thousands of dollars cleaning up the premises and fixing the disrepair, the EWM remains an open air market with essentially the same vendors and the same hours of operation as the original swap meet.

The fact is that the only changes EDI is requesting to 95-CUP-12 are adjustments to the access points and fire lanes to reflect the removal of the 0.9 acre Washington parcel from the operation of the EWM. The removal of the parcel requires a change to only one condition:



Escondido Drive-Inn, LP  
June 28, 2011  
Page 3

Condition 6. As the property is now operating with a new name, EDI is also requesting updates to the Sign Program but contrary to Mr. Blick's assertions, this does not change the conditions to the CUP nor does it constitute an expansion or change of use.

The Fire Department has requested changes to reflect current standards for fire lanes and access and EDI has made those changes. None of the requested modifications or changes required by the Fire Department affect the original development plans or significantly modifies the conditions attached to the 95-CUP-12.

**1. EDI is Requesting Modification to One Condition Regarding One Access Point on Washington Avenue.**

The removal of the Washington parcel from EWM requires modifications to Engineering Condition #6 which states:

6. The proposed westerly driveway access at Washington Avenue shall be "one way, exit only" and properly signed and striped as such. The driveway shall be reconstructed with a 20 feet wide apron per Std. Dwg. G-14, to City standards and to the satisfaction of the City Engineer.

Since EDI will not be operating the EWM on the Washington parcel, EDI will no longer use this westerly driveway access as part of its continued operation of the swap meet on its properties. This condition, therefore, will only apply to the operation of a swap meet on APN 228-270-87 if SSEI continues to operate a swap meet on its parcel. At present, the parcel is vacant and unused. The ultimate configuration of that driveway should be addressed by SSEI at such time as SSEI decides the future use of its property. EDI is unaware of any plans by SSEI to use the property as a swap meet. In fact, the Washington Parcel is currently in foreclosure and SSEI has approached EDI and offered to sell EDI all of the fixtures and equipment on the SSEI property.

Removal of the westerly driveway access on Washington Avenue does affect the potential circulation pattern approved as part of 95-12-CUP, but the modification is minor and will not affect the traffic concerns Condition 6 meant to address. Attached are the exhibits included in EDI's revised plot plan showing the existing access control and the proposed access control.

After the 1995 modification, vendors could legally exit the swap meet from the driveway on the Washington parcel. According to the current vendors, however, the majority of vendors continued to use the other exits. As depicted, under EDI's present application pedestrians and vehicles will continue to enter and exit from the panhandle off of Mission Avenue, from the driveway on Quince Street and from the easterly driveway on Washington Avenue as they always did prior to 1995 and as they continued to do after the 1995 modification.

Escondido Drive-Inn, LP  
June 28, 2011  
Page 4

The record for the 1995 modification reflects a concern with traffic congestion on public streets. This concern was and is addressed by Condition 36 which states:

36. When the access to the swap meet is changed to provide the vendors and vehicle entrance at the eastern access point across the bridge over the flood control channel, all stacking of vehicles waiting to enter the swap meet shall be provided entirely within the parking lot of the swap meet. No vehicles shall stack out on public streets.

Similarly, Engineering Condition of Approval 23 requires the preparation and approval of a traffic control plan to go into effect during the hours of heavy traffic flows (traffic peak hours) and states:

23. The developer will be required to prepare a traffic control plan to be implemented by the swap meet operation. This plan will go into effect during the hours of heavy traffic flows (traffic peak hours). The plan shall provide access control for the vendors and the general public to facilitate their access to the swap meet without interfering with the traffic on the public streets or the traffic from other driveways. The plan shall provide for onsite stacking of vehicles and control of left turn movements out of the existing driveway on Quince Street. The plan shall be prepared to the satisfaction of the Chief of Police and the City Engineer.

On August 2, 1996, the City approved the Traffic Management Plan to alleviate traffic congestion on Quince Street at the entrance to the swap meet caused by vehicles waiting to turn left into and out of the parking lot.

EDI has not requested any modification of these conditions. In compliance with the Conditions and the Traffic Management Plan, EDI has and will continue to provide onsite stacking of all vehicles and access control for vendors and customers without interfering with traffic on public streets.

## **2. EDI is requesting an Updated Sign Program**

EDI is requesting minor modifications to the existing Sign Program required by Condition 16 and 17, which state:

16. Prior to the issuance of building permits for any new structure constructed in Phase # 1 (excluding permits issued for the purpose of code compliance for existing structures), a Sign Program, which details the sign design in terms of size, height, colors, materials,

Escondido Drive-Inn, LP  
June 28, 2011  
Page 5

and text copy for directional signs and business signs, as well as the locations of signs on site and the changes to the existing sign, shall be submitted for review by the Design Review Board and be in compliance with the Sign Ordinance (Article 66) to the satisfaction of the Planning Division.

17. A separate sign permit from the Planning and Building Divisions will be required prior to the installation of any sign, in accordance with the Sign Program Criteria to the satisfaction of the Planning Division. All proposed signage associated with the project must comply with the City of Escondido Sign Ordinance (Ord. 92-47).

In 1997, the City approved the following signs: two (2) wall signs on the corner of Quince and Washington measuring 3.5 feet X 10 feet and one (1) freestanding sign with 2 faces on Mission, measuring 6 X 16 feet.

EDI is continuing the existing sign program with the addition of new signs to be approved based on the following:

- 1) Building area to include the entire retail area of the open air market, which is approximately 7.06 acres or 307533.6 square feet (Escondido Municipal Code section 33-1391(9)).
- 2) Wall signs permitted on the archways at each entrance.
- 3) Signs on the inside of the arch ways are "interior signs" as they are entirely within the retail area and not visible from the public streets. These signs are exempt from permit requirements and will not be included in the sign area calculation (section 33-1393(a)(5)).
- 4) One freestanding sign at the entrance on Washington Avenue on APN 228-270-72.
- 5) One freestanding sign at the entrance on Quince Street on APN 228-270-72.

EDI is not requesting approval of any signs in violation of the Sign Ordinance (Article 66) and therefore will continue to be in compliance with 95-12-CUP. Once the modifications to the Sign Program are approved, EDI will submit the design specifications for each proposed sign to obtain a separate sign permit for each, as required by Condition 17.

To the extent that any of EDI's individual signage requests are not deemed appropriate, the City can merely deny the individual request. The request itself hardly justifies a review or revocation of the entire CUP.

Escondido Drive-Inn, LP  
June 28, 2011  
Page 6

**3. EDI is Not Requesting Modifications to Reciprocal Access or Parking Between the Six Parcels.**

As a condition to 95-CUP-12, the City required a joint parking, access and maintenance agreement providing for the swap meet to have shared access and parking rights with the three SSEI parcels being added to the CUP. Condition 9 states:

9. Prior to the issuance of building permits for any retail structure located on the vacant auto repair shop (APN # 228-270-46) in phase # I, a joint parking, access and maintenance agreement, or other appropriate documentation which provides for the Swap Meet to have shared access and parking rights with the two parcels (APN # 228 -270-38 & 44 ) located along Quince Street and the parcel (the site of the vacant auto repair shop, APN # 228-270-46) along Washington Avenue, shall be submitted to the Planning Division. An additional parking agreement(s) as needed for providing the required parking for the restaurant shall be submitted prior to building permit issuance for the restaurant (APN # 228-270-73). Prior to release of occupancy of the retail expansion area and/or the restaurant, the associated parking documents shall be recorded to the satisfaction of the Planning Division.

In 1996, the parties entered into The Reciprocal Easement: Parking and Maintenance Agreement (the Agreement). The Agreement states it runs with the land and will terminate “when the Swap Meet and Farmer’s Market use on the Leased Properties ends” (section 6). “Leased Properties” is defined as the EDI properties, APNs 228-270-72, 228-270-73 and 228-270-77.

The current application, which does not change or expand the use, does not require an amendment to the City’s parking space requirement or the Agreement. EDI acknowledges that the other properties subject to the CUP (APN 228-270-38, - 44 and - 87) will continue to have access to the parking lots on EDI property for “the parking of motor vehicles, pedestrian and vehicular travel and ingress and egress” (Agreement, section 1). None of the changes made or requested by EDI have blocked public access to APN 228-270-38, - 44 or – 87.

**4. EDI is not Modifying Fire Department Conditions**

The conditions attached to 95-12-CUP clearly require compliance with Fire Department requirements. The 1995 modification to the CUP included the following conditions from the Fire Department:

13. The applicant shall be required to demonstrate that the construction of the access bridge from the parking lot into the swap

Escondido Drive-Inn, LP  
June 28, 2011  
Page 7

meet over the flood control channel, will support heavy fire fighting equipment (80,000 lbs.), or vehicle weight limits shall be posted and alternative access provided to the satisfaction of the Fire Marshal.

14. A minimum of 20-foot wide fire lane with 13'-6" vertical height clearance shall be provided and permanently maintained within the swap meet retail area and along the project access from Mission Avenue, to the satisfaction of the Fire Department. The boundary of said fire lane shall be clearly marked on site and there shall be no display or sale of merchandise within the fire lane nor any other obstruction of the fire lane.

15. A turn around area for emergency vehicles shall be provided and permanently maintained at the terminus of the access road from Mission Avenue. The turn around area shall maintain a minimum of 13'-6" vertical height clearance and shall be marked on-site and kept clear at all times to the satisfaction of the Fire and the Engineering Departments.

Subsequent to the approval of the 1995 CUP, the bridge was certified to carry 62,000 lbs, accepted by the Fire Department and posted accordingly.

EDI is not changing or requesting any changes with respect to the fire access locations or the bridge (except for the removal of an unpermitted structure that blocked access to the bridge). EDI has reopened the blocked access point to Mission Avenue after receiving confirmation from the Fire Department that this would constitute "alternative access provided to the satisfaction of the Fire Marshal." (Condition 13). EDI will also be submitting a recertification of the bridge weight capacity by a certified structural engineer so that the previously unreadable sign can be verified and replaced.

Although EDI has made changes on the property as reflected in the proposed site plan, each was required by the Fire Department after the Fire Marshall inspected the property in early May 2011. Specifically, EDI: removed a few stalls to provide a 28 foot inside radius on all turns, increased the width of all fire lanes to 24 feet and painted all fire lanes with "NO PARKING FIRE LANE" printed in 4 inch white paint on 8 inches of red striping.

Although EDI is not including the Washington parcel in its operation of the swap meet, EDI is not changing any of its obligations under 95-CUP-12 or the Municipal Code to provide a safe, secure, properly maintained operation. EDI's parking lots continue to be available for the other parcels subject to the CUP and although EDI has built a fence between its property and the Washington parcel, the gate is left open during market hours, with a security guard to ensure customers are not entering through this entrance without paying. Other than Mr. Blick's letters, EDI has received no complaints from neighboring property owners or members of the public.

Escondido Drive-Inn, LP  
June 28, 2011  
Page 8

**EDI IS PERMITTED BY THE CUP AND GOVERNING LAW TO OPERATE EWM ON ITS THREE PARCELS**

In addition to incorrectly claiming that the modifications requested are not “minor” as required for consideration under Municipal Code section 33-1208, Mr. Blick claims EDI’s operation of the swap meet on less than all six parcels is otherwise unlawful and in violation of the CUP.

The CUP does not condition the swap meet use on SSEI as the operator and does not include any condition requiring that all six parcels be operated as a swap meet with the same operator. If the CUP did have any such conditions, they would be unlawful (*Anza Parking Corporation v. City of Burlingame* (1987) 195 C.A. 3d 855, 860). The well-established legal principles that apply to the present issue include:

- (1) A conditional use permit runs with the land and benefits successor property owners (*County of Imperial v. McDougal* (1977) 19 C. 3d 505, 510).
- (2) Any conditions placed on a conditional use permit that relate to the applicant and not the use of the zoning of the property would be invalid (*Sounhein v. City of San Dimas* (1996) 47 C.A. 4<sup>th</sup> 1181, 1191).
- (3) A conditional use permit cannot be conditioned on the permittee having no right to transfer the permit with the land (*Anza Parking Corporation v. City of Burlingame* (1987) 195 C.A. 3d 855, 860).

There is no authority, and Mr. Blick fails to cite to any authority, requiring EDI to suspend operation of its use pending approval of its application for modification of the CUP. From a technical standpoint, the only way to suspend operation would be for the City to revoke the CUP and the City does not have any grounds to modify or revoke the CUP (see, Escondido Municipal Code section 33-1207). From a practical and humanitarian standpoint, suspending operation of the swap meet would put hundreds of vendors out of work and create significant hardship for them and their families.

In conclusion, the use of the swap meet has been neither changed nor expanded. What has actually happened is that EDI spent considerable time and money fixing the disrepair and safety violations that the prior operator allowed to exist on the property. EDI consulted with the City to determine the repairs and alterations that needed to be accomplished, it expedited the repairs and adjustments to minimize the hardship to the vendors and employees at the swap meet, had the repairs and adjustments inspected after they were completed and submitted engineered plans for review and approval by the Community Planning Director as soon as the inspections were completed.

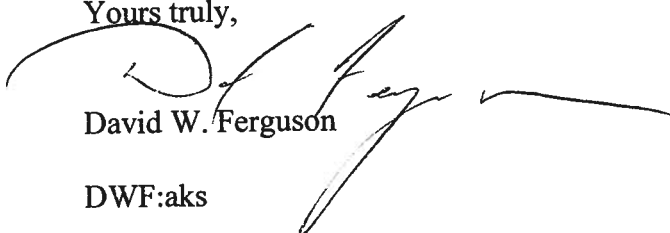
Finally, it is well established law that CUP’s “run with the land” and that a CUP applies to all parcels, regardless of ownership. EDI has properly submitted an application under Municipal Code section 33-1208 that demonstrates that its ongoing operation meets the

Escondido Drive-Inn, LP  
June 28, 2011  
Page 9

conditions of the current CUP with only minor adjustments. These adjustments have not created any impact on public safety or welfare. The adjustments have, in fact, improved the pre-existing situation. Although it is appropriate for the Planning Commission to consider Mr. Blick's letters, it would be inappropriate for the Planning Commission to usurp the Directors' prerogatives by scheduling a hearing before the Director has completed her review and made a decision.

Thank you for your consideration.

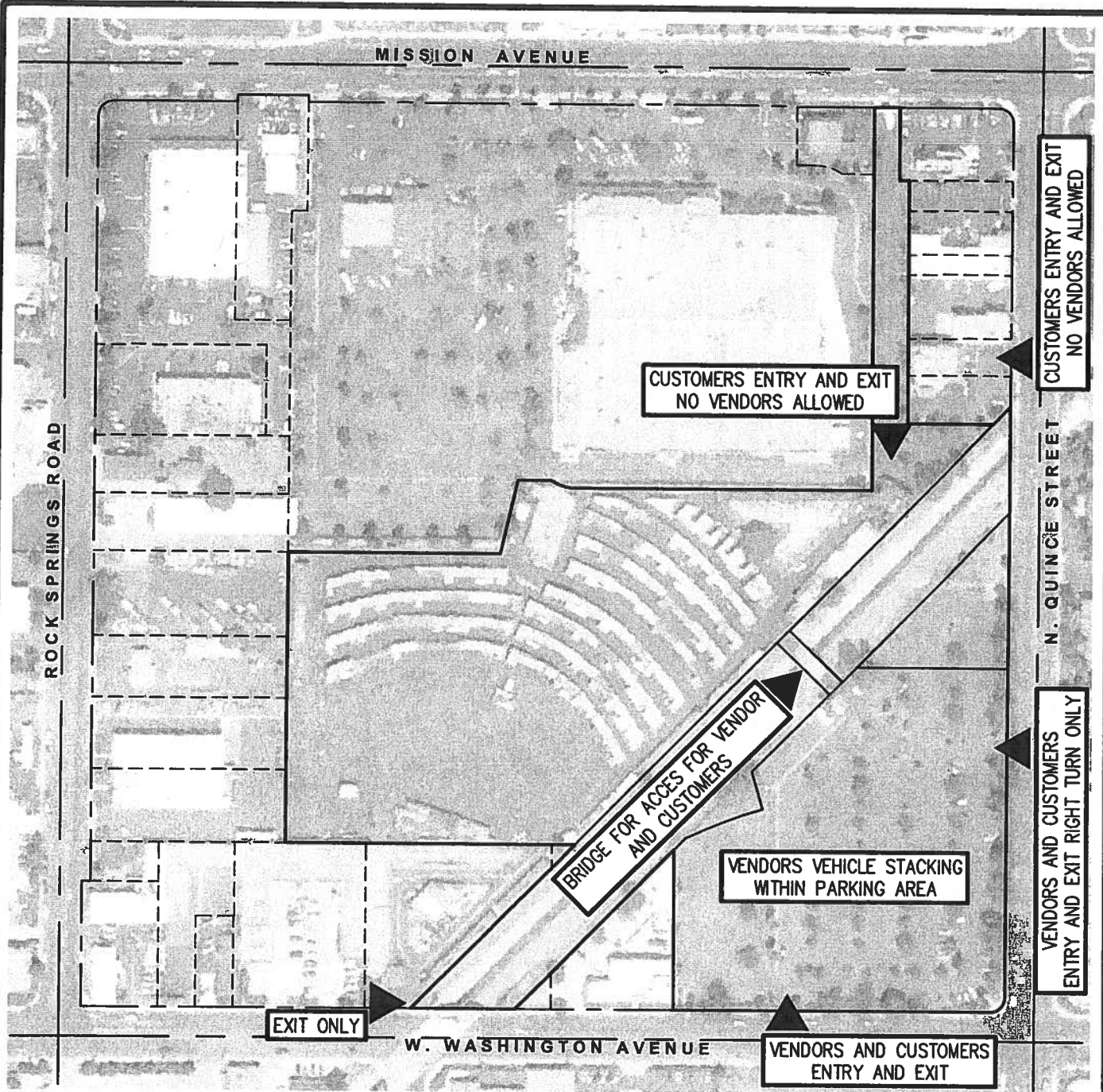
Yours truly,

  
David W. Ferguson

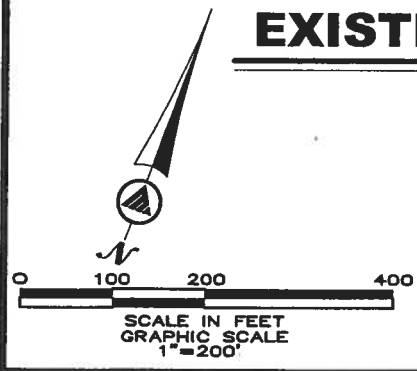
DWF:aks

Enclosure:

cc. Ms. Rozanne Cherry  
Mr. Jeffrey Epp  
Ms. Corrine Neuffer



**EXISTING CIRCULATION PATTERN**



DATE: May 31, 11 3:19pm by:gwacker  
 FILE:C:\Temp\AcPublish\_6028\10085 EX-PROP CUP Exhibits.dwg

Planning • Engineering • Surveying • Telecom

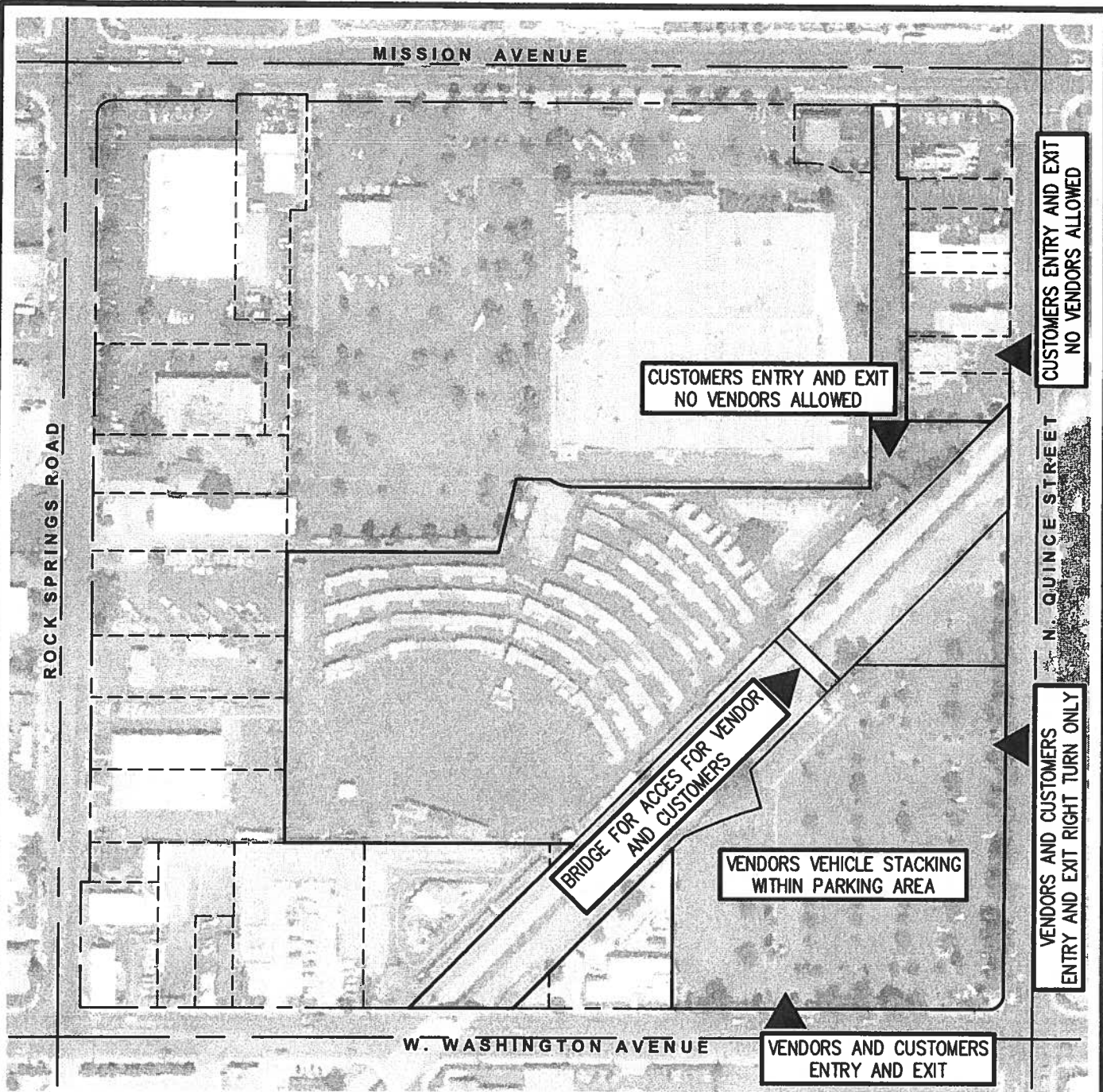


200 East Washington Ave., Suite 200  
 Escondido, CA 92025  
 P. 760.741.3570  
 F. 760.741.1786

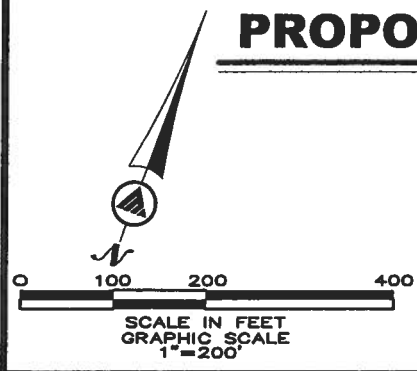
www.masson-assoc.com

**CONDITIONAL USE PERMIT  
 95-12-CUP**





## **PROPOSED CIRCULATION PATTERN**



DATE: May 31, 11 3:19pm by:gwoccker  
 FILE:C:\Temp\AcPublic\6028\10085 EX-PROP CUP Exhibits.dwg

Planning • Engineering • Surveying • Telecom



200 East Washington Ave., Suite 200  
 Escondido, CA 92025  
 P. 760.741.3570  
 F. 760.741.1786

[www.masson-assoc.com](http://www.masson-assoc.com)

# **CONDITIONAL USE PERMIT 95-12-CUP**

ATTACHMENT #1

ESCONDIDO ZONING CODE

**DIVISION 1. CONDITIONAL USE PERMITS**

**Sec. 33-1200. Definition and purpose.**

Conditional use permit shall mean a zoning instrument used primarily to review the location, site development or conduct of certain land uses. These are uses which generally have a distinct impact on the area in which they are located, or are capable of creating special problems for bordering properties unless given special attention. (Zoning Code, Ch. 109, § 1094.01)

**Sec. 33-1201. Authorization.**

Except as provided in section 33-1212, the planning commission shall have the authority to grant, conditionally grant or deny a conditional use permit application as provided for in Section 65900 et seq. of the California Government Code, based on sound principles of land use. Except as provided in section 33-1212, a conditional use permit is granted at the discretion of the planning commission and is not the automatic right of any applicant. (Zoning Code, Ch. 109, § 1094.03; Ord. No. 95-5, § 1, 5-24-95)

**Sec. 33-1202. Application and procedure.**

Application for a conditional use permit may be initiated by the property owner or agent of the property affected, the planning commission or the city council. Application shall be made on forms provided by the city and shall be accompanied by a fee in the amount established by resolution of the city council. The fee shall not be refunded unless the application is withdrawn prior to the time that the publication of notice of the hearing is ordered. The fee for conditional use permits for residential care facilities for the handicapped shall be one hundred fifty dollars (\$150.00). The application shall further be accompanied by such materials as required by the city planner. Except as provided in section 33-1212, the planning commission shall hold a duly-noticed public hearing as required by Division 6 of this article. Such hearing may be continued from time to time as deemed necessary by the commission. (Zoning Code, Ch. 109, § 1094.05; Ord. No. 95-5, § 2, 5-24-95)

**Sec. 33-1203. Findings of the commission.**

The decision of the planning commission shall be in writing and shall state the reasons therefore. In granting a conditional use permit, the following guidelines shall be observed:

- (a) A conditional use permit should be granted upon sound principles of land use and in response to services required by the community;
- (b) A conditional use permit should not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.
- (c) A conditional use permit must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is to be located.

Any conditional use permit granted shall be subject to such conditions necessary and desirable to preserve the public health, safety and general welfare. (Zoning Code, Ch. 109, § 1094.07)

**Sec. 33-1204. Notification of commission's action.**

Not later than five (5) working days following the commission's action, the decision of the commission shall be filed with the city clerk and a copy thereof mailed to the applicant at the address shown on the application. (Zoning Code, Ch. 109, § 1094.09)

**Sec. 33-1205. Appeal and effective date.**

The provisions of Division 6 of this article regarding appeal of the commission's action and the effective date of approval shall apply. (Zoning Code, Ch. 109, § 1094.11)

**Sec. 33-1206. Expiration.**

Unless otherwise specified in the action granting a conditional use permit, said permit which has not been utilized within twelve (12) months from the effective date shall become null and void. Also, the abandonment or non-use of a permit for a period of twelve (12) consecutive months shall terminate said permit and any privileges granted thereunder shall become null and void. However, an extension of time may be granted by the planning commission. Once any portion of a conditional use permit is utilized, the other conditions thereof become immediately operative and must be strictly complied with. (Zoning Code, Ch. 109, § 1094.13)

**Sec. 33-1207. Modification or revocation of conditional use permits.**

The planning commission on its own motion may, or upon the direction of the city council shall, hold a hearing upon the question of the modification or revocation of a conditional use permit granted under or pursuant to the provisions of this section. Written notice of such public hearing shall be served on the owner of the property for which such permit was granted at least ten (10) days before such public hearing. Such notice may be served either personally or by certified mail, postage prepaid, return receipt requested. A conditional use permit may be modified or revoked if the planning commission and city council find:

- (a) That the use is detrimental to the public health, safety or welfare or is a nuisance;
- (b) That the conditional use permit was obtained by fraud;
- (c) That the use for which the permit was granted is not being exercised;
- (d) That the use for which the permit was granted has ceased or been suspended for six (6) months or more;
- (e) That the conditions of the improvements, if any, on a property for which a conditional use permit has been issued, are such that they can be used or altered as to be used in conformity with the uses permitted in the zone in which such property is located without impairing the constitutional rights of any person;

(f) That the conditions of the conditional use permit are not being complied with. (Zoning Code, Ch. 109, § 1094.15)

**Sec. 33-1208. General provision.**

Expansion of existing conditional uses of less than one thousand (1,000) square feet of ten (10) percent of the facility, whichever is less, may be excepted by the director of planning and building from conditional use permit requirements. The director of planning and building may approve or conditionally approve minor adjustments to the original development plans that do not involve an expansion or change to the conditionally permitted use, provided that such adjustments do not conflict with the concept or intent of the development plans originally approved by the planning commission or city council. (Zoning Code, Ch. 109, § 1094.16; Ord. No. 2001-08, § 8, 5-9-01)

**Sec. 33-1209. Limitation on refiling of applications.**

Final action as set forth in this division by the planning commission or city council in denying any application for a conditional use permit shall prohibit the refiling of a petition the same as, or substantially the same as, the original petition upon property previously considered, until not less than one (1) year shall have elapsed from the date of denial of said petition. (Zoning Code, Ch. 109, § 1094.17)

**Sec. 33-1210. Violation—Penalty.**

In addition to modification or revocation as provided in section 33-1207 of this division, the violation of any condition of a conditional use permit is unlawful and may be punished as provided in section 33-1313 of this article. A violation of any condition of a conditional use permit may also result in the imposition of civil penalties as provided in section 1-20 et seq. of Chapter 1 of the Escondido municipal code. (Zoning Code, Ch. 109, § 1094.18; Ord. No. 90-60, § 1, 11-7-90)

**Sec. 33-1211. Reserved.**

(Deleted by Ord. No. 92-47, § 2, 11-18-92)

**Sec. 33-1212. Conditional use permits for residential care facilities for the handicapped.**

(a) The decision whether or not to issue a conditional use permit for residential care facilities for the handicapped, when required by other provisions of this code, shall lie with the sound discretion of the director of planning and building. Whenever permissible under the California Environmental Quality Act or its guidelines for implementation, the planning director shall prepare a notice of exemption for the proposed residential care facility. If the facility is not eligible for an exemption, the director shall conduct only such environmental review as is necessary to comply with the minimum requirements of the California Environmental Quality Act. The construction of access ramps for persons with mobility impairments shall not be deemed to be a substantial modification of a structure or to have a significant effect on the environment.

(b) Upon determining whether or not to issue a conditional use permit for a residential care facility for the handicapped, the planning director shall provide notification of the intended decision to surrounding property owners as provided in section 33-1300. The notification shall advise all interested persons that unless

appealed, the planning director's decision to issue a conditional use permit for a residential care facility for the handicapped shall become final within ten (10) days of the date of notification.

(c) Any interested person may appeal the decision of the planning director to grant or deny a conditional use permit for a residential care facility for the handicapped. Such appeal shall be made to the planning commission and the city council, and shall be made pursuant to the requirements set forth in section 33-1300 et seq. of this code.

(d) In determining whether or not to grant a conditional use permit for a residential care facility for the handicapped, the director of planning and building shall grant the application as long as the following requirements are met:

(1) The proposed use and structure comply with all existing and applicable Zoning Code provisions, Uniform Housing Code provisions, and Uniform Building Code requirements;

(2) The site and structure have, or will receive, all necessary licenses from the appropriate state or federal regulatory agencies;

(3) The design of the physical structure is not wholly inconsistent with the design and scale of the surrounding neighborhood; however, this factor shall not be considered with respect to an existing structure;

(4) The use and structure will not create measurable and identifiable traffic problems in the surrounding neighborhood. In making this determination, the director shall determine from information supplied by the applicant the number of automobile trips that the home may reasonably be expected to generate. Traffic may not be used as a reason to deny or condition the application unless this number is more than twice the number which the city assumes for planning purposes will be generated by a typical single-family residence, which is ten (10);

(5) The use and structure will not create measurable and identifiable parking problems in the surrounding neighborhood. In making this determination, the director shall determine from information supplied by the applicant the number of cars that may reasonably be expected to be present at the home at any one time, and may condition the permit on the applicant's providing the appropriate number of off-street parking spaces. In making this determination, the director shall not apply any formula, but shall assess the actual likelihood that the prospective residents will own and operate cars. (Ord. 95-5, § 3, 5-24-95)

**Secs. 33-1213—33-1219. Reserved.**