



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 6/24/04

Agenda Item 1

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Use Permit PI-2004-0176 – Hani Haddad (Applicant/ Owner): Request for New Off-Sale Alcoholic Beverage Outlet Located Less Than 500 Feet from Another Outlet

The Property Is Located at 230 Jackson Street (State Route 92) in the Neighborhood Commercial (CN) District

RECOMMENDATION:

Staff recommends that the Planning Commission find the project is categorically exempt from environmental review and approve the Conditional Use Permit and Variance based on the attached findings and conditions of approval.

DISCUSSION:

Crossroads World Market is a specialty ethnic food store. It carries an assortment of products from 30 different countries and cultures. It is located on the northerly side of Jackson Street (State Route 92), a 6-lane divided highway connecting Downtown with the San Mateo Bridge, in the CN District. It is located easterly of the *State Department of Motor Vehicles* building at Soto Road. Immediately to the west of the site is Morelia Meat Market and to the east is a barber shop. The properties along the opposite side of the street contain a mixture of retail and office commercial uses within the General Commercial (CG) and Commercial Office (CO) Districts. Single-family dwellings, in a Medium-Density Residential (RM) District, are located to the rear of the property.

Crossroads World Market is seeking a use permit to allow it to carry specialty imported wines and beers to complement its unique line of ethnic foods. The store would have a limited display area for these specialty beverages within 192 cubic feet of shelf area (four shelves), representing less than 1 percent of the store's floor area. No chilled alcoholic beverages will be sold and no liquor window advertising for alcoholic beverages would be posted. The store is open 10 am to 7 pm Monday through Saturday, and 10 am to 5 pm on Sunday.

The Zoning Ordinance requires a use permit for new off-sale alcoholic beverage outlets with the exception of specified establishments (large retailers, restaurants and special event functions). It does not allow new off-sale outlets within 500 feet radius of any other alcoholic beverage outlets with the exception of the specified establishments. An off-sale alcoholic beverage outlet, Country Liquors (201 Jackson Street), is located on the southerly side of Jackson Street, across the street (110-foot radius) from Crossroads World Market. In addition, West Lake Restaurant (320 Jackson Street), is located easterly of the market and serves beer and wine as part of its food service.

According to the *State Department of Alcoholic Beverage Control* (ABC), there is an over-concentration of off-sale liquor licenses in the census tract in which this property lies. Its records indicate that there are nine off-sale licenses (includes restaurants) operating where five licenses would be considered appropriate for the population. This census tract extends from the northerly side of Jackson Street to a portion of Sunset Boulevard, and between *BART* to the east and the Union Pacific Railroad tracks to the west. Only one business has an off-sale liquor license along Jackson Street in this census tract, the remaining are on A Street (6) and West Winton Avenue (2).

Previous Application

Crossroad World Market applied for a use permit and variance in January 2002. Staff supported the application because the market is unique and the highway median and width, along with the speed and volume of traffic, created a boundary between the north and south side of Jackson Street/State Route 92. There were no off-sale alcoholic beverage outlets on the north side of Jackson Street serving the westbound traffic and the effective distance, to get from Crossroads World Market to Country Liquor across the street, by car or walking is greater than 500 feet. There were nine off-sale liquor licenses at the time the application was filed. West Coast Meat Market (147 Jackson Street) has subsequently closed. The Hayward Citizens for Responsible Liquor Outlets and the Hayward Police Department supported the project. The applicant also provided 512 signatures of customers who supported his application.

The Planning Commission concurred with staff, and on March 28, 2002, approved (4:1) the use permit and variance application for the reduced separation. The Planning Commissioners who supported the project pointed to the uniqueness of the business, the limitations on the sales (restricted hours, limited display area, and no window advertising) and that Jackson Street separates businesses on either side of the street such that the effective separation between liquor stores exceeds 500 feet.

On May 21, 2002, the City Council overturned (4:3) the Planning Commission decision. City Council Members stated that approval would be inconsistent with the Council's previous actions on similar applications (El Tapatio at A and Grand Streets, and a former Korean market at Foothill Boulevard and Russell Way) and that the store could thrive without alcohol sales.

New Application

The applicant is applying for a use permit to sell specialty imported wine and beers (ABC Type 20 - Off Sale Beer & Wine). The applicant believes that his selection of specialty products from different cultures makes his market unique and serves the public convenience by providing these specialty products in one store. Providing specialty imported wines and beers would only add to the public convenience by making it convenient to purchase both food and drink in one store. Furthermore, The General Plan Economic Development Policies encourages attraction of this type of business. *“Conduct outreach to identify upscale retail (such as bookstores, coffee stores, gourmet food shops, etc.) that could serve the Hayward community, the surrounding region and commuters.”*

The applicant also believes that measures are in place to assure public health and safety with respect to the sale and use of alcoholic beverages. No chilled wine or beer would be sold, inventory would be limited to imported specialty wines and beers, no liquor advertising would be posted, and his hours of operation would be limited to 10 am to 7 pm Monday through Saturday, and 10 am to 5 pm on Sunday.

Staff Analysis

The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses. The 500-foot radius requirement addresses the quantitative but not the qualitative aspects of a business when determining whether or not to allow another off-sale liquor outlet. The highway provides a special circumstance (physical constraint) supportive of a variance and allows an opportunity to address the qualitative aspect of a business when the public convenience and necessity would be served and that measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.

Staff believes Crossroads World Market is the type of upscale business the General Plan Policies encourages, it meets the public convenience and necessity requirements, and that measures to assure the public health and safety are provided. The store does not gear itself to sell to the mass market, rather it has a regional draw that brings customers from all over the bay area who are seeking these specialty products in one location. The storage and display of the alcoholic beverages would not encourage immediate consumption in that the product would not be refrigerated, the size of the area designated for display and the range of product available is limited, and the hours of operations are limited. The area of display is limited to a greater degree than has been enforced in other situations; typically, alcoholic beverages may occupy up to 5 percent of the floor area, whereas this store's display will be limited to 2.5 percent. The store never would be open beyond 7:00 pm, eliminating the ability to purchase alcoholic beverages during the evening hours. These factors would serve as built in mechanisms to deter alcohol abuse.

On the other hand El Tapatio did not meet the public convenience and necessity findings in that the products offered at El Tapatio are offered at two other markets on A Street are similar and already have off-sale liquor licenses. In addition, the Police Department reported a high number of service calls related to public consumption of alcohol and public drunkenness in the vicinity of El Tapatio and none associated with the liquor store in the vicinity of Crossroads World Market. Furthermore, Crossroads World Market is located along a major highway and separated some distance from similar establishments, whereas another liquor outlet is located next door to El Tapatio and members of the public (130 individuals) opposed the application of El Tapatio.

It also differs from the former Korean market on Foothill Boulevard in that a Use Permit was not required; it was exempt from the City's Alcoholic Beverage Outlet Regulations, having more than 10,000 square feet in area. The Planning Commission was asked only to make a finding for the Department of Alcoholic Beverage Control (ABC) that allowing the sale of alcoholic beverages at the Korean Market is necessary for the public convenience and welfare. Neither the Commission nor the Council could make a finding that it was necessary for the public convenience and welfare with the saturation of outlets in the downtown area, as there was no mechanism (e.g. use permit) for imposing conditions of approval (such as hours of operation, advertising, packaging) under which the market could operate if it were to sell alcoholic beverages.

Unlike these two markets, Crossroads World Market is a unique market that provides specialty products from 30 countries not found all in one location in Hayward. Residents from surrounding cities and across the bay come to Crossroads World Market because they cannot find the products offered elsewhere. Crossroads World Market offers a unique product line not duplicated elsewhere and allowing for the applicant to include specialty imported wine and beers would only enhance the line and add to the public convenience for residents of Hayward and the region. In staff's opinion, unlike the other markets, the findings for public convenience and necessity can be made for Crossroad World Market. Furthermore, there would be mechanisms to minimize alcohol abuse.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Class 1 Existing Facilities.

PUBLIC NOTICE:

On April 23, 2004, a referral notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Burbank and Jackson Triangle Task Force members and the Hayward Area Planning Association. The Referral Notice provided an opportunity for persons to comment on the project. There were 14 responses opposing another off-sale liquor outlet to the public notice as noted above. On June 14, 2004, a Notice of Public Hearing for the Planning Commission

meeting was mailed. COMMPRE was notified about the hearing and a staff report was sent to them.

CONCLUSION:

Staff believes the 500-foot radius requirement does not address the qualitative aspects of a business when determining whether to allow another off-sale liquor outlet nor the aspect of the regional draw of the business. The location of Crossroads World Market on Jackson Street/Highway 92 provides a special circumstance (physical constraint) in which a pedestrian or vehicle must travel over 500-feet (effective distance) to the nearest Off-Sale Liquor Outlet which provides sufficient grounds for a variance and allows an opportunity to address the qualitative aspect of a business.

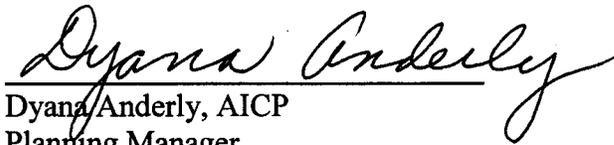
Staff believes this is the type of upscale business the City of Hayward is interested in attracting and retaining. The market is unique, has a regional draw and is not geared to the mass market. The operation of the market provides built-in mechanisms to deter some of the type of alcohol problems the Police Department are concerned about. Therefore staff recommends that the Planning Commission approve the use permit and variance to allow the applicant to provide his patrons the opportunity to purchase imported specialty wines and beers along with the specialty food products from around the world.

Prepared by:



Carl T. Emura, ASLA
Associate Planner

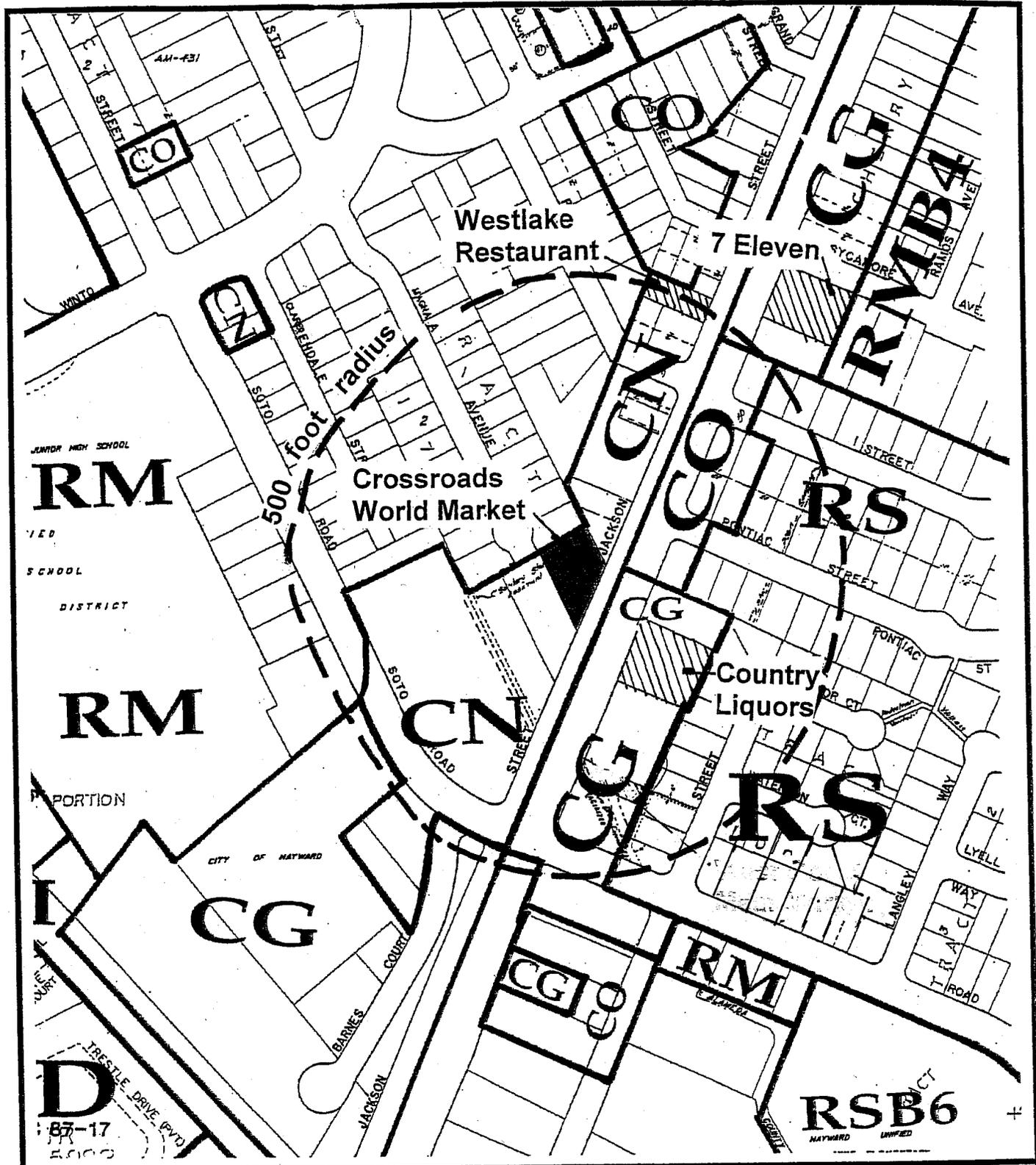
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Approval
- C. Conditions of Approval
- D. List of Off-Sale Alcohol Licenses within Census Tract 4363
- E. List of Specialty Wines and Beers



Area Map/Map of Alcoholic Beverages

PL-2002- 0025 UP

Address: 230 Jackson Street, North

Applicant: Hani Haddad

Owner: Hani Haddad & H. Banejad for Crossroads World Market

FINDINGS FOR APPROVAL
Conditional Use Permit PL-2004-0176
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, *Existing Facilities*.

Conditional Use Permit:

2. The proposed use is desirable for the public convenience and necessity. Crossroads World Market expands the diversity of uses along Jackson Street and serves both the neighborhood as well as the general public and enhances the character of the surrounding area. Specialty imported beers and wines would complement the specialty foods offered at this market, thereby providing a public convenience.
3. The proposed off-site sales of imported beer and wine at Crossroads World Market would not be detrimental to the public health, safety and general welfare. There are built-in mechanisms in the market's operations that deter the negative aspects associated with the sale of alcohol. The market is oriented to a select audience who are purchasing specialty items not commonly found in the local markets or alcoholic beverage outlets. The market is open for a limited number of hours and only a small area of the market would be devoted to the display of alcoholic beverages. No refrigerated alcoholic beverages will be sold which would discourage immediate consumption.
4. The market is in harmony with the City's policy and the intent and purpose of the CN District regarding the location of new off-sale alcoholic beverage outlets. The sale of alcoholic beverages at Crossroads Market is not proximate to, and will not detrimentally affect, any church, school, playground or park, or recreation center. The adjacent residential uses to the north are accessible from Winton Avenue, and not directly from Jackson Street or this property.
5. The other existing off-sale alcoholic beverage outlet within the 500-foot radius have operated without any criminal incidents.
6. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

Variance:

7. There are special circumstances applicable to the property in that Jackson Street (State Route 92) provides a physical barrier such that the effective distance to travel by car or foot is greater than 500 feet.
8. The variance does not constitute a grant of a special privilege inconsistent with the limitation upon other properties in the vicinity. The hours of store operation and the floor area allowed for display of alcoholic beverages is limited to a greater degree than other establishments.
9. The approval of this permit will not create an undue concentration of establishments dispensing alcoholic beverages in that the other establishments within 500 feet of the Crossroads Market are located on the southerly side of Jackson Street. The location of the market is unique as Jackson Street (State Route 92) provides a strong barrier separating the properties on either side of the highway, because of the median island and the limited cross access points. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

CONDITIONS OF APPROVAL
Conditional Use Permit PL-2004-0176
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. Application No. PL-2004-0176 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time an off-sale liquor license has been obtained from the State Department of Alcoholic Beverage Control (ABC) and all conditions of approval have been met, or a time extension of this application is approved.
2. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the expiration date.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. There shall be no on-site advertisement of the sale of alcoholic beverages visible from the exterior of the building.
5. Beer, malt beverages and wine coolers in containers of 16 oz. or less shall not be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine coolers, beer coolers, or pre-mixed distilled spirit cocktails (if allowed by the license) must be sold in manufacturer pre-packaged multi-unit quantities.
6. Alcoholic beverages shall not be sold in a refrigerated, or otherwise cooled, condition.
7. The sale of products, other than beer and wine, measured by gross receipts on an annual basis, shall exceed the annual sale of beer and wine products, measured by gross receipts. Not more than 2.5 percent of the floor area of the store shall be devoted to the sale, display and storage of alcoholic beverages.
8. The permittee shall prominently post signs inside permittee's premises and adjacent to each entrance/exit door stating that the consumption of alcoholic beverages in public is prohibited by law pursuant to Section 4-2.10 of the Hayward Municipal Code.

9. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within 6 months of approval of this permit. Any employee hired after this permit is approved shall attend Responsible Beverage Service training within 6 months of his/her date of hire.
10. The operating hours of the market is limited to 10 am to 7 pm Monday thru Saturday, and 10 am to 5 pm Sunday.
11. Two 24-inch box street trees shall be provided along the Jackson Street frontage. Street trees shall be located in the landscape setback rather than adjacent to the street to allow better visibility of oncoming traffic at the driveway. Landscaping shall be provide along the parkway strip down to the east property line with groundcover or shrubs that shall not exceed 30 inches in height.
12. The existing irrigation system shall be restored and converted to an automatic irrigation system. Irrigation heads shall be added to provide complete coverage to all landscape areas without over spraying onto walks, drives or parking areas.
13. All missing, dead and damaged plant material throughout the landscape areas shall be replaced. Groundcover shall be provided to cover the entire landscape area. The two trees adjacent to the building shall be replaced. One tree shall be planted in each of the end caps at the end of the row of parking.
14. Trees shall not be topped or severely pruned at any time. Any trees that are topped or severely pruned shall be replaced with trees of equal caliper to the damaged trees immediately upon notification by the City.
15. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for permit revocation.
16. Any violation by the permittee or any employee of the premises of these conditions or of any rule or regulation issued by the Department of Alcoholic Beverage Control or any law concerning the sale and distribution of alcohol is cause for revocation of the permit before the duly authorized review body.

Census Tract 4363 – Off-Sale Liquor Outlets

<u>Licensee/Premise</u>	<u>License Type</u>
Hoang, Thuhang Thi 566 Jackson Street	21
Kim, Byung 370 Winton Avenue	20
Bajwa, Bachan Singh 396 Winton Avenue	21
Hernandez, Guadalupe 112 A Street	20
Bajwa Brothers 210 A Street	21
Singh, Bahadar 218 A Street	20
Villarreal, Ernestina F. 236 A Street	20
Ramirez, Anton 340 A Street	20
Quik Stop Markets, Inc 505 A Street	20

License Types

- 20 OFF SALE BEER & WINE – (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on premises.
- 21 OFF SALE GENERAL – (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold.

List of Specialty Wines and Beers

DIME Group International distributes the following product;

Wines from	Romania	Murfatlar
	Yugoslavia	Vranac Burgundy, Montenegro Chardonnay
	Moldova	Kagor, Muscat
	Georgia	Kindzmarauli, Khvanchkara
	Ukraine	Massandra collection
Beers from	Poland	Tickie Kmicic
	Russia	Baltica
	Ukraine	Obolon
	Yugoslavia	Niksicko Pivo
	Estonia	Saku

These are the current accounts that sell product of DIME in East Bay area:

Frimont – Sousa's Liquor

Walnut Creek - Babushka

Concord - Polsky Delikateski, European Food

San Francisco – Europa Express, New World Market

European Food L.L.C