



CITY COUNCIL AGENDA REPORT

MEETING DATE: SEPTEMBER 7, 2010

ITEM NUMBER:

SUBJECT: APPEAL OF REVOCATIONS OF ZONING APPLICATIONS ZA-89-25 AND ZA-92-10
MINOR CONDITIONAL USE PERMITS FOR GARCIA RECYCLING CENTER
739 WEST 19TH STREET

DATE: AUGUST 26, 2010

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MEL LEE, SENIOR PLANNER
KIMBERLY BRANDT, DIRECTOR

FOR FURTHER INFORMATION CONTACT: MEL LEE, (714) 754-5611
mlee@ci.costa-mesa.ca.us

RECOMMENDATION:

Continue hearing to the October 5, 2010 Council meeting.

BACKGROUND:

On July 12, 2010 and August 9, 2010, the Planning Commission considered Zoning Applications ZA-89-25 and ZA-92-10, minor conditional use permits for an existing neighborhood recycling facility (Garcia Recycling) located in the parking area of a retail shopping center. The zoning applications were called up for review to the Planning Commission by Commissioner Mensinger on June 9, 2010. Both zoning applications were revoked by the Planning Commission on a 4-1 vote (Vice Chair Clark voting no).

On August 16, 2010, the revocations were appealed by the Miles+Chen Law Group, legal counsel for Garcia Recycling, the business owner (Appeal Form, Attachment 4).

ANALYSIS:

Request for Continuance

One of the arguments raised in the 11-page appeal letter is that the legal representatives for Garcia Recycling were not afforded adequate time and opportunity to respond to concerns.

Planning staff and the City Attorney's office have reviewed the appeal letter. Due to the detailed legal issues that were raised by the appellant in their August 16th letter, and as advised by the City Attorney's office, staff is recommending a continuance of this item to the October 5, 2010 City Council meeting. This should provide the appellant with an

appropriate amount of time (over 30 calendar days) to review and respond to the issues discussed in this staff report with regard to the appeal.

Responses to Appeal

The appeal application contains an 11-page letter specifying the basis for the appeal and arguments for overturning the Commission's decision to revoke the zoning applications. The following analysis includes staff responses to these concerns:

1. *"Planning staff did not raise the issues [with the use permits were] due to enforcement problems." "Garcia Recycling was not aware that the Commission was considering revoking its permit on the grounds that its operations violated a condition of approval [until August 4, 2010]." (Pages 1 and 2 of appeal).*

Two staff reports were prepared for the public hearings dated July 12, 2010 and August 9, 2010 on Garcia Recycling where public nuisance issues and use permit violations were noted as the basis for concerns with Garcia's Recycling.

The first report for the July 12th Planning Commission hearing indicated that the Commission may modify or revoke a Planning/Zoning Application if the following conditions are found to apply:

1. The use constitutes a public nuisance; or
2. The use does not comply with the conditions of approval.

Staff believes there was sufficient notice to Garcia Recycling and acknowledgement of the violations of the use permit, dating back to August 3, 2009, when staff sent Garcia Recycling a letter stating that they were operating in violation of their zoning approvals (Attachment 7, Correspondence, City of Costa Mesa August 3, 2009). The applicant's attorney responded in a letter to staff dated August 19, 2009, that "Garcia Recycling does not believe that it is in violation of the Minor Conditional Use Permit" and was willing to comply with the requirements, with exception to the removal of the truck (Attachment 7, Correspondence, Miles+Chen Law letter dated August 19, 2009).

In the July 12, 2010 staff report, the analysis included a timeline of code enforcement activity and communications with Garcia's Recycling beginning with a site inspection by code enforcement and Planning staff on July 30, 2009, through June 15, 2010 (Attachment 3).

In addition, the reports indicated that use permit violations and ongoing code enforcement were major concerns. A significant degree of City staff resources has been devoted to the investigation of complaints related to the use and ongoing enforcement of noise and property maintenance issues. The business owner/property owner has failed to rectify the problems to be in compliance with the minor conditional use permit requirements to the satisfaction of the City.

2. *"The Commissioners deprived Garcia Recycling of due process by making factual findings and legal conclusions without allowing Garcia Recycling to respond." (Page 2 of appeal).*

During both hearings, the applicant and their legal counsel were provided with an opportunity to present and rebut information, including but not limited to, the following:

1. A four-page letter with 16 pages of attachments (Attachment 7, Correspondence, Letter From Miles+Chen Law Group dated July 12, 2010).
2. An eight-page letter with 67 pages of attachments submitted prior to the meeting and attached to this memo for reference (Attachment 7, Correspondence, Letter From Miles+Chen Law Group dated August 6, 2010).
3. A 23-slide PowerPoint presentation with text and photos presented during the meeting (Attachment 7, Correspondence, Garcia Recycling Center August 9, 2010).

Additionally, in accordance with public hearing procedure, the applicant was given an opportunity to address the Commission and provide rebuttal of any evidence. The evidence included site photographs and the detailed timeline of staff's attempts to work with the operator as noted earlier in this report (see Attachment 3), which was presented during both hearings.

3. *"The Commissioners failed to meet the standards set forth in the Costa Mesa Municipal Code and State law in revoking Garcia Recycling's (minor) conditional use permit." (Page 4 of appeal).*

The findings contained in the Planning Commission resolution were reviewed by the Deputy City Attorney as to form and found to be in accordance with State Law, as well as Municipal Code Section 13-29(o) (Enforcement Authority).

4. *"The Commission failed to comply with the California Environmental Quality Act in revoking Garcia Recycling's (minor) conditional use permit without environmental review". (Page 8 of appeal).*

The revocation action complies with the California Environmental Quality Act (CEQA) as it is categorically exempt from CEQA pursuant to Section 15321 for Enforcement Actions by Regulatory Agencies.

5. *"The Commissioners violated the Brown Act by deliberating outside the public meeting." (Page 10 of appeal)*

The deliberations by the Commissioners occurred during the public hearing and did not violate the provisions of the Brown Act.

Updated Code Enforcement Activity

The timeline of events has been updated to include recent code enforcement activity occurring after the Planning Commission's action to revoke the use permits, as well as recent photographs of Garcia's Recycling showing ongoing violations (Attachment 3).

It should be noted that, according to a separate memo prepared by Public Services, no violation of water quality standards were observed by Public Services staff at the location (Attachment 7, Correspondence, Memo From Public Services dated August 27, 2010).

Additional Findings for Revocation

Should City Council uphold the Planning Commission's revocation of the zoning applications, staff recommends the additional findings, which are incorporated into the draft resolution attached to this report.

- Based on the photographic evidence prepared by staff and made part of the public record:
 - The use is operating off-site (on the adjacent Smart and Final property) in violation of ZA-89-25 and ZA-92-10, which was approved for the 739 West 19th Street property (subject site) only.
 - The use is in violation of the following Conditions of Approval of Zoning Application ZA-92-10, Minor Conditional Use Permit for a recycling center:
 - (i) Storage of a commercial truck on the property to serve as additional storage area in lieu of a container is in violation of **Condition of Approval No. 3 for ZA-92-10**: "Any and all containers, with a maximum of two, shall be located at the northeast corner of the site as shown on the approved plans, and shall maintain a minimum setback of twenty (20) feet from the front property line."
 - (ii) Materials kept outside the containers are in violation of **Condition of Approval No. 5 for ZA-92-10**: "All materials shall remain inside the containers."
 - (iii) Not keeping the area free of debris, in violation of **Condition of Approval No. 6 for ZA-92-10**: "Applicant shall keep the area surrounding the container(s) free of debris."

Zoning Applications ZA-89-25 and ZA-92-10 are provided in their entirety as Attachment 2 to this report.

- The use is in violation of the City of Costa Mesa's Municipal Code, Title 20 (Property Maintenance) Standards.

- Based on the evidence submitted into the record, the original operation has significantly expanded beyond the scale and intensity of a neighborhood recycling facility and is more comparable to a regional recycling facility. Orange Coast College is considered a regional recycling facility. Neighborhood recycling facilities in the surrounding area include Earthwize Recycling and NexCycle.

The processing of approximately 4.2 million pounds of recyclable materials in 2008 at Garcia Recycling, as indicated in the attachments to the letter from Miles+Chen Law Group dated July 12, 2010, exceeds the annual 2009 number of the following recycling facilities:

- Orange Coast College Recycling Center (2701 Fairview Road) - 3.9 million pounds (source: OCC August 17, 2010).
- EarthWize Recycling (2180 Newport Boulevard) - 496,387 pounds (source: EarthWize Recycling August 16, 2010).
- NexCycle (185 East 17th Street) - 283,315 pounds (source: NexCycle August 17, 2010).

ALTERNATIVES

Staff is recommending a minimum 30-day continuance to the next City Council meeting on October 5, 2010. This continuance will allow the applicant's attorneys an appropriate amount of time to review and respond to the staff report.

Should the Council decide to act upon the matter, the following are the alternatives:

1. Uphold the Planning Commission's decision to approve the revocation of Zoning Applications ZA-89-25 and ZA-92-10, based on the Planning Commission's original findings and the additional findings included in the attached resolution.
2. Reverse the Planning Commission's decision to revoke Zoning Applications ZA-89-25 and ZA-92-10.

LEGAL REVIEW:

The City Attorney's office has approved the attached resolutions as to form.

CONCLUSION

The applicant's attorney has expressed concerns regarding insufficient time and opportunity to respond during the proceedings. As advised by the City Attorney's office, staff is recommending a minimum 30-day continuance to the next City Council meeting on October 5, 2010. Planning Commission's decision to revoke Zoning Applications ZA-89-25 and ZA-92-10 was based on the evidence in the record presented during the public hearings, and complies with all applicable City Code and State Law provisions.



MEL LEE, AICP
Senior Planner



KIMBERLY BRANDT, AICP
Development Svs. Director

DISTRIBUTION: City Manager
Asst. City Manager
City Attorney
Acting Asst. Dev. Svs. Director
Public Services Director
Transportation Svs. Mgr.
City Clerk (2)
Staff (4)
Planning Staff (8)
File (2)

Garcia Recycling Centers & Metals Inc.
Attn: Jesus Garcia
1115 S. Elliot Place
Santa Ana, CA 92704

Russell Pange Trust
1835 Newport Boulevard, #A109
Costa Mesa, CA 92627

Miles+Chen Law Group
Attn: Patricia J. Chen
9911 Irvine Center Drive, Suite 150
Irvine, CA 92618

Steve Chan
720 Center Street
Costa Mesa CA 92628

ATTACHMENTS:

1. Draft Resolutions
2. ZA-89-25 and ZA-92-10
3. Garcia Recycling Timeline of Events from July 2009 to the Present and Exhibits
4. Appeal Form
5. Planning Commission Reports and Resolution
6. Minute Excerpts
7. Correspondence (In Chronological Order to the Present)

File: 090710ZA8925ZA9210Appeal

Date: 082710

Time: 3:00 p.m.

**ATTACHMENT 1
DRAFT RESOLUTIONS**

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO UPHOLD THE PLANNING COMMISSION'S ACTION TO REVOKE ZONING APPLICATIONS ZA-89-25 AND ZA-92-10

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, in 1989, Zoning Application ZA-89-25 was filed by Jesus Garcia, authorized agent for Russell Pange Trust, requesting approval of minor conditional use permit for a recycling facility, located at 739 West 17th Street in a C1 zone;

WHEREAS, on November 6, 1989, the Zoning Administrator approved Zoning Application ZA-89-25 for a minor conditional use permit for a recycling center at the subject location;

WHEREAS, on December 1, 1992, the Zoning Administrator approved Zoning Application ZA-92-10 for a minor conditional use permit for the relocation and expansion of the previously-approved recycling center at the subject location;

WHEREAS, a review of the minor conditional use permits were requested by Planning Commissioner Mensinger to determine if the minor conditional use permits should be modified or revoked;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 12, 2010, and continued to August 9, 2010, and ZA-89-25 and ZA-92-10 were revoked by the Planning Commission;

WHEREAS, on August 16, 2010 an appeal of the Planning Commission's decision was filed by Miles+Chen Law Group representing the business owner of Garcia Recycling;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the City Council hereby **UPHOLDS** the Planning Commission's action to **REVOKE** Zoning Applications ZA-89-25 and ZA-92-10.

PASSED AND ADOPTED this 7th day of September, 2010.

ALLAN MANSOOR
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

EXHIBIT "A"**FINDINGS**

- A. Revocation of ZA-89-25 and ZA-92-10 was initiated because the operation of the use (a recycling facility) was determined to constitute a public nuisance and to be noncompliant with conditions of approval, pursuant to Municipal Code Section 13-29(o) (Enforcement Authority). Based on the evidence submitted into the public record, the use is not being operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10, specifically:
1. The recycling facility is not being operated in a manner deemed compatible with surrounding properties and uses. From July 2009, to the present, the City has documented code enforcement and Planning staff inspections of the use identifying the following concerns: excessive noise related to employees pouring recycled materials into containers at the facility; odors stemming from used beverage containers, the operator's failure to maintain the cleanliness of the facility; customers loitering during and outside of business hours; customers parking on adjacent properties to use the recycling facility. The conditions of approval of ZA-89-25 and ZA-92-10 were designed to minimize these types of impacts.
 2. The use creates a negative visual impact on West 19th Street, due to lack of property maintenance. Specifically, the containers generally have an unsightly, "battered" appearance; the landscape planters surrounding the facility have not been adequately maintained due to high use of the facility by customers; and the high volume of recyclables received at this location requires the daily staging of a commercial truck on a long-term basis, in lieu of a second recycling container.
 3. A significant degree of City staff resources has been devoted to the use as a result of complaints related to the use and continual enforcement of noise and property maintenance issues. The business owner/property owner has failed to rectify the problems to be in compliance with the minor conditional use permit requirements to the satisfaction of the City.
 4. Issues related to noise, odors, loitering, and property maintenance are not prevalent at other recycling facilities in the City as they are at this location. According to City records, the City has had no complaints related to noise, odors, loitering, property maintenance, etc. related to the operation of the recycling facilities at other locations in the City.
 5. Modifications to the conditions of approval for ZA-89-25 and ZA-92-10 are not sufficient to address the adverse impacts to surrounding properties. Revocation will require cessation of the current use and a similar use cannot be established in the future unless a new Zoning Application is submitted and approved.
 6. The intensity and scale of the recycling facility is inappropriate for a prominent parking lot location adjacent to West 19th Street, a major arterial designated as an "urban path" in the City's 2000 General Plan. Given the high volume of recycling occurring at this facility, the facility is considered out-of-scale with the intended function of neighborhood recycling facilities which may be in parking lots pursuant to a minor conditional use permit.
 7. If the minor conditional use permits are revoked, the City will remain in compliance with all applicable provisions of State Law as it pertains to recycling and waste management. Specifically, revocation would not result in an unserved

- “convenience zone” as defined by State Law because the area would continue to be served by the existing recycling facility at Von’s Market. Additionally, per the letter submitted into the public record by the Costa Mesa Sanitary District dated August 9, 2010, revocation of the minor conditional use permits would not compromise the Integrated Waste Management Plan because the City’s Sanitary District separates recyclables from regular trash to comply with the applicable beverage container diversion goals.
8. The use is not being operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10 in that the original approval was for a neighborhood recycling facility approved to operate within the parking area for the 739 W. 19th Street property. Based on the evidence submitted into the record, the original operation has expanded to the scale and intensity of a regional recycling facility, processing approximately 4.2 million pounds of recyclable materials in 2008, based on the applicant’s testimony. This expansion has resulted in a scale and intensity of use beyond the boundaries of the subject property, requiring the use of the parking area for the adjacent 709 W. 19th Street property (Smart & Final property) for the unloading of recyclable materials by customers.
 9. Based on the photographic evidence prepared by staff and made part of the public record:
 - a. The use is operating off-site (on the adjacent Smart and Final property) in violation of ZA-89-25 and ZA-92-10, which was approved for the 739 West 19th Street property (subject site) only.
 - b. The use is in violation of the following Conditions of Approval of Zoning Application ZA-92-10, Minor Conditional Use Permit for a recycling center:
 - i. Storage of a commercial truck on the property to serve as additional storage area in lieu of a container is in violation of **Condition of Approval No. 3 for ZA-92-10**: “Any and all containers, with a maximum of two, shall be located at the northeast corner of the site as shown on the approved plans, and shall maintain a minimum setback of twenty (20) feet from the front property line.”
 - ii. Materials kept outside the containers are in violation of **Condition of Approval No. 5 for ZA-92-10**: “All materials shall remain inside the containers.”
 - iii. Not keeping the area free of debris, in violation of **Condition of Approval No. 6 for ZA-92-10**: “Applicant shall keep the area surrounding the container(s) free of debris.”
 10. The use is in violation of the City of Costa Mesa’s Municipal Code, Title 20 (Property Maintenance) Standards.
 11. Based on the evidence submitted into the record, the original operation has significantly expanded beyond the scale and intensity of a neighborhood recycling facility and is more comparable to a regional recycling facility. Orange Coast College is considered a regional recycling facility. Neighborhood recycling facilities in the surrounding area include Earthwize Recycling and NexCycle.

The processing of approximately 4.2 million pounds of recyclable materials in 2008 at Garcia Recycling as indicated in the attachments to the letter from Miles+Chen Law Group dated July 12, 2010, exceeds the annual 2009 number of the following recycling facilities:

- Orange Coast College Recycling Center (2701 Fairview Road) - 3.9 million pounds (source: OCC August 17, 2010).
 - EarthWize Recycling (2180 Newport Boulevard) - 496,387 pounds (source: EarthWize Recycling August 16, 2010).
 - NexCycle (185 East 17th Street) - 283,315 pounds (source: NexCycle August 17, 2010).
- B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City's environmental procedures, and has been found to be exempt from CEQA under Section 15321 for Enforcement Actions by Regulatory Agencies.
- C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO REVERSE THE PLANNING COMMISSION'S ACTION TO REVOKE ZONING APPLICATIONS ZA-89-25 AND ZA-92-10

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, in 1989, Zoning Application ZA-89-25 was filed by Jesus Garcia, authorized agent for Russell Pange Trust, requesting approval of minor conditional use permit for a recycling facility, located at 739 West 17th Street in a C1 zone;

WHEREAS, on November 6, 1989, the Zoning Administrator approved Zoning Application ZA-89-25 for a minor conditional use permit for a recycling center at the subject location;

WHEREAS, on December 1, 1992, the Zoning Administrator approved Zoning Application ZA-92-10 for a minor conditional use permit for the relocation and expansion of the previously-approved recycling center at the subject location;

WHEREAS, a review of the minor conditional use permits were requested by Planning Commissioner Mensinger to determine if the minor conditional use permits should be modified or revoked;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 12, 2010, and continued to August 9, 2010, and ZA-89-25 and ZA-92-10 were revoked by the Planning Commission;

WHEREAS, on August 16, 2010 an appeal of the Planning Commission's decision was filed by Miles+Chen Law Group representing the business owner of Garcia Recycling;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the City Council hereby **REVERSES** the Planning Commission's action to **REVOKE** Zoning Applications ZA-89-25 and ZA-92-10.

PASSED AND ADOPTED this 7th day of September, 2010.

ALLAN MANSOOR
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

**ATTACHMENT 2
ZA-89-25 AND ZA-92-10**

Application # ZA-89-25

APPLICATION FOR MINOR CONDITIONAL USE PERMIT/
ADMINISTRATIVE ADJUSTMENT

Part One

Address/Location of Request 739 W. 194th St.

Name of Property Owner Dr. Russell Pang Phone _____

Address of Property Owner 1831 Orange Avenue, Suite E, Costa Mesa 92627

* Property Owner Signature Dr. Russell Pang Date 10-12-89

Name of Authorized Agent Jesus Garcia Phone 751-7906

Address of Authorized Agent 1309 S. Shawnee Dr, Santa Ana, CA 92704

Authorized Agent Signature Jesus Garcia Date 10-3-89

Part Two (Office Use Only)

Date Application Received 10/16/89 By WBU

Date Application Accepted as Complete _____ By _____

FEE	
Negative Declaration	\$ _____ (0131190106)
Minor Conditional Use Permit	<u>190.00</u> (0131110009)
Administrative Adjustment	_____ (0131110009)
Total Fee	\$ _____

Negative Declaration _____
Minor Conditional Use Permit 1
Administrative Adjustment _____

G.P. Gen Comm.
Zone C1
AP# _____
424-202-01

Request: Minor Conditional Use Permit for a mobile recycling center at an existing commercial center.

Rec'd 10/16/89 WBU #40407

Exempt. _____

Part Three (Office Use Only)

ACTION

- Denied (See attached Findings)
- Approved, subject to Findings and Conditions of Approval (attached)

By W Bouwens - Kellen Date 11/16/89

Notice of Decision to Planning Commission and City Council Date 11/16/89

Appeal Period Expires Date 11/16/89



The application referenced above has been approved by the Zoning Administrator based on the Findings and Conditions of Approval listed below.

FINDINGS

Minor Conditional Use Permit

1. The information presented substantially complies with Section 13-347 of the Costa Mesa Municipal Code in that:
 - a. The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.
 - b. The granting of the Conditional Use Permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
 - c. The granting of the Conditional Use Permit will not allow a use, density, or intensity which is not in accordance with the General Plan designation for the property.
 - d. The project is consistent with Article 22-1/2, Transportation Systems Management of the Costa Mesa Municipal Code in that no intersection to which the project contributes measurable traffic shall operate at less than the Standard Level of Service as a result of project implementation.

CONDITIONS OF APPROVAL

The project shall meet all requirements of the following City Departments:

- Plng. 1. Approval shall be for a period of one (1) year. Prior to expiration, applicant may request renewal, subject to reevaluation at that time. The Development Services Director may extend the Planning Action for a period not to exceed two (2) years if all conditions of approval have been satisfied, no complaints have been received, and the site inspection reveals compliance with applicable Ordinance requirements. Thereafter, the Development Services Director may extend the permit for successive two (2) year periods under the same terms.

2. Approval of a modified Minor Conditional Use Permit is required prior to expansion of the business.

ORDINANCE OR CODE PROVISIONS

The following list of Federal, State and local laws applicable to the project has been compiled by Staff for the applicant's reference:

- | | | |
|-------|----|---|
| Plng. | 1. | Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance. |
| Bldg. | 2. | Comply with the requirements of the Uniform Building Code as to design and construction. |

SPECIAL DISTRICT REQUIREMENTS

The requirement of the following special district is hereby forwarded to the applicant:

- | | | |
|-------|----|--|
| Sani. | 1. | Applicant to contact the Costa Mesa Sanitary District at 754-5043 prior to beginning recycling program. Costa Mesa Sanitary District has jurisdiction over materials left at the curb side in residential neighborhoods. |
|-------|----|--|

If you have questions, please call Willa Bouwens-Killeen at 754-5153 between 11:00 a.m. and 2:00 p.m.

(ZA8925)



City of Costa Mesa Planning Division
 Post Office Box 1200
 77 Fair Drive
 Costa Mesa, CA 92628-1200
 (714) 754-5245

PRELIMINARY ENVIRONMENTAL DESCRIPTION

For Office Use Only:

Project Number 7A-89-25 Date Received/By 10/16/89

Zone C1 General Plan Designation Gen Comm

Recommendation: Exempt Negative Declaration EIR

Class 1

Applications for projects in the City of Costa Mesa cannot be processed until an initial study of environmental impacts has been completed and an exemption granted or a Negative Declaration or Environmental Impact Report prepared. Please fill out the following and return (with preliminary site plans, including location and size of all existing structures and trees) five (5) working days prior to submitting your application:

Location of Project 739 W 19th st.
Costa Mesa CA.

Description of Project My plan is to park at the location above
1 home truck to buy aluminum cans Plastic Brls
and Glass Bottles

I will keep the place clean and Free From any type
of noise.
Sincerely this is my plan

Mon 10:30 AM to 5:00 PM
 Tues 10:30 AM to 5:00 PM
 Wed 10:30 AM to 5:00 PM
 Thur 10:30 AM to 5:00 PM
 Fri 10:30 AM to 5:00 PM
 Sat 10:30 AM to 5:00 PM
 Sunday Closed

Submitted by Juan Garcia Date 9-26-89

Mailing Address 1309 S Shawnee Dr Phone (714) 751-7906
Santa Ana CA 92704 Zip Code 92704

Not all projects will necessitate the preparation of an Environmental Impact Report. In order to make a determination as to whether any significant environmental impacts may result from the proposed project, the above information is necessary. As soon as possible, the Environmental Evaluator will determine whether or not the project will require an Environmental Impact Report and will notify the project sponsor accordingly.

22

PROJECT DESCRIPTION/JUSTIFICATION

- (1) Project Location 739 W 19th St.
(2) Describe Project and Request(s) Mobile Recycling Unit.

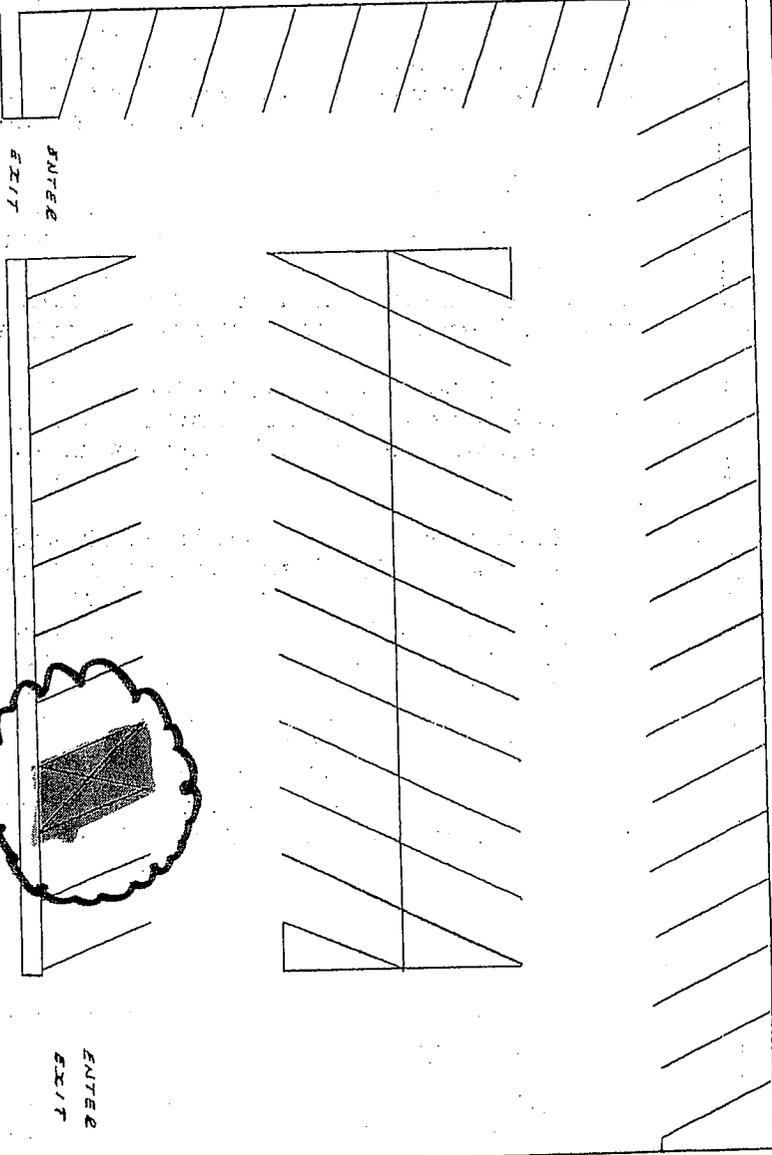
(3) If application is for Conditional Use Permit(s) or Minor Conditional Use Permit(s), answer the following: Describe how the proposed use is substantially compatible with uses permitted in the same general area and how the proposed use would not be materially detrimental to other properties within the same area.

During the Working Hours.
It will keep the place clean and noiseless
everything will be in order so that the
neighbour won't be bothered nor the
areas around attendant - pays cash - ^{#receipts given} hours ^{10³⁰. 5⁰⁰}
_{M - Sat.}

If application is for Variance(s) or Administrative Adjustment(s), answer the following: Describe the property's special circumstances, including size, shape, topography, location or surroundings, that justify the Variance or Administrative Adjustment request in that strict application of the Zoning Ordinance deprives the property of privileges enjoyed by others in the vicinity under identical zoning classification.

POMONA ST.

739 W 19th St
EL TORO BRVD
MARKET



19th St

ENTER
EXIT

ENTER
EXIT

WALLACE ST

Minor Land Use Permit
Project No. 2A-89-25
DATE 11/1/89
BY [Signature]

H2

SCALE: _____ APPROVED BY: _____
DATE: _____ DRAWN BY: _____
REVISED: _____

DRAWING NUMBER

2A-89-25

DATE: November 30, 1992

APPLICATION # ZA-92-10
ADDRESS: 739 W. 19th Street

The application referenced above has been approved by the Zoning Administrator based on the Findings and Conditions of Approval and Ordinance/Code Provisions listed below.

FINDINGS

Minor Conditional Use Permit

1. The information presented substantially complies with Section 13-347 of the Costa Mesa Municipal Code in that:
 - a. The proposed use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.
 - b. The granting of the Conditional Use Permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood, due to the separation of the use from the residences to the south by an existing commercial building.
 - c. The granting of the Conditional Use Permit will not allow a use, density, or intensity which is not in accordance with the General Plan designation for the property.

CONDITIONS OF APPROVAL

The project shall meet all requirements of the following City Departments:

- Plng. 1. The Conditional Use Permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The Conditional Use Permit may be referred to the Planning Commission for modification or revocation at any time if the Conditions of Approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the Development Services Director or his designee, any of the findings upon which the approval was based are no longer applicable.

2. Any further expansion or relocation of the business first requires approval of a Minor Conditional Use Permit.
3. Any and all containers, with a maximum of two, shall be located at the northeast corner of the site as shown on the approved plans, and shall maintain a minimum setback of twenty (20) feet from the front property line.
4. The business shall not operate between 8:00 p.m. and 8:00 a.m.
5. All materials shall remain inside the containers.
6. Applicant shall keep the area surrounding the container(s) free of debris.
7. Signs shall be limited to identifying recycling business only and painted or attached only to the container(s).

ORDINANCE OR CODE PROVISIONS

The following list of Federal, State and local laws applicable to the project has been compiled by Staff for the applicant's reference:

- | | |
|-------|---|
| Bldg. | 1. Comply with the requirements of the Uniform Building Code as to design and construction. |
| Fire | 2. Center may not encroach on required width of drive for emergency access. |

SPECIAL DISTRICT REQUIREMENTS

The requirement of the following special district is hereby forwarded to the applicant:

- | | |
|-------|---|
| Sani. | 1. Developer to contact the Costa Mesa Sanitary District at (714) 631-1731 for current District requirements. |
|-------|---|

APPEAL

If your case is denied by the Zoning Administrator or if you are in disagreement with the Conditions of Approval, you may appeal the decision to the Planning Commission. You must submit an appeal request (form available in the office of the City Clerk or Development Services Department at City Hall). The request must be returned to the Planning Division within seven (7) days of the Notice of Decision of the Zoning Administrator's decision. Any decision of the Planning Commission can similarly be appealed (with a fee) within seven (7) days to the City Council. While the City

Council decision is final, a request for a rehearing before the Council may be filed with the City Clerk within seven (7) days of the original City Council decision for consideration of any new evidence not known by Council at the time of their hearing.

If you have questions, please call Willa Bouwens-Killeen at 754-5153 between 8:00 a.m. and Noon.

(ZA9210)A2



City of Costa Mesa Planning Division
 Post Office Box 1200
 77 Fair Drive
 Costa Mesa, CA 92628-1200
 (714) 754-5245

PRELIMINARY ENVIRONMENTAL DESCRIPTION

For Office Use Only:

Project Number ZA-92-10 Date Received/By 9/21/92 WBR

Zone C1 General Plan Designation Gen Comm

Recommendation: Exempt Negative Declaration EIR

Applications for projects in the City of Costa Mesa cannot be processed until an initial study of environmental impacts has been completed and an exemption granted or a Negative Declaration or Environmental Impact Report prepared. Please fill out the following and return (with preliminary site plans, including location and size of all existing structures and trees) five (5) working days prior to submitting your application:

Location of Project 739 19th st
Costa Mesa CA 92627

Description of Project My plan is to park a Mobile Container
Ben at the location above to buy Aluminium Cans
Plastic Bottle and Glass Brls.
I will keep the place clean and Free From any type
of noise.

Sincerely this is my plan

Schedule

MON	9:00 AM to 5:00 PM
TUES	9:00 AM to 5:00 PM
WED	9:00 AM to 5:00 PM
THURS	8:00 AM to 5:00 PM
FRID	9:00 AM to 5:00 PM
SAT	9:00 AM to 5:00 PM
SUN	9:00 AM to 4:00 PM

Date 8-15-92

Submitted by Juan Garcia

Mailing Address 1309 S Shawnee Dr Phone (714) 751-7906
Santa Ana CA 92704 Zip Code 92704

Not all projects will necessitate the preparation of an Environmental Impact Report. In order to make a determination as to whether any significant environmental impacts may result from the proposed project, the above information is necessary.

As soon as possible, the Environmental Evaluator will determine whether or not the project will require an Environmental Impact Report and will notify the project sponsor accordingly.

**ATTACHMENT 3
TIMELINE FOR GARCIA RECYCLING
AND EXHIBITS**

Garcia Recycling Timeline of Events from July 2009 to the Present

Date	Discussion	Progress
July 30, 2009	Joint staff visit from Planning and Code Enforcement staff.	No visible progress.
August 3, 2009	City issued letter stating recycling center is violating CUP and requested: <ol style="list-style-type: none"> 1. Remove the truck staged at the property 2. Install new signs 3. Remove cashier from required landscape area and repair damaged landscaping. 4. Ensure all staging and materials are contained inside the containers. 	No visible progress.
August 21, 2009	Received letter from recycling centers attorney requesting a meeting.	Meeting arranged.
September 3, 2009	Meeting held with applicant and City staff.	Applicant to follow up with staff.
September 14, 2009	Spoke with applicant's representative over phone.	Provided photos of sign examples and painted containers over email. Signs ok, provide onsite.
November 24, 2009	Meeting with applicant.	Containers painted and cleaned up signage.
March 18, 2010	City issued letter stating issues related to installation of a new cashier's unit, noise and landscape repairs that still need to be addressed. Applicant advised case will be forwarded to Code Enforcement if no further progress made.	No visible progress.
March 22, 2010	Call from applicant.	Different alternatives discussed.
April 1 & 5, 2010	Call from applicant.	Removed cashiers unit and removed illegal paving; however, replaced with artificial lawn. Not permitted.
April 7, 2010	Meeting with applicant and City staff.	Discussed possible different locations on property for recycling center.
April 12, 2010	Meeting with applicant and City staff.	Desired location (abutting 19 th St), not acceptable (was original location under ZA-89-25).
April 29, 2010	Meeting with applicant and City staff.	Restored live landscaping. Supposed to test different locations on property for functionality.
May 26, 2010	Call from applicant.	Wished to remain in current location and replace staged truck with 2 nd container and change out throughout day.
June 9, 2010	Planning Commissioner Mensinger called item up for review.	Scheduled for July 12, 2010 Planning Commission meeting.

Date	Discussion	Progress
June 15, 2010	Meeting with applicant.	Progress to date: <ol style="list-style-type: none"> 1. Removed cashiers unit. 2. Installed landscaping. 3. Painted units and cleaned up signage. 4. 2nd container replaced staged truck (however only for week or two. Truck currently remains). Remaining Violations: <ol style="list-style-type: none"> 1. Business being conducted outside containers. 2. Truck still staging at site.
August 13, 2010 to Present	Daily inspections by Code Enforcement (see attached pictures)	One letter and three citations issued by Code Enforcement (see attached).



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

August 16, 2010

Jesus Garcia
1115 South Elliot Place
Santa Ana, CA 92704

**RE: GARCIA'S RECYCLING
739 WEST 19TH STREET, COSTA MESA**

Dear Mr. Garcia:

The City of Costa Mesa has received complaints regarding your business at the subject property. On **August 13, 2010**, the subject property was inspected. As a result of this inspection, it has been determined that the premises is in violation of the conditions of approval of Minor Conditional Use Permit ZA-92-10 and, therefore, in violation of Costa Mesa Municipal Code Section 20-4(b). The specifics of the violation are:

1. Operating off-site (at the Smart and Final property at 707 West 19th Street);
2. Outdoor work (operating business outside the containers);
3. Storage of a truck on the property;
4. Trash and debris; and
5. Business is causing damage to required on-site landscaping

In order to comply with your minor conditional use permit, you must:

1. Discontinue all spill over of business onto the adjoining property;
2. Conduct all business within the container(s);
3. Truck to be removed from property;
4. Clean up all trash and debris; and
5. Repair/replace on-site landscaping.

Because of a history of violations, a first citation, in the amount of \$150 will be issued by mail today. To avoid further citation, you must comply with these requirements by Wednesday, August 18, 2010 or a second citation, in the amount of \$300, will be issued.

Should you have any questions regarding this matter, please contact Mel Lee at 714.754.5611 or mlee@ci.costa-mesa.ca.us.

Sincerely,


WILLA BOUWENS-KILLEEN
Chief of Code Enforcement

cc: Code Enforcement Officer Tim Sun
Code Enforcement Officer Burt Santee
Senior Planner Mel Lee

34

**Costa Mesa Code Enforcement
NOTICE OF CORRECTION**

CIVIL CITATION

B 7283

Costa Mesa Municipal Code Violation

CITE NO. 7283 ISSUE DATE 8-16-10

8-16-10 1419 MON
Date Time am pm Day of the Week Prior Citation

TO JESUS GARCIA

JESUS GARCIA
Name (First) Middle Last

ADDRESS 1115 SOUTH ELLIOT PLACE

1115 SOUTH ELLIOT PLACE
Residence Address

CITY/ST. SANTA ANA, CA ZIP 92704

SANTA ANA CA 92704
City State Zip Code

The citation issued to you was incorrect as indicated by the items checked below. This Notice of Correction does not affect the validity of the citation or the required court appearance.

- Date/Time issued should be _____
- Court appearance should be on _____
- Violation section(s) should be _____

Driver License Number State Age Birth Date

- Loc. of violation _____
- DOB/Age _____
- Vehicle/Veh. Lic. _____

Sex Hair Eyes Height Weight Race

Other FINE SHOULD BE \$150.00,
NOT \$75.00.
Appearance location should be:

739 W 19TH ST
Address Of Violation

HARBOR JUSTICE CENTER
4601 Jamboree Road, Newport Beach, California

COSTA MESA CA 92767
City State Zip Code

Other _____

20-4(b)
Violation CMMC Sec. Violation CMMC Sec.

Approved by [Signature]

Fine: \$ 75.00 Fine: \$ _____

Date Correction Notice 8/17/10

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

- VIOLATION OF CUP.

2644-30 File - White; Violator - Canary; Court - Pink

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X
VIOLATOR: Without admitting guilt, I acknowledge having received this citation.

F. GAMBORA 12 CODE ENFORCEMENT
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 5 day of OCTOBER 20 10, at 1:30 pm.

Check in at the City Clerk's office.

CIVIL CITATION
Costa Mesa Municipal Code Violation

B 7454

8-20-10 1600 FR B 7283
Date Time am pm Day of the Week Prior Citation

JESUS GARCIA
Name (First) Middle Last

1115 SOUTH ELLIOT PLACE
Residence Address

SANTA ANA CA 92704
City State Zip Code

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

739 W. 19TH ST.
Address Of Violation

COSTA MESA CA 92627
City State Zip Code

2nd (300.00) 20-4(b)
Violation CMMC Sec. Violation CMMC Sec.

Fine: \$ 300.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

VIOLATION OF CONDITIONAL USE
PER MM 2ND CITE

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X
VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

SANTER 30 CODE ENFORCEMENT
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 5th day of Oct 20 10, at 1:30 pm.

Check in at the City Clerk's office.

36

CIVIL CITATION

B 7456

Costa Mesa Municipal Code Violation

8-25-10 1200 WE B7283 B7454
Date Time am pm Day of the Week Prior Citation

JESUS GARCIA
Name (First) Middle Last

1115 SOUTH ELLIOT PLACE
Residence Address

SANTA ANA CA 92704
City State Zip Code

Driver License Number State Age Birth Date

Sex Hair Eyes Height Weight Race

739 W. 17TH ST
Address Of Violation

COSTA MESA CA 92627
City State Zip Code

20-4(b) CMMC
Violation CMMC Sec. Violation CMMC Sec.

Fine: \$ 500.00 Fine: \$

OFFICER'S OBSERVATIONS: On the date specified herein, the undersigned officer observed at the specified address, the following conditions:

VIOLATION OF CONDITIONAL
USE PERMIT - 3RD CITE

VIOLATION NOTICE BY:

- Personal Service
- Mail
- Property Posted
- Person Cited Refused To Sign Receipt For Citation
- Violation(s) not committed in my presence, certified on information and belief

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON DATE SHOWN ABOVE.

X
VIOLATOR: Without admitting guilt, I acknowledge having received the citation.

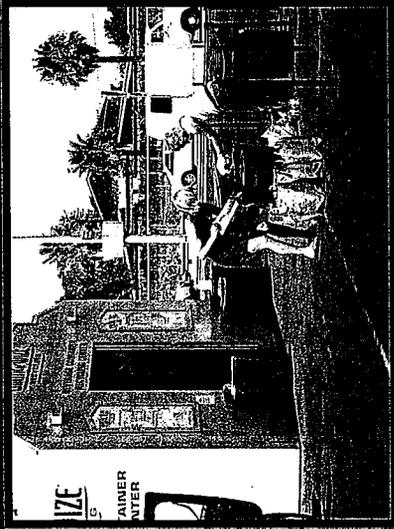
SANTEE 30
Issuing Officer ID Number Department

THE LAW REQUIRES THAT YOU COMPLY WITH THIS CITATION OR CONTEST THE VIOLATION. (1) TO COMPLY with this citation, correct the violation immediately, and pay the fine within 30 days (see reverse side). (2) TO CONTEST this citation, you must pay the fine, and request a hearing within 30 days (follow procedure on reverse side).

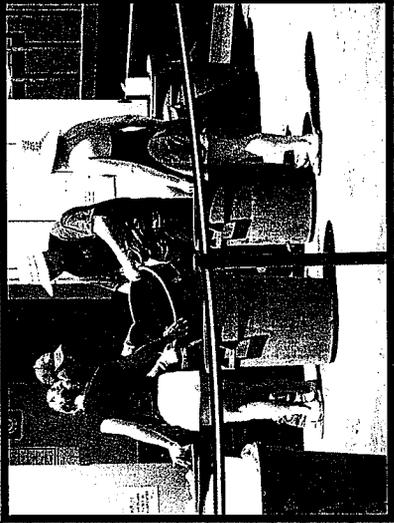
If you have followed the procedure to contest this citation, your Administrative Hearing will be held at the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, First Floor, on the 2nd day of NOV 20 10, at 1:30 pm.

Check in at the City Clerk's office.

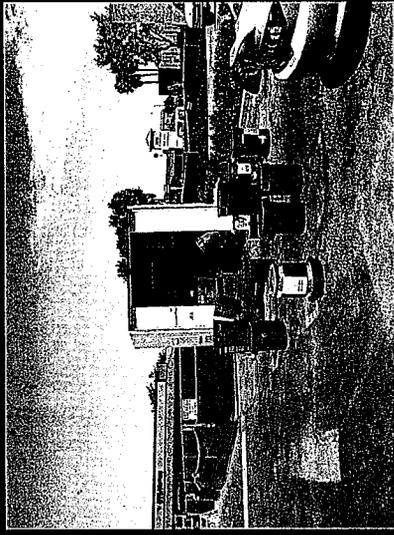
37



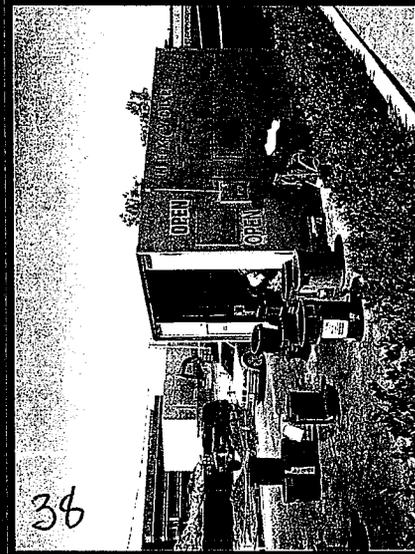
**EARTHWISE
(NEWPORT & 22ND)**



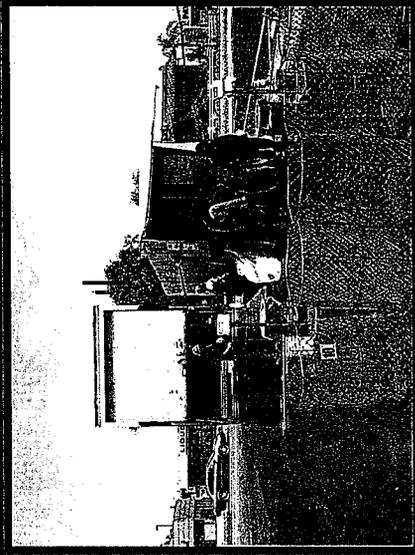
**EARTHWISE
(NEWPORT & 22ND)**



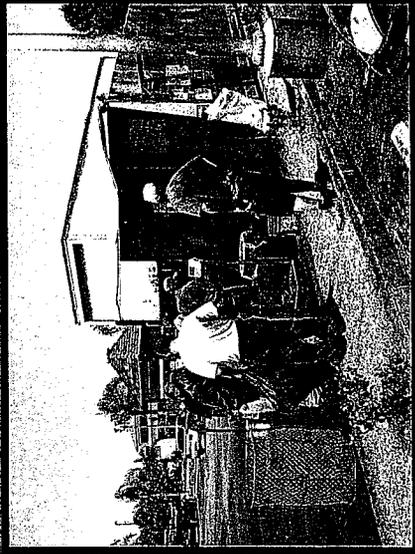
**VON'S
E. 17TH ST.**



**VON'S
E. 17TH ST.**

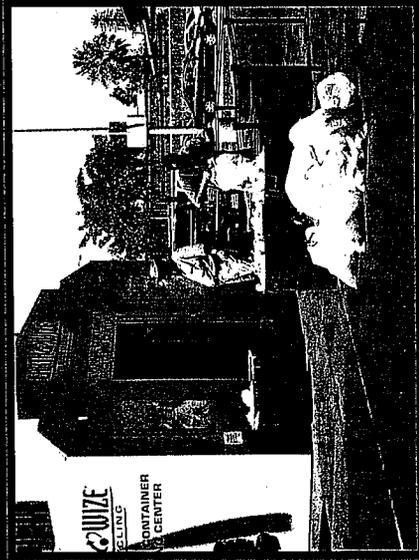


**GARCIA RECYCLING
E. 19TH ST.**

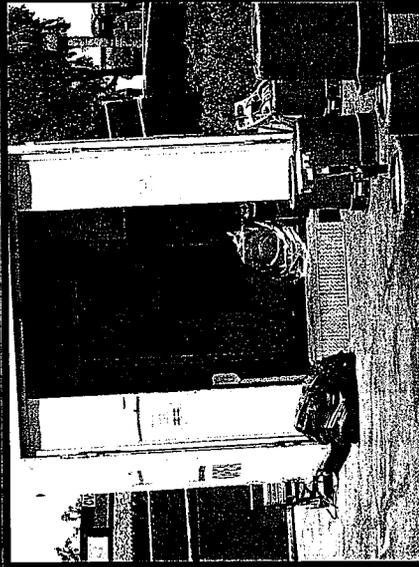


**GARCIA RECYCLING
E. 19TH ST.**

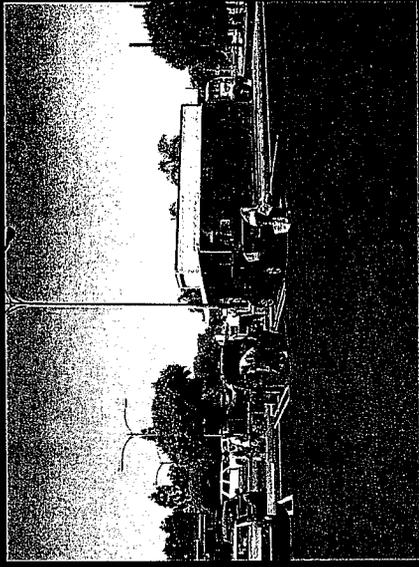
**RECYCLING CENTER PHOTOS
WEDNESDAY AUGUST 18, 2010 APPROX. 11:00 AM**



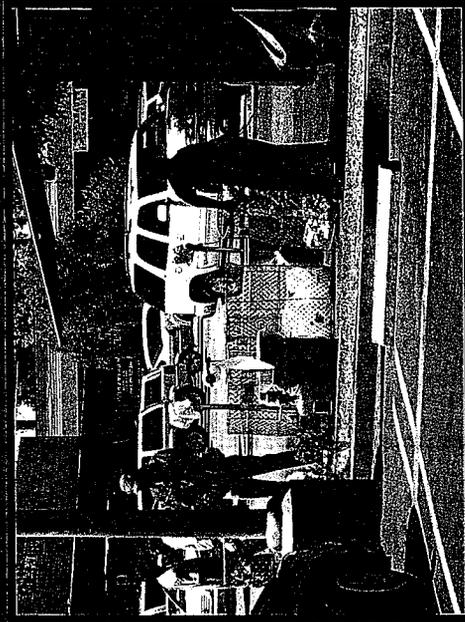
**EARTHWISE
(NEWPORT & 22ND)**



**VON'S
E. 17TH ST.**



**GARCIA RECYCLING
E. 19TH ST.**

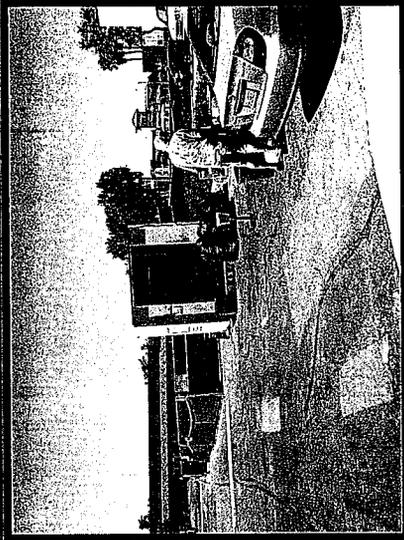


**GARCIA RECYCLING
E. 19TH ST.**

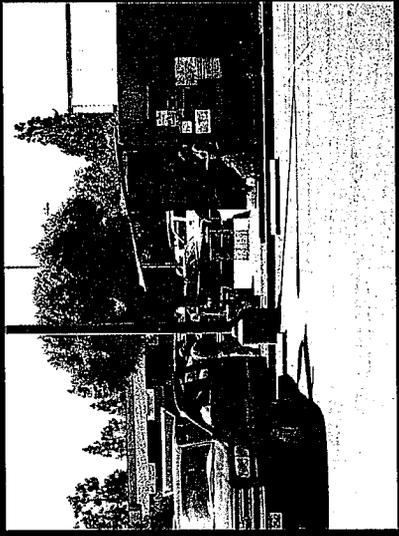
**RECYCLING CENTER PHOTOS
THURSDAY, AUGUST 19, 2010 APPROX. 11:00 AM**



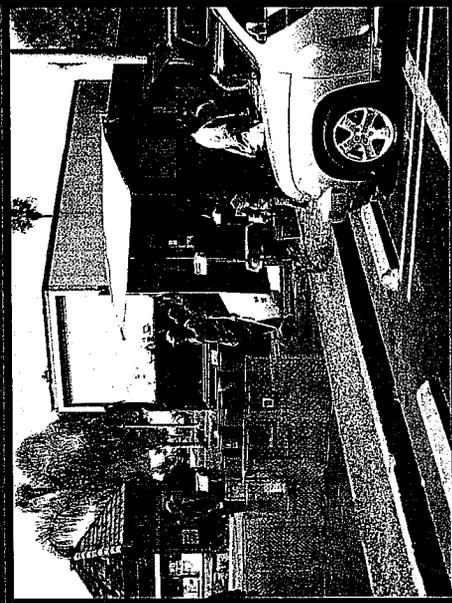
**EARTHWIZE
NEWPORT & 22ND**



**VON'S
E. 17TH ST.**



**GARCIA RECYCLING
E. 19TH ST.**

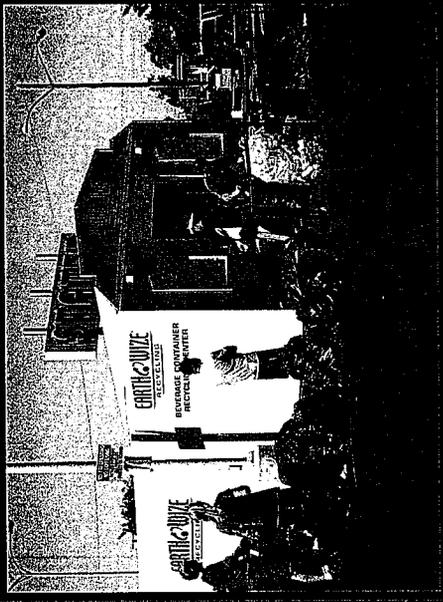


**GARCIA RECYCLING
E. 19TH ST.**

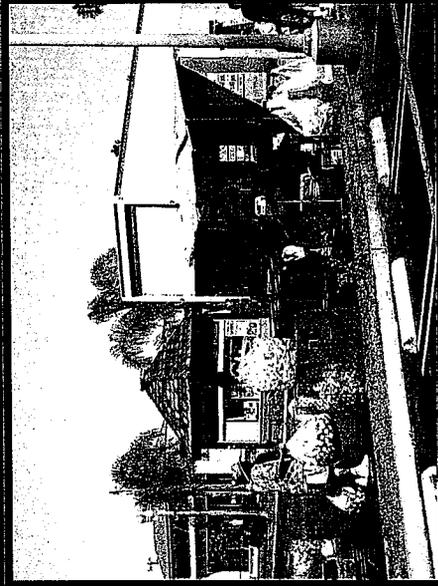
**RECYCLING CENTER PHOTOS
FRIDAY, AUGUST 20, 2010 APPROX. 11:00 AM**



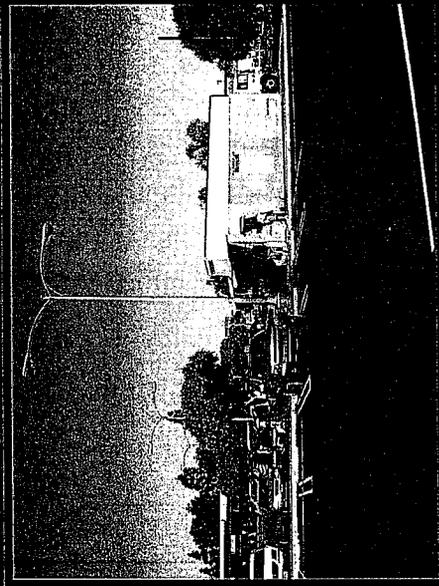
**EARTHWIZE
NEWPORT & 22ND**



**EARTHWIZE
NEWPORT & 22ND**

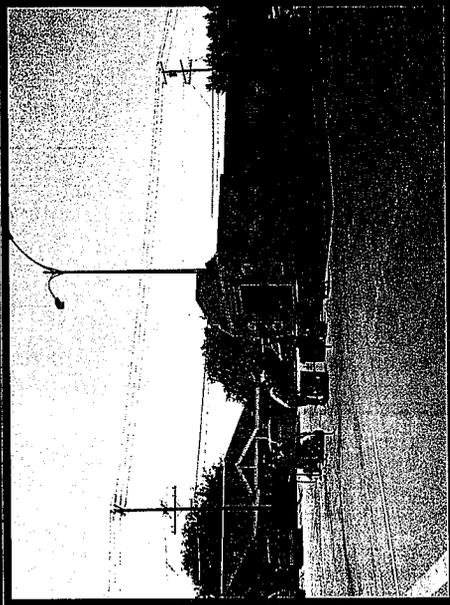


**GARCIA RECYCLING
E.19TH ST.**

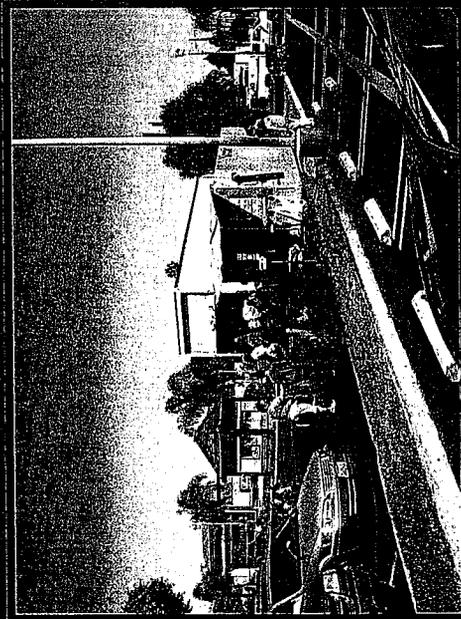


**GARCIA RECYCLING
E. 19TH ST.**

**RECYCLING CENTER PHOTOS
TUESDAY, AUGUST 24, 2010 APPROX. 11:00 AM**



**EARHTHWIZE
NEWPORT & 22ND**

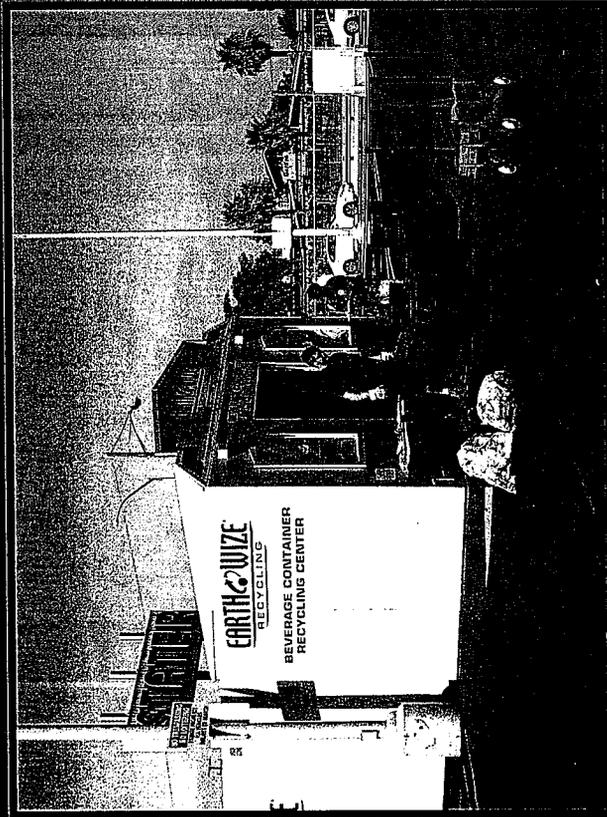


**GARCIA RECYCLING
E. 19TH ST.**

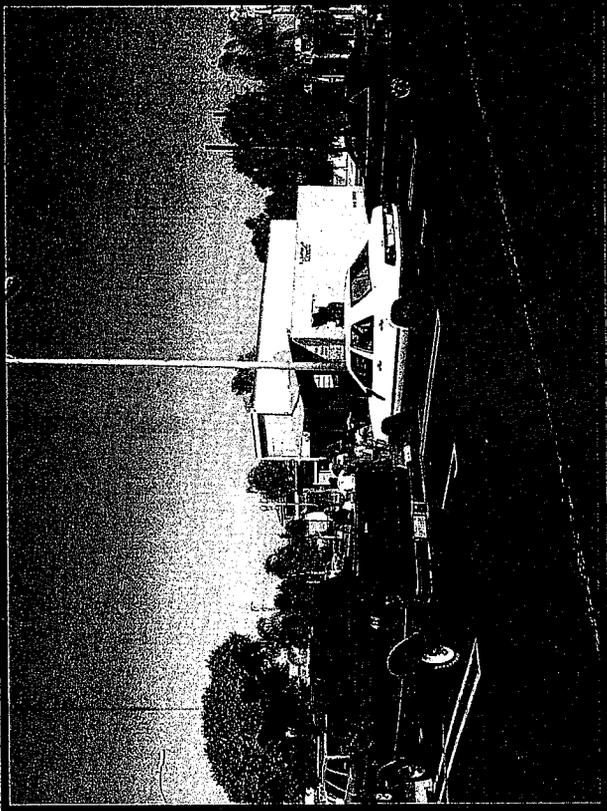


**GARCIA RECYCLING
E. 19TH ST.**

**RECYCLING CENTER PHOTOS
WEDNESDAY, AUGUST 25, 2010 APPROX. 11:00 AM**



**EARTH WIZE
NEWPORT & 22ND**



**GARCIA RECYCLING
E. 19TH ST.**

**RECYCLING CENTER PHOTOS
THURSDAY, AUGUST 26, 2010 APPROX. 9:30 AM**

**ATTACHMENT 4
APPEAL FORM**

CITY OF COSTA MESA
P. O. Box 1200
Costa Mesa, CA 92628-1200

RECEIVED
CITY CLERK

FEES: \$ 1220

2010 AUG 16 PM 3:07

APPLICATION FOR REVIEW, APPEAL OR REHEARING

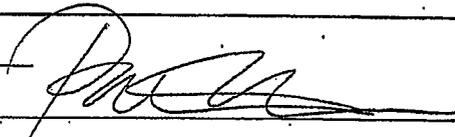
Applicant Name Garcia Recycling Center
Address 739 West 19th Street, Costa Mesa
Phone _____ Representing* _____

CITY OF COSTA MESA
BY _____

REQUEST FOR: REVIEW** APPEAL REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Revocation of Zoning Applications ZA-89-25 and ZA-92-10. Planning Commission hearing - August 9, 2010

Decision by: Planning Commission
Reasons for requesting review, appeal or rehearing: See attached

Date: 8/13/10 Signature: 

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
** Review may be requested only by City Council or City Council Member
Costa Mesa/Forms 1/Application for Review-Appeal-Rehearing

1 STEPHEN M. MILES (State Bar No. 185596)
PATRICIA J. CHEN (State Bar No. 197719)
2 MILES • CHEN LAW GROUP
A Professional Corporation
3 9911 Irvine Center Drive, Suite 150
Irvine, California 92618
4 Telephone: (949) 788-1425
Facsimile: (949) 788-1991
5
6 Attorney for Garcia Recycling Center

7
8 BEFORE THE CITY COUNCIL OF THE CITY OF COSTA MESA
9

10
11 In the matter of

12 Revocation of Zoning Applications
13 ZA-89-25 and ZA-92-10 by City of
Costa Mesa Planning Commission

14 **APPLICATION FOR APPEAL**

15 Date of decision: August 9, 2010

16
17 Pursuant to Section 2-303 of the Costa Mesa Municipal Code, Applicant Garcia Recycling
18 Center (“Garcia Recycling”) hereby appeals the decision of the City of Costa Mesa Planning
19 Commission to revoke Garcia’s minor conditional use permits.

20 **I. Procedural Background**

21 On or about June 9, 2010, Commissioner Mesinger called up for review to the Planning
22 Commission. Garcia Recycling’s minor conditional use permits to consider modification or
23 revocation of the permits for “an existing neighborhood recycling facility (Garcia Recycling)
24 located in the parking area of a retail shopping center.” See Planning Commission Agenda
25 Reports dated July 12, 2010 and July 28, 2010. The City’s Planning Staff did *not* raise the issue
26 of Garcia Recycling’s conditional use permits with the Planning Commission due to enforcement
27 problems. Garcia Recycling received notice of the hearing scheduled for July 12, 2010 on or
28 about July 1, 2010 and received the Planning Commission Agenda Report on or about July 6,

1 2010. Because of the short time frame and the gravity of the matter, Garcia Recycling requested
2 a continuance of the hearing which was granted by the Commission at the hearing on July 12,
3 2010. The hearing was continued to August 9, 2010, where the Planning Commission voted to
4 revoke Garcia Recycling's permit.

5 **II. Garcia Recycling Center**

6 Garcia Recycling has been in business for over 20 years and it operates four recycling
7 collection centers in the cities of Garden Grove, Santa Ana, and Costa Mesa. Garcia Recycling
8 owns and operates the recycling center located in the parking lot of a retail shopping center at 739
9 West 19th Street in Costa Mesa, which is the subject of this proceeding. The Planning
10 Commission's decision on August 9, 2010 to revoke Garcia Recycling's minor conditional use
11 permits directly impacts Garcia Recycling's ability to operate this facility.

12 **III. Reasons for Appeal**

13 **A. The Commissioner's Deprived Garcia Recycling of Due Process by Making**
14 **Factual Findings and Legal Conclusions Without Allowing Garcia Recycling**
15 **to Respond**

16 On or about July 28, 2010, Costa Mesa Planning Staff ("Staff") issued a Planning
17 Commission Agenda Report ("July 28th Report") which proposed the following findings in the
18 resolution revoking Garcia Recycling's conditional use permit:

19
20 *"Revocation of ZA-89-25 and ZA-92-10 was initiated because the operation of*
21 *the use was determined to be a public nuisance pursuant to Municipal Code*
22 *Section 13-29(o) (Enforcement Authority). Specifically, the use is not being*
23 *operated in a manner deemed to be compatible with surrounding properties and*
24 *uses, the use creates a negative visual impact due to excessive signage and lack of*
25 *property maintenance, a significant degree of City staff resources has been*
26 *devoted to the use as a result of complaints related to the use and continual*
27 *enforcement of noise and property maintenance issues, and issues related to noise,*
28 *odors, transients, property maintenance, etc. do not appear to be prevalent at other*
recycling facilities in the City as they are at this location. Modifications to ZA-
89-25 and ZA-92-10 are not sufficient to address the adverse impacts to
surrounding properties. Revocation will require cessation of the current use and a
similar use cannot be established in the future unless a new Zoning Application is
submitted and approved."

1 July 28th Report at 12 (emphasis added). As such, Garcia Recycling understood that the Planning
2 Commission was contemplating revoking its permit on the grounds that its operations may be
3 considered a nuisance by the City.

4 At the hearing on August 9, 2010, however, Garcia Recycling *received for the first time*
5 another draft resolution attached to a City of Costa Mesa Inter Office Memorandum dated August
6 4, 2010 (August 4th Resolution) indicating additional findings including “[t]he use is not being
7 operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10.” Because
8 Garcia Recycling was not aware that the Commission was considering revoking its permit on the
9 grounds that its operations violated a condition of approval, Garcia Recycling only presented
10 evidence refuting the nuisance claim.

11 Even if Garcia Recycling had the opportunity to respond to the argument that it was in
12 violation of certain conditions of approval, it would not have been able to intelligibly respond
13 since *at no time, either prior to or during the hearing, did the Commission ever identify which*
14 *condition(s) of approval Garcia Recycling violated.* Indeed, during the hearing, after admitting
15 that there were insufficient facts to find a nuisance, the Commission took a deliberate recess after
16 which Commissioner Righeimer put up a picture of Garcia Recycling (which may have been
17 taken in the Fall of last year) and pronounced that the picture demonstrated that Garcia Recycling
18 encroached on the neighboring property and therefore was in violation of its permit.¹ On this
19 flimsy ground, the Commission voted to revoke the conditional use permit.

20 Garcia Recycling should have been afforded the opportunity to respond to this new theory
21 of revocation which was developed by the Commissioners on the fly – after the close of public
22 comment. Failing to allow Garcia Recycling to meaningfully respond to whether it had violated
23 any condition of approval of its permits resulted in a breach of due process.

24
25
26
27 ¹ We are in the process of obtaining the DVD and transcript of the hearing. Once we receive these items, we will
28 submit a memorandum of points and authorities in support of this appeal along with all supporting documentation.
Garcia Recycling reserves to right to raise any and all issues related to the hearings and zoning applications at issue.

1 **B. The Commissioners Failed to Meet the Standards Set Forth by the Costa**
2 **Mesa Municipal Code and State Law in Revoking Garcia Recycling's**
3 **Conditional Use Permit**

4 The seminal decision on revocation and modification of use permits ironically
5 involved the City of Costa Mesa - *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal.App.4th
6 1519 (1992). This decision involved complaints from residents abutting the parking lot of

7 the bar about noise, trash, and drunken behavior during late hours of operation. *Id.* at
8 1524. The Court of Appeal held that a use permit, once issued, becomes a fundamental
9 vested right that cannot be impaired absent a showing of either a failure by the permittee
10 to comply with the reasonable conditions of the permit or a compelling public necessity.
11 (*Id.* at 1530.)

12 “Once a use permit has been properly issued the power of a municipality to
13 revoke it is limited. Of course, if the permittee does nothing beyond
14 obtaining the permit it may be revoked. Where a permit has been properly
15 obtained and in reliance thereon the permittee has incurred material
16 expense, he acquires a vested property right to the protection of which he is
17 entitled.”

18 *Id.* Furthermore,

19 “When a permittee has acquired such a vested right it may be revoked if
20 the permittee fails to comply with reasonable terms or conditions expressed
21 in the permit granted [citations] or if there is a compelling public necessity.
22 [Citations.] [P] A compelling public necessity warranting the revocation of
23 a use permit for a lawful business may exist were the conduct of that
24 business constitutes a nuisance.”

25 *Id.* (quoting *O'Hagen v. Bd. Of Zoning Adjustment*, 19 Cal.App.3d 151, 158
26 (1971)).

27 According to the Costa Mesa Municipal Code (“CMMC”):

28 “the planning commission may require the modification or revocation of
any planning application and/or pursue other legal remedies as may be
deemed appropriate by the city attorney, if the planning commission finds
that the use as operated or maintained:

- a. Constitutes a public nuisance as defined in State Civil Code Sections 3479 and 3480; or
- b. Does not comply with the conditions of approval.”

CMMC § 13-29(o)(1). California Civil Code Section 3479 states:

“Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the

1 senses, or an obstruction to the free use of property, so as to interfere with
2 the comfortable enjoyment of life or property, or unlawfully obstructs the
3 free passage or use, in the customary manner, of any navigable lake, or
river, bay, stream, canal, or basin, or any public park, square, street, or
highway, is a nuisance.”

4 Civil Code Section 3480 states:

5 “A public nuisance is one which affects at the same time an entire
6 community or neighborhood, or any considerable number of persons,
although the extent of the annoyance or damage inflicted upon individuals
may be unequal.”

7 In the present case, the conditional use permit is a fundamental vested right held by
8 Garcia Recycling. There is no dispute that the permit was properly issued by the City and Garcia
9 Recycling has relied on this permit for its 20 years of operation. As such, the power of the City
10 to revoke this permit is limited. *See Goat Hill Tavern*, 6 Cal.App.4th at 1530. As the Deputy
11 City Attorney acknowledged during the August 9th hearing, the standard for revoking an existing
12 permit is much higher than that of denying a conditional use permit application. Nevertheless,
13 the Commission completely ignored this heightened standard by making false findings of fact on
14 the fly in order to justify its predetermined decision, i.e., revocation of Garcia Recycling’s
15 conditional use permits.

16 The transcripts of both the July 12th and August 9th hearings will clearly reflect a few of
17 the Commissioner’s feelings towards Garcia Recycling and how they simply don’t like the
18 “look” of the facility, or how they are “embarrassed” by the appearance of the facility. *Notably,*
19 *they never articulate what it is about the facility that is so offensive.* Perhaps it is because
20 Garcia Recycling and the shopping center cater to the Latino community and they simply do not
21 like the “look” of these hardworking individuals who collect beverage containers to supplement
22 their income.

23 1. The Commissioners Failed to Identify Which Condition of Approval the
24 Garcia Recycling Violated

25 During the hearing, after the close of public comment, the Commissioners amended the
26 August 4th Resolution by adding the following finding which Commissioner Rigueimer
27 developed after a recess:
28

1 "The use is not being operated in compliance with the conditions of approval for
2 ZA-89-25 and ZA-92-10 in that the original approval was for a neighborhood
3 recycling facility approved to operate within the parking area for the 839 W. 19th
4 Street property. Based on the evidence submitted into the record, the original
5 operation has expanded to the scale and intensity of a regional recycling facility,
6 processing approximately 4.2 million pounds of recyclable materials annually.
This expansion has resulted in a scale and intensity of use beyond the boundaries
of the subject property, requiring the use of the parking area for the adjacent 709
W. 19th Street property for the unloading of recyclable materials by customers."

7 ~~Resolution PC-10-25 adopted on August 9, 2010 ("Final Resolution").~~

8 First of all, this finding fails to set forth which specific conditions of approval are being
9 violated by Garcia Recycling. Furthermore, the finding is completely flawed as follows:

- 10 • There is no reference to a "neighborhood recycling facility" in either permits (nor
11 is it clear what a "regional recycling facility" is);
- 12 • There is no evidence in the record of what the volume of recyclable materials
13 processed in 1992 after Permit ZA-92-10 "for the relocation and *expansion* of an
14 existing recycling center" was issued by the City. Thus, how could the
15 Commission conclude that there was in fact an expansion of the scale and
16 intensity of the property?;
- 17 • To conclude that use of the adjacent parking lot means the "expansion has resulted
18 in a scale and intensity of use beyond the boundaries," is wholly unsupported by
19 the record. Garcia Recycling clearly stated that Smart & Final customers also use
20 its adjacent parking lot – the issue is one of convenience. Applying the same
21 logic, Smart & Final would be in violation of conditional use permit as well.

22 Therefore, the Commission erred in finding that Garcia Recycling violated its conditions
23 of approval and the City Council should overturn its decision.

24 2. The Commissioners Failed to Establish Any Nuisance

25 As acknowledged by a few of the commissioners, the record does not support a nuisance
26 determination. There is no record of code violations, police records, or anything remotely
27 supportive of a nuisance.

28 First of all, the City's findings on their face do not meet the definition of a nuisance as set

1 forth in Civil Code Section 3479 and 3480. Garcia's Recycling's operations are not injurious to
2 health, it is not an obstruction to the free use of property, nor does it affect an entire community
3 or neighborhood. The purported negative visual impact is based on "excessive signage and lack
4 of property maintenance" which hardly arises to the level of being "indecent or offensive to the
5 senses," particularly where a vested interest is at stake.

6 Aside from the letter petition signed by approximately 35 people citing that the facility's
7 presence "[b]ring (sic) in transients; drunkard asleep all around, urinating, trash . . . odors, unkept
8 (sic) areas, unnecessary noise," there is little in the record to support the City's findings. As far as
9 we can tell, there are only two documented complaints in the last year or so, both citing excessive
10 noise. The City of Costa Mesa, Development Services Department investigated one of the
11 complaints and visited Garcia Recycling seven times and noted "NO VIOLATION OBSERVED"
12 each time and closed the case on July 17, 2009. Contrast the significant evidence of complaints
13 that was presented by the City in *Goat Hill Tavern*, where the court still found that the City's
14 decision to deny renewal of applicant's permit was not supported by the evidence. *See Goat Hill
15 Tavern*, 6 CalApp.4th at 1525.

16 As to the transients cited by the City, the City has made no showing to distinguish
17 complaints about Garcia Recycling from other possible causes such as the liquor store and soup
18 kitchen across the street from the shopping center. *See Goat Hill Tavern*, 6 Cal.App.4th at 1531.
19 Thus, pursuant to *Goat Hill Tavern*, the City simply has failed to meet its burden to show how
20 revocation is justified.

21 3. The Commissioners Failed to Address the Plethora of Evidence Supplied
22 by Garcia Recycling Refuting Any Potential Nuisance Finding

23 In contrast to the City's anemic evidence of nuisance, Garcia Recycling submitted the
24 following evidence:

- 25 • recent pictures of the facility showing that the signage is small and unoffensive
- 26 and the entire operation is barely visible from the street.
- 27 • Pictures of the soup kitchen across the street which serves the homeless
- 28 • Letter from the businesses most directly impacted by Garcia Recycling's

1 operations, the business owners in the shopping center, who opined that they do
2 not find Garcia Recycling's operation to be offensive.

3 • Letter from Victor Bonilla, part owner of the shopping center and property
4 manager, indicating that he has not received any complaints about Garcia
5 Recycling.

6 • Public outreach to community members to ascertain the basis of the purported
7 complaints against Garcia Recycling

8 • Public outreach to those individuals who signed the complaint petition to which
9 Garcia Recycling received no response.

10 • Petition with over 500 signatures in support of Garcia Recycling by the
11 community members who frequent the shopping center and Garcia Recycling.

12 The Commission completely failed to address this evidence in making its nuisance
13 determination.

14 C. The Commission Failed to Comply with the California Environmental
15 Quality Act in Revoking Garcia Recycling's Conditional Use Permit Without
16 Environmental Review

17 The California Environmental Quality Act ("CEQA") defines a "project" as "an activity
18 which may cause either a direct physical change in the environment, or a reasonably foreseeable
19 indirect physical change in the environment." Pub. Res. Code § 21065. The CEQA Guidelines
20 further define a "project" as "the whole of an action, which has a potential for resulting in either a
21 direct physical change in the environment, or a reasonably foreseeable indirect physical change in
22 the environment" CEQA Guidelines § 15378(a). The revocation of Garcia Recycling's
23 permit would constitute a "project" under CEQA because it has a potential for resulting in a
24 physical change in the environment in that the recycling of beverage containers may be severely
25 reduced thereby resulting in additional tonnage of trash in landfills (which would result in
26 additional vehicle trips for garbage trucks and more greenhouse gas emissions) and an increase in
27 trash on the streets.

28 It is undisputed that Garcia Recycling handles more than double the amount of recyclable

1 beverage containers than any other recycling operation in Costa Mesa. While the City may
2 speculate that the recyclers would simply take their materials to other recyclers, based on the
3 comments we received at the neighborhood meeting, this would not be the case. Many of Garcia
4 Recycling's customers walk to the facility (as evidenced by the pictures we previously submitted)
5 and would not be able to walk to the other recyclers. Moreover, Garcia Recycling is the only
6 facility that is open on Mondays when the volume of material is the heaviest. Garcia Recycling is

7 the largest and most efficient operation (as we learned from our neighborhood meeting, people
8 come to Garcia instead of other facilities because of its efficiency). The other recyclers simply
9 cannot handle the volume of materials that Garcia Recycling handles and as such, it is inevitable
10 that the total volume of beverage containers recycled in the City would decrease and result in an
11 environmental impact. This impact must be analyzed under CEQA.

12 Although the Commission may argue that the revocation of the permit is exempt under the
13 categorical exemption set forth in CEQA Guidelines Section 15321, an exception to the
14 categorical exemption would apply here, i.e., there is a reasonable possibility of significant effect
15 due to unusual circumstances. See CEQA Guidelines Section 15300.2(c). "Unusual
16 circumstance" within the meaning of the exception is whether "the circumstances of a particular
17 project (i) differ from the general circumstances of projects covered by a particular categorical
18 exemption, and (ii) those circumstances create an environmental risk that does not exist for the
19 general class of exempt projects." *Azusa Land Reclamation Co. v. Main San Gabriel Basin*
20 *Watermaster*, 52 Cal.App.4th 1165, 1207 (1997); see also *Communities for a Better Environment*
21 *v. California Resources Agency*, 103 Cal.App.4th 98, 129 (2002).

22 This is not a typical case where the Commission is revoking the conditional use permit of
23 a bar or restaurant which would not result in significant impacts to the environment. The
24 Commission is considering revoking the permit of a recycling facility that is mandated by state
25 law and which diverts a significant amount of trash from the landfills. This creates an
26 environmental risk that does not exist for the general class of projects under this exemption.
27 Indeed, the California Beverage Container Recycling and Litter Reduction Act aka "The Bottle
28 Bill" (AB 2020) explicitly allows the Department to penalize cities that "prohibit[] the siting of a

1 supermarket site” or “cause[] a supermarket site to close its business.” Pub. Res. Code §
2 14581(a)(5)(F) (emphasis added). We cannot conceive of any other type of use where a city may
3 be subject to a penalty where a conditional use permit is revoked. Clearly, in passing the Bottle
4 Bill, the Legislature felt that cities should subrogate their land use interest for the benefit of
5 recycling:
6

7 “It is the intent of the Legislature to make redemption and recycling convenient to
8 consumers, and the Legislature hereby urges cities and counties, when exercising
9 their zoning authority, to act favorably on the siting of multimaterial recycling
10 centers, reverse vending machines, mobile recycling units, or other types of
11 recycling opportunities, as necessary for consumer convenience, and the overall
12 success of litter abatement and beverage container recycling in the state.”

13 Pub. Res. Code § 14501(e).

14 As discussed above, because Garcia Recycling handles such a high volume of recycled
15 beverage containers, there is certainly a reasonable possibility that closure of the facility would
16 result in a significant effect on the environment. Thus, the exception to the categorical exemption
17 would apply.

18 **D. The Commissioners Violated the Brown Act by Deliberating Outside of the**
19 **Public Meeting**

20 Meetings of public bodies must be "open and public," actions may not be secret, and
21 action taken in violation of open meetings laws may be voided. Govt. Code §§ 54953(a),
22 54953(c), 54960.1(d). During the August 9th hearing, the Commissioners appeared to reach an
23 impasse regarding a finding of nuisance and they could not decide whether they wanted to modify
24 the permits, how they would modify it, or whether to revoke it. Commissioner Righeimer called
25 for a recess and the Commissioners left the councils chambers and appeared to deliberate outside
26 of the presence of the public. This is evidenced by the fact that when Commissioner Righeimer
27 called the meeting back to order he had proposed language for the finding that Garcia Recycling
28 violated its conditions of approval which the other commissioners immediately accepted without
even examining the language. It seems that they drafted the language together out of the purview
of the public in violation of the Brown Act. Thus, the Commission’s decision to revoke Garcia

1 Recycling's permit must be deemed null and void.

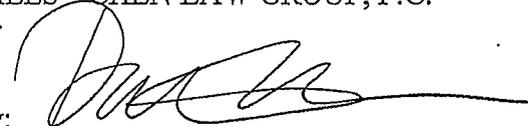
2 **IV. CONCLUSION**

3 For the foregoing reasons, we request that the City Council overturn the Planning
4 Commission's decision to revoke Garcia Recycling's conditional use permits.

5
6 Date: August 13, 2010

Respectfully submitted,

7 ~~MILES • CHEN LAW GROUP, P.C.~~

8
9 By: 
10 Patricia J. Chen

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
MILES • CHEN LAW GROUP
A PROFESSIONAL CORPORATION

**ATTACHMENT 5
PLANNING COMMISSION REPORTS
AND RESOLUTION**



PLANNING COMMISSION AGENDA REPORT

VI.4

MEETING DATE: JULY 12, 2010

ITEM NUMBER:

**SUBJECT: REVIEW OF ZONING APPLICATIONS ZA-89-25 AND ZA-92-10
MINOR CONDITIONAL USE PERMITS FOR GARCIA RECYCLING CENTER
739 WEST 19TH STREET**

DATE: JULY 1, 2010

**FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER
(714) 754-5611 (mlee@ci.costa-mesa.ca.us)**

PROJECT DESCRIPTION

Zoning Applications ZA-89-25 and ZA-92-10 were called up for review to the Planning Commission by Commissioner Mensinger on June 9, 2010. This review will consider modification or revocation of the minor conditional use permits for an existing neighborhood recycling facility (Garcia Recycling) located in the parking area of a retail shopping center.

APPLICANT

The original applicant is Jesus Garcia, owner of Garcia Recycling Center. The property owner is Russell Pange Trust.

RECOMMENDATIONS

1. Revoke Zoning Application ZA-89-25 and Modify ZA-92-10; or
2. Revoke both Zoning Applications ZA-89-25 and ZA-92-10.

MEL LEE, AICP
Senior Planner

KHANH NGUYEN
Asst. Development Services Director

BACKGROUND***Project Site/Environs***

The property is located on the south side of West 19th Street between Wallace Avenue and Pomona Avenue, and contains a multi-tenant retail shopping center which includes El Toro Bravo Market, Lion's Den nightclub, and several food and retail tenants. The property is surrounded by the following:

- To the west, Wallace Avenue;
- To the east, a Smart and Final store;
- To the south, residential properties;
- To the north, several commercial properties, including a pawn shop and liquor store, across West 19th Street.

The property is zoned C1 and has a General Plan designation of General Commercial. The property is also located within the 19 West Urban Plan.

Previous Zoning Applications for the Existing Recycling Center

ZA-89-25: The applicant submitted the original minor conditional use permit for the recycling center for aluminum cans, plastic and glass bottles, in exchange for money. The use was approved by the Zoning Administrator on November 6, 1989. The approval consisted of a single truck occupying a parking space along the West 19th Street frontage (see Attachment 2). The approved hours of operation were 10:30 a.m. to 5:00 p.m. Monday through Saturday (closed Sundays). On December 3, 1991, the applicant was advised by staff that the use was not operating in compliance with ZA-89-25 for the following reasons:

- More than one truck was being used for the collection of recycling materials;
- The operation had been moved from the front of the property to the rear of the property, which generated noise complaints from the abutting residential properties.

In response to these issues, the applicant submitted an application to revise the MCUP for the use, which was processed as ZA-92-10.

ZA-92-10: The applicant submitted a request to modify ZA-89-25 to allow a maximum of two portable recycling containers, located within the front parking area, in three parking spaces along the side of the property adjacent to Smart and Final's parking lot. This was approved by the Zoning Administrator on December 1, 1992. The approved hours of operation are 9:00 a.m. to 5:00 p.m. Monday through Saturday, and 9:00 a.m. to 4:00 p.m. Sundays (see Attachment 3).

ANALYSIS***Code Provisions***

Municipal Code Section 13-29(o) (Enforcement Authority) allows the Commission to modify or revoke a Planning or Zoning Application if the following conditions are found to apply:

1. The use constitutes a public nuisance; or
2. The use does not comply with the conditions of approval.

Use Issues

Past concerns related to the operation of this use is summarized in the discussion below.

- *The use is not being operated in a manner deemed to be compatible with surrounding properties and uses.* Since the approval of the use, concerns resulting from noise related to the pouring of recycled materials into containers at the facility, odors related to the used beverage containers, loitering of vagrants and homeless, and customers parking on adjacent properties to use the recycling facility have been raised (see Attachment 4).
- *The use creates a negative visual impact due to excessive signage and lack of property maintenance.* The containers at this location generally have an unsightly, "battered" appearance; the landscape planters surrounding the use have not been adequately maintained due to high use of the facility by customers; and the high demand for recyclables at this location requires the staging of a truck, in lieu of the second container (see pictures in Attachment 5).
- *A significant degree of City staff resources has been devoted to the use as a result of complaints related to the use and continual enforcement of noise and property maintenance issues.* A timeline of City staff efforts to correct the issues at the site from July 2009 to the present is summarized in the table below:



Date	Discussion	Progress
July 30, 2009	Joint staff visit from Planning and Code Enforcement staff.	No visible progress.
August 3, 2009	City issued letter stating recycling center is violating CUP and requested: <ol style="list-style-type: none"> 1. Remove the truck staged at the property 2. Install new signs 3. Remove cashier from required landscape area and repair damaged landscaping. 4. Ensure all staging and materials are contained inside the containers. 	No visible progress.
August 21, 2009	Received letter from recycling centers attorney requesting a meeting.	Meeting arranged.
September 3, 2009	Meeting held with applicant and City staff.	Applicant to follow up with staff.
September 14, 2009	Spoke with applicant's representative over phone.	Provided photos of sign examples and painted containers over email. Signs ok, provide onsite.
November 24, 2009	Meeting with applicant.	Containers painted and cleaned up signage.
March 18, 2010	City issued letter stating issues related to installation of a new cashier's unit, noise and landscape repairs that still need to be addressed. Applicant advised case will be forwarded to Code Enforcement if no further progress made.	No visible progress.
March 22, 2010	Call from applicant.	Different alternatives discussed.
April 1 & 5, 2010	Call from applicant.	Removed cashiers unit and removed illegal paving; however, replaced with artificial lawn. Not permitted.
April 7, 2010	Meeting with applicant and City staff.	Discussed possible different locations on property for recycling center.
April 12, 2010	Meeting with applicant and City staff.	Desired location (abutting 19 th St), not acceptable (was original location under ZA-89-25).
April 29, 2010	Meeting with applicant and City staff.	Restored live landscaping. Supposed to test different locations on property for functionality.
May 26, 2010	Call from applicant.	Wished to remain in current location and replace staged truck with 2 nd container and change out throughout day.
June 9, 2010	Planning Commissioner Mensinger called item up for review.	Scheduled for July 12, 2010 Planning Commission meeting.

Date	Discussion	Progress
June 15, 2010	Meeting with applicant.	Progress to date: <ol style="list-style-type: none"> 1. Removed cashiers unit. 2. Installed landscaping. 3. Painted units and cleaned up signage. 4. 2nd container replaced staged truck (however only for week or two. Truck currently remains). Remaining Violations: <ol style="list-style-type: none"> 1. Business being conducted outside containers. 2. Truck still staging at site.

- Issues related to noise, odors, transients, property maintenance, etc. do not appear to be prevalent at other recycling facilities in the City as they are at this location. According to City records, the City has had no complaints related to noise, odors, transients, property maintenance, etc. related to the operation of the recycling facilities at the Stater Brothers property (2180 Newport Blvd.) or at Vons Market (185 East 17th Street).

A map showing the locations of the existing recycling facilities in the City is attached to this report (Attachment 6).

Modification of Zoning Application ZA-92-10

Zoning Application ZA-92-10 is a minor conditional use permit to expand/relocate the originally-approved recycling center use under ZA-89-25.

If the Commission wishes to retain the recycling business at this location, it is necessary to revoke ZA-89-25 which established the original recycling center, and modify ZA-92-10 as follows:

- Modify the description of ZA-92-10 to indicate that the discretionary permit is independent (or not associated) with any prior approval for a recycling center at this location, including ZA-89-25 which established the original recycling center.
- Add the following conditions of approval for ZA-92-10 as recommended by staff to address the concerns related to the use at this location:
 - The minor conditional use permit for the recycling facility is a discretionary permit that is not associated to any previous approvals. The approved hours of operation are 9:00 a.m. to 5:00 p.m. Monday through Saturday, and 9:00 a.m. to 4:00 p.m. Sundays.
 - The use shall be limited to the type of operation described in this staff report. i.e., a recycling center for aluminum cans, plastic and glass bottles in a maximum of two containers. Any change in the operational

- characteristics including, but not limited to, hours of operation or number of containers, shall require approval of an amendment to the minor conditional use permit, subject to Zoning Administrator approval.
- The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
 - The applicant shall patrol the area over which the applicant has control in an effort to prevent the loitering of persons about the premises. The frequency of patrols shall be increased should the need arise. The applicant shall make reasonable efforts to prevent loitering during hours the business is open.
 - Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering.
 - The applicant shall maintain free of litter all areas of the premises under which applicant has control.
 - The applicant shall construct a decorative wrought iron fence a minimum of six feet in height along the easterly property line (between the subject property and Smart and Final) to prevent recycling customers from parking in the adjacent lot, subject to the City's provisions for walls, fences, and hedges.
 - The applicant shall upgrade the existing on-site landscaping to provide thorn bearing hedges or similar plant treatments to prevent damage to the landscaped areas by customers.
 - The recycling containers shall be properly maintained and shall be replaced if damaged or dirty.
 - The above conditions of approval are required to be complied with no later than 30 days from the date of approval. The applicant shall contact the Planning Division to arrange a Planning inspection of the site to confirm that the conditions of approval and code requirements have been satisfied.
 - All business activity shall be conducted inside the containers including, but not limited to, washing and weighing items received for recycling.

Note that these would be in addition to the existing conditions of approval for ZA-92-10.

Revocation of ZA-89-25 and ZA-92-10

Because a Zoning Application continues to be in effect regardless if the use was modified or amended afterwards (i.e., "runs with the land") a similar use could be established on the property without any updated conditions of approval to minimize impacts to surrounding properties.

Commission may also determine that modifications to ZA-92-10 may not be sufficient to address the impacts to surrounding properties as a result of this use and determine the current use to be a public nuisance, thereby revoking the minor conditional use

permit. Revocation will require cessation of the current use and a similar use cannot be established in the future unless a new Zoning Application is submitted and approved.

In order to discontinue all recycling center activity at this location, it is necessary to revoke both minor conditional use permits. Zoning Application ZA-89-25 was a MCUP to originally establish the recycling center use at this location, and Zoning Application ZA-92-10 represents a MCUP to expand the previously-approved use.

ENVIRONMENTAL DETERMINATION

If modified, the use would be exempt from the provisions of the California Environmental Quality Act under Section 15301 for Existing Facilities. If the use is revoked, it would be exempt from the provisions of the California Environmental Quality Act (CEQA) Section 15321 for Enforcement Actions by Regulatory Agencies.

GENERAL PLAN CONFORMITY

As indicated earlier, based on the current nature of the use and impacts to surrounding properties, the use is not consistent with the City's General Plan, specifically, Objective LU-1F, which encourages minimizing blighting influences and maintaining the integrity of stable neighborhoods, unless the Zoning Applications are modified or revoked as appropriate.

ALTERNATIVES

The Commission has the following alternatives:

1. Revoke ZA-89-25 and Modify ZA-92-10 by incorporating the additional recommended conditions of approval, required to be complied with by the applicant no later than 30 days from the date of approval; or
2. Revoke both ZA-89-25 and ZA-92-10. Revocation will require that, if a similar use is proposed in the future, a new Zoning Application be submitted and approved.
3. Receive and file. This involves no action to either modify or revoke ZA-89-25 and ZA-92-10. The minor conditional use permits will remain in place with no changes, and this review is filed.

CONCLUSION

Staff recommends that the Commission takes action, as appropriate, to either modify or revoke Zoning Applications ZA-89-25 and ZA-92-10.

- Attachments:
1. ~~Draft Planning Commission Resolutions~~
 2. ~~Zoning Application ZA 89-25~~
 3. ~~Zoning Application ZA 92-10~~
 4. ~~Correspondence From October 1992 to the Present~~
 5. Location Map and Photos
 6. Table and Map of Existing Recycling Facilities in Costa Mesa



cc: Development Services Director
Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

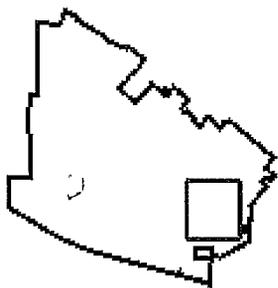
Garcia Recycling Centers & Metals Inc.
Attn: Jesus Garcia
1115 S. Elliot Place
Santa Ana, CA 92704

Russell Pange Trust
1835 Newport Boulevard, #A109
Costa Mesa, CA 92627

Miles+Chen Law Group
Attn: Patricia J. Chen
9911 Irvine Center Drive, Suite 150
Irvine, CA 92618

File: 071210ZA9210Review	Date: 070110	Time: 10:00 a.m.
--------------------------	--------------	------------------

Overview Map

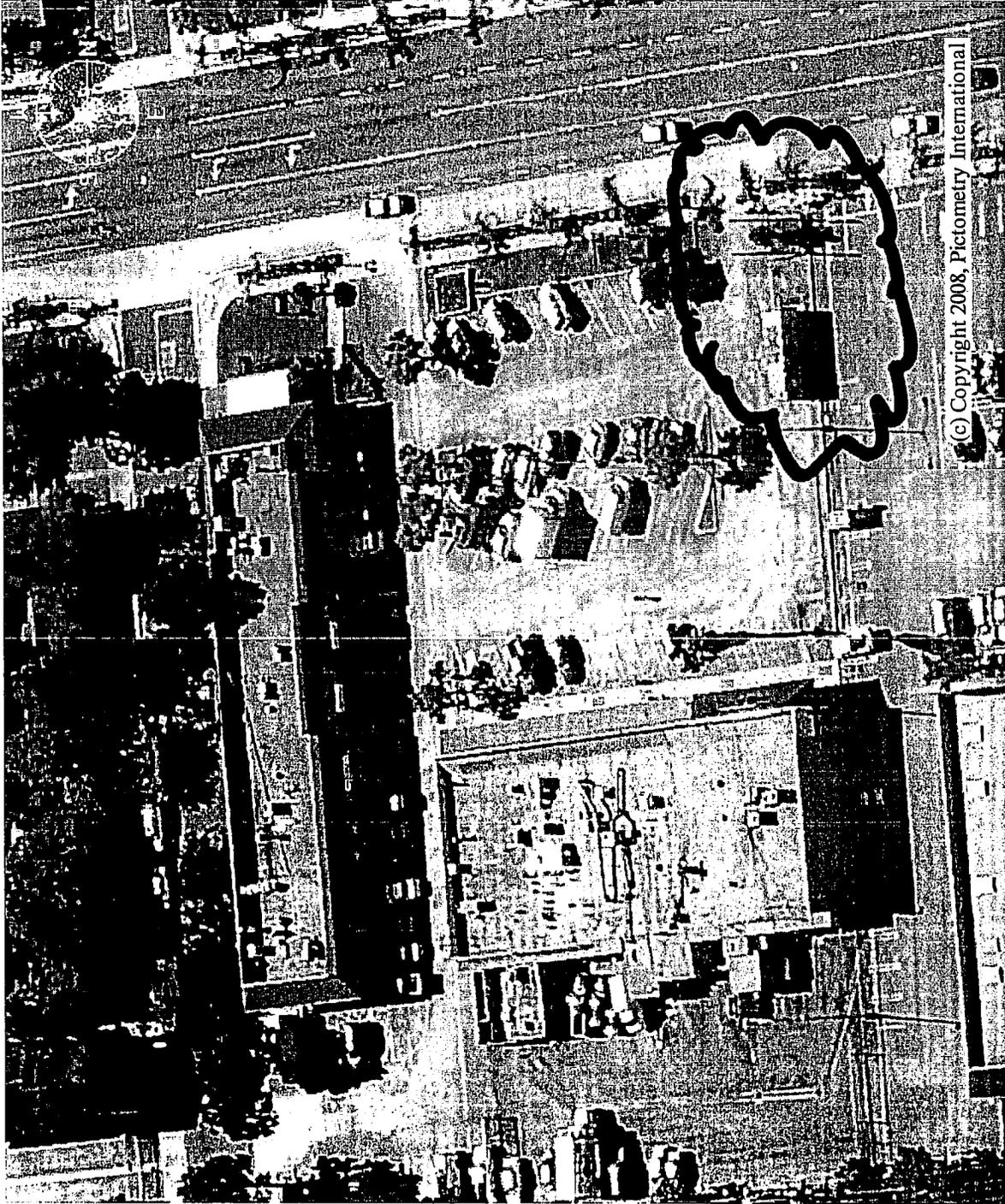


Map Display



Legend

- Hydrology Channel-5
- Street Names
- Parcel Lines
- City Boundary
- Water Ways
- Ortho Level 2008
- Ortho Level 2006
- Parcels
- ROW Polygon-5

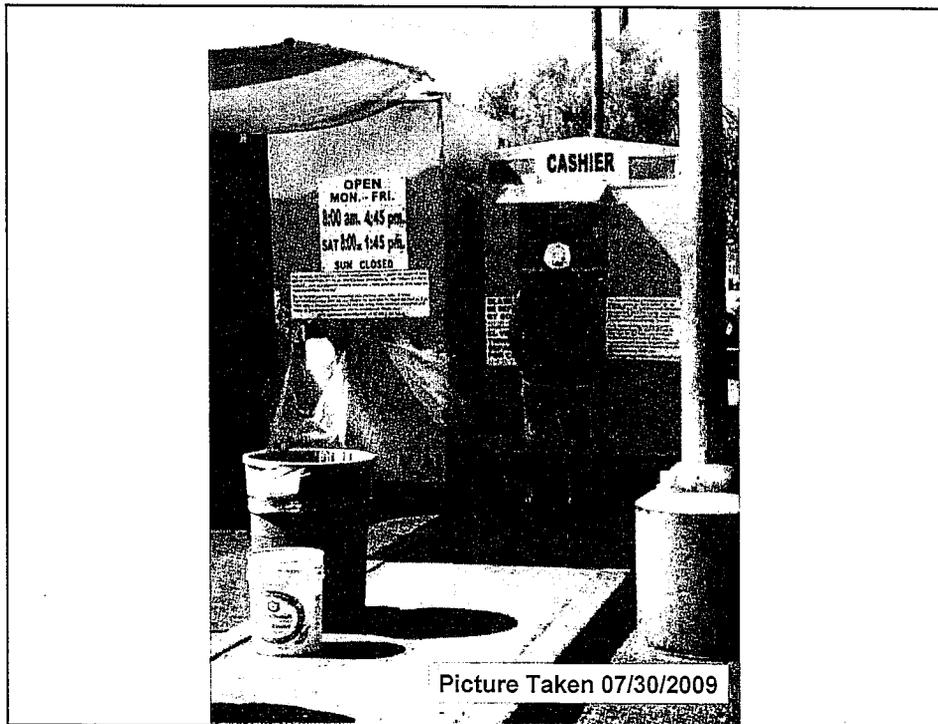


67

Zoom 100 %
 Zoom In Zoom Out View From North South East West Ortho Tool: none

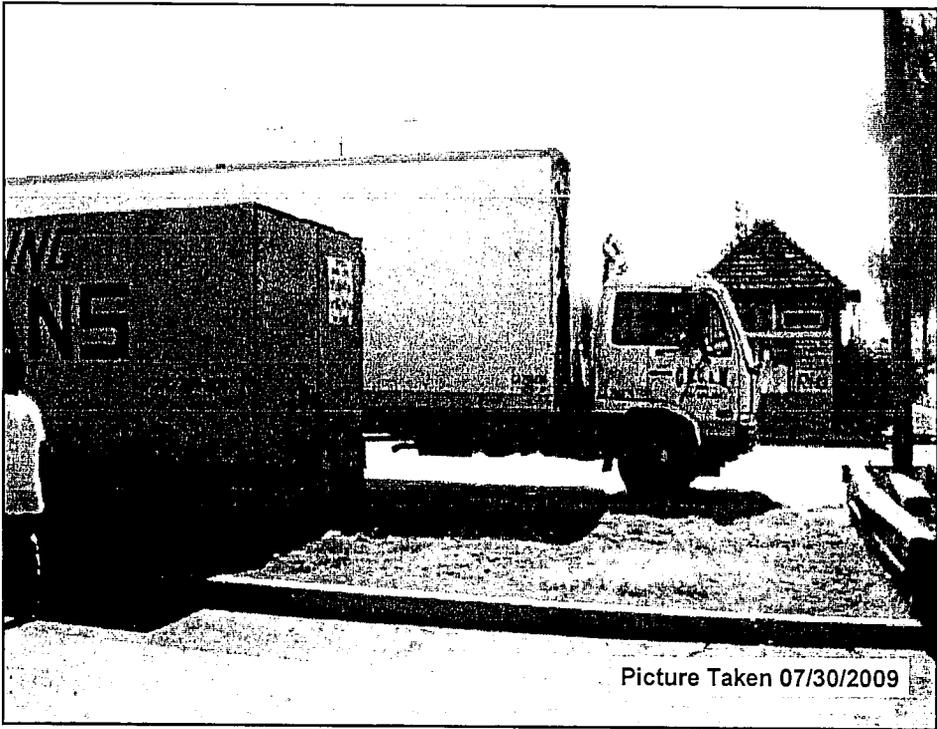


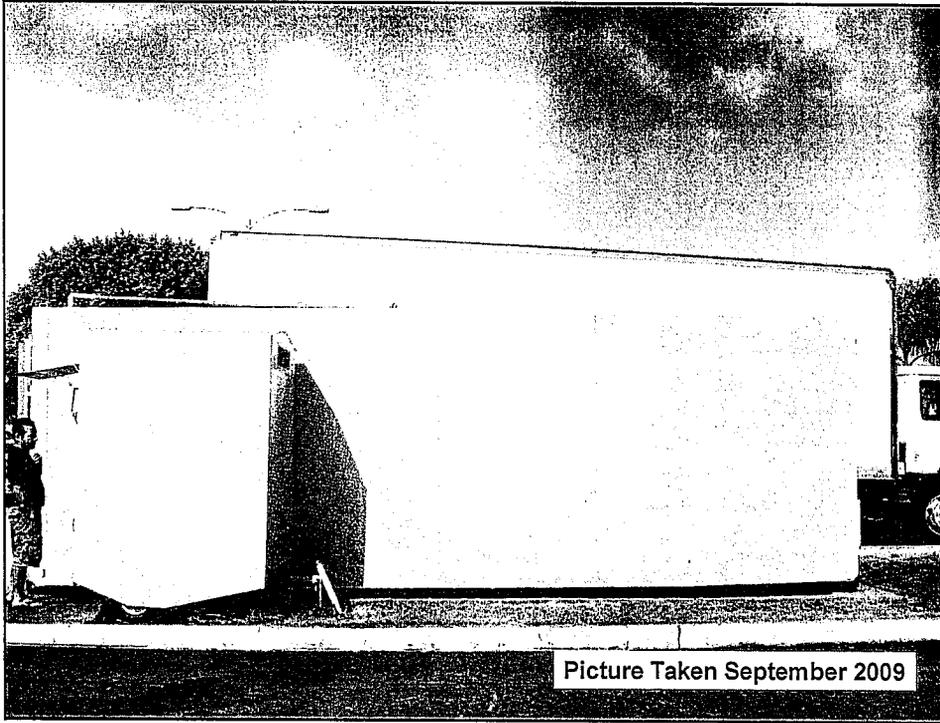
Picture Taken 07/30/2009



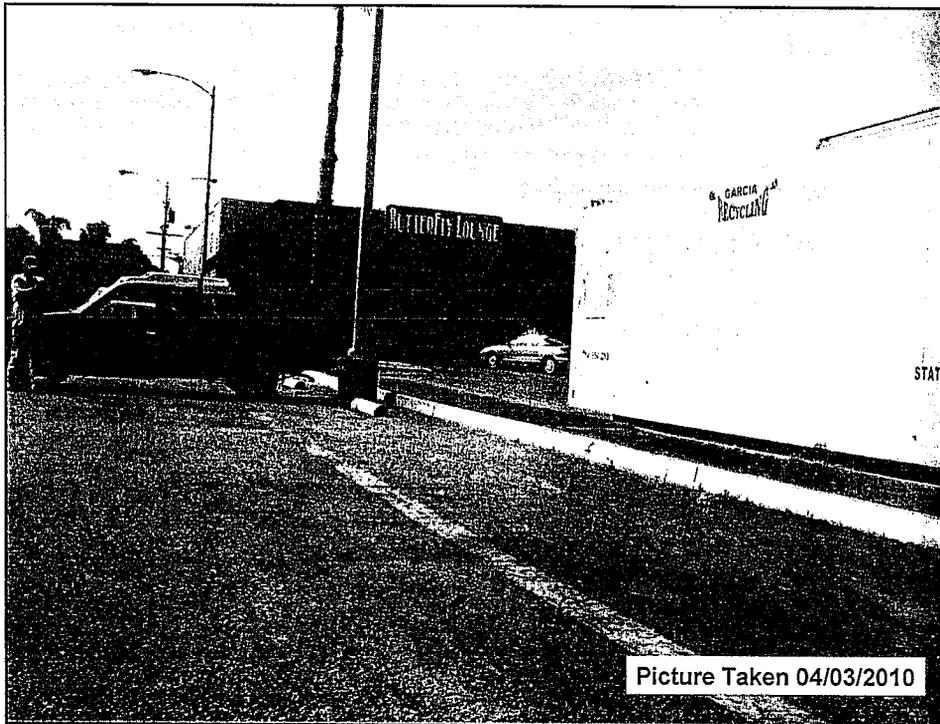
Picture Taken 07/30/2009

68



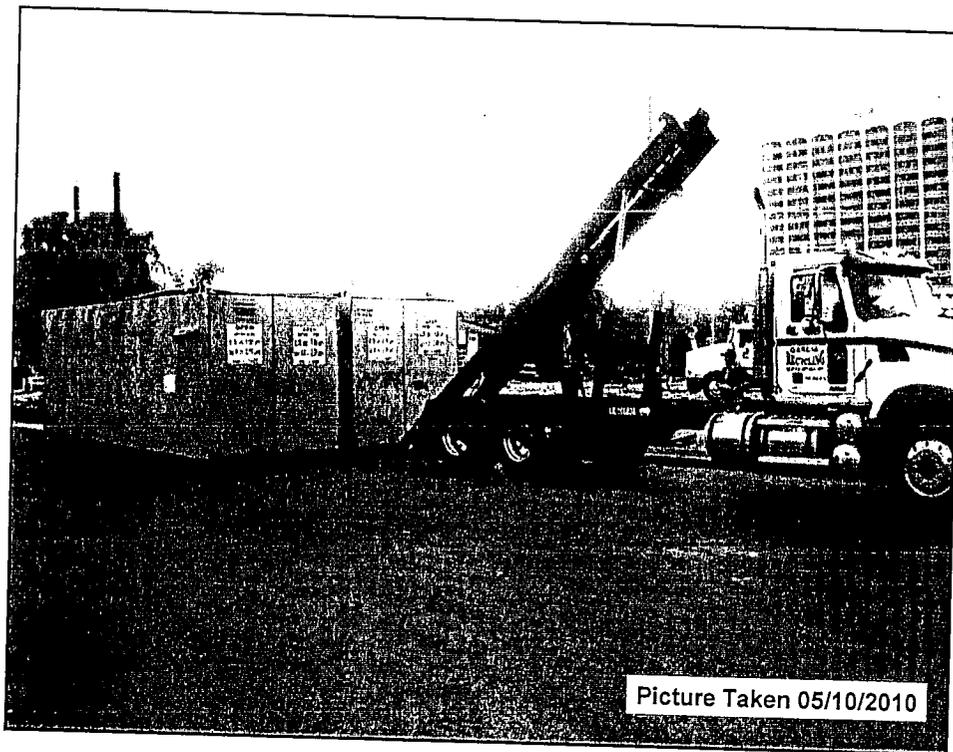


Picture Taken September 2009



Picture Taken 04/03/2010

70

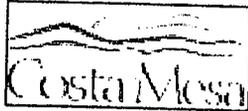


71

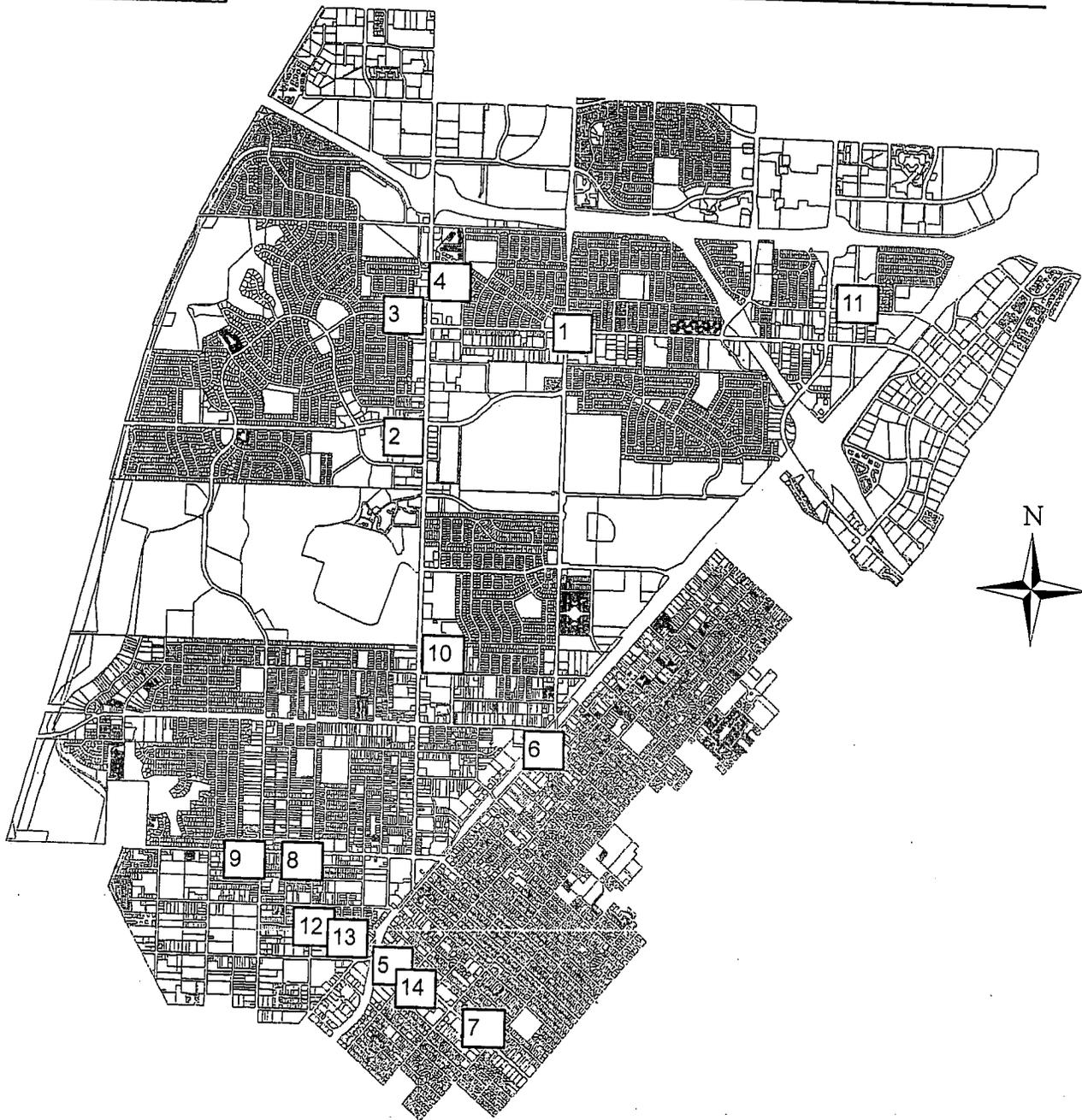
CalRecycle/Division of Recycling
 Status of Convenience Zones and Recycling Centers in Zones
 In Order by County, City and Convenience Zone Number
 Report dated 4/26/2010

CO	City	Zone	Stat	Market Name	Market Address	Zip	Cert #	Facility Name	Facility Address	Operatnl Date	Decert Date
ORA	Costa Mesa	1362	SZ	Stater Bros Mkt	1175 Baker St. Ste C	92626	RC1009	ASOCC Recycling Center	2701 Fairview Rd	01/01/1970	
ORA	Costa Mesa	1363	EZ	Vons Market	2701B Harbor Blvd	92626					
ORA	Costa Mesa	1364	EZ	Marukai Market	2975 Harbor Blvd	92626					
ORA	Costa Mesa	1365	EZ	Henry's Marketplace	3030 Harbor Blvd Ste D	92626					
ORA	Costa Mesa	1366	SZ	Vons Market	185 E 17th St	92627	RC5957	NexCycle	185 E 17th St	12/17/1994	
ORA	Costa Mesa	1367	SZ	Stater Bros Mkt	2180 Newport Blvd	92627	RC11667	EarthWize Recycling	2180 Newport Blvd	07/12/2003	
ORA	Costa Mesa	1371	SZ	Ralphs Grocery	380 E 17th St	92627	RC5957	NexCycle	185 E 17th St	12/17/1994	
ORA	Costa Mesa	1372	SZ	Smart & Final	707 W 19th St	92627	RC11925	Garcia Recycling Center & Metals	739 W 19th St	11/01/2003	
ORA	Costa Mesa	1373	SZ	El Metate Market	817 W 19th St	92627	RC11925	Garcia Recycling Center & Metals	739 W 19th St	11/01/2003	
ORA	Costa Mesa	4574	EZ	Irvine Ranch Market	2651 Irvine Ave	92626					
ORA	Costa Mesa	4953	EZ	Albertsons Store	2300 Harbor Blvd	92626					
ORA	Costa Mesa	5114	EZ	Mitsuwa Marketplace	665 Paulinho Ave	92626					
ORA	Costa Mesa	5314	SZ	Trader Joes Market	640 W 17th St	92627	RC5957	NexCycle	185 E 17th St	12/17/1994	
ORA	Costa Mesa	5314	SZ	Trader Joes Market	640 W 17th St	92627	RC11925	Garcia Recycling Center & Metals	739 W 19th St	11/01/2003	
ORA	Costa Mesa	5981	SZ	Mothers Market & Kitchen	225 E 17th St	92627	RC5957	NexCycle	185 E 17th St	12/17/1994	

72



Recycling Centers in Costa Mesa



Market Name	Market Address	Facility Name
1. Stater Bros Market	1175 Baker Street, Suite C	ASOCC Recycling Center
2. Vons Market	2701 Harbor Boulevard, Suite B	
3. Marukai Market	2975 Harbor Boulevard	
4. Henry's Marketplace	3030 Harbor Boulevard, Suite D	
5. Vons Market	185 E 17th Street	NexCycle
6. Stater Bros Market	2180 Newport Boulevard	Earthwise Recycling
7. Ralphs Grocery	380 E 17th Street	NexCycle
8. Smart & Final	707 W 19th Street	Garcia's Recycling Center & Metals
9. El Metate Market	817 W 19th Street	Garcia's Recycling Center & Metals
10. Albertsons Store	2300 Harbor Boulevard	
11. Mitsuwa Marketplace	665 Paularino Avenue	
12. Trader Joes Market	640 W 17th Street	NexCycle
13. Trader Joes Market	640 W 17th Street	Garcia's Recycling Center & Metals
14. Morthers Market & Kitchen	225 E 17th Street	NexCycle

73