

ATTACHMENT 2

MILES CHEN LAW GROUP

**Costa Mesa Planning Commission Meeting
August 9, 2010**

2 [START AUGUST 9, 2010 PC ITEM 3 MP3]

3 MR. JAMES RIGHEIMER: Okay, next item, item
4 number three.

5 FEMALE VOICE: Application number ZA-89-25
6 and ZA-92-10. Site address, 739 W. 19th Street.
7 Applicant, Jesse Garcia. Zone, C1.

8 Environmental determination, Exempt.

9 Description, from the meeting of July 12, 2010,
10 review, modification, or revocation of Minor
11 Conditional Use Permit Za-92-10 for a recycling
12 center with a maximum of two containers in a
13 commercial shopping center.

14 MR. RIGHEIMER: Staff? Mr. Lee.

15 MR. LEE: Yes, Mr. Chairman and
16 commissioners, the subject property is located
17 on the south side of W. 19th Street between
18 Wallace Avenue and Pamona Avenue. It contains a
19 multiple tenant retail shopping center. Major
20 tenants include Alturo Bravo Market [phonetic],
21 Lion's Den Night Club, and several food and
22 retail stores. The property is also bounded by
23 Wallace Avenue to the west, a Smart and Final
24 store to the east, residential properties to the
25 south, which would be to the rear of the

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1 property, and to the north of property directly
2 across W. 19th Street, several commercial
3 properties including a pawn shop and a liquor
4 store. The property is zoned C1 and has a
5 general plan designation of general commercial.
6 The property is also located within the city's
7 19 West Urban Plan. The specific application
8 that's before you today is actually two separate
9 minor conditional use permits that were
10 processed for this property. The first one was
11 zoning application ZA-89-25, the 89 signifying
12 the year in which the application was first
13 approved. This was the first minor conditional
14 use permit that was processed and approved for
15 Garcia's Recycling. At that time, the approval
16 was for the recycling container to actually be
17 directly adjacent to the W. 19th Street frontage.
18 In 1992, an amendment to the application, ZA-92-
19 10, was processed relocating that recycling
20 facility to its present location that you see in
21 the lower right hand portion of your screen.
22 The city's municipal code does allow the
23 commission to modify and/or revoke a planning or
24 zoning application if the following conditions
25

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1
2 are found to apply: the use constitutes a public
3 nuisance, or the use does not comply with the
4 conditions of approval. These two zoning
5 applications were brought forward to the
6 commission at the request of Planning
7 Commissioner Mensinger on June 9, 2010. This
8 item was originally scheduled for your July 12
9 meeting. However, at the July 12 meeting the
10 applicant's legal counsel requested that the
11 item be continued to this meeting in order to
12 allow the applicant additional time to contact
13 the neighbors, work with the neighbors, and at
14 the commission's direction also develop some
15 best management practices for the use of the
16 facility. The reason that these issues came
17 into play was that in the years that Garcia's
18 Recycling has been operating at this facility,
19 and especially with the recent operation
20 beginning in July of 2009 to this date, several
21 concerns have been brought to light regarding
22 the operation of this use at its current
23 location. One issue is that the use is not
24 being operated in a manner to be deemed to be
25 compatible with surrounding properties and uses.

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1 Specifically, concerns have been raised
2 resulting from noise related to the pouring of
3 recycled materials, cans and bottles, into the
4 containers at the facility, odors related to the
5 used beverage containers that are collected at
6 this facility, and loitering and customers
7 parking on adjacent properties to use the
8 recycling facility. An issue was also raised
9 regarding negative visual impact due to the
10 excessive signage that was on the containers
11 that you can see in these photographs as well as
12 a lack of property maintenance that you can also
13 see in these photographs. The containers at
14 this location generally have a battered
15 appearance, and the landscape planners
16 surrounding the use have not been adequately
17 maintained as a result of the high use of the
18 facility by its customers. Also, because of the
19 high demand by customers for this facility, it
20 necessitated the staging of a truck in addition
21 to the existing recycling container that's on
22 the property. As I indicated, since July 2009,
23 staff has been working with the applicant to
24 resolve a lot of these issues. And attached in

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1 your original July 12, 2010 staff report is a
2 summary of the efforts staff has undertaken as
3 well as the applicant/operator has undertaken to
4 try to resolve the issues at this facility.
5 However, it is staff's opinion that many of the
6 issues still remain unresolved. According to
7 city records, the city has had no complaints
8 related to noise, odor, loitering, property
9 maintenance with regards to the other recycling
10 facilities that are located within the city of
11 Costa Mesa. These are some additional
12 photographs of the Garcia's Recycling location,
13 and these are photographs that show the other
14 locations in the city, the recycling center at
15 Orange Coast College in the upper left hand
16 corner of your screen. Recycling facility for
17 Earth Wise at the Stater [phonetic] Brothers
18 Market at Newport and 22nd in the middle upper
19 portion of the screen, and of course another
20 photograph of Garcia's Recycling on the right
21 hand portion of your screen, and the existing
22 recycling facility at Bonds [phonetic] Market
23 Shopping Center on E. 17th Street, which is at
24 the bottom portion of your screen. In your

1 original July 12 planning commission staff
2 report, staff presented three alternatives. One
3 alternative is to revoke the original zoning
4 application, ZA-89-25, and modify the conditions
5 of approval for ZA-92-10. We had recommended
6 several additional conditions of approval, which
7 is also incorporated in one of the alternative
8 resolutions in your packet this evening, in
9 order to minimize and reduce the impact of the
10 operational facility to surrounding properties.
11 The second alternative is to revoke both minor
12 conditional use permits, ZA-89-25 and ZA-92-10.
13 The reason that staff in both instances is
14 recommending revocation of the original 1989
15 minor conditional use permit is, as I indicated,
16 that was for the old location of the recycling
17 facility right on the 19th Street frontage, which
18 of course no longer applies, because that
19 condition use permit was superseded by the one
20 in 1992. The second alternative would be to
21 actually revoke both conditional use permits
22 based upon the finding that the property
23 constituted a public nuisance. Included in your
24 packets this evening is actually an addendum
25

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1 memorandum that was printed on yellow paper that
2 actually incorporated some additional findings
3 that were reflected in the original July 12
4 planning commission staff--

5
6 MALE VOICE: Where was that again?

7 MR. LEE: It's your supplemental memorandum
8 on the yellow sheet. It's a revised resolution,
9 if the commission chooses to revoke both minor
10 conditional use permits with some additional
11 findings that were incorporated reflecting the
12 items that were discussed in the staff report.
13 And the third alternative is to basically
14 receive and file the report, which basically
15 would mean the commission would take no action
16 to either modify or revoke the minor conditional
17 use permits and would basically allow the
18 facility to continue to operate as is. For your
19 packets this evening, we did prepare an updated
20 memorandum that reflects some of the issues that
21 the legal counsel for Garcia's Recycling raised
22 in their letter dated July 12, 2010.
23 Specifically, there are two items that the
24 attorney raised in the letter that I do want to
25 address this evening. The first is that the

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1 applicant's legal counsel made a statement in
2 the letter that basically if the commission were
3 to take the action to revoke both of the
4 Garcia's Recycling minor conditional use
5 permits, the alternative two, that basically two
6 convenient zones would be in violation of the
7 state law with regards to recycling. It's known
8 as the Bottle Bill. Staff did contact a
9 representative of Cal Recycle, which is the
10 California agency that does oversee recycling
11 centers in the area. They did provide us this
12 exhibit which shows the convenient zones in the
13 immediate area of Garcia's Recycling. By
14 further definition, a convenient zone is how Cal
15 Recycle sets up the criteria for determining
16 whether a recycling facility needs to go into a
17 certain area based upon a number of supermarkets
18 that are in that area. As you can see in this
19 exhibit, in addition to Garcia's Recycling,
20 which is this actual symbol here, is the
21 recycling center at the Bonds Market, which is
22 this symbol here. As you can see, the
23 convenient zones actually overlap in this area,
24 and according to Cal Recycle, if the commission

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1 were to take the action to revoke both minor
2 conditional use permits, it would not results in
3 what's called an un-served convenient zone by
4 state definition, because the area would
5 continue to be served by the existing recycling
6 facility at Bonds Market. Furthermore, if you
7 go to the frequently asked question page on the
8 Cal Recycle website, they also state on their
9 website that multiple overlapping convenient
10 zones can be served by a single recycler. The
11 second issue the applicant's legal counsel
12 raised in their letter was that in fact if the
13 commission were to take the action to revoke
14 both minor conditional use permits, it would
15 potentially compromise the city's integrative
16 waste management plan. The staff did contact
17 the Cost Mesa Sanitary District, which of course
18 is involved in overseeing the integrated waste
19 management plan and did confirm that in addition
20 to independent recyclers like the Garcia's
21 Recycling, the Orange Coast College, and other
22 recycling facilities, the city of Costa Mesa
23 Sanitary District does in fact, as part of the
24 waste division program, does recycle items out
25

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1 of the regular waste stream and diverts those
2 materials to a recycling facility. The actual
3 documentation is attached to your staff report
4 that's included in today's packet. And we also
5 did receive a separate written confirmation from
6 the Costa Mesa Sanitary District also stating
7 that they do provide their own recycling in
8 compliance with the state regulations for waste
9 diversion.
10

11 MR. RIGHEIMER: Mr. Lee, that's the August
12 9th letter, 2010, from the Costa Mesa Sanitary
13 District?

14 MR. LEE: Yes, that is correct.

15 MR. RIGHEIMER: Okay. I want to just put
16 that in the record and make sure that the
17 applicant has a copy of that.

18 MR. LEE: Yes, that is correct.

19 MR. RIGHEIMER: Okay, thank you.

20 MR. LEE: So that basically brings you up to
21 date on the status of the continued hearing or
22 the review of zoning application ZA-89-25 and
23 ZA-92-10. This concludes my presentation. I
24 can respond to any questions any of the
25 commissioners may have.

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MR. RIGHEIMER: Commissioners questions for staff.

MR. COLIN MCCARTHY: Mr. Chair.

MR. RIGHEIMER: Commissioner McCarthy.

MR. MCCARTHY: I'm looking at the new proposed findings, and it mentions the city's 2000 general plan and the fact that 19th Street is in the urban path, quote, unquote. What is that referring to?

MR. LEE: W. 19th Street is designated as what is known as an Urban Path. In other words, it's a major arterial, where it's targeted for overall improvement and enhancement. Of course, the city undertook a beautification project several years ago with the repaving and the new light standards and basically new development also has to comply with development standards in terms of landscaping, building architecture, things of that nature. So that's basically what that's making reference to.

MR. MCCARTHY: Okay, and then my other question, and I don't know if this is for you or for counsel, Municipal Code Section 1329, which provides a basis for the modification and

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2 revocation of the CUP provides an or. There's
3 the public nuisance or the failure to meet the
4 conditions, correct?

5 MR. LEE: Yes, that's correct.

6 MR. MCCARTHY: It's not a requirement of
7 both. You don't need to find their not meeting
8 their conditions of approval and it's a public
9 nuisance.

10 MR. LEE: That is correct.

11 MR. MCCARTHY: So it could be found by this
12 body to be a nuisance and modified or revoked,
13 or it could be found to be not operating within
14 the conditions of approval and modified or
15 revoked, correct?

16 MR. LEE: Yes, that is correct.

17 MR. MCCARTHY: Okay. Thank you, Mr.
18 Chairman.

19 MR. RIGHEIMER: Commissioners.

20 MR. SAM CLARK: Mr. Chair.

21 MR. RIGHEIMER: Vice Chair Clark.

22 MR. CLARK: Mr. Chair, I'd like to ask
23 counsel a couple of questions with regards to
24 the letter and/or packet that we received from
25 Ms. Chen dated August 6. Mr. Adams, on page

1 two, item number two, she references revocation
2 of the Garcia Recycling Conditional Use Permit
3 is unjustified and would amount to an abuse of
4 planning commission discretion and then sites
5 Goat Hill Tavern versus City of Costa Mesa.
6 Could you comment on that for me?
7

8 MR. ADAMS: Yes. Goat Hill Tavern is a much
9 more complicated case than what is indicated in
10 the findings here. The finding of whether it is
11 a public nuisance is not a legal conclusion.
12 That is a factual conclusion that this
13 commission has within their purview to make.
14 Goat Hill Tavern is a completely different type
15 of case. It was based on different issues, and
16 there's nothing there that I would say prevents
17 you from looking at this matter and making the
18 determinations that you need to make.

19 MR. CLARK: Okay. And then, item number
20 three she mentions revocation of the permit is
21 subject to CEQUA, California Environmental
22 Quality Act. Could you comment on the accuracy
23 of that as well?

24 MR. ADAMS: Well, there is a CEQUA review,
25 and the staff has addressed that in the report.

There's an exemption applied.

MR. CLARK: Thank you very much.

MR. RIGHEIMER: Commissioners, are there questions for staff? I have a question, Mr. Lee. I'm sorry.

MR. STEPHEN MENSINGER: Mr. Chair.

MR. RIGHEIMER: Commissioner Mensinger, please.

MR. MENSINGER: Mel, this is a question for you. When Garcia's originally received their CUP for recycling wasn't there a facility located in the back of the shopping center, toward the houses?

MR. LEE: Yes. Actually, the 1989 minor conditional use permit was for the location along the W. 19th Street frontage. What had happened was they had actually moved the containers to the rear of the property, which of course resulted in complaints from the neighbors that are immediately butting into it to the south. So as a result of that, that is what led to the 1992 revision that basically put it out back towards the front of the street but at the location that it's located at today.

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MR. MENSINGER: Second question, in 2000, this item was pulled up it looks for review, the CUP was pulled up for review by the planning commission. Do you have any information on that?

MR. LEE: I did see in the packet a request to bring it up for review. Actually, I'm not certain if that review ever went forward. Perhaps at that time the applicant had modified their operation to address whatever issues were in effect at that time. But I was not able to actually find a record where that request to bring it before the commission was actually brought forward to the commission.

MR. MENSINGER: And the third question, as it relates to Garcia's, it's my understanding that the counsel for Garcia's came forward about a year ago asking for an expansion of their facility. Can you enlighten us as to what the request was a year ago?

FEMALE VOICE: Chair and commissioners, the request was just to address the violations that staff had said they were in on the property. It was not to expand it.

MR. MENSINGER: Okay. Is the volume of recyclables today the same as it was when they originally received their CUP. Is it the same operation?

MR. LEE: It is the same operation in terms of the number of containers, yes.

MR. MENSINGER: Okay. Very good. Thank you.

MR. RIGHEIMER: Okay, the question I have, and I think you just touched on it. The May 22 letter of 2000 that went to Garcia looked like it was generate from staff, signed by Wullah [phonetic]. Here, and it basically was telling them to, discussing their MCUPs. However, the findings used to justify the MCUPs can no longer be made and the conditions approved are not consistently complied with. Therefore, the recycling needs to be discontinued. What you're saying is we have no record of what happened after that.

MR. LEE: That's correct.

MR. RIGHEIMER: Okay, and then on page 22 we've got a spreadsheet here that shoes the amount of recycling done for aluminum cans,

1 plastic, HDPE number two, and glass. Where did
2 that document come from?

3
4 MR. LEE: This document was supplied by the
5 applicant's legal counsel, so they can probably
6 provide information as where this information
7 came from.

8 MR. RIGHEIMER: Okay. It came from the
9 applicant's counsel.

10 MR. LEE: That's correct.

11 MR. RIGHEIMER: Okay. Okay, any other
12 questions for staff?

13 MR. MENSINGER: Mr. Chair.

14 MR. RIGHEIMER: Commissioner Mensinger.

15 MR. MENSINGER: Mel, just so I understand
16 the landscape here, Mr. Banella [phonetic] is
17 the owner of that shopping center. Is that
18 correct?

19 MR. LEE: Yes, that's correct.

20 MR. MENSINGER: Okay, and is it customary
21 for a recycling center like Garcia's to have a
22 rental agreement with Mr. Banella to lease that
23 space?

24 MR. LEE: Yes, a lease agreement, yes.

25 MR. MENSINGER: Is that public record, do

1
2 you know?

3 MR. LEE: We do not have a copy of that
4 least agreement, no, so it would not be part of
5 the public record.

6 MR. MENSINGER: Okay, thank you.

7 MR. RIGHEIMER: Any other questions for
8 staff? Okay, I'm going to report any ex parte
9 communications. Anybody met with or talked with
10 the applicant or any other neighbors in the area
11 at all since the last meeting? None? Okay.

12 MALE VOICE: Mr. Chair, I did speak with a
13 couple of neighbors in the area.

14 MR. RIGHEIMER: Okay. Anybody else speak
15 with some neighbors in the area. You don't have
16 to say you spoke. We have to say we spoke.
17 It's okay. You're allowed to speak to us.

18 MALE VOICE: Mr. Chair, I believe I received
19 a couple of emails.

20 MR. RIGHEIMER: Emails. I think I also
21 received, and those would be in the record.

22 MALE VOICE: As did I, Mr. Chair.

23 MR. RIGHEIMER: Okay, thank you. Okay, I'm
24 going to go ahead and open the public hearing.
25 Do we have the representative of Garcia's here?

1 Yes, please. You can come around. It's a
2 little easier. You get a side profile on TV.
3 You're looking good.

4 MR. STEPHEN MILES: Good evening, Mr.
5 Chairman, members of the commission. Stephen
6 Miles on behalf of Miles Chen Law Group. We
7 represent Garcia Recycling. Just by way of
8 protocol, I'm not aware of how much time
9 allotment I have, but I'd like to start with
10 some introductory comments and concepts and hand
11 it over to my partner, Patricia Chen, to kind of
12 get into the nuts and bolts.

13 MR. RIGHEIMER: Yes, we're not going to
14 limit the time that you have in there. Just
15 understand, you know, if it goes really long,
16 you know.

17 MR. MILES: Great. Thank you.

18 MR. RIGHEIMER: Go ahead.

19 MR. MILES: I'm going to talk about three
20 main topics. I'm going to get into the
21 procedure of the proceeding that is before us
22 today. I'm going to talk about the underlying
23 land use law that applies with respect to the
24 review of a conditional use permit. I'm also

1 going to touch on the evidence that has been
2 presented in this case and some of the
3 evidentiary standards that apply to the
4 conditional use permit. My partner, Patricia
5 Chen, is going to go into more detail on that.
6 And then, I'm going to finish with the
7 California Environmental Quality Act, taking
8 into consideration the comments from your deputy
9 city attorney. I'll address that issue in this
10 context of a conditional use permit that
11 implicates the unknown of four million pounds of
12 solid waste. So to begin, just so we
13 understand, the Goat Hill Tavern case was
14 referenced. And basically, besides saying that
15 it's a complicated case, the reality is that
16 it's a seminal decision. It's somewhat ironic
17 that it was this fine city that brought us that
18 decision. But it is the seminal decision on
19 conditional use permits, and it's important, I'm
20 also a municipal attorney, and I find that
21 sometimes public officials, elected and non-
22 elected public officials, often confuse the
23 distinction between issuing a use permit and
24 what occurs once it is issued. And that's

1 really one of the legal concepts, the tenants
2 that Goat Hill Tavern addressed, which says that
3 once that conditional use permit is issued, you
4 know, up to that point this commission has full
5 discretion. It can condition it. It can weight
6 evidence. It can decide everything it wants to.
7 Once that use permit is issued, it then becomes
8 a fundamental vested property right of the
9 permit holder. And so the rules change. The
10 rules change with respect to the review of it,
11 the revocation, the modification of it. And the
12 rules change with respect to the way a court
13 will review the action of this commission with
14 respect to that permit. This proceeding is a
15 quasi-adjudicative proceeding. It relates to
16 that permit that's held by an individual. It's
17 not legislative. You don't get that same
18 deference that you would otherwise be accustomed
19 to in the issuance of a permit. I just wanted
20 to point that out, because that's kind of an
21 underlying tenant of what we're discussing. In
22 the staff report there are I believe two or
23 three recommended actions, and they relate to
24 these two minor conditional use permits, ZA-89-

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25 and ZA-92-10. There was an explanation about why you can revoke one, and I don't quite understand the rationale. But what I will say is that those two use permits are not wholly integrated in any way, shape, or form. There's no supersede language in the '92 permit, so from a legal position, Garcia Recycling will point out that both of those permits run with the land; both of those permits are fundamental vested property rights; and neither one of them should be revoked or modified without ample evidence and justification by this commission. Getting into the evidence that's been submitted. We've been struggling with this. We were asked to represent Garcia Recycling. We participated in a public outreach. Every known complainant was issued a letter, and surprisingly, and Pat, my partner, will get into this in more detail, we haven't received a single verification of a complaint. We saw actually on a Public Records Act request we saw that there was an email that was referencing a complaint by Smart and Final. There was a reference to an exhibit or an attachment to the email. That attachment wasn't

1 included in our Public Records Act materials, so
2 we've struggled with trying to figure out what
3 exactly is the essence of the complaint that has
4 driven this review proceeding. Fundamentally, I
5 would say that there is no evidence, let alone
6 substantial evidence, of a violation of the use
7 permit. And there certainly is nothing that
8 arises to a public nuisance that would justify
9 revocation. Whether or not there's
10 justification to work cooperatively with Garcia
11 Recycling to do some things, that's always good.
12 That's being a good neighbor, which I think
13 Garcia Recycling has been for the 21 years that
14 it has been operating without complaint under
15 its use permit. So what I'd like to point out
16 is the concept of celerity. And the best way to
17 describe celerity is the anecdote about getting
18 your hand in the cookie jar. And you ask should
19 you slap that wrist within a minute of getting
20 that hand in the cookie jar, a week later, a
21 year later, a decade later. What's the efficacy
22 of that? You want to slap the wrist
23 immediately. Usually you have a violation and
24 then you have a response. Seldom do you see,

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1 and you certainly didn't see this in the Goat
2 Hill Tavern decision, that 20 years have gone by
3 and then all of a sudden we've got an issue with
4 the use permit. We think we have a public
5 nuisance or we have violations of the conditions
6 of this permit. I would implore upon this
7 commission to go back to the Goat Hill Tavern
8 decision. I know it's complex, but really one
9 of the distinctions, and chairman, you made
10 great distinctions about the In and Out Burger,
11 about how that In and Out Burger won't result in
12 a traffic, a queuing or a parking problem based
13 on the circumstances. The Goat Hill Tavern
14 decision interestingly had to do with a bar. It
15 had to do with a liquor license, a liquor
16 establishment. It didn't have to do with
17 something that's mandated by state law. See,
18 Garcia Recycling is a use permit that is also
19 fulfilling a state mandate. So that's a
20 distinction that you should look at between this
21 circumstance and the facts and the evidence in
22 Goat Hill Tavern, because if you read that
23 decision carefully, you'll see that the City of
24 Costa Mesa did a good job of documenting

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1 evidence. It just happened that the Harp, there
2 was a spurious relationship there that they
3 couldn't quite provide causation. And that's
4 what really happened in that decision. But the
5 evidence before you today, there's nothing that
6 even remotely goes to the amount of evidence
7 that was presented in the Goat Hill Tavern
8 decision by the City of Costa Mesa. And the
9 staff report will illustrate the fact that not
10 until July of 2009 was there even a culmination
11 of trying to figure out is there any evidence
12 about any complaint whatsoever. So again, that
13 goes to we've got a 1989 permit. In 2009 we
14 have a review, and if you look really at the
15 points that were made as of July 2009, there's
16 really nothing that directly says that there's a
17 violation or anything that amounts to a public
18 nuisance or a concern with the public health,
19 safety, and welfare. Moving to my third and
20 final topic is the California Environmental
21 Quality Act. We agree that typically the
22 review, modification, revocation of the use
23 permit is subject to a categorical exemption.
24 That makes sense, because you've already issued

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1 an entitlement. You've probably gone through
2 the environmental review, and there's really not
3 much to talk about in terms of potential
4 environmental impacts. CEQUA also provides for
5 what we call the exception to the exemption, and
6 that's codified at the CEQUA guidelines section
7 15300.2, and that's Title 14 of the California
8 Code of Regulations. The concept of the
9 exception to the exemption is that any codified
10 categorical exemption recognizes that there can
11 be unique circumstances where that exemption
12 doesn't truly apply to the circumstance. And as
13 I pointed out before, we're dealing with a use
14 permit that's related to a state mandate for the
15 reduction of solid waste material. I've noted
16 that we're talking about annually four million
17 pounds of recycled materials. CEQUA applies the
18 concept of a baseline, the existing physical
19 setting. To rely on a categorical exemption in
20 the context of possibly revoking Garcia
21 Recycling's permit would result in a violation
22 of the California Environmental Quality Act by
23 the mere essence that you have a physical
24 baseline of a facility that is recycling four
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1 million pounds of material. If you take that
2 away, you're going to have to analyze where does
3 that four million pounds go? What is the carbon
4 footprint? Again, now that we have Assembly
5 Bill 32, we have to deal with carbon emissions,
6 greenhouse gas emissions. What is the
7 environmental net result of eliminating that
8 baseline? That's how the analysis should work,
9 and we've commented that we believe the
10 exception to the exemption applies. And under
11 the Bankers Hill decision I believe that there
12 are findings that this commission should make if
13 they intend to truly rely on a categorical
14 exemption. So again, with that I would, it is
15 an adjudicative proceeding. I would also like
16 to, because it is adjudicative, we would like to
17 reserve some time for rebuttal. Typically in an
18 adjudicated proceeding we have the opportunity
19 to address the complainants. We're having
20 difficulty finding out who that is or what that
21 is. But I'd like to turn this over now to
22 Patricia Chen, so she can go through in some
23 greater detail the legal standards that apply
24 and some of the details of the evidence that

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1 we've compiled and lodged with the
2 administrative record. I do note that a lot of
3 the photographs, even though it was somewhat
4 anemic, some of those photographs are clearly
5 outdated. They have signage that doesn't exist
6 right now. So I don't know why outdated
7 photographs were being used, but I just would
8 like a note on the record that the photographs
9 that you saw are outdated and don't reflect the
10 existing physical setting at Garcia Recycling,
11 thank you.

12
13 MR. RIGHEIMER: Okay, and you will be able
14 to rebut any comments from the public or the
15 commission.

16 MR. MILES: Thank you, Mr. Chair.

17 MS. PATRICIA CHEN: Good evening,
18 commissioners. My name is Patricia Chen, also
19 with Miles Chen Law Group. I want to take this
20 time to kind of go through, as Steve said, in
21 more detail the legal standards that apply in
22 this case and then kind of go through the
23 evidence as we see it as to what the city has,
24 or at least what was provided to use, and then
25 also what we've provided to the city. So the

1 legal standard regarding revocation are set
2 forth in Costa Mesa Municipal Code Section 13-
3 2901. And basically, the planning commission
4 may require the modification or revocation of
5 any planning application and/or pursue any other
6 legal remedies as may be deemed appropriate by
7 the city attorney if the planning commission
8 finds that the use as operated or maintained
9 constitutes a public nuisance or does not comply
10 with the conditions of approval. Then we go to
11 the definitions of what a nuisance is, and
12 that's set forth in civil codes section 3479,
13 which says anything which is injurious to
14 health, including but not limited to the illegal
15 sale of controlled substances or is indecent or
16 offensive to the senses or an obstruction to the
17 free use of property so as to interfere with the
18 comfortable enjoyment of life or property or
19 unlawfully obstructs the free passage or use in
20 the customary matter of any navigable lake or
21 river, bay, stream, canal, or basin, or any
22 public park, square, street, or highway is a
23 nuisance. Civil code section 3480 states a
24 public nuisance is one which affects at the same
25

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1
2 time an entire community or neighborhood or any
3 considerable number of persons, although the
4 extent of the annoyance or damage inflicted upon
5 individuals may be unequal. Going back to the
6 Goat Hill Tavern decision, which Steve has cited
7 and we've also cited in our documents submitted
8 to the city, once a use permit has been properly
9 issued, the power of a municipality to revoke it
10 is limited. At that point, as Steve pointed
11 out, it becomes a vested property right, and it
12 is entitled to protection. When a permittee has
13 acquired such a vested right, it cannot be
14 revoked unless the permittee fails to comply with
15 reasonable terms or conditions expressed in the
16 permit granted, or there is the compelling
17 public necessity. That is, there is a public
18 nuisance. We've scoured the documents that we
19 have in our possession with respect to the
20 evidence, and we've identified the following.
21 There's a letter dated November 17, 1992 signed
22 by seven individuals complaining of depreciation
23 of value of homes, transients, odors, unkempt
24 areas and unnecessary noise and trash. But I
25 wanted to note that this letter was written

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2 prior to Garcia Recycling's location to the
3 front of the parking lot away from the
4 residents. Then, there's an undated letter
5 signed by approximately 35 individuals urging
6 the city to revoke Garcia Recycling's use permit
7 stating basically the same things set forth in
8 the prior 1992 letter and saying that it's been
9 18 years, and the city ignored their 1992
10 complaint. Then, we received from the city at
11 the last hearing emails from Smart and Final
12 dated July 7 through 8 that actually refers to a
13 complaint letter that is not attached to the
14 email. Steve touched upon that. That's why I
15 think we may be struggling so much is because we
16 don't know exactly the basis of where the
17 complaints are coming from. But nevertheless,
18 in the correspondence that Smart and Final had
19 with the city, they actually, while they
20 complain of transients and they show pictures
21 showing the volume of folks who use the
22 facility, they also acknowledge that it is a
23 very busy center and removing it would not be
24 good for local businesses. And it is obvious
25 that a center at this location is an absolute

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1 necessity. Also, there was testimony of an
2 individual at the July 12 planning commission
3 meeting complaining of the look of Garcia
4 Recycling, and I think this is kind of the crux
5 of what's going on, it's the visual impact. And
6 as the city has submitted an additional memo
7 today, it talks about the urban, I forgot what
8 the wording was. It was an urban pathway on 19th
9 Street. So I think that's kind of what we're
10 really getting at is the look of Garcia
11 Recycling. Now, in response to this evidence,
12 we point out in our submittal, and we're
13 reiterating that, we have a letter from Victor
14 Bonia [phonetic] dated July 21. He's the part
15 owner of the shopping center and the property
16 manager, and he says that he has not received
17 complaints, and that all that is visible from
18 the street is really the front of the truck and
19 the back of an unmarked container. There's even
20 a tree blocking the view. He also doesn't
21 believe that Garcia Recycle brings in transients.
22 He points out that there's a soup kitchen across
23 the street, which we've also pointed out in our
24 submittal along with pictures of that facility.
25

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1 He also notes that Garcia Recycling keeps its
2 facility clean, and its employees are constantly
3 sweeping the area and picking up any litter. He
4 and his tenants have not found the noise to be
5 offensive, and they would be the ones most
6 directly affected by the noise and odors. And
7 he hasn't received any complaints about noise
8 from his customers. He also believes that
9 Garcia Recycling is located in an area of the
10 parking lot that does not cause a disruption to
11 the customers or the neighboring businesses. As
12 we pointed out, it's located in front of the
13 Lion's Den, which is a nightclub. So it's not
14 open during the day, so the parking lot is not
15 disruptive. Their activities in the parking lot
16 are not disruptive. WE also have a letter from
17 the neighboring businesses saying that they have
18 not felt that Garcia Recycling has disrupted
19 their businesses, and they are not offended by
20 the appearance of Garcia Recycling's operations,
21 nor have they complained of any noise, litter,
22 or homeless individuals. They also expressed,
23 as other individuals have during our public
24 outreach, that it's really unfair to blame
25

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1 Garcia Recycling for the homeless when there's
2 actually a soup kitchen across the street. We
3 also have a petition signed by over 500
4 individuals indicating support for Garcia
5 Recycling and agreeing that Garcia Recycling's
6 operations are not disruptive to the
7 surroundings or aesthetically offensive. And
8 Garcia's services are important to the
9 community. I thought it would be helpful to
10 kind of give the more current pictures of Garcia
11 Recycling. These pictures were taken basically
12 in the last two weeks or so. And I thought it
13 was important for everyone to see what it looks
14 like when you're actually driving past Garcia
15 Recycling. So you see it, this is driving I
16 guess it would be west on 19th Street. Oh, east
17 to west on 19th Street. And so you see Garcia
18 Recycling, and I'm sorry I don't have a pointer,
19 but that signage on the side of the containers
20 is what it looks like now. It doesn't have the
21 cash for cans sign that city staff had put up
22 earlier. They have completely painted their
23 containers as a result of working with the city
24 to address some of those issues back in last
25

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1 year from July and in the fall of last year. So
2 this is what it looks like now and has looked
3 like for months. This is a picture looking
4 straight on at the facility, and all you really
5 see is the one truck, and there is a tree
6 blocking it. And then past the facility that's
7 what you look at as you are passing from west to
8 east. This is a side view of the facility, what
9 it looks like. And here are residents walking
10 to Garcia Recycling, and we pointed this out in
11 our last submittal back on I think it was July
12 12. You know, Garcia Recycling really serves
13 the community, and many, many residents walk to
14 Garcia Recycling. And in fact, these very
15 residents would not be recycling if Garcia were
16 not in the location that it's in, and they've
17 kind of expressed that to us. Here are photos
18 of other facilities. I know that Mel had put up
19 a couple pictures before of the other
20 facilities. These are also very recent, and
21 they also show the activity much like Garcia
22 Recycling. It's inevitable that there is going
23 to be some of the transactions occurring outside
24 of the containers themselves. This is the Next

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1 Cycle micro site, and you can see the staging of
2 recyclable materials outside the container.

3 This is Earth Wise, also in Costa Mesa, and same
4 thing here. You have people standing in line.

5 It's just inevitable. And I think that is the
6 end of my slide show. I just wanted to make

7 sure that you were able to see the photos in a
8 little bit more depth instead of the copies.

9 I'm not sure how great they came out. So we
10 reiterate that we just don't think the evidence
11 is there for the city to be able to revoke the
12 permit. So we're happy to answer any questions.

13
14 MR. RIGHEIMER: Commissioners, any questions
15 for the applicant?

16 MR. MCCARTHY: Mr. Chair.

17 MR. RIGHEIMER: Commissioner McCarthy.

18 MR. MCCARTHY: When, the photos that you
19 showed of the facility, when were those taken?

20 MR. RIGHEIMER: Yes, we need one of you to
21 answer the questions. Yes.

22 MS. CHEN: They were taken in the last two
23 weeks.

24 MR. MCCARTHY: What time of day?

25 MS. CHEN: Jesse? Eleven o'clock or twelve

o'clock in the midday during the busy time.

MR. MCCARTHY: That's fine, Mr. Chair.

Thank you.

MR. RIGHEIMER: Okay, any other questions for the applicant?

MR. MENSINGER: Mr. Chair.

MR. RIGHEIMER: Commissioner Mensinger.

MR. MENSINGER: Is it okay if the applicant comes up?

MR. RIGHEIMER: Well, whoever the applicant wants to respond to--

MR. MENSINGER: [Interposing] I'd like to ask Mr. Garcia some questions. I'm sorry, I can't hear you. You need a mike.

MR. RIGHEIMER: Just come to the microphone to answer.

MR. MILES: Mr. Commissioner, I think if we can get the question, then we can as a team decide who is the most appropriate--

MR. MENSINGER: [Interposing] Counselor, I appreciate that. I really do. I realize your counsel, but the applicant I think is Mr. Garcia, and that's really the person that I'd like to ask the question to.

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1 MR. MILES: Correct, and we're his attorney,
2 and this is an adjudicated proceeding, so I
3 would like to know so that we can defer you to
4 the person that is going to give the best
5 response. I mean, it's just a matter of we've
6 all taken on different tasks.
7

8 MR. RIGHEIMER: Understand. City attorney,
9 can you give us what we need to do on that?

10 MALE VOICE: Mr. Garcia has chosen to be
11 represented by counsel here, so it's up to Mr.
12 Garcia whether or not he wants to have questions
13 asked of him or he wants his counsel to address
14 the questions.

15 MR. RIGHEIMER: Okay, thank you. Anything
16 else, Commissioner?

17 MR. MILES: [Interposing] We don't
18 necessarily, I'm not, we don't have a problem.

19 MR. RIGHEIMER: I understand. No problem.
20 No apology is needed.

21 MR. MILES: Thanks.

22 MR. MENSINGER: All right, question for you.
23 I'm going to ask questions through you for Mr.
24 Garcia. Is Mr. Garcia a Costa Mesa resident?

25 MR. JESSE GARCIA: I'm going to apologize

1 for my English, because my language is Spanish,
2 but I came to this country 30 years ago. I've
3 been a resident and now an American citizen.
4 I've lived in Cost Mesa for four years. This is
5 my town. I had to move to the border of Santa
6 Ana and Fountain Valley for reason for my school
7 for my kids for Santa Barbara. I have a
8 beautiful wife, - - kids, and God has provided
9 for me. And I'm so happy here to present my
10 life, because when I came to this country, I
11 came illegal, and I came thanks to my wife. I
12 got a resident. I got my American-ship. And
13 I've been working by the state for 22 years.
14 And I'm so happy. I've known Mr. Lee for about
15 20 years from Garden Grove. He gave me the
16 permission to do my plan that I have been
17 suffering too many robberies.

18
19 MR. MENSINGER: Mr. Chair, I just want to
20 ask him a question.

21 MR. GARCIA: Too many robberies is why I
22 tried to buy a main place to recycle. But I
23 feel bad for these things. I've been trying to
24 work the best I can - - and Rebecca know. And
25 I'm here, and I just want to say if you revoke

1 the license, I'm happy. I know God will
2 provide, and I want to say thank you for
3 everything. My English is very bad, but I want
4 to, any questions you can ask.
5

6 MR. RIGHEIMER: Okay, thank you.

7 MR. MENSINGER: Mr. Chair.

8 MR. RIGHEIMER: Commissioner Mensinger.

9 MR. MENSINGER: Mr. Garcia I just want to
10 say, first of all I want to say thanks for
11 providing a great service. I think recycling
12 all of us agree up here, we want to make sure we
13 clear the air on this, recycling is important
14 for our community. As a matter of fact, we do a
15 lot of it in all the youth sports that all of us
16 give time to - - or Estancia [phonetic]. We're
17 all actively involved in all kinds of elements
18 of the green process. And I just want you to
19 understand this is not about you. It's about
20 the people in the community that are being
21 affected by this particular use, and there are
22 concerns about--

23 MR. RIGHEIMER: [Interposing] Okay. Is
24 there a question for the applicant?

25 MR. MENSINGER: Mr. Garcia, so you do live

1 in Costa Mesa?

2 MR. GARCIA: I used to live in Costa Mesa
3 for four years.

4 MR. MENSINGER: You live in Costa Mesa?

5 MR. GARCIA: No.

6 MR. MENSINGER: You don't live in Costa
7 Mesa?

8 MR. GARCIA: No.

9 MR. MENSINGER: Okay. You live in Fountain
10 Valley now?

11 MR. GARCIA: It's one house only divided.

12 MR. MENSINGER: Okay, and you're the owner
13 of this business, correct?

14 MR. GARCIA: Yes.

15 MR. MENSINGER: You're the sole owner?

16 MR. GARCIA: Yes.

17 MR. MENSINGER: That's the only question I
18 have for you.

19 MR. GARCIA: Thank you.

20 MR. RIGHEIMER: Any other questions for the
21 applicant.

22 MR. JIM FITZPATRICK: Mr. Chair.

23 MR. RIGHEIMER: Commissioner Fitzpatrick.

24 MR. FITZPATRICK: Thank you. So I consider
25

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1 myself to be a green and sustainable guy, and
2 I'm a champion and advocate for many things
3 green and in particular recycling. I always
4 think we can do more to reduce, reuse, and
5 recycle. So I'm going to ask a couple of
6 questions on some solutions. But first, I just
7 had some fact-based questions. When you did
8 your education and outreach program, did you
9 invite any commissioners or city staff to the
10 event?
11

12 MS. CHEN: No. We passed out flyers in the
13 neighborhood, in the shopping mall, and we did
14 it in both Spanish and English. And then when
15 we did not, we had about just over 20 people
16 attend, and because we weren't happy about the
17 attendance, we had hoped for more, that's when
18 we went ahead and sent letters individually to
19 each of the folks who had signed the recent
20 petition. So we really were trying to do what
21 we could to kind of reach out.

22 MR. FITZPATRICK: Okay. Did you contact
23 Smart and Final?

24 MS. CHEN: No, we did not.

25 MR. FITZPATRICK: Okay. Could you put up

1 those pictures again that we just went through?
2 No, they were the ones that the applicant
3 shared.

4
5 MR. RIGHEIMER: The applicant's pictures?

6 MR. FITZPATRICK: Yes, sorry about that.
7 Not that one. It might have been the one just
8 before it. Yes, okay. So in this view, the
9 cars that are parked in Smart and Final, are
10 those Garcia Recycling customers?

11 MS. CHEN: I can't tell from this picture,
12 but sometimes yes, there is crossover. Some of
13 the customers do park in that lot and walk over.
14 It goes both ways. As there are customers who
15 park in the Lion's Den lot and go to Smart and
16 Final, so it goes both ways.

17 MR. FITZPATRICK: Okay. Could you go down a
18 couple more? Keep going. Yes, same thing here.
19 And then one more, Mel. Yes, so the claim is
20 that if Garcia's was not available that these
21 residents would not recycle.

22 MS. CHEN: Yes. We've heard that from
23 folks, and they just can't walk to the nearest
24 facility. It's not within walking distance.

25 MR. FITZPATRICK: What would they do with

1 that?

2
3 MS. CHEN: They probably would either not
4 pick up the recycling, because I know that a lot
5 of folks pick up the recycling off the streets.
6 So either they wouldn't pick up the recycling or
7 I'm not sure what they would do. I think we are
8 just going to speculate.

9 MR. FITZPATRICK: I just don't, I haven't
10 seen that much trash that exists in the city of
11 Costa Mesa. We've got a lot of code
12 enforcement. We street sweep once a week, and
13 then the sanitary district has demonstrated that
14 if those are left in the residential trash
15 containers that all that does get recycled. So
16 I'm not in support of your claim that that would
17 wind up in landfills.

18 MALE VOICE: Mr. Chairman, may I recommend
19 that at this point we just ask questions about
20 the presentation rather than provide any input?

21 MR. RIGHEIMER: Commissioner?

22 MR. FITZPATRICK: Thank you. So as I read
23 your documents here, honestly I think we come to
24 the same conclusions. I think this is a very, a
25 big business. Four million pounds is a lot of

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1 recyclables.

2
3 MR. RIGHEIMER: Commissioner, if we can get
4 to the questions.

5 MR. FITZPATRICK: So with that, I am trying
6 to understand what opportunities there are to
7 modify the existing operation. And as I see on
8 handwritten page eight, we could stage a truck
9 or put a wrought iron fence. Are those the only
10 two options that you've come up with?

11 MS. CHEN: We have not come up with any of
12 the alternatives. Those alternatives were
13 developed by city staff, and they have not been
14 discussed with Garcia Recycling.

15 MR. FITZPATRICK: So then no recommendations
16 have come forward then?

17 MS. CHEN: We are more than happy to talk to
18 city staff about that, about potential
19 modifications, but at this point we haven't
20 started that discussion. We have worked with
21 the city addressing various concerns including,
22 for instance, the fact that the signage, they
23 didn't like the signage. We had the containers
24 painted. And also, we installed landscaping at
25 the request of the city. But as far as the

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1 fence or any of the conditions that were set
2 forth in the agenda packet, we have not
3 discussed that with the city yet, but we're
4 happy to.
5

6 MR. FITZPATRICK: Thank you.

7 MR. MENSINGER: Mr. Chair.

8 MR. RIGHEIMER: Commissioner Mensinger.

9 MR. MENSINGER: Just a question for staff.

10 I'm just curious, Mel, are there any other
11 businesses in the city of Costa Mesa that
12 operate out of 20-foot or 40-foot containers,
13 basically shipping containers besides recycling?

14 MR. LEE: Not that I can think of off hand,
15 no.

16 MR. MENSINGER: So would it be safe to say
17 there are none in the urban corridor.

18 MR. LEE: Yes, that would be correct.

19 MR. MENSINGER: The revitalized corridor.
20 Mrs. Chen, I'm just curious as a resident and a
21 planning commissioner, why wouldn't you or your
22 client come to the city with some solutions to
23 those pictures?

24 MR. RIGHEIMER: Commissioner Mensinger, I'm
25 going to call that question out of line. If you

1 have a question for her--

2 MR. MENSINGER: [Interposing] That's what
3 I'm asking. Why wouldn't she come to the--

4 MR. RIGHEIMER: [Interposing] That's not
5 what we're here, I'm not looking for her to
6 figure out what she could do or couldn't do.
7 I'm going to look at what the application is.

8 MR. MENSINGER: Let me rephrase the
9 question. Do you have any idea why your client
10 hasn't come up with any solutions?

11 MR. RIGHEIMER: I'm going to call that
12 question out of line.

13 MR. MENSINGER: That's fine. No further
14 questions.

15 MR. RIGHEIMER: No further questions. Any
16 other questions from commissioners? I have a
17 question if--

18 MR. FITZPATRICK: [Interposing] I have a
19 quick question.

20 MR. RIGHEIMER: Mr. Fitzpatrick.

21 MR. FITZPATRICK: Is it an option to put a
22 truck? Is it an option to put a truck in this
23 facility as a potential solution? Is that even
24 a consideration?
25

1 MR. LEE: I don't believe that's actually
2 reflected in our recommended conditions of
3 approval. I think that the way that it's worded
4 is just basically the containers without the
5 truck. But that's certainly an option the
6 commissioners can consider.
7

8 MR. MILES: Again, I think, as Patricia kind
9 of mentioned, we're at a phase where we're
10 discussing a potential revocation or
11 modification of the existing use permit. We've
12 done our diligence to try to establish what the
13 basis of the complaints were so that we can
14 address those complaints. Discussions about
15 what might be in the cooperative spirit
16 accomplished I think is something that needs to
17 be discussed, and these concepts I just,
18 unfortunately we haven't addressed those. But I
19 think as Patricia has mentioned that Garcia
20 Recycling is ready, willing, and able to work
21 cooperatively with city staff like they have in
22 the past to address any reasonable suggestions
23 from the city.

24 MR. RIGHEIMER: Thank you. I have a
25 question for Ms. Chen, I guess. If we go to

2 page 25, the actual CUP, the MCUP ZA-92-10, do
3 you have that? I'm looking at conditions of
4 approval.

5 MS. CHEN: Sorry, which packet?

6 MR. RIGHEIMER: The first packet. And it
7 would have been pages 23, 24, 25. Correct, it's
8 the July packet.

9 MS. CHEN: Yes.

10 MR. RIGHEIMER: Okay, and on page 25, number
11 three, it reads any and all containers with a
12 maximum of two shall be located at the northwest
13 corner of the site, as shown in the approved
14 plans, and shall maintain a minimum set back of
15 20 feet from the front property line. Staff,
16 can you bring the picture up that we just had a
17 second ago? Just back up a couple of pictures.
18 Back up one more, I guess. Back up another one.
19 Back up one more. I guess this picture will
20 show in here I think we can agree that the truck
21 there is not a container.

22 MS. CHEN: It is a truck. It has a
23 container on it. And the reason why we think
24 that the two permits have to be read together is
25 because if you look on page 20 of the same

1 packet, and this is for the original '89 permit,
2 it says for the description of the project it
3 says my plan is to park at the location above
4 one ton truck to buy aluminum cans, plastic
5 bottles, and glass bottles. So together it
6 seems to us, and you know, it may be just a tiny
7 bit gray, but together it seems to me that the
8 two permits would allow for one truck and one
9 container.
10

11 MR. RIGHEIMER: Okay, and can you tell me
12 how many tons that truck is?

13 MR. GARCIA: Three ton truck.

14 MS. CHEN: Three ton truck.

15 MR. RIGHEIMER: It's a three ton truck?
16 Okay. And as you follow on number three it says
17 and shall maintain a minimum set back of 20 feet
18 from the front of the property line. Is the
19 front of that truck 20 feet from the property
20 line? Answer through your attorney, please.

21 MR. MILES: The response is that the belief
22 is that the set back is in excess of 20 feet.

23 MR. RIGHEIMER: For the front of the truck.

24 MR. MILES: From the front of the truck.

25 MR. RIGHEIMER: Okay.

MR. MILES: And again, well.

MR. RIGHEIMER: Go ahead. And then, Ms. Chen, what are the number of employees out at the property?

MS. CHEN: At any given time there are three or four employees at the facility, four if it's very busy.

MR. RIGHEIMER: So if I was at the property at ten o'clock on Saturday morning and I saw seven employees with hats on getting stuff out I would have been mistaken?

MR. GARCIA: [Inaudible.]

MR. RIGHEIMER: You need to be on the record.

MR. MILES: Again, the questions right now I think are, one, outside of the staff report, have no relationship to the complaints that we've been trying to determine what the concerns are. And it's a little bit difficult right now for us to give you a legitimate and competent answer. I think the essence of Garcia Recycling's comment is that there is a responsiveness to the volume of recycled materials that are being generated and processed

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1 through the facility. And one point I think
2 that we'd like to point out is that Mondays, for
3 example, are a very busy day, because the other
4 recycling facilities are closed on Mondays. So
5 Garcia Recycling provides a very invaluable
6 service to the community on Mondays. I suspect
7 that the point is that there are up to four
8 employees as a standard, and it probably
9 deviates from that given the need to respond to
10 volume. But I don't believe that there's any
11 condition in the CUP that mandates what amount
12 of employees can be assisting at Garcia
13 Recycling.

14
15 MR. RIGHEIMER: Thank you. Okay, and
16 lastly, the property at Smart and Final, the
17 application does not have a CUP to operate
18 business from Smart and Final, the Smart and
19 Final property next door, it's 709. It's not
20 part of this application.

21 MS. CHEN: The application I think speaks
22 for itself.

23 MR. RIGHEIMER: Okay, and then do employees
24 from Garcia's go over to cars and trucks and
25 unload from the Smart and Final property?

MS. CHEN: I don't know the answer to that.

MR. RIGHEIMER: Okay, thank you. Any other questions? Counsel, I know you have some comments you want to make with regards to the presentation.

MALE VOICE: If you want, as far as some of the legal issues that have raised, with regard to the Goat Hill Tavern, earlier I didn't mention this because I figured the commission understands it. But I think it bears repeating. I concur with counsel with regard to the impact of Goat Hill Tavern as far as what has to be shown. You're not looking at a new CUP with an applicant requesting a CUP in this area. The only, it's a higher level of showing that has to come to show that it's a public nuisance, not that it's just not a good fit, but that it's a public nuisance. And Counselor Chen was correct in the code sections she sited and showed you up on the screen. They are correct with regard to what a public nuisance is. It is described in the civil code, which is referenced in the Costa Mesa municipal code 3479 and 3480. What they presented there was correct. What I mentioned

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1 earlier is Goat Hill Tavern does not say, cannot
2 be applied to say that the evidence as shown is
3 inadequate to find a public nuisance. Ms. Chen
4 didn't go on and evaluate the evidence, and you
5 can consider that. But Goat Hill Tavern isn't
6 saying to you that you can't find that there's a
7 public nuisance. That is your job to determine
8 whether there is a public nuisance or not.

9 CEQUA does have, it is true and cases have held
10 that sometimes categorical exemption doesn't
11 remove the project from CEQUA analysis. And
12 there is an exception to it, and the exception
13 is even though a categorical exemption may
14 apply, if it has a significant impact on the
15 environment, then you have to look past the
16 categorical exemption. And therefore, it
17 wouldn't apply. Sometimes something might fit
18 into a categorical exemption but it's having an
19 impact on the environment, and that's what CEQUA
20 is all about. So you can consider that. This
21 is the first I've heard that the applicant, and
22 maybe I didn't see all the information, two
23 things. It indicated that there's an opposition
24 to the revocation of the first CUP. The staff
25

1 has indicated that the second one, the minor CUP
2 was replacing the first one. Now, there's a
3 contest that I first hear tonight that they want
4 both CUPs. And then, Ms. Chen said it was a
5 little bit of a gray area. I think it's a big
6 gray area when you try to put both CUPs
7 together, which are talking about two separate
8 locations, and then saying that you can have a
9 truck there. We haven't researched that issue
10 because I didn't hear it until tonight. And as
11 far as the question about three or four
12 employees and if someone witnesses seven
13 employees, even though the number of employees
14 isn't in the conditions, I think it's in a quasi
15 judicial proceeding it would be appropriate to
16 test the credibility of any witnesses that are
17 providing you evidence. And Mr. Garcia did talk
18 to you about certain things. And if he
19 indicates there are three or four employees and
20 you've been out there and saw a different
21 number, I think that's something you can
22 consider with regard to credibility of the
23 witness. And then, there was an argument about
24 20 years of no code enforcement and all of a

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1 sudden you're doing a revocation. I don't know,
2 just because, you know, and I'm not sure whether
3 there has been known code enforcement, but I
4 don't think that's a bar to you reviewing it now
5 if a public nuisance exists there. Again, a
6 much higher standard than if this was a new
7 application. Do you have any questions?

8
9 MR. MCCARTHY: Yes, Mr. Chair.

10 MR. RIGHEIMER: Commissioner McCarthy.

11 MR. MCCARTHY: We keep talking about the
12 public nuisance, but again, this goes back to
13 the question that I asked Mel earlier about
14 Costa Mesa's code gives two bases for
15 modification or revocation of the CUP, the
16 public nuisance standard, which you've discussed
17 and has been discussed in the presentation, or
18 the applicant's failure to meet their conditions
19 of approval, correct?

20 MALE VOICE: That's correct. Either one or
21 both would be something that you should be
22 considering when looking at this whole issue.

23 MR. MCCARTHY: Okay, but the heightened
24 standards that you were alluding to as far as
25 the public nuisance component of it, are you

1 interpreting the Goat Hill case to mean that
2 it's a heightened standard applied to the
3 failure to meet the original conditions of
4 approval also? Or is that only as it pertains
5 to the public nuisance complaint?
6

7 MALE VOICE: Well, yes. As far as
8 violations of conditions of approval, if there's
9 a constant violation of the conditions of
10 approval and it doesn't seem that you can get
11 compliance with those, that's something you can
12 consider. That's a different level. A new
13 applicant hasn't violated conditions. So what
14 they're trying to do is contrast what a new
15 applicant would be like and what level you have
16 to look. You're just looking for a good fit.
17 But after there is a vested property right, once
18 you, you know, a type of vested property right,
19 once you give them permission for the use, now
20 it can't be that it's not just a good fit. You
21 have to either find that it's a public nuisance
22 or they're just not living up to the conditions
23 of approval that you set on them. Those are the
24 things you can look at. Does that help?

25 MR. MCCARTHY: Yes.

MR. RIGHEIMER: Any more comments from the city attorney?

MR. MENSINGER: Mr. Chair.

MR. RIGHEIMER: Commissioner Mensinger.

MR. MENSINGER: This is for the city attorney. So is a three ton truck being used there a violation when they're allowed a one ton truck? I just want to make sure I understand that.

MALE VOICE: I'm sorry, what was that?

MR. MENSINGER: Their CUP allows for a one ton truck.

MR. RIGHEIMER: Well, let's not, we can't state that it does. There's a discussion whether both CUPs are in effect or just one. But if both were in effect I guess is the question.

MR. MENSINGER: So can I, I guess--

MALE VOICE: [Interposing] If the condition says you can only have a one ton truck there, now again, I haven't read the CUP. But if it says you can only have a one ton truck there and they have a three ton truck, that would seem to be a violation.

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MR. MENSINGER: Okay, thank you.

MR. FITZPATRICK: Mr. Chair.

MR. RIGHEIMER: Commissioner Fitzpatrick.

MR. FITZPATRICK: I have another point of clarification on handwritten page 22, the schedule of recycling purchases. The 4.1 or so million pounds, is that for Garcia's Costa Mesa or all Garcias?

MS. CHEN: It's for that facility.

MR. RIGHEIMER: Any other questions? Okay, we have a public hearing here. At this point, members of the public can come up to the microphones. Please give me your name and address, and you will have three minutes to speak to the issues.

MR. EDWARD CARMONE: Thank you. My name is Edward Carmone [phonetic]. I live at 752 Center Street, right around the corner. Could ask that that slide, that overhead slide be shown right at the very, very beginning?

MR. RIGHEIMER: On the presentation of our staff or from Ms. Chen's staff?

MR. CARMONE: It was from the commission's slide.

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MR. RIGHEIMER: Okay, Mel. Okay.

MR. CARMONE: It's an overhead shot showing 19th Street and Wallace.

MR. RIGHEIMER: I'm going to hold for one second. Can I answer your question?

FEMALE VOICE: I'm sorry. I don't mean to interrupt, but this individual spoke at the last hearing, and I think you, at least at the last hearing said that was going to be his only opportunity to speak.

MR. RIGHEIMER: Thank you. Sir, did you speak at the last hearing?

MR. CARMONE: Yes, I did.

MR. RIGHEIMER: Okay, if you already spoke at the last hearing, I can't have testimony from you at this hearing. Is there anybody else? I think your wife can do it for you. You don't have to write your name. You can speak to this without writing your name. Just make sure before we leave we have it.

MS. FRANCA CARMONE: My name is Franca Carmone, and I live at 752 Center Street. And I have no objections about the recycling. In fact, we love recycling. The only objections we

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1 have is the location. I think there are other
2 locations that could be considered, and it would
3 be better. Nineteenth Street is a beautiful
4 street now. They've remodeled or redid it with
5 the lamps, beautiful lamps and et cetera, and
6 now this really detracts from it. There are a
7 lot of people coming around with large bags of
8 cans. I think if it would be in a different
9 location, maybe where you have more commercial
10 places like, well, like Pamona and 17th Street,
11 where they have the - - houses, that would also
12 be close to the people that could take their
13 recycling goods. It would be close to them, so
14 in case they think this is the best place to be,
15 because most of the people live around there who
16 collect these things. And they can walk to it.
17 So it's just the noise, and it does collect a
18 lot of people pick up cans, and they just take
19 it over there, and then they go. There are a
20 lot of liquor stores there, so they go and buy
21 some liquor with a little bit of money they make
22 there. And you can see a lot of people getting
23 around there that are homeless. So I would, my
24 only objection is if he could relocate someplace
25

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1 else it would be nice. That's it.

2 MR. RIGHEIMER: Thank you.

3 MS. CARMONE: Thank you.

4 MS. CLAUDETTE MCKILLIAN: Mr. Chairman,
5 commission, I'm Claudette McKillian. My first
6 time I've ever attended a city hall meeting, but
7 this situation was important to me, so that's
8 why I'm here. With what Mrs. Carmone said in
9 wanting Mr. Garcia to relocate, maybe the soup
10 kitchen, maybe that should be relocated. And
11 what was mentioned about the businesses across
12 the street, a pawn shop, liquor store, soup
13 kitchen, a beauty salon which is right across
14 the street failed to be mentioned. I'm here in
15 favor of Mr. Garcia and his recycling business,
16 and I think one of the most important things
17 that have not been mentioned this evening is the
18 jobs that he provides for the young men that
19 work for him. I believe in capitalism. He is
20 providing jobs for people that don't have jobs
21 nowadays. I think it's important. He has been
22 in business for 20 years. He's a good American
23 citizen. All the legalities have been mentioned
24 by the attorneys, and I think that the recycling
25

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1 place should stay. I see no reason why his
2 permit should not be reinstated. He's a
3 businessman. He's provided entrepreneurship.
4 This country was built on that. I think that
5 should be considered in your decision. I am
6 personally going to report this meeting, things
7 that we go to and attend for the Balboa Bay
8 Republican Women, and I know they will all be in
9 support of you, Mr. Garcia. Thank you.
10

11 MR. RIGHEIMER: Thank you. Anyone else want
12 to speak? Just come to the podium.

13 MR. VINCE PONICO: Good evening. My name is
14 Vince Ponico [phonetic], 20912 Skimmer Lane,
15 Huntington Beach. I have been a customer of Mr.
16 Garcia for over ten years and I'm here to show
17 my support for Garcia Recycling. The complaints
18 against this company are unjust. Garcia
19 Recycling provides a valuable service to the
20 city of Cost Mesa, such as preserving our
21 environment, employment in a struggling economy,
22 and providing cash to individuals who take the
23 time to recycle their reusables. Please give
24 Garcia Recycling a chance to survive. Thank
25 you.

MR. RIGHEIMER: Thank you. Anyone else want to speak? If you're going to speak, please come down. It will be a little quicker.

MR. CHUCK PERRY: My name is Chuck Perry, 425 East Bay Street in Costa Mesa. I've been a long-time resident here since 1958. I've dealt with Mr. Garcia's business for a number of times, and I just had a couple of questions. In the very beginning it seemed to me when he first started there was one container there. Now, there's a truck parked on a concrete culvert there and another container beside it. And if they're doing four million pounds, what did they do in the beginning when you guys gave them the permission to be there? That's kind of one of my questions. I don't know what it was in the beginning, but I'm sure it's changed. What happens when it goes from four million to eight million? Do we have three containers sitting there? Is that the next step? I'm kind of asking what's the business plan here for the city. Is having a truck and a container a business plan? And the second thing and the most upsetting thing to me is the way that they

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1 do their bottles. What they do is they take
2 them from one container and to get the liquids
3 out so that they're not, you're not being given
4 cash for that liquid, they dump them into
5 another, and the liquids go all over the ground.
6 And they have people that clean it up, and they
7 sweep it, but what happens to the liquids when
8 it starts to rain? It goes down into our sewer
9 system, and that's a question I think you guys
10 have to really look at. I'm not the complainant
11 here. I just was interested in it, because I
12 saw it. Those are kind of the questions I have.
13 Thank you very much.

14 MR. RIGHEIMER: Thank you. Anybody else
15 from the public want to speak? Name and
16 address, please.

17 MR. ERIC LARSON: Eric Larson, 168 East
18 Wilson, Costa Mesa. We've been recycling with
19 Garcia's for about ten years, that's me and my
20 small family. We've never seen any of the
21 violations that were mentioned. Formerly, we
22 lived on Shalimar Street in the early '70s when
23 the area wasn't so upgraded as it is today.
24 These are hardworking individuals, and we need
25

1 this facility in Costa Mesa, because there are
2 not many options on that side of town. The
3 thing that I'd like to say the most is the money
4 that we received from this recycling facility is
5 spent in this adjacent area here from the food
6 shops to the nearest gas station, which is on
7 the corner of - - and 19th. And we're
8 approximately responsible for about 200 pounds a
9 week, well, a month. Excuse me, a month. In my
10 heyday when I was doing it more for a full-time
11 basis, I was bringing in maybe three times that
12 much. And that's all coming from Costa Mesa and
13 money in return is being spent in Costa Mesa in
14 those vicinity pictured up here. That's all I
15 have.
16

17 MR. RIGHEIMER: Thank you. Anybody else
18 want to speak? And if you're going to speak,
19 please come to the microphone. It will speed it
20 up a little bit, thank you.

21 MS. LAVON LARSON: My name is Lavon Larson.
22 I live at 168 East Wilson Street in Costa Mesa.
23 I find that when I go to the recycling place the
24 four, five gentlemen that he has working for
25 him, they are polite, they are speedy, they

1 accurately weigh, and they are very helpful. If
2 I had a heavy container, they would even help me
3 take it out of my car. As a senior citizen, I
4 really like that. They are needed. I need the
5 money from my recycling to buy the gas, and when
6 I was there, everything was clean. And I
7 understand when everybody has gone home they
8 sweep the parking lot, and they also wash it
9 down. I don't know if it goes into any sewer,
10 but they are very neat people. Thank you.

11 MR. RIGHEIMER: Thank you. Anybody else
12 want to speak? Seeing nobody else coming to the
13 microphone, I'm going to go ahead and close.
14 I'm sorry, call the applicant for rebuttal. And
15 there is not a time limit.

16 MR. MILES: Thank you, Mr. Chairman. I'll
17 keep it brief. I just wanted to reiterate the
18 Goat Hill Tavern decision. I think your deputy
19 city attorney and us are on the same page. I
20 just would like to point out that, you know, the
21 point is that in weighing evidence and this
22 commission deciding do you have the goods, do
23 you have the evidence that's necessary to revoke
24 or even modify this use permit. The Goat Hill

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1 Tavern decision makes it clear that the
2 reviewing court is going to exercise independent
3 judgment, and that's something you should keep
4 into consideration. It's not an abuse of
5 discretion standard, and there's not going to be
6 deference to the commission. The court is going
7 to weigh it in its own eyes. And that's where
8 factually, if you look at the Goat Hill Tavern
9 decision, you'll see that the City of Costa Mesa
10 observed or received complaints, numerous
11 complaints that were documented about public
12 urination, intoxication in the vicinity. They
13 documented it. They took formal action. One of
14 the things that is glaringly missing here, and
15 it's always suspect in a nuisance proceeding or
16 in a revocation proceeding where you have no
17 evidence of citation, notice of violation, a
18 formal code enforcement proceeding. Typically,
19 an administrative body as this would prefer to
20 insulate itself before jumping right into
21 possibly damaging a property right and possibly
22 violating civil rights. And as a prefatory
23 action typically you would see something like an
24 administrative citation that would give the
25

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1 permit holder an opportunity to address the
2 concern or the causable action which we are
3 continuing to struggle to define. In terms of,
4 if we're talking about let's think creatively
5 how do we resolve this, and we're talking about
6 possibly this second phase of what can, as a
7 good neighbor, or what cooperatively can be
8 accomplished, we might think about that. I
9 think there is an entire proceeding, an
10 administrative process that has been overlooked
11 that could have been a better vehicle I think to
12 start to get at that is there a legitimate
13 concern and can Garcia Recycling address that
14 concern before its fundamental vested property
15 rights are at issue. To address the two
16 containers and truck issue, again, there's
17 really not a slippery slope problem here. I
18 understand the concern that what was the start
19 point? How much tonnage was there? Is this
20 going to go to eight million pounds of recycle
21 material? The point is that Garcia Recycling is
22 limited to two containers. There's never going
23 to be more unless there's a modification of the
24 CUP. So the volume is controlled by that

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condition, and that's typically what a CUP is supposed to do. It's not a use of property by right, but it's a use of property that's understood as compatible with appropriate conditions. And I think that's why the '92 permit has the two container language. And again, the gray area or what we're debating about whether or not the container can be on a truck, really, the reality is that those containers have to be on-loaded, off-loaded from a truck. So it makes the process a lot more efficient when you have a truck that counts as the container. That's the, you know, if you want to get into the minutia of the gray area and debate that, that's been going on for a decade. And that's why I point to the issue of celerity and why I think it's important to look at the Goat Hill Tavern decision, and you will see that nothing remotely like this fact pattern was presented in that case. In that case, the court very clearly established that the evidence was insufficient to revoke the permit and pointed out that it's an independent judgment standard of review. And it's because you are

1 implicating a fundamental vested property right.
2 Thank you.

3
4 MR. RIGHEIMER: Thank you. Okay, I'm going
5 to close the public hearing, and I'll take a
6 motion or comments from the commission.
7 Commissioner Mensinger.

8 MR. MENSINGER: Mr. Chair, I'd like to make
9 a motion. Based on the evidence in the record
10 and findings contained in Exhibit A, the
11 planning commission hereby revokes zoning
12 application ZA-89-25 and ZA-92-10 with respect
13 to the property described above.

14 MR. RIGHEIMER: I have a motion. Do I have
15 a second?

16 MALE VOICE: Second for discussion.

17 MR. RIGHEIMER: I have a motion, a second,
18 discussion.

19 MALE VOICE: I have a question for counsel.
20 The concept of vested right. If 20 years ago we
21 approved let's say a little coffee shop and it
22 turned out to be Starbucks 20 years later, I
23 guess my point is at what point would this stop?
24 Could it go to 20 million pounds, or because we
25 have one container and they decide to have 20

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1 trucks there continuously pulling it out,
2 storing it, taking it away? At what point do
3 vested rights have to be balanced with kind of
4 what's going on in the neighborhood and kind of
5 20 years later?
6

7 MALE VOICE: Well, an option that you have
8 before you obviously is a CUP modification to
9 address the current issue if you believe that
10 there is a public nuisance there and that it can
11 be dealt with with additional conditions.
12 That's how you would deal with it as it goes
13 forward. But if something doesn't rise to the
14 level of public nuisance, the vested right is
15 going to continue. You wouldn't have the
16 ability to consider a modification or revocation
17 or anything like that. Except for the other
18 avenue that was mentioned earlier, if somebody
19 is continually violating the conditions of
20 approval, that's really a separate approach.
21 That's a different issue. I think the first one
22 is what you're talking about. Does that answer
23 your question?

24 MALE VOICE: Yes.

25 MALE VOICE: The reason why I'm supporting

1
2 Commissioner Mensinger's motion is that rather
3 than dispute what I see are the opportunity to
4 dispute some factual representation here, I
5 don't think they're material. But I agree with
6 the findings that there is a significant volume
7 here. And I'm challenged to try and figure out
8 myself how to modify, and I can't figure out how
9 to screen or block or relocate where you abut
10 residential. So I'm not presented with any
11 modification options here today, and that's why
12 I'm supporting the motion. Thank you.

13 MR. MCCARTHY: Mr. Chair.

14 MR. RIGHEIMER: Commissioner McCarthy.

15 MR. MCCARTHY: I talked to a lot of the west
16 side residents that I know about this project,
17 and they raised their concerns to me. I saw the
18 problems with this project. My concern of
19 course, again, is looking through the conditions
20 of approval from '92. I'm struggling to find
21 something that I can hang my hat on as far as a
22 specific violation. That defaults me to the
23 public nuisance argument. And while I have a
24 lot of problems with this project, I really,
25 really do, I think there are a lot of things

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1 going wrong, Mr. Garcia, on your project down
2 there. I think your counsel is looking at this
3 thing through rose colored glasses, or maybe
4 they're just portraying that to us. I did go
5 out there and see this, and I was flabbergasted.
6 It's the first time that I've lived here that
7 I've been embarrassed to be in Costa Mesa, to
8 drive through that shopping center and see
9 what's going on there. The parking impacts, the
10 homelessness and vagrancy that we can blame the
11 soup kitchen all we want, but there are people
12 carrying cans. So it all falls down on Garcia.
13 The concern that I have is again that I don't
14 know at this point that the record contains
15 enough evidence to find the public nuisance, and
16 that's what I'm grappling with right now as a
17 planning commissioner, not as a resident of
18 Costa Mesa. As a resident of Costa Mesa, the
19 fact that this is on our urban path right down
20 19th Street is just, it's shocking to me that we
21 allow this. But I just don't see enough to go
22 down that path of public nuisance, which is why
23 I can't support the motion unfortunately.

24 MR. CLARK: Mr. Chair.

MR. RIGHEIMER: Vice Chair.

MR. CLARK: I'm going to start in one director. Commissioner Mensinger, and at the risk of having you go on at length, could you give me a little better detail of why you motioned the way you did?

MR. MENSINGER: I'm sorry. What is your question?

MR. CLARK: Can you explain yourself as to why you chose that motion? I have no reasoning from you for the motion. I'm not arguing that it's a good or bad reasoning. I don't know what it is.

MR. MENSINGER: Commissioner Clark, it just goes back, this goes back several months from contacts and letters from the community, some folks in the audience and some not in the audience. I believe that when this use was approved for a CUP it was an apple, and today it's an orange. And it doesn't take a genius to go out there and look at the facility and see how much volume is being done out of this location to understand that this is a nuisance. You know, I'll say this quite often. People are

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1
2 attracted to communities, and we as a city need
3 to continue to attract new people. And it's
4 very difficult to do when uses become nuisances.
5 And clearly this, besides the violations that
6 have been noted, and besides the findings that
7 staff has given us eloquently here in one
8 through seven, this, I would love to see Mr.
9 Garcia in another location that is not on 19th
10 Street near all these homes and that affects all
11 these residents. So I hope that answers your
12 question.

13 MR. CLARK: As well as I can expect. This
14 is a challenging issue. I unfortunately agree
15 with both commissioners so far, which is not a
16 good place to be in this. I've been past this
17 facility on many occasions as well, and although
18 I'm not sure I echo entirely my embarrassment at
19 Costa Mesa driving by, I certainly understand
20 the sentiment. I don't find that the facility
21 is an asset in looks to Costa Mesa. I think we
22 have issues there. However, that being said, so
23 far I have nothing in the record that gives me
24 the ability to certainly not have a warm and
25 fuzzy feeling about trying to revoke the

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1 permits. We don't have a consistent evidence of
2 violations of the original CUP. However, the
3 counsels almost made an argument in favor of
4 that all by themselves by calling into account
5 the original CUP that says a one ton truck, and
6 we obviously have a three ton truck sitting
7 right in the picture that has consistently been
8 there. That's not sufficient for me to be a
9 complete violation at the level that I think is
10 warranted. We have no code enforcement actions.
11 I've got nothing to base violations on. And
12 although I have heard that we have public
13 comments to the contrary, we certainly do not
14 have a lot of public comments saying we don't
15 like the facility. As a matter of fact, we've
16 got evidence in the record of 500 people signing
17 that they liked the facility. So unfortunately
18 I can't go for a public nuisance at that point.
19 So as much as I would admonish the applicant to
20 work with staff to clean this up, and I admonish
21 staff to get code enforcement all over this so
22 there is actually evidence, I'm going to offer
23 substitute motion that we receive and file.
24

25 MR. RIGHEIMER: I have a motion. Do I have

1 a second.

2 MALE VOICE: Second for discussion.

3 MR. CLARK: It's always for discussion.

4 MR. RIGHEIMER: Is there any discussion to
5 receive and file.

6 MALE VOICE: Mr. Chair.

7 MR. RIGHEIMER: Please.

8 MALE VOICE: After I listened to both
9 commissioners communicate that they have
10 observed issues, you're not going to even
11 attempt to modify or make any recommendations
12 or?
13

14 MALE VOICE: Mr. Chair, I guess the concern
15 that I've been grappling with is how do we
16 modify this to address the concerns that have
17 been raised to me by the community, the
18 vagrancy, the noise, the odor, et cetera, that I
19 have personally seen exist but unfortunately
20 aren't in the record to the degree that they
21 should be. And I don't know how to modify that
22 to ameliorate those. That's the concern that I
23 have.

24 MR. CLARK: Mr. Chair.

25 MR. RIGHEIMER: Commissioner.

1 MR. CLARK: Just in answer to Commissioner
2 Fitzpatrick, and I think it deserves an answer.
3 I agree with Commissioner McCarthy. We don't
4 have evidence in the record. My personal
5 driving by once or twice doesn't constitute
6 enough record to modify. What am I going to
7 modify? I don't have evidence in the record
8 that says this is the problem. What do we do to
9 fix it? I'm just not seeing that. I don't have
10 anything that I can work with on that. And
11 here's what I think happens at this point.
12 Either the applicant cleans it up because they
13 work with city officials and it improves, or the
14 applicant doesn't and code enforcement gives us
15 a case to work with, and it shows up back here
16 and we deal with it then. But we've got to have
17 evidence on the record, and I personally do not
18 see it.

19 MR. RIGHEIMER: Let me see if I can get some
20 evidence on the record here. Can we go to the
21 staff July 11 report, page 20, the photo? There
22 are a lot of reasons that people may or may not
23 like this on the property. I'm not concerned
24 why they may or may not like it, but like any

1 other project, it has rules to follow by and to
2 work by in there. I think on the record we have
3 that over 4.2 million pounds is run through this
4 operation here. I think if we look on picture
5 page 20, the picture in here, we're showing, can
6 you pull that one up at all?
7

8 MALE VOICE: You said handwritten page 20?

9 MR. RIGHEIMER: It's handwritten on the
10 July. Do you have the photo? Well, I'll
11 describe the photo for you. It's taken from the
12 Smart and Final parking lot. It's people with
13 bags of cans in the Smart and Final parking lot
14 bringing over to the property. What you've got
15 here is an operation, an industrial operation
16 doing 4.2 million pounds that the parking lot
17 becomes full of people over at Smart and Final.
18 You cannot do ten pounds of business in a five
19 pound bag, and they cannot limit the amount of
20 business and work they do to the area that they
21 have. And so therefore, they have customers who
22 come over to the Smart and Final parking lot,
23 based on this picture and other evidence given
24 by Smart and Final, to operate here. And
25 they're not allowed to do that. They also have

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1 brought in a three ton truck that does not sit
2 20 feet back from the front of the property over
3 in there. Based on how many employees are out
4 there, I guess we can get into that issue in
5 here. But the intensity of volume done on this
6 property is not the issue if it stays on this
7 property, if it does not stay on this property
8 when you have customers doing it. Several weeks
9 ago we had here another recycling property that
10 came to us. It's different because of the fact
11 that they were going for a CUP, so there's a
12 different standard. I understand that point.
13 But we went through it and said could they do
14 the business on the property there and not
15 affect the neighboring properties or the impact
16 on the street. What we have evidence here for
17 is that this cannot be contained on this
18 property here, that over the years based on
19 Smart and Final's testimony that they use their
20 parking lot to do it. And in fact, looking at
21 photos, the parking lot becomes full with this
22 in here. And so it's the amount of volume,
23 based on the fact that it goes over the property
24 line, and they don't have a CUP to go on the
25

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1 neighboring property. And that's why I would
2 speak against this motion to receive and file
3 and then go back to the original motion.
4

5 MALE VOICE: Mr. Chair.

6 MR. RIGHEIMER: Commissioner.

7 MALE VOICE: I'm interested in this
8 argument. So the argument is that because
9 they've expanded beyond their original approval
10 to operate the facility that now they have
11 violated their '92 conditions of approval for
12 operating a facility.

13 MR. RIGHEIMER: Correct. We have evidence
14 in the record showing that the other property
15 next door has to be used in order for this to do
16 the intensity of the 4.2 million pounds a year.
17 So the motion on here right now is to receive
18 and file. And vice chair and then--

19 MALE VOICE: Mr. Chair, I withdraw my second
20 to the motion to receive and file.

21 MR. RIGHEIMER: Seeing no second, is there
22 any other second for the motion to receive and
23 file. Seeing none, we'll go back to the
24 original motion. Do you have any more comments
25 on the original motion.

1 MR. CLARK: All right, Mr. Chair, your
2 evidence is sufficient in the sense that we've
3 got not just a truck that's not quite the right
4 size but literally is spilling over onto another
5 piece of property which is clearly not part of
6 the CUP. Now, my quandary at that point is I
7 would like to, because we have a lot of public
8 input that supports this facility and the use of
9 this facility, find a way to modify the
10 conditions of approval to keep this facility
11 operational if at all possible. I think it
12 behooves us to exhaust any possibility of
13 modification prior to revocation. So that being
14 said, I mean, it's going to take me a minute to
15 look at the conditions that are here and if
16 there are other ones that are, you know, other
17 commissioners would be interested in, I'm
18 certainly amenable to talking about that.

19 MR. RIGHEIMER: Commissioner Mensinger, and
20 then Commissioner McCarthy.

21 MR. MENSINGER: Mr. Chair, I'm not sure if
22 it's appropriate at this point to grant
23 Commissioner Clark the time to figure out how to
24 make modifications to something that's he's
25

1 already made a motion to receive and file on.

2 MR. RIGHEIMER: He has the right to do that
3 as a commissioner.
4

5 MR. MCCARTHY: Mr. Chair.

6 MR. RIGHEIMER: Commissioner McCarthy.

7 MR. MCCARTHY: So then the basis of your
8 findings regarding the, for lack of a better
9 term, expansion outside of their conditions of
10 approval would be under 1329, the section of
11 their not adhering to their conditions of
12 approval versus the public nuisance argument
13 that's been, you know, we've got the kind of
14 either, or, or both options as far as the
15 findings. Then, you would, as far as your
16 motion is concerned, find the revocation based
17 on being out of compliance with 1329 of the
18 municipal code regarding not meeting their
19 conditions of approval for the expansion of the
20 operation, correct?

21 MR. RIGHEIMER: Correct. I'm giving
22 Commissioner Vice Chair a chance to look over.

23 MALE VOICE: Mr. Chairman, if I may. I
24 think the motion on the floor is with the
25 findings that are in Exhibit A which are the

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1 public nuisance, so that's what the motion is
2 that has been seconded.

3
4 MR. RIGHEIMER: So then we have to add in,
5 we have to modify it or I could make a
6 substitute motion.

7 MALE VOICE: Or you can make an amendment to
8 the motion to add additional findings.

9 MALE VOICE: Mr. Chair, since I was the
10 maker of the motion, I'll make the motion that
11 we allow Commissioner Clark the time to modify
12 the motion, my motion.

13 MR. RIGHEIMER: Well, just modify, modify
14 for--

15 MALE VOICE: We're not sure what.

16 MR. RIGHEIMER: No, which one was it again?
17 13?

18 MALE VOICE: Mr. Chair, can we take a
19 recess? Would that be possible? That would be
20 great.

21 MR. RIGHEIMER: I will go ahead and take a
22 recess. Ten minute recess.

23 [Music]

24 MR. RIGHEIMER: Okay, we are back. Please
25 take your seats. At this time we had a motion

1 and a second to revoke. I think adding to that
2 we had to also add the municipal code section
3 with regards to a violation of the actual
4 conditions of the CUP and add a finding. I
5 scratched this out, and I'm not an attorney, so
6 help me with this, Mel. Number eight, scale and
7 intensity. With 4.2 million pounds of the
8 recycling the center is so large as to spill
9 over into neighboring properties. Customers
10 routinely park and unload from 709, Smart and
11 Final. Go ahead.

12
13 MALE VOICE: Yes, we can incorporate that
14 language into the final findings.

15 MR. RIGHEIMER: Thank you. Commissioner.

16 MALE VOICE: Just to be clear, the findings
17 under A are going to delete reference to the
18 public nuisance.

19 MR. RIGHEIMER: Correct.

20 MALE VOICE: Okay, thank you.

21 MR. RIGHEIMER: Or amend it to. Leave
22 nuisance and--

23 MALE VOICE: [Interposing] My understanding
24 is you're finding public nuisance and you're
25 finding a violation of the CUP in that it is

1 expanded beyond the scope of the CUP. It's
2 both.
3

4 MR. RIGHEIMER: Okay.

5 MR. CLARK: Mr. Chair.

6 MR. RIGHEIMER: Vice Chair Clark.

7 MR. CLARK: I have found what I hope will be
8 an acceptable substitute motion.

9 MR. RIGHEIMER: Please.

10 MR. CLARK: Mr. Chair, I'm going to move
11 that based on the evidence in the record and the
12 findings contained in Exhibit A, which happens
13 to be handwritten page eight, the planning
14 commission hereby revokes ZA-89-25 and modifies
15 ZA-92-10 with respect to the property above.
16 Modification to ZA-92-10 is shown in Exhibit B,
17 which happens to be on page nine, handwritten
18 page nine. It relates to the clarification that
19 the minor conditional use permit is an
20 independent permit not related to any previous
21 approvals of the recycling facility, and B,
22 addition of new conditions of approval.

23 MR. RIGHEIMER: And the additional of the
24 conditions of approval are?

25 MR. CLARK: There are on page eight.

MR. RIGHEIMER: B.

MR. CLARK: Page eight and I think nine.
Nine and ten, sorry.

MR. RIGHEIMER: I'm seeing page 11 here. Am
I missing something?

MALE VOICE: Page nine and ten.

MR. CLARK: Nine and ten.

MR. RIGHEIMER: Is the findings for
approval. And then the conditions are 11? Oh,
okay. Sorry. Wrong one. Sorry. Do I have a
second? It dies for lack of a second. Back to
the main motion. Any other comments from the
commissioners? Seeing no, we will call for a
question.

FEMALE VOICE: Motion carried, four to one,
Clark voting no.

MR. RIGHEIMER: This item can be appealed to
the city council within seven days, and the next
city council meeting is when, Mr. Conner or Mr.
Corey?

MALE VOICE: The next council meeting is
next Tuesday.

MR. RIGHEIMER: All right. Thank you very
much.

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1 COSTA MESA PLANNING COMMISSION MEETING 90

2 MALE VOICE: Mr. Chair, before we move to
3 the next item, can I make a recommendation that
4 we put together a team to try and figure out
5 some additional ways to recycle in this city?

6 MR. RIGHEIMER: I think if you want to bring
7 that issue up after this as a completely
8 separate issue, we can discuss it. Okay, next
9 item. Corey, help me. I'm lost. Item four.

10 [END AUGUST 9, 2010 PC ITEM 3 MP3]

C E R T I F I C A T E

I, Kelly Jo Eldredge certify that the foregoing transcript of the Costa Mesa Planning Commission Meeting, August 9, 2010 was prepared using standard electronic transcription equipment and is a true and accurate record.

Signature: _____



Date: August 23, 2010