
ATTACHMENT 4



CITY OF COSTA MESA

CALIFORNIA 92626-1200

P.O. BOX 1200

DEVELOPMENT SERVICES DEPARTMENT

December 3, 1991

Dr. Russell Pang
1831 Orange Avenue
Suite E
Costa Mesa, CA 92627

RE: MINOR CONDITIONAL USE PERMIT ZA-89-25
RECYCLING CENTER
739 WEST 19TH STREET, COSTA MESA

Dear Dr. Pang:

It has come to Staff's attention that the recycling center approved under ZA-89-25 is not being conducted as originally approved. It is my understanding that the business owner has expanded from the one truck originally approved (that would cover one parking space) to two truck trailers as well as the original truck. Additionally, the operations have been moved to the rear of the site, adjacent to residentially zoned and developed property.

As this use - and any expansion or modification - needs a Minor Conditional Use Permit, a new Minor Conditional Use Permit must be applied for the business, as it is now being conducted, may be required to be discontinued.

I have enclosed the necessary paperwork. In order to allow the resolution of this matter as soon as possible, I ask that either the business be returned to the state originally approved by the Zoning Administrator or that a new application be filed by December 31, 1991.

298
77 FAIR DRIVE

ATTACHMENT 5

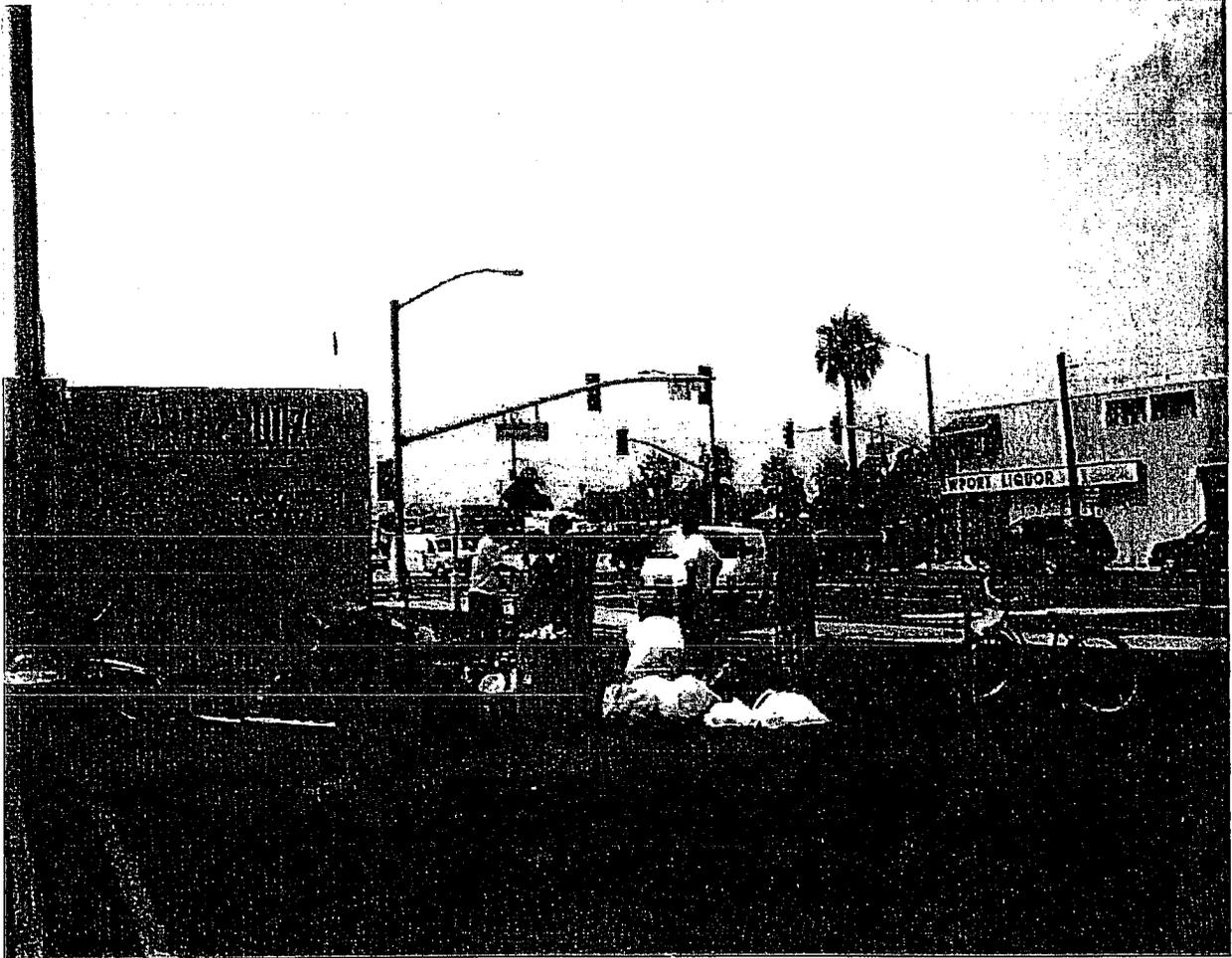
ATTACHMENT 5
OTHER SIMILAR FACILITIES



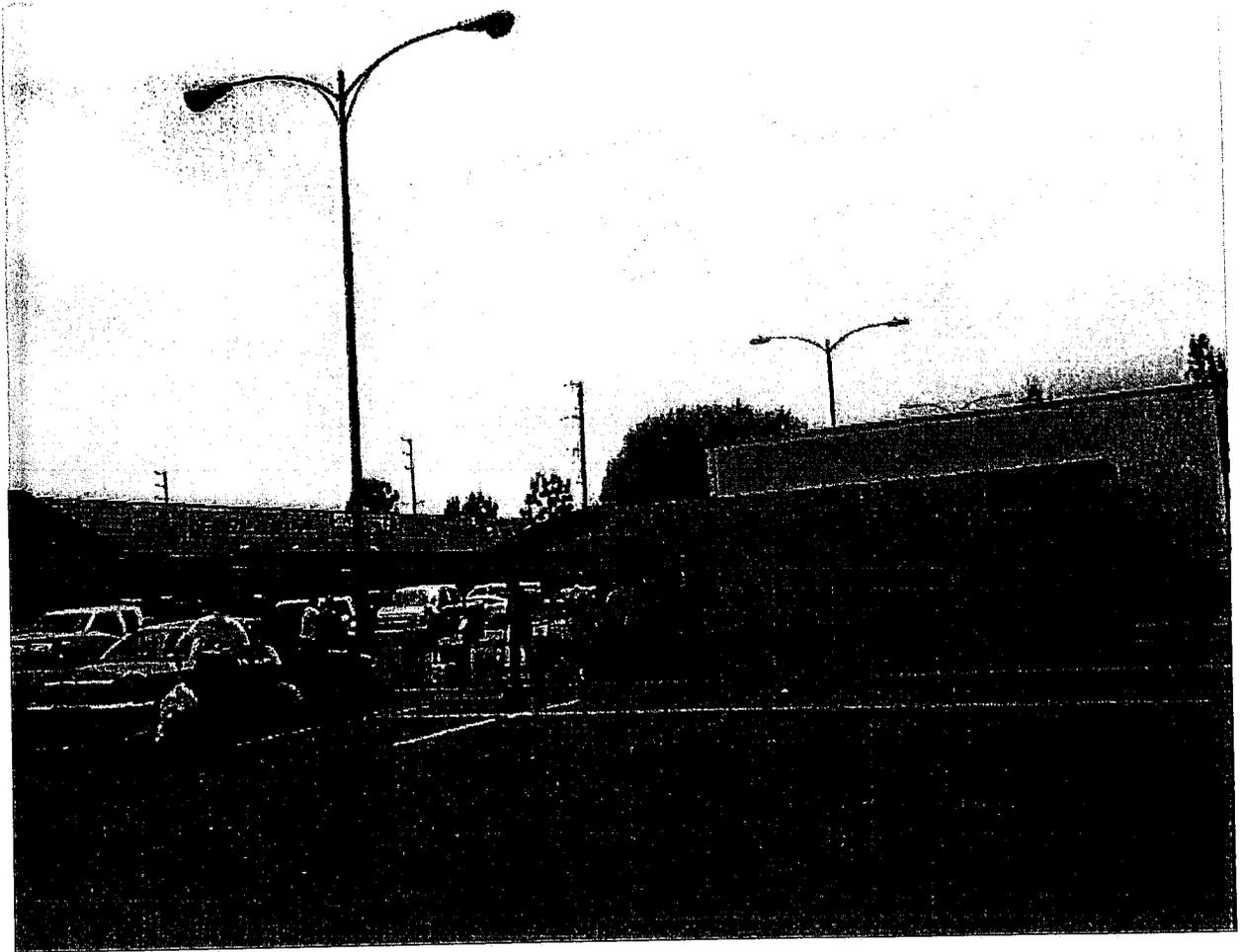
NexCycle
185 E. 17th Street



NexCycle
185 E. 17th Street

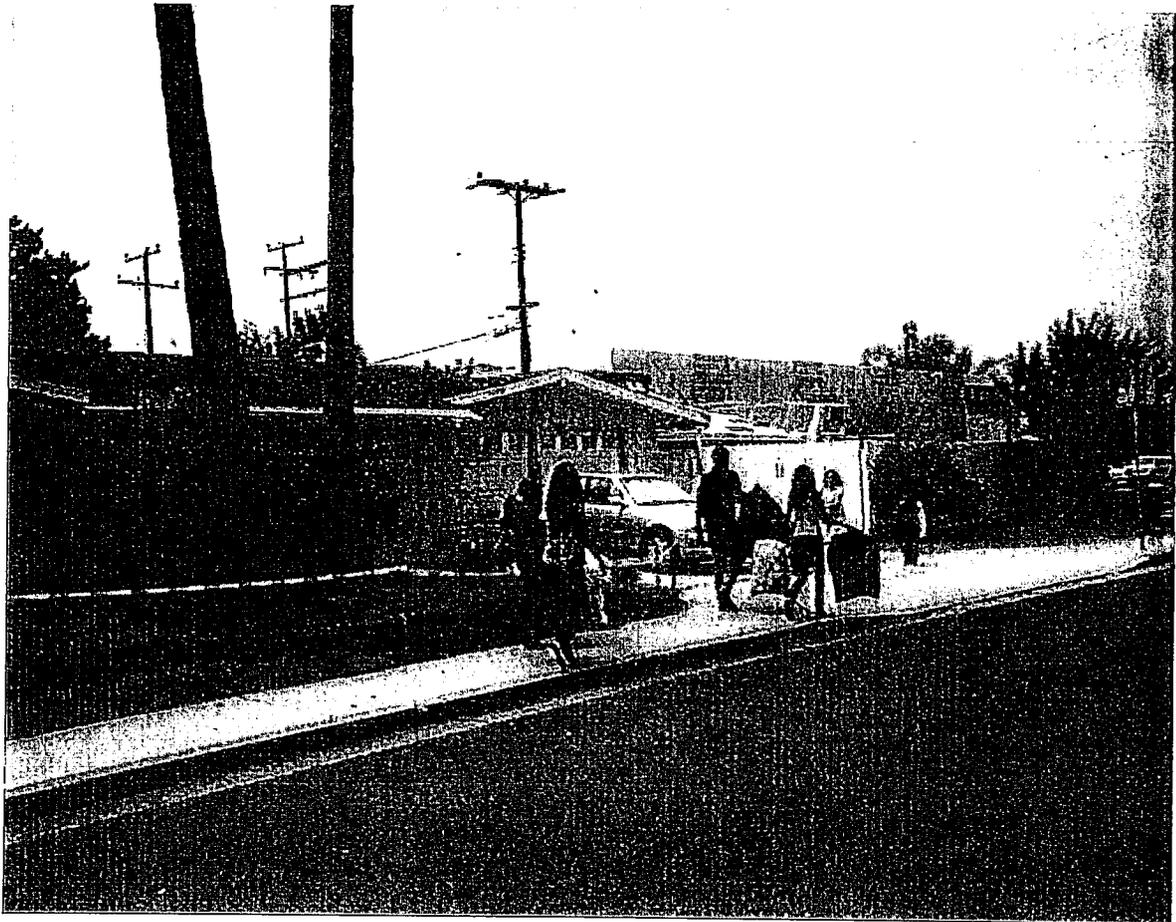


Earthwize Recycling
2180 Newport Blvd.



Garcia Recycling
739 W. 19th Street

303



Residents in the community walking to Garcia Recycling

304

VI.4
ZA-89-25 & ZA-92-10

From: Dee Ann Catlin
Sent: Thu 7/8/2010 12:37 PM
To: Jim Fitzpatrick
Cc: 'FLYNN, CLAIRE'; 'NGUYEN, KHANH'; cc389 Costa Mesa; Laura Jimenez
Subject: RE: #389 - Costa Mesa - Recycling

Thank you! Typically in those areas where a Smart & Final is in an unserved zone, we will take in the recycling at the store. However, having said that, the amount of recycling that those stores actually see is next to nothing. In those few cases where the amount of recycling is overwhelming (like Store #377 in San Luis Obispo) we use TOMRA. This would always be our first option for a certified company. TOMRA always follows through with any complaints or problems associated with their centers. They man their centers during certain hours and make sure the area is maintained. The other issue that we find to be a problem is the location of the center in the parking lot. Placing it in an area such as it is here in Costa Mesa is a problem.

Although these centers if they are not run properly can cause problems such as those we have here in Costa Mesa, it is obvious that a center at this location is an absolute necessity. Removing the center will create an "unserved zone" for retails in this area and based on the amount of recycling that this center generates, it would create a huge labor intense burden on all retails in this zone.

These are my recommendations: (Based on the application I can not tell if the applicant is the property owner or the recycling company) However, I suggest that additional conditions be imposed on both, requiring that the center be manned during certain hours of each day (as required by statute) and that the area be maintained daily, removing all trash. I would also include a condition advising that if the conditions are not met the city will require that the property owner find another recycling company to take over the center. If possible I would also move the center from the front of the lot to the back.

Please let me know if you have any other questions.
Thanks!

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VI.4

ZA-89-25; ZA-92-1C

Attachments: Recycling center 001.jpg; Recycling center 002.jpg; Recycling center pic 3.jpg

From: Dee Ann Catlin [mailto:Dee.Catlin@smartandfinal.com]
Sent: Monday, July 12, 2010 9:51 AM
To: Jim Fitzpatrick
Cc: NGUYEN, KHANH; LEE, MEL
Subject: FW: #389 - Costa Mesa Recycling

Hi Jim, Here are some pictures of the recycling area that our manager took this morning. As you can see, it is a very busy center and removing would not be good for local businesses. However, moving it to a different area would probably be a better solution.

Let me know if you have any questions.

Thanks!

From: cc389 Costa Mesa
Sent: Monday, July 12, 2010 8:06 AM
To: cc389 Costa Mesa; Dee Ann Catlin; Rosie Squieri
Cc: Donald Alvarado; Monika Harmon; Laura Jimenez
Subject: FW: #389 - Costa Mesa Recycling

Hello,
I added picture #3

The guys just opened 7:55 am and there is about 25 to 30 people waiting for to start recycling.

Thanks again
Tim

SMART & FINAL
CC389

From: cc389 Costa Mesa
Sent: Monday, July 12, 2010 7:56 AM
To: cc389 Costa Mesa; Dee Ann Catlin; Ron Graves; Rosie Squieri
Cc: Donald Alvarado; Monika Harmon; Laura Jimenez
Subject: RE: #389 - Costa Mesa Recycling

Hello,
I wanted to take some pictures and send in to show the amount of recycling this center does on a daily basis. These pictures were taken at about 7:30 this morning and every morning we have the same amount of people waiting for it to open. It would be next to impossible for us to take in this amount of recycling. This center is usually this busy from open to close and they usually have 4 to 5 employees manning this bin, and have a Full truck switched out half way through the business day. I will be going

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on vacation next week and wanted to give everyone a clear picture of how busy this bin is.

Picture 001 shows the line of recyclers and a bicyclist coming up with his recycling to get in line.
Picture 002 shows the line of people and a car waiting to unload when center opens.

Thanks,
Tim

SMART & FINAL
CC389

From: cc389 Costa Mesa
Sent: Wednesday, July 07, 2010 10:54 AM
To: Dee Ann Catlin; Ron Graves; Rosie Squieri
Cc: Donald Alvarado; Monika Harmon; Laura Jimenez
Subject: RE: #389 - Costa Mesa Recycling

Hello, Dee Ann

I would agree with the bullet points in this letter 100%. The foreseeable issues we will have is way to much recycling for our store to handle this recycling center does so much business I am amazed that there is that much to recycle in Costa Mesa. We have cars, truck wagons, wheel barrels you name it full everyday heading to this center for recycling. The last thing I would want is all of the transients walking through our store with recycling leaking and causing a mess, and security issues.

I had this issue at CC418 years ago and it was a hassle. We would recycle at store level give customers cash back on recycling when you have someone come in with 5 to 6 bags full and you would have to hand count each can and bottle. We would then have to give them cash back through credit key, and then we would have to re bag all recycling and then load all recycling into my car and drive it to a recycling center. I would have to separate and recycle at center, and get receipt from center go into store (Ralph's and get money from clerk at register) I then would return to store put money back into register, and closer would enter moneys into check out so store would balance out on check out.

I feel this would be a huge issue for our store if we had to recycle in store it would be a night mare.

Thanks,
Tim

SMART & FINAL
CC389

From: Dee Ann Catlin
Sent: Wednesday, July 07, 2010 10:23 AM
To: Ron Graves; cc389 Costa Mesa; Rosie Squieri

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Cc: Donald Alvarado; Monika Harmon
Subject: FW: #389 - Costa Mesa Recycling

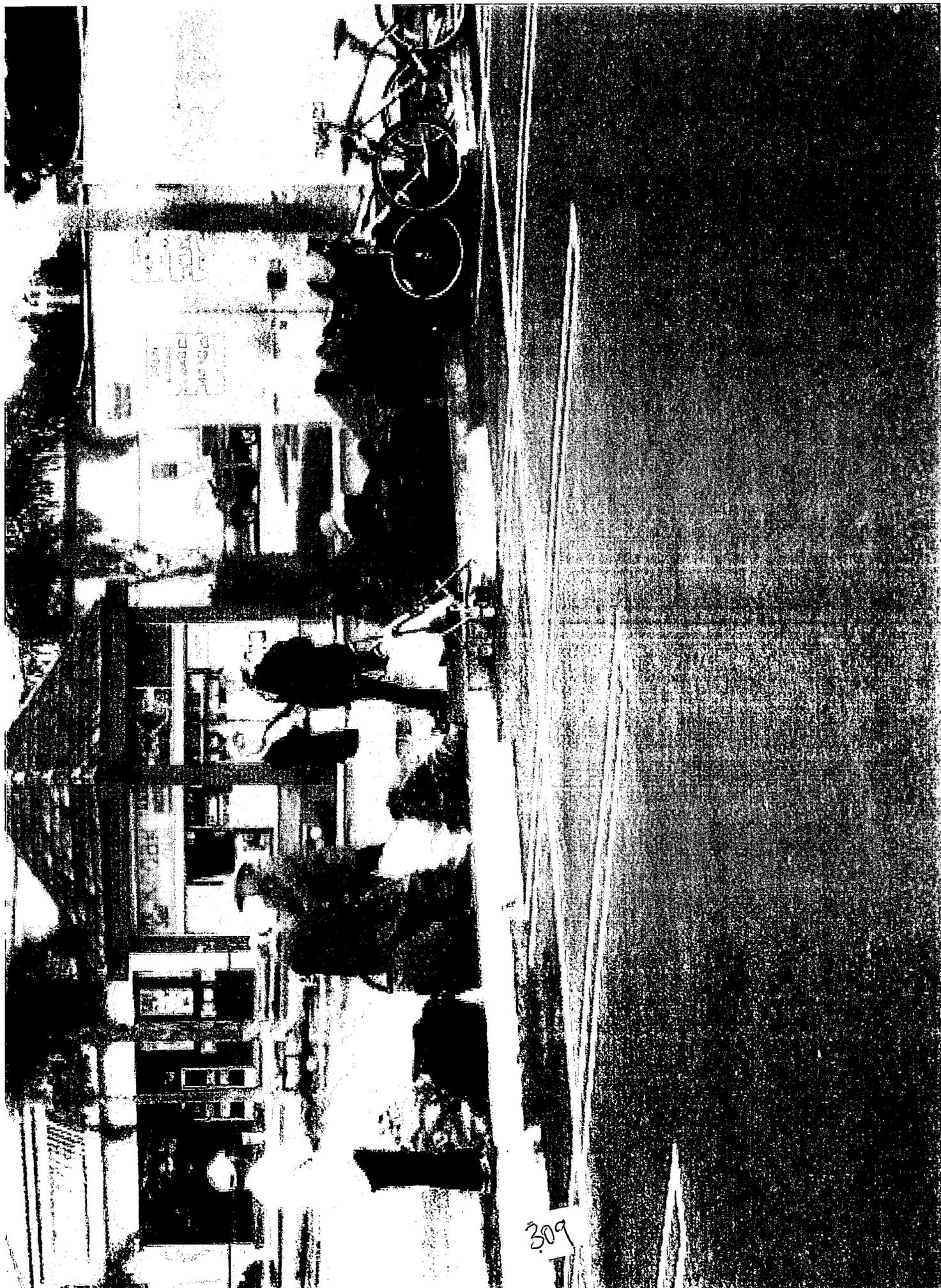
This morning I received a call from Jim Fitzpatrick, Mr. Fitzpatrick is a planner at the City of Costa Mesa. He wanted to advise us that a public hearing is set for Monday July 12, 2010 at 6:00 p.m. for a review of the recycling center CUP that is issued to the lot adjacent to store #389 Costa Mesa. Apparently Smart & Final wrote a complaint letter to the city regarding this issue (see attached) and therefore they wanted to give us an opportunity to appear at the hearing with our concerns. Although I do understand the many issues and concerns that these types of centers create, it is important to understand that if this center is removed from the location, this will put store #389 in an "Unserved Zone" and each retailer in this zone will then be required to take in recycling.

Please let me know what your position is regarding this center and also let me know if any of you would like to attend this hearing so that I can let the planner know.

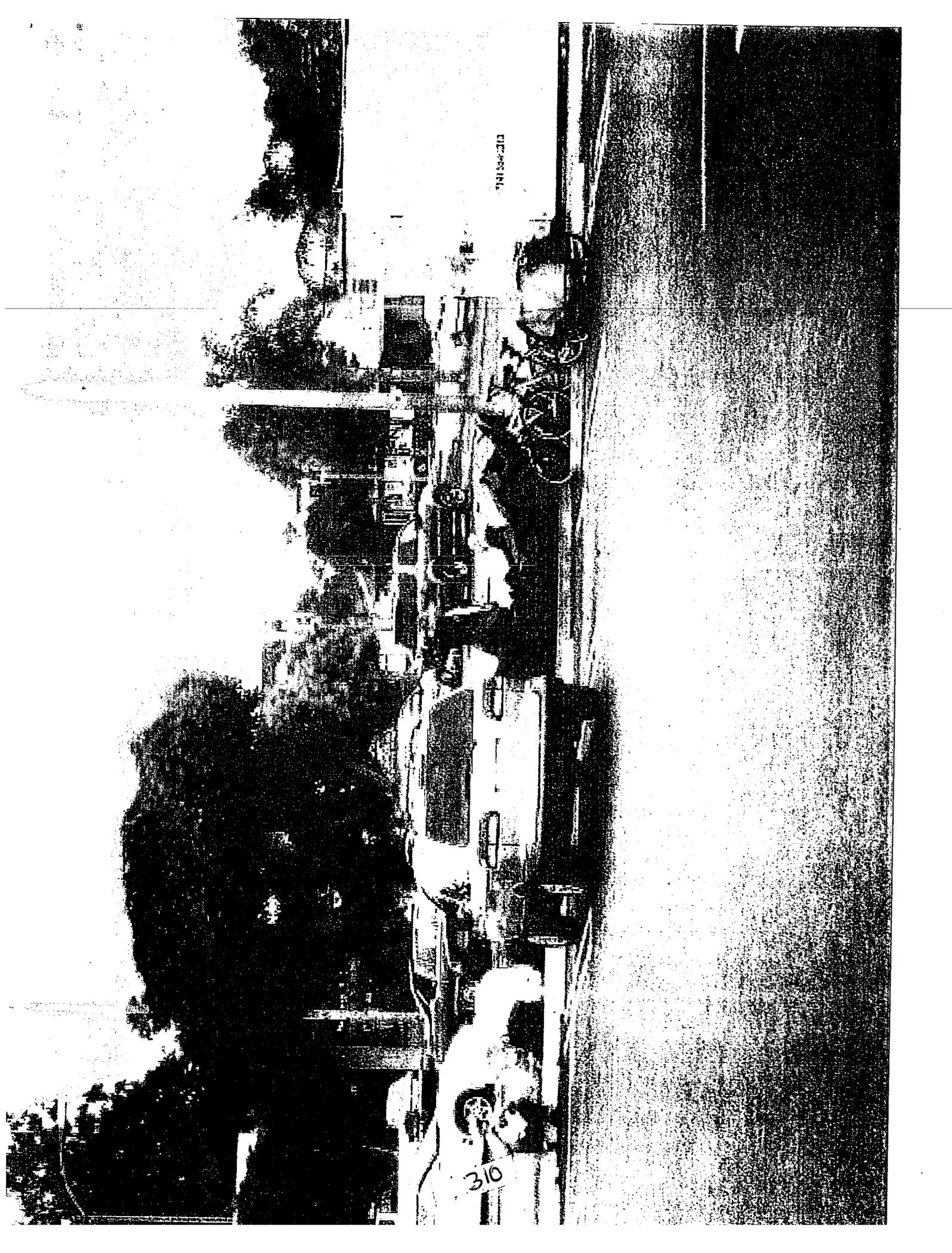
Thanks!

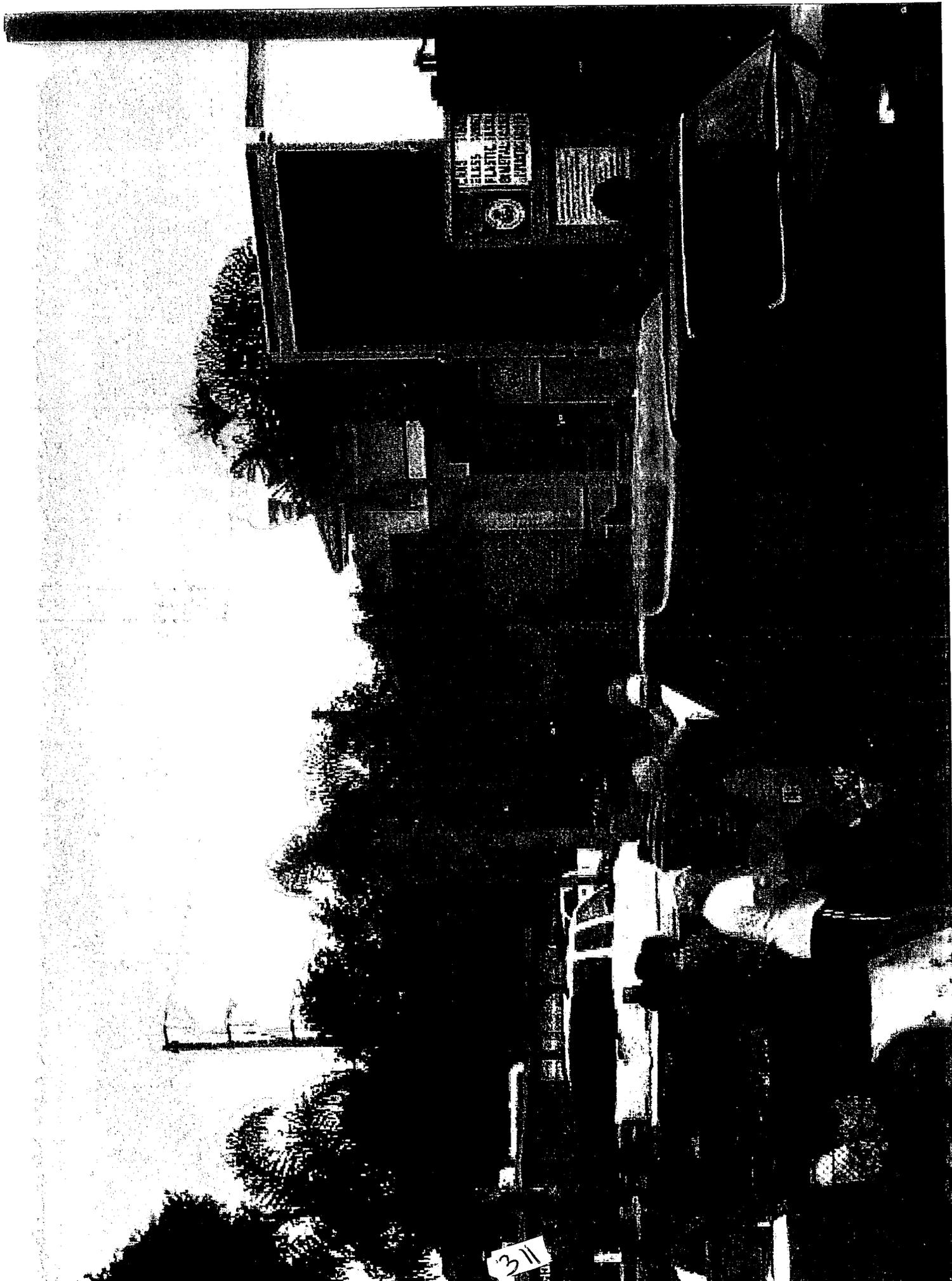
Dee Ann

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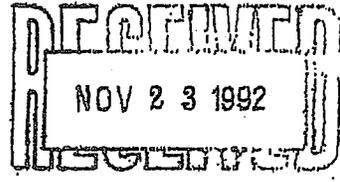


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JUL 12 2010



NOVEMBER 17, 1992

COSTA MESA ZONING ADMINISTRATOR
CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CA 92628-1200

RE: ZONING ACTION ZA-92-10 FOR JESUS GARCIA

TO WHOM IT MAY CONCERN:

WE ARE SUBMITTING WRITTEN COMMENTS REGARDING THE ABOVE APPLICATION:

*IT WILL FURTHER DEPRECIATE OUR HOME AND THE EXISTING HOMES IN THE AREA. THIS AREA IS ALREADY STRUGGLING WITH A NUMBER OF PROBLEMS. THIS WILL CAUSE US TO RECONSIDER HOME IMPROVEMENTS!

*IT WILL BRING IN TRANSIENTS BRINGING THEIR COLLECTED GOODS FOR MONEY. (DRUNKARDS SLEEP, URINATE, AND LEAVE TRASH HIDING BESIDE THE TRASH CENTERS.)

*THERE ARE A NUMBER OF ALREADY ESTABLISHED RECYCLING CENTERS IN THE CITY. (EX: ORANGE COAST COLLEGE, STATER BROS. MARKET)

*WITH RECYCLED TRASH COMES ODORS, UNKEPT AREAS, AND UNNECESSARY NOISE AND TRASH. (WITH THE PRESENT PLACEMENT OF THE RECYCLING CENTER NOISE OF THE RECYCLING CENTER CAN BE HEARD ON BOTH SIDES OF THE 700 CENTER ST. WHAT WOULD THE MOVING THE CENTER 100 YRDS. DO?)

WE ARE ANGRY! THIS WILL NOT BE TOLLERATED IN OUR NEIGHBORHOOD.

- 735 Center Jennifer H. Webster *Jennifer H. Webster*
- " " *Edward Webster*
- 735 Center Chris Frembling *Chris Frembling*
- 734 Center Patsy Latscha *now 2 unit, 1 front 1 back*
- 739 CENTER JOSE MORALES *Jose Morales*
- 738 Center *Carla Heletery* CARLES MORALES
- 729 Center *Carole Wynn* *Carole Wynn*

Costa Mesa Zoning Administrator
City of Costa Mesa

Re: Zoning Action reference ZA-89-25 & ZA-89-25

It has been 18 years since the City of Costa Mesa ignored our 1992 messages imploring the city to deny or get rid of the Jesus Garcia Recycling center in the parking lot of the Lion's Den/Smart and Final.

In the 1992, letter, these complaints and concerns were voiced in opposition to the operation's presence:

Bring in transients; drunkard asleep all around, urinating, trash:

There are alternative recycling destinations available that produce less impact in their locale;

Odors, unkept areas, unnecessary noise, trash.

This nuisance's presence needs to be terminated. 18 years of problems is onerous and oppressive. None of these conditions are less now than in 1992. Please do not let history repeat itself. WE urge the facility's operational permissions be permanently revoked as an 18 year period without cure is not excusable, and continued permission constitutes undue prejudice against those most impacted by the negative effects of this operation.

City of Costa Mesa Planning commission , please revoke their use permit immediately. Thank you for your time.

Maria Martinez

713 Center st Costa mesa CA 92627

Plan SOUTER for SOUTER Family TRUST

703 Center St.

COSTA MESA CA 92627

makayla Knalson 313 III Weelo Dr. C.A 92627

Costa Mesa Zoning Administrator
City of Costa Mesa

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Alexandra Sanson

732 Apple, Costa Mesa CA 92627

Franklin Kittle TX 911

James W. E. 702 Center ST Costa Mesa CA 92627

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City of Costa Mesa

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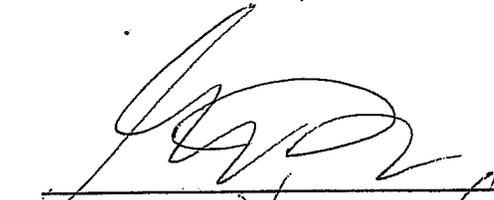
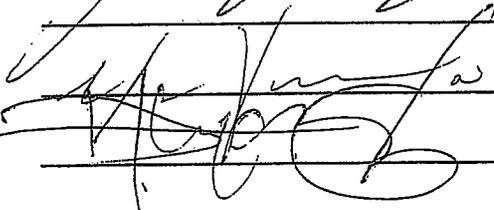
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712 CENTER ST. COSTA MESA

724 CENTER ST. COSTA MESA
411 N. CEDAR ST. ORANGE CA

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Costa Mesa Zoning Administrator
City of Costa Mesa

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Domingo M. Paul 724 Center St. Costa Mesa 92627

Mr. C. T. 724 Center St. Costa Mesa 92627

Jesus Cervantes 724 Center St. Costa Mesa 92627

Francis E. Lopez 724 Center St. Costa Mesa 92627

Costa Mesa Zoning Administrator
City of Costa Mesa

Re: Zoning Action reference ZA-89-25 & ZA-89-25

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Steven A. Chu 720 Center St. Costa Mesa 92627

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Costa Mesa Zoning Administrator
City of Costa Mesa

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Carole Wilson 729 Center St Costa Mesa Ca 92621

Frank Carmona 752 Center St Costa Mesa Ca 92627

De Carmona 752 Center St, Costa Mesa Ca 92627

Joseph P Thomas 762 Center St Costa Mesa Ca 92627

Sara Barragan 7510 Center St C.M. CA 92627

Monica VanDeusen, Mark Hauert
757 Center St, Costamesa Ca. 92627

Sylvia Chan 720 Center St Cost Mesa 92627

~~Annun... 763 center st costame~~
Ashley Barr 769 center St COSTA MESA

Olivia Suber 777 Center St Costa Mesa
Olivia Paris 785 W. Center St CM 92627

~~Jane ... 788 center~~
Holroyd Watson 756 W. 19th St C.M., CA.

Lee ... " " "

Peggy Kruger 758 W 19th St CM, CM

Stephen Kent 973 OAK ST CA CA 92621

Frank Gutierrez 789 W. 19th st.

Ed Tamara 742 WEELO DR CM 92627

Yoshiko Tanaka 1846 WALLACE AVE CM 92627

~~...~~ 735 CENTER ST. CM 92627

~~...~~ 18317 W Wallace CM 92627

~~...~~ 9-9-10

VI.3

ZA-89-25 and ZA-92-10

Attachments: Notice re neighborhood meeting.pdf; Spanish Notice of Meeting.pdf; Letter from Victor Bonilla re Garcia Recycling 072110.pdf; Letter from Businesses re Garcia Recycling 072110.pdf; Signed petition.pdf

From: Patricia J. Chen [mailto:pchen@miles-chen.com]

Sent: Tuesday, July 27, 2010 2:40 PM

To: LEE, MEL

Cc: 'Garcia Recycling'; FREDCANLAS@aol.com; 'Stephen Miles'

Subject: Update on Garcia Recycling

Mel,

Per your request, we would like to update you on our progress to date with respect to Garcia Recycling. We held a neighborhood meeting yesterday at the Costa Brava Restaurant in the shopping center after having the business pass out flyers during the preceding week (the two flyers are attached (Spanish and English)). More than 20 individuals attended. We explained to the attendees that the City had received complaints about Garcia Recycling and was debating whether to modify or revoke Garcia Recycling's conditional use permit. The attendees expressed overwhelming support of Garcia Recycling. They raised the following points:

- Garcia Recycling is the best recycling facility in the area because the employees are nice, work really hard, go out of their way to assist customers, and are fast so the wait time is much less than other facilities, its operation is the cleanest around, and Garcia Recycling is honest and not swindlers (in paying for the recyclables).
- The City is using Garcia Recycling as a scapegoat for the homeless who loiter in the area. Removal of Garcia Recycling would not solve the homeless problem. There is a liquor store and soup kitchen across the street which attract the homeless. The City should address the homeless problem.
- Many people rely on Garcia Recycling for their income. One homeless man said if it weren't for Garcia Recycling, he did not know what he would do. Another woman said that she had lost her job a few years ago and is dependent on Garcia Recycling for her income.
- Many people walk to the facility and would not be able to recycle at the other facilities if Garcia is shut down because they are too far
- One woman said she specifically drives from Newport Beach to Garcia Recycling because she thinks so highly of the service and she brings her kids to teach them about recycling
- Another person indicated that because of Garcia Recycling, trash is being picked up in the neighborhood and being recycled and that the trash would otherwise be going to landfills
- Another person noted that he spends all his cash that he earns at Garcia within a 2-3 block radius of Garcia Recycling and so Garcia Recycling is good for the City.

We asked how Garcia Recycling could better improve its operations, particularly visually since that was the predominant concern raised at the last Planning Commission meeting. The responses were as follows:

- One person said the operations really can't be improved visually and that he can't see the operation from the street. Others agreed.
- Another person suggested using synthetic grass so that the grass doesn't die (we responded that Garcia Recycling used to have synthetic grass but the City asked to have it removed)
- Another person suggested painting a mural on the side of the container (we responded that the City would not allow this)
- Some individuals expressed the sentiment that the City just doesn't like having to look at homeless people and that it isn't Garcia Recycling's fault

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07/28/2010

- One person raised the fact that the City does not like the look of the shopping center because it caters to the Latino community. Costa Mesa used to be known as "Goat Hill" and it was where the Latino community gathered. This shopping center serves as the same kind of gathering place for the Latino community today.

Because we had expected more people to attend, including those who oppose Garcia Recycling's operations, we decided that we should specifically reach out to those parties who signed the petition submitted to the City. We are sending out a letter to those parties today to give them an opportunity to voice their concerns to us so that we can address their issues. The letter is attached.

Furthermore, we received a letter of support from Victor Bonilla, the part owner of the shopping center and owner of several businesses in the center including the El Toro Market, and a letter of support from the businesses in the shopping center, both are attached. Finally, I have also attached a petition in support of Garcia Recycling which is growing by the day. I will send you an updated petition closer to the meeting.

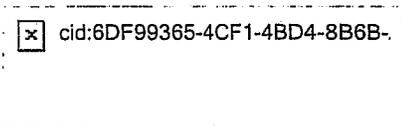
We have been in touch with CalRecycle as well, specifically Walt Simmons, who has given us some guidance on an alternative site which I will discuss in our submittal. However, from speaking to community members and businesses in the area, it seems clear that Garcia Recycling should not be relocated. The community depends on the facility. We do not believe that the complaints that the City has received warrants relocating Garcia Recycling.

I am in the process of preparing an additional submittal on behalf of Garcia Recycling. I had hoped to get it to you today for you to include in your agenda package, but I have been sidetracked by other matters and will get it to you as soon as I can.

If you have any questions, please feel free to contact me.

Pat

Patricia J. Chen, Esq., LEED AP
9911 Irvine Center Drive, Suite 150 | Irvine, CA 92618 | (213) 804-8000



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**TO THE NEIGHBORS AND BUSINESS OWNERS
SURROUNDING GARCIA RECYCLING LOCATED AT
739 WEST 19TH STREET, COSTA MESA, CA:**

On July 9th, 2010, the Costa Mesa Planning Commission called for review of Garcia Recycling's conditional use permit due to purported complaints about its operations from the community. The Planning Commission is contemplating either modifying or revoking Garcia Recycling's permit, and the hearing on this issue is scheduled on August 9, 2010 at 6:00 p.m. We believe that revoking the permit is unduly harsh since we are providing a much needed service to the community, and in the process we are helping to divert trash from landfills.

Nevertheless, Garcia Recycling is very concerned about these complaints and would like to invite you to voice your opinion about our recycling facility so that we can better improve our service to the community.

Please join us on **Monday, July 26, 2010 at 9:30 a.m.** at **Costa Brava Restaurant** located at **727 West 19th Street, Costa Mesa.** Refreshments and snacks will be provided.

A los vecinos y dueños comerciales alrededor de Garcia Recycling en 739 W. 7th Street, Costa Mesa, CA :

El 9 de Julio de 2010, la Comisión de Planificación de la ciudad de Costa Mesa pidió una revision al uso condicional del permiso de Garcia Recycling debido a quejas pretendidas sobre sus operaciones de la comunidad. La comisión de planificación contempla a modificar o a revocar el permiso de Garcia Recycling. La audiencia en esta cuestión esta programada el 9 de Agosto de 2010 a las 6:00pm. Creemos que se revocan el permiso es excesivamente contra dictorio ya que proporcionamos un servicio muy necesario a la comunidad, y en el proceso ayudamos a desviar la basura del basurero.

Garcia Recycling está preocupada por estas quejas y a la compañía le gustaría invitarles a decir su opinión sobre nuestra instalación de reciclaje de modo que podamos mejorar nuestro servicio a la comunidad.

Por favor acompañenos el lunes, 26 de Julio de 2010 a las 9:30am en el Restaurante La Costa Brava en 727 West 19th Street, Costa Mesa.

Bebidas y antojitos estaran dispuestas.

VI-3
ZA-89-25 and ZA-92-10

Victor M. Bonilla
El Toro Bravo Market
739 W. 19th Street
Costa Mesa, California 92627
(949)646-4266

Received
City of Costa Mesa
Development Services Department

JUL 27 2010

July 21, 2010

Planning Commission
City of Costa Mesa
c/o Mr. Mel Lee
Senior Planner
P.O. Box 1200
77 Fair Drive
California, CA 92626-1200

Re: Garcia Recycling

Dear Commissioners:

I am the owner of El Toro Market, El Toro Bravo Tortilla Factory, and Costa Brava Restaurant in the shopping center located at 738 W. 19th Street in Costa Mesa. I am also a part owner of the shopping center and the property manager. I have been a part owner and the property manager for over 30 years. For the last 20 years, Garcia Recycling Center has been a tenant and has operated its mobile recycling facility in our parking lot. During the 20 years, I have not received any complaints about Garcia Recycling's operations. As such, I was very surprised to learn that the Planning Commission decided to review Garcia Recycling's conditional use permit with the intent of potentially revoking its permit.

As both the owner of El Toro Bravo Market and the shopping center, I consider Garcia Recycling an integral part of our community. I know all the tenants and neighbors and we all view Garcia Recycling as providing a very necessary service to the community. Many of my customers use Garcia Recycling and depend on its services for extra income, particularly in this tough economic climate. It is no wonder that Garcia Recycling is so busy.

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I have observed Garcia Recycling's activities and I have determined that it currently is in the optimum spot in our parking lot. Garcia Recycling does not disrupt any of the businesses in the center. Moreover, the operation is not visible from the street. I attended the Planning Commission meeting on July 12, 2010 and heard an individual complain about seeing Garcia Recycling's "ugly" operations as he drives by, but I respectfully disagree. All that is visible from the street is the front of the truck and the back of an unmarked container, and there is even a tree blocking this view.

It is clear to me that there are residents in Costa Mesa who simply do not like the look of this shopping center because it primarily serves the Hispanic community.

As the owner of El Toro Bravo Market, I need Garcia Recycling because it is the only recycling facility in our convenience zone. As such, if it is shut down, we would be required to redeem beverage containers (which we cannot do due to the high volume) or pay \$100 per day to the State. ***We simply cannot afford to pay \$100 per day – this would cause my business severe financial hardship.***

I understand that from reading the complaint letters received by the City (which was given to me at the July 12, 2010 meeting) that some residents are saying that Garcia Recycling bring in homeless people who are drunk and urinate everywhere, trash, odors, unkempt areas, and unnecessary noise. As the property manager who monitors the shopping center every day, I strongly disagree. While there is an occasional homeless person in the shopping center, these individuals are not necessarily brought in by Garcia Recycling. There is a homeless soup kitchen across the street, Someone Cares Kitchen, which serves the homeless. I (or my employees) usually ask them to move along if they have no business in our shopping center. However, we do not turn away such individuals if they are customers, including if they are selling beverage containers to Garcia Recycling. To do so, would be wrong.

As for trash, odors, and unkempt areas, Garcia Recycling keeps its facility clean and its employees are constantly sweeping the area and picking up any litter. If Garcia Recycling did not maintain the area, I would certainly have stepped in. I have not had to do so. As for the noise, the operation is fairly noisy if you are near the facility because of the glass containers; however, I and my tenants have not found it to be offensively noisy given the location of the operation in the parking lot. Garcia Recycling is located in front of Lion's Den which is a bar that is only open at night. As such, the business is not disrupted by Garcia Recycling's operations. Next to Lion's Den is my restaurant, Costa Brava restaurant. My customers have not complained about the noise. It is clear to me that Garcia Recycling does its best to contain its operations to its designated area and minimizes its impact to the surroundings.

Once again, as a part owner of the shopping center, owner of the El Toro Bravo Market and other businesses in the shopping center, and the property manager, I wholeheartedly support Garcia Recycling's continued operations at its current location, and I strongly urge the Planning Commission not to revoke Garcia Recycling's permit.

Should you have any questions, please feel free to contact me.

Sincerely,



Victor M. Bonilla

VI.3

ZA-89-25 and ZA-92-10

Received
City of Costa Mesa
Development Services Department

JUL 27 2010

July 21, 2010

Planning Commission
City of Costa Mesa
c/o Mr. Mel Lee
Senior Planner
P.O. Box 1200
77 Fair Drive
California, CA 92626-1200

Re: Garcia Recycling

Dear Commissioners:

We are the businesses in the shopping center at 739 West 19th Street, Costa Mesa, California. It has come to our attention that the Planning Commission is considering revoking Garcia Recycling Center's permit due to complaints about the appearance of the facility, litter, noise, and homeless people resulting from Garcia Recycling's operations. Garcia Recycling has been operating at this location as long as we have been here and our businesses have never been disrupted by its operations. Garcia Recycling runs a clean facility and provides a service which our community very much needs. Our customers regularly bring their beverage containers to Garcia Recycling, and we consider Garcia Recycling part of our community. We are not offended by the appearance of Garcia Recycling's operations, nor have we complained about any noise, litter, or homeless individuals resulting from Garcia Recycling.

It seems that the homeless individuals in the area come from Someone Cares Kitchen across the street, where they are provided free or subsidized food. It is unfair to blame Garcia Recycling for their presence in the area. Nevertheless, we believe that Garcia Recycling helps the underprivileged in our community by allowing them to cash in the beverage containers they collect from city streets. By doing so, Garcia Recycling is

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helping to keep our streets clean as well as helping divert trash from our landfills which benefits the environment as a whole.

We strongly urge the Planning Commission to allow Garcia Recycling to continue its operations in our shopping center.

By: Sam Murillo

Company: El Toro Bros Holdings

Date: 7-23-10

By: [Signature]

Company: Costa Mesa Medical Clinic

Date: 7-23-10

By: Juan Aczo Miguel Arredondo

Company: Juan Aczo/CA

Date: 07-23-10

By: James M. Jimenez

Company: STORIAS Mex food

Date: 7/23/2010

By: Yanela Bernal

Company: Lu's Beauty Salon

Date: 7-23-10

By: Fabrizio Tillos

Company: Tricomeel Arroyo Corp

Date: 07/23/2010

By: Brenda Quinteros

Company: BFT Wireless

Date: 07-23-10

By: _____

Company: _____

Date: _____

By: _____

Company: _____

Date: _____

Name

~~James~~
 Carl Kociencki
~~Robert Chiles~~
~~[Signature]~~
~~[Signature]~~
~~[Signature]~~
~~[Signature]~~
 Douglas Stone
 Jungyeok Huh
 [Signature]
 Sergio Abel
 Rosa Mendez
 Carlos A.
 Wilbur A.
 Rogue Pizarra

Address

724 1/2 W. 19th Colma
 412 Olive Ave #340 H.B. 92648
 1976 Anaheim ave
~~1976 Anaheim ave~~
 940 W. 18 St Apt "D" 6 Costa Mesa 92627
 940 W. 18 St Apt # D-6 Costa Mesa, CA 92627
 376 E-21st Street Costa Mesa, CA 92627
 588: Wilson St Costa Mesa ?
 2105 Wallace Ave Costa Mesa CA
 716 James St #A 9A
 3118 Gibraltar Ave Costa Mesa CA 915
 3119 Gibraltar Ave Costa Mesa CA 915
 2002 Bacon Blvd. CA 915
 863 center st. Apt 15
 2193 Maple. st. CA Costa Mesa 92627

Name

DORU

Manuel Briones

Thomas Kicking

SPRIT STAINING

Yumbia Valenzuela

Michelle Vega

B Anderson

Mary Roman

Emily Rosales

ERIC ROSALES

DMARRASSR

Jose Lara

Yenencia Costaneda

STEPHAN PARRERA

Rubert Calveya

Address

2700 Peterson PL APT-510 CM.

989 Victoria ST Apt H-3

1688 Whittier Ave Spc 2 CM 92627

786 W 17th ST CM 92627

661 Sea / ST Costa Mesa CA

661 Sea ST COSTA MESA CA

2010 Newport Blvd

271 Camellia Ln. Costa. CA

277 Camellia Lane COSTA MESA

277 Camellia LN COSTA MESA

1816 Peterson St Costa

634 Shalimar Dr

525 St. Victoria AP 62 CM

2520 SALT LAKE CITY DR 15 COSTA MESA 92628

635 Parker St. CM CALIF

Name

Address

Anthony Williams

2777 Harbor Blvd. Costa Mesa, CA

Jaime Smeets

615 Victoria St. #1

Cesar E. Flores

2032 Wallace Av. #9

George Devine

344 Walnut

Costa Mesa, Calif

~~Jim Hunt~~

~~610 MARQUEE CARMEL CA 95008~~

Mariano Rodriguez

709 Shalimar Dr. Costa Mesa, Ca

Sen. B. Luans

125 LAMAR ST. COSTA MESA

Jean Rodriguez

Pomona 1955-417, Coste Mesa

José Rojas

2016 WALLACE

Claudia Zavala

710 W 18th St. 23 Costa Mesa.

Rod Sheppard

1955 Pomona Apt C Costa Mesa

Julie Abbi

2045 Shipway Lane, NB

Mary Johnson

178. 219th St. M 92627

Earl G. Gagliardi

17291 Harbor Apt. 3 C.M.

Name

Address

Andy Alvarez

9717 Bickley Dr H.B CA

7

Pedro Cuahutle

688 W Wilson St Costa Mesa CA

94

Tom Markham

1975 POMONA #2 C.M

711

José Luis G. P.

1965 WALLACE APT B2

94

Richard F. ...

1885 Anaheim Ave C.M.

949

Mike ...

3970 Ford Rd. C.M.

9

...

9280 Colton Ave A.K.

94

Juan Garcia

566 Hamilton St. Costa M

94

Roque Jones

1921 Anaheim Apt 9 costmesa

94

Kelley Gabriel

21342 Greenspray #7

94

...

1550 Supacke Costa Mesa

94

Naura ...

1525 Superior Ave Ste 114 NB

94

Nick Cannoll

133 E 16th St Unit 3

94

Anna Lily ...

2401 1/2 East 14th St.

94

Peter Allison

903 W 17th Costa Mesa CA

94

Name	Address	
Agustin A	940 W 185 APTS-	9995
Gabriel Morales	2245 Raleigh Ave. Ca.	999
Vicente Ramirez	790 W. WILSON APT A COSTA MESA	999
MIKE WILKS	2225 WALTER AVE	999
Efigenio Hernandez	1545 Victoria apt #10	
Maria M. Mejia	2270 Miner St #A Costa Mesa ca 92627	
MONY VARGAS	471 F BROADWAY apt #471	67
Evanna Acosta	592- Est. Hanam	69
Kathy Moran	17332 Roseleaf Ave TUSTIN	77
Shannon Gibson	11912 37th Street Newport Bch.	99
Sally Ruiz A	373 Palcam Pl Costa Mesa CA 92627	99
JOSEFINA CORDESA	707 SHALIMAR. APT. B. COSTA MESA	99
JAIMO SORA	14212 Raleigh Pl. Tustin Ca. 92780	99
MARGON GARCIA	5558 WAYMAN ST RIVERSIDE CA 92504	

Name	Address
Steven Wilson	3713 Mareus Dr NB
Maria Sanchez	149 E. Bay St.
Laura Moscota	140 E. Bay St.
BRIAN GOWDY	301 STONEY LANE
James PI	2039 Charles St. C.M
Filberto Gonzalez	1251 Baker st Apt C.
Roberto Rosales	765 SHALIMAR DR C
Greene Hubbard	2407 MARGARET, NB
Gebriela Gorrion	2910 Peppertree Ln op AGM
Mark Strickler	2528 Duke Pl. Costa Mesa CA 92626
J Gonzalez	1041 Pomona All.
Ciro Garcia	2052 Pomona Ave Apt. A "11" C.M.
Francisco Pineda	2115 Joyce Hill C.M.C.
Edgardo Hernandez	1450 Downville Pl. C.M.
David M. M...	1107 Ridge Crest Ct Ca

Name

Address

EVANGELINA

1843 Wallace COSTA MESA

VENN-PAUMI

4208 HICARIA-WAY NEWPORT BEACH 9C

Banca Perez

2414 Santa Ana W. apt A.

Alicia Lopez

955 W 19th AP. E233/CN

Maura Bahena

631 Victoria #D

MICHAEL MANN

595 REDLANDS AVE, NP PMA

Antonio Perez

956 JOANN ST C.M.C.

Antonio Castaneda

963 Victoria st.

RAFAEL SOLIA

~~2300 FAIRVIEW Rd 12206~~

~~ELIZABETH~~

George Ortiz

605 Victoria ST B107

ANTHONY ALLEN

914 W. 19th ST COSTA MESA CA 92627

MANUEL A

1780 PLACENTIA M - C

STEVE BOULTON

2200 Newport Blvd N.B. 92663 9

MARCO KUALCABA

1604 Ramona ave C.M.

Name	Address
Donald	840 Union Dr.
Fernando Torres	1931 Pomona Ave C
Nancy Hernandez	9668 N.P. Royal
Antonio Mike	3140 Samaria Pl Costa Mesa CA
Scott	1801 Via Ouito NB
Scott H. Solvers	1959 Continental Av. 9
Jennifer Sorenson	21032 Shackelford Cir HB 92646 7
Rodrigo Sincato	657 plumer St #A Com. CA 92627 9
Celia Galindo	1819 Monrovia Ave #2 C. M-92627 (999)
Hermisvia Lopez	6th Ave. 518 Th St CM
Benito Gonzalez	26772 Morena Drive Mission Viejo 92691 CA
Marcos Miranda	2265 Country Dr Apt. E Costa Mesa
Candy Moroy	1965 Pomona Ave Apt. #178 Costa Mesa 92627
Maria Hernandez	897 Center St. apt. 23 Costa Mesa 92627
Esperanza Martinez	825 Center St apt. C. 217 Costa Mesa

Name	Address
JOSE PETERSON Gabrielle McAllister	1530 Serrano 376 E. 18th Costa Mesa 9
Hoguel Nazare	839 Towne SA Carlsbad 9
Grace Bandet	678 W. 19th ST CM
JUAN CEDA	387 W St BAY C. M.
BOB MILLS	1684 WHITTIER AVE #41 C.M. 92027
Juan Orzoco	1684 735 Serrano #A
Salvador Gonzalez	2029-E Pomona Av. Costa Mesa Ca. 92627
EDDY NOROQUIST	2330 VANQUADWAY E-104 CM 92626
DAN SWAN	304 Cullen Cm 92627
VINCENTICO	20912 Shimmer Lane #13 92618
ERIC BRICKA	21472 Serrano Ave C.M. 92627
Pedro Carriel	1940 Wallace ave apt 9 cm 92627
Donatiny Legend	P.O. Box 2105 COSTA MESA, CA 92628
JUAN GUTIERREZ	702 IRAMES COSTA MESA CA 92627

On July 9th, 2010, the Costa Mesa Planning Commission called for review of Garcia Recycling's conditional use permit for its operations at 739 W. 19th Street due to purported complaints about its operations from the community. The Planning Commission is contemplating either modifying or revoking Garcia Recycling's permit, and the hearing on this issue is scheduled on August 9, 2010 at 6:00 p.m. We believe that revoking the permit is unduly harsh since we are providing a much needed service to the community, and in the process we are helping to divert trash from landfills.

We believe we run a clean, efficient, recycling operation and we make every effort to minimize our impact to the surrounding neighborhood and businesses by constantly sweeping the area, picking up any litter, and keeping our trucks and containers freshly painted and free of graffiti. We also do our best to serve our customers as quickly as possible by having a large, well-trained staff. If you agree that Garcia Recycling's service is important to the community and that its operations are not disruptive to the surroundings or aesthetically offensive, please show your support by signing below.

339

Name

Address

Telephone or email

WILLIAM J MILLS 1684 WHITTIER AVE. # 41 CM, 92627
Frank Sanguino 2191 Harbor Blvd Spc # 3
Gabriela Allister 576 E. 18th Costa Mesa 92627

1-914-211-1111

VI 3

ZA-90-25 & ZA-92-10

From: Jim Fitzpatrick
Sent: Saturday, July 31, 2010 3:26 PM
To: LEE, MEL
Cc: NGUYEN, KHANH
Subject: FW: Recycling Center

Mel,

Suggest that this picture also be shared with Planning Commissioners and be considered as part of the Staff Report.

Jim

Ralph's @ 2555 Eastbluff NB, CA

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RECYCLING-CENTER

Plastic

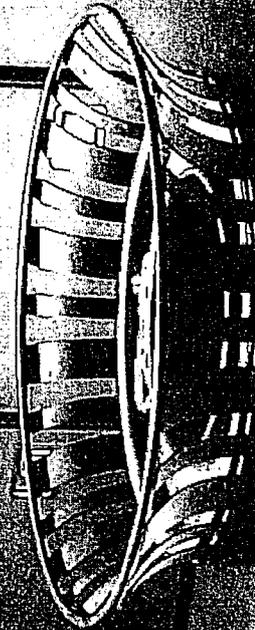
Cans

Glass

Cans

Plastic

341



VI.3
ZA 89-25 & ZA-92-10

From: LEE, MEL
Sent: Monday, August 02, 2010 8:06 AM
To: VIERA, CORRIE
Subject: FW: Newport Beach code on recycling center

Another for the Commission.

Thanks,

Mel

From: Jim Fitzpatrick
Sent: Saturday, July 31, 2010 3:18 PM
To: LEE, MEL
Cc: NGUYEN, KHANH
Subject: RE: Newport Beach code on recycling center

Mel, Can you please send this to all Commissioners so that have this, and consider making it part of the Staff Report.

Thanks,

Jim

From: Jim Fitzpatrick
Sent: Monday, July 12, 2010 9:40 AM
To: 'LEE, MEL'
Cc: 'NGUYEN, KHANH'
Subject: FW: Newport Beach code on recycling center

Mel, just wanted to follow up on our meeting, here is the NB vs CM code comparison on Recycling Centers.

Jim

Following is a brief comparison of the City of Newport Beach's and Costa Mesa's regulations on recycling facilities. Overall, it appears that the City of Newport Beach has codified (in other words, specified in their Municipal Code) specific regulations that would typically appear as conditions of approval on the use permit application in Costa Mesa.

Please let me know if you have any additional questions.

Differences:

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08/02/2010

- Costa Mesa Municipal Code (CMMC) does not make a distinction between small and large recycling facilities. Code requires a MCUP in primarily all of the commercial and industrial zones, excluding Town Center zoning district where they are prohibited.
- CMMC does not specify a buffer zone or separation requirement from residential zones.
- CMMC does not specify that the recycling facility be comprised of enclosed structures or be screened by a block wall.
- CMMC does specify that the recycling facility be located outside the required street setback.
- CMMC makes a distinction between what types of materials can be recycled or collected in terms of being hazardous or nonhazardous materials.

Similarities:

- Costa Mesa has similar requirements through conditions of approval regarding signage, parking availability, appearance of storage containers, litter-free environment, prohibition on parking of commercial vehicles (i.e. box trucks), etc.
- Through conditions we can also indicate what types of materials (i.e. only CRV glass, aluminum, or plastic containers, paper, and other recyclable items and not scrap metal) can be recycled.

Thanks.
Claire

here is the Title 20 Code from NB

20.48.160 – Recycling Facilities

This Section establishes standards and procedures for the siting and operation of various types and sizes of commercial recycling facilities.

A. Small collection facilities. A small collection facility shall:

1. Not exceed an area of 350 square feet or 3 parking spaces, not including space that would be periodically needed for the removal of materials or exchange of containers;
2. Be set back at least 10 feet from a public right-of-way and shall not obstruct pedestrian or vehicular circulation;
3. Accept only CRV glass, aluminum, or plastic containers, paper, and other recyclable items;
4. Not use power-driven processing equipment;
6. Not be located within 50 feet of a lot zoned or occupied for residential use;

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7. Have containers and site fencing that are compatible in color and design and harmonious with the surrounding neighborhood;
 8. Store materials in sturdy containers that are secured and maintained in good condition. Storage, excluding truck trailers, shall not be visible above the height of the required screen walls;
 9. Be kept clean and free of litter;
 10. Have signs as follows:
 - a. Identification signs with a maximum area of 15 percent for each side of the structure or 12 square feet, whichever is less. In the case of a wheeled facility, the side shall be measured from the ground to the top of the container;
 - b. Signs that are compatible and harmonious with the character of their location; and
 - c. Directional signs, consistent with Chapter 20.42 (Sign Standards) and without advertising message, installed with the approval of the Director if found necessary to facilitate traffic circulation or if the facility is not visible from the public right-of-way.
 11. Not reduce available parking spaces below the minimum number required for the principal use.
- B. Large collection facilities.** A large collection facility shall:
1. Not be located within 300 feet of a residential use;
 2. Be screened from public rights-of-way by solid masonry walls or located within an enclosed structure as required by the review authority;
 4. Store materials in sturdy containers that are secured and maintained in good condition. Storage, excluding truck trailers, shall not be visible above the height of the required screen walls; and
 5. Be kept clean and free of litter.

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Ms. Gabriele McAllister
376 E 18th St. # C
Costa Mesa, CA 92627

VI.3

ZA-89-25 & ZA-92-10

Aug 3rd, 2010

Received

City of Costa Mesa

Development Services Department

AUG 4 2010

To: City of Costa Mesa
c/o Mel Lee / Senior Planner

Mr. Lee,

I am writing you this letter regarding Garcia's Recycling at W. 19th St.

I have been taking my recycle there for about 2 years. The place is kept very clean and the personel is extremely helpful. Since I am 60 years old and have severe arthritis, it is very refreshing to find a company that will help to unload my car. They tried to improve their place by putting in artificial grass, which by the way looked real, and you asked them to take it out. Why?

Unfortunately with people walking and unloading on the real grass, it doesn't last that long. Also they supply soap and water, so people are able to wash their hands.

Again unfortunately every recycling place does have homeless people around. But that's not Garcia's fault.

In conclusion, I don't really see any reason why you would want to close such a good place.

If you should have any questions, please feel free to contact me at 949-646-9611.

Sincerely,

Gabriel Mc Allister

CC : Miles-Chen Law Group - Patricia Chen
Garcia's Recycle

MILES • CHEN LAW GROUP

9911 Irvine Center Drive, Suite 150 • Irvine, CA 92618
Phone: 949.788.1425 • Fax (949) 788-1991

A PROFESSIONAL CORPORATION
LAND USE • ENVIRONMENT • ENTITLEMENT

VI.3
ZA-89-254 ZA-92-10

August 6, 2010

VIA EMAIL (mlee@ci.costa-mesa.ca.us)

Planning Commission
City of Costa Mesa
c/o Mr. Mel Lee
Senior Planner
P.O. Box 1200
77 Fair Drive
Costa Mesa, CA 92626-1200

Re: Conditional Use Permit ZA-92-10, 739 West 19th Street, Costa Mesa, California

Dear Commissioners:

First of all, we would like to thank you for agreeing to continue the hearing on the above-referenced matter to August 9, 2010. We have taken the time to thoroughly investigate the matter and to speak to CalRecycle as we indicated. Per Mel Lee's request, we provided him with an update on our public outreach efforts on July 27, 2010 via email (which is incorporated by reference). We have also summarized these efforts below. Moreover, in addition to the issues we raised in our July 12, 2010 letter to the Planning Commission (which is incorporated by reference), we will discuss more issues below which should give this Commission serious pause in moving forward with any revocation proceeding.

1. **Public Outreach**

On July 26, 2010, we met with the community members to discuss the operation of Garcia Recycling Center & Metals, Inc. ("Garcia Recycling") and to determine how Garcia Recycling could improve its operations to be a good neighbor to the community. The individuals who attended the meeting expressed overwhelming support of Garcia Recycling and noted that it is the best recycling facility in the area because it is an efficient operation so the wait time is much less than other facilities, the employees are nice and go out of their way to assist customers, and Garcia Recycling is honest and does not take advantage of its customers. One woman said she specifically drives from Newport Beach to Garcia Recycling because she thinks so highly of the service and she brings her kids to teach them about recycling. Some individuals indicated that they rely on Garcia Recycling for their income. One homeless man said if it weren't for Garcia Recycling, he did not know what he would do. Similarly, another woman said that she had lost her job a few years ago and is dependent on Garcia Recycling for income. Finally, one person aptly pointed out that because of Garcia Recycling, trash is being picked up in the neighborhood and being recycled and that the trash would otherwise be going to landfills.

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We asked the attendees how Garcia Recycling could better improve its operations, particularly visually since that was the predominant concern raised at the last Planning Commission meeting. Many individuals thought it was unfair that Garcia Recycling was being blamed for drunkards loitering in the area when there is a liquor store and soup kitchen for the homeless across the street. We also got suggestions to use synthetic grass instead of sod which gets trampled over time, and to paint a mural on the side of the container. We explained that Garcia Recycling did use synthetic grass in the past but the City asked them to remove it and that the City would unlikely be willing to approve a mural.

The most poignant comment came from one of the business owners who opined that the City simply does not like the look of Garcia Recycling and the shopping center because it caters to the Latino community. Costa Mesa used to be known as "Goat Hill" and it was where the Latino community gathered. This shopping center serves as the same kind of gathering place for the Latino community today, yet she believes that the City would like to shut it down beginning with Garcia Recycling.

Because we had expected more people to attend, including those who oppose Garcia Recycling's operations, we decided to specifically reach out to those parties who signed the petition submitted to the City. We sent out a letter to those parties on July 27, 2010 to give them an opportunity to voice their concerns to us so that we can address their issues. *See Exhibit A. To date, we have not received any calls.*

2. **Revocation of Garcia Recycling's Conditional Use Permit is Unjustified and Would Amount to an Abuse of the Planning Commission's Discretion**

The seminal decision on revocation and modification of use permits ironically involved the City of Costa Mesa - *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal.App.4th 1519 (1992). This decision involved complaints from residents abutting the parking lot of the bar about noise, trash, and drunken behavior during late hours of operation. *Id.* at 1524. The Court of Appeal held that a use permit, once issued, becomes a fundamental vested right that cannot be impaired absent a showing of either a failure by the permittee to comply with the reasonable conditions of the permit or a compelling public necessity. (*Id.* at 1530.)

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

Id. Furthermore,

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

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

In *Goat Hill Tavern*, the City of Costa Mesa provided extensive evidence through a staff report that "summarized 19 reported police incidents occurring at the tavern between August 1990 and November 1990. They included incidents in the parking lot and complaints the tavern exceeded its capacity and its patrons were drunk in public." *Id.* at 1524-25. Notwithstanding the large number of incidents over a four month period, the City of Costa Mesa's preliminary action of limiting the tavern's hours of operation was stayed by the trial court and ultimately the Court of Appeal affirmed the trial court's grant of a writ of mandate against the City. (*Id.* at 1523, 1532.)

The grant of the writ of mandate against the City of Costa Mesa was largely based on the type of evidence presented at hearing:

- 1) Several witnesses wrote or testified favorably to Goat Hill Tavern.
- 2) Police records showing the number of incidents reported at the tavern were less than at most other bars and coffee shops in the vicinity.
- 3) No showing to distinguish complaints about Goat Hill Tavern from other possible causes, including other bars and other pedestrians that frequented the area.

In the present case, the conditional use permit is a fundamental vested right held by Garcia Recycling. There is no dispute that the permit was properly issued by the City and Garcia Recycling has relied on this permit for its 20 years of operation. As such, the power of the City to revoke this permit is limited. *See id* at 1530.

According to the Costa Mesa Municipal Code ("CMMC"):

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

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

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

"Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

Civil Code Section 3480 states:

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

The City appears to be considering revoking Garcia Recycling’s permit because its operations may be deemed a public nuisance:

“Specifically, the use is not being operated in a manner deemed to be compatible with surrounding properties and uses, the use creates a negative visual impact due to excessive signage and lack of property maintenance, a significant degree of City staff resources has been devoted to the use as a result of complaints related to the use and continual enforcement of noise and property maintenance issues, and issues related to noise, odors, transients, property maintenance, etc. do not appear to be prevalent at other recycling facilities in the City as they are at this location.”

Staff Report at 12.

We believe that the City cannot make a nuisance determination in this case. First of all, the City’s findings on their face do not meet the definition of a nuisance as set forth in Civil Code Section 3479 and 3480. Garcia’s Recycling’s operations are not injurious to health, it is not an obstruction to the free use of property, nor does it affect an entire community or neighborhood. The purported negative visual impact is based on “excessive signage and lack of property maintenance” which hardly arises to the level of being “indecent or offensive to the senses,” particularly where a vested interest is at stake.

Aside from the letter petition signed by approximately 35 people citing that the facility’s presence “[b]ring (sic) in transients; drunkard asleep all around, urinating, trash . . . odors, unkept (sic) areas, unnecessary noise,” there is little in the record to support the City’s findings. As far as we can tell, only two complaints were documented in the last year or so. Both complaints allege excessive noise.¹ The City of Costa Mesa, Development Services Department investigated one of the complaints and visited Garcia Recycling *seven* times and noted “NO VIOLATION OBSERVED” each time and closed the case on July 17, 2009. See Exhibit B. Contrast the significant evidence of complaints that was presented by the City in *Goat Hill Tavern*, where the court still found that the City’s decision to deny renewal of applicant’s permit was not supported by the evidence. See *Goat Hill Tavern*, 6 Cal.App.4th at 1525.

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

¹ The three complaint letters from residents cited by the City date back to October and November of 1992, prior to Garcia Recycling’s relocation from the back of the parking lot to the front. See Attachment 4 to Planning Commission Agenda Report dated July 1, 2010. Also included is a letter from Smart & Final dated June 6, 2000, over 10 years ago. Smart & Final has subsequently communicated with the City regarding Garcia Recycling as discussed below.

Moreover, we hereby submit the following additional evidence to refute the City's potential nuisance determination. Attached as Exhibits C, D, and E are pictures of the facility from the street.² First of all, the signage is barely visible. *See* Exhibit C. Secondly, the operation is barely visible from the street. *See* Exhibit D. Furthermore, as discussed above, there is a soup kitchen across the street which serves individuals in need. *See* Exhibits F and G. As to the noise and odors, the people most directly impacted by the operations, the business owners in the shopping center, have opined that they do not find Garcia Recycling's operation to be offensive. *See* Exhibit H. Victor Bonilla, the part owner of the shopping center and property manager also indicated that he has not received any complaints about Garcia Recycling. *See* Exhibit I. As discussed above, we have performed public outreach to those individuals who signed the petition and have not received any responses to date.

Finally, we hereby present a petition with *over 500 signatures* in support of Garcia Recycling by the community members who frequent the shopping center and Garcia Recycling. *See* Exhibits J and K. These are the individuals who will be most directly affected by the decision of the Planning Commission and *their voices cannot be ignored*. The Commission simply cannot revoke Garcia Recycling's permit to the detriment of the community because a few individuals who "don't like the look" of Garcia Recycling's operations purportedly complained to the City.

3. **Revocation of the Permit is Subject to the California Environmental Quality Act**

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

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

² During the July 12, 2010 Planning Commission meeting, a commentator and the Commissioners extensively discussed the visual impact from "driving by." As such, we presume that this vantage is the focus of the visual impact.

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

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

This is not a typical case where the Commission is revoking the conditional use permit of a bar or restaurant which would not result in significant impacts to the environment. The Commission is considering revoking the permit of a recycling facility which diverts a significant amount of trash from the landfills. This creates an environmental risk that does not exist for the general class of projects under this exemption. Indeed, the California Beverage Container Recycling and Litter Reduction Act aka "The Bottle Bill" (AB 2020) explicitly allows the Department to penalize cities that "prohibit[] the siting of a supermarket site" or "*cause[] a supermarket site to close its business.*" Pub. Res. Code § 14581(a)(5)(F) (emphasis added). We cannot conceive of any other type of use where a city may be subject to a penalty where a conditional use permit is revoked. Clearly, in passing the Bottle Bill, the Legislature felt that cities should subordinate their land use interest for the benefit of recycling:

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

Pub. Res. Code § 14501(e).

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

4. There is no Reason to Relocate Garcia Recycling to an Alternate Site

We have previously indicated to you that we would work with the City and the Division of Recycling in the Department of Resources Recycling and Recovery (the "Department") to determine whether moving the facility to another site or adding another facility would be in the best interest of the community and the City. Based on our discussions with the community, business owners in the shopping center and Walt Simmons at CalRecycle, we believe that Garcia Recycling is located in the optimum location to serve the community with the least amount of impact to the surrounding environment. Garcia Recycling has been in this location since 1992. It is an integral part of the community. Even Smart & Final recognizes that "it is obvious that a [recycling] center at this location is an absolute necessity" and that "removing [it] would not be good for local businesses." See Attachment 3 to July 28, 2010 Planning Commission Agenda Report. The City asked Garcia Recycling to move to its present location in the parking lot in 1992 because it, too, recognized that this location was optimal. It does not abut residences, nor does it disrupt businesses since Lion's Den, the business closest to Garcia Recycling is only open in the evening. Moving the operation to the back of parking lot as Smart & Final suggests would more directly impact the nearby residences. Thus, Garcia Recycling strongly believes it should not relocate its operations within the parking lot.

5. Garcia Recycling Serves Three Convenience Zones, Two of Which Garcia Recycling Serves Exclusively

As detailed in our July 12, 2010 submittal to the Commission, Garcia Recycling is the sole recycling facility serving two convenience zones. The July 28, 2010 Agenda Report asserts that revoking Garcia Recycling's conditional use permit "would not result in an unserved convenience zone because the area would continue to be served by the existing recycling facility at Von's Market." The report cites to CalRecycle's website FAQ page (which is not a binding guidance document) to support this contention notwithstanding the clear language of the statute:

"Except as otherwise provided in this chapter, there *shall be at least one certified recycling center or location within every convenience zone* that accepts and pays the refund value, if any, at one location for all types of empty beverage containers and is open for business during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9 a.m. to 5 p.m."

Pub. Res. Code § 14571(a) (emphasis added). It is undisputed that Garcia Recycling is the only recycling facility located in the convenience zones for Smart & Final and El Metate. As such, pursuant to the Bottle Bill, if Garcia Recycling were to cease operations, it appears that Smart & Final and El Metate would either need to redeem all empty beverage containers or pay to the Department \$100 per day until a recycling location is established. See Pub. Res. Code § 14571.6.

In sum, we believe that Garcia Recycling operates a clean and efficient recycling facility and that the community is very much in support of its continued operations. It seems that there

are a few individuals and Commissioners who may not like the “look” of Garcia Recycling notwithstanding the undisputed benefit Garcia Recycling confers on the community including:

- Collecting and facilitating the recycling of beverage containers;
- Diverting trash from landfills;
- Helping to keep the streets in the community clean by providing an incentive for people to pick up trash, and;
- Providing income to individuals;

The fact that these individuals are offended by the “look” of Garcia Recycling’s operations simply does not justify revoking its conditional use permit.

Garcia Recycling will continue to work together with the City to avoid and minimize any potential impact to the surrounding environment that may be caused by its operations. As you can see, there is a long history of Garcia Recycling addressing the concerns raised by City staff. Most recently, Garcia Recycling installed additional landscaping to improve the aesthetics of the facility. *See Exhibit L.* We request that the Commission allow staff and Garcia Recycling to work out additional mitigation measures that are acceptable not only to Garcia Recycling and the City, but also to the property owner, neighbors, and Smart & Final. For example, we would like to show the City how staging a truck has a far lower impact on the surroundings than having to load and unload a container 2-3 times a day. Furthermore, while Garcia Recycling is open to constructing a wrought iron fence along the easterly property line, the owners of the shopping center are not necessarily supportive of this. We believe these issues must be discussed prior to having conditions imposed on Garcia Recycling.

We appreciate your consideration on this matter and look forward to answering any questions at the hearing.

Sincerely,



Patricia J. Chen

cc: Fred N. Canlas, CPA (via email)
Jesus Garcia (via email)
Rebecca Robins (via email)
David Rodriguez (via email)