

**ATTACHMENT 3
CORRESPONDENCE FROM
SEPTEMBER 7, 2010 TO PRESENT**

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

10 In the matter of
11

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR APPEAL**

14 Date of decision: August 9, 2010
15

16 **I. INTRODUCTION**
17

18 The Planning Commission of the City of Costa Mesa (the "Planning Commission"), has
19 decided that Appellant Garcia Recycling Center's ("Garcia Recycling") operations on 19th Street
20 must go, notwithstanding the fact that *it has lawfully operated there for over 20 years*. On or
21 about June 9, 2010, Commissioner Mesinger called up for review to the Planning Commission
22 Garcia Recycling's minor conditional use permits to consider modification or revocation of the
23 permits for "an existing neighborhood recycling facility (Garcia Recycling) located in the
24 parking area of a retail shopping center." See City Council Agenda Report dated August 26,
25 2010 ("Staff Report") at 58.¹ Unlike most revocation proceedings, the matter was not raised by

26 ¹ We received an email from Mel Lee with a link to Staff Report on September 3, 2010. Staff is recommending a
27 continuance of this item to "provide the appellant with an appropriate amount of time (over 30 calendar days) to
28 review and respond to the issues discussed in this staff report with regard to the appeal," however, *Garcia Recycling*
does not want the item continued. Although Garcia Recycling would have appreciated receipt of the Staff Report
well in advance of the September 7, 2010 hearing, pursuant to Section 2-203(2) of the Costa Mesa Municipal Code,

1 the City's Planning Staff ("Staff") due to repeated citations. In fact, Staff had been working with
2 Garcia Recycling, on various issues, none of which arose to a level of nuisance justifying
3 revocation much less a citation. Nevertheless, the Planning Commission not only decided to
4 initiate the proceedings without any justification and it also proceeded to revoke Garcia
5 Recycling's conditional use permit without adequately articulating the reasons for revoking
6 Garcia Recycling's vested rights. In doing so, it violated Garcia Recycling's due process rights,
7 the California Environmental Quality Act ("CEQA"), and the Ralph M. Brown Act (the "Brown
8 Act").

9 To add insult to injury, realizing that the record was indeed devoid of any citations or
10 enforcement actions taken against Garcia Recycling, the City began issuing citations to Garcia
11 Recycling *after the Planning Commission had already voted to revoke Garcia Recycling's*
12 *permits*. After 20 years of operation without receiving a single citation, the City issued *three*
13 citations in the span of 10 days (on August 16th, 20th, and 25th).² See Staff Report at 35-37. This
14 is a prime example of post hoc rationalization - a means to attempt to justify its revocation of the
15 permits.

16 Continuing their "witch hunt," it appears that Commissioners Fitzpatrick and Mesinger
17 met with the Development Services and Public Services staff on August 18, 2010 to "discuss
18 concerns expressed by Commissioner Fitzpatrick relative to potential water quality violations at
19 [Garcia Recycling]." Staff Report at 268.

20
21 "Staff canvassed the entire area of operation, and *found no evidence of any*
22 *discharge of materials or putrescible waste leaving the site. No evidence was*
23 *found of any liquids from this operation reaching the gutters on 19th Street."*

24 *Id.* In fact, Staff found that Garcia Recycling was implementing current Best Management
25 Practices and that "[t]here is no history of water quality complaints received over the [last five

26 "the appeal *shall* be considered at the first regular meeting which follows receipt of the application by ten (10) or
27 more days, and which allows sufficient time for the giving of notice as required by section 2-308." (emphasis
28 added). Garcia Recycling invokes its right to have a timely appeal of the Planning Commission's decision and
submits that the City does not have the authority to unilaterally continue the item pursuant to Section 2-203.

² These citations simply indicate a "violation of conditional use permit," and do not shed any light on what
violations occurred. Garcia Recycling is currently in the process of requesting administrative review of the
citations.

1 years]; and there is no history of water quality violations on record for this operation.” *Id.* at 269
2 (emphasis in original).

3 Recognizing that Garcia Recycling was justified in pointing out that no one has every
4 indicated which conditions of approval it has purportedly violated, Staff, has *for the first time*
5 indicated which conditions of approval are at issue. *See* Staff Report at 4. This recitation is too
6 little too late. Pursuant to the Costa Mesa Municipal Code Section 2-303(4)(b), the City Council
7 is limited to reviewing the “[f]indings, if any, and decision of the person or body whose decision
8 is being appealed.” It cannot consider new findings proposed by Staff. Nor can the City Council
9 fabricate findings out of thin air where no adequate findings have been established by the
10 Planning Commission. Neither the Planning Commission resolution, any prior documents, nor
11 even the recent citations received by Garcia Recycling refer to these conditions of approval.
12 Thus, nothing in the record supports the finding that Garcia Recycling violated any use permit
13 condition.

14 Likewise, there is nothing in the record to support a nuisance finding. Garcia Recycling
15 went to great lengths to meet with the neighbors at the request of the Planning Commission and
16 it found that most neighbors (including the neighboring businesses and the property owner and
17 manager) were in support of Garcia Recycling. *See* Transcript of July 12, 2010 Planning
18 Commission Meeting (“July 12th Transcript”) at 9-10 (attached as Attachment 1); Staff Report at
19 140-141 & 168-69. Indeed, Commissioner McCarthy observed, “[t]he concern that I have is
20 again that I don’t know at this point that the record contains enough evidence to find the public
21 nuisance . . . I just don’t see enough to go down that path of public nuisance, which is why I
22 can’t support [revocation].” August 9th Transcript at 75. Likewise, Commissioner Clark stated,
23 “so far I have nothing in the record that gives me the ability to certainly not have a warm and
24 fuzzy feeling about trying to revoke the permits. We don’t have a consistent evidence of
25 violations of the original CUP. . . . We have no code enforcement actions. I’ve got nothing to
26 base violations on.” *Id.* at 77-78.

27 It is clear from the record that the Planning Commission was looking for any reason to
28 revoke Garcia Recycling’s permit because it simply does not like the “look” of Garcia Recycling

1 and it blames Garcia Recycling for the homeless problem in the area:

2
3 "I did go out there and see this, and I was flabbergasted. It's the first time that
4 I've lived here that I've been embarrassed to be in Costa Mesa, to drive through
5 that shopping center and see what's going on there. The parking impacts, the
6 homelessness and vagrancy that we can blame the soup kitchen all we want, but
7 there are people carrying cans. So it all falls down on Garcia."

8 Transcript of the August 9, 2010 hearing before the Planning Commission ("August 9th
9 Transcript") (attached as Attachment 2) at 75.³ The video of the hearing shows the palpable
10 nature of Commissioner McCarthy's disdain.

11 After struggling with the lack of evidence in the record of nuisance, Commissioner
12 Righeimer suddenly pointed to an outdated photo in Planning Staff's presentation as evidence
13 that Garcia Recycling was violating its permit because it showed customers using the Smart &
14 Final parking lot. *Id.* at 81-82. He further asserted that the picture somehow showed that the
15 truck "does not sit 20 feet back from the front of the property." *Id.* at 82. He concluded that by
16 looking at the picture, "[w]hat we have evidence here for is that this cannot be contained on this
17 property here. . . . And so it's the amount of volume, based on the fact that it goes over the
18 property line, and they don't have a CUP to go on the neighboring property." *Id.* at 82-83.
19 Appellants submit that the single picture which was shown in a power point presentation by Staff
20 (and was not otherwise provided to Garcia Recycling) referenced by Commissioner Righeimer
21 simply could not have and did not show that Garcia Recycling was in violation of the
22 unidentified use permit conditions, yet the Commissioners jumped on board and voted in favor
23 of revocation based on the single picture.⁴

24 The City Council should not be swayed by the Commissioners' inexplicable visceral
25 reaction to Garcia Recycling.⁵ It must base its review on the facts and evidence presented and it

26 ³ The best evidence of the due process violations can be found in the video and transcript of the August 9, 2010
27 hearing before the Planning Commission which are incorporated by reference. Since we obtained the DVDs of the
28 Planning Commission hearings (July 12, 2010 and August 9, 2010 hearings) from the City of Costa Mesa, we
assume the City Council has access to the videos of the hearings as they are part of the record.

⁴ It is still unclear which picture Commissioner Righeimer was relying on.

⁵ The tone of the hearing may have been set by Commissioner Mesinger (the same Commissioner who called up
Garcia Recycling's conditional use permit for review). Despite the fact that Mr. Jesus Garcia, owner of Garcia
Recycling, was represented by counsel, Commissioner Mesinger demanded to direct questions to Mr. Garcia. Mr.
Garcia graciously agreed to comply even though he professed that his English was not fluent. The only questions

1 is clear that the record simply does not support revocation of the permits.

2 **II. BACKGROUND**

3 Garcia Recycling has been in business for over 20 years and it operates four recycling
4 collection centers in the cities of Garden Grove, Santa Ana, and Costa Mesa. Garcia Recycling
5 was the *first* company to operate a recycling center in the City of Costa Mesa and its facility has
6 been located in the parking lot of a retail shopping center at 739 West 19th Street in Costa Mesa,
7 for over 20 years.

8 Garcia Recycling has two minor conditional use permits, ZA-89-25 and ZA-92-10. Staff
9 Report at 19-30. The original permit was issued in 1989 and the second permit was issued
10 Garcia Recycling in 1992 when it moved its operations from the back of the parking lot to the
11 front of the parking lot at the request of the City. In the original Preliminary Environmental
12 Description for the 1989 permit, Mr. Garcia indicated that his plan was to park a “one ton truck,”
13 and to buy aluminum cans, plastic bottles, and glass bottles. *Id.* at 22. The 1992 permit
14 application was “for the relocation and *expansion* of an existing recycling center.” *Id.* at 25.
15 Neither permit describes the mobile recycling facility as a “neighborhood recycling facility” or a
16 “regional recycling facility.” In fact, the Planning Commission explicitly acknowledges that the

17
18 “Costa Mesa Municipal Code (CMMC) does not make a distinction between
19 small and large recycling facilities. Code requires a MCUP in primarily all of the
20 commercial, and industrial zones, excluding Town Center zoning district where
21 they are prohibited.”

22 *Id.* at 164.

23 Aside from the complaints which prompted the City to ask Garcia Recycling to move
24 from the back of the parking lot to the front of the parking lot in 1992, Garcia Recycling was
25 unaware of purported complaints of its operations until last summer when it was contacted by
26 the City regarding its operations. *See id.* at 32. As the timeline prepared by the City
27 demonstrates, the City only began raising issues with Garcia Recycling last year. Garcia

28 Commissioner Mesinger asked Mr. Garcia was “so do you live in Costa Mesa?” and “you’re the owner of this
business?” *See id.* at 39-42. Commissioner Mesinger’s motivation for putting Mr. Garcia on the spot remains a
mystery, but we doubt that he has ever subjected other business owners to such treatment during a public hearing.

1 Recycling worked with the City with the issues raised through June 15, 2010 and made
2 significant progress until its permits were suddenly called for review by the Planning
3 Commission. Normally, enforcement staff would bring the issue of a recalcitrant applicant to
4 the Planning Commission's attention. But this was not the case here since as evidenced by the
5 fact that *no citations were ever issued against Garcia Recycling until after the Commission*
6 *revoked Garcia Recycling's permits.*

7 Garcia Recycling received notice of the hearing scheduled for July 12, 2010 on or about
8 July 1, 2010 and received the Planning Commission Agenda Report on or about July 6, 2010.
9 Because of the short time frame and the gravity of the matter, Garcia Recycling requested a
10 continuance of the hearing which was granted by the Commission at the hearing on July 12,
11 2010. The hearing was continued to August 9, 2010, and the Commissioners urged Garcia
12 Recycling to use the time to meet with its neighbors to better understand the complaints against
13 its operation.

14 After distributing fliers in English and Spanish, Garcia Recycling did in fact met with the
15 community members on July 26, 2010 to discuss its operations and to determine how Garcia
16 Recycling could improve its operations to be a good neighbor to the community. *Id.* at 142-143.
17 The individuals who attended the meeting expressed overwhelming support of Garcia Recycling
18 and noted that it is the best recycling facility in the area because it is an efficient operation so the
19 wait time is much less than other facilities, the employees are nice and go out of their way to
20 assist customers, and Garcia Recycling is honest and does not take advantage of its customers.
21 One woman said she specifically drives from Newport Beach to Garcia Recycling because she
22 thinks so highly of the service and she brings her kids to teach them about recycling. Some
23 individuals indicated that they rely on Garcia Recycling for their income. One homeless man
24 said if it weren't for Garcia Recycling, he did not know what he would do for income. Similarly,
25 another woman said that she had lost her job a few years ago and is dependent on Garcia
26 Recycling for income. Finally, one person aptly pointed out that because of Garcia Recycling,
27 trash is being picked up in the neighborhood and being recycled and that the trash would
28 otherwise be going to landfills.

1 In response to the question about how Garcia Recycling could better improve its
2 operations, particularly visually since that was the predominant concern raised at the last
3 Planning Commission meeting, many individuals thought it was unfair that Garcia Recycling
4 was being blamed for drunkards loitering in the area when there is a liquor store and soup
5 kitchen for the homeless across the street. A few people suggested using synthetic grass instead
6 of sod which gets trampled over time, and to paint a mural on the side of the container. Garcia
7 Recycling explained that it had used synthetic grass in the past but the City asked them to
8 remove it and that the City would unlikely be willing to approve a mural.

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

15 Because Garcia Recycling had expected more people to attend, including those who had
16 specifically opposed Garcia Recycling's operations, it decided to specifically reach out to those
17 parties who signed the petition submitted to the City. Counsel for Garcia Recycling sent out a
18 letter to those parties on July 27, 2010 to give them an opportunity to voice their concerns to us
19 so that we can address their issues. See Exhibit A. To date, counsel has not received any calls.

20 Between the July 12, 2010 hearing and the August 9, 2010 hearing, Garcia Recycling
21 collected over 500 signatures in favor of its operation.⁶ Staff Report at 204-240. In addition,
22 both the property owner/property manager and neighboring businesses sent in letters to the City
23 indicating their support for Garcia Recycling and the fact that they did not find Garcia
24 Recycling's operations to be disruptive in any way. *Id.* at 197 and 201. Victor Bonilla, the
25 property owner/property manager indicated that he had not received complaints about Garcia
26 Recycling and that "Garcia Recycling keeps its facility clean and its employees are constantly

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28 ⁶ It has since received even more support. Garcia Recycling will submit another signed petition at the hearing on
September 7, 2010.

1 sweeping the area and picking up any litter.” *These would be the individuals and businesses*
2 *most directly impacted by Garcia Recycling’s operations.*

3 Garcia Recycling presented the results of its neighborhood meeting to the Planning
4 Commission and pointed out all the letters in support of its operation as well as the petition
5 signed by over 500 individuals. Staff Report at 168. None of this evidence was discussed in any
6 depth at the August 9th hearing, despite the fact that it was the Commissioners requested that
7 Garcia Recycling poll its neighbors. Instead, as discussed above, the Commissioners used a
8 single photo as evidence to revoke Garcia Recycling’s permits.

9 During the hearing, the Commissioners raised the question of whether Garcia Recycling
10 had approached Smart & Final about issues associated with its operation. Having not done so,
11 Garcia Recycling reached out to Smart & Final on or about August 25, 2010. Counsel for Smart
12 & Final indicated that its concerns about Garcia Recycling did not really have to do with
13 customers parking in the Smart & Final lot. Rather, the real issue is the homeless individuals
14 loitering in the area who hassle customers. Like the Commissioners, Smart & Final believe that
15 Garcia Recycling is somehow solely responsible for the presence of these individuals
16 notwithstanding the fact that there is a soup kitchen and a liquor store directly across the street
17 from Garcia Recycling.

18 **III. ARGUMENT**

19 **A. The Commissioner’s Deprived Garcia Recycling of Due Process by Making**
20 **Factual Findings and Legal Conclusions Without Allowing Garcia Recycling**
21 **to Respond**

22 On or about July 28, 2010, Costa Mesa Planning Staff (“Staff”) issued a Planning
23 Commission Agenda Report (“July 28th Report”) which proposed the following findings in the
24 resolution revoking Garcia Recycling’s conditional use permit:

25
26 *“Revocation of ZA-89-25 and ZA-92-10 was initiated because the operation of*
27 *the use was determined to be a public nuisance pursuant to Municipal Code*
28 *Section 13-29(o) (Enforcement Authority). 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

1 of property maintenance, a significant degree of City staff resources has been
2 devoted to the use as a result of complaints related to the use and continual
3 enforcement of noise and property maintenance issues, and issues related to
4 noise, odors, transients, property maintenance, etc. do not appear to be prevalent
5 at other recycling facilities in the City as they are at this location. Modifications
6 to ZA-89-25 and ZA-92-10 are not sufficient to address the adverse impacts to
7 surrounding properties. Revocation will require cessation of the current use and
8 a similar use cannot be established in the future unless a new Zoning Application
9 is submitted and approved.”

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

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

20 Even if Garcia Recycling had the opportunity to respond to the argument that it was in
21 violation of certain conditions of approval, it would not have been able to intelligibly respond
22 since *at no time, either prior to or during the hearing, did the Commission ever identify which*
23 *condition(s) of approval Garcia Recycling violated.* Indeed, during the hearing, after admitting
24 that there were insufficient facts to find a nuisance, the Commissioner Rigueimer put up a
25 picture of Garcia Recycling (which may have been taken in the Fall of last year) and pronounced
26 that the picture demonstrated that Garcia Recycling encroached on the neighboring property and
27 therefore was in violation of its permit. On this flimsy ground, the Commission voted to revoke
28 the conditional use permit.

Garcia Recycling should have been afforded the opportunity to respond to this new
theory of revocation – that Garcia Recycling violated its conditions of approval - which was
developed by the Commissioners on the fly – *after* the close of public hearing. Failing to allow

1 Garcia Recycling to meaningfully respond to whether it had violated any use permit condition
2 resulted in a breach of due process – especially in a quasi-adjudicative proceeding to revoke a
3 use permit.

4 B. The Commissioners Failed to Meet the Standards Set Forth by the Costa
5 Mesa Municipal Code and State Law in Revoking Garcia Recycling’s
6 Conditional Use Permit

7 The seminal decision on revocation and modification of use permits ironically
8 involved the City of Costa Mesa - *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal.App.4th
9 1519 (1992). This decision involved complaints from residents abutting the parking lot
10 of the bar about noise, trash, and drunken behavior during late hours of operation. *Id.* at
11 1524. The Court of Appeal held that a use permit, once issued, becomes a fundamental
12 vested right that cannot be impaired absent a showing of either a failure by the permittee
13 to comply with the reasonable conditions of the permit or a compelling public necessity.
14 (*Id.* at 1530.)

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

21 *Id.* Furthermore,

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

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

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:

1 a. Constitutes a public nuisance as defined in State Civil Code
2 Sections 3479 and 3480; or

3 b. Does not comply with the conditions of approval.”

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

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

12 Civil Code Section 3480 states:

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

17 In the present case, the conditional use permit is a fundamental vested right held by

18 Garcia Recycling. There is no dispute that the permit was properly issued by the City and

19 Garcia Recycling has relied on this permit for its 20 years of operation. As such, the power of

20 the City to revoke this permit is limited. *See Goat Hill Tavern*, 6 Cal.App.4th at 1530. As the

21 Deputy City Attorney acknowledged during the August 9th hearing, the standard for revoking an

22 existing permit is much higher than that of denying a conditional use permit application.

23 Nevertheless, the Commission completely ignored this heightened standard by making false

24 findings of fact on the fly in order to justify its predetermined decision, i.e., revocation of

25 Garcia Recycling’s conditional use permits.

26 As discussed above, the transcripts of both the July 12th and August 9th hearing clearly

27 reflect a few of the Commissioner’s strong feelings towards Garcia Recycling and how they

28 simply don’t like the “look” of the facility, or how they are “embarrassed” by the appearance of

the facility. *Notably, they never articulate what it is about the facility that is so offensive.* Nor

do they identify which use permit conditions Garcia Recycling violated or what action or

inaction was taken by Garcia Recycling that amounted to a nuisance. As such, the City Council

must reverse the decision of the Planning Commission to revoke Garcia Recycling’s permits.

1. The Commissioners Failed to Identify Which Use Permit Condition

Garcia Recycling Violated

1 During the hearing, after the close of public comment, the Commissioners amended the
2 August 4th Resolution by adding the following finding which Commissioner Rigueimer
3 developed after a recess:

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

13 Staff Report at 83 (Resolution PC-10-25 adopted on August 9, 2010 (“Final Resolution”)).

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

- 16 • There is no reference to a “neighborhood recycling facility” in either use permit
17 (nor is it clear what a “regional recycling facility” is);
- 18 • There is no evidence in the record of the baseline volume of recyclable materials
19 processed in 1992 after Permit ZA-92-10 (“for the relocation and *expansion* of
20 an existing recycling center”) was issued by the City. Thus, how could the
21 Commission conclude that there was in fact an unlawful expansion of the scale
22 and intensity of the use of property?⁷;
- 23 • To conclude that use of the adjacent parking lot means the “expansion has
24 resulted in a scale and intensity of use beyond the boundaries,” is wholly
25 unsupported by the record. Garcia Recycling clearly stated that Smart & Final
26 customers also use its adjacent parking lot – the issue is one of convenience.
27 Applying the same logic, Smart & Final would be in violation of its conditional
28 use permit as well. Moreover, every co-tenant of any parking lot would be at risk

⁷ As to the argument that Garcia Recycling is in violation of the permit because the original permit application indicated that Garcia Recycling would be using a one ton truck as opposed to a three ton truck, this argument ignores the fact that the 1992 permit explicitly states that the recycling center would be expanded. A substitution of a three ton truck for the one ton truck is consistent with the stated expansion.

1 of permit revocation or loss of other entitlement from baseless assertions of
2 patron use of parking areas. The City has provided no legal basis for why a
3 patron of both Garcia Recycling and Smart & Final cannot decide where to park.
4 A more fundamental point is that the City has provided no evidence of the legal
5 documentation that governs use of the parking lots in question.

6 Therefore, the Commission erred in finding that Garcia Recycling violated its conditions
7 of approval and the City Council should reverse the Planning Commission's decision to revoke
8 Garcia Recycling's permits.

9 Planning staff now seeks to rectify the findings made by the Planning Commission by
10 proposing that the City Council make the additional findings set forth in the proposed
11 Resolution. See Staff Report at 13-14. These findings include in part:

- 12
- 13 a. The Use is operating off-site (on the adjacent Smart and Final property) in
14 violation of ZA-89-25 and ZA-92-10, which was approved for the 739 West
15 19th Street property (subject site) only.
 - 16 b. The use is in violation of the following Conditions of Approval of Zoning
17 Application ZA-92-10, Minor Conditional Use Permit for a recycling center:
 - 18 i. Storage of a commercial truck on the property to serve as additional
19 storage area in lieu of a container is in violation of **Condition of**
20 **Approval No. 3 for ZA-92-10**: "Any and all containers, with a
21 maximum of two, shall be located at the northeast corner of the site as
22 shown on the approved plans, and shall maintain a minimum setback of
23 twenty (20) feet from the front property line."
 - 24 ii. Materials kept outside the containers are in violation of **Condition of**
25 **Approval No. 5 for ZA-92-10**: "All materials shall remain inside the
26 containers."
 - 27 iii. No keeping the area free of debris, in violation of **Condition of**
28 **Approval No. 6 for ZA-92-10**: "Applicants shall keep the area
surrounding the container(s) free of debris."

23 As discussed above, CMMC Section 2-303(4)(b), the City Council is limited to
24 reviewing the "[f]indings, if any, and decision of the person or body whose decision is being
25 appealed," it cannot and should not consider new findings. Even if the City Council could make
26 new findings, Garcia Recycling submits that these findings are not supported by the record.
27 Staff is proposing that the City Council make these findings "based on the photographic
28 evidence prepared by staff," however, the photographs, in and of themselves, do not support

1 these violations.

2 First, while the pictures do show the fact that some customers use the Smart & Final
3 parking lot, there is no condition of approval that restricts the use of Smart & Final parking
4 spaces (which is why no condition of approval is cited). Moreover, the fact that customers use
5 the Smart & Final parking lot does not mean that Garcia Recycling is “operating off-site,”
6 otherwise, Smart & Final would likewise be “operating off-site” since Garcia Recycling’s
7 customers often park in the Garcia Recycling lot and visit Smart & Final.

8 Second, the fact that Garcia Recycling is using a commercial truck on the property does
9 not violate the Conditional of Approval No. 3 for ZA-92-10. The language of the condition does
10 not preclude one of the two approved containers to sit on a truck, especially since Garcia
11 Recycling had previously used a truck pursuant to ZA-89-25. Indeed, Garcia Recycling used a
12 truck pursuant to ZA-92-10 for *17 years* without incident. After the City raised this issue with
13 Garcia Recycling, Garcia Recycling tried using a container without the truck in June 2010,
14 however, Garcia Recycling determined that using a container was much more disruptive to the
15 parking lot due to loading and unloading of the containers. *See* Staff Report at 33. Before
16 Garcia Recycling could discuss this issue with staff, the Planning Commission called up the
17 permit review. To revoke Garcia Recycling’s permit under these circumstances where it was
18 working with City Staff to address issues (even though Garcia Recycling has never been in
19 violation of its permit) is patently unfair and in bad faith.

20 Furthermore, the truck and containers are in fact set back more than 20 feet of the
21 property line. The pictures simply do not show this violation.

22 Third, while Condition of Approval No. 5 for ZA-92-10 does require that “[a]ll materials
23 shall remain inside the containers,” the fact that customers are unloading their beverage
24 containers in the parking lot and are standing in line with their bags of containers does not mean
25 Garcia Recycling is in violation of the condition. As we have previously pointed out, all
26 recycling facilities operate in this manner. *See* Staff Report at 107. The intent of the language is
27 to prevent Garcia Recycling from storing purchased beverage containers outside of the storage
28 bins. No such storage occurs on the facility – all purchased beverage containers are immediately

1 deposited in the permitted containers.

2 Finally, as to Condition of Approval No. 6 for ZA-92-10, none of the pictures show
3 debris in the area surrounding the containers. In fact, the record reflects just the opposite. For
4 example, Victor Bonilla, the property owner and manager stated that "Garcia Recycling keeps its
5 facility clean and its employees are constantly sweeping the area and picking up any litter."
6 Staff Report at 145. These sentiments were echoed in the neighborhood meeting.

7 In sum, the Planning Commission was wholly unjustified in finding that Garcia
8 Recycling violated its conditions of approval without ever identifying the conditions. Even if the
9 City can make new findings, the record simply does not support the fact that Garcia Recycling
10 violated its conditions of approval.

11 2. The Commissioners Failed to Establish Any Nuisance

12 As acknowledged by the commissioners, the record does not support a nuisance
13 determination.⁸ At the time of the Planning Commission hearing, there was no record of code
14 violations, police records, or anything remotely supportive of a nuisance.

15 Moreover, the City's findings on their face do not meet the definition of a nuisance as set
16 forth in Civil Code Section 3479 and 3480. Garcia's Recycling's operations are not injurious to
17 health, it is not an obstruction to the free use of property, nor does it affect an entire community
18 or neighborhood. The purported negative visual impact is based on "excessive signage and lack
19 of property maintenance" which hardly arises to the level of being "indecent or offensive to the
20 senses," particularly where a vested interest is at stake.

21 Aside from the letter petition signed by approximately 35 people citing that the facility's
22 presence "[b]ring (sic) in transients; drunkard asleep all around, urinating, trash . . . odors,
23 unkept (sic) areas, unnecessary noise," there is nothing in the record to support the City's
24 findings. As far as we can tell, there are only two documented complaints in the last year or so,
25 both citing excessive noise. The City of Costa Mesa, Development Services Department

26
27 ⁸ After finding no evidence of nuisance, the Commissioners focused on violations of the (unarticulated) conditions
28 of approval. Yet at the end of the meeting, after some confusion, it appears that the deputy City Attorney clarified
that the revocation was based on both violations of the conditions of approval and nuisance even though it was clear
that there were no facts to establish a nuisance finding. *Id.* at 87-88.

1 investigated one of the complaints and visited Garcia Recycling seven times and noted “NO
2 VIOLATION OBSERVED” each time and closed the case on July 17, 2009. *See* Staff Report
3 at 182. Contrast the significant evidence of complaints that was presented by the City in *Goat*
4 *Hill Tavern*, where the court still found that the City’s decision to deny renewal of applicant’s
5 permit was not supported by the evidence. *See Goat Hill Tavern*, 6 Cal.App.4th at 1525.

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

11 As discussed above, staff attempts to now bolster the record by issuing three citations
12 against Garcia Recycling *after* its permit has already been revoked. The City Council should see
13 through this transparent attempt to repair the record, and it should reverse the decision of the
14 Planning Commission.

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

17 In contrast to the City’s anemic evidence of nuisance, Garcia Recycling submitted the
18 following evidence:

- 19 • Recent pictures of the facility showing that the signage is small and unoffensive
20 and the entire operation is barely visible from the street.
- 21 • Pictures of the soup kitchen across the street which serves the homeless
- 22 • Letter from the businesses most directly impacted by Garcia Recycling’s
23 operations, the business owners in the shopping center, who opined that they do
24 not find Garcia Recycling’s operation to be offensive.
- 25 • Letter from Victor Bonilla, part owner of the shopping center and property
26 manager, indicating that he has not received any complaints about Garcia
27 Recycling.
- 28 • Public outreach to community members to ascertain the basis of the purported

1 complaints against Garcia Recycling

- 2 • Public outreach to those individuals who signed the complaint petition to which
3 Garcia Recycling received no response.
- 4 • Petition with over 500 signatures in support of Garcia Recycling by the
5 community members who frequent the shopping center and Garcia Recycling.

6 The Commission completely failed to address this evidence in making its nuisance
7 determination. Garcia Recycling hereby submits the following additional evidence – Garcia
8 Recycling recently replaced the landscaping again (on or about August 28, 2010) and added
9 signs directing its customers not to step on the grass or park in the Smart & Final parking lot.
10 *See Attachment 3.*

11 C. **The Commission Failed to Comply with the California Environmental**
12 **Quality Act in Revoking Garcia Recycling’s Conditional Use Permit Without**
13 **Environmental Review**

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

25 It is undisputed that Garcia Recycling handles more than double the amount of recyclable
26 beverage containers than any other recycling operation in Costa Mesa. While the City may
27 speculate that the recyclers would simply take their materials to other recyclers, based on the
28 comments we received at the neighborhood meeting, this would not be the case. Many of Garcia

1 Recycling's customers walk to the facility (as evidenced by the pictures we previously
2 submitted) and would not be able to walk to the other recyclers. Moreover, Garcia Recycling is
3 the only facility that is open on Mondays when the volume of material is the heaviest. Garcia
4 Recycling is the largest and most efficient operation (as we learned from our neighborhood
5 meeting, people come to Garcia instead of other facilities because of its efficiency). The other
6 recyclers simply cannot handle the volume of materials that Garcia Recycling handles and as
7 such, it is inevitable that the total volume of beverage containers recycled in the City would
8 decrease and result in an environmental impact. This impact must be analyzed under CEQA.

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

19 This is not a typical case where the Commission is revoking the conditional use permit of
20 a bar or restaurant which would not result in significant impacts to the environment. The
21 Commission is considering revoking the permit of a recycling facility that is mandated by state
22 law and which diverts a significant amount of trash from the landfills. This creates an
23 environmental risk that does not exist for the general class of projects under this exemption.
24 Indeed, the California Beverage Container Recycling and Litter Reduction Act ("The Bottle Bill"
25 or AB 2020) explicitly allows the Department to penalize cities that "prohibit[] the siting of a
26 supermarket site" or "cause[] a supermarket site to close its business." Pub. Res. Code §
27 14581(a)(5)(F) (emphasis added). We cannot conceive of any other type of use where a city
28 may be subject to a penalty where a conditional use permit is revoked. Clearly, in passing the

1 Bottle Bill, the Legislature felt that cities should subrogate their land use interest for the benefit
2 of recycling:

3
4 “It is the intent of the Legislature to make redemption and recycling convenient
5 to consumers, and the Legislature hereby urges cities and counties, when
6 exercising their zoning authority, to act favorably on the siting of multimaterial
7 recycling centers, reverse vending machines, mobile recycling units, or other
8 types of recycling opportunities, as necessary for consumer convenience, and the
9 overall success of litter abatement and beverage container recycling in the state.”

10 Pub. Res. Code § 14501(e).

11 As discussed above, because Garcia Recycling handles such a high volume of recycled
12 beverage containers, there is certainly a reasonable possibility that closure of the facility would
13 result in a significant effect on the environment.⁹ Thus, the exception to the categorical
14 exemption would apply.

15 **D. The Commissioners Violated the Brown Act by Deliberating Outside of the**
16 **Public Meeting**

17 Meetings of public bodies must be “open and public,” actions may not be secret, and
18 action taken in violation of open meetings laws may be voided. Govt. Code §§ 54953(a),
19 54953(c), 54960.1(d). During the August 9th hearing, the Commissioners appeared to reach an
20 impasse regarding a finding of nuisance and they could not decide whether they wanted to
21 modify the permits, how they would modify it, or whether to revoke it. *See* August 9th
22 Transcript at 83-86. Commissioner Righeimer called for a recess and the Commissioners left the
23 councils chambers and appeared to deliberate outside of the presence of the public. This is
24 evidenced by the fact that when Commissioner Righeimer called the meeting back to order he
25 had “scratch out” proposed language for the finding that Garcia Recycling violated its conditions
26 of approval which the other commissioners immediately accepted without even examining the
27 language. *See id.* at 86-89. The Commissioners drafted the motion language together outside of
28 the purview of the public in violation of the Brown Act – the classic “seriatim meeting”. Thus,
the Commission’s decision to revoke Garcia Recycling’s permit must be deemed null and void.

⁹ By characterizing Garcia Recycling as a “regional recycling facility,” Staff appears to agree that Garcia Recycling handles a significant amount of recycled beverage containers.

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IV. CONCLUSION

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

Date: September 7, 2010

Respectfully submitted,

MILES • CHEN LAW GROUP, P.C.



By: _____
Patricia J. Chen

ATTACHMENT 1

MILES CHEN LAW GROUP

**Costa Mesa Planning Commission Meeting,
July 12, 2010**

1 COSTA MESA PLANNING COMMISSION MTG, JULY 12, 2020

2 [START PC MEETING ITEM 4.MP3]

3 MALE VOICE 1: Mr. Chair, the second item
4 was No. 4.

5 MR. RIGHEIMER: No. 4, and I think we did
6 have someone who wanted to speak on Item No. 4.
7 We've got a letter from the applicant. They
8 just brought in an attorney, and they're looking
9 to postpone it. So if we vote to postpone it,
10 if you want to speak on the item, we'll let you
11 speak on it today, but you can't speak on it if
12 it gets postponed to that new date. So you
13 might want to decide which one you want to do on
14 that there.

15 MR. CARMONE: Excuse me, sir.

16 MR. RIGHEIMER: Please.

17 MALE VOICE 2: Have him come up.

18 MR. CARMONE: So either I choose to speak on
19 it--

20 MR. RIGHEIMER: Please come to the
21 microphone. You can choose to speak on it now
22 or if we postpone it then, but you can only
23 speak once.

24 MR. CARMONE: Which would be when?

25 MR. RIGHEIMER: August 9.

1 COSTA MESA PLANNING COMMISSION MTG, JULY 12, 2010

2 MR. CARMONE: If it's postponed to there.

3 MR. MENSINGER: Mr. Chair?

4 MR. RIGHEIMER: Well, real quick. Would it
5 be okay, if this did get postponed, to speak
6 then?

7 MR. CARMONE: Yes.

8 MR. RIGHEIMER: Okay.

9 MR. MENSINGER: Mr. Chair, if he's here
10 tonight, though, he can speak on it, correct?

11 MR. RIGHEIMER: He can speak on it tonight,
12 but we're not going to vote on it.

13 MR. MENSINGER: So if you don't want to come
14 back and wait around again, your comments will
15 be kept in the record to reflect your thoughts.

16 MR. CARMONE: I'll speak on it now.

17 MR. MENSINGER: So you can speak on it now.
18 I want to make sure you understand that.

19 MR. RIGHEIMER: Let's go ahead and go
20 forward. Go ahead and do it the proper way.
21 One second. Let her go first. Let the clerk --
22 go ahead.

23 THE CLERK: Public hearing Item No. 4.
24 Application No. ZA-89-25 and ZA-92-10. Site
25 address: 739 West 19th St. Applicant: Jesse

1 COSTA MESA PLANNING COMMISSION MTG, JULY 12, 2010

2 Garcia. Zone: C1. Environmental
3 determination: Exempt. Description: Review,
4 modification, and/or revocation of Minor
5 Conditional Use Permit ZA-92-10 for a recycling
6 center with a maximum of two containers in a
7 commercial shopping center.

8 MR. RIGHEIMER: Mr. Lee.

9 MR. LEE: Yes, Mr. Chairman and
10 commissioners. To just briefly describe in more
11 detail the item. This item has been brought
12 forward for your review for possible
13 modification and/or revocation. Two Minor
14 Conditional Use Permits, ZA-89-25 and ZA-92-10.
15 This is for Garcia's Recycling, which currently
16 operates at the property, 739 West 19th St. The
17 purpose of bringing this item forward for the
18 Commission's consideration is to either modify
19 or revoke the Minor Conditional Use Permits that
20 allow the recycling facility to operate at this
21 location.

22 MR. RIGHEIMER: And we've got a letter from
23 the applicant looking to postpone?

24 MR. LEE: We have received the letter from
25 the applicant's representative requesting that

2 this item be continued to the August 9th
3 meeting.

4 MR. RIGHEIMER: Does Stephen have any
5 problem with that at all?

6 MR. LEE: No.

7 MR. RIGHEIMER: Let's see here. How do we
8 want to do this? Counsel? Open to the public?

9 MALE VOICE 2: Open to public hearing.

10 MR. RIGHEIMER: What I'm going to do is go
11 ahead and open the public hearing on this item.
12 It will be a little bit out of step from how we
13 normally do this, because I know the applicant's
14 looking for a continuance. So I'm going to go
15 ahead and open the public hearing. Sir?

16 MR. CARMONE: As I said, my name is Edward
17 Carmone. I live 752 Center Street on the corner
18 of Center and Wallace. I come before you again
19 to oppose it as I did on the initial approval of
20 this.

21 First of all, I've lived here for 20-some
22 odd years and 19th Street has been beautified.
23 It's lovely to drive down 19th and see all the
24 day lilies when they're in bloom and the palms.
25 It's lovely. And all of a sudden, we come upon

2 this container that's sitting right out in front
3 of God and everybody with all these cans and
4 people and trash and noise going on. It doesn't
5 enhance anything. It doesn't beautify it. It
6 absolutely destroys what the city has spent a
7 lot of money on in trying to correct. We're
8 trying to build a west side. We're trying to
9 create an environment that is family-friendly,
10 and that certainly is not.

11 And now the applicant is asking for an
12 extension, as I understand this, and possibly a
13 second container. To me, that's ridiculous.
14 It's totally out of place. It doesn't belong
15 there. I have no objection to recycling. I
16 think it's a great idea, but not there. And I'm
17 not saying "not in my backyard"; I'm saying not
18 there. It is right smack in the middle of what
19 you tried to create as far as a pleasant
20 environment. It's terrible. Please do not
21 approve this application. Thank you.

22 MR. RIGHEIMER: Thank you. Just for
23 clarification, this item's actually come up
24 because some planning commissioners have gotten
25 so many calls that the Planning Commission has

1 COSTA MESA PLANNING COMMISSION MTG, JULY 12, 2010

2 brought this item up. Commissioner Mensinger
3 brought this item up to look at; review, modify,
4 or revoke came from the commission here.

5 MR. CARMONE: Thank you.

6 MR. RIGHEIMER: Is there anybody else from
7 the public?

8 MS. CHEN: Good evening. My name is
9 Patricia Chen. I'm with Miles Chen Law Group.
10 I represent the applicant, Garcia Recycling.
11 Obviously, I don't want to waive my opportunity
12 to speak.

13 MR. RIGHEIMER: As the applicant you don't.
14 It's okay.

15 MS. CHEN: All right. So do you want me to
16 make a presentation as to why --

17 MR. RIGHEIMER: No, I think you just want to
18 tell us you want your extension. We've already
19 seen your letter.

20 MS. CHEN: Okay. Obviously, we had
21 requested an extension so that we can take the
22 time to speak to Cal Recycle, Department of
23 Conservation, and also we'd like to engage the
24 City in further discussions. We plan to use
25 this time to do that and also to poll our

1 COSTA MESA PLANNING COMMISSION MTG, JULY 12, 2010

2 customers as well to see what might work.

3 Garcia Recycling has been working with the City.

4 They will continue to work with the City. They

5 are open to moving the facility if they have the

6 support of the City and the Department of

7 Conservation. So they are trying to be good

8 citizens here and we reserve our right to make a

9 more comprehensive presentation at our next

10 meeting.

11 MR. RIGHEIMER: Okay. So the applicant's
12 asked for a continuance. Do I have a motion --

13 MR. MCCARTHY: Mr. Chair?

14 MR. RIGHEIMER: Commissioner.

15 MR. MCCARTHY: I move that we continue Item
16 No. 4, review of zoning application ZA-89-25 and
17 ZA-92-10, Minor Conditional Use Permits for
18 Garcia Recycling Center, 739 West 19th St., to
19 the meeting of August 9th.

20 MR. RIGHEIMER: I have a motion.

21 MALE VOICE 4: Second for discussion.

22 MR. RIGHEIMER: I have a second. Any other
23 discussion?

24 MR. MENSINGER: Mr. Chair, since I'm the
25 person who brought this up, I'd be more than

2 happy to support that extension.

3 MR. RIGHEIMER: Okay.

4 MR. MCCARTHY: Mr. Chair?

5 MR. RIGHEIMER: Commissioner.

6 MR. MCCARTHY: I have a comment in support.

7 I would suggest to Miss Chen that she talk to
8 the neighbors. One of the things that we see on
9 a lot of these is the applicant, or in this
10 case, the respondent, comes back and says we're
11 working really hard with the city, and we've had
12 all this great dialogue with the city, but
13 nobody's talking to the neighbors and listening
14 to the neighbors' concerns, so I would suggest
15 that you reach out and talk to the folks that
16 are impacted by this to the best degree that you
17 can before the August 9th meeting.

18 MS. CHEN: I understand. I'll relay that.

19 MR. FITZPATRICK: Mr. Chair?

20 MR. RIGHEIMER: Commissioner Fitzpatrick.

21 MR. FITZPATRICK: I'm in support of this as
22 well. There's no need for any rush to judgment
23 here. I think that we should take this
24 opportunity to really have a good dialogue and
25 consider a lot of different options.

2 I, too, would suggest that the applicant
3 really focus on understanding what the
4 residents' issues and concerns are, because this
5 has received a tremendous amount of
6 communication on the subject, and see if we
7 can't come up with some solutions here. I've
8 been on the phone with Cal Recycle and other
9 cities to understand best practices, and visited
10 all the locations.

11 I just think that we should use this time as
12 an opportunity to try and figure out, maybe not
13 necessarily site-specific, but also kind of what
14 it is we want our city to look like now and in
15 the future around recycling, because it's such
16 an important issue and it's obviously high
17 demand. I would encourage the applicant to
18 really be looking at what the issues are and
19 what options may be available to solve those
20 issues. Thank you.

21 MR. MENSINGER: Mr. Chair?

22 MR. RIGHEIMER: Commissioner Mensinger.

23 MR. MENSINGER: Since I'm obviously the
24 commissioner that pulled this item, I want to
25 also weigh in and ask the applicant to focus in

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2 on the best practices. After receiving a lot of
3 calls over the last seven months, and a lot of
4 discussions with neighbors like the gentleman
5 that just spoke, and then driving to the site
6 myself, the site certainly has a lot of room to
7 grow.

8 Clearly, it hasn't changed much since 1989
9 and we'd like to see recycling centers in the
10 city, and we'd like to see recycling centers
11 conceptually throughout the whole community,
12 because we believe in that. A lot of us,
13 Commissioner Fitzpatrick and myself, are
14 certified green consultants. The issue is not
15 the recycling, the issue is the condition of the
16 center and the effect on the surrounding
17 neighbors and best practices in the community
18 today. Thank you.

19 MR. RIGHEIMER: Okay. Seeing this is
20 started in 1992, I guess another month won't be
21 much. Call for the question.

22 THE CLERK: Motion carried 5-0.

23 MR. RIGHEIMER: All right. Thank you very
24 much. It'll be August 9.

25 [END PC MEETING ITEM 4.mp3]

C E R T I F I C A T E

I, JILL M. RAUSCH, certify that the foregoing transcript of COSTA MESA PLANNING COMMISSION MEETING, JULY 12, 2010, was prepared using standard electronic transcription equipment and is a true and accurate record.

Signature _____



Date _____

8-24-10