

Martin D. Koczanowicz

David P. Hale

March 24, 2016

Planning and Building Department  
Mr. Cody Scheel  
976 Osos Street  
Room 200  
San Luis Obispo, CA 93408

**Re: PLC 23/2016; Vadnais DRC 2015-00047, Development  
Plan/Coastal Development Permit.**

Dear Planning Commission Members:

Our Firm has been engaged by Mr. John Morrison related to the above referenced project. Mr. Morrison is one of the residential residents immediately adjacent to this subject operation and has been struggling for some time with what appears to be consistent and flagrant violations of code and local ordinances in its operation.

This project sits in the back portion of a shopping center parking structure located at Tamson Drive, Cambria, APN 013-101-081. Some 90 feet from the property line of our clients which occupy noise sensitive receptors in the form of single family residents. The zoning applicable to this location is Commercial Retail zoning as stated in staff's Planning Commission report. The current use consist of a 160 square foot storage container enclosed by a wood panel façade, a 96 square foot storage shed and a 67 square foot awning cover. The staff report continues to state that the subject facility encompasses approximately 550 square feet, which is significantly in excess of the allowable square footage for a Recycling Collection Station as defined is 23.08.098.

The subject entitlement being proposed by the applicant is not authorized by your local codes for expansion of a land use category of Recycling Collection Station beyond 100 square feet. Specifically this proposed entitlement amends the use to a Recycling and Scrap land use category which is an incompatible use as defined within Title 23 of the Coastal Zone Land Use Ordinance, subsection D (20), (Manufacturing & Processing) of the Allowable Use Table – Coastal Zone and the Land Use Element of the County’s General Plan. A review of this table shows this use is clearly not an allowable nor authorized use in a Commercial Retail zone district. This is an inappropriate entitlement under Recycling Collection Station ordinance section 23.08.098 and staff also fails to make the necessary findings for a Minor Use Permit as required under 23.08.098 (a) if in fact this were a Recycling Collection Station which it is not.

To the extent this project significantly expands this use from a Recycling Collection Station to a Recycling and Scrap usage, it imposes a significantly greater potential of environmental impacts and therefore is not appropriate to approve a Categorical Exemption under the California Environmental Quality Act (CEQA). To the extent this project land use is inconsistent with the specific zoning of Commercial Retail, the County is not authorized to approve a Categorical Exemption for this project. And for other reasons as more fully enumerated hereinafter, the County has failed to adequately assess the total environmental impacts related to this project. There will be significant noise and vehicular traffic which have not even been looked at nor assessed by County staff clearly in violation of CEQA.

### ZONING CONSISTENCY

Initially it should be pointed out, that the only purpose for the proposed request for a land use entitlement which is the subject matter of this Planning Commission agenda item is due to the

flagrant and continued violation by the applicant to the land use policies of the County.

This proposed modification or retroactive application of approval of the applicant's violations of the San Luis Obispo Code is not authorized under the County's current ordinances or code sections.

Staff articulates within Page one of Exhibit A to their staff report the following in section B under "Development Plan" which states; "The proposed project or use is consistent with the San Luis Obispo County General Plan/Local Coastal Program because the existing as-built recycling collection station is an allowed use under the Special Use standards, involved minimal site disturbance on an existing developed lot, and the existing as-built recycling facility is not visible from any major public viewing corridors."

We submit as will be explained hereinafter, this project is not consistent with allowable zoning in the County's General Plan and Local Coastal Program and the above criteria for which staff concludes this project is authorized is irrelevant and inconsequential to the necessary criteria to determine whether this use is an allowable use on this site.

Within the San Luis Obispo County Coastal Allowable Use Table & Definitions, hereinafter referred to as "Coastal Table O" which is found within the County's Land Use Element of its General Plan, the definition section [D19] defines the Recycling Collection Stations use as follows:

**Facilities for temporary accumulation and storage of recyclable discarded materials, which are subsequently transported to recycling centers or solid waste disposal sites for further processing....(Does not include ....recycling**

**processing facilities, which are listed under Recycling and Scrap; ....)**

Section [D20] of the definition section of Coastal Table O defines Recycling and Scrap as follows:

**Establishment primarily engaged in .....temporary storage and distribution of recyclable or reusable scrap and waste materials,...Also includes any storage of such materials in an area larger than 200 square feet or higher than six feet.**

The staff in numerous occasions throughout their staff report refer to the subject property as “the existing as-built recycling collection station” as if the approval of the proposed development plan transforms the unlawful and non-code compliant operation of the applicants business into an acceptable use consistent with your ordinances and General Plan of the County. We respectfully submit, it does not.

Section 23.08.098 of the County’s codes specifically defines the land use element requirements for Recyclable Collection Stations. Subsection (a) states that establishment of a Recyclable Collection Station requires the issuances of a Minor Use Permit, not a Development Plan. Further, and more importantly, subsection (f), (Design Standards) subdivision (3) states that a Recycling Collection Station “**is to be no larger than 100 square feet.**”

When reading Section 23.08.098 (f)(3) which limits the square feet allowed for Recycling Collection Stations to 100 square feet with the definition of a Recycling and Scrap use (recycling operations over 200 square feet) it become clear that the proposed application before the Planning Commission is not for the approval of a collection center but for a Recycling and Scrap operations since the operations (storage and distribution of recyclable material) represent over 500 square feet of operational space.

The submittal and approval of the proposed Development Plan cannot change fundamental definitions of land uses contained within your code. This additional operational requirement for more square footage, by definition within your code, changes the land use classification of this business to a Recycling and Scrap operation. This type of land use is not a compatible land use as defined within the Coastal Table O.

A review of the Land Use Category matrix found within Coastal Table O, section D (Manufacturing & Processing) subsection 20 clearly shows that Recycling & Scrap is not an allowed use in Commercial Retail. We have attached hereto a copy of that pertinent part of the matrix as Exhibit "A". Therefore for the above reasons, unless a zone district amendment is approved to a zoning classification that authorizes Recycling & Scrap land uses, this use as defined and currently existing, is unlawful, a violation of the existing land use classifications and that due to the Design Standards of the current zoning, is not permissible. A Development Plan does not cure those deficiencies based upon the County's own code interpretations.

Section 23.01.033 - Consistency with the Land Use Element and Local Coastal Plan Required, contained within the Coastal Zone Land Use Ordinance and General Plan clearly requires consistency between proposed uses and zoning classifications. It states the following:

**No new use of land, buildings, division of land or other development shall be established, and no application for such use, land division or other permit required pursuant to this title shall be approved, unless the proposed use or division is determined to be allowable in the land use category where the proposed site is located, pursuant to subsections a through e of this section.**

Nowhere within subsection a through e can it be interpreted that this proposed use is compatible with the current existing zoning. For the reasons stated above and based upon the definitions of the above reference land use classifications, there is no possible way to conclude this propose use is compatible with the current zoning. This section of the County's code clearly requires compatibility and consistency which doesn't exist.

Although courts will generally give great deference to local agency's interpretation of their ordinances, they will also look to their codes to ascertain how those codes are to be interpreted. Section 23.01.041 gives clear direction on how to interpret the above subject codes. It states the following:

**Any questions about the interpretation or applicability of any provision of this title, are to be resolved as provided by this section.**

....

**b. Language:**

**(1) Construction: When used in this title, the words "shall," "will," and "is to" are always mandatory and not discretionary. The words "should" or "may" are permissive. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural, and the plural the singular.**

In terms of defining the Development Standards for a Recycling Collection Station, section 23.08.098 (f)(3) states that the development or business "is to be" no larger than 100 square feet. That requirement can and should be interpreted in accordance with section 23.01.041 as mandatory for this use classification. It is not discretionary and can only be changed subject to a text amendment to

the code. Any approval of any development over that amount and specifically to the size of the existing project would cause a reclassification of the use by definition to Recycling and Scrap which cannot be approved by the Planning Commission as incompatible with existing zoning.

One final observation related to section 23.08.097 is that any Recycling and Scrap use cannot be located within 500 feet from any residential single family or multi-family category or residential use on an adjoining lot. Not only is our client's property adjacent to the proposed use and is a single family residence, his property line is located within 100 linear feet of the proposed project. Both the type of land use owned by our client and being within 100 feet of the project, precludes the Planning Commission from approving this project.

#### **PROJECT IS INCOMPATIBLE WITH GENERAL PLAN**

As indicated above, the consistency table of allowable land uses in each zoning category is clearly identified and defined in the County's Land Use Element of its General Plan. To the extent by definition of uses, this proposed entitlement being requested by the applicant is a Recycling and Scrap use, it is not allowed within a Commercial Retail zone district and is directly in violation of the County Land Use Element of its general plan. There is a plethora of California decisional case law that states you cannot approve a development entitlement that is inconsistent with your General Plan.

The project has for some time consisted of the receipt, processing and storage of recyclable material including aluminum cans and glass products. The storage, processing, movement and transportation of these products creates a significant amount of noise to sensitive noise receptors located less than 100 linear feet from this project.

The staff has attempted to argue this project is categorically exempt in Exhibit A of their staff report based upon the fact this is an existing structure and is a "small recycling collection facility/structure with minimal site disturbance on an existing developed lot." Staff first mischaracterizes this project as a small recycling collection facility when in fact approval of this development plan will convert by definition this project to a Recycling and Scrap use. This use allows for significantly greater potential for environmental impacts which were not considered by staff and were not evaluated.

In subsection "D" of Exhibit A to the staff's report, staff has articulated his project will not be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use. Yet staff has failed to do any acoustical analysis of what or how much noise the processing, collection, transporting and shipping of glass and other products collected by this center will make. Especially when the size of the facility is now over 400% larger than lawfully authorized by your code.

Our client has for some time now made numerous request to the County to resolve the extensive noise produced by this facility with little or no enforcement by the County of the flagrant violations of the code as shown in the attached pictures, marked Exhibit "B".

CEQA requires that to the extent there is any evidentiary basis to create a fair argument of a proposed significant environmental effect, staff should have done an initial study and some form of environmental analysis to assess the potential impacts. Moreover the Noise Element of the County's General Plan mandates such an analysis.

The Noise Element of the General Plan defines single family residences as a noise sensitive land use. No evidence has been presented by staff to support or suggest there is no impact to these noise sensitive land uses. Our clients have been raising issues with the County for a significant period of time that it is uncomfortable to sit in their back yard when the applicant is processing glass and other products that make a significant amount of noise. Moreover, Table 2-2 of the Noise Element of the General Plan has a specific process staff must follow to determine whether there are current noise impacts to our clients. Staff has proposed no information to suggest they have followed these procedures. Under CEQA staff's failure to consider or evaluate those potential impacts as required under the General Plan should not and does not equate to the conclusion of there being a lack of significant impacts.

Since this project is a Recycling and Scrap use and the project currently represents a 400% increase in size to what is allowed in a Recycling Collection Station; that our clients property is less than 100 feet from the applicants operations, well under the minimum spacing requirements under the code for Recycling and Scrap operations, and that our client has on numerous occasions complained to the County regarding the noise impacts from this project, is more than enough relevant evidence and information to submit this project is in violation of the Noise Element of the General Plan and has failed to be adequately assessed under CEQA. Staff should have done an acoustical analysis to determine whether this project has impacts in excess of the minimum noise requirements of the General Plan.

For the above reasons, this project cannot be approved without an adequate CEQA analysis and approval of a categorical exemption would be in violation of CEQA.

Staff has also failed to adequately assess potential traffic impacts and related noise associated with those elements of the project. Within subsection F of Exhibit "A" of the staff report, staff

makes a finding that the proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads because the project has access by Tamson Drive which is a local road constructed to handle traffic associated with the project.

Staff presents no evidence or basis for that analysis and again, merely assumes there is no impacts associated with traffic. Impacts on existing or newly constructed roads are not the only potential impacts that can arise from traffic. Staff has failed to articulate or find how a 400% increase in the size of this recycling operation will increase traffic and in what amounts. These types of impacts, irrespective of whether the roads are of sufficient size to accommodate traffic, can and will produce noise from increased traffic, idling of cars or trucks while loading, transporting and distributing recyclable material, and potential secondary emissions. Staff has again merely concluded without any analysis as to whether any of the above may have significant impacts on our clients' property.

## CONCLUSION

The project as proposed has morphed from an acceptable and allowable use, Recycling Collection Station, to a Recycling and Scrap use which is not allowed within the Commercial Retail zoning currently existing on the property. Approval of this project would clearly be in violation of the Coastal Zone Land Use Ordinance, the County's Land Use Element of its General Plan, and the Coastal Table "O".

The project has not been adequately assessed for environmental impacts in accordance with CEQA. To the extent the project has currently and unlawfully been expanded to a size in excess of 400% of the allow size for a Recycling Collection Station and to the extent that approval of this entitlement would, by definition contained with

the Land Use Element, be considered a Recycling and Scrap use, the environmental impacts such as noise and traffic have not been considered or evaluate by staff. The location of our client's property within 100 feet clear is substantially closer than the 500 space limitations of the pertinent zoning which raises reasonable notice and evidence of potential noise and other environmental impacts that may arise from this project. The very impacts our clients have been raising for some time with the County.

Our client is not opposed to recycling facilities. They only request that the facility be located within an area that is more commercial/retail oriented than single family residential. Our clients due to the location are substantially affected by hearing the conversations of the workers at the location, the noise of glass and other recyclable products being processed, and the noise of vehicles going in and out. It is also an issue that the applicant physically blocks the road with a cable to inhibit access to the end of Tamson Drive. To the extent that Tamson Drive is a public street, the gating or blocking of vehicular traffic, including the potential access of emergency service vehicles, to locations behind our client's house is in direct violation of the California Vehicle Code, section 21101.

As a consequence of the above, the Planning Commission does not have the authority to approve this requested entitlement for expansion of the current recycling operations. Our client has proposed that the recycling operations be move to another industrial or commercial service area zoned for these types of uses, move the recycling operation within the parking facility of the Cookie Crock market or shut down the operations. It is not a violation of the California Beverage Container Recycling Act (AB 2020) to move this facility to another location even if miles away; the County can issue a variance for the Cookie Crock store to eliminate a couple parking stalls if required by the store entitlements; or to shut down this facility as being in gross violation of the current zoning ordinances and permits issued for its operations.

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Sincerely,

Koczanowicz & Hale

Handwritten signature of Martin D. Koczanowicz in cursive script, with the initials 'mt' at the end.

Martin D. Koczanowicz



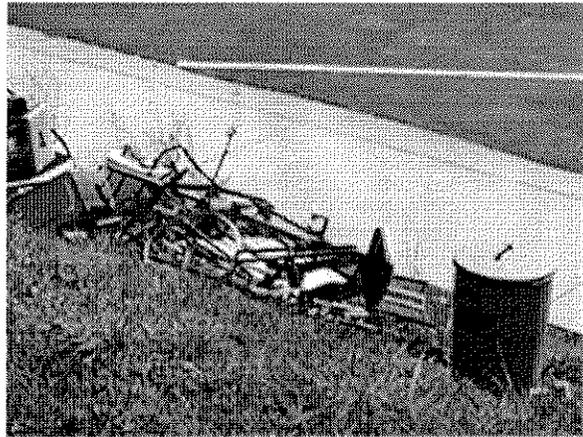
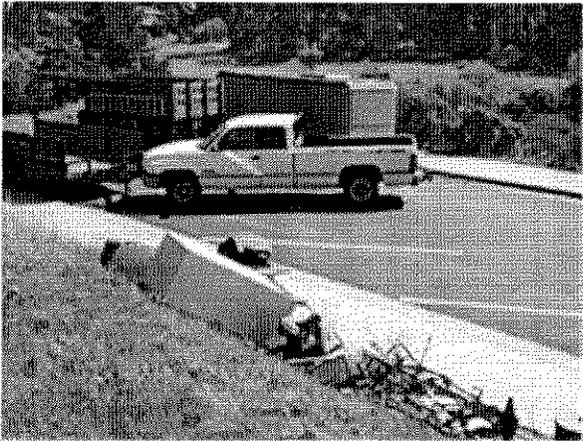
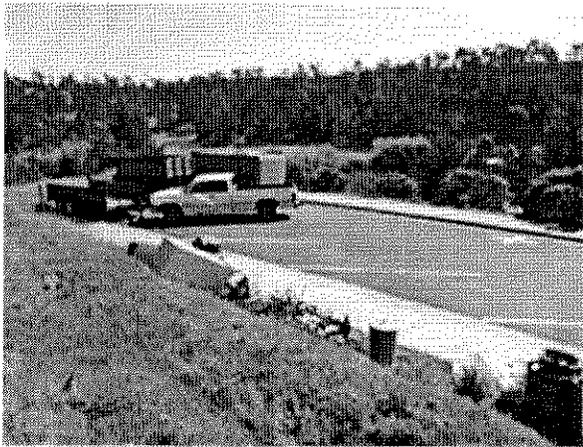
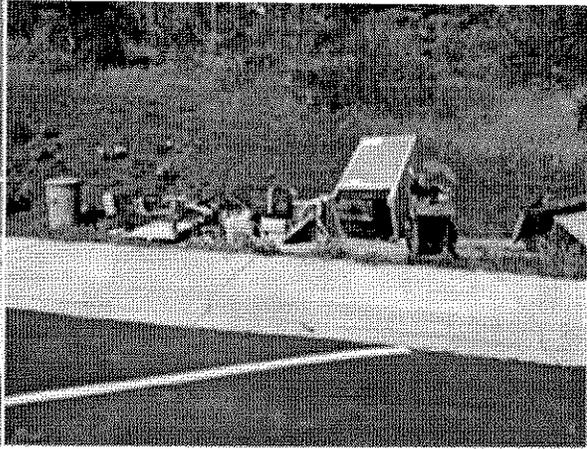
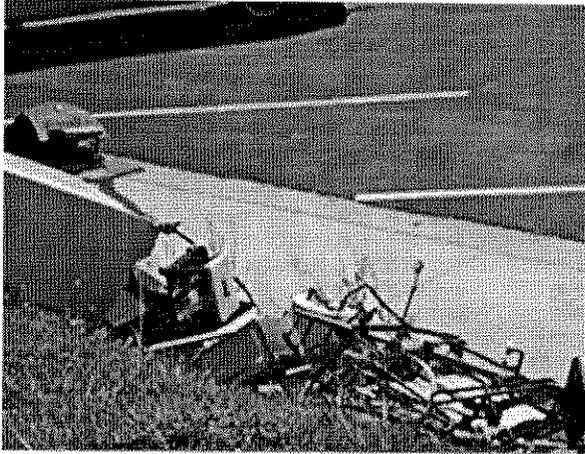


EXHIBIT B