

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # B-6

Urgent

Routine

AGENDA DATE July 16, 2013

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Consider the Recommended Decision of the Nuisance Abatement Hearing Board Regarding CE No. 12-0224 at 0 Bystrum Road, Modesto, California, or Set the Matter for Hearing on August 20, 2013

STAFF RECOMMENDATIONS:

1. Adopt the recommended decision of the Nuisance Abatement Hearing Board regarding nuisances at 0 Bystrum Road, Modesto, California, as set forth in Attachment 1.
Or
2. Set the matter for hearing on August 20, 2013, as requested by the Representative of Central Valley Recycling in Attachment 2.

FISCAL IMPACT:

Staff from the Department of Environmental Resources and the Department of Planning and Community Development have assisted with the subject Nuisance Abatement process. If the business owners do not cease the scrap metal recycling operation, appropriate legal action will be taken. Costs associated are anticipated to exceed \$20,000. If a forced abatement is necessary, the costs will be charged to the property owners and if the responsible person fails to pay the cost of abatement, a Notice of Abatement Lien will be recorded against the property.

BOARD ACTION AS FOLLOWS:

No. 2013-354

On motion of Supervisor De Martini, Seconded by Supervisor O'Brien
and approved by the following vote,
Ayes: Supervisors: O'Brien, Withrow, De Martini and Chairman Chiesa
Noes: Supervisors: None
Excused or Absent: Supervisors: Monteith
Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION: Considered the recommended decision of the Nuisance Abatement Hearing Board regarding CE No. 12-0224 at 0 Bystrum Road, Modesto, California and continued this item to the 8/20/2013 meeting as requested by the representative of Central Valley Recycling

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

Consider the Recommended Decision of the Nuisance Abatement Hearing Board Regarding CE No. 12-0224 at 0 Bystrum Road, Modesto, California, or Set the Matter for Hearing on August 20, 2013

DISCUSSION:

The business identified as "Central Valley Recycling" (CVR) is operated on two adjoining parcels, by Donald Francis Sr. and Donald Francis Jr. Said parcels are both zoned General Commercial District (C-2) and identified as Assessor's Parcel Number (APN) 038-012-008 (524/526 S. 9th St, Modesto) and APN 038-012-009 (0 Bystrum Rd, Modesto) and are owned by Stanley A. Goblirsch and Joyce O. Goblirsch. The parcel identified as APN 038-012-008 is improved with two (2) Quonset hut-type buildings used to primarily collect California Redemption Value (CRV) recycling. CRV recycling typically includes household items such as aluminum cans, and plastic and glass bottles. There are no land use/zoning complaints associated with the portion of this business operating on APN 038-012-008. The parcel identified as APN 038-012-009 is improved with a truck scale and scale house, containers, machinery, and piles utilized for the collection of scrap metal items. The scrap metal portion of the business and the operating practices employed by the operator have resulted in noise and air quality complaints.

In 2009, the Stanislaus County Director of Planning and Community Development, based on the evidence at hand at the time, determined that CVR's scrap metal recycling operation was similar in character and purpose to permitted uses in County Code Chapter 21.56 General Commercial (C-2) and approved the issuance of a business license to CVR for scrap metal recycling, in addition to CRV type recycling, on both APN 038-012-008 and 009. In 2012, County officials received complaints from residents of the adjoining neighborhood relating to noise and air pollution from the on-site movement of scrap metal. In response to the complaints, renewal of the business license application was placed on hold to allow the Planning Department an opportunity to review the complaints and the current operations. During staff's review of CVR's operation, the complaints of noise and dust were verified and it was determined that the nature and intensity of the use had changed and was no longer appropriate for the location. On September 5, 2012, the Director of Planning and Community Development informed CVR that the County would not approve the business license because of complaints received from the surrounding neighborhood. Due to the nuisance conditions arising out of CVR's operations that were affecting the neighboring residential areas, the Director determined that the operation of the scrap metal recycling business is not in character with permitted C-2 uses. The Director informed CVR that if they wished to contest this determination they may submit a written appeal request within 10 days of the notice, under County Code 21.112.020(B). No appeal was submitted.

In late 2012 or early 2013, CVR requested Bollard Acoustical Consultants, Incorporated to prepare a noise study to address noise concerns. The noise study dated January 30, 2013, showed that CVR exceeded Stanislaus County's daytime noise level standards contained in County Code section 10.46.120(B) by 2 to 4 decibels (dB) on the days the facility was in operation, and by as much as 6dB Lmax (the highest root-mean-square (RMS) sound level measured over a given period of time) and 9 dB L50 at the east property line 50 feet from the existing residences.

In response to a complaint regarding a non-permitted land use (scrap metal recycling operation), Code Enforcement staff conducted an inspection at 0 Bystrum Road, Modesto,

Consider the Recommended Decision of the Nuisance Abatement Hearing Board Regarding CE No. 12-0224 at 0 Bystrum Road, Modesto, California, or Set the Matter for Hearing on August 20, 2013

California, and subsequently issued a Notice and Order to Abate on April 2, 2013, for the alleged violations:

- (1) §21.56.020 and §21.16.040 of the Stanislaus County Code. Non-Permitted Land Use (scrap metal recycling operation).
- (2) §21.56.040(D) of the Stanislaus County Code. No operation (scrap metal recycling operation) shall be conducted on any premises in such a manner as to cause an unreasonable amount of noise, odor, dust, smoke, vibration or electrical interference detectable off the site.

Stanley A. Goblirsch and Joyce O. Goblirsch are the current owners of record according to the County Assessor's Office, the County Clerk-Recorder's Office, and a title report obtained from Stewart Title Company. The property owners and the operators of CVR have refused to comply with the Notice and Order to Abate.

On June 27, 2013, staff presented their report to the Nuisance Abatement Hearing Board to declare the property a nuisance (Attachment 1). A number of issues were raised at the meeting by both the representatives of CVR and the public, primarily those residing in nearby homes. Representatives of CVR spoke in opposition of staff's recommendation and stated the scrap metal recycling operation should be allowed in the C-2 zone. To mitigate the noise, CVR representatives mentioned that they were willing to build a ten-foot concrete wall (fence) and to implement a noise plan. CVR representatives also mentioned that a water truck was purchased to control the dust. Representatives of the public felt that the scrap metal recycling operation was a nuisance and brought up several issues and concerns. Some of the issues presented by the public dealt with health concerns such as asthma caused by the amount of dust created from the property, noise and odor caused by the dismantling of automobiles, vibration caused by the movement of heavy industrial equipment, an inability to maintain tenants in nearby rental homes, and the overall quality of life within the surrounding area which has been adversely affected.

At that meeting, the Nuisance Abatement Hearing Board declared the property a nuisance and forwarded the matter to the Board of Supervisors recommending approval (Attachment 1). The Board may adopt, modify, or reject the recommendations, and if adopted, the property owner(s) will be required to abate the nuisance within two weeks of the Board's decision by complying with the requirements identified in Attachment 1.

On July 3, 2013, the Chairman of the Board received a letter from Thomas H. Terpstra, Attorney-at-Law, representing Central Valley Recycling, requesting a de novo hearing of the matter before the Board of Supervisors (Attachment 2). It was also requested that the hearing be scheduled on August 20, 2013, which is the next evening Board meeting.

Consider the Recommended Decision of the Nuisance Abatement Hearing Board Regarding CE No. 12-0224 at 0 Bystrum Road, Modesto, California, or Set the Matter for Hearing on August 20, 2013

POLICY ISSUE:

The recommended action supports the Boards' priorities of A Safe Community, A Healthy Community, and the Efficient Delivery of Public Services by improving the quality of life and protecting the health and safety of the community.

STAFFING IMPACTS:

Staff from the Department of Environmental Services, Planning Department, and County Counsel will continue to address the nuisance.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources. Telephone: 209-525-6770



NUISANCE ABATEMENT HEARING BOARD

RECOMMENDED DECISION

**IN RE: 0 Bystrum Road, Modesto, CA
Abatement Hearing No. CE# 12-0224**

The above referenced matter came before the Nuisance Abatement Hearing Board for hearing on June 27, 2013. Upon consideration of oral testimony and documentary evidence presented at the hearing, the Nuisance Abatement Board makes the following findings of fact and conclusions:

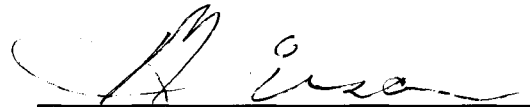
1. The property located at 0 Bystrum Road, Modesto, CA, in the unincorporated area of Stanislaus County, California, also identified as Assessor's Parcel Number 038-012-009, is zoned C-2, General Commercial District.
2. County Staff confirmed the existence of and presented evidence of violations of Stanislaus County Codes, (as listed in the County Code(s) or interpreted or determined to violate County Code(s)) occurring on the property, as noted in "Attachment A."
3. All interested parties were served a Notice and Order to Abate pursuant to Stanislaus County Code Section 2.92.030, describing the conditions or use of the property that constitutes the violations and ordering abatement of those conditions.
4. County staff has attempted to obtain voluntary compliance by the interested parties, and the interested parties have had significant and reasonable time to correct all violations but have refused and/or failed to meet the deadlines prescribed by Notice.
5. The owners have the legal responsibility for maintenance of the property in conformance with the applicable law, ordinance and rules, including abatement of all violations and compliance with all orders of the County.
6. The interested parties were served proper Notice of Hearing to Abate Nuisance pursuant to Stanislaus County Code Section 2.92.070.
7. Based on the evidence and testimony presented at the hearing, which is incorporated herein by reference, there is substantial evidence that violations of the Stanislaus County Code, as set forth in the staff report for the matter, still exists on the property.
8. Pursuant to Stanislaus County Code Section 2.92.010, the continuing violations that exist on the property constitute a public nuisance.

The Nuisance Abatement Hearing Board further recommends the Board of Supervisors adopt the following decision:

- Approve Staff's recommendation and determine the use of the property described as a Non-Permitted Land Use and a Nuisance in the staff report are a violation of Stanislaus County Code Section 21.56.020, Section 21.16.040, and Section 21.56.040(D).
1. Order the owner and interested parties to abate the nuisance on the property within two weeks from the date of the Board decision by correcting the condition or use of the property as set forth in the staff report on this matter.
 2. Authorize the County to abate the nuisance and to charge the costs of the abatement to the County if the Owners or other interested parties do not abate the nuisance within the specified time period.
 3. Authorize County staff, pursuant to Stanislaus County Code Section 2.92.070, to dispose of any material, equipment, vehicles or other personal property removed from the property to abate a nuisance in any manner authorized by law, and to charge the costs of disposal to the owners and/or interested parties as part of the cost of abatement.
 4. Authorize County staff to charge the owners and/or interested parties for County staff time incurred to investigate through the Abatement Hearing.
 5. Order a Notice of Abatement Lien be recorded against the property if the owners and/or interested parties fail to pay the costs demanded by the County.
- Deny Staff's recommendation and determine the use of the property described as a Non-Permitted Land Use and a Nuisance in the staff report are not a violation of Stanislaus County Code Section 21.56.020, Section 21.16.040, and Section 21.56.040(D).

NOW THEREFORE, the Nuisance Abatement Hearing Board orders the Director to forward these findings and conclusions and its recommended decision to the Stanislaus County Board of Supervisors within 30 days.

Dated: June 27, 2013



Richard Gibson, Chair
Stanislaus County Nuisance Abatement Hearing Board

It should be noted that on JUL 16 2013 the Board of Supervisors will hear this matter as a consent item.

THOMAS H. TERPSTRA

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION

578 N. WILMA AVENUE

SUITE A

RIPON, CA 95366

209.599.5003

F209.599.5008

tterpstra@thtlaw.com

July 3, 2013

SENT VIA EMAIL

Vito.Chiesa@StanCounty.com

Vito Chiesa
Chairman of the Board
Stanislaus County Board of Supervisors
1010 Tenth Street, Suite 6700
Modesto, CA 95354

Re: Central Valley Recycling/Administrative Hearing No. CE#12-0224

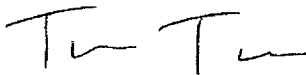
Dear Honorable Chairman Chiesa and Board Members:

This office represents Central Valley Recycling in connection with the above-referenced matter. The Nuisance Abatement Hearing Board heard this matter on June 27, 2013, and CVR received its decision on July 1, 2013. Pursuant to your County Code, we hereby respectfully request a "de novo" hearing of this matter before the Board of Supervisors. We further request that in order to allow adequate time for preparation, that the hearing be held on August 20, 2013. In discussions with the County Counsel's office, it appears that this date (which is a night meeting) would allow for more public input as well.

Thank you for your time and consideration of this request.

Very truly yours,

Law Office of Thomas H. Terpstra



Thomas H. Terpstra
Attorney-at-Law

THT:kk

Attachment "A"

RE: File Number CE 12-0224
Assessor's Parcel Number: 038-012-009
Address: 0 BYSTRUM RD, MODESTO, CA

Inspection of the above reference property revealed the following violations of Stanislaus County Code §2.92.010:

Code Section Violation:	Corrective Action:	Compliance Date:
§21.56.020 and §21.16.040 of the Stanislaus County Code. Non-Permitted Land Use (scrap metal recycling operation).	Immediately discontinuing the non-permitted land use (scrap metal recycling operation). For information regarding the allowable uses on the property in question, you may consult Stanislaus County Planning and Community Development, located at 1010 10th Street, 3rd Floor, Modesto (209-525-6330).	05/17/2013
§21.56.040(D) of the Stanislaus County Code. No operation (scrap metal recycling operation) shall be conducted on any premises in such a manner as to cause an unreasonable amount of noise, odor, dust, smoke, vibration or electrical interference detectable off the site.	Discontinuing the scrap metal recycling operation which is a nuisance to the public. NOTE: Failure to comply could result in a civil/criminal action being brought against the property owner.	05/17/2013

CC: Central Valley Recycling (CVR), 524 S. 9th St, Modesto, CA 95351
Donald G. Francis, Business Owner of CVR, 2220 Millcreek Dr, Modesto, CA 95351
Thomas H. Terpstra, Attorney at Law, 578 N. Wilma Ave, STE: A, Ripon, CA 95366
Mark Niskanen, JB Anderson Land Use Planning, 139 S. Stockton Ave, Ripon, CA 95366
Paul Bollard, President of Bollard Acoustical Consultants, Inc., 3551 Bankhead Rd, Loomis, CA 95650
Angela Freitas, Planning & Community Development Director, 1010 10th St, STE: 3400, Modesto, CA 95354

Enclosures: Stanislaus County Code

9/05/12 letter to Donald Francis from Angela Freitas, Planning & Community Development Director
02/21/13 letter to Donald Francis from Angela Freitas, Planning & Community Development Director

CE# 12-0224

0 Bystrum Rd

Modesto, CA 95351

“Central Valley Recycling”

Streets City Zoom Tools Show Search Box Print Help



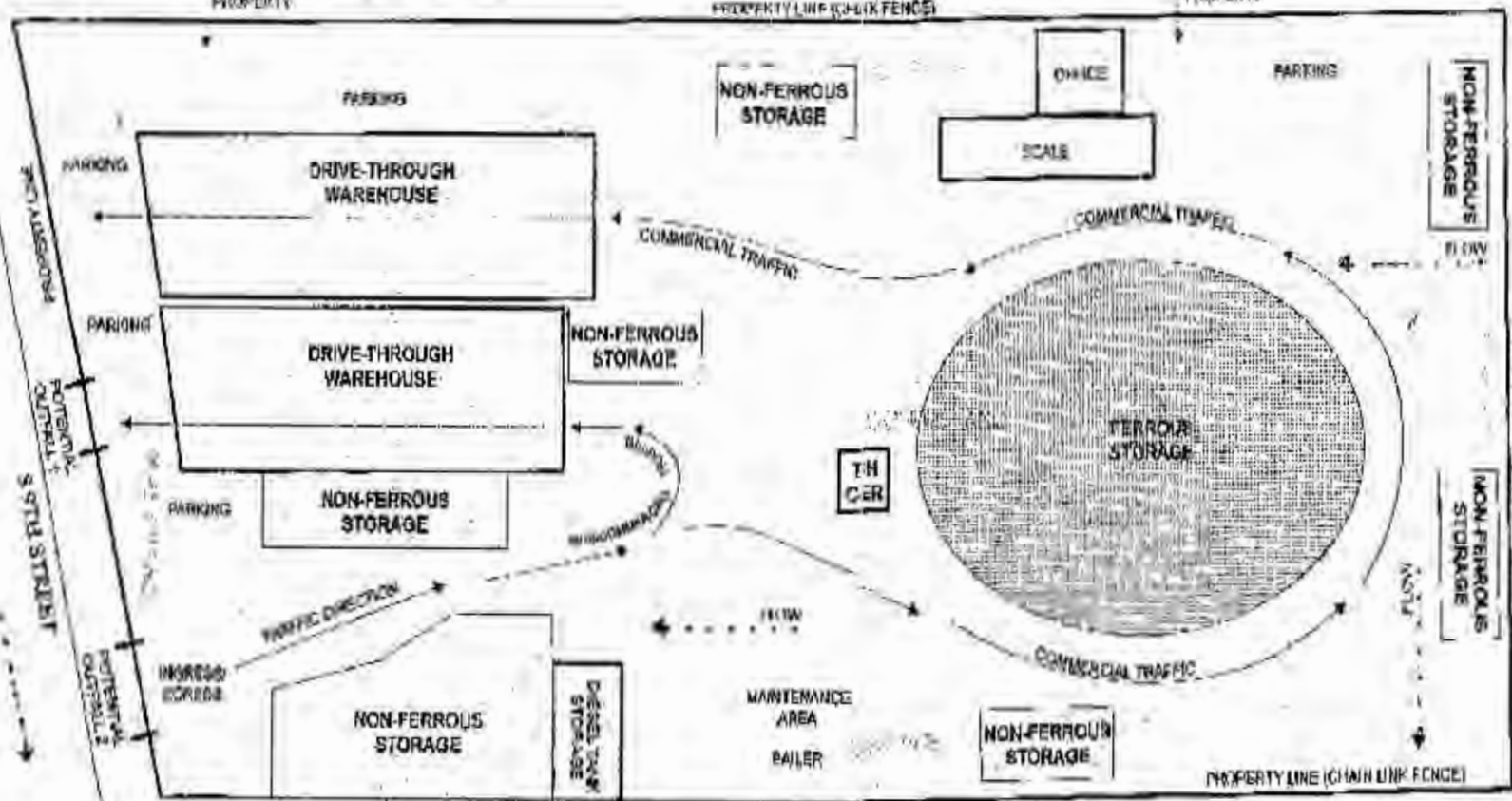
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PROPERTY LINE (CHAIN LINK FENCE)



MAP DATA AND PROJECT STATISTICS:

INFORMATION DERIVED IN THIS MAP IS DERIVED FROM FIELD OBSERVATIONS MADE BY H2E CONSULTING ON JULY 16, 2012. INFORMATION PROVIDED BY CENTRAL VALLEY RECYCLING AND AVAILABLE AERIAL IMAGES AND GIS DATA.

JURISDICTION: COUNTY OF STANISLAUS

ZONE/COMING: INDUSTRIAL

AIRCCEL: CENTRAL VALLEY REGION 5



STORAGE INVENTORY DESCRIPTION:

- DRY ALUMINUM DANG
- PLASTIC (RUBBER)
- NLAWA
- ALUMINUM
- BRASS
- COPPER
- RADIATORS
- STEEL/LESS STEEL
- MATERIALS
- ROCK AND WIRE
- CANISTERS (PAPER)
- EMERTE



	FACILITY MAP	
	CENTRAL VALLEY RECYCLING MORFETTS, CA	
DATE: 08/01/12	SCALE: 1" = 100'	REV: 0

1



10/31/2012

2

SCUZA AVE 700
BYSTRUM

STOP

10/31/2012



3



11/07/2012

4



11/07/2012

5

11/07/2012





11/07/2012

7



11/07/2012

8



11/07/2012



11/07/2012





11/07/2012



04/02/2013



04/02/2013

14

COIZA AVE 700
BYSTRUM RD 550

STOP

04/02/2013



15

BYSTR



04/02/2013



05/22/2013



05/22/2013



06/27/2013



06/27/2013

20



06/27/2013

21



06/27/2013

Additional Site Maps

**CENTRAL VALLEY RECYCLING
0 BYSTRUM RD, APN 038-012-009
AREA MAP**

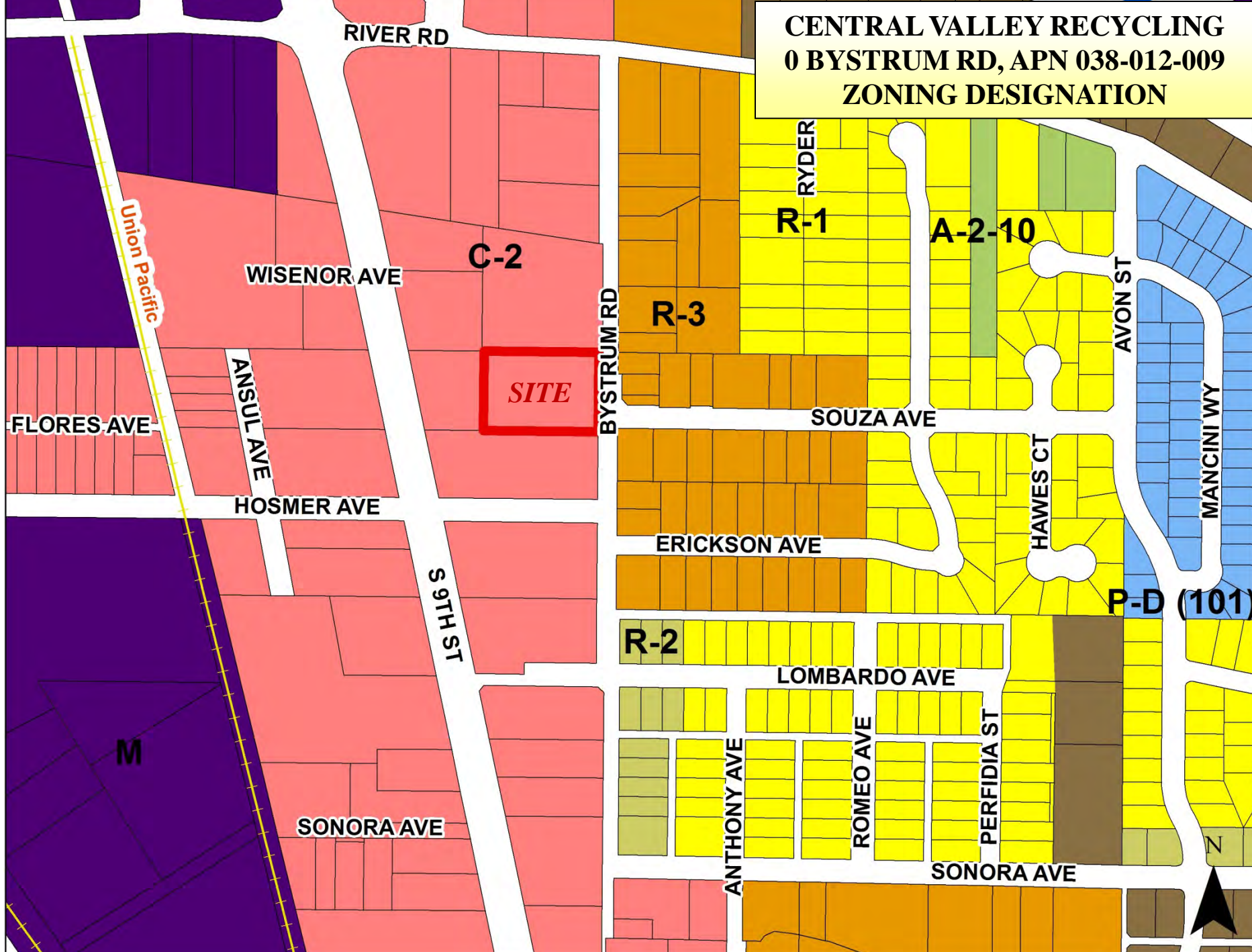
MODESTO

CERES



SITE
↓

**CENTRAL VALLEY RECYCLING
0 BYSTRUM RD, APN 038-012-009
ZONING DESIGNATION**



**CENTRAL VALLEY RECYCLING
0 BYSTRUM RD, APN 038-012-009
2010 STANISLAUS COUNTY
AERIAL**



SITE



S 9TH ST

HOSMER AVE

BYSTRUM RD

ERICKSON AVE

SOUZA AVE

RYDER WY

MONTAGUE CT

MONTAGUE AVE



THOMAS H. TERPSTRA

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F209.599.5008

RIPON, CA 95366

June 26, 2013

Nuisance Abatement Hearing Board
3800 Cornucopia, Suite C
Modesto, CA 95358-9494

Re: Central Valley Recycling

Honorable Board Members:

As you are aware, this office represents Central Valley Recycling (“CVR” or the “Operator”) in connection with the above referenced matter. The purpose of this letter is to outline CVR’s position with respect to the legal issues presented in this matter. This letter will serve to supplement the presentations to be made by J.B. Anderson and the Operator.

In summary, it is CVR’s position that this Board is without jurisdiction to determine whether a nuisance exists with respect to the alleged zoning consistency issue, and must instead focus solely on whether a nuisance exists due to alleged noise and dust from the operation. If the Board finds a nuisance exists due to noise, dust or related site conditions, it must limit any potential remedy to those designed to bring about compliance in those areas. CVR has demonstrated a willingness to work proactively on these issues, and will continue to do so.

ALLEGED ONSITE NUISANCE CONDITIONS CAN BE REMEDIED

The alleged nuisance pertaining to noise and dust stems from a few adjacent property owners, and has either already been addressed (in the case of dust) or is in the process of being remedied. J.B. Anderson representatives will be in attendance to review the results and recommendations of the January, 2013, Noise Study prepared by Bollard and Associates. In summary, Bollard believes that there are viable and feasible solutions to the noise issues, much of which is directly related to background noise conditions. Dust issues were handled through the San Joaquin Valley Air Pollution Control District, which retains ongoing jurisdiction to deal with compliance issues. In and of themselves, none of the alleged onsite nuisance conditions provide any basis for ordering the cessation of permitted scrap metal recycling on the site.

THE COUNTY HAS FAILED TO PROVIDE DUE PROCESS TO THE OPERATOR

The Operator undeniably has a property interest at stake in this matter, and as such, is entitled to due process of law in any proceeding affecting its property interest.¹ First, we note

¹ One court recently observed: “In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor of assuring that such hearings are fair. *Night Life Partners v. City of Beverly Hills* (2003) 108 CA4th 81

Honorable Board Members
Nuisance Abatement Hearing Board
June 26, 2013
Page 2

that under the California Appellate Court decision in *Nightlife Partners v. City of Beverly Hills*, 108 Cal.App.4th 81 (2003), the County Counsel's office cannot properly serve as both counsel for the Code Enforcement Unit and counsel to the Nuisance Abatement Hearing Board, on the one hand advocating for one of the parties and on the other, advising the hearing body. To the extent the County Counsel's office has already advised the NAHB in this matter, CVR's rights have already been affected.

More, fundamentally, as we explain below, the previous Director's determination in 2009 that scrap metal recycling was "similar in character and purpose to uses enumerated..." in the C-2 zone was, first and foremost, a zoning determination. The current Director (who, not coincidentally, attempted to deny CVR a business license in 2009) cannot simply reverse a legitimate consistency determination, whether her own or the previous Director's. CVR relied upon this zoning determination for much more than a mere business license. In reliance upon the County's consistency determination, CVR expended more than \$500,000 over a three year period on the subject site. Moreover, CVR made significant investments in personnel, with all of its attendant recruitment, training and management. In 2009, CVR employed 9 persons; today, it employs 23 in good paying jobs. Without the 2009 consistency determination, none of that investment would, or could, have been made. It is also worth noting, as we point out below, that the 2009 consistency determination was unconditional; that is, no time frame or conditions were stated under which the consistency determination could be revoked.

In complete disregard of CVR's property right in, and reliance upon, the underlying zoning consistency determination, the Director attempts to characterize CVR's property interest as consisting solely of an annual business license. The Director then attempts to shield her illegal and improper refusal to process CVR's business license renewal from further administrative or judicial scrutiny by labeling it a "staff decision" under section 21.112.020. This argument must fail for at least three reasons. First, the record is clear that the applicant did not receive the September 12, 2012, letter which ostensibly constitutes the Director's "staff decision". The letter was marked "returned" and was not personally served. In this context, at a minimum, posting of the letter on the property, as mandated by Section 2.92.030, was required. Second, several months after the September 5th letter was sent, the Planning Department continued to meet with the operator and its representatives, and even authorized a Noise Study (prepared by the applicant at the cost of \$5,000), in an attempt to resolve the alleged nuisance issues. If the Director's decision was intended to be final, why convey an opposite message to the Operator? Why encourage the Operator to work toward solutions on the site, if the use is inappropriate in the first instance? Third, and most important, because the Director's 2009 determination conferred important rights on CVR and the property, the 10 day appeal period of Section 21.112 does not apply. Rather, assuming for the sake of argument that the 2009 consistency determination can be revisited at all, CVR should have been afforded notice and a hearing before the Planning Commission under Chapter 21.104. That section provides that any "*zoning permit, staff approval permit, use permit or variance granted in ordinance with the conditions of this title may be revoked if any of the conditions or terms of the permit or variance are violated...*" Under this section, even conditionally permitted uses can only be revoked following appropriate notice and a public hearing. How can a permitted use be entitled to less due process?

Clearly, the director cannot avail herself of the generic "ten-day appeal" provisions of section 21.112. CVR contends that the County, made a consistency determination 2009, and having applied that same determination to other scrap metal recyclers in the C-2 zone, cannot summarily reverse that determination on a case-by-case basis, much less in the context of a simple business license renewal. But even if we assume, for the purpose of argument, that the County can attempt such a reversal, it can only do so in the context of a noticed public hearing before the Planning Commission under section 21.104 of the Code. Accordingly, the NAHB is without jurisdiction on threshold zoning consistency issue in this matter.

THE DIRECTOR'S ATTEMPT TO REVERSE THE 2009 ZONING CONSISTENCY DETERMINATION IS WITHOUT PRECEDENT AND UNLAWFUL

Code Enforcement staff, at the direction of the Director, has brought this proceeding against CVR, not ultimately to address noise or other operating concerns. Instead, the clear objective of the Director is to put CVR out of business. The Director's September 5, 2012, determination that CVR's ongoing scrap metal recycling operation is not consistent with uses enumerated in the C-2 zoning regulations is arbitrary, capricious and cannot be sustained as a matter of law. Director Kirk Ford made a determination in 2009, which placed scrap metal recycling into the category of permitted uses under the C-2 zoning designation. As a result of that threshold determination, CVR's scrap metal recycling use stands on the same level as every other enumerated use permitted in the C-2 zone. Indeed, County records confirm that other scrap metal recyclers have also obtained approval of business licenses in the C-2 zone, meaning that Director Ford's determination has been uniformly and consistently applied. The logic behind Director Ford's 2009 determination is easy to understand, because the C-2 zone is a remarkably flexible and inclusive zone. Consider the fact that the C-2 zone permits, among many other uses, auto body repair and painting, motorcycle repair shops, bottling plants, cleaning and dyeing establishments, animal hospitals, hatcheries, petroleum storage and dozens of other diverse uses, many of which have a decidedly "industrial" element. To provide even more flexibility, Section 21.56.020(E) permits the Director to supplement the list of enumerated uses with proposed uses which are "similar in character and purpose" to the enumerated uses.

Having made that determination, and having signed off upon business license renewals routinely in 2010 and 2011, Director Freitas now attempts to unilaterally reverse the County's course on a case by case basis, essentially treating business licenses as short term Use Permits.² This ignores the proper role of the Director in the business license renewal process. The only

² If the folly of the Director's position is not made abundantly clear in the instant case, it can easily be illustrated in the following example. The C-2 zone expressly permits "tire, battery and automobile parts establishments". Suppose a business owner requested that the Director make a consistency determination that a tire manufacturing plant is an allowable use in the C-2 zone. Then suppose the Director approves the request, and business owner, after applying for all necessary site plan and building permits, invests \$50 million into a new tire manufacturing plant. The final required permit is a business license. Under Director Freitas' interpretation, the routine business license renewal process would provide her a new opportunity to revisit the zoning consistency issue, and with the stroke of a pen (without notice or a hearing), revoke the tire plant's zoning and run it out of business. This cannot be a proper interpretation of the law.

role of the Director is to ensure that (a) the nature or intensity of the underlying use has not changed, (b) that the zoning classification of the property has not changed, or (c) that the list of permitted uses in the underlying zone has not changed. To suggest, as the County does here, that even in the absence of changed circumstances, the threshold question of zoning consistency may be revisited each and every year is ludicrous, and would have a devastating impact on scores of legitimate businesses in the County. Businesses cannot be subject to the whim of the Planning Director every 12 months, or they will never be able to expand, procure capital, and hire long-term employees or otherwise grow their businesses. Like any of the other specifically enumerated uses, the determination of consistency cannot be revisited absent changed circumstances as outlined above. If the business fails to operate within applicable regulations, the appropriate remedy is to obtain compliance through the code enforcement process, or, in the case of a use governed by an approved Conditional Use Permit, to revoke or modify the CUP under the applicable provisions of the Code.³

In this case, the County could have made a determination in 2009 that scrap metal recycling could only be permitted in the C-2 zone with a CUP, in which case the revocation process would govern. The County chose not to impose this additional level of scrutiny, finding scrap metal recycling to be substantially similar to other permitted uses in the C-2 zone.

Finally, we call the Board's attention to internal emails and field notes obtained by CVR under the California Public Records Act. These documents show that Code Enforcement staff understood the highly unusual nature of Director Freitas' revisiting of the threshold zoning consistency finding, and actually concur with CVR's position. We have attached copies of Mr. Miramontes' file notes, which clearly show Code Enforcement's disagreement with Director Freitas' approach, and reinforce CVR's argument that business license renewal in this context should be routine.⁴ In summary, we call attention to Ms. Mein's observation in her October 11, 2012, email to Jami Aggers:

"I understand the political nature of this case, but have difficulty supporting her justification which is basically 'because I said so.' I most definitely see CE being challenged by the operator and property owner."

As CVR's attorneys, we can think of no better way of capturing the essence of this case. Whether politically motivated or otherwise, the Notice and Order should be dismissed.

³ Under normal circumstances, as occurred in this case in 2010 and 2011, a lower level staff planner would have routinely evaluated and initialed the renewal application, one of many hundreds of such which are received and processed each year.

⁴ From Mr. Miramontes' file notes: "Raja stated once Planning Dept. approves a business license, it's typically renewed without further Planning Dept. review unless requested by Planning Dept. or if any change occurs such as ownership, business name, etc."

Honorable Board Members
Nuisance Abatement Hearing Board
June 26, 2013
Page 5

Very truly yours,

Law Office of Thomas H. Terpstra

A handwritten signature in black ink, appearing to be 'T. H. Terpstra', written in a cursive style.

Thomas H. Terpstra
Attorney-at-Law

THT:rr

cc: Angela Freitas, Planning & Community Development Director
Ed Burroughs, Deputy County Counsel
Thomas Boze, Deputy County Counsel