

<b>Location:</b>	<b>545 Independent Road (See map on reverse)</b>
<b>Assessor's Parcel Number:</b>	<b>041-3908-003-03</b>
<b>Proposal:</b>	Appeal of a Zoning Administrator's approval of a Primary Recycling Center Activity at 545 Independent Road under case number CU12-077.
<b>Appellant:</b>	Robert Schwartz, Jed Myall, and Jay Coriell
<b>Owners:</b>	Copperking LLC.
<b>Planning Permits Required:</b>	Minor Conditional Use permit for a Primary Recycling Activity
<b>General Plan:</b>	Business Mix
<b>Zoning:</b>	CIX-2, Commercial Industrial Mix 2 Zone
<b>Environmental</b>	Exempt, Section 15301, 15332 & 15183 of the State CEQA
<b>Determination:</b>	Guidelines, Existing Facilities, In-Fill Development Projects, and Projects consistent with a community plan, general plan, or zoning.
<b>Historic Status:</b>	Not a Potentially Designated Historic Property; rating: F3
<b>Service Delivery District:</b>	6
<b>City Council District:</b>	7
<b>Status:</b>	Pending
<b>Action to be Taken:</b>	Decision on appeal
<b>Staff Recommendation:</b>	Deny the appeal thereby upholding the Zoning Administrator's Approval.
<b>Finality of Decision:</b>	Final
<b>For Further Information:</b>	Contact case planner <b>Moe Hackett</b> at (510) 238-3973 or by email at <a href="mailto:mhackett@oaklandnet.com">mhackett@oaklandnet.com</a> .

**SUMMARY**

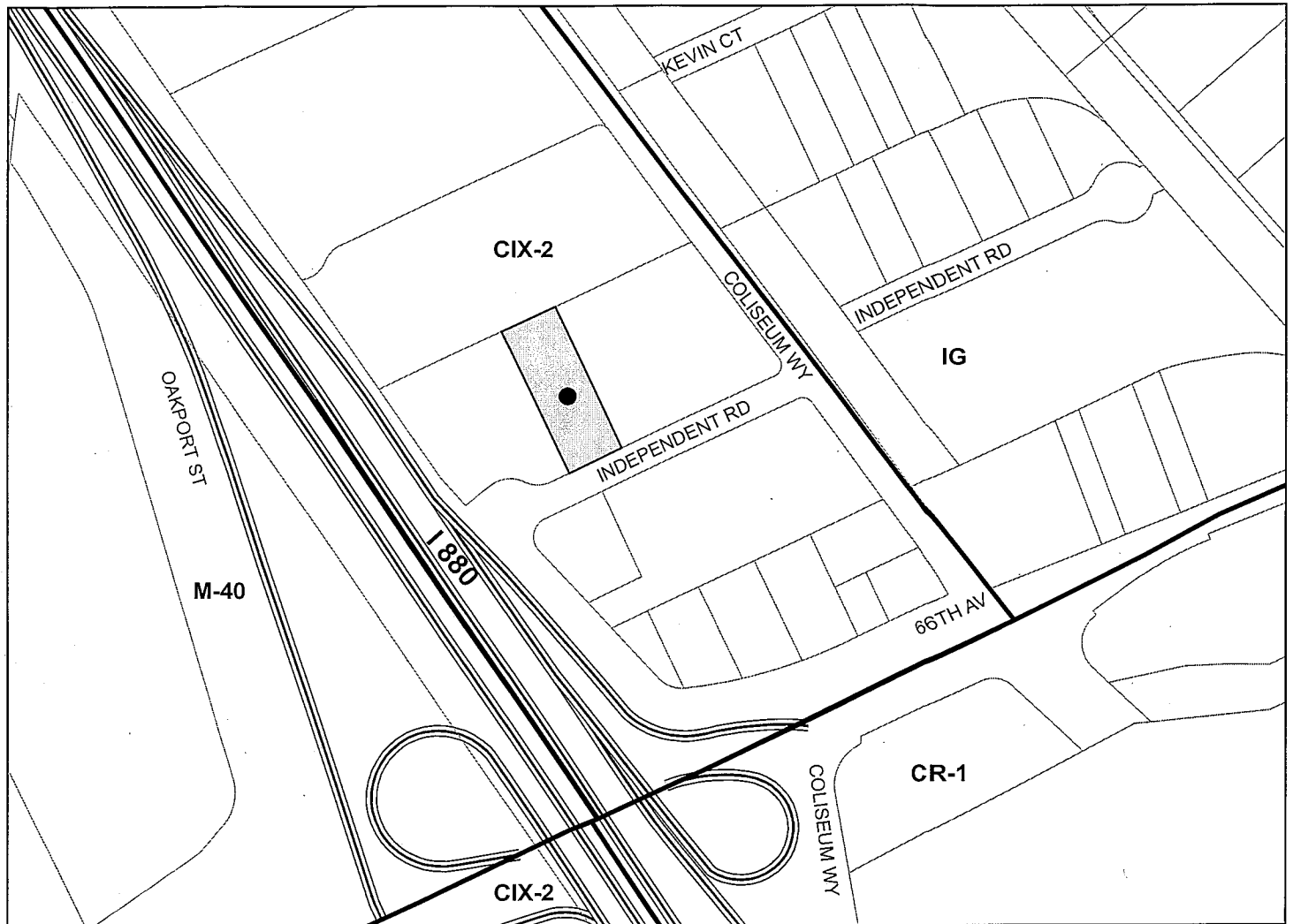
On June 6, 2012, Lakeside Metals /Lance Finkel applied for a Minor Conditional Use Permit with the Planning and Zoning Division for the operation of a Medium to Large scale /bulk metal recycling facility, which is classified as a Primary Recycling Center Industrial Activity, for the property located at 545 Independent Road. The subject property is zoned CIX-2, which allows Primary Recycling Center Activities upon the granting of a Minor Conditional Use Permit.

On November 5, 2012 the Zoning Manager approved the application, finding that the proposal complied with all the necessary criteria for approval. On November 15, 2012 Robert Schwartz filed an appeal on the approved project to the Planning Commission. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Manager's approval of the project.

**PROPERTY DESCRIPTION**

The subject property is an approximately 35,515 square foot lot located on the north side of Independent Road, containing an approximately 24,700 square foot commercial/industrial building with a surface parking lot and loading docks at the front of the property. The neighborhood is primarily commercial and industrial in character in all directions with some lighter commercial (wholesale) activities to the north and east.

# CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: A12-230 (CU12-177)  
Applicant: Lakeside Metal / Lance Finkel  
Address: 545 Independent Rd  
Zone: CIX-2

**PROJECT DESCRIPTION**

The proposal includes improvements to the interior of an existing commercial/ industrial building for use as a Primary Recycling Center. As noted above in the Summary, the proposal was granted approval of a Conditional Use Permit in November of 2012.

**BASIS OF THE APPEAL**

On November 15, 2012 the appellant, Robert Schwartz on behalf of Jed Myall, and Jay Coriell submitted an appeal of the Zoning Manager's decision to approve the proposed Primary Recycling Center activity. The applicant's appeal letter received November 15, 2012 contains arguments challenging the Zoning Manager's approval (see Attachment B). The appellant's arguments are summarized below. Staff's response to the arguments follows.

**Appellant's Argument #1:** The appellant asserts that the project is in violation of the California Environmental Quality Act (CEQA) as it is not subject to Categorical Exemptions cited in sections 15183, 15301, 15332 of the CEQA Guidelines.

**Staff Response #1:** Staff disagrees that the proposal does not qualify for the exemptions provided under CEQA. The proposal includes the re-use of an existing commercial/industrial building and does not include any new additions to the structure other than interior tenant improvements consistent with Section 15301 of the State CEQA Guidelines. Given that the proposal included a change of use under the Planning Code of a building in excess of 10,000 square feet staff also relied upon Section 15332 of the State CEQA Guidelines, and the required findings for use of this exemption were included in the decision letter approving the project. The Section 15332 findings made in the decision letter are as follows:

- 1) **The project is consistent with the applicable general plan designation and all general plan policies as well as with applicable zoning designation and regulations.**

The proposed project is consistent with the City of Oakland General Plan Business Mix classification which is intended to create, preserve, and enhance areas appropriate for a wide variety of businesses and related commercial and industrial establishments. The proposal will utilize a previously established commercial / industrial structure that was designed for warehousing and other similar industrial, manufacturing, and shipping activities. The site has direct frontage and access along the industrial roadway of Independence Road and Coliseum Way. The proposal will not include activities that would be characterized as Heavy/High Impact Manufacturing or General Manufacturing (such as Metal foundries), and as such is within the CIX-2 areas range of activities that are intended for this land use class. This location and use will be consistent with the General Plan's Neighborhood Objective and Policy (I/C1.2) which seeks to retain existing business and jobs which are consistent with long range objectives within Oakland.

- 2) **The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The development site is located within the Oakland City limits, is less than five acres and is completely surrounded by urban uses.

**3) The project site has no value as habitat for endangered, rare, or threatened species.**

The project site has been previously developed for commercial, industrial, manufacturing, or warehousing activities and does not contain any habitat for endangered, rare, or threatened species.

**4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

The proposal is within the capacity of the surrounding area to accommodate vehicle access, and levels of service to accommodate the new traffic generation from the re-use of the existing commercial or warehousing structure. With implementation of standard conditions of approval related to ongoing performance standards, the project would not result in any significant impacts on noise, air quality, or water quality.

**5) The site can be adequately served by all required utilities and public services.**

All required utilities are readily accessible on the surrounding streets, and the site will continue to be adequately served by public services in the area.

**Appellant's Argument #2: The appellant states that the proposal will result in inverse Condemnation of neighboring property rights.**

Staff Response #2: The appellant has presented no evidence that the proposal will result in any violation of its constitutional rights or property rights and neither the City of Oakland nor the applicant proposes to take neighboring properties by eminent domain or other means. The proposal which consists of recycling activities within an existing enclosed structure, is permitted within the CIX-2 zone upon the granting of a Minor Conditional Use Permit, and will not alter the property rights of the neighboring properties allowed within the Zoning Code as the result of approval of the Minor Conditional Use permit.

**Appellant's Argument #3: The appellant argues that the proposed use will create harmful adverse effects (dust, litter, visual impacts), and does not meet the General Use Permit criteria.**

Staff Response #3: Staff disagrees that the project does meet the required general use permit criteria. The Conditional Use Permit was granted upon the basis that the re-use of the warehouse-type building will essentially be continuing a similar activity of storage of materials within the building with routine truck trips to pick up and drop off materials, as all activities will take place entirely within an enclosed building. Staff recognizes that recycling activities can sometimes create negative visual impacts and has set Specific Conditions that directly address these impacts, some of which that were included in the approval are as follows:

Specific Condition #13 requires that:

- No recycling or material processing or storage activities shall be conducted out side of the structure (i.e. no open facility activities).
- When not being used for loading of recycled material all loading dock doors shall remain closed.
- As required interior and exterior surface areas shall be clean and power wash regularly twice a month at a minimum.

- Specifically, uses allowed by this general use permit shall be limited to medium to large scale deliveries and shipment of metal intended for a bulk scale processing and recycling only, and shall not allow for small scale walk-up, automobile, or pushed cart drop-offs.

Specific Condition #15 requires that:

- The applicant shall clear the sidewalk and gutter areas along Independent Road for a minimum of 20 feet beyond the edge of the property lines along the street, of litter and debris at least once a week or as needed to control litter.

**Appellant's Argument #4: The appellant argues that proposal is inconsistent with the General Plan.**

Staff Response #4: See Staff Response #1;(1). Staff believe that the proposal meets the General Plan Business Mix Classification as a Flexible "economic development zone", which strives to accommodate older industries and anticipate new technologies, including both commercial and industrial operations high impact industrial uses including those that have hazardous materials on-site may be allowed provided they area adequately buffered from residential areas. The proposed Primary Recycling Center will not include activities that would be characterized as Heavy/High Impact Manufacturing or General Manufacturing (such as Metal foundries), and in addition to the specific conditions #13 for Operational Restriction, will be located entirely within an existing structure and as such will be buffered from neighboring commercial activities (there are no nearby residential areas).

*(Note: cited from the Generals Plan Land Use And Transportation Element, Page 152).*

**Appellant's Argument #5: The appellant asserts that the Business Mix/Retail frontage (fronting the 880 freeway) should accommodate higher value uses and should not front the freeways visual corridor**

Staff Response #5: The proposed activity will take place within a previously existing commercial structure. Staff has specifically conditioned that the activity only occur within the enclosed building to assure that any potential negative visual aspects of a recycling operation are not visible from any of the surrounding roadways or the 880 freeway. In addition, neither the Business Mix General Plan or the Commercial Industrial Mix-2 (CIX-2) Zone is intended for general retail activities. The CIX-2 Zoning specifically prohibits retail activities unless they are included as an accessory use only.

**Appellant's Argument #6: The appellant asserts that the affected area directly abutting the Coliseum areas Regional Commercial General Plan designation and will negatively impact the Coliseum and Arena complex , and also conflicts with the City's goals for "Coliseum City".**

Staff Response #6: The Project site is located within the Business Mix General Plan Area and is separated from the Regional Commercial General Plan Area by approximately 600 feet. As stated above in Staff Response #2 the approval of this project in no way affects the allowed uses of the surrounding properties in the area, and as stated in Staff Response #3, the proposed activity is entirely located within an existing structure and will not be visible or create impacts to the surrounding area. The appellant has failed to present evidence, cause, or reason that the proposed enclosed Recycling activity (as approved with conditions) will negatively affect the Coliseum and Arena complex.

At this time the "Coliseum City" Area concept/study is not an adopted policy or specific plan, and the current proposed Specific Plan area does not include the proposed project site or adjacent neighboring area north of 66<sup>th</sup> Avenue. Staff has considered the Coliseum City proposal as part of the research and review of this Recycling Centers approval and has found no conflicts or impacts to these ongoing planning efforts for the "Coliseum City" Area studies, sports teams retention, or the existing Coliseum and Arena Regional Commercial area.

**Appellant's Argument #7: The appellant states that the lack of community participation and due process as a CEQA violation.**

**Staff Response #7:** The Project (CU12077) was publicly noticed between the dates of June 29, 2012 and July 16, 2012 to a 300-foot radius to all property owners of record as required by the Planning Code. Additionally a notification sign was placed at the project site during this same time period. The case planner also walked the area visiting the immediate surrounding neighbors on Independent Road to solicit comments and concerns. During the notification process many e-mail comments were received and used to address concerns including the incorporation of some of the specific conditions of approval. While a CEQA Notice of Exemption (NOE) does not require separate public notice, the intent to use the aforementioned Categorical Exemptions was included in the public notice that was placed at the project site and mailed to surrounding property owners. Therefore the City rejects the notion that the public was not informed or that the City ignored the required community process.

**CONCLUSION**

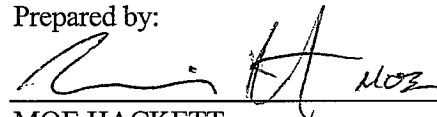
Staff believes the proposal complies with all the necessary criteria for approval of the Minor Conditional Use Permit. The proposal will reuse an existing structure in an established commercial industrial district to house a conditionally permitted recycling activity in such a way as to create the fewest possible operational impacts.

Staff believes the appellant has not sufficiently demonstrated that there was an abuse of discretion in the Zoning Manager's determination, and as such the determination should be upheld.

**RECOMMENDATIONS:**

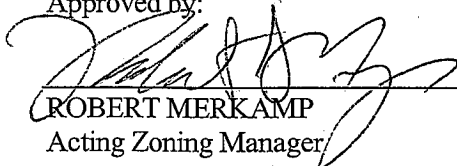
1. Affirm staff's environmental determination;
2. Uphold the Zoning Manager's approval of the Minor Conditional Use Permit.

Prepared by:

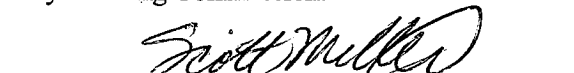


MOE HACKETT  
Planner II

Approved by:

  
ROBERT MERKAMP  
Acting Zoning Manager

Approved for forwarding to the  
City Planning Commission:

  
SCOTT MILLER  
Interim Planning & Zoning Director

**ATTACHMENTS:**

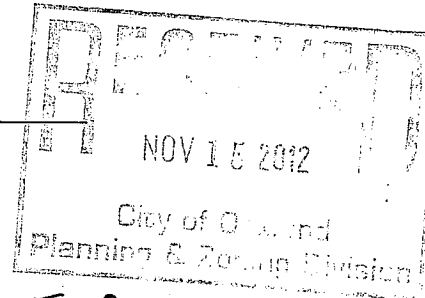
- A. Appellant's Letter, dated November 15, 2012
- B. CU12-077 Approval Letter and Conditions



**CITY OF OAKLAND**  
**APPEAL FORM**  
**FOR DECISION TO PLANNING COMMISSION, CITY**  
**COUNCIL OR HEARING OFFICER**

**PROJECT INFORMATION**

Case No. of Appealed Project: CU-12-077  
Project Address of Appealed Project: 545 Independent Rd  
Assigned Case Planner/City Staff: Moe Hackett



**APPELLANT INFORMATION:**

Printed Name: (See Attached List) Phone Number: 510 562-5000  
Mailing Address: 7711 Oakport St Alternate Contact Number: 510 483-8300  
City/Zip Code Oakland, CA 94621 Representing: \_\_\_\_\_  
Email: Rob@management-engineering.com

An appeal is hereby submitted on:

☐ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

**YOU MUST INDICATE ALL THAT APPLY:**

- ☐ Approving an application on an Administrative Decision
- ☐ Denying an application for an Administrative Decision
- ☒ Administrative Determination or Interpretation by the Zoning Administrator
- ☐ Other (please specify) \_\_\_\_\_

**Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:**

- ☒ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- ☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
- ☐ Design Review (OPC Sec. 17.136.080)
- ☐ Small Project Design Review (OPC Sec. 17.136.130)
- ☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
- ☐ Minor Variance (OPC Sec. 17.148.060)
- ☐ Tentative Parcel Map (OMC Section 16.304.100)
- ☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
- ☐ Creek Protection Permit (OMC Sec. 13.16.450)
- ☐ Creek Determination (OMC Sec. 13.16.460)
- ☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- ☐ Hearing Officer's revocation/impose or amend conditions (OPC Secs. 17.152.150 &/or 17.156.160)
- ☐ Other (please specify) \_\_\_\_\_

(continued on reverse)

(Continued)

- ☐ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**      ☐ Granting an application to:      OR      ☐ Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- ☒ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☐ Other (please specify) \_\_\_\_\_

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**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

**The appeal is based on the following:** *(Attach additional sheets as needed.)*

*(See Attached)*

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**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

*(Continued on reverse)*



(Continued)

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*Signature of Appellant or Representative of  
Appealing Organization*

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*Date*

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**Date/Time Received Stamp Below:**

**Below For Staff Use Only**

**Cashier's Receipt Stamp Below:**

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RE: Case File No. CU12077; 545 Independent Road; APN (041-3908-003-03)

TO: **THE CITY OF OAKLAND - PLANNING AND ZONING DIVISION OF  
COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY**

Please find this Attachment to Appeal Form submitted in appeal of that finding of approval of the above referenced application dated November 5, 2012 for General Use Permit.

Reason for Appeal: An error and/or abuse of discretion has been/is being committed by the Zoning Manager to grant the subject General Use Permit not supported by substantial evidence for the following reasons originally stated in the attached Exhibits 1 and 2 and as stated as follows:

**I. Violation of California Environmental Quality Act (CEQA)**

The proposed use is not consistent with the applicable general plan designation, general plan policies as well as applicable zoning designation, regulations, promulgations and, therefore, constitutes, inter alia, a CEQA violation, and otherwise not subject to Categorical Exemptions cited under, inter alia, Sections 15183, 15301, 15332 of the CEQA Guidelines, as well as an inverse condemnation of existing property rights to all neighboring property owners, as set forth herein.

**A. General Permit Criteria**

The planning staff has remarked that the facility will not create harmful adverse effects. It is readily evident that all recycling centers have significant impacts in their local areas, including increased dust, litter, visual impairments and other important influences. Neither the proposed project plan, nor the General Use Permit, in any way detail how such dust, litter, trash and visual impairments and influences will be properly managed and/or mitigated.

For example, completely ignored is something as simple as exterior door screens to mitigate the visual impact, which should certainly be required. A case study can and should be made on the other side of Coliseum Way, also on Independent Road - which is farther from the visual corridor of the 880 Freeway and, therefore, has a higher industrial zoning category than the proposed area. A local owner on Independent Road, Kevin Scott, who owns Bay Area Contract Carpets as well as the building/real property, complains that the dust from the recycling company that was approved near his building is making it impossible to continue to show carpets because the contaminated dust literally covers all the carpet samples being shown. He has called the EPA no less than 5 times to complain but there appears to be no way to solve the problem and for him to continue to do business there. Obviously, recycling drives other businesses out and reduces the values of all neighboring properties. Since such an operation on the 880 Freeway side of Coliseum Way would constitute a significant divergence from the City General Plan, from the zoning designation, regulations, promulgations and, therefore, constitutes, inter alia, a CEQA violation, approval of the subject project constitutes an inverse condemnation of all real property owners in the area.

After the recycling company next to Bay Area Contract Carpets drove out another business, the recycling company then acquired adjacent property at a lower value, so as to expand and further impact a larger and larger area. Thus, it is clear that the entire visual corridor along the Oracle Arena and O.co Coliseum complex area along the 880 Freeway is at severe risk of the same pattern occurring. An offer was already made by the applicant here on the Clothing Broker building which is on the freeway to convert it from retail to recycling. If the recycling business is allowed to persist, that offer may be accepted, which will become the final straw to the visual and other damage to the existing retail/wholesale nature of the Coliseum Way enclave, including the Oracle Arena and O.co Coliseum Arena.

A map showing the use of the buildings in the neighborhood and how different the recycling business is from the existing character is attached as Exhibit 3. Even though the promises have been made that the recycling business will abide by visual criteria, those promises are too vague and the City does not have the enforcement staff to ensure that it will happen.

#### **B. General Plan Policies and Zoning Designation**

##### **Business Mix/Retail Frontage Industrial Should Accommodate Higher Value Uses While Steering Heavier Industrial Uses to the General Industrial & Transportation (GIT) Areas Not Fronting this Highly Critical 880 Freeway Visual Corridor.**

The impacted subject area directly abuts the Regional Commercial Area of the General Plan for the Coliseum Area. This was done to improve uses along 66<sup>th</sup> Avenue to take advantage of higher value activities including wholesale and retail sales as well as improving and preserving the Coliseum Area. The Business Mix area is intended to support a variety of businesses, while steering heavier industrial uses towards the General Industrial and Transportation Zone. Regardless of whether the city staff feels the scrap metal activity is functional and legal here, there can be no doubt it is not an attractive use. Metal recycling operations takes away value from other surrounding properties and will cause disinvestment by other owners - as has already been the case on the other side of Coliseum Way. The snowball effect will be the end of any attractive usages along the north and south sides of this highly critical 880 Freeway visual corridor. Simply stated, issuance of this single General Use Permit will spell the end of the Coliseum Area by discouraging any further proliferation of the kinds of light industrial and regional commercial uses the City and the surrounding property owners, including the Oracle Arena and O.co Coliseum Complex, could benefit from in this critical area to the future of Oakland. Not only will the tenants of the Oracle Arena and O.co Coliseum Complex be directly and negatively impacted, but the tight block of wholesalers/retailers along 66<sup>th</sup> Avenue will all be by the sudden emergence a metal recycling company. Despite a complete failure to properly notify the businesses in the area, objections were made by a number of longstanding and committed to the well-being of Oakland - 66<sup>th</sup> Avenue businesses - including, Kay Upholstery, Sherman Williams Paints, Auto Parts Express, Bay City Furniture, USA Metals, B & T Trading and B & T Restaurant Supply.

Ashley Furniture, a large 60,000 square foot showroom, part of a nationwide furniture company on Coliseum Way - on the backside of the subject proposed recycling company - will be negatively affected by allowing recycling into their side of Coliseum Way. According to Jay

Coriell, Manager of San Oak Management, all the businesses under his management are negatively affected by the decision to allow metal recycling on the North 880 Freeway side of Coliseum Way. These businesses include Royal Coffee, Siemens, Ashley Furniture, National Auto Body Parts and Raybern Foods.

Adjacent property owners from the national headquarters of Meyer Plumbing Supply as well as the flagship location for the Clothing Broker - who are both operating retail and wholesale businesses - are vehemently opposed to the undertaking of a metals recycling operation between their buildings. Meyer Plumbing is a worldwide exporter known as AISI with offices and distribution in many other countries. These kinds of light impact businesses are not only hard to come by, but considering moving-out of Oakland because of this myopic planning decision. If allowed to become final, this preliminary approval of General Use Permit will result in a loss of quality jobs, sales tax revenue and property taxes from this area, e.g., a major shift in what the City of Oakland has been trying to do in the Oracle Arena and O.co Coliseum Complex and Coliseum Way areas.

### C. Conflict with City's Own Goals for Future Economic Value

The City Planning Staff's statement at page 5, par. 1, of the November 5, 2012 form letter approval, that the use is consistent with the Neighborhood Objective and Policy, this metal recycling use will bring heavier industrial activity into an area which aims to promote jobs and economic activity with higher value uses. The approval of the metal recycling operation conflicts with City of Oakland's aim to attract higher value commercial, industrial and Regional Serving Retail businesses.

The City of Oakland affirmed and adopted new zoning in 2006 which sought to allow the Business Mix areas to house a variety of uses. However the City also adopted the General Industrial & Transportation with (IG Zoning) along the non-freeway fronting properties of the Oracle Arena, O.co Coliseum Complex and Coliseum Way in order to accommodate heavier uses, while those with 880 Freeway frontage should be encouraged to host attractive, higher value and regionally serving uses. The City's own Retail Study (Denise Conley, Conley-Consulting Group) identifies Coliseum Way as a potential area to house new regional retail - usages the City of Oakland is urgently trying to attract. The new Ashley Furniture store represents a success in this area. However, bringing a metals recycler will simply veto all of those established policies and goals. Furthermore, the City is investing over \$3.0 million in a Specific Plan for this Oracle Arena and O.co Coliseum Complex area (e.g., "**Coliseum City**") which aims to retain and grow the entire area as a regionally-serving commercial entertainment-sports venue and will further attract uses that generate sales tax and quality employment for the area. The present approval makes a mockery of decades of planning and policy-making for the subject area.

### **1. Metal Scrap Recycling Project Represents Complete Policy Shift From City of Oakland's "Coliseum City" Renovation Plans - Aimed at Keeping Sports Teams**

The subject metal scrap recycling project within a critical visual 880 Freeway corridor represents a complete abrogation of the recently announced "Coliseum City" renovation plans designed to keep the three Oakland sports teams from leaving.

As set forth by CBS News San Francisco<sup>1</sup> just this past March, 2012:

"Mayor Jean Quan unveiled plans to build a 750-acre sports and entertainment hub in the O.Co Coliseum area with a view towards persuading the three professional sports teams to stay in the City. Mayor Quan said that the so-called Oakland "Coliseum City" complex is a game changer that will attract new businesses. The Oakland City Council voted *unanimously* to spend \$3.5 million to begin the process of developing the Coliseum area.

*... Assistant City Administrator Fred Blackwell said that in addition to building new sports stadiums, the city hopes to develop a site near the Coliseum that would attract business such as biotech, clean technology and digital technology companies.*

City Council President Larry Reid, who represents the Coliseum area, said, "*if we make this plan happen, it will change the city for a lifetime.*"

The plan involved spending \$1.6 million to study the viability of new sports facilities for the A's, Raiders and Warriors, with another \$1.9 million for *planning and environmental work around the Oracle Arena and adjacent O.co Coliseum.*

The money is among the last of the city's redevelopment funds. The study is expected to take more than a year to complete.

*... (We) are committed to working with the City of Oakland and the County of Alameda, as well as the Raiders (and) A's ... to create a game plan to retain these franchises in Oakland for the benefit of the entire East Bay,' said Keith Salmon with the grassroots group 'Save Oakland Sports.' [Emphasis supplied.]*

Thus, approval of the scrap metal recycling project is, in essence, a major policy shift from announced and approved policy and planning for the City of Oakland in this vital Oracle Arena and O.co Coliseum area.

## **II. Lack of Community Participation and Due Process – CEQA Violation**

This area of Coliseum Way is a neighborhood, with many small industrial tenants. Staff never considered the area a "community" and chose not to circulate the application for a Public hearing. Therefore, many of the business owners represented (see attachments) had absolutely no benefit of expressing their extreme opposition to this proposed use before the Planning

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<sup>1</sup> <http://sanfrancisco.cbslocal.com/2012/03/07/oakland-rolls-out-renovation-plans-aimed-at-keeping-sports-teams/>

Commission. The undersigned believe that given the staff's early knowledge of concern, this item should have been fully vetted before the Commission, instead of an administrative process.

Because the applicant property exists in a visual corridor whereupon literally millions of vehicles per month pass by, including to/from sporting and other events at the Oracle Arena and O.co Coliseum arena and sports complex, a much broader view of the area impacted by the proposed project must be utilized. To date, no notices or contacts of any kind whatsoever have been disseminated beyond immediate adjacent property owners to the subject highly offending use. Clearly, the vested interests of long term tenants at Oracle Arena and O.co Coliseum, such as the Oakland Raiders, Oakland Athletics as well as other businesses affected by this adversely impacted and vital visual corridor in and out of the City of Oakland and other business operators within and around the larger area should have been notified of the important, extreme and strategic divergence from the City of Oakland General Plan and Policies.

For each and every of the above reasons, we are requesting that the appeal be granted to deny the use permit for recycling.

Date: \_\_\_\_\_ Bus/Owner Robert A. D. Schwartz  
Signature Robert A. D. Schwartz  
Contact # \_\_\_\_\_  
Email \_\_\_\_\_

Date: \_\_\_\_\_ Bus/Owner \_\_\_\_\_  
Signature \_\_\_\_\_  
Contact # \_\_\_\_\_  
Email \_\_\_\_\_

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Contact # \_\_\_\_\_  
Email \_\_\_\_\_

Commission. The undersigned believe that given the staff's early knowledge of concern, this item should have been fully vetted before the Commission, instead of an administrative process.

Because the applicant property exists in a visual corridor whereupon literally millions of vehicles per month pass by, including to/from sporting and other events at the Oracle Arena and O.co Coliseum arena and sports complex, a much broader view of the area impacted by the proposed project must be utilized. To date, no notices or contacts of any kind whatsoever have been disseminated beyond immediate adjacent property owners to the subject highly offending use. Clearly, the vested interests of long term tenants at Oracle Arena and O.co Coliseum, such as the Oakland Raiders, Oakland Athletics as well as other businesses affected by this adversely impacted and vital visual corridor in and out of the City of Oakland and other business operators within and around the larger area should have been notified of the important, extreme and strategic divergence from the City of Oakland General Plan and Policies.

For each and every of the above reasons, we are requesting that the appeal be granted to deny the use permit for recycling.

Date: \_\_\_\_\_ Bus/Owner Clothing Broker/Property Owner  
Name Robert A.D Schwartz  
Address 513-515 Independent Rd  
Contact # 510-562-5000  
Email RADS@ksikeyboards.com  
Signature \_\_\_\_\_

Date: 6/15/12 Bus/Owner Meyer Plumbing & Bldg Owner  
Name Jed Myall  
Address 575 Independent Way  
Contact # 510 832-3324  
Email apsijed@sprynet.com  
Signature \_\_\_\_\_

Date: \_\_\_\_\_ Bus/Owner San Oak Management  
Name Jay Coriell  
Address 6201 Coliseum Way  
Contact # 510-632-5139  
Email JAY 6195 @ SBCGLOBAL.NET  
Signature \_\_\_\_\_

Date: \_\_\_\_\_ Bus/Owner \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact # \_\_\_\_\_  
Email \_\_\_\_\_  
Signature \_\_\_\_\_

**EXHIBIT 1**





## Objection to use permit - CU12-077

Robert D Schwartz <rschwartz@ksikeyboards.com>

Mon, Jul 9, 2012 at 12:12 PM

To: mhackett@oaklandnet.com

To: Moe Hackett

Re: CU12-077 - Objection to the use permit

From: Robert AD Schwartz, Owner and Robert Schwartz Property Manager-513-515 Independent Rd

Dear Moe,

As the owner and property manager of 515 Independent Road which is adjacent to 545 Independent Road we object to the issuance of a use permit for a metals recycling company for the following reasons:

### **The use is not compatible with the surrounding neighborhood.**

The area from high street to 66th ave has been and is looked at by the City as part of a retail loop and is also part of the Coliseum City development area currently being studied.

Due to our proximity to the freeway, there has been an increase in tenants and space used for retail purposes in our neighborhood. A recycling center is a step backwards from the retail development that will generate more tax revenue for the City. As an example of the upward trend of the development, a 120,000 square foot furniture retailer has just opened on the next block. On the other side, there is another furniture store, an upholstery store, Sherman Williams Paint store, An ornamental metals store, and a restaurant supply outlet.

More significantly, adjacent or across the street there are retail businesses like the Clothing Broker (our tenant), an automobile parts retail store and Meyers plumbing supply and showroom. All of these neighbors have expressed to me their intention to object to a recycling center.

Another important improvement that will enable our area to attract high tech businesses is the offering of a very high speed fiber supported symmetrical internet service. Until now the area was bereft of such capability and incapable of supporting a high tech business. A recycling center is therefore a step backwards from the current positive developments we are experiencing.

### **The proposed use is not attractive:**

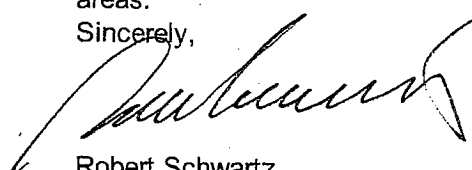
As you can see on Google earth or by driving by Lakeside Metal Recycling, there are a number of exposed dumpsters constantly out in front of the building. We have rejected tenants in the other half of our building because they would have exposed shipping containers in the parking lot. Exposed dumpsters are more unsightly than what we have already rejected as a tenant in this area.

The proximity of the site near the freeway will also cause millions of people traveling the freeway every month to have a more negative view of Oakland.

### **Other areas are already zoned for this use**

We hope you will seriously consider locating the recycling center in the area that is already zoned and designated for this use on San Leandro Street near 98th Ave. At the very least such a use permit for a recycling center should be delayed until it is examined in light of future plans by the City for the coliseum and retail loop areas.

Sincerely,



Robert Schwartz  
Property Manager

**EXHIBIT 2**

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

11/15/12 13:49:43

Next Option: 101

Applic#\* A12230 Type:

Tract

Date Filed: 11/15/12 Complete By: 12/15/12 Disposition:

NUMBER STREET NAME SUFFIX\* SUITE ASSESSOR PARCEL#

Site addr: 1) 545 INDEPENDENT RD 041 -3908-003-03

2)

3)

Zoning\* CIX2

GP Use 9GI Prcl Cond: X Cond Aprvl:

Viol:

Proj Descr: Appeal the case CU-12-077 locating recycling business in  
business mix area.

Environ Rev: Exempt? (Y/N): Y Sect: 15268

EX ER Applic#:

Track:

Lic# Phone# Applicant

Owner: COPPERKING LLC

Contractor:

Arch/Engr:

Agent: ROBERT SCHWARTZ

(510)562-5000

X

Applicant Addr: 7711 OAKPROT ST

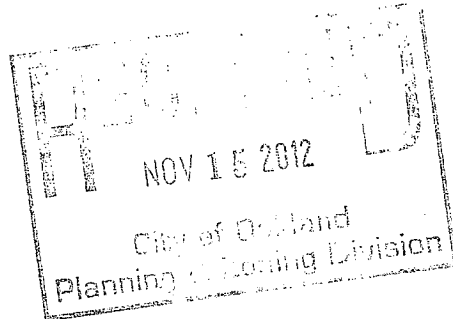
No Fee:

City/State: OAKLAND, CA

Zip: 94621

Other Related Applic#s:

F3=Ext F5=Chg F6=Add F7=Fwd F8=Bck F11=Fnd F12=Prv F23=Dsc F24=Com  
800 RECORD ADDED





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## Re: CU12-077 - Objection to the use permit

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**Robert D Schwartz** <rschwartz@ksikeyboards.com>

Fri, Aug 24, 2012 at 3:09 PM

To: mhackett@oaklandnet.com, Robert AD Schwartz <RADS@ksikeyboards.com>

We have not been notified of any decision regarding the granting of a use permit for 545 Independent Road. In addition, we found out the day after we objected that a decision had already been made and that the agreement to purchase the property had already gone ahead without any plan to consider the objections that the neighbors would be making. It appears that no due process has taken place and that there was never any intention to allow a due process to take place. We, including all the neighbors surrounding the property, have not been given the opportunity for a hearing or appeal because we have not even been notified of a decision.

We heard that one of the promises that was made regarding the use was that there would not be a lot of visible containers in front of the property but construction began immediately for a new fence in the front. This will no doubt create the same appearance that Lakeside metals has in the downtown area. You have, without due process, ignored the entire neighborhood, the zoning laws, the plans for the coliseum area and gone ahead in defiance of any legal or community process.

Our tenant has written to you that he will move out if Lakeside metals moves in. We will have been damaged if he indeed does so.

Please respond to this letter. You didn't even respond to the last one.

Sincerely,

Robert Schwartz

---

**Hackett, Maurice** <MHackett@oaklandnet.com>

Fri, Aug 24, 2012 at 4:07 PM

To: Robert D Schwartz <rschwartz@ksikeyboards.com>

Cc: "Candell, Chris" <CCandell@oaklandnet.com>

Good afternoon Mr. Schwartz,

No decision has been made regarding the allowed of the proposed recycling activity at 545 Independent Road.

You will be informed as to any approval or denial of the proposed activity.

I am forwarding your concerns to Chris Candell in Code Compliance to investigate any work or activity that is taking place without permits.

Thank you for your letter.

Moe Hackett

Planner II

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**From:** Robert D Schwartz [mailto:rschwartz@ksikeyboards.com]  
**Sent:** Friday, August 24, 2012 3:09 PM  
**To:** Hackett, Maurice; Robert AD Schwartz  
**Subject:** Re: CU12-077 - Objection to the use permit

[Quoted text hidden]

---

**Candell, Chris** <CCandell@oaklandnet.com>

Fri, Aug 24, 2012 at 4:17 PM

To: "Hackett, Maurice" <MHackett@oaklandnet.com>, Robert D Schwartz <rschwartz@ksikeyboards.com>

Gentlemen,

As code enforcement is a complaint driven process at this time, please report any activity taking place that is in violation of Zoning or Building Codes to the code enforcement line 238-3381. Please call in a complaint with the specific address and problem, e.g. building without a permit, or fence over height as the complaint may go to different inspectors depending on the situation and codes involved.

---

**From:** Hackett, Maurice  
**Sent:** Friday, August 24, 2012 4:08 PM  
**To:** 'Robert D Schwartz'  
**Cc:** Candell, Chris  
**Subject:** RE: CU12-077 - Objection to the use permit

[Quoted text hidden]

---

**Robert D Schwartz** <rschwartz@ksikeyboards.com>

Sat, Aug 25, 2012 at 3:13 PM

To: Robert Schwartz <RADS@ksikeyboards.com>

Bcc: "rschwartz@ksikeyboards.com" <rschwartz@ksikeyboards.com>

Here is the response

Begin forwarded message:

**From:** "Hackett, Maurice" <MHackett@oaklandnet.com>  
**Date:** August 24, 2012 4:07:38 PM PDT  
**To:** "Robert D Schwartz" <rschwartz@ksikeyboards.com>  
**Cc:** "Candell, Chris" <CCandell@oaklandnet.com>  
**Subject:** RE: CU12-077 - Objection to the use permit

[Quoted text hidden]



## Lakeside metals on 545 Independent Rd

rob@terracegarden.net <rob@terracegarden.net>  
To: rschwartz@ksikeyboards.com

Tue, Oct 2, 2012 at 11:26 AM



photo.JPG  
685K

Robert D Schwartz <rschwartz@ksikeyboards.com>  
To: "Hackett, Maurice" <mhackett@oaklandnet.com>  
Bcc: Robert AD Schwartz <RADS@ksikeyboards.com>

Tue, Oct 2, 2012 at 11:47 AM

This is a picture of Lakeside Metals in operation at 545 Independent Road. I made a complaint that they are operating without a permit. It is case number 1205131.

Hopefully, there is an enforcement action that is appropriate for this situation.

Thank you.

Robert Schwartz



photo.JPG  
685K

Robert D Schwartz <rschwartz@ksikeyboards.com>  
To: Don Schwartz <triallaw@cruzio.com>

Tue, Oct 2, 2012 at 11:51 AM

FYI -

[Quoted text hidden]

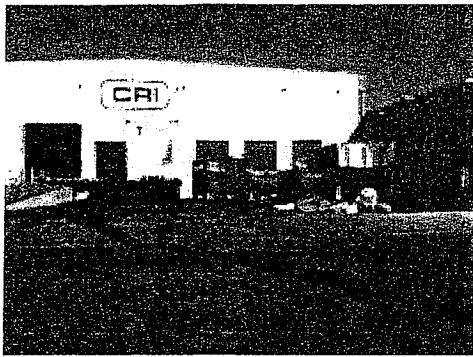


photo.JPG  
685K

**Hackett, Maurice** <MHackett@oaklandnet.com>  
To: Robert D Schwartz <rschwartz@ksikeyboards.com>  
Cc: "Vollmann, Peterson" <PVollman@oaklandnet.com>

Tue, Oct 2, 2012 at 12:01 PM

Hello Mr. Schwartz,

Thank you for providing your information to the Neighborhood Preservations Division. I will follow up with an Inspector.

I will forward this information to the person that is assigned to Case 1205131, and inform the Zoning District Supervisor of an open complaint.

Again

Thank you.

Moe Hackett

Planner II

**From:** Robert D Schwartz [mailto:rschwartz@ksikeyboards.com]  
**Sent:** Tuesday, October 02, 2012 11:47 AM  
**To:** Hackett, Maurice  
**Subject:** Fwd: Lakeside metals on 545 Independent Rd

This is a picture of Lakeside Metals in operation at 545 Independent Road. I made a complaint that they are operating without a permit. It is case number 1205131.

**EXHIBIT 3**



# Coliseum Way/ 66th Ave Retail & Wholesale Businesses

195 COLISEUM WAY

CLOTHING BROKER

CLOTHING BROKER

AUTOPARTS XPRESS

AUTOPARTS XPRESS  
1-800-258-8888

USA METALS

USA Metals Ltd.

Childer Block 4

6195 COLISEUM WAY  
ASHLEY FURNITURE OUTLET  
AMG, INC  
RAYBERN QUALITY FOODS  
INTERSTATE BRANDS CORPORATION  
SIEMENS  
ROYAL COFFEE  
NATIONAL BODY PARTS  
TIN SING INC.

RECYCLING CENTER

B & T RESTAURANT SUPPLY

B&T Restaurant Supply

SHERMAN WILLIAMS PAINTS



KAY UPHOLSTERY

Mayer Plumbing Supply

Inflicting Broker

Independent Rd

Sherman Williams

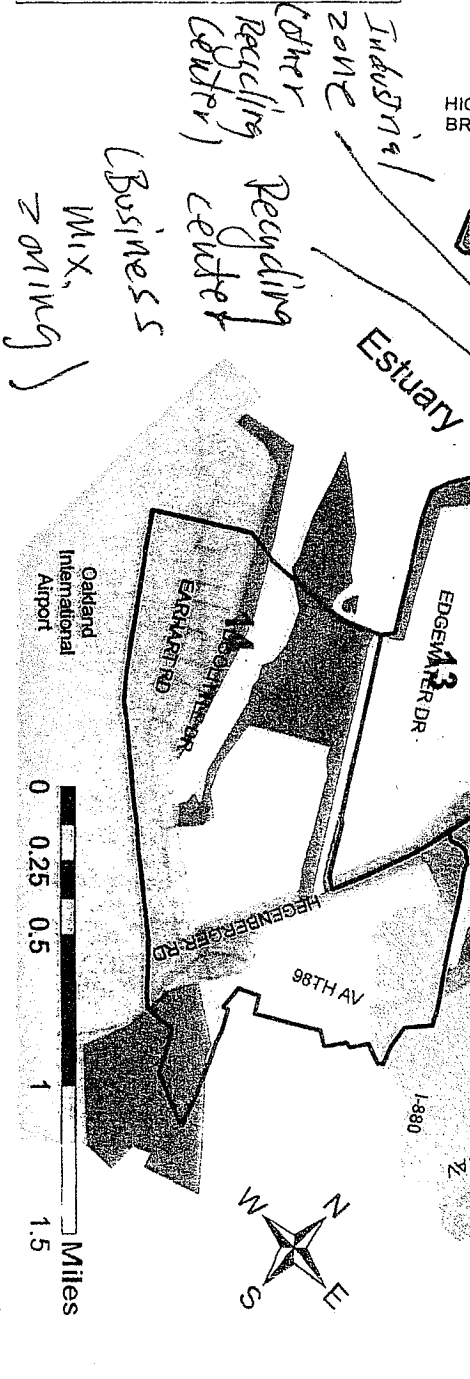
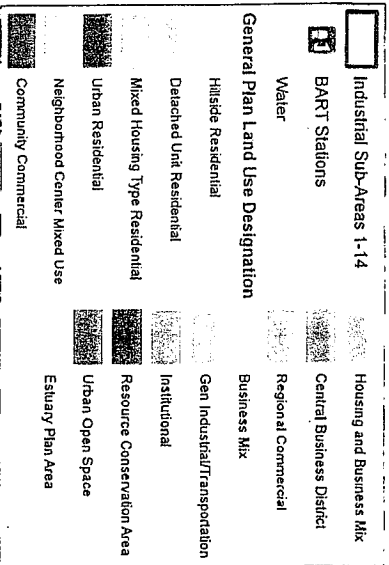
Key Chevrolet

Napa Auto Parts

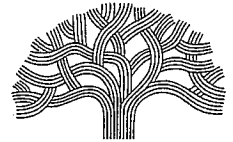
WAGNER'S

State Set 30

# Central and East Oakland Industrial Sub-Areas



# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency  
Planning & Zoning Services Division

(510) 238-3911  
FAX (510) 238-4730  
TDD (510) 238-3254

Sent via U.S. Mail and Electronic Mail

November 5 2012

Lakeside Metals /Lance Finkel  
412 Madison St.  
Oakland CA 94607

**RE: Case File No. CU12077; 545 Independent Road; APN (041-3908-003-03)**

Dear Mr. Finkel:

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

<b>Proposal:</b>	Establish a Primary Recycling Center activity within an existing industrial building.
<b>Planning Permits Required:</b>	Minor Conditional Use Permit
<b>General Plan:</b>	Commercial Industrial Mix
<b>Zoning:</b>	Commercial Industrial Mix Zone- 2
<b>Environmental Determination:</b>	Exempt, Sections 15301, 15332 and 15183 of the State CEQA Guidelines; existing facilities, in-fill projects and projects consistent with community plan, general plan or zoning.
<b>Historic Status:</b>	Non-historic Property; Survey rating: F3
<b>Service Delivery District:</b>	6
<b>City Council District:</b>	7

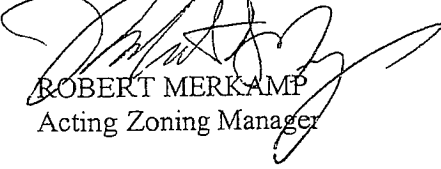
If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten calendar (10) days from the date of this letter, by 4:00 pm on November 15, 2012. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Moe Hackett, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$1352.91 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any

ATTACHMENT B

interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of **Moe Hackett, Planner II** Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA..

If you have any questions, please contact the case planner, **Moe Hackett, Planner II** at (510) 238-3973 or [mhackett@oaklandnet.com](mailto:mhackett@oaklandnet.com), however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



ROBERT MERKAMP  
Acting Zoning Manager

cc: Pete Vollmann, District Supervisor  
Chris Candell, Planner III  
Eric Hanson  
Robert D Schwartz

Chuck Krogh  
John D. Jones  
Lori Mohs  
Paul Mueller

Bill Neiman

Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals

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**ATTACHMENT A: FINDINGS**

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This proposal meets all the required findings under the 17.134.050 of the Oakland Planning Code (OMC Title 17) as set forth below and which are required to approve your application. Required findings are shown in **bold** type; reasons your proposal satisfies them are shown in normal type.

**17.136.050B GENERAL USE PERMIT CRITERIA**

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The proposal to allow Primary Recycling Center will take place within the existing structure that was designed for industrial/commercial activities such as transportation and warehousing or other light manufacturing activities. All recycling activities will take place within an enclosed building with no Open Facilities allowed (**See Specific Condition #13**). As such, the proposal will not create visual impacts, noise, or odors that would result in adverse effects that could be harmful to the development or uses of the abutting properties or surrounding neighborhood. The proposed use is well within the facility's capacity including floor area, open space, vehicle access, traffic generation, and parking and loading maneuvering space.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant**

The location currently provides a convenient location on a roadway that is well suited for truck circulation in an industrial context, and a facility that will allow for a completely enclosed operation. The enclosed nature of this proposal will benefit both the operator (with regard to security and wet weather operations), and the surrounding area with regard to the visual and physical containment of the generally negative elements associated with sorting and processing recyclables. The location provides convenient access to a major arterial street as well as a near by freeway (Interstate 880 with access off 66<sup>th</sup> Avenue). The location, size, and operating characteristics of the proposed, enclosed recycling center will be compatible with the surrounding neighborhood and will serve local commercial concerns (such as the Port of Oakland and other nearby Recycling collection center that do not deal primarily with metal, but may have residual scrap metal items that must be disposed of.), as well as bulk deliveries from city/ area wide satellite collection centers. The proposal will serve as a primary collection center that will be capable of receiving larger bulk loads of metal shipment /delivered by small medium and large trucks. Conditions of approval will prohibit individual retail redemption of small items such as cans and bottles delivered by car or shopping cart which may conflict with other

industrial and manufacturing activities in the area (See **Specific Condition #13**).

- C. **That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The proposed Primary Recycling Center will be compatible with the surrounding commercial industrial neighborhood and will serve the local region. Typical concerns related to Recycling Centers, such as noise, odor or unsightly visual impacts should not be a factor here. The activity will take place within an enclosed structure which should eliminate any possible impacts such as those mentioned above. Considering the existing location and design of the current structure, this proposed use will meet the commercial industrial intent of the immediate surrounding area on Coliseum Way and Independent Road. The intended function as a Primary Recycling Center will enhance and diversify the base of activities in the area. The proposal will not require the use of chemical treatment which may cause off site fumes or odors, and will not store food waste or byproducts (such as paper or cellulite debris) on site. Per **Specific Condition #13** the operation of surrounding Commercial and Manufacturing activities will be safeguarded from the possibilities of any unexpected incidence of vector incursion or contamination.

- D. **That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

The proposed use will not require any exterior design alterations to the existing facility.

**That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

- E. The proposal conforms to the Business Mix General Plan classification as that designation seeks to create, preserve, and enhance areas appropriate for a wide variety of businesses and related commercial and industrial establishments. The establishment of the use of a Primary Recycling Center at the site of an existing commercial / warehousing structure, and which is located on a major industrial street and corridor with suitable separation from other incompatible activities will allow for convenient access for medium to large scale deliveries and shipment of metal intended for a bulk scale processing and recycling facility.

## **ENVIRONMENTAL DETERMINATION**

For purposes of environmental review under the California Environmental Quality Act (CEQA), the project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The criteria for a Categorical Exemption under Section 15332 of the CEQA guidelines are as follows:

- 1) **The project is consistent with the applicable general plan designation and all general plan policies as well as with applicable zoning designation and regulations.**

The proposed project is consistent with the City of Oakland General Plan Community Commercial classification which is intended to create, preserve, and enhance areas appropriate for a wide variety of businesses and related commercial and industrial establishments. The proposal will utilize a previously established commercial / industrial structure that was design for warehousing and other like industrial, manufacturing, and shipping activities. The site has direct frontage and access along the industrial roadway of Independent Road and Coliseum Way. The proposal will not include activities that would be characterized as Heavy/High Impact Manufacturing or General Manufacturing (such as Metal foundries), and as such is within the CIX-2 areas range of criteria that is intended for this levels of commercial and industrial activities. This location and use will be consistent with the General Plan's Neighborhood Objective and Policy (I/C1.2) which seeks to retain existing business and jobs which are consistent with long range objectives within Oakland.

- 2) **The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The development site is located within the Oakland City limits, is less than five acres and is completely surrounded by urban uses.

- 3) **The project site has no value as habitat for endangered, rare, or threatened species.**

The project site has been previously developed for commercial, industrial, manufacturing, or warehousing activities and does not contain any habitat for endangered, rare, or threatened species.

- 4) **Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

The proposal is within the capacity of the surrounding area to accommodate vehicle access, and levels of service to accommodate the new traffic trip generation from the re-use of the existing commercial or warehousing structure. With implementation of standard conditions of approval related to ongoing performance standards, the project would not result in any significant impacts on, noise, air quality, or water quality.

- 5) **The site can be adequately served by all required utilities and public services.**

All required utilities are readily accessible on the surrounding streets, and the site will continue to be adequately served by public services in the area.



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**ATTACHMENT B: CONDITIONS OF APPROVAL**

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The proposal is hereby approved subject to the following Conditions of Approval:

**STANDARD CONDITIONS:**

**1. Approved Use.**

**a. Ongoing.**

The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated **June 6, 2012 with additional plans received and dated June 25, 2012** and amended with the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Zoning Administrator.

- b.** This action by the **Zoning Manager** ("this Approval") includes the approvals set forth below. This Approval includes: **Minor Conditional Use Permit for the establishment of a Primary Recycling Center**

**2. Effective Date, Expiration, Extensions and Extinguishment**

***Ongoing***

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

**3. Scope of This Approval; Major and Minor Changes**

***Ongoing***

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

**4. Conformance with other Requirements**

***Prior to issuance of a demolition, grading, P-job, or other construction related permit***

- a)** The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire



Marshal, and the City's Public Works Agency.

- b) The applicant shall submit approved building plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

## **5. Conformance to Approved Plans; Modification of Conditions or Revocation**

### ***Ongoing***

- a) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- b) Violation of any term, condition or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions** if it is found that there is violation of any of the **Conditions** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

## **6. Signed Copy of the Conditions**

### ***With submittal of a demolition, grading, and building permit***

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

## **7. Indemnification**

### ***Ongoing***

- a) The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination,

extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

#### **8. Compliance with Conditions of Approval**

##### ***Ongoing***

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

#### **9. Severability**

##### ***Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if any one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

#### **10. Job Site Plans**

##### ***Ongoing throughout demolition, grading, and/or construction***

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

#### **11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management**

##### ***Prior to issuance of a demolition, grading, and/or construction permit***

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plan check review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

#### **PROJECT SPECIFIC CONDITIONS:**

#### **12. Fire Department**

##### ***Prior to Building permit submittal***

The applicant shall submit plans to the City of Oakland Fire Services for approval.

#### **13. Operational Restrictions**

##### ***Ongoing***

The operation of the recycling center shall be limited to the following:

1. Specifically, uses allowed by this general use permit shall be limited to medium to large scale deliveries and shipment of metal intended for a bulk scale processing and recycling only, and shall not allow for small scale walk-up, automobile, or pushed cart drop-offs

2. Individual retail redemption of small items such as cans and bottles, paper or plastics is not allowed.
3. No recycling or material processing or storage activities shall be conducted out side of the structure (i.e. no open facility activities).
4. When not being used for loading of recycled material all loading dock doors shall remain closed.
5. The entire facility shall be maintained (inside and out) as a clean and vector free environment. This facility shall adhere to Alameda County Health standards. As required interior and exterior surface areas shall be clean and power wash regularly twice a month at a minimum. Vector traps shall be maintained in place at all times and a qualified service shall be employed to maintain vector control on site. Documentation of vector service records shall be posted on site and made available to City and County inspection personal at all times

**14. Signage**

*Prior to the addition of any new signage and Ongoing.*

*Ongoing:*

Any news signs shall be subject to small project design review per Section 17.136 of the Planning Code.

**15. Trash, litter, Graffiti, Loitering.**

*Prior commencement of use and ongoing.*

Graffiti shall be removed from the premises within 72 hours (3 days) of application. No clothing collection stations (bins) shall be established at this site. . The applicant shall clear the sidewalk and gutter areas along Independent Road for a minimum of 20 feet beyond the edge of the property lines along the street, of litter and debris at least once a week or as needed to control litter. Signage shall be posted around the property prohibiting loitering at all times and unlawful dumping. Restrictive signage shall display appropriate Municipal Code Sections reviewed and approved by the Oakland Police.

**16. Hours of Operation**

*Ongoing*

This proposal is approved with operational hours between 7:00 a.m. and 6:00 p.m.

City of Oakland  
Community and Economic Development Agency  
Zoning Division  
250 Frank H. Ogawa Plaza, Suite 2114  
Oakland, CA 94612

**NOTICE OF EXEMPTION**

TO: Alameda County Clerk  
1106 Madison Street  
Oakland, CA 94612

Project Title: Case No. CU12077

Project Applicant: Lakeside Metals -Lance Finkel

Project Description: Establishment of Primary Recycling Center for metal,  
with operational hours between 7:00 a.m. and 4:00 p.m..

Exempt Status:

**Statutory Exemptions**

- ☐ Ministerial {Sec.15268}  
☐ Feasibility/Planning Study {Sec.15262}  
{Sec.15302}  
☐ Emergency Project {Sec.15269}  
☐ Other: {Sec. \_\_\_\_\_}  
15332}

**Other**

- ☐ Projects consistent with a community plan, general plan or zoning {Sec. 15183(f)}  
☐ \_\_\_\_\_ (Sec. \_\_\_\_\_)

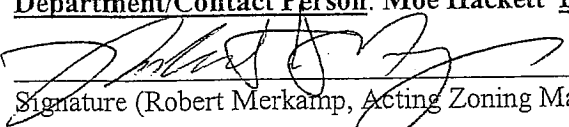
**Categorical Exemptions**

- ☒ Existing Facilities {Sec.15301}  
☐ Replacement or Reconstruction  
☐ Small Structures {Sec.15303}  
☐ Minor Alterations {Sec.15304}  
☒ In-fill Development {Sec.  
General Rule {Sec.15061(b)(3)}

**Reasons why project is exempt:** Project has been found to comply with the standards and requirements of Sections 15301 & 15332 of the California Environmental Quality Act (Categorical Exemptions, Class 1: Existing Facilities & In-fill Development (lot size greater than 10,000 sqft.)) As a separate and independent basis it is also exempt per Section 15183 of CEQA Guidelines (Special Situations, Projects that are consistent with a community plan, general plan,

**Lead Agency:** City of Oakland, Community and Economic Development Agency, Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

**Department/Contact Person:** Moe Hackett **Phone:** 510-238-3973

  
Signature (Robert Merkamp, Acting Zoning Manager)

11/5/12  
Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish and Game filing fees.

**\*ENVIRONMENTAL DECLARATION**  
**(CALIF. FISH AND GAME CODE SEC. 711.4)**

: FOR COURT USE ONLY

NAME AND ADDRESS OF APPLICANT OR LEAD AGENCY :

LEAD AGENCY: CITY OF OAKLAND  
Community and Economic Development  
Agency - Planning Division  
  
250 Frank H. Ogawa Plaza  
Oakland, CA 94612

APPLICANT: Lakeside Metals - Lance Finkel  
412 Madison St.  
Oakland CA 94607

: FILING NO. CU12171

CLERKS  
CLASSIFICATION OF ENVIRONMENTAL DOCUMENT: Check the box(es) that applies.  
USE ONLY

1. **NOTICE OF EXEMPTION**  
PLU 117  
☒ A - STATUTORILY OR CATEGORICALLY EXEMPT  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
  
☐ B - FEE EXEMPTION - NO IMPACT DETERMINATION ISSUED BY F&G  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
PLU 117
2. **NOTICE OF DETERMINATION**  
☐ A - NEGATIVE DECLARATION  
PLU 116  
\$2,044.00 (Two Thousand Forty Four Dollars) - STATE FILING FEE  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
  
☐ B - MITIGATED NEGATIVE DECLARATION  
\$2,044.00 (Two Thousand Forty Four Dollars) - STATE FILING FEE  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
PLU 116  
  
☐ C - ENVIRONMENTAL IMPACT REPORT  
\$2,839.25 (Two Thousand Eight Hundred Thirty Nine Dollars and Twenty Five Cents) - STATE  
FILING FEE  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
PLU 115
3. ☐ **OTHER** (Specify) Notice of Finding of No Significant Impact  
\$50.00 (Fifty Dollars) - CLERK'S FEE  
PLU 117

**\*THIS FORM MUST BE COMPLETED AND SUBMITTED WITH ALL ENVIRONMENTAL DOCUMENTS  
FILED WITH THE ALAMEDA COUNTY CLERK'S OFFICE.**

**FOUR COPIES OF ALL NECESSARY DOCUMENTATION ARE REQUIRED FOR FILING PURPOSES.**

**APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING AN ENVIRONMENTAL DOCUMENT  
WITH THE ALAMEDA COUNTY CLERK'S OFFICE.**

**MAKE CHECK PAYABLE TO: ALAMEDA COUNTY CLERK**

Revised 1/10/11

