

**AGENDA DATE:** November 14, 2006



# RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.  
VISALIA, CA. 93277  
PHONE (559) 733-6291  
FAX (559) 730-2653

Britt L. Fussel	Engineering
Deborah Kruse	Development Services
Jean P. Brou	Transportation
George Finney	Long Range Planning
Hal Cypert	Support Services
Roger Hunt	Administrative Services

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HENRY HASH, DIRECTOR

## AGENDA ITEM

ITEM NO. \_\_\_\_\_  
District 4

### SUBJECT:

Public Hearing on an appeal of Resource Management Agency's Administrative Hearing Officer's decision regarding Miramonte Sanitation (V101-084).

### REQUEST(S):

Deny the appeal and uphold the decision of the Hearing Officer regarding Miramonte Sanitation V101-084.

### SUMMARY:

Miramonte Sanitation is requesting an appeal hearing by the Tulare County Board of Supervisors concerning the recent Resource Management Agency's Administrative Hearing outcome and decision rendered by the Administrative Hearing Officer on October 2, 2006. This decision directed Miramonte to cease all waste hauling operations and remove trucks, materials and equipment from their property located at 42605 Rd. 72 northwest of Dinuba within 10 days, upheld all fines (\$6,000.00) and fees (\$1,050.00), and declared this violation as a Public Nuisance.

The Administrative Hearing was the result of Miramonte Sanitation continuing to operate after their appeal to the Tulare County Board of Supervisors for approval of a Special Use Permit was denied on March 14, 2006. This first appeal occurred after their application for a Special Use Permit for a Solid Waste Transfer Station was denied by the Tulare County Planning Commission. After the Board of Supervisors denial of the appeal and direction that Miramonte Sanitation be relocated "quickly", RMA issued a letter to the landowner interpreting "quickly" as ninety (90) days (to June 19, 2006).

Miramonte Sanitation's waste hauling operation was first discovered due to a complaint five (5) years ago. The business has operated at this location, leasing land from Dinuba Timber since the mid 1990's. During this period, Miramonte has operated in violation of requirements of the AE-20 (Exclusive Agriculture 20 acre minimum) zone per the Tulare County Zoning Ordinance Code 352.

Attached is an appeal letter prepared by Michael J.F. Smith, Attorney for Mr. Guy (Exhibit A), a chronological outline of the violation known as V101-084 (Exhibit B) and the Administrative Hearing Officers decision dated October 03, 2006 (Exhibit C).

**FINANCING:**

Not applicable

**ALTERNATIVES:**

Approve the appeal and reverse the decision of the Administrative Hearing Officer made on October 02, 2006 and allow Don Guy and Sharon R. Guy along with Miramonte Sanitation to enter into a Code Compliance Agreement to provide additional time to cease the operations currently being conducted on this property. Such an action is not recommended because the appellant has already had eight months (since March 14, 2006) to relocate the business.

**INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES**

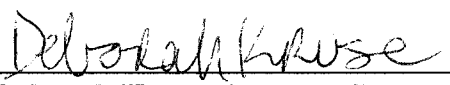
Other County Departments involved with this violation include or will include County Counsel and the District Attorney's office.

**SIGNATURE REQUIREMENTS:**

Chairman of the Board to sign the title Resolution. County Administrative Officer/Clerk of the Board of Supervisors or authorized Deputy to attest to the Resolution.

**ADMINISTRATIVE SIGN OFF:**

**RESOURCE MANAGEMENT AGENCY**

  
\_\_\_\_\_  
**Deborah Kruse, Assistant Director**  
**Development Services**

  
\_\_\_\_\_  
**Henry Hash, Director**

**Submittal Date: November 1, 2006**

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**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

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IN THE MATTER OF APPEAL OF )  
RESOURCE MANAGEMENT AGENCY'S) RESOLUTION NO.  
ADMINISTRATIVE HEARING )  
OFFICER'S DECISION REGARDING )  
MIRAMONTE SANITATION (V101-084) )

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Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, the following was adopted by the Board of Supervisors, at an official meeting held November 14, 2006, by the following vote:

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AYES:

NOES:

ABSTAIN:

ABSENT:

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ATTEST: C. BRIAN HADDIX,  
County Administrative Officer/  
Clerk of the Board of Supervisors.

By \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

Denied the appeal and upheld the decision of the Hearing Officer regarding Miramonte Sanitation V101-084.

## EXHIBIT A

### MICHAEL J. F. SMITH, A PROFESSIONAL CORPORATION

ATTORNEY AT LAW  
790 WEST SHAW AVENUE, SUITE 265  
FRESNO, CALIFORNIA 93704  
(559)229-3900  
Fax (559)229-3903  
Mjfsmith@mjfsmith.com  
On the web at www.mjfsmith.com

October 10, 2006

Tulare County Board of Supervisors  
c/o Brain Haddix, Clerk of the Board  
2800 West Burrel Ave.  
Visalia, CA 93291-4582

### Tulare County Board of Supervisors

RE: MIRAMONTE SANITATION,  
Property Owner: Don Guy and Sharon Guy  
Address: 42605 Road 72, Dinuba  
Violation Number: V101-084

Dear Madame & Sirs:

Pursuant to Tulare County Ordinance section 1-23-5025 this letter shall serve as a notice of appeal to the decision of the hearing officer on the Notice of Violation number V101-084.

The first basis for appeal is that the Resource Management Agency of Tulare County (RMA) has abused their discretion by taking it upon themselves to interpret the finding of the Board of Supervisors in Resolution No. 2006-0144. This resolution states that the applicant is to "cease and desist as quickly as possible". RMA staff has interpreted this to mean within Ninety (90) days.

The second basis for appeal is that the RMA's interpretation of "cease and desist as quickly as possible" is in error. RMA has produced no evidence to show that Ninety (90) days is an adequate amount of time for Mr. Guy to find a new location and move his entire operation.

The RMA Staff's current position is that, without any evidence at all, "as quickly as possible" can be "interpreted" as meaning whatever arbitrary date they select. They decided it means "90 days." The RMA Staff has given no legal authority for their ability to make this determination.

Moving a transfer station and trash hauling business to a new location is not easy or simple. It is not something that can be done in 90 days. Absolutely no evidence was submitted by the Staff to support their interpretation of Board resolution 2006-0144.

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The third basis for this appeal is that the Hearing Officer was in error in making his decision. Mr. Garcia *solely* considered the evidence produced and testimony provided by RMA and gave little to no weight to evidence produced by the property owners, Mr. Guy's testimony that he was and is trying to move his business, or the ruling of the Board of Supervisors. The property owner's evidence demonstrates that they have been diligent and are moving as quickly as possible, as specifically directed by the County Board of Supervisors. The Hearing Officer ignored this evidence completely.

The term "as quickly as possible" takes unforeseen developments into account. This Board did not specify an arbitrary, inflexible date. This was for good reason, because it would be totally unrealistic to ignore what had to be done to accomplish the intended result. RMA Staff has failed to address the issue of whether Miramonte is moving as quickly as possible. RMA Staff also failed to address how long it would take, realistically, to accomplish the move.

The Board of Supervisors' decision was made in March, but even before that date Mr. Guy had started looking for alternatives. Mr. Guy and his consultants and others working on the issue have been diligently working on moving the business, and have accomplished a great deal.

Details of the work that Mr. Guy has undertaken up to this point are provided in a post-hearing letter to the Hearing Officer, dated September 25, 2006. A copy of this letter should be provided to you pursuant to Tulare County Ordinance 165(b) and (d). A true and correct copy of this letter is attached as Exhibit A.

In October of 2001 the RMA was made aware of Miramonte Sanitation's operation without a use permit. In March of 2006 a final decision was made to deny Mr. Guy's request for a permit. The permit request was a four and a half year process, yet the RMA expects Mr. Guy to have the ability to move his business after ten years at that location, to now expect it to be moved in less than three weeks is arbitrary and capricious. This is an unreasonable request by the RMA.

Mr. Guy, via Miramonte Sanitation, provides an important service to residents and businesses of Tulare County and has done so for more than a decade. To deny him a reasonable amount of time to establish and move his business to another location would be detrimental to the goals of this Board in "serving the people of Tulare County".

The fourth basis for this appeal is that there was error in the participation of County Counsel in the administrative hearing on this matter and her post-hearing communications with the Hearing Officer.

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In this case, county counsel continued to communicate with the hearing officer, after the hearing, in unsolicited email. While we were informed of the email and responded, this communication in the process was improper. California Government Code § 11430.10(a) provides that while a proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party, without notice and opportunity for all parties to participate in the communication. A communication from an employee or representative of an agency that is a party is not prohibited if it is made on the record at the hearing. The California Court of Appeal, Second District, held in Nightlife Partners, Ltd. v. City of Beverly Hills, (2003) 108 Cal. App. 4th 81 [133 Cal. Rptr. 2d 234], “when local boards act as judicial bodies of limited jurisdiction, even though they are not bound by technical rules of judicial procedure, they must afford the parties appearing before them a reasonably fair hearing.”

California courts have also held that due process in an administrative hearing demand an appearance of fairness and the absence of even a probability of outside influence on the adjudication. “Whether or not there was actual bias in an administrative hearing is irrelevant; the appearance of unfairness is sufficient to invalidate the hearing.” (Quintero v. City of Santa Ana, (2003)114 Cal. App. 4th 810, 816 [7 Cal. Rptr. 3d 896].)

Finally, it was error for the Hearing Officer to fail to take into consideration that Miramonte Sanitation had operated, under contracts with Tulare County, without a permit for a period of Six (6) years prior to making Mr. Guy aware of the need for a permit. Mr. Guy was ignorant of the need for a permit to conduct his business in this area, which had been in industrial use for many years prior to Mr. Guy’s lease. The RMA Staff provided no evidence that this was, in any way, a reasonable delay and Mr. Guy was prejudiced by the RMA’s failure to act.

The RMA should be estopped from imposing fines on Mr. Guy according to the California Court of Appeals, Second District, in La Canada Flintridge Dev. Corp. v. Department of Transportation, (1985) 166 Cal.App.3<sup>rd</sup> 206, 219 [212 Cal.Rptr. 334].

**MICHAEL J. F. SMITH**

A Professional Corporation

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Due to the aforementioned errors and abuse of discretion, it is respectfully requested that this Board over rule the decision of the Hearing Officer and grant Mr. Guy a reasonable amount of time to relocate his business in a lawful manner.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael J.F. Smith", with a large, sweeping flourish extending to the right.

Michael J.F. Smith  
Attorney for Appellants  
Don Guy and Sharon Guy

Enclosures

Cc: Don Guy

**MICHAEL J. F. SMITH, A PROFESSIONAL CORPORATION**

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Mjfsmith@mjfsmith.com  
On the web at www.mjfsmith.com

September 25, 2006

Richard Garcia  
Hearing Officer  
c/o  
Tulare County  
Resource Management Agency  
5961 South Mooney Boulevard  
Visalia, CA 93277

**Resource Management Agency of Tulare County**

RE: MIRAMONTE SANITATION,  
Hearing date: September 20, 2006  
Property Owner: Don Guy and Sharon Guy  
Address: 42605 Road 72, Dinuba  
Violation Number: V101-084

Dear Sir:

Pursuant to your request at the hearing on the 20<sup>th</sup>, enclosed are a chronology and a limited selection of documentary evidence related to Donald and Sharon Guy's efforts to move the Miramonte Sanitation business.

This evidence demonstrates that they have been diligent and are moving as quickly as possible, as specifically directed by the County Board of Supervisors.

We submit that the Hearing Officer is bound by the Board of Supervisor's specific ruling, not by Staff's arbitrary and capricious "interpretation" of it. The "Violations" charged should be rejected, and Staff should be directed to negotiate a reasonable compliance agreement with the property owners, that will accomplish the goals of the Board.

This business has been at this location for about 12 years. It was initially placed on the site of Dinuba Forest Industries. In 2001, the lack of a use permit was noted, and the process of seeking one began. After years of hearings, appeals and negotiations, the Tulare County Board of Supervisors ordered Mr. Guy to move his business "as soon as possible." (Resolution 2006-0144) This ruling was made March 14, 2006. Since then, efforts to move the business have been under way, and have been continuous.



September 25, 2006  
Page 2

The term "as soon as possible" takes unforeseen developments into account. The Board did not specify an arbitrary, inflexible date. This was for good reason, because it would be totally unrealistic to ignore what had to be done to accomplish the intended result. Staff has failed to address the issue whether Miramonte is moving as quickly as possible. Staff also failed to address how long it would take, realistically, to accomplish the move.

The Staff's current position is that, without any evidence at all, "as soon as possible" can be "interpreted" as meaning whatever arbitrary date they select. They decided it means "90 days." This interpretation conflicts with the directive of the Board.

Moving a transfer station and trash hauling business to a new location is not easy or simple. It is not something that can be done in 90 days. Absolutely no evidence was submitted by the Staff to support their interpretation of Board resolution 2006-0144.

This business must remain in daily operation to avoid creating health and safety hazards for its customers, and to comply with its contracts and to provide weekly service to Tulare County businesses and residents. The services it provides are vitally important to health and safety. The Board's explicit recognition in the terms "as soon as possible" was that this process would take some effort and time.

First the size and nature of the existing operation must be considered. It is a small company, but has several trucks in daily operation. The trucks drive routes in a wide area, must make those rounds as promised and at least once a week as required by law, to avoid creating health and safety problems throughout the service area. Due to a shortage of qualified drivers, Mr. Don Guy drives one of those trucks himself, so he has limited time available to spend on finding and moving to a new location.

The Board of Supervisors' decision was made in March, but even before that date Mr. Guy had started looking for alternatives. Mr. Guy and his consultants and others working on the issue have been diligently working on moving the business, and have accomplished a great deal.

Site Selection: This first stage of moving is finding a place to go. There simply were no available properly permitted sites for sale in the immediate area. The time spent looking where Staff suggested was wasted and delayed the process. Staff conceded at the hearing that the Staff Report's reference to having provided "information identifying sites" was incorrect; what they really provided was not a list of available sites but a county map showing areas zoned in particular ways, and this map was not provided for 60 of the 90 days they allow for the move to occur.

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A site was located, however, and Mr. Guy entered into negotiations with two other businesses, and the property owner, and after extensive negotiations the group entered into a contract to buy the property in June. This contract was made about 90 days after the Board decision. This is very quick for a multi-million dollar, complex transaction, involving three other businesses. Staff's report presents no evidence that any other suitable site was available or overlooked, or could have been found or put under contract more quickly.

Site Permitting/ Preparation: In order to move to the new site, a Special Use permit must be obtained from Fresno County. As noted by Staff, Tulare County does not want Mr. Guy to simply move off the existing site to another illegal site. Accordingly, the new site must be appropriately permitted.

Mr. Poeschel and Mr. Guagliardo have actively and diligently proceeded with this process. The Phase I environmental work has been done, and a report is in the process of preparation; a basic site plan has been done, and a formal application has been signed by the property owner and submitted to Fresno County. So far, this process has only taken about 90 days since the land acquisition contract was signed.

This process is not a simple matter either. Attached is a copy of the initial statement of the operating plan, which is a key part of that application, and which contains 22 pages of detail that demonstrates the complexity of the task. It represents substantial work by the consultants. Staff's report presented no evidence whatsoever that this process has been delayed, could have or should have been done more quickly. It has proceeded as quickly as possible, as directed by the Board.

Communications with Resource Management of Tulare County: Staff has criticized Mr. Guy for an alleged failure to communicate with Tulare County about the process of planning and preparing for the move. This criticism is unjustified and irrelevant.

The Board did not direct Mr. Guy to talk to staff; it directed him to move his business. As Mr. Guagliardo testified, the consultants were lead to believe that communications were to go through the County Administrators office, and *did* respond in writing to the arbitrary "90 day" interpretation, with a copy to Mr. Bruce Kendall at Resource Management. (See copy attached.) Mr. Kendall did not respond.

Tulare County staff was also called on a number of occasions, was copied the relevant correspondence, and made itself fully aware of the process of the Fresno County application. A list of relevant phone calls by Miramonte to Tulare County Staff is attached. Many of these calls went unanswered. Written communications copied to Compliance and Resource Management staff, went unanswered.

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Again, there is no evidence whatsoever that any issue of communications with Staff has slowed the process at all. The property owner's focus on doing what he has been directed to do should not be diverted into making more unanswered phone calls or writing more unanswered letters.

Physical Movement of Equipment of the Tulare County Site: Until we have a place to go, the operating equipment cannot be moved away. At the Hearing, Staff testified that they did not want anything moved to any illegal site. Nothing at this site now has been identified as a health hazard or an emergency matter.

Non-operational equipment, junk, scrap metal, old trees, old trucks, etc. are being removed and have been removed. This process has been started and will continue as quickly as possible. We intend to have all of the scrap metal and non-operational equipment (with the exception of certain equipment needed for parts) removed by the end of October.

Receipts for shipments of metal to scrap yards are attached as a partial record, but other clean up actions have not been documented because they were done as part of routine maintenance and clean-up operations.

The documents attached are:

1. A detailed chronology of events, including the events noted by staff in their report;
2. A listing of phone calls by Miramonte Sanitation to Tulare County Staff, mainly unanswered (we do not have a record of their calls back to Miramonte, these may exist in County records);
3. A copy of the basic planning documents related to the Fresno County application, which demonstrates the complexity of the process;
4. Correspondence to Tulare County, cc-d to Mr. Kendall, et. al. demonstrating a request for more time, (also unanswered, except with the notice of violation);
5. Copies of receipts, etc. showing removal of scrap material, etc.

**MICHAEL J. F. SMITH**  
A Professional Corporation

September 25, 2006  
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Proposed Resolution:

There is no need or justification for further fines, penalties or legal action. These punitive measures simply make the process more difficult and expensive, and take time, money and focus away from accomplishing the objective.

As to the Communications issue, Staff should select some specific person that will be the contact for Miramonte Sanitation. They should have a telephone conference with Miramonte on a regular basis, and should come to the facility to check progress, perhaps once a month. This way staff can be kept informed and can provide input on any problems as they arise.

As to the process of moving the operation itself, the Board Resolution directing Miramonte to move should be interpreted as it clearly intended, to require continuous reasonable efforts, not to set an arbitrary cut-off date.

A "compliance agreement" should be negotiated on reasonable terms, so that the process of moving this business is accomplished. The goal of this process will be best served by a realistic and literal interpretation of the Board's directive, not by selecting an arbitrary date. In order to make sure that a compliance agreement is timely negotiated and put in place, a further hearing in a few weeks might be in order.

Miramonte Sanitation and its consultants and counsel are prepared to work cooperatively on a compliance plan with Staff. They have fully adopted the goal of moving as quickly as possible.

Respectfully yours,

Michael J.F. Smith

Enclosures

Cc: Bruce Kendall, Tulare County Resource Development

## EXHIBIT B

On 10/24/01, the Resource Management Agency received a complaint regarding a transfer station located at 42605 Rd. 72 in the Dinuba area. This violation was confirmed on 10/30/01 and file number V101-084 was begun.

On 10/31/01 a Notice of Violation was issued to the property owners, Dinuba Timber Industries. On 02/20/02 a Thirty Day Notice to Abate was mailed to the property owners.

On 03/20/02, the owners of Miramonte Sanitation submitted an application for a Special Use Permit for a Solid Waste Transfer Station.

On 05/02/03, Beverly Cates, Chief Planer, advised the owners by letter that the transfer station was not allowed in the AE-20 Zone and that a "temporary" use permit might be an option.

On 06/26/03, the owner supplied information that allowed Planning Staff to process the application as an Agricultural Service Establishment.

On 08/13/03, the use permit was heard by the Tulare County Planning Commission. The Planning Commission continued the Hearing to 08/27/03.

On 08/21/03, Bruce Kendall, Building and Zoning Inspector at the time, inspected the site and noted that the use continued.

On 08/27/03, the Planning Commission directed staff to re-notice the Hearing due to a change in the project description.

On 09/24/03, Ms. Cates sent a letter to the owner regarding a hold on the case.

On 01/06/04, a revised site plan and operational statement, prepared by a consultant, was received by the Resource Management Agency.

On 05/01/04, Catherine Andersen, Code Compliance Coordinator (retired), met with Planning staff and it was determined that the owners could only apply for a temporary used permit due to the nature of the non-agricultural use on the AE-20 property.

On 07/14/04, the use permit was again heard by the Planning Commission.

On 09/08/04, the Planning Commission denied the project without prejudice.

On 09/17/04, the applicant filed an appeal with the Board of Supervisors.

On 10/12/04, the Board of Supervisors heard the appeal and referred the matter back to the Environmental Assessment Officer for further environmental review. The Environmental Assessment Officer required the preparation of an Environmental Impact Report (EIR), and the applicant appealed this decision stating that an Initial Study Negative Declaration (ISIND) was sufficient.

On 04/05/04, the Board of Supervisors heard a second appeal with issues limited to the type of environmental document required for the project.

On 07/27/05, Ms. Cates received a new operational plan.

On 08/17/05, Ms. Cates met with Don Guy, owner of Miramonte Sanitation, and Joe Gaugliardo, agent, regarding the project description and mitigation measures. Joe Gaugliardo was going to revise the site plan and operational statement and get back with Ms. Cates.

On 11/22/05, the matter was brought back to the Board of Supervisors as a public hearing for consideration of a mitigated negative declaration. After extensive public comment, the Board continued the matter to 03/14/06, in order to allow staff time to prepare responses to the comments.

On 03/14/06, the matter was brought back to the Board with recommendations to either deny the project or required an Environmental Impact Report (EIR). The Board denied the project. The Board directed that all of the Miramonte Sanitation waste hauling and trucking equipment, materials, and operations be removed "quickly". The County Resource Management Agency interpreted that to be 90 days (June 19, 2006).

On 03/20/06, Ms. Cates sent a letter to Mr. Guy advising him of the time-frame for removal of the illegal use. A copy of the Board Resolution was sent with the letter.

On 05/31/06, Ms. Cates sent a letter to Mr. Guy with information identifying sites that were appropriately zoned for relocation of the use.

On 06/19/06 and 06/20/06, Samantha Franks, Planner I with Code Compliance, inspected the site and confirmed that the uses continued at the subject location.

On 06/22/06, a Thirty Day Notice to Abate was mailed to the property owner. This notice was also hand delivered by Code Compliance staff.

On 07/06/06, Jessica Gocke, RTEHS, MPA with the Environmental Health Service Division sent a letter to the owners regarding an inspection that revealed hazardous materials being stored on the site without a Hazardous material business plan.

On 08/21/06, a Notice of Violation and Order to Show Cause and Notice of Assessment of Civil Fines and Penalties was mailed to the property owner by regular and certified mail.

On 08/22/06, the Notice of Violation was hand delivered to Mr. Guy by Estevan Benavides, Building and Zoning Inspector with Code Compliance.

On 09/05/06, Steven Hunt, Code Compliance Officer III (extra help) inspected the site and confirmed that the violation continued.

On 09/20/06, at 9:00 A.M. an Administrative Hearing for Miramonte Sanitation was held in the Planning Commission room at RMA. Staff submitted their report and Mike Smith, attorney for Don Guy responded. Also present were Don Guy and Joe Gaudliardo. At the end of their response, Mr. Smith claimed "Miramonte Sanitation had permits" (Special Use Permits) to operate the Solid Waste Transfer Station. The Administrative Hearing Officer, Richard Garcia (City of Tulare) granted an additional 10 day period for submission of this permit to operate as claimed by Mr. Smith. He advised all persons present that his

decision would be rendered at the end of the 10 day period. Mr. Garcia also explained that he himself would interpret “quickly” to mean a few months and not the time period Mr. Guy was expecting (9 to 12 months).

On 10/02/06, Mr. Garcia signed the Notice and Statement of Decision and Assessment of Civil Fines and Penalties and Notice of Right to Appeal. This notice found Don Guy and Sharon R. Guy along with Miramonte Sanitation continued to operate in violation of the Tulare County Zoning Ordinance, Code 352, as amended (no special use permit). The Hearing Officer upheld the Notice of Violation and the fines of \$6,000.00 (\$100.00 per day per violation x 30 days) plus Administrative fees in the amount of \$1,050.00 and declared the violations as a public nuisance and directed the owner to immediately cease operation, and within 10 days to vacate the site and restore it to its original condition. In addition, Mr. Garcia allowed that if there is a 50% reduction of material and equipment, an additional 10 days would be granted for complete compliance. It was further ruled that if the owner fails to comply with the time-frame outlined, the matter would be referred to the District Attorney for further legal action.

On 10/13/06, Mr. Hunt conducted a field inspection of this site and determined that Miramonte Sanitation was still conducting business as usual.

**EXHIBIT C**

10/2/06

**RECORDING REQUESTED BY:**

Catherine Anderson  
Tulare County Resource Management Agency

**AND WHEN RECORDED MAIL TO:**

Catherine Anderson  
Tulare County Resource Management Agency  
5961 S. Mooney Blvd.  
Visalia, CA. 93277-9394

**COPY**

**THIS SPACE FOR RECORDER'S USE ONLY**

**Notice and Statement of Decision  
And  
Assessment of Civil Fines and Penalties  
And  
Notice of Right to Appeal**

October 2, 2006

OWNER(S) NAME:	Don Guy and Sharon R. Guy (Trustees for the Don Guy Family Trust)
OWNER(S) ADDRESS:	Miramonte Station PO Box 129 Reedley, CA 93654
VIOLATION SITE:	42605 Road 72, Dinuba
APN(S):	012-260-22
VIOLATION NO.:	V101-084



REGARDING:

Alleged violation of the following Ordinance Codes of Tulare County:

**Violation No. 1 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance - establishing and operating a Solid Waste Recycling Transfer/Processing facility without use permit approval in the AE-20 Zone. An application for the use permit PSP 02-028 was denied by the Planning Commission and your appeal to the Board of Supervisors was denied.**

**Violation No. 2 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance – storage and use of waste hauling, chipping and trucking equipment and materials in the AE-20 Zone.**

Whereas, the legal description of the subject property is attached as Exhibit A and made a part hereof.

Whereas, the County of Tulare, on August 21, 2006, issued a Notice of Violation, Order to Correct and Notice of Assessment of Civil Fines and Penalties (NOV), attached as Exhibit B and made a part hereof, to the Property Owner, specifying the sections of the Ordinance Code or Tulare County Zoning Ordinance No. 352 violated and the conditions constituting each and every violation and specifying a period of time not less than 30 days from receipt of the Notice of Violation within which the violation must be abated.

Whereas, in the NOV mailed to the Property Owners by regular and certified mail and personally delivered to the Property Owner by a Resource Management Agency staff person, the County set an appeal hearing date on September 20, 2006, giving the Property Owner the right and opportunity to be heard in regard to the alleged violations and the Property Owner and his Attorney, Mike Smith, appeared at the duly noticed hearing on this matter.

Whereas, at the Hearing, RMA Staff entered into evidence the Staff Report, attached as Exhibit C and made a part hereof, that detailed the case history which included Mr. Guy's initial operation of the use without use permit approval, his subsequent submittal of a use permit application that was ultimately denied by the Planning Commission, his appeal of the Commission's decision to the Board of Supervisors, the Board's Resolution upholding the Planning Commission's Decision and their order that all of the waste hauling and trucking equipment, materials, and operation be removed quickly, clarification by the Resource Management Agency (RMA) in writing that quickly meant 90 days – by June 19, 2006 - and a reminder letter from RMA to Mr. Guy with information identifying sites that were appropriately zoned for relocation.

Whereas, at the Hearing, RMA staff confirmed that the property owner failed to relocate the use within the time frame granted by the Board of Supervisors in Board Resolution No. 200-0144 (attached as exhibit D), and further failed to comply with the Notice and Order.

Whereas, Mr. Guy's attorney indicated that they had a valid use permit to operate at that location and RMA staff clarified that there was a previous use permit approved for the property, issued in 1948, to the previous owners for a lumber mill and that this use permit did not cover the current use of the property.

Whereas, the Hearing Officer, wishing to provide the owners an opportunity to provide evidence that they had a valid use permit that allowed the use to continue operating at the subject site, granted 10 days from the date of the Hearing to provide said evidence.

Whereas, the owner failed to provide evidence within the 10 day extension that they had a legal right to continue operating at the location,

Now, therefore, as Hearing Officer for the County of Tulare, I find the violations did exist on the property from August 21, 2006 to September 20, 2006, based upon the following evidence presented at the hearing:

1. The staff report, attached as Exhibit C and made a part hereof, which lists dates of inspections, dates that photographs were taken of the violations, and dates that Notices of Violations were mailed to the owner.
2. Statements by Interim Code Compliance Manager Bruce Kendall and Code Compliance Officer Steve Hunt, attesting that the information contained in the staff report was true and accurate.
3. Photographs taken by Sammi Franks, Planner I and Steve Hunt, Code Compliance Officer III, Extra Help and submitted as evidence at the hearing
4. Statements made by the owner indicating that the use continued on the property and that he was aware of the order to vacate the site.

Based upon the above findings, I hereby uphold the Notice of Violation and fines and penalties specified by the Notice and assess the Property Owner, under Section 1-23-3005 of the Ordinance Code of Tulare County, administrative fines in the amount of \$6000 (\$100.00 per day per violation x 30 days) plus Administrative fees in the amount of \$1050.00, declare the violations a public nuisance, and direct the owner to immediately cease operation, and within 10 days, vacate the site and restore it to its original condition. If at the end of the 10 days, RMA staff verifies that the use has ceased and that there is a 50% reduction of materials and equipment, an additional 10 days will be granted for complete compliance. If however, at any time the owner fails to comply with the time-frame outlined here-in, the matter will be referred to the District Attorney for further legal action.

**Fines and fees shall be paid immediately to the County of Tulare Resource Management Agency at 5961 South Mooney Blvd., Visalia, CA 93277 and the conditions of the property abated as outlined above. If the fines are not paid within 30 days, the County may proceed to court to obtain a judgment against the Property Owner and use all lawful means to collect such judgment.**

The Property Owner is further notified that should the violations continue past the time specified above, the County will seek additional remedies including, but not limited to: criminal prosecution, civil injunction, administrative abatement, judicial abatement, revocation of outstanding permits, withholding of future County permits and/or imposition of higher fines and penalties.

The person who appealed the Notice of Violation pursuant to Section 1-23-5015 of the Ordinance Code of Tulare County, or who are identified in said notice, may, within ten (10) calendar days from the date of this Notice of Decision, appeal this decision to the Tulare County Board of Supervisors in accordance with Section 1-23-5025 of the Ordinance Code of Tulare County. The appeal shall set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee to cover the cost of processing and hearing the appeal.

Tulare County Resource Management Agency

Richard Garcia  
Richard Garcia  
Administrative Hearing Officer

Dated: 10-3-06

State of California  
County of Tulare

On 10-3-06, before me, Sammi Franks, Notary Public, personally appeared Richard Garcia, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Sammi Franks

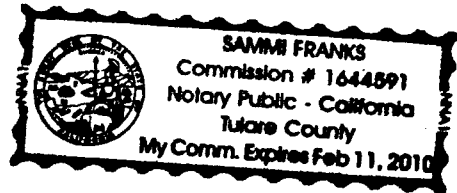


Exhibit "A"

DESCRIPTION:

PARCEL NO. 1:

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 23 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICE PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF SAID SOUTHEAST QUARTER, 652.75 FEET WEST OF THE NORTHEAST CORNER THEREOF, SAID POINT BEING THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE SOUTH ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, 1248.91 FEET TO A POINT 70.3 FEET NORTH OF THE SOUTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, 1296.1 FEET TO THE EAST LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY; THENCE NORTH 43° 12' WEST, ALONG THE SAID EAST LINE, 583.6 FEET; THENCE NORTH 42° 19' WEST ALONG THE SAID EAST LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY, 399 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE NORTH ALONG THE SAID WEST LINE, 528.7 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE EAST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, 1959.25 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE EAST, ASSUMED MERIDIAN, 953.28 FEET MEASURED ALONG THE NORTH LINE OF THE SAID SOUTHEAST QUARTER; THENCE SOUTH 1° 30' 30" EAST, 1584.38 FEET TO A POINT IN THE NORTHEASTERLY RAILROAD RIGHT OF WAY; THENCE FOLLOWING ALONG SAID RIGHT OF WAY NORTH 43° 10' 15" WEST, 1044.68 FEET; THENCE NORTH 42° 18' 15" WEST, 599.00 FEET TO A POINT IN THE WEST LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 1° 16' 14" WEST, 526.97 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, AS GRANTED TO MORTGAGE GUARANTEE COMPANY, A CORPORATION BY DEED DATED NOVEMBER 28, 1938 RECORDED DECEMBER 16, 1938.

PARCEL NO. 2:

THE NORTH HALF OF THE SOUTH 4/9THS OF THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 23 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND ON FILE IN THE BUREAU OF LAND MANAGEMENT AT THE DATE OF THE

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Exhibit "A" (cont'd)

ISSUANCE OF THE PATENT THEREOF, LYING EAST AND NORTH OF THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY.

EXCEPTING THEREFROM THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1.

EXCEPTING THEREFROM A STRIP OF LAND 36 FEET WIDE CONVEYED TO ALTA IRRIGATION DISTRICT, BY DEED RECORDED IN BOOK 57, PAGE 329 OF DEEDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTH  $89^{\circ} 59' 45''$  WEST ALONG THE NORTH LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 94.62 FEET; THENCE SOUTH  $0^{\circ} 49' 55''$  EAST, PARALLEL WITH THE EAST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 227.12 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH,  $0^{\circ} 49' 55''$  EAST, 237.20 FEET; THENCE SOUTH  $89^{\circ} 59' 45''$  WEST, PARALLEL WITH THE NORTH LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 128.78 FEET; THENCE NORTH  $24^{\circ} 45' 20''$  WEST, 261.17 FEET; THENCE NORTH  $89^{\circ} 59' 49''$  EAST, 254.70 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM A STRIP OF LAND FOR RIGHT OF WAY PURPOSE 16 FEET IN WIDTH OVER AND ACROSS A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, DESCRIBED AS BEGINNING AT A POINT ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, SAID POINT BEING 8 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTH  $89^{\circ} 59' 45''$  WEST, PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 751.96 FEET; THENCE SOUTH  $0^{\circ} 49' 55''$  EAST, PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 219.12 FEET.

*file*



# RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.  
VISALIA, CA. 93277  
PHONE (559) 733-6291  
FAX (559) 730-2653

Britt L. Fussel	Engineering
Deborah Kruse	Development Services
Jean P. Brou	Transportation
George Finney	Long Range Planning
Hal Cyfert	Support Services
Roger Hunt	Administrative Services

HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

## NOTICE OF VIOLATION, ORDER TO CORRECT, ORDER TO SHOW CAUSE AND NOTICE OF ASSESSMENT OF CIVIL FINES AND PENALTIES

August 21, 2006

Property Owner:	Don Guy
Mailing Address:	MiraMonte Sanitation PO Box 129 Reedley, CA 93654

Re: Violation of Ordinance Code	
Violation No:	V101-084
Location:	42605 Road 72, Dinuba
Parcel:	012-260-22

Hearing Date:	September 20, 2006
Hearing Time:	9:00 A.M.
Hearing Location:	Planning Commission Room 5961 South Mooney Blvd. Visalia, CA 93277 (Located across from Mooney Grove Park)

On June 22, 2006, you were issued a 30-DAY NOTICE TO ABATE COUNTY ORDINANCE CODE VIOLATIONS, and were requested to contact our office to discuss informal resolution of these allegations. More than 30 days have passed and the violations have not been corrected.

NOTICE IS HEREBY GIVEN, pursuant to Chapter 23 of Part 1 of the Ordinance Code of Tulare County, that the conditions on your property have been determined to be a

public nuisance and that for each day these conditions exist, one of more of the conditions is a separate violation of each ordinance and section as follows:

**Violation No. 1 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance - establishing and operating a Solid Waste Recycling Transfer/Processing facility without use permit approval in the AE-20 Zone. An application for the use permit PSP 02-028 was denied by the Planning Commission and your appeal to the Board of Supervisors was denied.**

**Violation No. 2 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance – storage and use of waste hauling, chipping and trucking equipment and materials in the AE-20 Zone.**

YOU ARE HEREBY ORDERED, to correct these violations and to repair or remove the public nuisance within 30 days from the date of this notice by completing the following:

- **Immediately cease operation of the illegally established transfer/processing facility.**
- **Relocate the waste hauling transfer/processing facility including all stored and used waste hauling, chipping and trucking equipment and materials and all other related materials.**

YOU ARE HEREBY NOTIFIED that if the public nuisance is not abated and the violations corrected on or before such time, you shall be subject to such fines and penalties as permitted by law. These include Administrative Fees set forth in the attached fee schedule, and fines and penalties in the amount of \$100/day from the date of this Notice for each day the violation continues to exist during the 30-day correction period to a total of **\$7050.00**. Should you fail to timely pay these fines, penalties, and fees, the County may commence civil legal action to recover these fines, penalties, and fees. The County may also place a lien on your real property and, with regard to the Administrative Fees, place these fees as a tax against your property. Interest may accrue until such time as the fines, penalties, and fees are paid.

YOU ARE FURTHER NOTIFIED to appear before the Tulare County Resource Management Agency Director or his designee on **September 20, 2006, at 9:00 A.M.**, at 5961 South Mooney Blvd., Visalia, California, 93277, at a HEARING TO SHOW CAUSE why the public nuisance should not be abated and why fines, penalties, and fees should not be imposed.

YOU ARE FURTHER NOTIFIED that at the HEARING TO SHOW CAUSE you may call witnesses to testify on your behalf, present documentary evidence, cross-examine witnesses and otherwise show why this public nuisance should not be abated and fines, penalties and fees should not be imposed. You may be represented by legal counsel at your own expense. If you do not speak English, you must bring an interpreter at your own expense.

YOU ARE FURTHER NOTIFIED that the HEARING TO SHOW CAUSE is your hearing allowed pursuant to Section 1-23-5015 of the Ordinance Code of Tulare County. SHOULD YOU FAIL TO APPEAR AT THIS HEARING it shall be deemed a waiver of your right to a hearing and the determination of fines, penalties, and fees specified in this Notice shall be deemed final and an order issued to that effect.

YOU ARE FURTHER NOTIFIED that if these violations continue after the expiration of the time specified in this NOTICE OF VIOLATION, the following proceedings could be initiated including, but not limited to; criminal prosecution, civil injunction, administrative abatement, judicial abatement, revocation of open building permits, recording the NOTICE OF VIOLATION against your title to this property, withholding future County permits, and/or the imposition of higher fees, fines, and penalties.

Please contact Bruce Kendall, Interim Code Compliance Manager, at (559) 733-6391, if you have any questions regarding this matter.

---

Bruce Kendall, Interim Code Compliance Manager  
Tulare County Resource Management Agency

cc: Supervisor Steven Worthley, District 4  
Henry Hash  
Deborah Kruse, Assistant Director – RMA Development Services  
Sammi Franks, RMA Code Compliance Division  
Beverly Cates, Project Review Division  
Jeff Monaco, RMA Solid Waste Division  
Keith Jahnke, Environmental Health  
Julia Roberts, County Counsel  
Dirk Poeschel, Agent, - 923 Van Ness Ave., Suite 200, Fresno, CA 93721  
Richard Gilbert, County of Fresno Solid Waste – 2220 W. Tulare St., 6<sup>th</sup> Floor,  
Fresno, CA 93721  
Dane S. Johnson, RWQCB Fresno Branch Office – 1685 E Street, Fresno, CA  
93706  
Keith Kennedy, State of California Waste Management Board -  
Richard Harriman, Attorney at Law – 4321 North West Ave., Suite 106, Fresno  
CA 93705-1450  
Roger Wazdatskey – 4819 Seldner St., Los Angeles, CA 90032  
File  
Correspondence





# RESOURCE MANAGEMENT AGENCY

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HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

## STAFF REPORT- EXHIBIT C

**HEARING DATE:**

September 20, 2006

**PROPERTY OWNER:**

Don Guy and Sharon R. Guy  
(Trustees for the Don Guy Family  
Trust)  
Miramonte Sanitation  
PO Box 129  
Reedley, CA 93654

### ALLEGED VIOLATIONS:

Violation No. 1 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance - establishing and operating a Solid Waste Recycling Transfer/Processing facility without use permit approval in the AE-20 Zone. An application for the use permit PSP 02-028 was denied by the Planning Commission and your appeal to the Board of Supervisors was denied.

Violation No. 2 – Sections 9.6, 16, and 21 of the Tulare County Zoning Ordinance Code 352, as amended, governing uses allowed in the AE-20 Zone, uses that require use permit approval, and uses that constitute a public nuisance – storage and use of waste hauling, chipping and trucking equipment and materials in the AE-20 Zone.

**SITUS ADDRESS:**

42605 Road 72, Dinuba

**ASSESSOR'S PARCEL NO.:**

012-260-22

**VIOLATION NUMBER:**

V101-084

**WITNESSES:** Bruce Kendall, Interim Code Compliance Manager  
Catherine Andersen, Code Compliance Coordinator, Retired  
Lissa Davis, Code Compliance Manager, Resigned  
Beverly Cates, Chief Planner  
Estevan Benavides, Building and Zoning Inspector II  
Sammi Franks, Planner II  
Steve Hunt - Code Compliance Officer III, Extra Help

**SUMMARY:**

**INSPECTIONS/MEETINGS:**

On 10/24/01, the Resource Management Agency received a complaint regarding a transfer station located on the subject property operating without use permit approval.

The owners were notified of the violation and on 3/20/02, submitted a use permit application.

On 5/2/03, Ms. Cates advised the owners by letter that the transfer station was not allowed in the AE-20 Zone and that a "temporary" use permit might be an option.

On 6/26/03, the owner supplied information that allowed Planning Staff to process the application as an ag service establishment.

On 8/13/03, the use permit went to Hearing before the Planning Commission. The Planning Commission continued the Hearing to 8/27/03.

On 8/21/03, Bruce Kendall, a Building and Zoning Inspector at the time, inspected the site and noted that the use continued.

On 8/27/03, the Planning Commission directed staff to re-notice the Hearing due to a change in the project description.

On 9/24/03, Ms. Cates sent a letter to the owner regarding a hold on the case.

On 1/6/04, a revised site plan and operational statement, prepared by a consultant, was received by the Resource Management Agency.

On 5/1/04, Catherine Andersen met with Planning staff and it was determined that the owners could only apply for a temporary use permit due to the nature of the use on the property.

On 7/14/04, the use permit was again heard by the Planning Commission.

On 9/8/04, the Planning Commission denied the project without prejudice.

On 9/17/04, the applicant filed an appeal with the Board of Supervisors.

On 10/12/04, the Board of Supervisors heard the appeal and referred the matter back to the Environmental Assessment Officer for further environmental review.

On 4/5/005, the Board of Supervisors heard a second appeal with issues limited to the type of environmental document required for the project.

On 7/27/05, Ms. Cates received a new operational plan.

On 8/17/05, Beverly Cates met with Don Guy and Joe Gaugliardo regarding the project description and mitigation measures. Joe Guagliardo was going to revise the site plan and operational statement and get back with Ms. Cates.

On 11/22/05, the matter was brought back to the Board of Supervisors in public hearing for consideration of a mitigated negative declaration. After extensive public comment, the Board continued the matter to 3/14/06, in order to allow staff time to prepare responses to the comments.

On 3/14/06, the matter was brought back to the Board with recommendations to either deny the project or require an Environmental Impact Report (EIR). The Board denied the appeal. The Board directed that all of the Miramonte Sanitation waste hauling and trucking equipment, materials, and operations be removed "quickly." The County Resource Management Agency interpreted that to be 90 days (June 19, 2006).

On 3/20/06, Ms. Cates sent a letter to Mr. Guy advising him of the time-frame for removal of the illegal use. A copy of the Board Resolution was sent with the letter.

On 5/31/06, Ms. Cates sent a letter to Mr. Guy with information identifying sites that were appropriately zoned for relocation of the use.

On 6/19/06 and 6/20/06, Ms. Franks inspected the site and confirmed that the uses continued at the subject location.

On 6/22/06, a Thirty Day Notice to Abate was mailed to the owner.

On 7/6/06, Jessica Gocke, RTEHS, MPA with the Environmental Health Service Division sent a letter to the owners regarding an inspection that revealed hazardous materials being stored on the site without a Hazardous material business plan.

On 9/5/06, Steve Hunt inspected the site and confirmed that the violation continued.

#### PHOTOS TAKEN:

6/19/06 – Samantha Franks

6/20/06 – Samantha Franks

9/5/06 – Steve Hunt

#### NOTICES OF VIOLATIONS:

On 3/20/06, a letter was sent to the owner advising him of the Board Decision and need to vacate the site by 6/19/06.

On 5/31/06, a letter was sent to the owner reminding him of the timeframe for removal.

On 6/22/06, a Thirty Day Notice to Abate was mailed to the property owners.

On 8/21/06, a Notice of Violation and Order to Show Cause and Notice of Assessment of Civil Fines and Penalties was mailed to the property owner by regular and certified mail.

On 8/22/06, the Notice of Violation was hand delivered to Mr. Guy by Estevan Benavides.

#### PUBLIC NUISANCE:

- **establishing and operating a Solid Waste Recycling Transfer/Processing facility without use permit approval in the AE-20 Zone. An application for the use permit PSP 02-028 was denied by the Planning Commission and your appeal to the Board of Supervisors was denied.**
- **storage and use of waste hauling, chipping and trucking equipment and materials in the AE-20 Zone.**

**CIVIL FINES AND PENALTIES: two (2) violations at \$100.00 per day from the date the notice was mailed (8/21/06 ) x 30 days (or until brought into compliance).**

#### STAFF'S RECOMMENDATION:

- **If the owners have abated the violations prior to the Hearing date, direct staff to prepare a Decision assessing Administrative Fees in the amount of \$765.00 to cover County costs and record the Decision as a lien against the property if the fee is not paid within 10 working days after the Hearing.**
- **If the owners have not complied prior to the Hearing, direct staff to prepare a Decision that declares the violations a public nuisance and assess Administrative Fees and full fines as per the Notice and Order and record the Decision as a lien against the property and refer the matter to the District Attorney for legal action.**

BEFORE THE BOARD OF SUPERVISORS

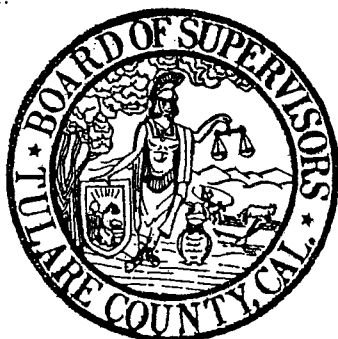
COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF AN APPEAL BY )  
DON GUY OF THE DENIAL OF )  
PSP 02-028 )

RESOLUTION NO. 2006-0144

UPON MOTION OF SUPERVISOR MAPLES, SECONDED BY SUPERVISOR COX, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD MARCH 14, 2006, BY THE FOLLOWING VOTE:

- AYES: SUPERVISORS ISHIDA, CONWAY, COX, WORTHLEY, AND MAPLES
- NOES: NONE
- ABSTAIN: NONE
- ABSENT: NONE



ATTEST: C. BRIAN HADDIX  
COUNTY ADMINISTRATIVE OFFICER  
CLERK, BOARD OF SUPERVISORS

BY: *[Signature]*  
Deputy Clerk

\*\*\*\*\*

Denied the appeal by Miramonte Sanitation and upheld the Planning Commission's decision to deny Special Use Permit No. PSP 02-028 to allow a solid waste recycling and transfer facility in the AE-20 (Exclusive Agricultural - 20 acre minimum) Zone, and directed the applicant to cease and desist as quickly as possible.

RMA  
CAO

DAY  
3/16/06