

# LAND USE HEARING OFFICER'S RECOMMENDATION

**APPEAL NO. AC-16-9 and AC-16-10**

**Project No. 1010688; 15ZHE-80293-16BOA-20003**

**WESTSIDE COALITION OF NEIGHBORHOOD ASSOCIATIONS, Appellants,  
CITY OF ALBUQUERQUE CODE COMPLIANCE DIVISION, Party Opponent.**

1    **I.    BACKGROUND**

2           These consolidated appeals present an issue of interpretation of certain provisions of  
3    the Zoning Code. The appeals raise significant questions of the definition of a solid waste  
4    transfer station and whether or not the *combined* activities involved in a transfer station use  
5    are permissive in an M-1 Zone. These issues arise from an appeal of a declaratory ruling  
6    issued by Andrew Garcia, City Code Compliance Manager. Mr. Garcia issued the declaratory  
7    ruling on June 10, 2016, as a response to an April 6, 2016 request from Savina G. Garcia,  
8    P.E. of Wilson & Company, Inc.

9           The Appellants, a consortium of neighborhood associations, filed their appeal on July  
10   1, 2016. A similar appeal was filed by Peggy Norton on July 27, 2016. Appeals of declaratory  
11   rulings to the City Council are not subject to the time limits for filing appeals.<sup>1</sup> The City  
12   Council referred both appeals to this Land Use Hearing Officer (LUHO). At the August 16,

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1 See §14-16-4-4(B)(1) of the City Zoning Code.

13 2016, LUHO hearing on AC-16-9, Appellant’s council, upon stipulation by the City Staff  
14 Party Opponents, moved to consolidate Peggy Norton’s appeal of the declaratory ruling (AC-  
15 16-10) with AC-16-9. Legal Counsel for the Westside Coalition of Neighborhood  
16 Associations is apparently also representing Peggy Norton, the Appellant of AC-16-10. I  
17 find that consolidation of the two appeals will bring an expedient resolution of both appeals  
18 because they concern the same facts, issues, and Zoning Code sections.<sup>2</sup> In addition, I find  
19 that Peggy Norton intelligently and voluntarily waived her right to have a separate LUHO  
20 hearing on her appeal and voluntarily agreed to consolidation of AC-16-10 with AC-16-9.  
21 The appeal records of both appeals are included and considered in this recommendation.

22

23 **II. STANDARD OF REVIEW**

24 Review of these appeals is a whole record review to determine if the Code  
25 Compliance Manager erred in his conclusions of the declaratory ruling; (1) in applying  
26 adopted city plans, policies, and ordinances to the ruling; (2) in the appealed action, including  
27 its stated facts; or (3) in acting arbitrarily, capriciously or manifestly abusive of discretion.  
28 At the appeal level of review, the ruling must be supported by a preponderance of the  
29 evidence in the record to be upheld. The Land Use Hearing Officer is advisory to the City  
30 Council. The Land Use Hearing Officer has the delegated authority to recommend that the  
31 City Council grant the appeal in whole or in part, deny, or remand the appeal to the Code  
32 Compliance Manager for reconsideration if the remand is necessary to clarify or supplement

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2 Because Counsel moved to consolidate both appeals at the conclusion of the LUHO hearing on AC-16-9, testimony was taken on the record from Appellant of AC-16-10 regarding her stipulation to consolidate the appeals and which included her voluntary waiver of a separate hearing for oral presentation of her appeal case.

33 the record, or if the remand would expeditiously dispose of the matter.”<sup>3</sup>

34 After reviewing the record, hearing arguments of the parties, and testimony from  
35 witnesses, I find that the construction given to the text of the M-1 zone by the Code  
36 Compliance Manager in his declaratory ruling is not supported in the text of the Zoning  
37 Code. I also find that the *combination* of the various activities involved in the solid waste  
38 transfer station which was the subject of the declaratory ruling, are not similar to, or  
39 compatible with the allowed uses in the Zoning Code text of the M-1 zone. Further, I find  
40 that Mr. Garcia’s conclusion that a solid waste transfer station is a permissive use in the M-  
41 1 zone is inconsistent with the designations given other similar solid waste transfer stations  
42 in the City. Finally, I find that Mr. Garcia’s declaratory ruling is arbitrary and capricious for  
43 these reasons and because he did not consider other important issues and facts in his ruling  
44 which I describe below.

45

### 46 **III. DISCUSSION**

47 The precise language of the request that triggered the June 10, 2016 ruling is:

48 “We formally request a declaratory ruling that a solid waste transfer  
49 station/convenience center and a household hazardous waste drop-off  
50 center are allowed activities in an M-1 zoned property; and that these  
51 activities do not constitute a public utility facility.”

52

53 However, the request for a declaratory ruling was not a hypothetical request about a  
54 hypothetical M-1 zone, or a hypothetical transfer station. This request clearly concerned a  
55 specific “M-1 zoned property” and a specific proposed transfer station. The requestor, in the

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3. See Rules of the Land Use Hearing Officer adopted by the City Council, February 18, 2004. Bill No. F/S OC-04-6 and codified in Section 14-16-4-4 of the Zoning Code.

56 April 6, 2016 letter expressly referred to the M-1 zoned property at “4600 Edith Boulevard  
57 NE,” and the “proposed Edith Transfer Station, COA Project No. 7006.92.” Presumably to  
58 assist Mr. Garcia with his ruling, a document entitled “Proposed Project Narrative,”  
59 describing the activities in the proposed transfer station was included with the request for  
60 declaratory ruling.

61 In response to the request, Mr. Garcia ruled:

62 “The operation of a solid waste transfer station and convenience center,  
63 including a household hazardous waste drop-off center, is a permissive  
64 activity in the M-1 Light Manufacturing zone...” (endnotes omitted).  
65

66 In arriving at this conclusion, Mr. Garcia interpreted the text of the various allowed uses in  
67 the M-1 zone to be “similar and compatible” with the *activities* performed in a solid waste  
68 transfer station. Although Appellants argue otherwise, I find that in determining whether a  
69 use not specifically permitted by the Zoning Code can be considered as permissive or  
70 conditional in a particular zone, the Code Compliance Manager has the authority to review  
71 the similarities of the activities associated with the proposed use with those allowed uses in  
72 a particular zone to determine if they are similar and compatible with the permissive or  
73 conditional uses in that zone. Zoning Code, §14-16-4-8(B) is an express delegation of this  
74 discretion and authority.

75 Solid waste transfer stations are not defined in the text of the Zoning Code. Thus, there  
76 can be no dispute that a “solid waste transfer station” is not a use that is expressly allowed  
77 as a permissive use or as a conditional use in any zone, including the M-1 zone. Appellants  
78 take the position that in declaring that a solid waste transfer station is a permissive use in the  
79 M-1 zone, Mr. Garcia ignored the plain meaning of the listed uses that are allowed in the M-

80 1 zone of the Zoning Code text. They also contend that in his declaratory ruling, Mr. Garcia  
81 ignored some significant activities that occur at a transfer station, only comparing selected  
82 activities with the alleged activities allowed in an M-1 zone. As shown below, I agree on  
83 both points. However, before moving into the analysis of the ruling, it should be determined  
84 what degree of deference the interpretative process used by the Code Compliance Manager  
85 should be accorded to his construction of the text of the Zoning Code and ultimately, to his  
86 ruling.

87 Appellants suggest that because the City in two previous zoning decisions approved  
88 SU-1 zoning for two other solid waste transfer stations, deference should not be accorded to  
89 this declaratory ruling because this ruling appears to be a shift in policy and in interpretation  
90 of the Zoning Code with regard to transfer stations. The record shows that in 1992, the EPC  
91 changed a zone from SU-2 for IP uses to SU-2 for a SU-1 use to allow a solid waste  
92 convenience center at that site. This transfer station is known as the Eagle Rock Transfer  
93 Station. The City Staff did not dispute this history. Following that decision, in March 1997,  
94 the City Council, citing the Eagle Rock transfer station zone change, approved a SU-1 zone  
95 for M-2 and R-1 uses for a solid waste transfer station at the Montessa Park site. Again, City  
96 Staff did not challenge these facts. I find that Mr. Garcia's interpretation is not consistent  
97 with the two previous City actions involving solid waste transfer stations.<sup>4</sup> Under New  
98 Mexico law, persuasive weight is to be given to the long-standing construction of ordinances  
99 by the City. This rule of deference arises in part from the notion that questions of

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4 An argument can be made that a transfer station could be permissive in both the M-1 zone and in a SU-1 zone, which would avoid the appearance of an inconsistency in interpretation and policy. However, the City Staff did not make this argument, and as shown below, a transfer station is not similar to the allowed uses in an M-1 zone.

100 interpretation of the Zoning Code implicate the expertise of those charged with interpreting  
101 it. However, as shown from the history, the City has previously given SU zoning to solid  
102 waste transfer station uses and activities. This is particularly important because, except for  
103 the two previous actions involving solid waste transfer stations, a solid waste transfer station  
104 remains uncategorized in any zone in the text of the Zoning Code. Additionally, in an earlier  
105 decision involving this site and this proposed transfer station, the EPC approved a zone  
106 change on the site from the M-1 zone to a SU-1 zone for the exact transfer station described  
107 in the request for Mr. Garcia’s declaratory ruling. Although the City Council remanded the  
108 zone change to the EPC, it did so because the analysis supporting the zone change, and the  
109 EPC decision came up short.<sup>5</sup> The record was deficient with regard to justifying it under R-  
110 270-1980. I find similar deficiencies here, not with regard to R-270-1980, but concerning  
111 meaningful analysis supporting the Code Compliance Manager’s conclusions in the  
112 declaratory ruling.

113 In his ruling, Mr. Garcia relies primarily on textual comparisons of *activities* to support  
114 his interpretation that a transfer station is permissive in a M-1 zone. As stated above,  
115 normally a heightened degree of deference to Zoning Code interpretations by the Code  
116 Compliance Manager is accorded because this function implicates zoning expertise by those  
117 charged with such expertise. It appears, however, there is no longstanding basis for according  
118 weight to the present construction of the Code. Thus, under these circumstances, Mr.  
119 Garcia’s interpretation should not be accorded the deference that is usually due.

120 It cannot be emphasized enough that there is not a defined use for a “solid waste transfer

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5 I note that there was testimony indicating that after the Council remanded the application to the EPC, the applicant, for unknown reasons, withdrew the application before the EPC reconsidered the matter.

121 station” listed in the text of §14-16-2-20, M-1, Light Manufacturing Zone of the Code. As  
122 stated above, however there is some guidance in the text of §14-16-4-8, Declaratory Rulings.  
123 In issuing a declaratory ruling to determine whether a use not specifically permitted by the  
124 Zoning Code can be considered as permissive or conditional in a particular zone, “the  
125 similarity to and compatibility with other permissive or conditional uses in that zone shall be  
126 determining factors.”<sup>6</sup> Accordingly, when employing this analysis (a similarity to, and  
127 compatibility with analysis), the Code Compliance Manager must consider both the  
128 permissive uses and the conditional uses in the “particular zone” he is comparing. Mr. Garcia  
129 did not do this. He only made his comparison with permissive uses, ignoring conditional uses  
130 in the M-1 zone. But this is not a fatal flaw in his ruling.

131 In concluding that a solid waste transfer station (transfer station) is a permissive use in  
132 a M-1 zone, Mr. Garcia concluded:

133 “The operation of a solid waste transfer station and convenience center,  
134 including a household hazardous waste drop-off center, is a permissive  
135 activity in the M-1 Light Manufacturing zone (ref. §14-16-2-20-(A)(8)  
136 of the Comprehensive City Zoning Code). Although the code requires  
137 that all manufacturing activities in the M-1 zone occur within a  
138 completely enclosed building, the assembly and treatment of articles –  
139 including the handling, sorting, and transitory storage of solid wastes for  
140 transfer to another facility – may occur either inside a building, outside  
141 a building, or both. These activities... are similar and compatible to other  
142 uses permitted in the M-1 zone, including recycling yards; a bottling  
143 plant, cold storage plant, or warehousing operation with deliveries by  
144 large trucks and semi-tractor trailers; as well as truck terminal and related  
145 maintenance facilities.”

146  
147 This is the crux of his analysis that resulted in the conclusion that a transfer station is a  
148 permissive activity (not use) in the M-1 zone. The zoning section referenced by Mr. Garcia

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6 See §14-16-4-8(B).

149 under §14-16-2-20-(A)(8) states in full:

150 “Manufacturing, assembling, treating, repairing, or rebuilding articles,  
151 except those conditional or otherwise limited in this zone or specifically  
152 listed as permissive or conditional in the M-2 zone, provided all  
153 manufacturing is conducted within a completely enclosed building.”

154 Mr. Garcia, therefore, takes the position that a transfer station is similar to, and compatible  
155 with the defined permissive uses in §14-16-2-20-(A)(8) which include “manufacturing,  
156 assembling, treating, repairing, or rebuilding articles.” Mr. Garcia attempted to clarify his  
157 written ruling, testifying that it is his interpretation of this section of the Code that of all these  
158 permissive activities in the M-1 zone, only “manufacturing” must take place in a fully enclosed  
159 building and that “assembling, treating, repairing, or rebuilding articles” can occur outside.  
160 This indoor/outdoor distinction does little to resolve the decisive issue in this appeal—whether  
161 a transfer station is similar to, and compatible with “manufacturing, assembling, treating,  
162 repairing, or rebuilding articles.” Assuming that §14-16-2-20-(A)(8) only requires  
163 “manufacturing” activities to occur indoors and “assembling, treating, repairing, or rebuilding  
164 articles” can occur outdoors, the question remains, what makes the *activities* performed or  
165 conducted at a transfer station similar to and compatible with the defined uses in §14-16-2-20-  
166 (A)(8), or to the “other uses” identified in the declaratory ruling such as a “recycling yard, a  
167 bottling plant, cold storage plant or warehousing operation with deliveries by large trucks and  
168 semi-tractor trailers, as well as truck terminal and related facilities?” Mr. Garcia never  
169 addresses or resolves this fundamental question in his ruling. Instead, he merely concludes that  
170 the various permissive activities and uses listed in the text of the M-1 zone are similar to and  
171 compatible with those *activities* of a transfer station.  
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174 Because the request for the declaratory ruling did not concern a hypothetical zone  
175 change site, or a hypothetical proposed transfer station, Mr. Garcia had within his grasp all the  
176 information he needed to make the meaningful comparisons a “similar to and compatible with”  
177 analysis requires.<sup>7</sup> The request specifically implicated the “proposed Edith Transfer Station”  
178 and its various activities. Mr. Garcia therefore had detailed information regarding the activities  
179 of the convenience center, the hazardous waste activities, vehicle maintenance facility, the  
180 recycling activities and drop-off area, the refueling islands, and the other solid waste transfer  
181 station activities. For example, generally, a solid waste transfer station is defined as a:

182 Light industrial-type facility where trash collection trucks discharge  
183 their loads so trash can be compacted and then reloaded into larger  
184 vehicles (e.g. trucks) for shipment to a final destination site, typically  
185 a landfill or a waste-to energy facility (EPA January 2001).<sup>8</sup>  
186

187 Mr. Garcia adopted this basic definition in his ruling which includes various basic activities.  
188 The pivotal and precise basic question Mr. Garcia was faced with, and which he did not answer  
189 is: How are these underlying activities of a solid waste transfer station, including discharging  
190 loads of trash, compacting that trash on site, and then reloading the compacted trash unto trucks  
191 similar to the listed M-1 uses in the Zoning Code text? Although these are the basic elements  
192 of a transfer station, the Edith Transfer Station clearly includes additional activities involving  
193 hazardous waste and recycling of which Mr. Garcia also failed to address in his ruling.

194 With regard to the comparison of activities, Mr. Garcia merely concluded that a transfer  
195 station is similar to and compatible with the activities associated with “recycling yards, bottling

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7 I note that this kind of analysis has very important ramifications. Finding that a use, otherwise not included in the text of a particular allowed zone, is an allowed use because it is similar to, and compatible with allowed uses defined in the text of the Code, has the same practical significance as a legislative amendment to the text of the Zoning Code.

8 See the Proposed Project Narrative attached to the request for the declaratory ruling.

196 plant, cold storage plant, warehousing and truck terminal.” First, however, “recycling yards”  
197 are not listed in the text of the M-1 zone as an allowed use or as a conditional use. At the  
198 LUHO hearing, Mr. Garcia testified, because there are existing recycling yards in M-1 zones  
199 in the City, recycling yards are permissive uses in an M-1 zone. Nevertheless, in a declaratory  
200 ruling, Mr. Garcia is charged with interpreting the text of the Zoning Code. It is not clear from  
201 the ruling if recycling yards exist in M-1 zones as non-conforming uses or otherwise. In  
202 addition, recycling may occur as part of another expressly allowed use. The point is that the  
203 plain meaning of his ruling does not comport with the plain meaning of the *text* in the Zoning  
204 Code with regard to allowed uses in the M-1 zone. And, although there may exist “recycling  
205 yards” in a M-1 zone as Mr. Garcia suggests, because his ruling is not accorded deference, I  
206 find that Mr. Garcia has not supported this contention with any credible support in the record.

207         Mr. Garcia attempted to further clarify his written comparisons at the LUHO hearing.  
208 He testified that there is no distinction between the term “use” and “activity.” However, a use  
209 may include a combination of activities as is the case with a solid waste transfer station use,  
210 and particularly with the proposed Edith Transfer Station. Mr. Garcia conflated the meaning  
211 of an activity with the defined uses in the text of the M-1 zone of the Code. The gravest error  
212 of his ruling, however, was that Mr. Garcia, did not consider *all* the activities that will take  
213 place at the Edith Transfer Station. Instead, Mr. Garcia seemingly focused only on the trucking  
214 activities involved in the M-1 zone uses with the trucking activities at a transfer station.  
215 Targeting an individual activity in isolation to a use, when a use such as a transfer station  
216 obviously includes multiple activities, presents problems. For the moment, it is clear that there  
217 are activities involved in a transfer station that are also involved in any number of the allowed

218 M-1 uses in the text of the Code. Mr. touched on one such obvious similarity. For example,  
219 refueling trucks and trucking activities will takes place at the proposed Edith Transfer Station.  
220 Truck terminals are a defined allowed use in the M-1 zone text and truck terminals encompass  
221 truck refueling and trucking activities. It is also obvious that the listed allowed M-1 uses having  
222 to do with manufacturing and warehousing all involve trucking activities of the goods and  
223 “articles” manufactured, including loading and unloading.<sup>9</sup> Presumably, this similarity also  
224 applies to the “other uses” identified by Mr. Garcia in his ruling, including a “bottling plant,  
225 cold storage plant, or warehousing operation with deliveries by large trucks and semi-tractor  
226 trailers; as well as a truck terminal and related maintenance facilities.” Again, trucking  
227 activities are an immediate commonality that can easily be gleaned from the listed allowed  
228 uses in the text of the M-1 zone with some of the activities conducted in a transfer station.<sup>10</sup>  
229 However, this limited similarity, without defining or comparing the materials involved to what  
230 is allowed in the text of the M-1 zone uses, easily cross over to allowed activities or uses in  
231 various other zones in the text of the Zoning Code. In short, trucking as a generic activity, is  
232 allowed in various zones.

233 At the LUHO hearing, Appellant’s counsel demonstrated that the “deliveries by large  
234 trucks” are allowed uses/activities in a C-3 zone and in a C-2 zone. This is accurate. In addition,  
235 bottling and warehousing operations are permissive uses in a C-3 zone. Yet, nobody has taken  
236 the position that a C-3 zone is appropriate for a solid waste transfer station merely because  
237 trucking is a shared activity with transfer station uses. Appellants’ point is that viewing and

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9 See §14-16-2-20-(A)(8).

10 In the “Proposed Project Narrative,” which was attached to the request for a declaratory ruling, it is disclosed that “[t]he transfer station will add 130 transfer truck trips.”

238 comparing in isolation various single activities or elements of a transfer station to the listed  
239 allowed uses in the M-1 zone is spurious and yields erroneous and irrational results. One such  
240 problem of such a superficial comparison is that none of the activities that Mr. Garcia focused  
241 on in his ruling, on their own, and in isolation, requires a permit from the New Mexico  
242 Environmental Improvement Board (NMEIB).

243 Trucking in of itself, as a similar activity, is less important for a meaningful  
244 comparison, than are the substances and materials involved in a solid waste transfer station  
245 and particularly with regard to the proposed Edith Transfer Station. In his ruling, Mr. Garcia  
246 steered clear from any analysis of the substances of what will be transported, unloaded, sorted,  
247 and reloaded at a transfer station. He also circumvented any meaningful investigation or  
248 comparison of the attributes or types of “articles,” materials, and or substances loaded,  
249 transported, and unloaded with manufacturing, assembling, and repairing activities of the  
250 allowed M-1 uses in the Zoning Code.<sup>11</sup>

251 It is undisputed that some of the activities involved at a solid waste transfer station  
252 require NMEIB permitting because some activities at the proposed Edith Transfer Station  
253 involve the collection, discharging, sorting, and transferring of large amounts of household  
254 hazardous waste (HHW), including discarded “paints, solvents, herbicides, pesticides, and  
255 batteries.”<sup>12</sup> There are additional permit application requirements for processing facilities and  
256 for recycling facilities that accept these varied solid waste materials and that accompanies the  
257 recyclable materials.<sup>13</sup> Appellants argue this distinguishing fact, sets a transfer station far apart

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11 At the LUHO hearing, I was urged to not hold the declaratory ruling to a high standard or to not expect Zoning Staff to perform detailed legal analysis. See my footnote 7 above.

12 See June 10, 2016, Declaratory Ruling, footnote ii.

13 See NMAC 20.9.3.1.

258 from any comparison of uses, activities, “articles,” or materials characteristically processed  
259 and transported within the allowed listed M-1 zone uses. I agree. The activities of a solid waste  
260 transfer station that involve solid waste materials and substances including HHW are nowhere  
261 contemplated by any of the uses identified in the declaratory ruling or in the Code text of the  
262 M-1 zone. The M-1 uses Mr. Garcia describes in his ruling, including “manufacturing,  
263 assembling, treating, repairing, or rebuilding articles,” do not match-up with activities  
264 involving large amounts of solid waste, including HHW. If there is a comparison to be made,  
265 Mr. Garcia did not make it. It was error to not include these considerations, the activities, and  
266 the substances associated with them in the declaratory ruling.

267 I find that while some trucking activities may be allowed in an M-1 zone, the activities  
268 involving solid waste and HHW at a transfer station, and particularly at the proposed Edith  
269 Transfer Station are not activities that are similar to, or compatible with any of the listed  
270 allowed uses (or the activities of the allowed uses) in an M-1 zone in the Code. I further find  
271 that *all* the various *combined* activities involved with a solid waste transfer station, as a single  
272 use, simply cannot be rationally bundled together and pigeonholed into “manufacturing,  
273 assembling, treating, repairing, or rebuilding articles” as declared in Mr. Garcia’s ruling. These  
274 are the fatal errors of the declaratory ruling.

275 Appellants argue that rather than attempt to pigeonhole some of the various separate  
276 activities involved at a transfer station into the M-1 allowed uses, the Code Compliance  
277 Manager should have reviewed the history and determined that because a transfer station is an  
278 infrequent use in the City, and because it includes various combinations of uses and activities  
279 not expressly allowed in any other zone, the SU-1 zone is the only appropriate zone for a

280 transfer station. In support of this contention, Appellants point to the two existing transfer  
281 station sites in Albuquerque and argue that SU-1 zoning is more appropriate for a transfer  
282 station. I agree. They also point to the recent zone change request (AC-15-6) as similar proof.  
283 Based on the two existing zoned transfer stations in the City, it is clear that SU-1 zoning is  
284 consistent with how the City has previously zoned these types of facilities. An SU-1 zone  
285 “provides suitable sites for uses which are special because of infrequent occurrence, effect on  
286 surrounding property, safety, hazard, or other reasons, and in which the appropriateness of the  
287 use to a specific location is partly or entirely dependent on the character of the site design.”<sup>14</sup>  
288 The evidence suggests that a solid waste transfer station is sited infrequently. The proposed  
289 Edith Transfer Station has unique safety and hazardous waste issues that require NMIEB  
290 permitting which are partly dependent on site design.<sup>15</sup> In addition, SU-1 zones are particularly  
291 appropriate for “[u]se combinations not adequately allowed and controlled in other zones,  
292 relative to a specific site.”<sup>16</sup> As shown above, the proposed Edith Transfer Station  
293 encompasses distinctive “use combinations” that together, are not expressly allowed in any  
294 zone. Just as the two other transfer stations are in SU zones, it is clear that this proposed transfer  
295 station is also squarely appropriate for SU-1 zoning.

296 In conclusion, I find that Mr. Garcia’s interpretation of the text of the M-1 zoning  
297 should not be accorded deference. The conclusion he reaches that a transfer station is a  
298 permissive use in a M-1 zone is inconsistent with previous zoning of transfer station in the  
299 City. Furthermore, his conclusion is erroneous because the combination of activities involved

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14 See § 14-16-2-22, SU-1 Special Use Zone.

15 I note that the April 6, 2016, request for declaratory ruling included a specific site design for the proposed Edith Transfer station which included the actual transfer station activities conspicuously placed in the center of the site.

16 See § 14-16-2-22(35).

300 in a transfer station, particularly those activities involving solid waste and HHW are not similar  
301 to or compatible with the listed allowed M-1 uses.

302 I respectfully recommend that to expeditiously dispose of this matter, the City Council  
303 should void the June 10, 2016 ruling, and replace it with a finding that solid waste transfer  
304 stations are more appropriately zoned SU-1. In the alternative, I recommend that the City  
305 Council merely void the June 10, 2016 declaratory ruling on the basis that it is an erroneous  
306 ruling.



Steven M. Chavez, Esq.  
Land Use Hearing Officer

August 26, 2016