

**ORDINANCE 19-1
AMENDING ORDINANCE 12-2**

**AN ORDINANCE OF THE CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
AMENDING THE CONSTRUCTION & DEMOLITION
DEBRIS PROGRAM ORDINANCE**

WHEREAS, In 2012, the Central Contra Costa Solid Waste Authority (CCCSWA) adopted Ordinance 12-2 regarding the agency’s Construction & Demolition Debris Program; and

WHEREAS, The CCCSWA wishes to amend Ordinance 12-2 to provide clarification regarding the agency’s certification program for Construction & Demolition Debris recovery facilities and make other updates, clarifications, and corrections to the ordinance.

NOW, THEREFORE, the Board of Directors (“Board”) of the CCCSWA hereby ordains as follows:

Section 1. **Adoption.** This Ordinance amends and adds to Ordinance 12-2, the Construction & Demolition Debris Program Ordinance, as set forth in Exhibit A. Text to be added is indicated in underlined font (e.g., underlined) and text to be deleted is indicated in ~~strikeout~~ font (e.g., ~~strikeout~~).

Section 2. **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 3. **CEQA.** The Board finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines (Title 14 of the California Code of Regulations) Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change in the environment, directly or indirectly. Further, this action is exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (the amendments are exempt because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment).

Section 4. **Effective Date.** This Ordinance shall be effective 30 days after its adoption.

Section 5. **Publication.** The Board Secretary shall either (a) have this Ordinance published once within 15 days after adoption in a newspaper of general circulation in Contra Costa County, or (b) have a summary of this Ordinance with the names of the Board members voting for and against the Ordinance published twice in a newspaper of general circulation, once 5 days before

its adoption and again within 15 days after its adoption, and with a certified copy of the entire Ordinance posted at the CCCSWA offices.

The foregoing Ordinance was introduced at a regular meeting of the Board on September 26, 2019, and adopted and ordered published at a regular meeting of the Board on October 24, 2019 by the following vote:

AYES: Members: _____

NOES: Members: _____

ABSTAIN: Members: _____

ABSENT: Members: _____

Karen Mitchoff, Chair
Central Contra Costa Solid Waste Authority
County of Contra Costa, State of California

COUNTER-SIGNED:

APPROVED AS TO FORM:

Janna McKay, Secretary of the Board,
Central Contra Costa Solid Waste Authority,
County of Contra Costa, State of California

Deborah L. Miller, Counsel for the
Central Contra Costa Solid Waste Authority,
County of Contra Costa, State of California

EXHIBIT A

ORDINANCE 12-2 AS AMENDED BY ORDINANCE 19-1

CONSTRUCTION & DEMOLITION DEBRIS PROGRAM ORDINANCE

ORDINANCE TITLE: ~~PERMITTING OF~~ CONSTRUCTION AND
DEMOLITION DEBRIS ~~TRANSPORTER SERVICES~~ PROGRAM

Section I. Purpose and Findings.

The Central Contra Costa Solid Waste Authority (the “CCCSWA”) hereby recites and finds as follows:

a. As of the year 2000, the California Integrated Waste Management Act of 1989 requires 50% of ~~the waste that was disposed of in landfills in 1990~~ to **all solid waste** be diverted from the waste stream.

b. The diversion and recycling of ~~r~~Recyclable ~~m~~Materials will assist the CCCSWA in helping Member Agencies achieve these state-mandated goals and help postpone the need for new landfill capacity.

c. The CCCSWA has franchised a residential recycling program on behalf of the constituents of the CCCSWA that includes the Cities and Towns of Danville, Lafayette, Moraga, Orinda, Walnut Creek and certain unincorporated areas of Central Contra Costa County in an effort to meet the mandatory landfill diversion goals.

d. **The California Green Building Standards Code (Part 11 of the California Building Standards Code in Title 24) generally requires covered projects to recycle and/or salvage for reuse a minimum of 65% of nonhazardous construction and demolition (“C&D”) debris, or meet applicable local construction and demolition waste management ordinances, whichever is more stringent.** The Member Agencies have ~~previously~~ adopted construction and demolition ordinances **and/or the California Green Building Standards Code, at times with changes, additions, or deletions,** to attempt to divert the landfilling of the recyclable portions of construction and demolition debris. ~~These ordinances mandate a 50% diversion requirement for projects meeting a certain size threshold, or “covered projects.”~~ The Board of Directors of the CCCSWA (the “Board”) wishes to support these ordinances by regulating the permitting of construction and demolition debris recycling transporter services being provided to those covered projects, **and certifying construction and demolition debris facilities.**

e. The Board finds that it is in the best interests of the CCCSWA to institute a Construction and Demolition Debris Transport Permit ~~Program~~ **and facility certification program** to encourage and track the transfer and recycling of construction and demolition debris generated within the ~~Central Contra Costa County area~~ **Service Area.**

f. Since 1996, the CCCSWA permitted the collection of recyclable materials, including construction and demolition debris, from commercial properties through Ordinance 96-1, "Permitting of Commercial Recyclers." ~~However, with the adoption of a new program governing commercial recycling, the CCCSWA will repeal Ordinance 96-1. This Ordinance 12-2~~ replaced the permitting program of Ordinance 96-1 ~~only~~ with regard to construction and demolition debris transporters. **CCCSWA adopted a new program governing commercial recycling through Ordinance 15-1, "Mandatory Commercial Recycling," and through franchise. Thus, Ordinance 96-1 has been repealed and replaced.**

g. ~~At the expiration of the CCCSWA solid waste franchise agreements in 2015,~~ ~~this~~ **This** Ordinance will be reevaluated **periodically**, and may be amended or repealed as the Board deems necessary. The Board may choose ~~at that time~~ to authorize exclusive solid waste handling services that encompass construction and demolition debris, other solid waste and/or recyclable materials, as it finds to be in the best interest of the CCCSWA. Therefore, this ~~permitting~~ program is intended as an interim measure, and is not intended to create any right to continued service provision under Public Resources Code section 49520 *et seq.*

Section II. Effective Date.

This Ordinance, **as amended, shall take effect on [_____]** ~~shall take effect on July 26, 2012.~~ This Ordinance will be reviewed periodically once implemented and amendments will be recommended to the CCCSWA Board, as needed, to improve effectiveness and performance of the ~~permit~~ program governed by this Ordinance.

Section III. Definitions.

The following words and phrases, whenever used in this Ordinance shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning.

a. "CCCSWA" means the Central Contra Costa Solid Waste Authority or its designated representative.

b. "Certified C&D Recovery Facility" means any **Recycling Facility** certified by the CCCSWA **pursuant to its then-current facility certification program** as operating in a manner that ~~recovers at least 50% or more of recyclable materials~~ **is expected to recover Recyclable Materials** from **C**onstruction and **D**emolition **D**ebris ~~provided for disposal.~~

c. "Construction and Demolition Debris Transporter Permit" or "Permit" means a permit issued by the CCCSWA, according to the procedures set forth in this Ordinance, which authorizes a ~~construction and demolition materials transporter~~ **Person** to collect ~~and/or,~~ transport, **and/or convey** Construction and Demolition Debris and Green Waste ~~associated with generated by a construction and/or demolition project from the Service Area~~ **Covered Project.**

d. "Construction and Demolition Debris" means used or discarded materials ~~removed from Premises during construction or renovation of a structure resulting from construction, remodeling, repair or demolition operations on any pavement, residential or~~

~~commercial building or other structure~~ generated by a Covered Project (for example, carpet, wood, aggregate, paint, shingles, and wallboard).

e. **“Construction and Demolition Ordinance”** means an ordinance adopted by a Member Agency that ~~specifies collection, transfer, processing, and disposal~~ **regulates Construction and Demolition Debris, including a Member Agency’s adoption of the California Green Building Standards Code, Part 11 of the California Building Standards Code in Title 24, with any changes, additions, or deletions.**

f. **“Covered Project”** means any project subject to a Member Agency’s Construction and Demolition ~~Recyclable Materials with the objective of maximizing reuse and/or diversion from landfilling~~ **Ordinance.**

fg. **“Executive Director”** means the Executive Director of the CCCSWA.

gh. **“Green Waste”** means tree trimmings, grass cuttings, dead plants, leaves, branches, and dead trees (not more than six (6) inches in diameter) and similar materials generated ~~at the Premises~~ **by a Covered Project.**

hi. **“Local Jurisdiction”** means Contra Costa County, and the Cities/Towns of Danville, Lafayette, Moraga, Orinda, and Walnut Creek to the extent their boundaries are within the Service Area.

ij. **“Member Agencies”** means the member agencies of the CCCSWA, which includes Contra Costa County, and the Cities/Towns of Danville, Lafayette, Moraga, Orinda, and Walnut Creek.

jk. **“Permitted Construction and Demolition Debris Transporter”** or **“Permittee”** means a Person or business entity that has been issued a **Construction and Demolition Debris Transporter** Permit from the CCCSWA ~~and that is in the business of collecting and/or transporting Construction and Demolition Debris, and Green Waste if it is part of the project, to a Recycling Facility.~~

kl. **“Person”** means an individual, association, partnership, corporation, or joint venture.

lm. **“Premises”** means the ~~residential, commercial or industrial~~ land or building ~~in the Service Area~~ where ~~Construction and Demolition Debris~~ **a Covered Project** is ~~generated~~ **located.**

mn. **“Recyclable Materials”** means any materials which, in whole or in part, may be recycled.

no. **“Recycling Facility”** means a facility that has adequate capacity for receipt, sorting, storage and processing of Recyclable Materials so that they can be further processed or sold to end-use markets, and is operated in compliance with applicable state and local statutes and regulations, including permitting requirements when applicable.

op. “Residual” means contaminant material, separated from Recyclable Materials or Green Waste, that cannot be recycled, composted, marketed or otherwise utilized, and must be disposed of as Solid Waste, hazardous waste, or medical waste.

pq. “Self-Haul” means the act of transferring ~~Recyclable Materials to a Recycling Facility for reuse or reprocessing~~ materials by the ~~generator~~ owner, tenant, occupant, or property manager of the ~~Recyclable Materials~~ Premises where the material is generated using its own employees and vehicles for the purpose of delivery to a reuse or reprocessing facility.

qr. “Service Area” means the physical area encompassed by the ~~jurisdiction~~ jurisdictional boundaries of the ~~Local Jurisdictions~~ Member Agencies, as set forth in, and as limited by, the Service Area Map for the CCCSWA, attached to the Joint Powers Agreement establishing the CCCSWA, as the same may be revised from time to time.

rs. “Solid Waste” means all putrescible and non-putrescible solid, semi-solid and liquid wastes including garbage, trash, refuse, paper, rubbish, ashes, plastic, glass, metals, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge that is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes as defined in the California Public Resource Code Section 40191, as that section may be amended from time to time except any of the above offered for sale.

Section IV. Requirement to Recycle Construction and Demolition Debris.

a. Construction and Demolition Debris **generated by a Covered Project must shall** be separated from other Solid Waste (such as normal household garbage, or commercial or industrial non-construction related debris) for the purpose of **recycling, reuse, or reprocessing salvage** consistent with the requirements and guidelines established in the Construction and Demolition Ordinances **where the Covered Project is located** ~~adopted by the Local Jurisdictions where the Construction and Demolition Debris is generated.~~

b. Construction and Demolition Debris diversion must also comply with ~~the 2010 California Green Building Standards Code (CALGreen) requirement of at least 50 percent of generated construction materials (2010 Green Building Standards Code, Sections 4.408~~ **applicable state and 5.408) local laws, as the same may be updated** and ~~any future changes~~ **amended from time to** ~~the diversion rate under that Code~~ **time.**

Section V. ~~Requirement to Properly Convey Construction and Demolition Debris to~~ Certified C&D Recovery Facilities

a. The CCCSWA ~~will~~ **is authorized to** designate and certify **Certified C&D Recovery Facilities** ~~facilities that recover at least fifty (50) percent or more of recyclable materials from Construction and Demolition Debris provided for disposal. Such facilities~~ **Certified C&D Recovery Facilities** will be expected to, **among other things**, provide receipts or other documentation showing the **certified facility name, material type, weight or volume, and unit of measurement (e.g. pounds, tons, cubic yards) for each load delivered. The**

~~CCCSWA will publish the list of Certified C&D Recovery Facilities for Member Agencies' use recovery and disposal amounts for each delivery. The CCCSWA will choose, evaluate, and periodically audit the Certified C&D Recovery Facilities to assess 50% or greater recovery of recyclable materials and compliance with all other requirements of the certification.~~ **The CCCSWA will publish the list of Certified C&D Recovery Facilities for Member Agencies' use.**

b. Any facility may apply to become a Certified C&D Recovery Facility. Application must be made to the CCCSWA following the requirements in the then-current certification program. The CCCSWA will apply the standards described in the then-current facility certification program, consistent with the procedures set forth in this Ordinance, to determine whether a facility qualifies for certification. If the Executive Director finds that the application is consistent with the intent, purpose, and requirements of the facility certification program, the Executive Director has the authority to issue the certification subject to any conditions that he or she deems necessary to carry out the purpose of the program and this Ordinance. A facility must be certified pursuant to the current facility certification program to qualify as a Certified C&D Recovery Facility; any facility certified under a terminated certification program must reapply and receive certification under the then-current program.

c. If the application for certification is denied, the Executive Director shall so inform the applicant in writing, which shall be mailed to the applicant's address shown on the application. The applicant may, within ten (10) calendar days after the CCCSWA's mailing of such notice, appeal the Executive Director's decision by submitting a written statement to the CCCSWA Board of Directors setting forth all facts on which the applicant intends to rely in contesting the denial of the certification. **The Board may refer the appeal to a hearing officer for adjudication. The decision of the Board (or hearing officer, if so appointed) shall be final.**

d. In the event a Certified C&D Recovery Facility fails to comply with the requirements of this Ordinance or the terms and conditions of certification, the Executive Director may pursue enforcement as provided in Section XXV.

~~b. Construction and Demolition Debris must be transported to Certified C&D Recovery Facilities designated by the CCCSWA, unless it is reused on site. Other C&D Recovery Facilities may not be used unless permission is provided by the Executive Director, or designee.~~

Section VI. Requirement to Report Green Waste Collection.

To the extent that Green Waste may be combined in Construction and Demolition Debris that is transported by a Permittee, the Permittee shall ensure that the Green Waste is also conveyed to a Certified C&D Recovery Facility and shall report ~~tonnages~~ **weight or volume and unit of measurement (e.g. pounds, tons, cubic yards) of Green Waste collected for each load delivered** in accordance with ~~Section XVII.b.3~~ **the requirements of this Ordinance and any Construction and Demolition Ordinance where the Covered Project is located.**

Section VII. Construction and Demolition Debris Transporter Permit.

a. To the extent that ~~any construction and/or demolition~~a project is covered under a Member Agency's Construction and Demolition Ordinance, the Person seeking to **collect, transport, and/or convey** ~~the~~ Construction and Demolition Debris ~~from that project~~**generated by the Covered Project** must obtain a Construction and Demolition Debris Transporter Permit prior to undertaking ~~collection and transport~~**such** activities within the CCCSWA Service Area, **except as specified herein.**

b. Any Person required to obtain a Construction and Demolition Debris Transporter Permit and not having done so shall, within twelve (12) calendar days of CCCSWA's mailing of notice, apply for **(and subsequently be determined entitled to receive)** a CCCSWA Construction and Demolition Debris Transporter Permit or be subject to the penalties and impoundment provisions set forth herein.

Section VIII. Exceptions.

a. An owner, tenant, occupant or property manager of the Premises who removes Construction and Demolition Debris and/or Green Waste **generated by a Covered Project** and transports those materials via Self-Haul ~~to a Certified C&D Recovery Facility~~ is not required to obtain a **Construction and Demolition Debris Transporter** Permit under this Ordinance.

b. A general contractor or a subcontractor performing a significant portion of the services on a **Covered P**project, such as demolition, who ~~disposes of~~**removes** the Construction and Demolition Debris and/or Green Waste **generated by a Covered Project** using that contractor's own employees and incidental to the predominant purpose for which the services are being performed is not required to obtain a Permit under this Ordinance. The determination of whether removal of such materials is incidental to the predominant purpose for which the services are being performed may be based on the facts and circumstances of the particular project, and will be made by the CCCSWA.

c. ~~As provided in Section VII, Permits are required for all other Persons wishing to transport Construction and Demolition Debris from covered projects.~~ If a project is exempted from compliance with a Construction and Demolition Ordinance ~~based on infeasibility~~, this Ordinance does not require a Permit for transporting Construction and Demolition Debris ~~for~~**generated by** that project.

Section IX. Construction and Demolition Debris Transporter Permit Application.

a. The application for a Construction and Demolition Debris Transporter Permit must be submitted to the CCCSWA.

b. The Application shall include:

1. The name, business and mailing address, telephone, fax number and electronic mail address (if applicable) of the applicant, including emergency phone number.

2. The type of business.

3. The business license number(s) for all Local Jurisdictions in which the applicant operates or will operate.
4. The contact name(s) of such personnel employed to work in the CCCSWA Service Area.
5. The type, kind and make of each vehicle to be used by the applicant in the collection and/or transportation of Construction and Demolition Debris and Green Waste, including license plate number.
6. Whether such vehicle is so constructed as to prevent unintended loss of contents.
7. The type and cover used for covering its contents.
8. Type(s) of container(s) used for collection.
9. The method, manner and frequency of cleaning such vehicles.
10. A description of the type of Construction and Demolition Debris (mixed or by type) and/or Green Waste generated as part of ~~the project~~ **a Covered Project** to be collected and/or transported **by the applicant**.
11. Certified C&D Recovery Facilities where all or part of the materials may be processed.
12. A list of references.
13. A list of any environmental or other regulatory citations, complaints, notices or violations, or other regulatory enforcement sanctions pending or brought against applicant's business in the last five years.
14. A statement that, if any of the information in the application changes in any material respect, the applicant will notify the CCCSWA in writing of the change or changes and will file a new application if required by the CCCSWA.
15. A statement that the applicant will maintain insurance and provide insurance information as required.
16. A statement that the applicant agrees to furnish such information and reports required in the quarterly reports.
17. A statement that the applicant agrees to operate in accordance with all applicable laws.

Section X. Issuance of Construction and Demolition Debris Transporter Permit.

- a. If the Executive Director finds that the application is consistent with the intent ~~and~~, purpose, **and requirements** of this Ordinance, the Executive Director has the authority to

issue the Permit subject to any conditions that he or she deems necessary to carry out the purpose of this Ordinance.

b. If the application is denied, the Executive Director shall so inform the applicant in writing, which shall be mailed to the applicant's address shown on the application. The applicant may, within ten calendar days of the CCCSWA's mailing of such notice, appeal the Executive Director's decision by submitting a written statement to the Board setting forth all facts on which the applicant intends to rely in contesting the denial of the Permit. The Board may refer the appeal to a hearing officer for adjudication. The decision of the Board or its hearing officer shall be final.

Section XI. Insurance.

a. Any Permitted Construction and Demolition Debris Transporter shall procure and maintain at its sole cost for the duration of its Permit insurance as required **below by the CCCSWA in its standard contract.**

~~a. — Minimum Scope of Insurance. Coverage shall be at least as broad as:~~

~~1) — Insurance Services Office form number GL0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).~~

~~2) — Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.~~

~~3) — Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.~~

~~b. — Minimum Limits of Insurance. A Permitted Construction and Demolition Debris Transporter shall maintain policy limits of no less than:~~

~~1) — General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.~~

~~2) — Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.~~

~~3) — Worker's Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code and Employers Liability limits of \$1,000,000 per accident.~~

~~c. — Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CCCSWA. At the option of the CCCSWA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as~~

~~respects the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents; or Permitted Construction and Demolition Debris Transporter shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.~~

~~d. — Other Insurance Provisions.~~

~~The policies shall contain, or be endorsed to contain, the following provisions:~~

~~1) — General Liability and Automobile Liability Coverages.~~

~~(a) — The CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Permittee; products and completed operations of Permittee; premises owned, occupied or used by Permittee; or automobiles owned, leased, hired or borrowed by Permittee. The coverage shall contain no special limitations on the scope of protection afforded to the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents.~~

~~(b) — Insurance coverage shall be primary insurance as respects the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents. Any insurance or self insurance maintained by the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents shall be excess of Permitted Construction and Demolition Debris Transporter's insurance and shall not contribute with it.~~

~~(c) — Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents.~~

~~(d) — Insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.~~

~~2) — Worker's Compensation and Employers Liability Coverage.~~

~~The insurer shall agree to waive all rights of subrogation against the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents for losses arising from work performed by Permitted Construction and Demolition Debris Transporter for the CCCSWA.~~

~~3) — All Coverages.~~

~~Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CCCSWA.~~

~~e. — Acceptability of Insurers~~

~~Insurance is to be placed with insurers with a Best's Key Rating Guide rating of no less than A:VII~~

~~f. — Verification of Coverage.~~

~~Each Permitted Construction and Demolition Debris Transporter shall furnish the CCCSWA with certificates of insurance and with original endorsements evidencing the insurance required. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the CCCSWA before work commences. All policies shall require the insurer to provide notice of cancellation to the CCCSWA thirty (30) days prior to cancellation. In addition, each Permitted Construction and Demolition Debris Transporter shall provide evidence of any policy renewal no later than thirty (30) days prior to the expiration of the policy. The CCCSWA reserves the right to require complete certified copies of all required insurance policies, at any time.~~

~~g. — Modification for Special Circumstances.~~

b. The Executive Director may modify the ~~above~~ **generally applicable** insurance requirements as they pertain to individual Permittees as needed to address special circumstances, **or modify the insurance requirements generally applicable to all Permittees, as appropriate.**

Section XII. Indemnification.

Each Permitted Construction and Demolition Debris Transporter shall defend, indemnify and hold harmless the CCCSWA and its Board, the Member Agencies and their City or Town Councils and County Board, their officers, employees and agents, of and from any and all claims for damages, costs, expenses, penalties, losses or liability in law or equity, of any kind and nature whatsoever, arising out of any activities authorized by this Ordinance, including acts for which strict liability is imposed by law (**collectively, "Claims"**). **Each Permitted Construction and Demolition Debris Transporter shall also indemnify, defend, and hold harmless the CCCSWA and its Board against any and all Claims made by Member Agencies or Member Agencies' contractors. All obligations under this provision are to be paid by the Permitted Construction and Demolition Debris Transporter as they are incurred by the CCCSWA.**

Section XIII. Conformance with the CCCSWA Member Agency Construction and Demolition Ordinances and Building Codes.

This Ordinance is adopted to support the CCCSWA and its Member Agencies' efforts to divert Recyclable Materials in Construction and Demolition Debris from landfilling through ~~requiring the use of~~ **regulating** Permitted Construction and Demolition Debris Transporters and **designating** Certified C&D Recycling Facilities, whose use will create the greatest opportunity to maximize diversion of the Recyclable Materials and Green Waste. This ~~O~~rdinance is intended to be read in harmony with the Construction and Demolition Ordinances of the Member Agencies and the California Green Building Standards Code (CALGreen).

Section XIV. Other Requirements.

a. Labeling of Construction and Demolition Recyclable Material Bins & Containers.

Bins and other containers used for the collection of Construction and Demolition Debris must have labels that are readable from a minimum of five (5) feet away containing at least two-inch (2") font lettering. Labels must also detail the types of acceptable materials that may be placed in the bin. If the list of acceptable materials changes, then the label must be updated to reflect the change in service. Additionally, there must be a notice placed on the bin that states "No Garbage" to ensure that only Construction and Demolition Debris is collected.

b. Safe Transport of Construction and Demolition Debris and Residual in Vehicles, Bins, and Containers.

Construction and Demolition Debris and Residual must be completely contained and covered during transport to a Certified C&D Recovery Facility. A cover must be secured to prevent loss of material or associated debris while traveling on public roads and highways. Construction and Demolition Debris must be collected in properly labeled containers as addressed in this Ordinance and transported in leak proof containers or vehicles constructed such that no materials or Residual can leak, fall, or be blown from the container or vehicle. If materials do fall, blow, or leak out of a collection vehicle or container, the Permittee must immediately pick up the materials and otherwise clean the place onto which the materials fall or are blown.

c. Accumulation of Materials

Construction and Demolition Debris, Green Waste and/or Residual may not be accumulated in such a manner that they:

- 1) Create a fire hazard dangerous to persons or property;
- 2) Become offensive to the public peace, health and safety;
- 3) Attract or create a home or breeding ground for vectors; or
- 4) Become a public or private nuisance.

d. Vehicle Identification

Every vehicle operated by the Permittee for collecting, transporting, and recycling Construction and Demolition Debris shall bear the Permittee's trade name and phone number on the sides of the vehicle.

Section XV. Enforcement of Compliance with Labeling Requirements.

If CCCSWA staff, CCCSWA's franchised Solid Waste and recycling collectors, or Permittee encounter a collection bin or container that is not properly labeled, as defined above, compliance shall be enforced as follows:

a. If a bin or container is found that is not properly labeled, the container or bin owner shall, within three (3) business days ~~from the bin owner or subject Premises owner's receipt of written~~ **CCCSWA's mailing of** notice ~~requesting compliance with this Ordinance,~~ properly label the bin or container **or be subject to the impoundment** and ~~or obtain a Construction and Demolition Debris Transporter Permit, if a permit is required and a valid permit is not in place~~ **fee provisions set forth herein.**

b. ~~Prior to removal and impoundment, the CCCSWA shall provide written notice to the Premises owner or occupant, to the bin owner if known, and to a party that has obtained a construction or demolition permit from the County, City or Town for the Premises where the bin or container is located. If the lack of proper labeling is not~~ **If the lack of proper labeling is not timely** corrected, or the CCCSWA has not been contacted or cannot determine the ownership of the bin or container after reasonable efforts, ~~within three (3) business days from receipt of the written notice requesting compliance with this Ordinance,~~ the CCCSWA or its agent may **remove and** impound the bin or container ~~and have the bin or container stored for pickup by the bin's owner.~~ For purposes of this section, written notice may be accomplished by ~~email,~~ personal service, US mail, or overnight mail. If the notice is delivered by email or personal service, it is deemed received on the same day of delivery. If the notice is delivered by overnight mail, it is deemed received one business day after it is sent. If the notice is delivered by US mail, it is deemed received five calendar days after it is sent.

c. If ~~any Person transporting Construction and Demolition Debris fails~~ **a bin or container is not properly labeled** on three or more occasions within a twelve (12) month period ~~to properly label collection containers,~~ and written notice has been given on at least two (2) of the prior occasions, the CCCSWA or its agent may thereafter remove and impound the bins or containers ~~which are found to be defectively labeled~~ without prior notification to bin or container owner. ~~If the transporter is permitted, such removal without notice may continue during the remaining term of the permit, provided the transporter or bin owner has failed to make satisfactory arrangements with the CCCSWA to avoid the removal and impoundment.~~

d. When bins **or containers** are removed and impounded by the CCCSWA, or its agent, prior to return of the bin **or container**, the Executive Director ~~will~~ **may** impose ~~and the CCCSWA or the CCCSWA's agent may bill the bin owner~~ a fee to cover **the cost of** collection, storage and return of the bins **or container** improperly labeled. The fee shall be based on the Debris Box Rates ("Per Pull") for collection of one twenty yard box as published in the current Rate Year Schedule of Rates for the Local Jurisdiction from which the bin is removed. If a bin **or container** is not claimed within three (3) months of the date it is ~~collected~~ **impounded**, it may be sold for removal and storage charges, or recycled, at the discretion of the CCCSWA.

Section XVI. Expiration of Construction and Demolition Debris Transporter Permit.

Each Construction and Demolition Debris Transporter Permit issued under this Ordinance shall expire annually and become subject for renewal on a date established by the CCCSWA Executive Director, or designee.

Section XVII. Suspension, Conditioning and Revocation of Construction and Demolition Debris Transporter Permit.

a. The Executive Director may investigate the actions of any Permittee conducting business within the Service Area, after failure of a Permittee to comply with one or more conditions of the Permit, or after other violation(s) of this Ordinance. **In the event of a violation, the Executive Director may pursue enforcement as provided in Section XXV.**

~~Following proper notice and an opportunity for a hearing, the Executive Director may take any or all of the following actions:~~

- ~~1) Temporarily suspend the Permit; or~~
- ~~2) Impose additional conditions within the Permit; or~~
- ~~3) Revoke the Permit.~~
- ~~4) Recommend to the Board that civil or criminal legal proceedings be initiated to obtain injunctive relief, damages, and restitution or criminal sanctions.~~

~~a. If the Executive Director suspends, conditions, or revokes the Permit, the Executive Director shall so inform the Permittee in writing, which shall be mailed to the address shown on the Permit application. The Permittee may, within ten calendar days of the CCCSWA's mailing of such notice, appeal the Executive Director's decision by submitting a written statement to the Board setting forth all facts on which the applicant intends to rely in contesting the decision. The Board may refer the appeal to a hearing officer for adjudication. The decision of the Board or its hearing officer shall be final.~~

b. In the event that a Permit is suspended or revoked, the Permittee shall forward the Permit, along with any overdue quarterly reports, to the Executive Director not later than the end of the eighth calendar day after the CCCSWA's mailing of notice of such suspension or revocation. The Permittee shall immediately cease all business activities and operations within the CCCSWA Service Area for which a permit is required by this Ordinance.

Section XVIII. Quarterly Reporting and Audit Requirements.

a. All Permitted Construction and Demolition Debris Transporters shall submit to the CCCSWA quarterly reports that document recycling information monthly for purposes of measuring and planning progress toward compliance with the requirements of state-mandated diversion goals. Each quarterly report must be submitted no later than 30 days after the end of the respective quarter ending on March 31, June 30, September 30, or December 31 of each year.

b. The quarterly reports submitted by each Permittee shall contain the following information:

1. The number of accounts within the Service Area and in each Local Jurisdiction, by name/address or Building Permit Number.

2. The total tonnage of Construction and Demolition Debris collected in each Local Jurisdiction.

3. The total tonnage by type of Construction and Demolition Debris collected in each Local Jurisdiction.

~~4. Identification of Certified C&D Recovery Facilities used for disposal of Construction and Demolition Debris collected in each Local Jurisdiction.~~

~~4.5.~~ The total tonnage of Residual disposed as a result of collection in each Local Jurisdiction, if known.

c. Failure to timely submit a quarterly report may result in the revocation or suspension of the Permit pursuant to this Ordinance.

d. The CCCSWA, by its representative or other qualified third party, may conduct an audit of the records of any Permittee to verify the tonnages collected, recycled and disposed of. The CCCSWA shall have the right to inspect such records on reasonable written notice to the Permittee and such records shall be made available at a location acceptable to the CCCSWA. The information contained in the records shall contain, at a minimum, the following for the applicable period of review:

1. The business name, address, phone number and contact Person of each commercial entity and each residential customer serviced by the Permittee; and

2. The date that the service began, and, if applicable, the date of termination of service; and

3. The total tonnage of Construction and Demolition Debris collected in each Local Jurisdiction; and

4. The name, address and phone number of Certified C&D Recovery Facilities used by the Permittee; and

5. The total tonnage of Residual disposed and disposal location as a result of collection in each Local Jurisdiction, if known.

e. The Permittee's failure to allow the CCCSWA to conduct such an inspection in a timely manner after notification may be grounds for suspension or revocation of the Permit, or other legal action as may be available pursuant to this Ordinance or at law.

f. Information that is furnished pursuant to Section XIV (b) and (c), above, which pertains to its business and financial affairs and is designated as a trade secret of the Permittee or any Recycling Facility, shall be handled as exempt from public disclosure to the full extent provided for in Sections 6254 (n) and 6254.7(d) of the Government Code. Any information provided which is deemed by the Permittee to be a trade secret must be clearly designated as "trade secret" by the Permittee prior to submission to the CCCSWA.

Section XIX. False Information.

The submission of false information to the CCCSWA by any Person in connection with a Permit **or facility certification** application, Permit **or facility certification** hearing procedure, audit, or quarterly report, shall be deemed a violation of this Ordinance and may subject the Person to enforcement as set forth this Ordinance and a **P**ermit **or facility certification** revocation.

Section XX. Permit and Certification Fees.

The CCCSWA shall have the authority to impose an annual Permit fee which shall be in an amount as set by resolution by the Board, which fee is intended to defray costs to the CCCSWA and its **M**embers **Agencies** for processing and issuing of Permits under this Ordinance and the program costs associated with this Ordinance. **If a facility applies for certification as a Certified C&D Recovery Facility, the third party contractor performing the application review service may charge a fee in an amount that does not exceed a formula approved by the Board, which fee is intended to defray the third party contractor's costs for the service of reviewing the application.**

Section XXI. Contracting with or Using Multiple Permitted Transporters or Certified Facilities.

Nothing in this Ordinance precludes waste generators from contracting with **or using** more than one Permitted Construction and Demolition Debris Transporter ~~in each Local Jurisdiction~~ **and/or Certified C&D Recovery Facility.**

Section XXII. Right to Dispose of Recyclable Materials.

This Ordinance does not limit the right of a waste generator to donate, sell or otherwise dispose of Construction and Demolition Debris or Green Waste, as long as disposal complies with the ordinances of the CCCSWA and of the generator's Local Jurisdiction.

Section XXIII. Rights of Permitted Transporters or Certified Facilities.

It is the intent of this Ordinance ~~is~~ that it shall not be interpreted to interfere with any federal, state, or local laws concerning intra or interstate commerce ~~or~~, transport of materials, **or processing of materials.** This Ordinance shall be interpreted in a manner so as to reconcile any purported conflicts between its contents and other laws in light of the limited objectives set forth herein.

Section XXIV. Judicial Review.

Judicial review of a final decision made under this Ordinance may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure Sec. 1094.5. Any such petition shall be filed within ninety days (90) after the date the decision becomes final as provided in the Code of Civil Procedure Sec. 1094.6, which shall be applicable to such actions.

Section XXV. Enforcement.

a. For any violation of this Ordinance, **a Permit, or the terms and conditions of certification, following proper notice and an opportunity for hearing**, the Executive Director shall have the discretion to take any or all of the following actions: (1) ~~revoke or temporarily suspend the Permit or facility certification~~; (2) **impose additional conditions on the Permit or facility certification**; (3) **revoke the Permit or facility certification** of the violator; ~~(24)~~ deny the issuance of ~~or suspend~~ future Permits, ~~(3)~~ **or facility certifications**; or (5) **recommend to the Board that it (i)** bring a civil action for restitution and/or damages; ~~(4ii)~~ seek injunctive relief; and ~~(5iii)~~ refer the violation for prosecution as a misdemeanor. **If the Executive Director suspends, conditions, or revokes a Permit or facility certification, the Executive Director shall so inform the Permittee or facility, as applicable, as well as each Member Agency, in writing, which shall be mailed to the Permittee's address as shown on the Permit or facility's address shown on the certification application, as applicable. The Permittee or facility, as applicable, may, within ten (10) calendar days after the CCCSWA's mailing of such notice, appeal the Executive Director's decision by submitting a written statement to the Board setting forth all facts on which the facility intends to rely in contesting the decision. The Board may refer the appeal to a hearing officer for adjudication. The decision of the Board (or hearing officer, if appointed) shall be final.**

b. If any violation of this Ordinance is charged as a misdemeanor, the penalty upon conviction of the violator shall be imprisonment in the county jail for a period not to exceed thirty (30) days or by a fine not exceeding \$1,000, or both such fine and imprisonment.

c. The provisions set forth in paragraphs a and b above shall be cumulative as to each other and as to the administrative and impoundment provisions set forth in Section ~~XIXV~~, as well as to other remedies which the CCCSWA may have at law.

Section XXVI. Severability.

If any provision of this Ordinance or the application thereof ~~to any Person~~, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of the remaining provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are hereby declared to be severable.