AGENDA

PUBLIC COMMENT PERIOD
(The public may speak on any item within the jurisdiction of the Zoning Administrator not listed on this agenda. Approximately 15 minutes is allocated for the Public Comment Period, and each speaker will be allowed approximately 3 minutes.)

HEARINGS:

1. Cardenas Market Appeal (PL19101 – AP) – Appeal of the Administrative Design & Site Review and Tree Removal Approval (PL18394 - DR, RT), for exterior improvements of an existing 41,940 square foot tenant space to be occupied by Cardenas Market located at 2250 Monument Boulevard. The General Plan designation is Regional Commercial; Zoning Classification is RC (Regional Commercial); APN 129-170-026. CEQA: Not a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378. Alternatively, if deemed to be a project, the project is categorically exempt under CEQA Guideline Sections 15061(b)(2) and (3), 15301, 15302, 15304, and 15305. Project Planner: Sarah Yuwiler @ (925) 671-3465

ADJOURNMENT

Next Regularly Scheduled Zoning Administrator Meeting: July 24, 2019

In accordance with the Americans with Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3021, at least five (5) days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

Correspondence and writings received within 72 hours of the scheduled Zoning Administrator meeting that constitute a public record under the Public Records Act concerning any matter on the agenda is available for inspection during normal business hours at the Permit Center located at 1950 Parkside Drive, Concord. For additional information contact the Planning Division at (925) 671-3152.

APPEALS

Decisions of the Zoning Administrator may be appealed to the Planning Commission. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.
AGENDA ITEM NO. 1
REPORT TO ZONING ADMINISTRATOR

DATE: July 17, 2019

SUBJECT: CARDENAS MARKET DESIGN AND SITE REVIEW AND TREE REMOVAL APPEAL (PL19101-AP)

Recommendation: Adopt Zoning Order No. 19-10ZA, denying the appeal and further approving the amended Cardenas Market Design and Site Review application (PL18394-DR)

CEQA: Not a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378. Alternatively, if deemed a project, the project is categorically exempt under CEQA Guideline Sections 15061(b)(2) and (3), 15301, 15302, 15304, and 15305.

I. Introduction

A. Application Request

Appeal of the administrative approval of a Design and Site Review and Tree Removal Permit\(^1\) application (PL18394-DR), for exterior improvements to the site such as building color scheme changes and upgrades of the following onsite features: trash enclosure, landscaping, and parking lot of an existing building for a 41,940 square foot tenant space.

B. Location

The project site is located at 2250 Monument Boulevard, Suite F (APN 129-170-026)

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\(^1\) As indicated below, staff no longer recommends that a Tree Removal Permit be issued after the property owner’s unauthorized removal of the trees on site. Instead, staff recommends that the unauthorized tree removal be considered as a code enforcement matter under Concord Municipal Code Section 8.40.
II. Background

On September 10, 2018 the Monument Business Owners Coalition (MBOC), which consists of a number of small businesses located in the Monument Corridor, sent the City of Concord a letter (Attachment D) outlining their concerns regarding Cardenas Market occupying the former Safeway location at 2250 Monument Boulevard. The letter expressed the MBOC’s request for the City to prepare an Environmental Impact Report (EIR) that would include an urban decay analysis and traffic study to evaluate economic and traffic impacts potentially associated with the Cardenas Market.

The City responded to the MBOC in a letter dated September 21, 2018 (Attachment E) explaining that preparation of an EIR or other environmental document is governed by the California Environmental Quality Act (CEQA). The letter also explained that CEQA was not applicable as it applies only to discretionary projects and a grocery store use, such as Cardenas Market, is allowed within the Regional Commercial “RC” zoning district by right via a Zoning Clearance.

Further, the City received a letter, dated November 6, 2018 (Attachment F), indicating that the Law Offices of Dana Dean had been retained to represent the MBOC. The letter also requested receiving notification of any action to be taken or decision to be considered by staff or governing body regarding the Cardenas Market application. The City indicated staff was working with Cardenas Market on exterior modifications to the building and site, which would require a Design and Site Review (“Design Review”) application.

On November 21, 2018, the City received a Design Review application, submitted for Cardenas Market, for the exterior modifications to the subject site, which included: building paint scheme changes, roof screens for mechanical equipment, lighting upgrades, shopping cart corrals, landscape upgrades, and a new trash enclosure. On December 18, 2018, staff deemed the application incomplete due to missing or insufficient information necessary for staff to complete its review. Cardenas Market submitted two subsequent iterations of its application and plans in response to staff’s information requests before the final submittal on May 15, 2019.

Subsequently, a Sign Plan was submitted on February 27, 2019 for the tenant spaces at 2250 Monument Boulevard, which included Cardenas Market. The effective date of the approved Sign Plan was May 27, 2019 following the commencement of the ten-day appeal period. No appeal was filed. However, a condition was placed on the Sign Plan approval requiring the Design Review application, PL18394, (the subject of this appeal) to be approved prior to issuance of a building permit for signage.

On May 24, 2019, an administrative approval of the Cardenas Market Design and Site Review application was issued and the approval was subject to a ten-day appeal period that ended at 5:00 p.m.
on June 3, 2019. Pursuant to their November 6, 2018 letter requesting notification of any action or decision pertaining to the Cardenas Market, a copy of the approval was provided to the Law Offices of Dana Dean. On June 3, 2019, staff received an appeal (Attachment C) of the Cardenas Market Design Review approval from the Law Offices of Dana Dean on behalf of the MBOC ("Appellant"). The Appellant challenges staff’s determination that the decision (1) is not in compliance with the purposes of the Concord Municipal Code (CMC), (2) was made in error and is an abuse of discretion, (3) involved inaccurate information, and (4) is unsupported by the record.

Concord Development Code (CDC) Section 18.400.020 identifies the Zoning Administrator as the review authority for appeals of administrative Design and Site Review decisions. CDC Section 18.510.050.C further provides that the appellate body shall conduct a “de novo” hearing at an appeal or call for review hearing, and may consider new materials and testimony in addition to the same application, plans, and related project materials that were the subject of the original decision.

In light of the de novo review, staff has conducted additional analysis of the Design Review approval and Tree Removal Permit and has submitted revisions to the conditions of approval for consideration as part of this appeal that may address some of Appellant’s concerns raised in their appeal.

Staff notes that on March 1, 2018, the owner of the property (and not the applicant) removed the existing trees in the parking lot area without first obtaining the requisite approvals under CMC Section 8.40 et seq. Unpermitted removal of protected trees is normally addressed through the City’s code enforcement process. Violators are provided a notice to comply and are directed to work with the Planning Division on installing replacement trees (CMC 8.40.150(f)). In the original permit evaluation, staff had considered retroactively issuing a Tree Removal Permit after receiving a landscape plan from Cardenas Market that included new trees to replace the removed trees. However, after further consideration, staff believes the best method to address the tree removal code violation action is through the code enforcement process. Therefore, a tree removal permit is no longer required in this instance.

III. General Information

A. General Plan

The site’s General Plan designation is Regional Commercial (RC) which is intended for large-scale commercial development that serves both local residents and residents from surrounding areas. It is applied to areas of the city appropriate for a mix of regional-scale commercial uses, including regional shopping centers, big box retail, new automobile dealerships, and associated services with a maximum Floor Area Ratio (FAR) of 0.5.

B. Zoning

The project is zoned Regional Commercial (RC) and is consistent with and implements the Regional Commercial land use designation of the General Plan. The RC zoning district allows for the use of a “grocery store” by right with a Zoning Clearance.

C. CEQA Status
Staff has determined that the Design Review approval and Tree Removal Permit\(^2\) are not subject to the California Quality Act of 1970, as amended (CEQA), because this activity is not a “project” pursuant CEQA Guidelines Section 15378 and Public Resources Code Section 21065 as the permit approvals will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.

As indicated in detail below, a grocery store use is permitted to operate in the subject location as a matter of right and the scope of City review is limited to design review. The site is not located in an aesthetically sensitive area or district (such as a designated historical district) and the design review is subject to the applicable design criteria outlined in the CDC. Accordingly, no further CEQA review is necessary as the Design Review approval does not contemplate the use of the site and is not considered to be a discretionary permit approval under CEQA.\(^3\)

In the alternative, if the Design Review approval is deemed to be a “project” under CEQA, the approval is also categorically exempt under CEQA Guidelines Section 15061(b)(2) (projects are exempt as categorically exemptions apply), and (b)(3) (the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment). Here, staff has determined that under the categorical exemptions available under CEQA Guidelines Sections 15301 (“Existing Facilities”), 15302 (“Replacement or reconstruction”), 15304 (“Minor alterations to land”) and 15305 (“Minor alterations to land use alterations”), the project is categorically exempt because the project consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements. Additionally, because the site is not located in a sensitive environment, in a historical district, scenic highway or on a site identified to be on a Hazardous Waste and Substances Site List, and there is no cumulative impact of successive projects of the same type in the same place, none of the exceptions to the exemptions apply under CEQA Guidelines Section 15300.2.

Additionally, the common sense exemption applies as it can be seen with certainty that there is no possibility that the design review approval of the site may have a significant effect on the environment. Therefore, no further CEQA review is warranted.

**D. Site Description**

The uniquely shaped parcel measures roughly 3.86-acres and is developed with an existing 42,660 square foot slump block wall building, formerly occupied by Safeway, and an associated parking lot. Attached to the building, but on a separate adjacent parcel is a small multi-tenant building with assorted retail uses including Monument Wine and Spirits. On the other side of the proposed Cardenas Market is a vacant parcel. The subject property along with other adjacent parcels, is owned by the same property owner and makes up a larger strip mall along Monument Boulevard known as “Four Corners”.

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\(^2\) Because staff recommends that the unauthorized tree removal issue be treated as a code enforcement issue instead of issuing a Tree Removal Permit, CEQA consideration of the Tree Removal Permit is no longer necessary.

The building, site condition, and appearance has deteriorated since the end of 2012 when Safeway vacated the property.

E. Surrounding Land Use

The site is surrounded by the following uses:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>General Plan Designation</th>
<th>Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Monument Wine &amp; Spirits, El Faro Mexican Foods</td>
<td>Regional Commercial</td>
</tr>
<tr>
<td>South</td>
<td>Vacant land</td>
<td>Regional Commercial</td>
</tr>
<tr>
<td>East</td>
<td>Public Storage, Costco</td>
<td>Regional Commercial</td>
</tr>
<tr>
<td>West</td>
<td>KFC</td>
<td>Regional Commercial</td>
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<td></td>
<td>Furniture Depot</td>
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IV. Detailed Project Description

A. Project Overview

Cardenas Market is a grocery store with various locations across California and Nevada focused on providing specialty and quality products from Latin America. Cardenas is a full-service grocery store providing produce, packaged and fresh items, a bakery, coffee shop and taqueria. The hours of operations Monday through Friday from 7:00 a.m. to 10:00 p.m.

The applicant is in the process of completing interior tenant improvement work to convert the existing building into the proposed Cardenas Market. No expansion of the existing floor area is proposed. The exterior modifications to the existing building consist of building paint scheme changes, the addition of roof screens for mechanical equipment, a new trash enclosure, parking lot improvements for compliance with the Americans with Disabilities Act (ADA), landscaping, improved lighting, and the implementation of shopping cart corrals.

The project is in substantial compliance with the goals, objectives, and policies of the Concord General Plan as this project implements Goal E-5 of the Economic Vitality Element, “A Revitalized Monument Community”, by providing exterior building and site upgrades to a shopping center that has deteriorated over time due tenant vacancy. These improvements will in turn stimulate economic development in the neighborhood and will raise the exterior standard of retail enterprises by revitalizing a shopping area within the Monument Community.

The proposal also promotes Principal LU-1.1. “Preserve and Enhance Neighborhood Character” and the associated policies that were established in order to facilitate this goal and its. This project implements those policies because the proposal includes exterior improvements and upgrades to a site that has been neglected and vacant for many years.
Further, the upgrades proposed through this Design and Site Review application promote Policy LU-2.1.1, “Maintain attractive and viable neighborhood-serving centers,” as the upgrades will greatly enhance the attractiveness of this shopping center while supporting the viability of the neighborhood-serving centers. Through the Design Review process, staff has been able to facilitate the intent of Goal LU-9, “Well Designed Development” and associated principal LU-9.1 and Policy LU-9.3 by analyzing the design and requiring upgrades above the applicant’s proposal to ensure a well-designed project.

A. Site Planning/Circulation/Parking

Site Access and Circulation

Access to the site is currently provided through two driveways, one of which is signalized, from Monument Boulevard. The only proposed modification to site access and circulation is to extend the onsite median at the signalized intersection by 26 feet in length to prohibit vehicles entering the site from turning left down the first parking aisle.

Parking

Minor modifications to the angles of the parking stalls in front of the building have been modified to meet current ADA requirements. Additionally, the adjacent sidewalks and landscaped areas have been modified accordingly. The existing, vacant coffee kiosk in the parking lot is proposed to be removed and replaced with parking spaces. Five parking spaces throughout the lot would be removed and replaced with built-in designated shopping cart corrals. Grocery stores have a parking requirement of 1 space/250 square feet. The use requires 168 parking spaces and 185 spaces are currently provided. Following the implementation of the proposed changes, including the ADA modifications, demolition of the coffee kiosk, and adding shopping cart corrals and landscaping, 174 parking spaces will be provided.

B. Building Architecture

The building architecture is proposed to remain unchanged with the exception of the replacement and the provision of additional roof screens to eliminate visibility of the new roof-mounted equipment associated with the business. The exterior would also be repainted to provide a refreshed look consisting of a tan/champagne color with accent trim of dark brown and crimson red consistent with the corporate colors of the company. The existing trash enclosure is proposed to be demolished and replaced with a new enclosure to comply with current requirements such as a roof, plumbing, water, and relocation from the property line. The trash enclosure would be constructed of like materials and painted to match the building.

C. Landscaping/Paving/Lighting

Landscaping
Staff was notified on March 1, 2019 that all previously existing parking lot trees were cut down by a property owner (member of the Bruzzone Family and Wing-Four Corners LLC). The removed trees were considered “protected” by the CDC because they were planted as a condition of approval from the original development of Safeway. The new landscape plan addresses landscaping for the entire parcel rather than focusing solely on the area where there trees were removed. The comprehensive landscape plan was reviewed and approved by the City’s landscape consultant for compliance with water efficiency requirements and appropriateness of the design.

**Paving**

Portions of the site are proposed to be repaved or slurry sealed in order to repair areas where the roots from the parking lot trees have caused aesthetic damage or upheaval. Additionally, the location where the coffee kiosk was previously located would be patched and repaved to allow for additional parking. The amount of paving to be removed or modified is less than the 10,000 square foot threshold that triggers stormwater treatment requirements under the C.3 provision of the Municipal Regional Permit and Contra Costa Clean Water Program.

**Lighting**

The fixtures (heads) of the existing parking lot lights will be removed and replaced on the existing 25-foot tall light standards to provide adequate lighting for visibility and safety concerns. There are no residential uses adjacent to the site, therefore pursuant to Chapter 18.150.110 (Outdoor Lighting), of the CDC, light standards with a maximum height of 25-feet may be used. The existing wall mounted lighting will be removed and replaced with wall sconces as shown on the project plans (Attachment B).

**V. Appeal**

The June 3, 2019 appeal identifies concerns raised by Ms. Dean on behalf of the MBOC (Attachment C). The appeal grounds are identified in bold below, followed by staff’s responses.

**Appeal Point 1: Administrative Design Review was not the proper level of review.**

*Staff Response:* As noted in the appellant’s letter, CDC Chapter 18.415.040 (Design and Site Review), provides examples of minor projects/improvements not requiring a discretionary permit approval, including new occupancies in existing commercial buildings when the property is not in conformance with the development standards applicable to the property where the project includes plans to substantially upgrade the exterior of the building and/or make significant upgrades to landscaping, parking areas, and other site improvements. The applicant is proposing to do exactly this and upgrade the site to comply with current standards and requirements. The appellant states Design and Site Review cannot be done when processing a discretionary permit such as a Tree Removal Permit; however, CDC Chapter 18.310.030 requires a Tree Removal Permit to be submitted at the time of application for any required permit, which would necessitate submittal with the Design and Site Review.
application, which was completed. However, after further review and evaluation, staff has determined a Tree Removal Permit cannot be included as part of the project because the trees were cut down by the property owner and the violation, as typical, shall be rectified through the code enforcement process. Code enforcement has been directed to commence the process with the property owner to correct the violation of the CMC. The landscape plan has been evaluated and 45 trees will replace the 19 that were removed.

Appeal Point 2: The Planning division failed to make the requisite findings for design review approval.

Staff Response:

CDC Sections 18.415.080, 18.415.090 18.415.100 set forth the design criteria, the development use and standards, and the necessary findings, respectively, when considering an application for design review.

The project meets the applicable design criteria per CDC Section 18.415.080 in the following ways:

a) The building design and landscaping support public safety and security by allowing for surveillance of the street by people inside buildings and elsewhere on the site. Additionally, the removal of the vacant coffee kiosk building will provide for a better line of sight and eliminate the possibility of an attractive nuisance, including people loitering in or around the vacant building. The applicant has also worked with the police department on a security plan and proposes to install security cameras as an additional safety enhancement.

b) The design is compatible with the historical or visual character of any area recognized by the city as having such character. The site and surrounding areas is not recognized by the City as having significant historical or visual character.

c) The project design preserves major views and vistas along major streets and open spaces and trails and enhances them by providing project amenities. The project would enhance views and vistas along Monument Boulevard by constructing new site improvements and amenities that can be seen from the street, such as landscaping, resurfaced parking, and lighting.

d) The proposed lighting and fixtures are designed to complement on-site buildings, are of an appropriate scale for the development, and provides adequate light for safety and security while minimizing glare as confirmed by the transportation division’s review of the photometric plan.

e) All mechanical, electrical, and utility equipment is located, screened, or incorporated into the design of the building so as not to be visible from off-site locations, and the proposed screening devices are consistent with the exterior colors and materials of the building. The applicant has provided roof screens, which have been reviewed by staff, to ensure adequate screening of the roof mounted equipment. The color of the proposed roof screens will be similar to the building wall colors for consistency.

f) The overall design of the project including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding
natural and built environment. The proposed changes to the building and the installation of new landscaping are cosmetic and aesthetic in nature which will effectively enhance the built environment.

g) The proposed design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community. The changes to the existing developed site are proposed in order to enhance the function, accessibility, traffic flow, safety, and appearance for occupants, visitors and the general community.

h) The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.

i) The project is compatible with the neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development. The proposed project will not modify the building scale or character but rather enhance and improve the existing building and site.

j) The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context. The proposal does not modify the existing building style or design as the modifications are limited to a new building paint scheme and site improvements.

k) The proposed landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage. The proposed landscaping consists of a variety of drought-tolerant vegetation that will blend with the surrounding landscape and has been appropriately size for the buildings and its location on-site.

l) Stormwater treatment areas have been integrated into the landscape design and are not being modified through the proposed upgrades. The amount of paving removed or modified is less than the 10,000 square foot threshold that triggers stormwater treatment under the C.3 provision of the Municipal Regional Permit and Contra Costa Clean Water Program.

m) New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development. The only new construction proposed is the replacement trash enclosure installation of new roof screens, and minor modifications to the size of existing planters. These improvements will be constructed to enhance the existing site condition, which has degraded over time due to the site being vacant for nearly seven years. The proposed improvements also would complement the surrounding developments, which include nearby properties that were recently remodeled and upgraded.

In reviewing the above criteria, staff has also determined that the proposed improvements conform to all applicable development and use standards as indicated in CDC Section 18.415.090 with the following:
• 18.415.090.A: The interrelationship between the orientation, location, and elevation of the building is mutually compatible and aesthetically harmonious as previously determined under the original development of the building in 1981. The applicant does not propose any major building modifications that would result in visible aesthetic differences. The applicant is enhancing the existing building by providing new exterior paint, similar to the existing building color, and providing replacement and additional roof screens to comply with CDC Section 18.150.080, which requires mechanical equipment be screened from public view. Neither of these improvements has any impacts to the existing aesthetically harmonious design.

• 18.415.090.B: The orientation, location, and elevation of the building was previously determined to be compatible with and aesthetically harmonious with adjacent development and the character of the neighborhood in 1981 through the original Use Permit and Design and Site Review approval. The applicant is not proposing any modifications to the location or orientation of the existing building; therefore, the project will not impact the character of the existing neighborhood. Additionally, the applicant is proposing minor modifications to the elevation of the building by adding roof screens in order to comply with current code requirements because the existing roof screens are not compliant.

• 18.415.090.C: All of the parking lot trees have been removed without approval and the remaining existing landscaping is in poor condition due to neglect because the site has been vacant since 2012. The proposed upgrades to the site include an entirely new landscape plan which will drastically increase the aesthetic appearance of the site and neighborhood as a whole. The existing trash enclosure does not meet the code requirements because it lacks a roof, is not plumbed to the sanitary sewer, does not have access to running water, and is located on the property line. The proposed plans will bring the trash enclosure into full compliance with the code and therefore these modifications provide a significant upgrade and improvement to the site as well as improve the appearance of the neighborhood.

• 18.415.090.D: Staff has reviewed the site for adequate parking, pedestrian access, and traffic circulation, and has required additional upgrades that were not part of the original project scope. These required upgrades include the extension of the median in the drive aisle at the signalized light on Monument Boulevard to prohibit vehicular access to the first parking aisle, which could potentially cause vehicles to stack into the roadway and block the free flow of traffic. This modification will greatly increase site circulation. ADA paths of travel and access have been added from Monument Boulevard and throughout the site to comply with current requirements, which will largely improve pedestrian access to the site. The site is adequately parked and meets the parking requirements per Table 18.160.040 of the CDC.

In light of the above, staff has determined the following necessary findings under CDC Section 18.415.100:

1) The project is in substantial compliance with the goals, objectives, and policies of the Concord 2030 General Plan as this project implements the goals of the Economic Vitality Element, which supports business growth and development resulting in
increased employment and a growing mix of retail shopping centers. Further, Cardenas Market is a key example of Policy E-4.1.1, E-4.1.2, and Goal E-5 as it is a new business that will stimulate economic development and raise the standard of retail enterprises along with revitalizing a shopping area within the Monument Community.

The proposal also promotes Land Use principal, LU-1.1., “Preserve and Enhance Neighborhood Character” and the associated policies that were created in order to ensure implementation can be met as the proposal includes exterior improvements and upgrades to a site that has been neglected and vacant for many years. Land Use policy LU-2.1.1 is the epitome of the project at hand which is to “Maintain attractive and viable neighborhood-serving centers” as this project provides an opportunity to upgrade the center to its previous condition as a viable neighborhood center. Through the Design Review process, staff has been able to facilitate the intent of Goal LU-9, “Well Designed Development” and associated principal LU-9.1 and Policy LU-9.3 by analyzing the design and requiring upgrades above the applicant’s proposal to ensure a well-designed project.

2) As set forth more fully above, the proposed design meets the design criteria as specified in CDC Section 18.415.080.

3) The overall project reflects the design principles and/or incorporates design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of the approval as the project upgrades require the existing non-conforming aspects of the project to be brought into conformance such as landscaping, inadequate roof mounted equipment screening, and a non-compliant trash enclosure.

Appeal Point 3: The project design does not conform to the applicable development and use standards. Specifically:

A. Concord Development Code Chapter 18.415.090 - “Landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood.”

B. Concord Development Code Chapter 18.415.090D- “Parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation.”

Staff Response:

The appellant alleges this finding cannot be made due to the language in Conditions of Approval #12 and #13 which requires these standards be met on an-going basis. These conditions are to ensure the project remains in compliance with the code standards and can further be a tool for enforcement as the Conditions of Approval are in perpetuity for the
duration of the use and property and are standard conditions of approval for all projects involving new landscaping.

City staff and Mt. Diablo Disposal and Resource Recovery have reviewed the proposed trash enclosure design which has resulted in modifications to ensure the trash enclosure is compliant with applicable standards. The proposed landscape plans have also been reviewed by a landscape consultant for compliance with City and State requirements and conditions are provided in the approval to ensure current and ongoing compliance.

The appellant stated that the unpermitted removal of 19 protected trees is not an “upgrade or improvement” to the site. Staff agrees with this assertion, and as indicated above, has notified code enforcement of the violation. However, staff has reviewed the proposed landscape plan, which provides for the planting of 45 new trees onsite to replace the 19 that were removed without a permit. As mentioned by the appellant and staff agrees, these trees were deemed “protected” trees because they were a condition of approval from the original use permit (UP58-81). The removal of the protected trees is being addressed through the code enforcement process.

As part of the design review process, the applicant has proposed and staff has required many site upgrades in order to address and ensure parking, pedestrian access, and traffic circulation are adequate and/or improved. The applicant is proposing ADA upgrades to bring the site into compliance with federal regulations. Additionally, a condition of approval has been added to the project requiring areas of the sidewalk along the frontage on Monument Boulevard, which have experienced lifting and cracking, to be repaired to provide safe pedestrian access to and from the site. Staff has also required the median in the parking lot, at the signalized entrance, be extended to restrict incoming vehicles from accessing the first drive aisle. This requirement is to ensure that vehicles do not stack up from the parking lot and into Monument Boulevard, creating a traffic circulation issue and safety concern.

The appellant further explains concern regarding future actions related to parking. Placing conditions of approval on a project requiring future actions is standard protocol and is the mechanism to ensure compliance with current standards prior to the construction of a project or the operation of business. Again, such conditions are standard and applied to all approvals.

**Appeal Point #4: The project is not consistent with or will compromise the General Plan with respect to the goals, principles, and policies as they relate to the Monument Community.**

**Staff Response:**

Courts give cities great deference in interpreting and applying its General Plan policies and goals to land development decisions. This deference is granted to the City because “policies in a general plan reflect a range of competing interests” and the City must be allowed broad discretion to “weigh and balance the plan’s policies when applying them.” (See *Save Our Peninsula Comm. V. County of Monterey* (2001) 87 Cal.App.4th 99, 142, citing *City of Walnut*...
In this instance, as discussed above, staff has determined that the location of the Cardenas Market in a previous grocery store space is consistent with many General Plan policies and goals; namely, Policies E-4.1.1, E-4.1.2, LU-2.1.1., LU-9.3 Goals E-5 & LU-9, Principals, LU-1.1, & LU-9.1.

In its appeal, the appellant argues that Cardenas Market is a “big box” store, which is inconsistent with the City’s General Plan goals. However, under the CDC use classifications, “big box” is defined as 80,000 square feet or great. The building footprint is approximately 41,000 square feet; therefore, Cardenas does not qualify as a “big box store.”

The appellant states that the project is inconsistent with Policy LU-10.5 as the unauthorized removal of trees has occurred. The trees were not removed by the applicant, but by the property owner. The tree removal is a violation of the CMC and the matter has been directed to code enforcement; however, staff believes the optimal solution is to require the applicant to enhance the site by requiring a landscaping plan, with 45 replacement trees. The required landscape plan will revitalize and enhance the landscaping onsite, in addition, the landscaping will have to comply with State Water Efficiency Requirements, which are currently not being met on site.

The appellant claims this project compromises the General Plan policy of attracting a mix of tenants to create a regional center. However, this project does just the opposite by allowing a new business to open in Concord that has not previously existed. This use will attract both local and regional customers to Concord to shop, which will assist to retain and attract other businesses due the large geographic draw, therefore, facilitating a businesses’ efforts to develop.

The appellant contends the policy focused on regional centers will be compromised; however, this project will do just the opposite and further strengthen the regional draw by providing a mix of tenants that will attract customers from both local and region-wide communities as was intended by this policy.

The appellant also argues that the project compromises the ability to achieve safe, efficient, on-site vehicular circulation and ample landscaping; however, to the contrary, the project is actually enhancing all of the above mentioned concerns. As mentioned previously, the landscaping will be upgraded and additional areas of landscaping have been added where feasible. In addition, as previously indicated, the circulation is being improved through required design modifications, such as the extension of the existing drive aisle median to restrict traffic circulation and enhance safety. Parking stalls at the end of the drive aisles have been required to be removed in order to restrict vehicles from backing out into the driveway, which will also further enhance safety. Additionally, ADA upgrades will be completed to bring the site into compliance with current federal standards.
The appellant argues that Land Use Principal 10.1 and its associated policies will be compromised, rather than promote enhancing the image and character of the City. All of the upgrades proposed and required through the design review process will only enhance and restore the image and attractiveness of a heavily trafficked and highly visible area located on a major arterial leading into and out of the Monument Corridor. These enhancements will also eliminate blight in an area that has been vacant and struggling for several years. Façade improvements such as repainting the building and implementation of new and sufficient roof screens will enhance the appearance of the existing building. Staff has also requested improvements to the right-of-way which will improve the needs of pedestrians by facilitating the removal and replacement of sidewalk areas due to some areas being in poor condition. Additional landscaping is proposed along the project frontage which will further enhance the streetscape as the condition of the existing ivy is deteriorating and in poor health.

The appellant claims the project will compromise the economic development programs of the City that seek to promote high quality employment. To the contrary, the project promotes this policy because it will provide additional opportunities for the employment of Concord residents, where this opportunity is currently unavailable. Additionally, the project is bringing a new business that does not currently exist in Concord, further adding to the City’s economic development.

**Appeal Point #5 & #6:** The project does not meet relevant design criteria in CMC 18.415.080, nor does it reflect the design principles or features of applicable design guidelines.

*Staff Response:*

Refer to Appeal Point #2 for previous explanation of compliance with the CDC design criteria.

Moreover, as mentioned numerous times above, the project complies with the purposes and criteria of design review. In addition, the project furthers the City’s General Plan policies and goals because the proposed improvements to a long-vacant grocery store space will only enhance the quality of the neighborhood, discourage unwanted behavior from the surrounding neighborhood, eliminate an attractive nuisance, and will stimulate economic stability of existing businesses by attracting new customers to the area, both locally and regionally.

**Appeal Point #7:** The arborist tree report fails to meet the minimum standards required by the Municipal Code.

*Staff Response:*

The arborists report was unable to identify all of the required standards pursuant to the typical requirements because the trees had been removed prior to the completion of the arborist report. Again, staff would like to reiterate the trees were removed by the property owner and not the applicant. The arborist had limited information due to the report be completed after the
tree removal had already occurred; therefore, was limited by the information he was able to
discern and obtain via Google Maps. Based on a previous Condition of Approval for the
original development of Safeway, staff was able to determine that the trees were protected,
which would have warranted a tree removal permit regardless of the species or size.

Additionally, an arborist recommendation is a moot point as again, the trees had been removed
prior to the preparation of an arborist report and, the failure to obtain a Tree Removal Permit
issue has been directed to code enforcement since it is considered to be a violation of the CMC
and not associated with the design review process.

The applicant states the “replacement trees are proposed to be in minimum box size of 24
inches” and that “replacement trees in boxes are less of a mitigation than replacement trees in
the ground which are allowed to grow larger, have larger canopies, more shade, bird perching
and butterfly habitat than trees constrained in boxes.” Staff would like to clarify that the
requirement of 24-inch box trees refers to the container size of the tree when purchased and all
trees will be planted in the ground and will therefore provide the above-mentioned aspects.

Appeal Point #8: The mature nineteen protected ash trees that were illegally removed
were important native trees.

Staff Response:

While the Ash trees are important and were protected due to a previous Condition of
Approval, they are not on the list of protected trees and therefore would typically not require
special attention when reviewing a request for removal unless they are protected by a previous
Condition of Approval.

Appeal Points #9 - #19: Appellant has contended that the project is subject to CEQA,
will have potential impacts to traffic, parking, noise and lighting, and that the City
should conduct an initial study.

Staff Response:

As stated above, staff has determined that the Design and Site Review approval and Tree
Removal Permit because this activity is not a “project” pursuant to Guidelines Section 15378 and Public
Resources Code Section 21065 as the permit approvals will not cause a direct physical change
or a reasonably foreseeable indirect physical change in the environment.

Moreover, as the proposed use is substantially similar to the previous grocery store use at the
site, it is reasonably foreseeable that there will not be a significant impact to traffic, noise or
lighting to the area. (Although parking is not considered an issue addressed by CEQA, staff

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4 Because staff recommends that the unauthorized tree removal issue be treated as a code enforcement issue instead of issuing a Tree
Removal Permit, CEQA consideration of the Tree Removal Permit is no longer necessary.
has also determined that the parking provided at the site meets the development standards for the grocery store use).

In the alternative, as stated above, if the permit approvals are deemed to be a “project” under CEQA, the permit approvals are also categorically exempt under CEQA Guidelines Section under Section 15061(b)(2) (projects are exempt as categorically exemptions apply), and (b)(3) (the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment). The project is also categorically exempt under 15301 (“Existing Facilities”), 15302 (“Replacement or reconstruction”), 15304 (“Minor alterations to land”) or 15305 (“Minor alterations to land use alterations”) as the project consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements. In addition, because the site is not located on a sensitive environmental environment, in an historical district, scenic highway or on a site identified to be on a hazardous waste site list, and there is no cumulative impact of successive projects of the same type in the same place, none of the exceptions to the exemptions apply under CEQA Guidelines Section 15300.2.

The appellant has also previously contended that allowing a chain store such as Cardenas Market into the previous Safeway store site will cause “urban decay” in the neighborhood, which in turn would require the preparation of an EIR. However, there is case law that suggests that, without relevant studies or surveys, conclusory remarks concerning urban decay are not enough to constitute substantial evidence that the project might lead to significant urban decay impacts. (Joshua Tree Downtown Business Alliance v. County of San Bernardino (2016) 1 Cal.App.5th 677). Here, there has been no viable evidence presented that allowing a grocery store into a long-vacant grocery store site will cause urban decay in the neighborhood.

In summary, staff has concluded that design review approval does not constitute a project under CEQA; in the alternative, if deemed to be a CEQA project, the project would be categorically exempt under CEQA Guideline Sections: 15061, 15301, 15302, 15304 or 15305.

V. Public Contact

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel, and has been published in the East Bay Times, as required by the Concord Municipal Code for an appeal. This item has also been posted at the Civic Center and at the subject site at least ten days prior to the public hearing.

VI. Summary and Recommendations

Staff recommends the Zoning Administrator open the public hearing, consider the staff report and presentations by the appellant, applicant, and close the hearing upon completion of public testimony. Staff recommends that the Zoning Administrator adopt Order No. 19-10ZA denying the appeal and upholding the modified approval of the Cardenas Market Design Review.
Prepared by: Sarah Yuwiler
   Assistant Planner

Attachments:
   A- Zoning Order No. 19-10ZA
   B- Project Plans date stamped received May 14, 2019
   C- Copy of Appeal
   D- MBOC Letter dated September 10, 2018
   E- City Response to MBOC dated September 21, 2018
   F- Notice of Representation and Notice of Interested Party dated November 6, 2018
ZA Order NO. 19-10ZA

OFFICE OF THE ZONING ADMINISTRATOR
CITY OF CONCORD

DENYING THE APPEAL OF ADMINISTRATIVE DESIGN AND SITE REVIEW
APPROVAL AND APPROVING MODIFIED CONDITIONS OF APPROVAL FOR
CARDENAS MARKET, LOCATED AT 2250 MONUMENT BOULEVARD, SUITE F
(PL18394-DR)

Appellant: Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition
Project Name: Cardenas Market

WHEREAS, on November 21, 2018, WSCS Design, on behalf of Cardenas Market, submitted
an application for Administrative Design and Site Review and Tree Removal Permit for exterior
modifications to an existing building for a new tenant at 2250 Monument Boulevard, Suite F (APN
129-170-026) ("Project Site"); the applicant is referred to herein as "Cardenas Market"; and

WHEREAS, the real property located at 2250 Monument Boulevard is owned by Wing-Four
Corners LLC. The Project Site was previously occupied by a Safeway grocery store, which had
vacated the premises in 2012; and

WHEREAS, the Project Site is zoned Regional Commercial (RC) which allows for the use of
a grocery store with a Zoning Clearance. Pursuant to Chapter 18.415 of the Concord Development
Code (CDC), Cardenas Market submitted an application for Design and Site Review to construct
tenant and façade improvements, install landscaping, and construct alterations the existing parking lot;
and

WHEREAS, on or around March 1, 2019, the property owner of the Project Site removed all
of the existing protected trees located in the parking lot without obtaining the proper authorization or
Tree Removal Permit from the City, as required by Concord Municipal Code (CMC) Section 8.40 et
seq.; and

WHEREAS, on May 15, 2019, the application was deemed complete by staff; and

WHEREAS, on May 24, 2019, staff issued an Administrative Design and Site Review
approval and a Tree Removal Permit, attached hereto as Attachment A, which included Conditions
of Approval, herein after referred to as "Administrative Approval;" and

WHEREAS, on June 3, 2019, the City received an appeal (referred to herein as the "Appeal")
of the Administrative Approval, filed by the Law Offices of Dana Dean on behalf of the “Monument Business Owners Coalition ("MBOC"), a copy of which is attached as Attachment B. The Appeal challenges staff’s determination that the decision (1) is not in compliance with the purposes of the Concord Municipal Code, (2) was made in error and is an abuse of discretion, (3) involved inaccurate information, and (4) is unsupported by the record; and

WHEREAS, pursuant to CDC Section 18.510.050.C, at an appeal or call for review hearing, the appellate body shall conduct a “de novo” hearing, and may consider new materials and testimony in addition to the application, plans and related project materials that were subject of the original decision; and

WHEREAS, staff has determined that the unauthorized removal of the trees from the property shall be addressed as a code enforcement issue, rather than issuing a Tree Removal Permit retroactively. Accordingly, staff has proposed modified Conditions of Approval, attached as Attachment C hereto, which remove any reference to a Tree Removal Permit but include conditions that require replacement of the removed trees (“Modified Administrative Approval”); and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970, as amended (“CEQA”), the Modified Administrative Approval is not a “project” pursuant to Public Resources Code Section 21065 and CEQA Guidelines Section 15378 as the Administrative Approval will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. In the alternative, if deemed to be a “project under CEQA, the Modified Administrative Approval is categorically exempt pursuant to CEQA Guideline Section 15061(b)(2) because it qualifies for the following exemptions under CEQA Guidelines Sections 15301 (“Existing Facilities”), 15302 (“Replacement or reconstruction”), 15304 (“Minor alterations to land”), and 15305 (“Minor alterations to land use alterations”) because the Modified Administrative Approval consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements. Additionally, the “common sense exemption” of CEQA Guidelines Section 15062(b)(3) applies as the Modified Administrative Approval does not have the potential for causing a significant effect on the environment; and
WHEREAS, the Zoning Administrator, after giving all public notices required by State law and the Concord Municipal Code, held a duly noticed public hearing on July 17, 2019, regarding the subject Appeal; and

WHEREAS, at such public hearing, the Zoning Administrator considered all oral and written information, testimony, and comments received during the public review process, including the staff report, presentation from the appellant, information received at the public hearing, the oral and written reports from City, as well as other materials, exhibits, and other information and documents contained in the record of proceedings relating to the proposed project, which are maintained at the offices of the City of Concord Planning Division (collectively, “Project Information”); and

WHEREAS, on July 17, 2019 the Zoning Administrator, after consideration of the Project Information, declared his intent to deny the appeal and uphold staff’s modified Administrative Design and Site Review approval, subject to modified Conditions of Approval, as set forth in Attachment C.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: that the Zoning Administrator does hereby deny the Appeal and approve the Modified Administrative Approval, as supported by the Project Information and the weight of the evidence presented at the hearing, and further makes the following findings:

1. The recitals above are true and correct and are incorporated herein by reference.

CEQA

2. The Modified Administrative Approval is not a “project” pursuant to Public Resources Code Section 21065 and CEQA Guidelines Section 15378 as the Modified Administrative Approval will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. In the alternative, if deemed to be a “project under CEQA, the Modified Administrative Approval is categorically pursuant to CEQA Guideline Section 15061(b)(2) because it qualifies for the following exemptions under CEQA Guideline Sections 15301 (“Existing Facilities”), 15302 “Replacement or reconstruction”), 15304 (“Minor alterations to land”), and 15305 (“Minor alterations to land use alterations”) because the Modified Administrative Approval consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements.
Additionally, the "common sense exemption" of CEQA Guideline Section 15062(b)(3) applies as the Modified Administrative Approval does not have the potential for causing a significant effect on the environment.

General Plan

3. The Modified Administrative Approval is in substantial compliance with the goals, objectives, and policies of the Concord General Plan as this project implements the goals of the Economic Vitality Element, which supports business growth and development resulting in increased employment and a growing mix of retail shopping centers.

4. Cardenas Market is a key example of Policy E-4.1.1, E-4.1.2, and Goal E-5 as it is a new business that will stimulate economic development and raise the standard of retail enterprises along with revitalizing a shopping area within the Monument Community.

5. The Modified Administrative Approval also promotes Land Use principal, LU-1.1, "Preserve and Enhance Neighborhood Character" and the associated policies that were created in order to ensure implementation can be met as the proposal includes exterior improvements and upgrades to a site that has been neglected and vacant for many years.

6. Land Use policy LU-2.1.1 is the epitome of the project at hand which is to "Maintain attractive and viable neighborhood-serving centers" as this project provides an opportunity to upgrade the center to its previous condition as a viable neighborhood center. Through the Design Review process, staff has been able to facilitate the intent of Goal LU-9, "Well Designed Development" and associated principal LU-9.1 and Policy LU-9.3 by analyzing the design and requiring upgrades above the applicant’s proposal to ensure a well-designed project.

Administrative Design and Site Review

7. The Modified Administrative Approval is consistent with the General Plan as explained in finding 3, 4, 5, and 6 above.

8. The Modified Administrative Approval meets the following criteria in CDC Section 18.415.080 (Design Criteria):

a. The building design and landscaping supports public safety and security by allowing...
for surveillance of the street by people inside buildings and elsewhere on the site. Additionally, the removal of the vacant coffee kiosk building will provide for a better line of sight and eliminate the possibility of an attractive nuisance, including people loitering in or around the vacant building.

b. The applicant has also worked with the police department on a security plan and proposes to install security cameras as an additional safety enhancement. The site and surrounding areas is not recognized by the City as having significant historical or visual character.

c. The Modified Administrative Approval preserves major views and vistas along major streets and open spaces and trails and enhances them by providing project amenities. The project would enhance views and vistas along Monument Boulevard by constructing new site improvements and amenities that can be seen from the street, such as landscaping, resurfaced parking, and lighting.

d. The Modified Administrative Approval lighting and fixtures are designed to complement on-site buildings, are of an appropriate scale for the development, and provides adequate light for safety and security while minimizing glare as confirmed by the transportation division’s review of the photometric plan.

e. All mechanical, electrical, and utility equipment is located, screened, or incorporated into the design of the building so as not to be visible from off-site locations, and the proposed screening devices are consistent with the exterior colors and materials of the building. The applicant has provided roof screens, which have been reviewed by staff, to ensure adequate screening of the roof mounted equipment. The color of the proposed roof screens will be similar to the building wall colors for consistency.

f. The overall design of the Modified Administrative Approval including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment. The proposed changes to the building and the installation of new landscaping are cosmetic and aesthetic in nature which will effectively enhance the built environment.

g. The Modified Administrative Approval design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the
general community. The changes to the existing developed site are proposed in order to enhance the function, accessibility, traffic flow, safety, and appearance for occupants, visitors and the general community.

h. The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.

i. The Modified Administrative Approval is compatible with neighboring development in the same Zoning District by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development. The proposed project will not modify the building scale or character but rather enhance and improve the existing building and site.

j. The Modified Administrative Approval creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context. The proposal does not modify the existing building style or design as the modifications are limited to a new building paint scheme and site improvements.

k. The Modified Administrative Approval landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage. The proposed landscaping consists of a variety of drought-tolerant vegetation that will blend with the surrounding landscape and has been appropriately size for the buildings and its location on-site.

l. Stormwater treatment areas have been integrated into the landscape design and are not being modified through the proposed upgrades. The amount of paving removed or modified is less than the 10,000 square foot threshold that triggers stormwater treatment under the C.3 provision of the Municipal Regional Permit and Contra Costa Clean Water Program.
m. New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development. The only new construction proposed is the replacement trash enclosure installation of new roof screens, and minor modifications to the size of existing planters. These improvements will be constructed to enhance the existing site condition, which has degraded over time due to the site being vacant for nearly seven years. The proposed improvements also would complement the surrounding developments, which include nearby properties that were recently remodeled and upgraded.

Development and Use Standards

9. The proposed improvements conform to all applicable development and use standards including the following:
   a. The interrelationship between the orientation, location and elevations of the building, structures and site improvements are mutually compatible and aesthetically harmonious;
   b. The orientation, location, and elevation of the building, structures, and site improvements are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood;
   c. The landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvements to the site and the appearance of the neighborhood; and
   d. The parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation.

Design Review Findings

10. Staff has determined the following necessary findings under CDC Section 18.415.100:
   a. The project is in substantial compliance with the goals, objectives, and policies of the Concord 2030 General Plan as this project implements the goals of the Economic Vitality Element, which supports business growth and development resulting in increased employment and a growing mix of retail shopping centers. Further, Cardenas Market is a key example of Policy E-4.1.1, E-4.1.2, and Goal E-5 as it is a new business that will stimulate economic development and raise the standard
of retail enterprises along with revitalizing a shopping area within the Monument Community. The proposal also promotes Land Use principal, LU-1.1., “Preserve and Enhance Neighborhood Character” and the associated policies that were created in order to ensure implementation can be met as the proposal includes exterior improvements and upgrades to a site that has been neglected and vacant for many years. Land Use policy LU-2.1.1 is the epitome of the project at hand which is to “Maintain attractive and viable neighborhood-serving centers” as this project provides an opportunity to upgrade the center to its previous condition as a viable neighborhood center. Through the Design Review process, staff has been able to facilitate the intent of Goal LU-9, “Well Designed Development” and associated principal LU-9.1 and Policy LU-9.3 by analyzing the design and requiring upgrades above the applicant’s proposal to ensure a well-designed project.

b. As set forth more fully above, the proposed design meets the design criteria as specified in CDC Section 18.415.080.

c. The overall project reflects the design principles and/or incorporates design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of the approval as the project upgrades require the existing non-conforming aspects of the project to be brought into conformance such as landscaping, inadequate roof mounted equipment screening, and a non-compliant trash enclosure.

11. The Modified Administrative Approval overall reflects design principles and/or incorporates design features that are consistent with the applicable design guidelines adopted by the City Council that are in effect at the time of approval.

12. In approving the Modified Administrative Approval, the Zoning Administrator has imposed Conditions of Approval, as included in Exhibit C, deemed necessary to:

a. Ensure that the Modified Administrative Approval conforms to the General Plan and other applicable plans or policies adopted by the Council; and

b. Ensure that the Modified Administrative Approval meets the requirements of the RC zoning district, applicable provisions of the Concord Municipal Code and other standards in the Development Code.
Based on the above findings, on July 17, 2019, the Zoning Administrator hereby denies said
Appeal and approves the Modified Administrative Approval for Design and Site Review for Cardenas
Market at 2250 Monument Boulevard, Suite F, subject to the Conditions of Approval, as set forth in
Exhibit C.

Michael P. Cass
Zoning Administrator

Exhibits:

A – May 24, 2019 Administrative Design and Site Review Approval and
Tree Removal Permit

B – Appeal of Administrative Design Review and Tree Removal Approval
filed by Monument Business Owners Coalition

C – Modified Administrative Design and Site Review Approval, with
Conditions of Approval
May 24, 2019

Candice Warren  
WSCS Design  
2501 E. Guasti Road Suite 201  
Ontario, CA 91761

VIA E-MAIL: Candice@wscsdesign.com

Subject: Administrative Design Review and Tree Removal Approval  
Cardenas Market  
2250 Monument Boulevard, Suite F  
PL18394-DR, RT  
APN 129-170-026

Dear Ms. Warren:

This letter with the attached Conditions of Approval constitutes approval of Design Review and Tree Removal (PL18394-DR, RT) for the exterior parking lot improvements including landscaping, a new trash enclosure and exterior paint changes for a 41,940 square foot tenant space associated with the new Cardenas Market tenant located at 2250 Monument Boulevard, Suite F. The General Plan designation is Regional Commercial; Zoning classification is RC (Regional Commercial); APN: 129-170-026.

The project shall be in substantial conformance with the plans date stamped received by the City of Concord, on May 14, 2019. The following Conditions of Approval are the responsibility of the project applicant. Compliance with these conditions, the City of Concord Municipal Code, and other applicable City of Concord Planning, Building, and Engineering codes and ordinances shall be required for all permits and inspections associated with this entitlement.

The Planning Division shall be the review authority for all sign plans under the City’s Development Code, and this approval may be appealed to the City’s Zoning Administrator by timely filing an appeal form, with an appeal fee in the amount of $99, with the Planning Division or City Clerk within ten (10) days of the date of the decision. A public notification fee of $1,372 would also apply for each public hearing scheduled.

PERMIT DESCRIPTION

1. These Conditions apply to and constitute approval of Design Review (PL18349-DR, RT) for exterior site improvements such as landscaping, parking lot improvements, a new trash enclosure and exterior paint changes, and tree removal of 19 ash trees that were required as a condition of approval from the original construction. The exterior building materials and colors shall be in substantial conformance with the approved plans, samples and exhibits as follows:
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<th>Sample Number</th>
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<td>Irrigation Plan</td>
<td>4/5/19</td>
<td>Olive Street</td>
<td>L2</td>
</tr>
<tr>
<td>Landscape Details</td>
<td>4/5/19</td>
<td>Olive Street</td>
<td>L3</td>
</tr>
<tr>
<td>Landscape Specifications</td>
<td>4/5/19</td>
<td>Olive Street</td>
<td>L4</td>
</tr>
<tr>
<td>Photometric Site Plan</td>
<td>8/29/18</td>
<td>N/A</td>
<td>E100</td>
</tr>
<tr>
<td>Cutsheets</td>
<td>8/29/18</td>
<td>N/A</td>
<td>E101</td>
</tr>
</tbody>
</table>
GENERAL CONDITIONS

3. The Conditions are the responsibility of the applicant and all contractors. Compliance shall occur as specified in the Conditions or at one of the following project milestones:
   a) With the submittal of Grading, Improvement, Landscape, or Building Plans.
   b) Prior to issuance of Encroachment, Grading, or Building Permits, whichever comes first.
   c) Prior to construction.
   d) On-going during construction.
   e) Prior to approval of the Final Map.
   f) Prior to occupancy approval.

   If timing for compliance is not specified, it shall be determined by the Divisions listed after the Condition. (PLNG, BLDG, ENGR)

4. Where a plan or further information is required, it is subject to review and approval by the applicable City Department/Division, as noted at the end of each Condition. The Division listed first shall be the primary contact for implementation of that Condition. (PLNG, BLDG, ENGR)

5. The project shall comply with all applicable Federal and State laws and Concord Municipal Code (CMC) requirements. (PLNG, BLDG, ENGR)

6. Minor modifications that are found to be in substantial conformance with the approved plans such as colors, plant materials, or minor lot line adjustments, may be approved administratively. Major modifications shall be approved by the applicable decision making body. (PLNG, ENGR)

7. All exterior improvements for the area adjacent to the tenant space out to the street curb shall be maintained in good condition and kept clean and clear of debris. When the tenant space is not adjacent to a street, sidewalk, or parking lot, the tenant shall be responsible for maintenance of the area immediately in front of their space. Exterior improvements include but are not limited to landscaping, street trees, sidewalks, parking areas, street furniture, trash receptacles and enclosures, signs, and building facades, except for areas which are maintained by the City. (PLNG)

ARCHITECTURAL

8. Any and all rooftop equipment (HVAC, meters, refrigeration equipment, plumbing lines, ductwork and transformers), shall not extend above the building parapet and shall be screened from view on all sides with materials architecturally compatible with the main structure. Screening details shall be shown on the Building Plans and submitted for review and approval by the Planning Division, prior to the issuance of Building Permits and installed prior to occupancy approval. (PLNG)

9. Vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted to match the color of the adjacent surface, unless otherwise approved by the Planning Division. (PLNG)
LANSCAPING

10. Revise and resubmit prior to building permit issuance for exterior improvements, detail #9, Drip Emitter, on sheet L3 to show piping buried below the soil grade. *(PLNG)*

11. Revise and resubmit prior to building permit issuance for exterior improvements, language for Section 13.0 on sheet L4, Drip, to indicate that piping and tubing shall be buried below soil grade. *(PLNG)*

12. Submit Final Landscape Plans prepared by a Landscape Architect, registered by the State of California prior to issuance of building permit for exterior improvements. *(PLNG)*

13. Irrigation Plans shall be submitted with the Final Landscape Plans in compliance with the requirements of CMC Chapter 18.170 “Water Efficient Landscaping” prior to issuance of a building permit for exterior improvements. *(PLNG)*

14. The Landscape Plans shall include a water usage program with the following:
   a) Estimated annual water use (in gallons) and the area (in square feet) to be irrigated.
   b) Precipitation rate(s) for each valve circuit.
   c) Monthly irrigation schedule for each type of irrigation head showing the plant establishment period and the first year thereafter. *(PLNG) CMC*

15. All landscaping shall be installed prior to occupancy approval. Contact the Planning Division at least two weeks prior to occupancy, to request a site inspection of all exterior improvements including buildings, driveways, parking lots, landscaping, irrigation, signs, lighting, walls, fences, and trash enclosures. *(PLNG)*

16. Prior to occupancy approval, the licensed Landscape Architect shall submit a Landscape Documentation Package with the following mandated elements:
   a) Application
   b) Certification of Compliance for Landscape Design
   c) Certification of Compliance for Landscape Installation
   d) Certification of Compliance for Landscape Audit
   e) Certification of Compliance for Landscape Maintenance
   f) Water Budget work sheets (if applicable)
   g) Landscape Plans
   h) Landscape and Maintenance Schedule *(PLNG)*

17. Provide a signed Certificate of Compliance stating that the Landscape Architect has met all State and City requirements prior to occupancy approval. *(PLNG)*

18. Submit three signed copies, one notarized, of the City’s “Property Maintenance Agreement”, to ensure on-going repair, replacement and maintenance of all exterior improvements including buildings, parking areas, private roads, walkways, landscaping, irrigation, signs, fences, walls, and other improvements, prior to occupancy approval. *(PLNG)*
19. Any vegetation damaged or destroyed by construction activities shall be replaced with like or comparable plant materials, and if damage occurs off-site, the replacement plants shall be approved by the property owner and the Planning Division, prior to occupancy approval. \textit{(PLNG)}

20. All new trees shall have a minimum box size of 24-inches. \textit{(PLNG)}

21. All existing trees within the project boundaries shall be preserved, except for 19 which have been removed per the arborist report prepared by Tom Arrington of Bay Arborist dated March 28, 2019. \textit{(PLNG)}

\textbf{SHOPPING CARTS}

22. Shopping carts corrals shall be creatively designed and built in to the landscaping with the usage of curbs as the wheel stops as shown on the landscape plans \textit{(PLNG)}

23. Shopping cart corrals shall be located adjacent to the landscape planters at the ends of the aisle as shown on the site plan page PDR-102 and the landscape plan page L1. \textit{(PLNG)}

24. Shopping carts shall be identified with the Cardenas' name, address and telephone number. Such identification shall be in the form of a metal or plastic tag fastened to the cart. \textit{(PLNG, CMC, PD)}

25. The following notice shall be posted prominently and conspicuously at all entrances: “Removal of shopping carts from these premises is prohibited by law (CMC 8.25.270) and will subject the violator to a minimum fine of $100.00”. Sign locations shall be indicated on the site plan for review and approval by the Planning Division prior to occupancy approval \textit{(PLNG, CMC, PD)}

26. Cardenas shall contract with a cart recovery company. Cardenas shall present evidence of the contract prior to the issuance of the occupancy approval. Said contract shall address measures for retrieval of missing and/or abandoned shopping carts in accordance with the CMC Article IV 8.25.300. \textit{(PD)}

\textbf{LIGHTING}

27. Show all exterior lighting including: building fixtures, walkway lighting, parking lot lighting, and street lights on the Site, Utility, Landscape, and Building plans, prior to the issuance of any permits. The height and style of fixtures shall be shown. Energy-saving fixtures shall be used and noted on the plans. \textit{(PLNG, ENGR, BLDG)}

28. All exterior building and parking lot lighting shall provide illumination for safety and shall be installed in a manner that is glare shielded and directed away from adjacent properties and right-of-ways. \textit{(PLNG)}

29. The lighting shall be shall be in substantial conformance with the photometric plans on page E100 and E101 of the plan set approved by the Transportation division. \textit{(ENGR, TRANS, PD)}
SIGNAGE

30. All signage should comply with the approved Sign Plan PL19049-DR on file with the City and the landlord. (*PLNG*)

31. Signs with exposed raceways shall not be permitted. (*PLNG*)

PARKING

32. All parking spaces shall be 9-feet wide by 19-feet long. (*PLNG*)

33. Wheel stops shall only be permitted for accessible spaces. (*PLNG*)

34. Parking shall comply with CMC Chapter 18.160 “Parking, Loading, and Access”, including motorcycle and bicycle parking spaces, drive aisle and parking space dimensions, turning radii, back-out dimensions, driveway clearances, landscape median dimensions, and other relevant information. (*ENGR, PLNG*) CMC

35. Short-term bicycle parking spaces shall be provided equal to five percent of the required vehicle spaces, with a minimum of two spaces per site and Long-term bicycle parking shall be provided according to the provisions of CMC Chapter 18.160 “Parking, Loading, and Access,” unless otherwise approved. (*PLNG*)

STREET/PARKING LOT IMPROVEMENTS

36. Project frontage shall comply with ADA requirements and damaged sidewalk shall be removed and replaced as indicated on plan set page PDR-102 prior to occupancy approval. (*ENGR*)

37. Parking lot shall be slurry sealed prior to occupancy approval. (*ENGR*)

38. Obtain an Encroachment Permit from the Engineering division prior to performing any work within the public right-of-way or public easements prior issuance of building permit for exterior improvements (*ENGR*) CMC

39. Above ground utility structures to be screened from public view. (*ENGR*)

40. No above ground utility facilities/structures shall be located between the face of curb and back of sidewalk in the public right-of-way. (*ENGR*)

41. Back flow preventions and other utility structures serving the project to be located on shall be located on the project property. (*ENGR*)

42. All new utilities shall be constructed underground prior occupancy approval. (*ENGR*)

43. The vacant dirt property adjacent to the building shall be hydroteed prior to occupancy approval. (*ENGR*)
44. Prevent site drainage from draining across sidewalks and driveways in a concentrated manner. *(ENGR)*

**SOLID WASTE/RECYCLING**

45. Trash bins and refuse shall be stored within approved trash enclosure and the doors shall be closed at all times except when the bins are being emptied. *(PLNG, ENGR)*

46. Comply with the provisions of the CMC, Central Contra Costa Sanitary District and the disposal service regarding enclosure design, access requirements, and the number of required individual refuse receptacles based upon waste pickup schedules. Trash enclosures shall incorporate the following features:

   a) A concrete pad to prevent damage to asphalt paving.
   b) A roof and sanitary sewer cleanout, designed to prevent rainwater from penetrating the interior of the enclosure and preclude trash from being blown outside of the bins.
   c) The cleanout shall connect to a sanitary sewer to prevent contaminated water from entering the storm drain system.
   d) If any cleaning agent or degreaser is used, wash water must be collected and discharged to the sanitary sewer, subject to the approval of the Central Contra Costa Sanitary District. *(CCCSO, ENGR)*

47. Trash enclosures shall incorporate the same architectural treatment, and use the same exterior materials and colors as the main building and shall comply with the Community Design Guidelines, including the following:

   a) A roof or trellis.
   b) Masonry, steel or heavy timber walls.
   c) An interior, poured-in-place curb to prevent damage to the screen walls.
   d) Doors with external hinges to prevent damage from the receptacle.
   e) Doors of solid metal or with a metal frame with self-closing latch.
   f) The height of the enclosure walls and door shall be the same height or higher than the bins within the enclosure. *(PLNG)*

**NOISE**

48. Site preparation and construction activities shall be limited to the days and hours as set forth below:

   **Monday through Friday**......7:30 a.m. to 6:00 p.m.

   Construction on Saturdays may be allowed only upon prior approval by the Building, Engineering, and Planning Divisions. No changes to these construction hours shall be allowed without the prior written consent of the City. A contact person shall be available during all construction activities in the evening and on weekends to respond to complaints and take actions necessary to reduce noise. *(BLDG, ENGR, PLNG)*
AGREEMENTS, FEES, BONDS

49. Provide a $5,000 cash deposit to the Planning Division to cover Condition Compliance and Mitigation Monitoring costs, at the time of submittal of plans and documents to Engineering Services or the Building Division for plan check. Planning staff’s time will be charged to this deposit for work performed to implement the Conditions of Approval, from the time of project approval to occupancy approval. Mitigation Monitoring costs will be charged at cost over the life of the project mitigation requirements. The deposit will be placed in a refundable account and any unused funds will be returned upon completion. If the initial deposit is insufficient to cover actual costs, an additional deposit will be required. (PLNG)

50. Pay a Document Imaging fee to reimburse the City for implementation of the Document Imaging and File Retention programs, prior to issuance of Grading or Building Permits. (PLNG)

OTHER/MISCELLANEOUS

51. A security plan shall be submitted and approved by the Police Department prior to occupancy. 
(PD)

52. Comply with the requirements of the Contra Costa County Fire Protection District. Submit complete sets of plans and specifications to the Fire District for review and approval at:

Contra Costa County Fire Protection District
2010 Geary Road
Pleasant Hill CA 94523

Plan review fees are assessed at that time. The City is not responsible for the collection of fees or enforcement of requirements imposed by the Fire District. (CCCFPD)

53. The applicant shall defend (with counsel approved by City) indemnify and hold harmless the City, any agency or instrumentality thereof, and its/their respective agents, officers, officials, volunteers, and employees from and against any and all administrative and/or legal claims, actions or proceedings to attack, set aside, void, or annul approval of the project, including without limitation, any related application, permit, certification, condition, environmental determination, other approval compliance or failure to comply with applicable laws and regulations, and/or processing methods (“Challenge”), with the exception of a Challenge arising out of the City’s sole negligence or willful misconduct. The City shall have the right to pre-approve any material decision involved in defending any such Challenge, including settlement, and may (but is not obligated to) participate in the defense of any Challenge. If applicant does not promptly defend any Challenge, City may (but is not obligated to) defend such Challenge as City, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense. The applicant shall bear any and all losses, damages, injuries, liabilities, costs, and expenses (including, without limitation, staff time and in-house attorney’s fees on a fully-loaded basis, attorney’s fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge (“Costs”), whether incurred by Developer, City, or awarded to any third party, and shall pay to the City upon demand any Costs incurred by the City. No modification of the project, any application, permit, certification, environmental determination, other approval, change in applicable laws and regulations, or change in
processing methods shall alter the applicant’s indemnity obligation. Pursuant to Government Code Section 66474.9, the applicant’s indemnification obligation with respect to any claim, action or proceeding to attack, set aside, void, or annul an approval of City concerning a subdivision (tentative, parcel, or final map application or approval) shall be limited to actions brought within the time period provided for in Government Code Section 66499.37, unless such time period is extended for any reason. The City shall promptly notify applicant of any challenge, and shall cooperate fully in the defense. (CA)

54. The permit and approval shall expire in (one) year from the date on which they became effective unless construction permits are obtained and work has begun. All permits approved concurrently with a Tentative Map shall be valid for the life of the map. The effective date of the permit and approval is June 4, 2019. (PLNG)

55. A request for a time extension from the expiration date of June 4, 2020 can be considered if an application with required fee is filed at least 10 days before the original expiration date, otherwise a new application is required. A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved. Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require, or permit denial. (PLNG)

Sincerely,

Sarah Yuwiler
Assistant Planner

Attachments:  Approved Plans
Arborists Report Recieved April 12, 2019

Cc:  Mindy Gentry, Planning Manager
     Frank Abejo, Principal Planner
     Ryan Pursley, Chief Building Official
     Kevin Marstall, City Engineer
     Bruce Davis, Senior Civil Engineer
     Mitra Abkenari, Assistant Engineer
     John Montagh, Economic Development Manager Abhishek Parikh, Transportation Manager
     Rick Bruzzone, Property Owner
     George Marquez, WSCS Design
PLANTING SPECIFICATIONS

DESIGN OF WORK

PLANTING design is an essential element of the landscape. It enhances the aesthetics of the property and creates a sense of place. The landscaper should be knowledgeable about plant growth and development, soil conditions, and climate to ensure the success of the planting.

PLANT MATERIALS

1. The landscaper should select plants that are well adapted to the local climate, soil conditions, and exposure level. The selection should be based on hardiness, disease resistance, and aesthetic value.

PLANTING

1. Plants should be positioned properly in the planting bed to allow for proper sunlight exposure and drainage. The planting depth should be three to four times the rootball diameter.

IRRIGATION SPECIFICATIONS

1. WATER SERVICE

The water service is available for the irrigation of the landscape. The system is designed to meet the water requirements of the landscape. The water service should be connected to the water meter by a 1" or 2" water line. The system should provide enough water for the landscape's needs.

2. IRRIGATION SYSTEM

The irrigation system is designed to meet the water requirements of the landscape. The system should provide enough water for the landscape's needs. The system should be tested and adjusted to ensure proper water distribution.

3. MAINTENANCE

The maintenance of the irrigation system is the responsibility of the property owner. The landscaper should provide the maintenance instructions, including the frequency of irrigation, water pressure, and irrigation schedule.

4. MATERIALS

The materials used for irrigation systems include pipes, valves, sprinklers, and controllers. The materials should be selected based on durability and cost-effectiveness. The system should be tested and adjusted to ensure proper water distribution.

5. PLANNING PROCEDURE

The planning procedure for irrigation systems includes selecting the appropriate irrigation system, determining the water requirements, and designing the irrigation system. The system should be designed to meet the water requirements of the landscape and provide enough water for the landscape's needs.

6. DRAINAGE

The drainage system should be designed to prevent water from pooling on the surface of the landscape. The system should be tested and adjusted to ensure proper drainage.

7. TESTING

The irrigation system should be tested to ensure proper water distribution. The system should be tested for leaks and adjustments made to ensure proper water distribution.

8. MAINTENANCE

The maintenance of the irrigation system is the responsibility of the property owner. The landscaper should provide the maintenance instructions, including the frequency of irrigation, water pressure, and irrigation schedule.

9. DOCUMENTATION

The documentation of the irrigation system includes the irrigation system plans, materials list, and maintenance instructions. The documentation should be kept for future reference and maintenance purposes.
TO: City Council or Planning Commission
City of Concord
1950 Parkside Drive
Concord, CA 94519

NOTICE OF APPEAL
CMC Chapter 18.510

I hereby appeal the decision / requirement of the Planning Division (ADMINISTRATOR OR COMMISSION) in approving / denying the application of Cardenas Market (NAME OF APPLICANT) for Administrative Design Review and Tree Removal Approval on May 24, 2019 (TITLE OF ITEM BEING APPEALED). Please indicate the specific action(s) or requirement(s) being appealed: Please see letter attached.

Monument Business Owners Coalition (PRINT NAME OF APPELLANT)

SIGNATURE OF APPELLANT REPRESENTATIVE

APPELLANT'S ADDRESS
283 East H Street, Benicia, CA 94510

HOME PHONE

BUSINESS PHONE
707-747-5206

ADDRESS FOR NOTICES
283 East H Street, Benicia, CA 94510

MY REPRESENTATIVE IS
Dana Dean (Law Offices of Dana Dean)

BUSINESS PHONE
707-747-5206

FOR STAFF USE ONLY

ADDRESS OF PROPERTY INVOLVED

ASSESSOR'S PARCEL NUMBER(S)

MUNICIPAL CODE/SECTION

FILE NUMBER

FILE TITLE

NAME OF RESPONSIBLE PLANNER

REVIEWED BY (PLANNING STAFF)

RECEIVED BY

PROJECT PLANNER

CITY CLERK USE ONLY

Received written appeal on June 3, 2019

Scheduled for Council agenda of TBD

Set for Public Hearing on TBD

0 Copies distributed to appropriate parties

CITY CLERK
June 3, 2019

Zoning Administrator
City of Concord
Concord Civic Center
1950 Parkside Drive
Concord, California 94519

Re: Appeal of Planning Division's May 24, 2019 Decision to Approve Administrative Design Review Application and Tree Removal (PL 18394-DR, RT) for Tenant Space at 2250 Monument Boulevard, Suite F, APN 129-170-026

Dear Zoning Administrator:

Our office represents the Monument Business Owners Coalition ("MBOC"), an unincorporated association, regarding the Cardenas Market that is proposed at 2250 Monument Boulevard, Suite F in Concord. MBOC respectfully submits this appeal of the City of Concord Planning Division staff's May 24, 2019 design review and tree removal approvals (PL 18394-DR, RT) (collectively, both approvals are referred to as the "Project").

This appeal is submitted on behalf of MBOC as an Interested Party pursuant to Concord Municipal Code ("CMC") sections 18.415.110, Post-decision procedures [for Design and Site Review] and 18.510.020, Right of Appeal.

As set forth below, a careful review of the 5/24/19 Decision and of all relevant matter indicates that Decision is not in compliance with the purposes of the CMC, was made in error and in abuse of discretion, involved inaccurate information, and is unsupported by the record. As such, the 5/24/19 Decision should be reversed and further review should be required prior to any future approval.

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1 See CMC Section 18.510.040(A).
**Facts**

As noted on the City’s website, “2017 marks the 37th year that Concord has been named a Tree City USA community by the National Arbor Day Foundation. The national award honors Concord’s commitment to its community forest. Concord is also the recipient of a Tree City Growth Award for the twentieth year for demonstrating progress in its community forestry program.”

The subject property for the Project had been occupied by a Safeway. However, there is a new proposed tenant, Cardenas Market, who is now seeking approvals from the City prior to opening its doors.

The new tenant proposes to open a Cardenas Market, which is a grocery store specializing in Mexican foods, including a deli and other prepared foods. According to the company’s website, there are several such markets in Northern California, Southern California and Las Vegas, Nevada. The location of the new proposed tenant is located adjacent to Pine Creek.

There are several Mexican food and prepared food businesses in the immediate vicinity of 2250 Monument Boulevard that similarly specialize in Mexican foods and prepared foods. These businesses have been a part of the fabric of City of several years, some for decades.

A land use attorney, presumably on behalf of Cardenas Market, Richard Bruzzone of Durgin Otterson Bruzone LLP, caused to be created an Arborist Report, dated March 28, 2019, entitled, “Tree Removal Permit Requested for Recent Unauthorized Tree Removal”. The Arborist Tree Report is prepared by Tom Arrington, ISA certified arborist #WE-3070A, 4100 Fariss Lane, El Sobrante, CA 94803 (“Arborist Tree Report” or “Report”).

The report states that an unspecified date, but prior to March 28, 2019, “19 canopy parking lot trees were removed from the parking lot at 2250 Monument Blvd.

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2 http://www.cityofconcord.org/354/Trees
3 There are at least 20 Latino restaurants and 6 Latino markets exist in the Monument Community.
4 The law office address is 1660 Olympic Boulevard, Suite 210, Walnut Creek, CA 94596-5127, and according to the applicant’s law office website, the LLP also has an office located in San Francisco. The office website indicates that the firm practices in the area of land use. http://doblawyers.com/rick-bruzzone.php#. Last visited June 3, 2019.
Boulevard." The report further states that, "Mr. Bruzzone was unaware that a tree removal permit was required by the City of Concord."

On or about September 10, 2018 the MBOC sent the City of Concord, Planning Division a letter expressing concern about the urban decay issues and requested the City engage in CEQA review of the project.

On or about September 21, 2018 the City wrote back to MBOC and stated that as of the writing of that letter, that CEQA was not yet applicable to any City determination because there was not yet a discretionary permit.

On November 6, 2018, our office requested designation of MBOC as an Interested Party for all matters within the jurisdiction of the City of Concord related to the Cardenas Market proposed at 2250 Monument Boulevard in Concord. Based on such designation, we received notice of the 5/24/19 project approvals.

By way of a letter dated May 24, 2019 from assistant planner, Sarah Yuwiler, to Candice Warren of WSCS Design, the project approvals in favor of a new anchor tenant, Cardenas Market include: exterior parking lot improvements including landscaping, a new trash enclosure and exterior paint changes for a forty-one thousand, nine hundred forty (41,940) square feet space.

The City's letter of approval attaches fifty-five (55) Conditions of Approval. Some off the conditions of approval appear to mitigate some of the environmental impacts of the proposed project.

The approvals omit a CEQA determination.

**Argument**

**Administrative Design Review Was Not the Proper Level of Review**

As a preliminary matter, the Planning Division's administrative design and site review for this project was not the proper level of review based on all of the various factors involved with this project.

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5 The complete address for the recipient's approval located in Southern California is Candice Warren WSCS Design 2501 E. Guasti Road, Suite 201, Ontario, CA 91761.
CMC Section 18.415.040 provides that minor projects/improvements that do not otherwise require a discretionary permit approval where the Planning Division determines that the project will not substantially affect the property rights of owners or adjacent parcels may be approved through administrative design and site review, with or without review by the Design Review Board, as determined by the Planning Division. It further provides examples of minor projects and improvements, including “new occupancies in existing nonbuildings” when the property is in conformance with the development standards applicable to the property” and “new occupancies in existing nonresidential buildings when the property is not in conformance with the development standards applicable to the property where the project includes plans to substantially upgrade the exterior of the building and/or makes significant upgrades to landscaping, parking areas, and other site improvements.”

However, administrative design and site review should not have been done here because a discretionary permit approval is required considering approval for the unauthorized tree removal was required because the nineteen (19) trees had been removed without a permit and because they were protected trees were destroyed without a permit. The trees were protected pursuant to a condition of approval for the original site, as indicated in the Arborist’s Report that was submitted by the applicant. The Municipal Code also provides protection for the removed trees. CMC 18.310 et seq.

As is detailed below, the Tree Removal Permit is a discretionary determination in accordance with the City’s own Municipal Code and Guidelines. See CMC 18.310.020(D) and 18.310.070, discussing the deliberative criteria for evaluation and findings necessary for removal of trees. In addition, the Project will substantially affect the property rights of owners or adjacent parcel, considering the extent of exterior site/parking lot improvements and tree removal involved here further underscoring the fact that an administrative permit is inappropriate for the entitlements sought here.

As such, the higher level of design review of the proposed exterior site/parking lot improvements and tree removal is required in this case. It is not enough that such design review, especially since the issue of the unauthorized tree removal had to be addressed, only occurred at the administrative level. At the very least, it

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6 Based on the language in CMC Section 18.415.040, it appears that the reference to “nonbuildings” may have inadvertently been used instead of “nonresidential buildings” as referenced in the other portions of this section.
must be referred to the Design Review Board, as allowed by CMC Section 18.415.040 (C) and (E) and as further described in CMC Section 18.415.060.

The 5/24/19 Decision must be reversed because of the failure to conduct the appropriate and adequate review required for this Project.

**The Planning Division Failed to Make the Requisite Findings for Design Review Approval**

CMC Section 18.415.090 states that “[d]esign and site review shall be approved when it is determined that the proposed improvements conform to all applicable development and use standards including the following:

A. The interrelationship between the orientation, location, and elevations of buildings and structures and site improvements are mutually compatible and aesthetically harmonious;

B. The orientation, location, and elevation of the buildings and structures and site improvements are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood;

C. Landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood; and

D. Parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation.” (emphasis added)

None of the above standards were discussed in the 5/24/19 Decision nor was there any determination that the Project conformed to above noted applicable development and use standards. In fact, they did not conform, given the unpermitted tree removal, _inter alia_.

Moreover, CMC section 18.415.100 sets forth that the review authority may approve, conditionally approve, or deny the application _after finding_ that:

1. The project is consistent with the general plan;

2. The project meets the relevant criteria in CMC 18.415.080 (Design
3. The project overall reflects design principles and/or incorporates design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of approval.

However, the 5/24/19 Decision does not include any of these requisite findings regarding the project involving the exterior site/parking lot improvements (including landscaping, a new trash enclosure and exterior paint changes) and tree removal. Without any record of such findings, there is no basis to approve the design review.

Therefore, the 5/24/19 Decision was made in error, is an abuse of discretion, and is not supported by the record before the decision-makers because it does not discuss the above standards nor does it include the requisite findings that are needed to support design review approval with regards to the exterior site/parking lot improvements. Instead of discussing the specific standards and findings that are required, the 5/24/19 Decision only indicates that “[the] letter with the attached Conditions of Approval ["COAs"] constitute approval of Design Review and Tree Removal...” and then proceeds to set out the 55 COAs.

With all of this in mind, the 5/24/19 Decision should be overturned because it is not supported by the record as the Planning Division failed to make the specific findings required for approval of design review for the exterior site/parking lot improvements.

Even if such findings were stated in the 5/24/19 Decision, a more thorough review shows that the design for the exterior site/parking lot improvements does not conform to all applicable development and use standards; is not consistent with the General Plan; does not meet the relevant criteria in CMC Section 18.415.080 (Design criteria); and does not overall reflect design principles and/or incorporate design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of approval, as is further discussed below.
The Project Design Does Not Conform to Applicable Development and Use Standards

In general, the Project design regarding proposed improvements do not conform to applicable development and use standards, which include, but are not limited to the following standards described in CMC Section 18.415.090:

*Landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood (CMC Section 18.415.090(C))*

This determination cannot be made at this time based on the language in the 5/24/19 Decision, because several of the COAs dealing with landscaping, irrigation systems, utility enclosures, and trash facilities involve future events and/or plans that have not been yet submitted and reviewed.

For example, with regards to landscaping, the 5/24/19 Decision, submission of “Final Landscape Plans” and irrigation plans occurs at a later date (COAs 12, 13) and the various, relevant certificates of compliance, including the certificate stating that the Landscape Architect has met all State and City requirements, are due prior to occupancy approval, which indicates that none have been submitted thus far. Accordingly, their compatibility with the municipal code is unknown.

As noted above, the landscaping does not meet current requirements nor does it provide a significant upgrade and improvement, considering the fact that the removal of 19 trees, as referenced in COA #21, was improper and occurred without the requisite tree removal permit, especially as such trees were protected under a condition of approval for the original site. There is no way that the removal of these 19 protected trees is an upgrade or improvement to the site and the appearance of the neighborhood.

The next finding required a determination that the Project was in compliance with the following code section:

*Parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation (CMC Section 18.415.090(D))*
Similarly, this determination also cannot be made because the relevant COAs do not explicitly state that the plans indicate that parking, pedestrian access, and traffic circulation are adequate or improved as they only discuss future conditions. For example, COAs 32 and 34 state that parking spaces shall be 9-feet wide by 19-feet long and that parking shall comply with “CMC Chapter 18.160 'Parking, Loading, and Access’”

Therefore, the above determinations regarding landscaping and parking standards cannot be made as they would be in error, in abuse of the Planning Division’s discretion, and not supported by the record, all of which provide reasons to reverse the 5/24/19 Decision.

The Project is Not Consistent with the General Plan

The 5/24/19 Decision was also made in error, in abuse of the Planning Division’s discretion, and is not supported by the record because the Project is inconsistent with the Concord 2030 General Plan (“General Plan”), especially with respect to the General Plan’s goal, principles, and policies related to the Monument Community.

Under the Economic Vitality Element of the General Plan, “Goal E-5: A Revitalized Monument Community” involves the underlying principle to “[i]mprove the economy in the Monument Community along with various policies:” The Project is specifically not consistent with Policy E-5.1.3, “[p]romote the development and expansion of, and investment in, small business in the Monument Corridor”, considering the severe impacts that the “big-box” entity like the proposed Cardenas Market would have on the small, locally owned businesses in the Monument Community.

Under the Land Use Element, one of the policies that this Project is inconsistent with is Policy LU-10.1.5: “Require trees and other landscaping within parking lots. Trees provide shading and also screen cars, reducing the visual impacts of large parking lots....” because of the unauthorized removal of trees that occurred with this Project.

Given the adverse impacts of the proposed Cardenas Market as a “big-box” entity and the unauthorized tree removal, among other things, examples of other

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7 General Plan, 2-15.
General Plan goals, principles, and policies that would be compromised because of this Project include, but are not limited to, the following:

- Under the Economic Vitality Element, Policy E-2.1.2: Retain and attract business and facilitate businesses’ efforts to develop and expand.\(^8\)

- Under the Land Use Element, Policy LU-3.1.1: Provide for regional centers that have an appealing mix of tenants and are designed with site amenities to attract customers from both local neighborhoods and region-wide communities.\(^9\)

- Under the Land Use Element, GOAL LU-9: Well-designed development and Policy LU-9.1.3: Require new commercial development to provide comprehensive landscaping, including hardscape and parking lot areas as well as pervious areas.\(^10\)

- Under the Land Use Element, Policy LU-9.2.1: Encourage land assembly to achieve building sites large enough for safe, efficient, on-site vehicular circulation, and ample landscaping.\(^11\)

- Under the Land Use Element, Principle LU-10.1: Create Attractive, Inviting Public Spaces and Streets that Enhance the Image and Character of the City; Policy LU-10.1.1: Encourage streetscape and façade improvements to enhance the appearance of existing uses along major arterials; Policy LU-10.1.2: Require new development to provide and maintain right-of-way improvements along project frontages such as landscaping, street trees, and other amenities that enhance the streetscape appearance; and Policy LU-10.1.3: Maintain an aesthetically pleasing street network that helps frame and define the community while meeting the needs of pedestrians, bicyclists, and motorists.\(^12\)

- Under the Growth Management Element, Policy GM-2.2.1: Support Concord’s economic development programs and seek to attract high

\(^8\) Id. at 2-10.
\(^9\) Id. at 3-31.
\(^10\) Id. at 3-41.
\(^11\) Id. at 3-42.
\(^12\) Id. at 3-43.
quality employment opportunities for local residents and others residing near local job centers.\textsuperscript{13}

Because this finding regarding consistency with the General Plan cannot be made though is required under CMC Section 18.415.100, there is no basis to approve the design review for this project and the 5/24/19 Decision should be overturned.

**The Project Does Not Meet Relevant Design Criteria in CMC 18.415.080**

Another finding under CMC section 18.415.100 that cannot be made is that the project meets relevant design criteria under CMC section 18.415.080 considering the various design criteria that the project fails to meet, including, but not limited to the following:

- B. The design is compatible with the historical or visual character of any area recognized by the city as having such character.

- F. The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment.

- G. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.

- H. The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.

- I. The project is compatible with neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development.

- J. The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context.

\textsuperscript{13} Id. at 4-4.
- K. The landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage.

- M. New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development.

Again, in absence of the required finding that the project meets design criteria, the 5/24/19 Decision must be reversed because approval for design review and tree removal was in error, in abuse of the Planning Division's discretion, and is not supported by the record.

The Project Does Not Reflect Design Principles or Features that are Consistent with Applicable Design Guidelines, Especially Considering Non-Compliance with the Purposes of Design Review and the Concord Municipal Code

As mentioned above, the 5/24/19 Decision is erroneous, not supported by the record, and made in abuse of the Planning Division's discretion, considering that it overlooked and did not even review several other important and relevant design principles or features, such as those stated in the Development Code purposes, which include, but are not limited to the stated purpose for design and site review as set forth in CMC Section 18.415.010:

- to recognize the interrelationship between the appearance of open spaces, buildings, and structures in order to ensure the orderly development of the city, the stability of land values, and the construction of structures, additions, or alterations with proper attention to the harmony, compatibility, and aesthetic quality of site design, architecture, landscape architecture, signs, and engineering.

The approval of design review and tree removal for this Project without the requisite findings and appropriate level of review as discussed above is in direct conflict with this underlying purpose for design and site review. In other words, it is impossible for the 5/24/19 Decision to have complied with this overall and
underlying purpose if the proper procedures for review and approval of design review were not followed.

Moreover, the 5/24/19 Decision also does not comply with some of the underlying purposes for the CMC itself, including, but not limited to, what the CMC was intended to do:

A. Guide physical development to: 1. Preserve and enhance the character and quality of residential neighborhoods; 2. Foster harmonious and workable relationships among land uses; and 3. Achieve the arrangement and diversity of land uses envisioned by the general plan.

B. Promote the economic stability of existing land uses that are consistent with the general plan and protect them from incompatible or harmful land uses.

With this in mind, it cannot be found that the Project reflects design principles or features that are consistent with applicable design guidelines when it does not reflect the basic premises and purposes for design and site review as well as overall for the CMC.

**The Arborist Tree Report Fails to Meet the Minimum Standards Required by the Municipal Code**

Concord Municipal Code sets forth the minimum informational requirements that must be in a tree report:

1. Botanical and common names of trees by tree number;
2. Location of trees by tree number;
3. Circumference at 54 inches above the ground and height by tree number, with equivalent diameter measurement;
4. Height;
5. Dripline radius by tree number (measure longest radius);
6. Condition by tree number; and
7. Recommendations. CMC 18.310.040 (A)
Here, the Arborist Tree Report ("Report") fails to identify the botanical names of the trees, such as the removed Ash trees. Rather, it merely states, "Data from Google Earth suggests that these canopy parking lot trees were Ash Trees..." Similarly, other trees in the report also fail to provide the botanical names, such as Swee: Gum, Drake Elms, Crape Myrtles, Eastern Redbuds.

Similarly, the Report fails to identify the circumferences of the individual trees by number as required, but rather lumps the 19 destroyed trees together, stating that, the "...Ash Trees rang[e] in trunk size from 6-24 inches in diameter."

The Report also fails to identify the heights (or estimate the individual heights) given the fact that the trees were illegally removed. Rather, the Report merely lumps all the trees together and provides only vague and confusing information, "Estimated heights ranged from 15-50 feet high with 5-20 foot widths."

Furthermore, the Report wholly fails to mention the minimal informational requirements set forth in 18.310.040 (5), (6) and (7)—respectively, "Dripline radius by tree number (measure longest radius)"; "Condition by tree number"; and "Recommendations."

The Report fails to satisfy the minimal requirements set forth in 18.310.040 (B), which states,

"B. Determination of Tree Condition. The information on tree condition in the report shall include:

1. A Rating System. The condition of each tree (excellent; good; fair to good; fair; fair to poor; or poor) based on the following factors:

   a. The condition and environment of the root crown (also roots, if applicable);

   b. The condition of the trunk, including decay, injury, callusing or presence of fungus sporophores and bacteria;

   c. The condition of the limbs, including strength of crotches, amount of deadwood, hollow areas, and whether excessive weight is borne by them;

   d. The condition and growth rate history of the twigs, including pest damage and diseases; and
e. Grade changes and presence of watercourses or ponding within the dripline.

2. Formulation of Tree Recommendation. Using the above factors, the arborist shall describe the tree condition, as follows:

a. Live crown ratio (the ratio of a tree’s live crown to its total height).

b. Structural condition, including root crown, trunk and limb ratings (this is separate from the tree’s vigor condition, which relates more to twigs, foliage, and growth rate).

c. The structure of the root crown and trunk are of primary importance and take precedence over any other factor.” -- 18.310.040(B), Italics added.

Finally, the Report fails to provide the Arborist recommendations as set forth in 18.310.040(C):

“C. Arborist Recommendations. The arborist recommendations shall address:

1. Measures by tree number that help improve condition ratings of individual trees, such as remedial maintenance, horticultural practices, mulch, and watering.

2. Preservation measures for each tree to remain.


All of the required Arborist recommendations, as set forth in Municipal Code 18.310.040(C), are omitted from the Report.

Notably, with an insufficient and incomplete Arborist Tree Report, the City cannot make other required determinations under the Municipal Code, such as the area that should be considered the Tree Protection Zone (TPZ). See CMC 18.310.050. On the contrary, having removed the mature trees with extensive canopies the Report proposes to plant new trees with a 3 to 1 ratio, but not all of
those trees will be planted in the ground. Rather the Report states that 57 new trees will be replanted, but that the mitigation falls short by 12 trees, which will be in 24 inch box tree replacements.

However, the conditions of approval are more lenient, allowing for all of the replacement trees are proposed to be in a minimum box size of 24 inches. Condition of approval #2. Either way, replacement trees in boxes are less of a mitigation than replacement trees in the ground which are allowed to grow larger, have larger canopies, more shade, bird perching and butterfly habitat than trees constrained in boxes.

**The Mature Nineteen Protected Ash Trees that were Illegally Removed Were Important Native Trees**

Ash trees (*Fraxinus latifolia*) are important native trees, especially to riparian corridors, such as is the case here with the Project’s proximity to Pine Creek. See Exhibit 1 attached showing California Native Plant Society’s statement on California Ash trees.¹⁴

The native ash trees also important for songbirds and swallowtail butterflies, especially given the proximity to the adjacent Pine Creek; aesthetics of the area and shade, as well as regional cooling benefits and carbon sinking values. Immature trees do not compare to the greater values that these mature trees provided before they were illegally felled.

**CEQA is Applicable and the City Must Do an Initial Study**

The City failed to make any CEQA determination with respect to the tree removal permit as set forth in the 5/24/19 Decision. Now, with the City’s approvals of the two (2) new permits, CEQA applies to both the Tree Removal Permit and the Design Review Permit such that the City must execute an Initial Study.

Since at least September 10, 2018 the Monument Business Owners Coalition requested the City must discharge its duties under CEQA with respect to traffic and urban decay. In addition, there are other potentially significant impacts as discussed in this letter that require analysis and disclosures of potentially significant impacts, including but not limited to noise, wildlife, and lighting.

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¹⁴ [https://calscape.org/Fraxinus-latifolia-(Oregon-Ash)?srcchr=sc56d5a39e8a775](https://calscape.org/Fraxinus-latifolia-(Oregon-Ash)?srcchr=sc56d5a39e8a775). Last visited June 3, 2019.
While some development permits may not be subject to CEQA based on a
determination that they are ministerial, this general rule turns with the facts.
Indeed, the unique facts present in this case underscore the applicability of CEQA
to both the Tree Removal Permit and the Administrative Design Review Permit.
CMC 18.515.010, “Environmental Review”.

The Tree Removal Permit is Subject to CEQA Review

A ministerial permit is one in which requires no judgment or deliberation by the
public agency. Public Resources Code section 21080(b)(1), CEQA Guidelines
section 15357. The tree removal permit is not a ministerial permit, rather it is a
discretionary permit. This is because the City is required to exercise its judgment
when making a determination as to whether to issue this new tree permit and the
mitigation acceptable to this particular situation. Several reasons support
requiring an Initial Study for this Project, including the plain language of the
Municipal Code. For example, the City’s review for tree removal requires the
City’s determination that the preservation of the protected trees is infeasible.
CMC 18.310.060, which requires:

“Where it has been determined that preservation of protected trees
associated with a construction and/or development project is
infeasible, replacement plantings shall be required ...”

The City does not have complete information which is omitted from the Arborist
Tree Report, as noted in this letter and therefore cannot make the necessary
infeasibility determination. Moreover, there is no information in the Report that
preservation of the trees was not feasible. Rather, the Report states that the
removed trees appeared to be in “fair health.”

The Tree Removal Permit is Discretionary per the Plain Language of
the Municipal Code and other City Guiding Documents

CMC Sections 18.310.020(D) and 18.310.070 inter alia discuss the activities that
require a tree permit, the criteria for evaluation and removal, and the findings for
approval of the permit. The tree removal that occurred here indicate that such
permit was required.

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15 CEQA Guidelines are codified 14 Cal. Code of Regulations 15000, et. seq.
Also, further discretionary decision that the Arborist Report seeks from the City is to replace mitigation for 12 of the 57 trees that must be replaced (3x19=57) that is ordinarily guided by a 3:1 mitigation with trees in planters rather than in the ground. This too is a discretionary determination, triggering the applicability of CEQA.

Mitigation of tree removal by replacement by trees planted in 24 inch boxes is not the same as trees in the ground because the tree growth will be forever limited by their box as opposed to in the ground specimens.

The City's website underscores the conclusion that the subject tree removal permit is a discretionary determination when it sets forth examples of discretionary permits in the City's Application Submittal Procedures for discretionary permits.16 The City's website provides a memo to "Permit Center Customers [on the] Subject [of] City of Concord Application Submittal Procedures", attached as Exhibit 2 and stating that, "Applications for Discretionary Permits will not be accepted without a prior, pre-arranged appointment with a Project Planner and Engineer to review all of the required materials and plans based on the application checklists for all of the following permits...Protected Tree Removal Permit."

Similarly, the Public Works Department provides a document showing the "Procedure for Removal of Protected Trees – Permit Requirements". It sets forth the City's deliberative process, including but not limited to listing the items that are required for the City's review. The City's website also notes that the City may require additional information and/or a site visit as part of that deliberative process, as well as mitigation and/or conditions of approval that may also be necessary.17 See attached Exhibit 3.

Further yet, the project with its major aesthetic change substantially affect the property rights of owners or adjacent parcels, considering the extent of exterior site/parking lot improvements and tree removal involved here, which further supports a determination by the City that as a discretionary permit, CEQA is triggered. As such, the City must execute an Initial Study.

As noted above, a tree removal permit, sought properly -- before the trees are destroyed-- is a discretionary determination and thus subject to CEQA. Additionally, for the situation at hand, CEQA is doubly triggered based on the unusual circumstances for a tree removal permit sought post removal and when trees were willfully removed without a permit.

The Tree Removal Permit is Discretionary Based on the Willful Removal of the Nineteen Ash Trees without the Required Permit

The Arborist Report indicates that these trees were protected under a “Condition of Approval” for the original site. Notably the trees are also protected under the City's Municipal Code, in addition to the original Conditions of Approval for the site. See 18.310.020 (A)(2) and (4).

The Arborist Report states that Mr. Bruzzone, for whom the Report was prepared, was “unaware” that a permit was required to remove trees. This is so despite the City’s longstanding tree preservation with a specific ordinance dedicated to tree preservation. (CMC 18.310.010 et seq.) and a Heritage Tree ordinance (CMC 8.40.010 et. seq.), as well as its 39th year that Concord has been named a Tree City USA community by the National Arbor Day Foundation.

It is untenable that Concord’s well-established municipal codes protecting its urban trees was so completely ignored. The remedy for such removal without a permit further underscores the argument that the Tree Removal Permit is not a ministerial determination. This circumstance is not set forth in the Municipal Code requiring no deliberation by the City. Rather, this is a unique situation where the City must authorize tree removal after it has happened, with some impacts left unknown based on the lacking information not provided in the Report.

Further yet, the Municipal Code only provides for a 3:1 mitigation ratio after an infeasibility determination was made, which there is no indication in the Arborist Report that it was infeasible to preserve the trees. CMC 18.300.060. On the contrary, the Report states that the removed trees were in “fair health”.

Like the Tree Removal Permit, the Administrative Design Review Permit is also Subject to CEQA based on Changes to the Project, to the Circumstances and New Information Not Previously Available
The original level of environmental review for the Project site is insufficient for this Project and further environmental review is required because triggering conditions exist: there are substantial changes proposed for the Project that will require major revisions in the prior environmental review; there are substantial changes in the circumstances under which the project is being undertaken that will require major revisions in the prior environmental review; and new information of a substantial importance to the Project that was not known and could not have been known when the prior environmental review was certified as complete has become available. Public Resources Code section 21166, Guidelines 15162.

For example, pursuant to Public Resources Code section 21166 (a) there are substantial changes in the Project requiring further environmental review include but not limited to changes in the impacts and mitigation related to in the parking, increased traffic, changes in the type of retail being offered, new construction noise, new lighting glare and new impacts to the 19 mature protected trees. These changes involve new and more severe significant environmental impacts and require commensurate changes to the prior environmental review for the site. Further, these new and more severe impacts were not considered in the previous environmental review.

Pursuant to Public Resources Code section 21166 (b), there are substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions in the prior environmental review for the project. For example, the changes to traffic and potential urban decay, lighting, parking, and tree removal are substantial changes, and such changes involve new and more severe significant environmental impacts such that the Project’s changes require major revisions to the previous environmental review based on the new and more severe impacts, which were not covered in the prior environmental review.

Pursuant to Public Resources Code section 21166 (c), there is new information available which was not known and could not have been known at the time the previous environmental review for the project was certified and complete.

Here, as noted below the project includes the new tenant who is also a purveyor of Mexican foods and prepared foods in an area known as the Monument Community which has approximately 20 existing Mexican markets and 6 Mexican restaurants. As a result, urban decay is a new issue that did not exist with the former tenant, Safeway. This results in more severe impacts to urban
decay because the existing smaller stores may be lost if the new larger Cardenas Market is established, resulting in boarded up businesses of at least 26 units. New environmental review must analysis these new impacts. Similarly, there is new information with respect to the tree removal, traffic, parking, noise and lighting, all of which require additional environmental review.

Here, since there is a further discretionary approval, the City must review these changes and require an Initial Study. Moreover, we strongly believe substantial environmental review is required based upon the Project’s changes and mitigation. See also *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal. App. 4th 25.

The Project may have a Potentially Significant Impacts to the Environment

Here, the Project and its new changes and/or the changes in circumstances create potentially significant impacts to the environment, which requires significant analysis and disclosure with respect to urban decay, traffic, parking, noise, lighting and wildlife.

Potentially Significant Impacts to Urban Decay

Urban Decay is a foreseeable potentially significant impact to the environment as a result of a large “big-box” Mexican market and prepared foods store, Cardenas Market, occupies an area that already has approximately 20 Mexican food markets and 6 Mexican restaurants in the Monument Community. See *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 171 (EIR for shopping center must consider effects on downtown business closures and physical deterioration); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal. App. 3d 433, 445–446, (accord); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1208, (EIR rejected because it omitted discussion of whether two proposed outlying shopping centers could cause urban decay when substantial evidence of such potential decay was presented).

Potentially Significant Impacts to Traffic and Parking

The Project may cause potentially significant impacts to traffic because prior traffic studies are outdated, as noted in the September 10, 2019 letter from
MBOC to the City. The City must require a new traffic study, especially given the increased traffic problems in this area.

It is unclear if there are sufficient number of parking spaces and whether the new trash enclosure eliminates any required parking spaces.

**Potentially Significant Impacts to Noise**

Construction of the Project may have potentially significant impacts to noise based on increased noise from the construction of the trash enclosure and related activities.

**Potentially Significant Impacts to Lighting**

The Project approvals allow for a new lighting scheme, but fails to provide sufficient performance standards. Rather, the Condition of Approval #28 states that “glare [is to be] shielded and directed away from adjacent properties and right of ways.” Without a performance standard, this mitigation is insufficient to bring potentially significant impacts related to glare to a level of insignificance.

**Potentially Significant Impacts to Wildlife**

The applicant illegally removed 19 native protected and mature trees near Pine Creek that have various environmental benefits including, but not limited to shade, butterfly habitat, songbird habitat, aesthetics, and carbon sequestration. The Initial Study must provide further analysis and disclosures with respect to the impact of the removal and whether or not the proposed mitigation is sufficient to reduce such impacts to less than significant impacts.

Such analysis would discuss the difference and delay as to when new trees, some of which do are not grown in the ground, will match the environmental values of the mature trees, some of heights of 50 feet. Further mitigation may be need to be required because some of the trees will only be in planter boxes and many may take decades to achieve the mass of the former trees.

**Conclusion**

In summary, the Planning Division’s 5/24/19 Decision to approve the design review for the exterior site/parking lot improvements (including landscaping, a new trash enclosure, and exterior paint changes) and the unauthorized tree
removal is not in compliance with the purposes of the CMC, was made in error and in abuse of discretion, involved inaccurate information, and is unsupported by the record.

Furthermore, because there was inadequate review and consideration of the project and the tree removal matter, especially considering that the requisite design criteria and standards were not discussed and that the requisite findings for design review approval were not explicitly set forth in the 5/24/19 Decision, there is no support for approving the design review and tree removal.

Therefore, based on all of the significant issues and concerns discussed above, the application for design review for the exterior site/parking lot improvements and the tree removal permit should have been denied. Accordingly, we request that the Zoning Administrator review the matter, sustain MBOC's appeal, and reverse the Planning Division's determination and required full review and application of the City's standards as detailed herein.

Thank you for your attention and consideration of this matter.

Respectfully submitted,

DANA DEAN
Attorney for MBOC

cc: clients
Oregon Ash  
Fraxinus latifolia
To: Permit Center Customers

Subject: City of Concord Application Submittal Procedures

Welcome to the City of Concord and thank you for your interest in making an investment in the community with your development application. The City strives to make Concord a premier place to live, work and do business. The City realizes the importance of your time and the benefit your investment can have on the community. The following information will help guide you and streamline the process to a successful application.

The following describes the permit-processing procedures the City has established for all discretionary permits¹ to ensure that applications are reviewed in a timely and comprehensive manner. The City wants to help applicants submit complete plans and documents in order to avoid last minute surprises and streamline the process. Specific information is necessary for staff to understand and evaluate projects in order to make recommendations to the City’s decision-makers.

First Point of Contact

The Planning Division is the first point of contact for the review and processing of all development applications. The Planning Division is responsible for managing development in the best interest of the City by applying regulations and standards based on the City of Concord’s General Plan, Development Code, Planning laws, and policies.

Applicants are encouraged to set up a pre-submittal meeting with Planning and Engineering staff prior to filing a formal application to determine the type of permit(s) required and to discuss application procedures. Applicants are required to submit a Pre-Application review form for the pre-submittal meeting (see Pre-Application checklist). At that meeting, applicants will receive more information on City policies and development requirements. These pre-submittal procedures provide the opportunity for the applicant to gain an understanding of the key project issues prior to spending significant time and resources on a formal submittal.

Application Process/Assignment of Project Planner

To provide you with the best possible customer service early in the process, a Project Planner will be assigned to manage your project. The Project Planner will be your primary point of contact for all submittals and coordination of meetings. The Project Planner will distribute the plans and application materials, schedule project review, communicate whether the application is

¹ Discretionary permits include Pre-Applications, Certificate of Appropriateness, Design and Site Development Review, Development Code Amendment, Finding of Public Convenience and Necessity, General Plan Amendment, Heritage Tree Nomination, Hillside Development Use Permit, Major Subdivisions, Minor Subdivisions, Minor Use Permit, Planned Development Use Permit, Protected Tree Removal Permit, Reasonable Accommodation, Rezoning/Prezoning, Use Permits, Variances, and Wireless Communication Facility, and all require consideration at a public hearing/meeting with one or more of the following: Zoning Administrator, Design Review Board, Planning Commission, and/or the City Council.
complete or incomplete, convey project issues to you and your design team, and facilitate resolution of issues. The development review process works best when there is a partnership between City staff and our customers. Staff will work diligently with you to identify and resolve project issues in order to move forward with a positive recommendation to the decision-makers.

Application Acceptability Meetings

Prior to a formal submittal, an applicant shall schedule a meeting with the Project Planner and Engineer, to determine if their development plans and documents are ready for a formal submittal. This is known as the “Application Acceptability” meeting. At this meeting, one complete set of the application materials will be reviewed to determine if all of the items on the submittal checklists are included. If the application package is deficient, the application will not be accepted. Staff will document the items needed to submit the application. Once those revisions have been made, the applicant shall schedule a second meeting with the same Project Planner and Engineer. When the application contains all of the required information, the applicant will be invited to return with the formal submittal, which includes the required number of plan sets, the application, and application fees. While staff may raise issues or provide comments on the plans during the application acceptance stage, this does not replace the DAC review process, which is a comprehensive review of the content of the submitted materials.

Following the formal application submittal, all applications are distributed to the Development Advisory Committee (DAC), which is comprised of City staff and representatives of responsible agencies, to determine if the application is complete or incomplete. The DAC review and completeness determination occurs within 30 days of the formal submittal. A project must be found to be complete before it can move forward through the development review process. In addition to the completeness review, the purpose of the DAC review is also to identify project issues.

Application and Permit Checklists

The Planning Division, in conjunction with Permit Center staff and representatives from various City Departments, has developed comprehensive checklists for all discretionary permits (available on the City web site). Submittal of complete plans and information, as listed on the applicable checklist(s), is required in order to move forward through the development review process and ultimately be scheduled for a public hearing. Submittal of incomplete or inconsistent materials results in multiple reviews by City staff and costly delays for the applicant.

If you have any questions about the submittal requirements, the development review process, or need help resolving an issue, please call (925) 671-3152. The City is continually improving the development review process to provide the best customer service possible. Staff welcomes any feedback or suggestions.
Discretionary Permit Application Appointment Information

In 2006, the City of Concord Permit Center implemented a new process for the filing of applications for all Discretionary Permits. Discretionary Permits are permits that require a public hearing or public meeting and approval by a decision making body including the Zoning Administrator, Design Review Board, Planning Commission, and/or City Council. Applications for Discretionary Permits will not be accepted without a prior, pre-arranged appointment with a Project Planner and Engineer to review all of the required materials and plans based on the application checklists for all of the following permits:

- Pre-Application
- Certificate of Appropriateness
- Condominium Conversion Use Permit
- Design and Site Development Review
- Development Code Amendment
- Finding of Public Convenience and Necessity
- General Plan Amendment
- Heritage Tree Nomination
- Hillside Development Use Permit
- Major Subdivision
- Minor Subdivision
- Minor Use Permit
- Planned Development Use Permit
- Protected Tree Removal Permit
- Reasonable Accommodation
- Rezoning/Prezoning
- Use Permit
- Variance
- Wireless Communication Facility

The Planning Division and Permit Center staff have prepared application checklists with submittal requirements for every type of discretionary permit. Applicants can use these checklists to assure that complete applications are prepared and submitted. Submittal of a complete application expedites processing of the application.

Applicants can call the Planning Division administrative staff at (925) 671-3152 anytime between 8:00 a.m. and 5:00 p.m., Monday through Friday, to schedule an appointment. All appointments will be scheduled on either Tuesday afternoons or Friday mornings, although staff will be as flexible as possible with applicants from out of the area.

For the first meeting with the Project Planner and Engineer, applicants and their Design Teams need to bring the following:

1. Application Form
2. A checklist for each application type
3. One complete full-size plan set
4. One copy of all other required documents and materials

If there are no deficiencies and the application is deemed acceptable, the applicant will be invited to return with their full submittal, including application fees, public hearing notification materials and all required copies of plans.

If there is need for subsequent meetings, applicants need to bring the marked up copies of the materials previously reviewed and the information missing from the first submittal. Every attempt will be made for the same Planner and Engineer who met with the applicant the first time to conduct the subsequent meeting. Every appointment that results in an “incomplete” finding will cost the hourly fee to cover the amount of time spent by each of the staff members. The appointment fee will be waived (i.e., credited towards the application fees) when plans are deemed acceptable.

Applications that do not have all of the required information will not be accepted.
Procedure for Removal of Protected Trees – Permit Requirements

The City of Concord takes pride in its urban forest and has been continually recognized by the National Arbor Day Foundation with the Tree City USA and Growth Awards. Trees offer significant social, economic, environmental benefits to the quality of life in our community by enhancing the aesthetic beauty of our neighborhoods, moderating climate, reducing energy costs and increasing property values. The Public Works Parks Division is responsible for ensuring the commitment to foster a healthy urban forest using the following guidelines for trees located within the City of Concord.

The procedure for reviewing an application to remove a Protected Tree requires the following steps to be completed and information submitted to the Public Works Parks Division for review and response. Only protected trees require a permit prior to removal and there is currently no fee associated with a single permit. Non-protected trees do not require a City of Concord issued permit prior to removal.

Definitions

Non-protected Tree (No Permit required): Eucalyptus, Acacia, Monterey Pine, Palm, Privet, unless such tree has been specifically designated a “Heritage Tree” by action of the Planning Commission.

Protected Trees:

(a) Any of the following listed native trees with a 12” DBH (diameter at breast height) single trunk, or 12” DBH sum of all stems on multiple trunk tree, measured at 54” above the ground: Valley Oak, Blue Oak, Coast Live Oak, California Bay, California Buckeye, California Sycamore.

(b) Other trees with at least 24” DBH (single trunk) or a multi-stemmed tree where the sum of all stems are 24” DBH, measured at 54” above the ground.

(c) Any tree which has been officially designated by action of the Planning Commission as a Heritage Tree.

(d) A tree required to be planted, relocated, or preserved as a condition of approval of a Tree Permit or other discretionary permit, and/or as environmental mitigation for a discretionary permit.

(e) A tree 6” DBH single or multi-stemmed that is located within the structural setback of creeks or streams (Creek and Riparian Habitat Protection 122-802).

Permit Application

Any person desiring to remove one or more protected trees shall apply to the Public Works Parks Division, unless the removal is associated with an application to the Planning Division, and should include the following documentation:

1. A letter of intent from the property owner
   (a) A plan showing the location of the tree(s) to be removed and the quantity and species of trees to be planted in exchange for the protected tree
   (b) Statement of specific reasons for the proposed removal

2. Arborist report including the following for each tree:
   a. A written narrative from an I.S.A. Certified Arborist
   b. Arborist Name, Certification # and company letterhead
   c. Species (common and scientific name)
d. Size (diameter, height, crown spread)
e. Condition of the tree (foliage, vigor, structural integrity, etc.)
f. Prognosis
g. Life expectancy
h. Location diagram (and photos, if desired)

City Review and Action

Staff will (1) date-stamp the letter of intent and arborist report; (2) enter application in the Tree Removal Log and assign the next consecutive file number and enter same onto application; (3) document fee payment if required, and provide the applicant a copy of receipt; (4) route material to City Arborist.

Review Procedure

Upon receipt of all required submittal items the case will be reviewed by the City Arborist or appropriate designated City staff person, a written response will be mailed, faxed or emailed to the applicant. Staff may request additional information from the applicant or arborist, and a site visit may be required. If the prognosis is deemed urgent or is a life/safety emergency, the City Arborist or designated City staff person has the discretion to approve or modify this process as needed.

Action

The City’s response to the applicant will include either a written approval (may be with conditions for tree replacement), denial (with reasons cited and/or mitigation recommendations), or request for additional information. A copy of the approval letter must be on site when the tree is being removed.

Frequently, a file will remain open if the approval is conditioned upon required replanting with one or more trees of a predetermined size. To bring closure to the file, it is the applicant’s responsibility to insure that conditions are implemented, and to submit proof of all required conditions being met within a reasonable timeframe.

Documentation including property owner’s letter of intent and certified arborist reports may be submitted to:

Concord Parks Division
Tree Permit Request
1455 Gasoline Alley, MS/47
Concord CA 94520

Additional tree related information including this document is available on the City of Concord website. Questions regarding the process for obtaining a permit to remove protected trees may be directed to the City Arborist Tyce Dekker at (925) 671-3064. Please allow up to five (5) business days to receive a return response. Thanks for your consideration.

Parks Make Life Better!

TREE CITY USA.
**EXHIBIT C**

**DRAFT CONDITIONS OF APPROVAL**

**CARDENAS MARKET DESIGN AND SITE REVIEW**

(PL18349-DR)

2250 MONUMENT BOULEVARD, Suite F

APN 129-170-026

**PERMIT DESCRIPTION**

1. These Conditions apply to and constitute approval of Design Review (PL18349-DR) for exterior site improvements such as landscaping upgrades, parking lot improvements, a new trash enclosure and exterior paint changes. The exterior building materials and colors shall be in substantial conformance with the approved plans, samples and exhibits as follows:

<table>
<thead>
<tr>
<th>Approved Building Colors and Materials</th>
<th>Manufacturer</th>
<th>Sample Number</th>
<th>Material / Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slump Block: Body</td>
<td>Dunn Edwards Paint</td>
<td>DEC723</td>
<td>Champagne</td>
</tr>
<tr>
<td>Roof Trim</td>
<td>Dunn Edwards Paint</td>
<td>DEA152</td>
<td>Deep Crimson</td>
</tr>
<tr>
<td>Fascia Trim &amp; Steel</td>
<td>Dunn Edwards Paint</td>
<td>DE6119</td>
<td>Neutral Valley</td>
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<td>Roof Screen</td>
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<td>SR-0.60E-0.84 SRI-70</td>
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<th>Approved Trash Enclosure Colors and Materials</th>
<th>Manufacturer</th>
<th>Sample Number</th>
<th>Material / Color</th>
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<td>Dunn Edwards Paint</td>
<td>DEC723</td>
<td>Champagne</td>
</tr>
<tr>
<td>Fascia Trim &amp; Steel</td>
<td>Dunn Edwards Paint</td>
<td>DE6119</td>
<td>Neutral Valley</td>
</tr>
<tr>
<td>Steel Roof</td>
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<td>7/8” Corrugated Roof</td>
<td>Galvanized Steel</td>
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<td>Steel Door</td>
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<tr>
<td>Plan</td>
<td>Date</td>
<td>Prepared by</td>
<td>Page</td>
</tr>
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</tr>
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<td>8/29/18</td>
<td>WSCS Design</td>
<td>PDR-000</td>
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<td>8/29/18</td>
<td>WSCS Design</td>
<td>PDR-100</td>
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<td>8/29/18</td>
<td>WSCS Design</td>
<td>PDR-102</td>
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<td>Site Plan-Enlarged</td>
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<td>WSCS Design</td>
<td>PDR-103</td>
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<td>Floor Plan</td>
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<td>Planting Plan</td>
<td>4/5/19</td>
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<td>L1</td>
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<td>Irrigation Plan</td>
<td>4/5/19</td>
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<td>4/5/19</td>
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<td>L3</td>
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<td>Cutsheets</td>
<td>8/29/18</td>
<td>N/A</td>
<td>E101</td>
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**GENERAL CONDITIONS**

2. The Conditions are the responsibility of the applicant and all contractors. Compliance shall occur as specified in the Conditions or at one of the following project milestones:
   a) With the submittal of Grading, Improvement, Landscape, or Building Plans.
b) Prior to issuance of Encroachment, Grading, or Building Permits, whichever comes first.

c) Prior to construction.

d) On-going during construction.

e) Prior to approval of the Final Map.

f) Prior to occupancy approval.

If timing for compliance is not specified, it shall be determined by the Divisions listed after the Condition. *(PLNG, BLDG, ENGR)*

3. Where a plan or further information is required, it is subject to review and approval by the applicable City Department/Division, as noted at the end of each Condition. The Division listed first shall be the primary contact for implementation of that Condition. *(PLNG, BLDG, ENGR)*

4. The project shall comply with all applicable Federal and State laws and Concord Municipal Code (CMC) requirements. *(PLNG, BLDG, ENGR)*

5. Minor modifications that are found to be in substantial conformance with the approved plans such as colors, plant materials, or minor lot line adjustments, may be approved administratively. Major modifications shall be approved by the applicable decision making body. *(PLNG, ENGR)*

6. All exterior improvements for the area adjacent to the tenant space out to the street curb shall be maintained in good condition and kept clean and clear of debris. When the tenant space is not adjacent to a street, sidewalk, or parking lot, the tenant shall be responsible for maintenance of the area immediately in front of their space. Exterior improvements include but are not limited to landscaping, street trees, sidewalks, parking areas, street furniture, trash receptacles and enclosures, signs, and building facades, except for areas which are maintained by the City. *(PLNG)*

**ARCHITECTURAL**

7. Any and all rooftop equipment (HVAC, meters, refrigeration equipment, plumbing lines, ductwork and transformers), shall not extend above the building parapet and shall be screened from view on all sides with materials architecturally compatible with the main structure. Screening details shall be shown on the Building Plans and submitted for review and approval by the Planning Division, prior to the issuance of Building Permits and installed prior to Certificate of Occupancy. *(PLNG)*

8. Vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted to match the color of the adjacent surface, unless otherwise approved by the Planning Division. *(PLNG)*

9. The trash enclosure shall be located so that no part of the structure, including footings, and roof overhang encroach into neighboring property. This change shall be shown on the building permit plan set prior to issuance of the building permit for exterior building work. *(ENGR, BLDG)*
LANSCAPING

10. Revise and resubmit prior to building permit issuance for exterior improvements, detail #9, Drip Emitter, on sheet L3 to show piping buried below the soil grade. *(PLNG)*

11. Revise and resubmit prior to building permit issuance for exterior improvements, language for Section 13.0 on sheet L4, Drip, to indicate that piping and tubing shall be buried below soil grade. *(PLNG)*

12. Submit Final Landscape Plans prepared by a Landscape Architect, registered by the State of California prior to issuance of building permit for exterior improvements. *(PLNG)*

13. Irrigation Plans shall be submitted with the Final Landscape Plans in compliance with the requirements of CMC Chapter 18.170 “Water Efficient Landscaping” prior to issuance of a building permit for exterior improvements. *(PLNG)*

14. The Landscape Plans shall include a water usage program with the following:

   1. Estimated annual water use (in gallons) and the area (in square feet) to be irrigated.
   2. Precipitation rate(s) for each valve circuit.
   3. Monthly irrigation schedule for each type of irrigation head showing the plant establishment period and the first year thereafter. *(PLNG) CMC*

15. All landscaping shall be installed prior to Certificate of Occupancy. Contact the Planning Division at least two weeks prior to occupancy, to request a site inspection of all exterior improvements including buildings, driveways, parking lots, landscaping, irrigation, signs, lighting, walls, fences, and trash enclosures. *(PLNG)*

16. Prior to occupancy approval, the licensed Landscape Architect shall submit a Landscape Documentation Package with the following mandated elements:

   a) Application
   b) Certification of Compliance for Landscape Design
   c) Certification of Compliance for Landscape Installation
   d) Certification of Compliance for Landscape Audit
   e) Certification of Compliance for Landscape Maintenance
   f) Water Budget work sheets (if applicable)
   g) Landscape Plans
   h) Landscape and Maintenance Schedule *(PLNG)*

17. Provide a signed Certificate of Compliance stating that the Landscape Architect has met all State and City requirements prior to Certificate of Occupancy. *(PLNG)*

18. Submit three signed copies, one notarized, of the City’s “Property Maintenance Agreement”, to ensure on-going repair, replacement and maintenance of all exterior improvements including buildings, parking areas, private roads, walkways, landscaping, irrigation, signs, fences, walls, and other improvements, prior to Certificate of Occupancy. *(PLNG)*
19. Any vegetation damaged or destroyed by construction activities shall be replaced with like or comparable plant materials, and if damage occurs off-site, the replacement plants shall be approved by the property owner and the Planning Division, prior to Certificate of Occupancy. (PLNG)

20. All new trees shall have a minimum box size of 24-inches. (PLNG)

SHOPPING CARTS

21. Shopping carts corrals shall be creatively designed and built into the landscaping with the usage of curbs as the wheel stops as shown on the landscape plans (PLNG)

22. Shopping cart corrals shall be located adjacent to the landscape planters at the ends of the aisle as shown on the site plan page PDR-102 and the landscape plan page L1. (PLNG)

23. Shopping carts shall be identified with the Cardenas’ name, address and telephone number. Such identification shall be in the form of a metal or plastic tag fastened to the cart. (PLNG, CMC, PD)

24. The following notice shall be posted prominently and conspicuously at all entrances: “Removal of shopping carts from these premises is prohibited by law (CMC 8.25.270) and will subject the violator to a minimum fine of $100.00”. Sign locations shall be indicated on the site plan for review and approval by the Planning Division prior to Certificate of Occupancy (PLNG, CMC, PD)

25. Cardenas shall contract with a cart recovery company. Cardenas shall present evidence of the contract prior to Certificate of Occupancy. Said contract shall address measures for retrieval of missing and/or abandoned shopping carts in accordance with the CMC Article IV 8.25.300. (PD)

LIGHTING

26. Show all exterior lighting including: building fixtures, walkway lighting, parking lot lighting, and street lights on the Site, Utility, Landscape, and Building plans, prior to the issuance of any permits. The height and style of fixtures shall be shown. Energy-saving fixtures shall be used and noted on the plans. (PLNG, ENGR, BLDG)

27. All exterior building and parking lot lighting shall provide illumination for safety and shall be installed in a manner that is glare shielded and directed away from adjacent properties and right-of-ways. (PLNG)

28. The lighting shall be shall be in substantial conformance with the photometric plans on page E100 and E101 of the plan set approved by the Transportation division. (ENGR, TRANS, PD)
29. The maximum height of the parking lot light standards shall be 25 feet. (PLNG)

SIGNAGE

30. All signage should comply with the approved Sign Plan PL19049-DR on file with the City and the landlord. (PLNG)

31. Signs with exposed raceways shall not be permitted. (PLNG)

PARKING

32. All parking spaces shall be 9-feet wide by 19-feet long. (PLNG)

33. Wheel stops shall only be permitted for accessible spaces. (PLNG)

34. Parking shall comply with CMC Chapter 18.160 “Parking, Loading, and Access”, including motorcycle and bicycle parking spaces, drive aisle and parking space dimensions, turning radii, back-out dimensions, driveway clearances, landscape median dimensions, and other relevant information. (ENGR, PLNG) CMC

35. Short-term bicycle parking spaces shall be provided equal to five percent of the required vehicle spaces, with a minimum of two spaces per site and Long-term bicycle parking shall be provided according to the provisions of CMC Chapter 18.160 “Parking, Loading, and Access,” unless otherwise approved. (PLNG)

STREET/ PARKING LOT IMPROVEMENTS

36. Project frontage shall comply with ADA requirements and damaged sidewalk shall be removed and replaced as indicated on plan set page PDR-102 prior to Certificate of Occupancy. (ENGR)

37. Parking lot shall be slurry sealed prior to Certificate of Occupancy. (ENGR)

38. Obtain an Encroachment Permit from the Engineering division prior to performing any work within the public right-of-way or public easements prior issuance of building permit for exterior improvements (ENGR) CMC

39. Above ground utility structures to be screened from public view. (ENGR)

40. No above ground utility facilities/structures shall be located between the face of curb and back of sidewalk in the public right-of-way. (ENGR)

41. Back flow preventions and other utility structures serving the project to be located on shall be located on the project property. (ENGR)

42. All new utilities shall be constructed underground prior to Certificate of Occupancy. (ENGR)
43. The vacant dirt property adjacent to the building shall be hydroteed prior to Certificate of Occupancy. (ENGR)

44. Prevent site drainage from draining across sidewalks and driveways in a concentrated manner. (ENGR)

SOLID WASTE/RECYCLING

45. Trash bins and refuse shall be stored within approved trash enclosure and the doors shall be closed at all times except when the bins are being emptied. (PLNG, ENGR)

46. Comply with the provisions of the CMC, Central Contra Costa Sanitary District and the disposal service regarding enclosure design, access requirements, and the number of required individual refuse receptacles based upon waste pickup schedules. Trash enclosures shall incorporate the following features:

1. A concrete pad to prevent damage to asphalt paving.
2. A roof and sanitary sewer cleanout, designed to prevent rainwater from penetrating the interior of the enclosure and preclude trash from being blown outside of the bins.
3. The cleanout shall connect to a sanitary sewer to prevent contaminated water from entering the storm drain system.
4. If any cleaning agent or degreaser is used, wash water must be collected and discharged to the sanitary sewer, subject to the approval of the Central Contra Costa Sanitary District. (CCSDD, ENGR)

47. Trash enclosures shall incorporate the same architectural treatment, and use the same exterior materials and colors as the main building and shall comply with the Community Design Guidelines, including the following:

a) A roof or trellis.
b) Masonry, steel or heavy timber walls.
c) An interior, poured-in-place curb to prevent damage to the screen walls.
d) Doors with external hinges to prevent damage from the receptacle.
e) Doors of solid metal or with a metal frame with self-closing latch.
f) The height of the enclosure walls and door shall be the same height or higher than the bins within the enclosure. (PLNG)

NOISE

48. Site preparation and construction activities shall be limited to the days and hours as set forth below:

Monday through Friday ........ 7:30 a.m. to 6:00 p.m.

Construction on Saturdays may be allowed only upon prior approval by the Building, Engineering, and Planning Divisions. No changes to these construction hours shall be allowed without the prior written consent of the City. A contact person shall be available during all
construction activities in the evening and on weekends to respond to complaints and take actions necessary to reduce noise. *(BLDG, ENGR, PLNG)*

**AGREEMENTS, FEES, BONDS**

49. Provide a $5,000 cash deposit to the Planning Division to cover Condition Compliance at the time of submittal of plans and documents to Engineering Services or the Building Division for plan check. Planning staff's time will be charged to this deposit for work performed to implement the Conditions of Approval, from the time of project approval to occupancy approval. The deposit will be placed in a refundable account and any unused funds will be returned upon completion. If the initial deposit is insufficient to cover actual costs, an additional deposit will be required. *(PLNG)*

50. Pay a Document Imaging fee to reimburse the City for implementation of the Document Imaging and File Retention programs, prior to issuance of Grading or Building Permits. *(PLNG)*

**OTHER/MISCELLANEOUS**

51. A security plan shall be submitted and approved by the Police Department prior to occupancy. *(PD)*

52. Comply with the requirements of the Contra Costa County Fire Protection District. Submit complete sets of plans and specifications to the Fire District for review and approval at:

Contra Costa County Fire Protection District  
2010 Geary Road  
Pleasant Hill CA 94523

Plan review fees are assessed at that time. The City is not responsible for the collection of fees or enforcement of requirements imposed by the Fire District. *(CCCFPD)*

53. The applicant shall defend (with counsel approved by City) indemnify and hold harmless the City, any agency or instrumentality thereof, and its/their respective agents, officers, officials, volunteers, and employees from and against any and all administrative and/or legal claims, actions or proceedings to attack, set aside, void, or annul approval of the project, including without limitation, any related application, permit, certification, condition, environmental determination, other approval compliance or failure to comply with applicable laws and regulations, and/or processing methods ("Challenge"), with the exception of a Challenge arising out of the City’s sole negligence or willful misconduct. The City shall have the right to pre-approve any material decision involved in defending any such Challenge, including settlement, and may (but is not obligated to) participate in the defense of any Challenge. If applicant does not promptly defend any Challenge, City may (but is not obligated to) defend such Challenge as City, in its sole discretion, determines appropriate, all at applicant’s sole cost and expense. The applicant shall bear any and all losses, damages, injuries, liabilities,
costs, and expenses (including, without limitation, staff time and in-house attorney's fees on a fully-loaded basis, attorney's fees for outside legal counsel, expert witness fees, court costs, and other litigation expenses) arising out of or related to any Challenge ("Costs"), whether incurred by Developer, City, or awarded to any third party, and shall pay to the City upon demand any Costs incurred by the City. No modification of the project, any application, permit, certification, environmental determination, other approval, change in applicable laws and regulations, or change in processing methods shall alter the applicant's indemnity obligation. Pursuant to Government Code Section 66474.9, the applicant's indemnification obligation with respect to any claim, action or proceeding to attack, set aside, void, or annul an approval of City concerning a subdivision (tentative, parcel, or final map application or approval) shall be limited to actions brought within the time period provided for in Government Code Section 66499.37, unless such time period is extended for any reason. The City shall promptly notify applicant of any challenge, and shall cooperate fully in the defense. (CA)

54. The permit and approval shall expire in (one) year from the date on which they became effective unless construction permits are obtained and work has begun. All permits approved concurrently with a Tentative Map shall be valid for the life of the map. The effective date of the permit and approval is July 27, 2019. (PLNG)

55. A request for a time extension from the expiration date of July 27, 2020 can be considered if an application with required fee is filed at least 10 days before the original expiration date, otherwise a new application is required. A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved. Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require, or permit denial. (PLNG)
PLANTING SPECIFICATIONS

DESCRIPTION OF SPECIMEN

1. Plant material shall be selected from a reputable source. Due to the nature of the planting environment, site conditions, species available, and budget constraints, plant selection may vary. All plantings shall be in keeping with the type of material selected.

2. The design and layout of the planting shall be such that the planting will complement the existing landscape and provide a functional and aesthetically pleasing environment. The planting shall be designed to enhance the visual appeal of the area.

3. Planting materials shall be of high quality and have a history of strong growth and good performance. The plants shall be healthy and free of visible defects or disease, and shall be adapted to the local climate and soil conditions.

4. The planting design shall take into account the existing vegetation and soil conditions. The planting shall be designed to provide a balanced and harmonious look, with consideration given to color, texture, and seasonality.

5. All planting materials shall be selected from a reputable source. Due to the nature of the planting environment, site conditions, species available, and budget constraints, plant selection may vary. All plantings shall be in keeping with the type of material selected.

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10. The design and layout of the planting shall be such that the planting will complement the existing landscape and provide a functional and aesthetically pleasing environment. The planting shall be designed to enhance the visual appeal of the area.

11. Planting materials shall be of high quality and have a history of strong growth and good performance. The plants shall be healthy and free of visible defects or disease, and shall be adapted to the local climate and soil conditions.

12. The planting design shall take into account the existing vegetation and soil conditions. The planting shall be designed to provide a balanced and harmonious look, with consideration given to color, texture, and seasonality.

13. All planting materials shall be selected from a reputable source. Due to the nature of the planting environment, site conditions, species available, and budget constraints, plant selection may vary. All plantings shall be in keeping with the type of material selected.

14. The design and layout of the planting shall be such that the planting will complement the existing landscape and provide a functional and aesthetically pleasing environment. The planting shall be designed to enhance the visual appeal of the area.

15. Planting materials shall be of high quality and have a history of strong growth and good performance. The plants shall be healthy and free of visible defects or disease, and shall be adapted to the local climate and soil conditions.

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20. The planting design shall take into account the existing vegetation and soil conditions. The planting shall be designed to provide a balanced and harmonious look, with consideration given to color, texture, and seasonality.

IRIGATION SPECIFICATIONS

4. 1. The irrigation system shall be designed to meet the specific needs of the site, taking into account the local climate, soil conditions, and plant requirements. The system shall be designed to provide adequate water for the plants, while minimizing water waste and runoff.

2. The irrigation system shall be designed to provide uniform water distribution across the entire planting area. The system shall be designed to provide adequate water for the plants, while minimizing water waste and runoff.

3. The irrigation system shall be designed to provide adequate water for the plants, while minimizing water waste and runoff. The system shall be designed to provide uniform water distribution across the entire planting area.

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TO: City Council or Planning Commission
   City of Concord
   1950 Parkside Drive
   Concord, CA 94519

FOR STAFF USE ONLY
Public Notice Fee $1,372.00
(According to Fees and Charges Resolution)
DATE PAID

CITY OF CONCORD
NOTICE OF APPEAL
CMC Chapter 18.510

Planner Division
ADMINISTRATOR OR COMMISSION

Cardenas Market
NAME OF APPLICANT

Administrative Design Review and Tree Removal Approval
TITLE OF ITEM BEING APPEALED

May 24, 2019
DATE

Please indicate the specific action(s) or requirement(s) being appealed:

Please see letter attached.

Monument Business Owners Coalition
NAME OF APPELLANT

SIGNATURE OF APPELLANT REPRESENTATIVE

APPELLANT'S ADDRESS
203 East H Street, Benicia, CA 94510

ADDRESS FOR NOTICES
283 East H Street, Benicia, CA 94510

HOME PHONE
707-747-5206

BUSINESS PHONE
707-747-5206

MY REPRESENTATIVE IS
Dana Dean (Law Offices of Dana Dean)

FOR STAFF USE ONLY

ADDRESS OF PROPERTY INVOLVED

ASSessor'S PARCEL NUMBER(S)

FILE NUMBER

FILE TITLE

RECEIVED BY

PROJECT PLANNER

CITY CLERK USE ONLY

Received written appeal on June 3, 2019
Scheduled for Council Agenda of TBD
Set for Public Hearing on TBD

0 Copies distributed to appropriate parties

CITY CLERK
June 3, 2019

Zoning Administrator
City of Concord
Concord Civic Center
1950 Parkside Drive
Concord, California 94519

Re: Appeal of Planning Division’s May 24, 2019 Decision to Approve Administrative Design Review Application and Tree Removal (PL 18394-DR, RT) for Tenant Space at 2250 Monument Boulevard, Suite F, APN 129-170-026

Dear Zoning Administrator:

Our office represents the Monument Business Owners Coalition ("MBOC"), an unincorporated association, regarding the Cardenas Market that is proposed at 2250 Monument Boulevard, Suite F in Concord. MBOC respectfully submits this appeal of the City of Concord Planning Division staff’s May 24, 2019 design review and tree removal approvals (PL 18394-DR, RT) (collectively, both approvals are referred to as the “Project”).

This appeal is submitted on behalf of MBOC as an Interested Party pursuant to Concord Municipal Code ("CMC") sections 18.415.110, Post-decision procedures [for Design and Site Review] and 18.510.020, Right of Appeal.

As set forth below, a careful review of the 5/24/19 Decision and of all relevant matter indicates that Decision is not in compliance with the purposes of the CMC, was made in error and in abuse of discretion, involved inaccurate information, and is unsupported by the record. As such, the 5/24/19 Decision should be reversed and further review should be required prior to any future approval.

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1 See CMC Section 18.510.040(A).
Facts

As noted on the City’s website, “2017 marks the 37th year that Concord has been named a Tree City USA community by the National Arbor Day Foundation. The national award honors Concord’s commitment to its community forest. Concord is also the recipient of a Tree City Growth Award for the twentieth year for demonstrating progress in its community forestry program.”

The subject property for the Project had been occupied by a Safeway. However, there is a new proposed tenant, Cardenas Market, who is now seeking approvals from the City prior to opening its doors.

The new tenant proposes to open a Cardenas Market, which is a grocery store specializing in Mexican foods, including a deli and other prepared foods. According to the company’s website, there are several such markets in Northern California, Southern California and Las Vegas, Nevada. The location of the new proposed tenant is located adjacent to Pine Creek.

There are several Mexican food and prepared food businesses in the immediate vicinity of 2250 Monument Boulevard that similarly specialize in Mexican foods and prepared foods. These businesses have been a part of the fabric of City of several years, some for decades.

A land use attorney, presumably on behalf of Cardenas Market, Richard Bruzzone of Durgin Otterson Bruzzone LLP, caused to be created an Arborist Report, dated March 28, 2019, entitled, “Tree Removal Permit Requested for Recent Unauthorized Tree Removal”. The Arborist Tree Report is prepared by Tom Arrington, ISA certified arborist #WE-3070A, 4100 Fariss Lane, El Sobrante, CA 94803 (“Arborist Tree Report” or “Report”).

The report states that an unspecified date, but prior to March 28, 2019, “19 canopy parking lot trees were removed from the parking lot at 2250 Monument Blvd.”

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2 http://www.cityofconcord.org/354/Trees
3 There are at least 20 Latino restaurants and 6 Latino markets exist in the Monument Community.
4 The law office address is 1660 Olympic Boulevard, Suite 210, Walnut Creek, CA 94596-5127, and according to the applicant’s law office website, the LLP also has an office located in San Francisco. The office website indicates that the firm practices in the area of land use. http://doblawyers.com/rick-bruzzone.php#.
Last visited June 3, 2019.
Boulevard.” The report further states that, “Mr. Bruzzone was unaware that a
tree removal permit was required by the City of Concord.”

On or about September 10, 2018 the MBOC sent the City of Concord, Planning
Division a letter expressing concern about the urban decay issues and requested
the City engage in CEQA review of the project.

On or about September 21, 2018 the City wrote back to MBOC and stated that as
of the writing of that letter, that CEQA was not yet applicable to any City
determination because there was not yet a discretionary permit.

On November 6, 2018, our office requested designation of MBOC as an Interested
Party for all matters within the jurisdiction of the City of Concord related to the
Cardenas Market proposed at 2250 Monument Boulevard in Concord. Based on
such designation, we received notice of the 5/24/19 project approvals.

By way of a letter dated May 24, 2019 from assistant planner, Sarah Yuwiler, to
Candice Warren of WSCS Design, the project approvals in favor of a new anchor
tenant, Cardenas Market include: exterior parking lot improvements including
landscaping, a new trash enclosure and exterior paint changes for a forty-one
thousand, nine hundred forty (41,940) square feet space.

The City’s letter of approval attaches fifty-five (55) Conditions of Approval. Some
off the conditions of approval appear to mitigate some of the environmental
impacts of the proposed project.

The approvals omit a CEQA determination.

Argument

Administrative Design Review Was Not the Proper Level of Review

As a preliminary matter, the Planning Division’s administrative design and site
review for this project was not the proper level of review based on all of the
various factors involved with this project.

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5 The complete address for the recipient’s approval located in Southern California
is Candice Warren WSCS Design 2501 E. Guasti Road, Suite 201, Ontario, CA
91761.
CMC Section 18.415.040 provides that minor projects/improvements that do not otherwise require a discretionary permit approval where the Planning Division determines that the project will not substantially affect the property rights of owners or adjacent parcels may be approved through administrative design and site review, with or without review by the Design Review Board, as determined by the Planning Division. It further provides examples of minor projects and improvements, including “new occupancies in existing nonbuildings” when the property is in conformance with the development standards applicable to the property and “new occupancies in existing nonresidential buildings when the property is not in conformance with the development standards applicable to the property where the project includes plans to substantially upgrade the exterior of the building and/or makes significant upgrades to landscaping, parking areas, and other site improvements.”

However, administrative design and site review should not have been done here because a discretionary permit approval is required considering approval for the unauthorized tree removal was required because the nineteen (19) trees had been removed without a permit and because they were protected trees were destroyed without a permit. The trees were protected pursuant to a condition of approval for the original site, as indicated in the Arborist’s Report that was submitted by the applicant. The Municipal Code also provides protection for the removed trees. CMC 18.310 et seq.

As is detailed below, the Tree Removal Permit is a discretionary determination in accordance with the City’s own Municipal Code and Guidelines. See CMC 18.310.020(D) and 18.310.070, discussing the deliberative criteria for evaluation and findings necessary for removal of trees. In addition, the Project will substantially affect the property rights of owners or adjacent parcel, considering the extent of exterior site/parking lot improvements and tree removal involved here further underscoring the fact that an administrative permit is inappropriate for the entitlements sought here.

As such, the higher level of design review of the proposed exterior site/parking lot improvements and tree removal is required in this case. It is not enough that such design review, especially since the issue of the unauthorized tree removal had to be addressed, only occurred at the administrative level. At the very least, it

6 Based on the language in CMC Section 18.415.040, it appears that the reference to “nonbuildings” may have inadvertently been used instead of “nonresidential buildings” as referenced in the other portions of this section.
must be referred to the Design Review Board, as allowed by CMC Section 18.415.040 (C) and (E) and as further described in CMC Section 18.415.060.

The 5/24/19 Decision must be reversed because of the failure to conduct the appropriate and adequate review required for this Project.

The Planning Division Failed to Make the Requisite Findings for Design Review Approval

CMC Section 18.415.090 states that “[d]esign and site review shall be approved when it is determined that the proposed improvements conform to all applicable development and use standards including the following:

A. The interrelationship between the orientation, location, and elevations of buildings and structures and site improvements are mutually compatible and aesthetically harmonious;

B. The orientation, location, and elevation of the buildings and structures and site improvements are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood;

C. Landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood; and

D. Parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation.” (emphasis added)

None of the above standards were discussed in the 5/24/19 Decision nor was there any determination that the Project conformed to above noted applicable development and use standards. In fact, they did not conform, given the unpermitted tree removal, inter alia.

Moreover, CMC section 18.415.100 sets forth that the review authority may approve, conditionally approve, or deny the application after finding that:

1. The project is consistent with the general plan;

2. The project meets the relevant criteria in CMC 18.415.080 (Design
3. The project overall reflects design principles and/or incorporates design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of approval.

However, the 5/24/19 Decision does not include any of these requisite findings regarding the project involving the exterior site/parking lot improvements (including landscaping, a new trash enclosure and exterior paint changes) and tree removal. Without any record of such findings, there is no basis to approve the design review.

Therefore, the 5/24/19 Decision was made in error, is an abuse of discretion, and is not supported by the record before the decision-makers because it does not discuss the above standards nor does it include the requisite findings that are needed to support design review approval with regards to the exterior site/parking lot improvements. Instead of discussing the specific standards and findings that are required, the 5/24/19 Decision only indicates that “[the] letter with the attached Conditions of Approval [“COAs”] constitute approval of Design Review and Tree Removal...” and then proceeds to set out the 55 COAs.

With all of this in mind, the 5/24/19 Decision should be overturned because it is not supported by the record as the Planning Division failed to make the specific findings required for approval of design review for the exterior site/parking lot improvements.

Even if such findings were stated in the 5/24/19 Decision, a more thorough review shows that the design for the exterior site/parking lot improvements does not conform to all applicable development and use standards; is not consistent with the General Plan; does not meet the relevant criteria in CMC Section 18.415.080 (Design criteria); and does not overall reflect design principles and/or incorporate design features that are consistent with applicable design guidelines adopted by the City Council that are in effect at the time of approval, as is further discussed below.
The Project Design Does Not Conform to Applicable Development and Use Standards

In general, the Project design regarding proposed improvements do not conform to applicable development and use standards, which include, but are not limited to the following standards described in CMC Section 18.415.090:

Landscaping, irrigation systems, walls and fences, or features to conceal outdoor activities, utility enclosures, and trash facilities meet current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood (CMC Section 18.415.090(C))

This determination cannot be made at this time based on the language in the 5/24/19 Decision, because several of the COAs dealing with landscaping, irrigation systems, utility enclosures, and trash facilities involve future events and/or plans that have not been yet submitted and reviewed.

For example, with regards to landscaping, the 5/24/19 Decision, submission of “Final Landscape Plans” and irrigation plans occurs at a later date (COAs 12, 13) and the various, relevant certificates of compliance, including the certificate stating that the Landscape Architect has met all State and City requirements, are due prior to occupancy approval, which indicates that none have been submitted thus far. Accordingly, their compatibility with the municipal code is unknown.

As noted above, the landscaping does not meet current requirements nor does it provide a significant upgrade and improvement, considering the fact that the removal of 19 trees, as referenced in COA #21, was improper and occurred without the requisite tree removal permit, especially as such trees were protected under a condition of approval for the original site. There is no way that the removal of these 19 protected trees is an upgrade or improvement to the site and the appearance of the neighborhood.

The next finding required a determination that the Project was in compliance with the following code section:

Parking, pedestrian access, and traffic circulation are adequate or improved for all modes of circulation (CMC Section 18.415.090(D))
Similarly, this determination also cannot be made because the relevant COAs do not explicitly state that the plans indicate that parking, pedestrian access, and traffic circulation are adequate or improved as they only discuss future conditions. For example, COAs 32 and 34 state that parking spaces shall be 9-feet wide by 19-feet long and that parking shall comply with "CMC Chapter 18.160 'Parking, Loading, and Access'"

Therefore, the above determinations regarding landscaping and parking standards cannot be made as they would be in error, in abuse of the Planning Division’s discretion, and not supported by the record, all of which provide reasons to reverse the 5/24/19 Decision.

The Project is Not Consistent with the General Plan

The 5/24/19 Decision was also made in error, in abuse of the Planning Division’s discretion, and is not supported by the record because the Project is inconsistent with the Concord 2030 General Plan ("General Plan"), especially with respect to the General Plan’s goal, principles, and policies related to the Monument Community.

Under the Economic Vitality Element of the General Plan, "Goal E-5: A Revitalized Monument Community" involves the underlying principle to "[i]mprove the economy in the Monument Community along with various policies:7 The Project is specifically not consistent with Policy E-5.1.3, "[p]romote the development and expansion of, and investment in, small business in the Monument Corridor", considering the severe impacts that the "big-box" entity like the proposed Cardenas Market would have on the small, locally owned businesses in the Monument Community.

Under the Land Use Element, one of the policies that this Project is inconsistent with is Policy LU-10.1.5: "Require trees and other landscaping within parking lots. Trees provide shading and also screen cars, reducing the visual impacts of large parking lots...." because of the unauthorized removal of trees that occurred with this Project.

Given the adverse impacts of the proposed Cardenas Market as a "big-box" entity and the unauthorized tree removal, among other things, examples of other

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7 General Plan, 2-15.
General Plan goals, principles, and policies that would be compromised because of this Project include, but are not limited to, the following:

- Under the Economic Vitality Element, Policy E-2.1.2: Retain and attract business and facilitate businesses’ efforts to develop and expand.\(^8\)

- Under the Land Use Element, Policy LU-3.1.1: Provide for regional centers that have an appealing mix of tenants and are designed with site amenities to attract customers from both local neighborhoods and region-wide communities.\(^9\)

- Under the Land Use Element, GOAL LU-9: Well-designed development and Policy LU-9.1.3: Require new commercial development to provide comprehensive landscaping, including hardscape and parking lot areas as well as pervious areas.\(^10\)

- Under the Land Use Element, Policy LU-9.2.1: Encourage land assembly to achieve building sites large enough for safe, efficient, on-site vehicular circulation, and ample landscaping.\(^11\)

- Under the Land Use Element, Principle LU-10.1: Create Attractive, Inviting Public Spaces and Streets that Enhance the Image and Character of the City; Policy LU-10.1.1: Encourage streetscape and façade improvements to enhance the appearance of existing uses along major arterials; Policy LU-10.1.2: Require new development to provide and maintain right-of-way improvements along project frontages such as landscaping, street trees, and other amenities that enhance the streetscape appearance; and Policy LU-10.1.3: Maintain an aesthetically pleasing street network that helps frame and define the community while meeting the needs of pedestrians, bicyclists, and motorists.\(^12\)

- Under the Growth Management Element, Policy GM-2.2.1: Support Concord’s economic development programs and seek to attract high

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\(^8\) Id. at 2-10.
\(^9\) Id. at 3-31.
\(^10\) Id. at 3-41.
\(^11\) Id. at 3-42.
\(^12\) Id. at 3-43.
quality employment opportunities for local residents and others residing near local job centers.¹³

Because this finding regarding consistency with the General Plan cannot be made though is required under CMC Section 18.415.100, there is no basis to approve the design review for this project and the 5/24/19 Decision should be overturned.

The Project Does Not Meet Relevant Design Criteria in CMC 18.415.080

Another finding under CMC section 18.415.100 that cannot be made is that the project meets relevant design criteria under CMC section 18.415.080 considering the various design criteria that the project fails to meet, including, but not limited to the following:

- B. The design is compatible with the historical or visual character of any area recognized by the city as having such character.

- F. The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment.

- G. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.

- H. The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.

- I. The project is compatible with neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development.

- J. The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context.

¹³ Id. at 4-4.
- K. The landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooftlines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage.

- M. New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development.

Again, in absence of the required finding that the project meets design criteria, the 5/24/19 Decision must be reversed because approval for design review and tree removal was in error, in abuse of the Planning Division's discretion, and is not supported by the record.

The Project Does Not Reflect Design Principles or Features that are Consistent with Applicable Design Guidelines, Especially Considering Non-Compliance with the Purposes of Design Review and the Concord Municipal Code

As mentioned above, the 5/24/19 Decision is erroneous, not supported by the record, and made in abuse of the Planning Division's discretion, considering that it overlooked and did not even review several other important and relevant design principles or features, such as those stated in the Development Code purposes, which include, but are not limited to the stated purpose for design and site review as set forth in CMC Section 18.415.010:

to recognize the interrelationship between the appearance of open spaces, buildings, and structures in order to ensure the orderly development of the city, the stability of land values, and the construction of structures, additions, or alterations with proper attention to the harmony, compatibility, and aesthetic quality of site design, architecture, landscape architecture, signs, and engineering.

The approval of design review and tree removal for this Project without the requisite findings and appropriate level of review as discussed above is in direct conflict with this underlying purpose for design and site review. In other words, it is impossible for the 5/24/19 Decision to have complied with this overall and
underlying purpose if the proper procedures for review and approval of design review were not followed.

Moreover, the 5/24/19 Decision also does not comply with some of the underlying purposes for the CMC itself, including, but not limited to, what the CMC was intended to do:

A. Guide physical development to: 1. Preserve and enhance the character and quality of residential neighborhoods; 2. Foster harmonious and workable relationships among land uses; and 3. Achieve the arrangement and diversity of land uses envisioned by the general plan.

B. Promote the economic stability of existing land uses that are consistent with the general plan and protect them from incompatible or harmful land uses.

With this in mind, it cannot be found that the Project reflects design principles or features that are consistent with applicable design guidelines when it does not reflect the basic premises and purposes for design and site review as well as overall for the CMC.

The Arborist Tree Report Fails to Meet the Minimum Standards Required by the Municipal Code

Concord Municipal Code sets forth the minimum informational requirements that must be in a tree report:

1. Botanical and common names of trees by tree number;
2. Location of trees by tree number;
3. Circumference at 54 inches above the ground and height by tree number, with equivalent diameter measurement;
4. Height;
5. Dripline radius by tree number (measure longest radius);
6. Condition by tree number; and
7. Recommendations. CMC 18.310.040 (A)
Here, the Arborist Tree Report ("Report") fails to identify the botanical names of the trees, such as the removed Ash trees. Rather, it merely states, "Data from Google Earth suggests that these canopy parking lot trees were Ash Trees..." Similarly, other trees in the report also fail to provide the botanical names, such as Sweet Gum, Drake Elms, Crape Myrtles, Eastern Redbuds.

Similarly, the Report fails to identify the circumferences of the individual trees by number as required, but rather lumps the 19 destroyed trees together, stating that, the "...Ash Trees rang[e] in trunk size from 6-24 inches in diameter."

The Report also fails to identify the heights (or estimate the individual heights) given the fact that the trees were illegally removed. Rather, the Report merely lumps all the trees together and provides only vague and confusing information, "Estimated heights ranged from 15-50 feet high with 5-20 foot widths."

Furthermore, the Report wholly fails to mention the minimal informational requirements set forth in 18.310.040 (5), (6) and (7)—respectively, "Dripline radius by tree number (measure longest radius)”; “Condition by tree number”; and “Recommendations.”

The Report fails to satisfy the minimal requirements set forth in 18.310.040 (B), which states,

“B. Determination of Tree Condition. The information on tree condition in the report shall include:

1. A Rating System. The condition of each tree (excellent; good; fair to good; fair; fair to poor; or poor) based on the following factors:

   a. The condition and environment of the root crown (also roots, if applicable);

   b. The condition of the trunk, including decay, injury, callusing or presence of fungus sporophores and bacteria;

   c. The condition of the limbs, including strength of crotches, amount of deadwood, hollow areas, and whether excessive weight is borne by them;

   d. The condition and growth rate history of the twigs, including pest damage and diseases; and
e. Grade changes and presence of watercourses or ponding within the dripline.

2. Formulation of Tree Recommendation. Using the above factors, the arborist shall describe the tree condition, as follows:

   a. Live crown ratio (the ratio of a tree’s live crown to its total height).

   b. Structural condition, including root crown, trunk and limb ratings (this is separate from the tree’s vigor condition, which relates more to twigs, foliage, and growth rate).

   c. The structure of the root crown and trunk are of primary importance and take precedence over any other factor.” --18.310.040(B), Italic added.

Finally, the Report fails to provide the Arborist recommendations as set forth in 18.310.040(C):

   “C. Arborist Recommendations. The arborist recommendations shall address:

   1. Measures by tree number that help improve condition ratings of individual trees, such as remedial maintenance, horticultural practices, mulch, and watering.

   2. Preservation measures for each tree to remain.


   --CMC 18.310.040(C), italics added for emphasis.

All of the required Arborist recommendations, as set forth in Municipal Code 18.310.040(C), are omitted from the Report.

Notably, with an insufficient and incomplete Arborist Tree Report, the City cannot make other required determinations under the Municipal Code, such as the area that should be considered the Tree Protection Zone (TPZ). See CMC 18.310.050. On the contrary, having removed the mature trees with extensive canopies the Report proposes to plant new trees with a 3 to 1 ratio, but not all of
those trees will be planted in the ground. Rather the Report states that 57 new
trees will be replanted, but that the mitigation falls short by 12 trees, which will
be in 24 inch box tree replacements.

However, the conditions of approval are more lenient, allowing for all of the
replacement trees are proposed to be in a minimum box size of 24 inches.
Condition of approval #2. Either way, replacement trees in boxes are less of a
mitigation than replacement trees in the ground which are allowed to grow
larger, have larger canopies, more shade, bird perching and butterfly habitat than
trees constrained in boxes.

**The Mature Nineteen Protected Ash Trees that were Illegally
Removed Were Important Native Trees**

Ash trees (*Fraxinus latifolia*) are important native trees, especially to riparian
corridors, such as is the case here with the Project's proximity to Pine Creek. See
Exhibit 1 attached showing California Native Plant Society’s statement on California
Ash trees.¹⁴

The native ash trees also important for songbirds and swallowtail butterflies, especially
given the proximity to the adjacent Pine Creek; aesthetics of the area and shade, as well
as regional cooling benefits and carbon sinking values. Immature trees do not compare
to the greater values that these mature trees provided before they were illegally felled.

**CEQA is Applicable and the City Must Do an Initial Study**

The City failed to make any CEQA determination with respect to the tree removal
permit as set forth in the 5/24/19 Decision. Now, with the City’s approvals of the
two (2) new permits, CEQA applies to both the Tree Removal Permit and the
Design Review Permit such that the City must execute an Initial Study.

Since at least September 10, 2018 the Monument Business Owners Coalition
requested the City must discharge its duties under CEQA with respect to traffic
and urban decay. In addition, there are other potentially significant impacts as
discussed in this letter that require analysis and disclosures of potentially
significant impacts, including but not limited to noise, wildlife, and lighting.

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¹⁴ https://calscape.org/ Fraxinus-latifolia-(Oregon-
Ash)?srchcr= sc56d5a39e8a775. Last visited June 3, 2019.
While some development permits may not be subject to CEQA based on a determination that they are ministerial, this general rule turns with the facts. Indeed, the unique facts present in this case underscore the applicability of CEQA to both the Tree Removal Permit and the Administrative Design Review Permit. CMC 18.515.010, “Environmental Review”.

The Tree Removal Permit is Subject to CEQA Review

A ministerial permit is one in which requires no judgment or deliberation by the public agency. Public Resources Code section 21080(b)(1), CEQA Guidelines section 15357. The tree removal permit is not a ministerial permit, rather it is a discretionary permit. This is because the City is required to exercise its judgment when making a determination as to whether to issue this new tree permit and the mitigation acceptable to this particular situation. Several reasons support requiring an Initial Study for this Project, including the plain language of the Municipal Code. For example, the City’s review for tree removal requires the City’s determination that the preservation of the protected trees is infeasible. CMC 18.310.060, which requires:

“Where it has been determined that preservation of protected trees associated with a construction and/or development project is infeasible, replacement plantings shall be required …”

The City does not have complete information which is omitted from the Arborist Tree Report, as noted in this letter and therefore cannot make the necessary infeasibility determination. Moreover, there is no information in the Report that preservation of the trees was not feasible. Rather, the Report states that the removed trees appeared to be in “fair health.”

The Tree Removal Permit is Discretionary per the Plain Language of the Municipal Code and other City Guiding Documents

CMC Sections 18.310.020(D) and 18.310.070 inter alia discuss the activities that require a tree permit, the criteria for evaluation and removal, and the findings for approval of the permit. The tree removal that occurred here indicate that such permit was required.

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15 CEQA Guidelines are codified 14 Cal. Code of Regulations 15000, et. seq.
Also, further discretionary decision that the Arborist Report seeks from the City is to replace mitigation for 12 of the 57 trees that must be replaced (3x19=57) that is ordinarily guided by a 3:1 mitigation with trees in planters rather than in the ground. This too is a discretionary determination, triggering the applicability of CEQA.

Mitigation of tree removal by replacement by trees planted in 24 inch boxes is not the same as trees in the ground because the tree growth will be forever limited by their box as opposed to in the ground specimens.

The City’s website underscores the conclusion that the subject tree removal permit is a discretionary determination when it sets forth examples of discretionary permits in the City’s Application Submittal Procedures for discretionary permits. The City’s website provides a memo to “Permit Center Customers [on the] Subject [of]: City of Concord Application Submittal Procedures”, attached as Exhibit 2 and stating that, “Applications for Discretionary Permits will not be accepted without a prior, pre-arranged appointment with a Project Planner and Engineer to review all of the required materials and plans based on the application checklists for all of the following permits...Protected Tree Removal Permit.”

Similarly, the Public Works Department provides a document showing the “Procedure for Removal of Protected Trees – Permit Requirements”. It sets forth the City’s deliberative process, including but not limited to listing the items that are required for the City’s review. The City’s website also notes that the City may require additional information and/or a site visit as part of that deliberative process, as well as mitigation and/or conditions of approval that may also be necessary. See attached Exhibit 3.

Further yet, the project with its major aesthetic change substantially affect the property rights of owners or adjacent parcels, considering the extent of exterior site/parking lot improvements and tree removal involved here, which further supports a determination by the City that as a discretionary permit, CEQA is triggered. As such, the City must execute an Initial Study.

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As noted above, a tree removal permit, sought properly – before the trees are destroyed-- is a discretionary determination and thus subject to CEQA. Additionally, for the situation at hand, CEQA is doubly triggered based on the unusual circumstances for a tree removal permit sought post removal and when trees were willfully removed without a permit.

The Tree Removal Permit is Discretionary Based on the Willful Removal of the Nineteen Ash Trees without the Required Permit

The Arborist Report indicates that these trees were protected under a “Condition of Approval” for the original site. Notably the trees are also protected under the City’s Municipal Code, in addition to the original Conditions of Approval for the site. See 18.310.020 (A)(2) and (4).

The Arborist Report states that Mr. Bruzzone, for whom the Report was prepared, was “unaware” that a permit was required to remove trees. This is so despite the City’s longstanding tree preservation with a specific ordinance dedicated to tree preservation. (CMC 18.310.010 et seq.) and a Heritage Tree ordinance (CMC 8.40.010 et. seq.), as well as its 39th year that Concord has been named a Tree City USA community by the National Arbor Day Foundation.

It is untenable that Concord’s well-established municipal codes protecting its urban trees was so completely ignored. The remedy for such removal without a permit further underscores the argument that the Tree Removal Permit is not a ministerial determination. This circumstance is not set forth in the Municipal Code requiring no deliberation by the City. Rather, this is a unique situation where the City must authorize tree removal after it has happened, with some impacts left unknown based on the lacking information not provided in the Report.

Further yet, the Municipal Code only provides for a 3:1 mitigation ratio after an infeasibility determination was made, which there is no indication in the Arborist Report that it was infeasible to preserve the trees. CMC 18.300.060. On the contrary, the Report states that the removed trees were in “fair health”.

Like the Tree Removal Permit, the Administrative Design Review Permit is also Subject to CEQA based on Changes to the Project, to the Circumstances and New Information Not Previously Available
The original level of environmental review for the Project site is insufficient for this Project and further environmental review is required because triggering conditions exist: there are substantial changes proposed for the Project that will require major revisions in the prior environmental review; there are substantial changes in the circumstances under which the project is being undertaken that will require major revisions in the prior environmental review; and new information of a substantial importance to the Project that was not known and could not have been known when the prior environmental review was certified as complete has become available. Public Resources Code section 21166, Guidelines 15162.

For example, pursuant to Public Resources Code section 21166 (c) there are substantial changes in the Project requiring further environmental review include but not limited to changes in the impacts and mitigation related to in the parking, increased traffic, changes in the type of retail being offered, new construction noise, new lighting glare and new impacts to the 19 mature protected trees. These changes involve new and more severe significant environmental impacts and require commensurate changes to the prior environmental review for the site. Further, these new and more severe impacts were not considered in the previous environmental review.

Pursuant to Public Resources Code section 21166 (b), there are substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions in the prior environmental review for the project. For example, the changes to traffic and potential urban decay, lighting, parking, and tree removal are substantial changes, and such changes involve new and more severe significant environmental impacts such that the Project’s changes require major revisions to the previous environmental review based on the new and more severe impacts, which were not covered in the prior environmental review.

Pursuant to Public Resources Code section 21166 (c), there is new information available which was not known and could not have been known at the time the previous environmental review for the project was certified and complete.

Here, as noted below the project includes the new tenant who is also a purveyor of Mexican foods and prepared foods in an area known as the Monument Community which has approximately 20 existing Mexican markets and 6 Mexican restaurants. As a result, urban decay is a new issue that did not exist with the former tenant, Safeway. This results in more severe impacts to urban
decay because the existing smaller stores may be lost if the new larger Cardenas Market is established, resulting in boarded up businesses of at least 26 units. New environmental review must analysis these new impacts. Similarly, there is new information with respect to the tree removal, traffic, parking, noise and lighting, all of which require additional environmental review.

Here, since there is a further discretionary approval, the City must review these changes and require an Initial Study. Moreover, we strongly believe substantial environmental review is required based upon the Project’s changes and mitigation. See also Eller Media Co. v. Community Redevelopment Agency (2003) 108 Cal. App.4th 25.

The Project may have a Potentially Significant Impacts to the Environment

Here, the Project and its new changes and/or the changes in circumstances create potentially significant impacts to the environment, which requires significant analysis and disclosure with respect to urban decay, traffic, parking, noise, lighting and wildlife.

Potentially Significant Impacts to Urban Decay

Urban Decay is a foreseeable potentially significant impact to the environment as a result of a large “big-box” Mexican market and prepared foods store, Cardenas Market, occupies an area that already has approximately 20 Mexican food markets and 6 Mexican restaurants in the Monument Community. See Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal. App. 3d 151, 171 (EIR for shopping center must consider effects on downtown business closures and physical deterioration); Citizens for Quality Growth v. City of Mt. Shasta (1988) 198 Cal. App. 3d 433, 445–446, (accord); Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal. App. 4th 1184, 1208, (EIR rejected because it omitted discussion of whether two proposed outlying shopping centers could cause urban decay when substantial evidence of such potential decay was presented).

Potentially Significant Impacts to Traffic and Parking

The Project may cause potentially significant impacts to traffic because prior traffic studies are outdated, as noted in the September 10, 2019 letter from
MBOC to the City. The City must require a new traffic study, especially given the increased traffic problems in this area.

It is unclear if there are sufficient number of parking spaces and whether the new trash enclosure eliminates any required parking spaces.

**Potentially Significant Impacts to Noise**

Construction of the Project may have potentially significant impacts to noise based on increased noise from the construction of the trash enclosure and related activities.

**Potentially Significant Impacts to Lighting**

The Project approvals allow for a new lighting scheme, but fails to provide sufficient performance standards. Rather, the Condition of Approval #28 states that “glare [is to be] shielded and directed away from adjacent properties and right of ways.” Without a performance standard, this mitigation is insufficient to bring potentially significant impacts related to glare to a level of insignificance.

**Potentially Significant Impacts to Wildlife**

The applicant illegally removed 19 native protected and mature trees near Pine Creek that have various environmental benefits including, but not limited to shade, butterfly habitat, songbird habitat, aesthetics, and carbon sequestration. The Initial Study must provide further analysis and disclosures with respect to the impact of the removal and whether or not the proposed mitigation is sufficient to reduce such impacts to less than significant impacts.

Such analysis would discuss the difference and delay as to when new trees, some of which do are not grown in the ground, will match the environmental values of the mature trees, some of heights of 50 feet. Further mitigation may be need to be required because some of the trees will only be in planter boxes and many may take decades to achieve the mass of the former trees.

**Conclusion**

In summary, the Planning Division’s 5/24/19 Decision to approve the design review for the exterior site/parking lot improvements (including landscaping, a new trash enclosure, and exterior paint changes) and the unauthorized tree
removal is not in compliance with the purposes of the CMC, was made in error and in abuse of discretion, involved inaccurate information, and is unsupported by the record.

Furthermore, because there was inadequate review and consideration of the project and the tree removal matter, especially considering that the requisite design criteria and standards were not discussed and that the requisite findings for design review approval were not explicitly set forth in the 5/24/19 Decision, there is no support for approving the design review and tree removal.

Therefore, based on all of the significant issues and concerns discussed above, the application for design review for the exterior site/parking lot improvements and the tree removal permit should have been denied. Accordingly, we request that the Zoning Administrator review the matter, sustain MBOC's appeal, and reverse the Planning Division's determination and required full review and application of the City's standards as detailed herein.

Thank you for your attention and consideration of this matter.

Respectfully submitted,

DANA DEAN
Attorney for MBOC

cc: clients
Oregon Ash  
Fraxinus latifolia

© 2008 Jean-Pol GRANDMONT

Show all photos

Estimated Plant Range (2)
Cascade Range from southwestern British
rock diameter of 30-90 centimeter, and it is
leaf flat, ovate, 6-12 centimeter long and 3-4
deciduous, meaning that male and female
if the tree reaches 20-30 years of age. It is

Google

Annual Precip. 6.1" - 117.4"
Summer Precip. 0.1% - 4.04%
Coldest Month 28.9° F - 55.0° F
Hottest Month 49.0° F - 84.1° F
Humidity 0.01% - 35.0% vpd
Soil Description Typically found in poorly drained, moist bottomland with deep soil rich in humus
Drainage Slow
Sunset Zones 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
Companion Plants

Wildlife Attracted
Butterflies are attracted to plants in the Fuchsia genus, including the Pale Swallowtail, Two-tailed Swallowtail, and Western Tiger Swallowtail butterflies which use these as host plant

Butterflies hosted ?

SHOW ALL >>

Landscaping Information

Ease of Care Very Easy
Water Requirement Extremely Low Very Low Low Moderate - High
Propagation For propagating by seed: 3 mos. stratification.
Common uses Bird Gardens
Nursery Availability Commonly Available
Nurseries
Bay Native, California Flora Nursery, Capital Wholesale Nursery, Central Coast Wid's, CEN Native Plant Nursery, East Bay Wid's, Eklhorn Native Plant Nursery, Fernald Native Nursery, Flourish, Gold Rush Nursery, Las Palmas, Native Home Nursery, Oaktown Native Plant Nursery, The Watershed Nursery, Walker Avenue Nursery

Print Plant Sign Print Plant Label Edit

Sources include: Wikipedia. All text shown in the "About" section of these pages is available under the Creative Commons Attribution-ShareAlike License. Plant observation data provided by the participants of the California Flora of Humboldt. Native information provided by Jason Flowers Project. Propagation from seed information provided by the Santa Barbara Botanic Garden from "Seed Propagation of Native California Plants" by Sara E. Emery. Sources of plant photos include California, Wikieukopedia Commons, and independent plant photographers who have agreed to share their images with California Flora. Other general sources of information include California, CNPS Manual of Vegetation Online, Jason Flowers Project, Las Palmas, Theodore Payne, State of Life, The Konza Society, and information provided by CNPS volunteer editors, with special thanks to Don Reeder. Climate data used in creation of plant range maps is from PRISM Climate Group, Oregon State University, using 30 year (1981-2010) annual "normals" at an 800 meter spatial resolution.

Links: JasonFlowers Project CNPS California Prisms
EXHIBIT 2
To: Permit Center Customers

Subject: City of Concord Application Submittal Procedures

Welcome to the City of Concord and thank you for your interest in making an investment in the community with your development application. The City strives to make Concord a premier place to live, work and do business. The City realizes the importance of your time and the benefit your investment can have on the community. The following information will help guide you and streamline the process to a successful application.

The following describes the permit-processing procedures the City has established for all discretionary permits to ensure that applications are reviewed in a timely and comprehensive manner. The City wants to help applicants submit complete plans and documents in order to avoid last minute surprises and streamline the process. Specific information is necessary for staff to understand and evaluate projects in order to make recommendations to the City’s decision-makers.

First Point of Contact

The Planning Division is the first point of contact for the review and processing of all development applications. The Planning Division is responsible for managing development in the best interest of the City by applying regulations and standards based on the City of Concord’s General Plan, Development Code, Planning laws, and policies.

Applicants are encouraged to set up a pre-submittal meeting with Planning and Engineering staff prior to filing a formal application to determine the type of permit(s) required and to discuss application procedures. Applicants are required to submit a Pre-Application review form for the pre-submittal meeting (see Pre-Application checklist). At that meeting, applicants will receive more information on City policies and development requirements. These pre-submittal procedures provide the opportunity for the applicant to gain an understanding of the key project issues prior to spending significant time and resources on a formal submittal.

Application Process/Assignment of Project Planner

To provide you with the best possible customer service early in the process, a Project Planner will be assigned to manage your project. The Project Planner will be your primary point of contact for all submittals and coordination of meetings. The Project Planner will distribute the plans and application materials, schedule project review, communicate whether the application is

1 Discretionary permits include Pre-Applications, Certificate of Appropriateness, Design and Site Development Review, Development Code Amendment, Finding of Public Convenience and Necessity, General Plan Amendment, Heritage Tree Nomination, Hillside Development Use Permit, Major Subdivisions, Minor Subdivisions, Minor Use Permit, Planned Development Use Permit, Protected Tree Removal Permit, Reasonable Accommodation, Rezoning/Prezoning, Use Permits, Variances, and Wireless Communication Facility, and all require consideration at a public hearing/meeting with one or more of the following: Zoning Administrator, Design Review Board, Planning Commission, and/or the City Council.
complete or incomplete, convey project issues to you and your design team, and facilitate resolution of issues. The development review process works best when there is a partnership between City staff and our customers. Staff will work diligently with you to identify and resolve project issues in order to move forward with a positive recommendation to the decision-makers.

**Application Acceptability Meetings**

Prior to a formal submittal, an applicant shall schedule a meeting with the Project Planner and Engineer, to determine if their development plans and documents are ready for a formal submittal. This is known as the “Application Acceptability” meeting. At this meeting, one complete set of the application materials will be reviewed to determine if all of the items on the submittal checklists are included. If the application package is deficient, the application will not be accepted. Staff will document the items needed to submit the application. Once those revisions have been made, the applicant shall schedule a second meeting with the same Project Planner and Engineer. When the application contains all of the required information, the applicant will be invited to return with the formal submittal, which includes the required number of plan sets, the application, and application fees. While staff may raise issues or provide comments on the plans during the application acceptance stage, this does not replace the DAC review process, which is a comprehensive review of the content of the submitted materials.

Following the formal application submittal, all applications are distributed to the Development Advisory Committee (DAC), which is comprised of City staff and representatives of responsible agencies, to determine if the application is complete or incomplete. The DAC review and completeness determination occurs within 30 days of the formal submittal. A project must be found to be complete before it can move forward through the development review process. In addition to the completeness review, the purpose of the DAC review is also to identify project issues.

**Application and Permit Checklists**

The Planning Division, in conjunction with Permit Center staff and representatives from various City Departments, has developed comprehensive checklists for all discretionary permits (available on the City website). Submittal of complete plans and information, as listed on the applicable checklist(s), is required in order to move forward through the development review process and ultimately be scheduled for a public hearing. Submittal of incomplete or inconsistent materials results in multiple reviews by City staff and costly delays for the applicant.

If you have any questions about the submittal requirements, the development review process, or need help resolving an issue, please call (925) 671-3152. The City is continually improving the development review process to provide the best customer service possible. Staff welcomes any feedback or suggestions.
Discretionary Permit Application Appointment Information

In 2006, the City of Concord Permit Center implemented a new process for the filing of applications for all Discretionary Permits. Discretionary Permits are permits that require a public hearing or public meeting and approval by a decision making body including the Zoning Administrator, Design Review Board, Planning Commission, and/or City Council. Applications for Discretionary Permits will not be accepted without a prior, pre-arranged appointment with a Project Planner and Engineer to review all of the required materials and plans based on the application checklists for all of the following permits:

- Pre-Application
- Certificate of Appropriateness
- Condominium Conversion Use Permit
- Design and Site Development Review
- Development Code Amendment
- Finding of Public Convenience and Necessity
- General Plan Amendment
- Heritage Tree Nomination
- Hillside Development Use Permit
- Major/Minor Subdivision
- Minor Subdivision
- Minor Use Permit
- Planned Development Use Permit
- Protected Tree Removal Permit
- Reasonable Accommodation
- Rezoning/Prezoning
- Use Permit
- Variance
- Wireless Communication Facility

The Planning Division and Permit Center staff have prepared application checklists with submittal requirements for every type of discretionary permit. Applicants can use these checklists to assure that complete applications are prepared and submitted. Submittal of a complete application expedites processing of the application.

Applicants can call the Planning Division administrative staff at (925) 671-3152 anytime between 8:00 a.m. and 5:00 p.m., Monday through Friday, to schedule an appointment. All appointments will be scheduled on either Tuesday afternoons or Friday mornings, although staff will be as flexible as possible with applicants from out of the area.

For the first meeting with the Project Planner and Engineer, applicants and their Design Teams need to bring the following:

1. Application Form
2. A checklist for each application type
3. One complete full-size plan set
4. One copy of all other required documents and materials

If there are no deficiencies and the application is deemed acceptable, the applicant will be invited to return with their full submittal, including application fees, public hearing notification materials and all required copies of plans.

If there is need for subsequent meetings, applicants need to bring the marked up copies of the materials previously reviewed and the information missing from the first submittal. Every attempt will be made for the same Planner and Engineer who met with the applicant the first time to conduct the subsequent meeting. Every appointment that results in an "incomplete" finding will cost the hourly fee to cover the amount of time spent by each of the staff members. The appointment fee will be waived (i.e., credited towards the application fees) when plans are deemed acceptable.

Applications that do not have all of the required information will not be accepted.
PUBLIC WORKS DEPARTMENT

Parks Division

Procedure for Removal of Protected Trees – Permit Requirements

The City of Concord takes pride in its urban forest and has been continually recognized by the National Arbor Day Foundation with the Tree City USA and Growth Awards. Trees offer significant social, economic, environmental benefits to the quality of life in our community by enhancing the aesthetic beauty of our neighborhoods, moderating climate, reducing energy costs and increasing property values. The Public Works Parks Division is responsible for ensuring the commitment to foster a healthy urban forest using the following guidelines for trees located within the City of Concord.

The procedure for reviewing an application to remove a Protected Tree requires the following steps to be completed and information submitted to the Public Works Parks Division for review and response. Only protected trees require a permit prior to removal and there is currently no fee associated with a single permit. Non-protected trees do not require a City of Concord issued permit prior to removal.

Definitions

Non-protected Tree (No Permit required): Eucalyptus, Acacia, Monterey Pine, Palm, Privet, unless such tree has been specifically designated a “Heritage Tree” by action of the Planning Commission.

Protected Trees:

(a) Any of the following listed native trees with a 12" DBH (diameter at breast height) single trunk, or 12" DBH sum of all stems on multiple trunk tree, measured at 54" above the ground: Valley Oak, Blue Oak, Coast Live Oak, California Bay, California Buckeye, California Sycamore.

(b) Other trees with at least 24" DBH (single trunk) or a multi-stemmed tree where the sum of all stems are 24" DBH, measured at 54" above the ground.

(c) Any tree which has been officially designated by action of the Planning Commission as a Heritage Tree.

(d) A tree required to be planted, relocated, or preserved as a condition of approval of a Tree Permit or other discretionary permit, and/or as environmental mitigation for a discretionary permit.

(e) A tree 6" DBH single or multi-stemmed that is located within the structural setback of creeks or streams (Creek and Riparian Habitat Protection 122-802).

Permit Application

Any person desiring to remove one or more protected trees shall apply to the Public Works Parks Division, unless the removal is associated with an application to the Planning Division, and should include the following documentation:

1. A letter of intent from the property owner
   (a) A plan showing the location of the tree(s) to be removed and the quantity and species of trees to be planted in exchange for the protected tree
   (b) Statement of specific reasons for the proposed removal

2. Arborist report including the following for each tree:
   a. A written narrative from an I.S.A. Certified Arborist
   b. Arborist Name, Certification # and company letterhead
   c. Species (common and scientific name)
d. Size (diameter, height, crown spread)
e. Condition of the tree (foliage, vigor, structural integrity, etc.)
f. Prognosis
g. Life expectancy
h. Location diagram (and photos, if desired)

City Review and Action

Staff will (1) date-stamp the letter of intent and arborist report; (2) enter application in the Tree Removal Log and assign the next consecutive file number and enter same onto application; (3) document fee payment if required, and provide the applicant a copy of receipt; (4) route material to City Arborist.

Review Procedure

Upon receipt of all required submittal items the case will be reviewed by the City Arborist or appropriate designated City staff person, a written response will be mailed, faxed or emailed to the applicant. Staff may request additional information from the applicant or arborist, and a site visit may be required. If the prognosis is deemed urgent or is a life/safety emergency, the City Arborist or designated City staff person has the discretion to approve or modify this process as needed.

Action

The City’s response to the applicant will include either a written approval (may be with conditions for tree replacement), denial (with reasons cited and/or mitigation recommendations), or request for additional information. A copy of the approval letter must be on site when the tree is being removed.

Frequently, a file will remain open if the approval is conditioned upon required replanting with one or more trees of a predetermined size. To bring closure to the file, it is the applicant’s responsibility to ensure that conditions are implemented, and to submit proof of all required conditions being met within a reasonable timeframe.

Documentation including property owner’s letter of intent and certified arborist reports may be submitted to:

Concord Parks Division
Tree Permit Request
1455 Gasoline Alley, MS/47
Concord CA 94520

Additional tree related information including this document is available on the City of Concord website. Questions regarding the process for obtaining a permit to remove protected trees may be directed to the City Arborist Tyce Dekker at (925) 671-3064. Please allow up to five (5) business days to receive a return response. Thanks for your consideration.
Monument Business Owners Coalition  
1099 Regent Dr Suite A  
Concord Ca 94518  
925-383-6010

September 10, 2018

City of Concord  
Planning Division  
1950 Parkside Drive  
Concord, CA 94519

Dear City of Concord Planning Division:

The restaurants and markets of the Monument Community request an Environmental Impact Report to be conducted for an urban decay study and a traffic study on the proposed Cardenas at 2250 Monument Boulevard in Concord.

We are requesting the study to assess the economic impact and potential for urban decay resulting in the expansion of Cardenas into the Monument Community. This coalition believes that this Cardenas will result in the closure of markets and restaurants throughout the Monument. Cardenas is a “big-box” Latino supermarket that would negatively affect the locally owned businesses that have been a part of the Concord and Monument Community. The vibrancy and the culture of our community will drastically change.

The Monument Community is an area of high density when it comes to Latino markets and restaurants because there are approximately 20 Latino restaurants and 6 Latino markets. Only six are represented in this letter, yet there are many more families owned Latino businesses that will be adversely affected. Due to the short notice of this proposed Cardenas, we were only able to acquire five Latino businesses to write the City of Concord. It is currently difficult for a Latino market or restaurant to survive in the Monument Community because of their abundance. An urban decay study was conducted, in 2015, for the proposed Walmart in Chico, California, and even though the urban decay study concluded that the project will not significantly contribute to urban decay, it still mentioned that a grocery store and some restaurants could close. This is concerning because a Walmart targets a broad range of customers, whereas Latino markets and restaurants tend to target more specific customers within a community. This proposed Cardenas will vacuum up majority of the customers and residents in the Monument and will close multiple Latino markets and restaurants, which will lead to more retail vacancies.
within the Monument Community. The urban decay study for the Walmart in Chico was conducted prepared by ALH Urban and Regional Economics.

In 2010, there was an urban decay study conducted for the expansion of the Walmart in Glendora, California. The study concluded that expansion of the Walmart would not conclude in supermarket store closures, but it did mention that those supermarkets would see a reduction in sales. This 2010 urban decay study took into account Albertsons, Ralphs Grocery, and Vons Market. This Walmart was compared to other nationally ran companies. Cardenas has approximately 16 store locations between California and Nevada. It is a very large business that will be competing with families who own Latino markets and restaurants in one location and maybe even three. Cardenas will not be compared with other nationally ran companies but with small community businesses that also target the same specific client that Cardenas targets. These businesses will not be able to manage a reduction in sales because they are small businesses. Larger nationally ran businesses can handle a reduction in sales. This urban decay study was conducted by The Natelson Dale Group, Inc.

Additionally, we are requesting an Environmental Impact Report to study the traffic impacts that Cardenas will have on Monument Boulevard. The identified retail center, 2250 Monument Boulevard, is an older retail center and we request a more recent study to occur because Monument Boulevard is already a heavily traveled road.

Sincerely,

Hector Barragan
Los Rancheros

Santiago Morales
El Molino

Antonio Lopez
El Rancho

Ignacio Lopez
Mercado Del Sol

Roberto Cortez
Concord Produce

Angel J. Gomez
Las Montañas

CC:
Edi Birsan, Mayor
Carly Obringer, Vice Mayor,
Laura Hoffmeister, Councilmember
Ron Leone, Councilmember
Tim McGallian, Councilmember
Valerie Barone, City Manager
September 21, 2018

Monument Business Owners Coalition
1099 Regenti Drive, Suite A
Concord, CA 04518

RE: Proposed Cardenas Market at 2250 Monument Boulevard

Dear Monument Business Owners Coalition members:

The City of Concord has received the letter dated September 10, 2018, from the Monument Business Owners Coalition ("Coalition") expressing concerns regarding the Cardenas Market proposed at 2250 Monument Boulevard. We appreciate the Coalition taking the time to share their concerns. The City of Concord strives to support both new and existing businesses in our community in a way that promotes our overall mission to become a premier business destination while providing small businesses an opportunity to thrive and grow.

The Coalition’s letter requests that the City prepare an environmental impact report (EIR) that would include an urban decay analysis and traffic study to evaluate Cardenas Market's potential economic and traffic impacts. The requirement to evaluate and disclose a project’s potential environmental impacts through the preparation of an EIR or other environmental document is governed by the California Environmental Quality Act (CEQA). CEQA applies to discretionary projects that require “the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity” (Public Resources Code Section 2108; CEQA Guidelines Section 15357).

Cardenas Market proposes to locate on property zoned RC (Regional Commercial) that was previously occupied by Safeway. The RC zoning allows grocery stores such as Cardenas Market with a Zoning Clearance if it meets objective standards and requirements contained in the Development Code that are applicable to a grocery store use. In other words, the City cannot exercise discretion on whether to allow Cardenas Market based on subjective criteria, such as potential environmental impacts, and thus cannot require the studies requested by the Coalition.

Planning staff is working with Cardenas Market on proposed exterior modifications to the existing building and site that will require a Design Review Permit. Additional planning permits may be required as we obtain more information on the scope of the project and business.
If the Coalition would like to track the status of this project, it may do so by contacting Sarah Yuwiler, Assistant Planner, who is managing all planning-related permits associated with the project. Sarah can be reached at (925) 671-3465 or at Sarah.Yuwiler@cityofconcord.org.

We want to thank the Coalition members for the valuable services they provide to Concord and the Monument area, and wish each member continued success. Please feel free to contact me at (925) 671-3434 if you need additional assistance or to discuss this matter further.

Sincerely,

[Signature]

Andrea Ouse, AICP
Community and Economic Development Director

cc: Mayor and City Council
Valerie Barone, City Manager
John Montagh, Economic Development Manager
Michael Cass, Acting Planning Manager
Frank Abejo, Principal Planner
Sarah Yuwiler, Assistant Planner
November 6, 2018

Susanne Brown  
City Attorney  
City of Concord  
Concord Civic Center  
1950 Parkside Drive  
Concord, California 94519  
susanne.brown@cityofconcord.org

Sent Via Electronic and U.S. Mail

Re: Notice of Representation and Notice of Interested Party re:  
Cardenas Market Proposed at 2250 Monument Boulevard

Dear Ms. Brown:

Thank you for taking the time to speak with me recently at the Concord Housing and Economic Development Subcommittee Meeting, which took place on October 22, 2018.

Please be advised that this office has been retained to represent the Monument Business Owners Coalition ("MBOC") regarding the Cardenas Market proposed at 2250 Monument Boulevard in Concord. Please direct all future correspondence regarding this proposed development to this office.

In addition, this office is requesting designation of MBOC as an Interested Party for all matters within the jurisdiction of the City of Concord related to the Cardenas Market proposed at 2250 Monument Boulevard in Concord.

As such, please provide timely notice to this office, as the representative of Interested Party MBOC, of any action to be taken or decision to be considered by staff or any advisory or governing body regarding the Cardenas Market proposed at 2250 Monument Boulevard in Concord.
Thank you for your courtesy and cooperation. Please do not hesitate to contact me if you need further information.

Respectfully submitted,

Dana Dean

DD/tk

cc: client