Regular Meeting of the City of Concord Planning Commission

Wednesday, September 4, 2019
6:30 p.m.
1950 Parkside Drive

Information for the public on participation at Planning Commission meetings can be found on the back of the Speaker Identification Card located near the Council Chamber entrance. Should you have any questions after consulting the Speaker Identification Card, please contact the Planning Division at (925) 671-3152 prior to the Planning Commission meeting.

AGENDIZED ITEMS - The public is entitled to address the Planning Commission on items appearing on the agenda before or during the Planning Commission’s consideration of that item. Each speaker will be limited to approximately three minutes.

1. **ROLL CALL**

2. **PLEDGE TO THE FLAG**

3. **PUBLIC COMMENT PERIOD**

4. **CONSENT CALENDAR**
   
   A. **8/7/19 Meeting Minutes**

5. **PUBLIC HEARINGS**
   
   A. **Myrtle Creek Estates Subdivision Amendment (PL19099 - TM, DR, RT)** - Application for an amendment to an approved Tentative Major Subdivision Map, Design Review and Tree Removal for a seven-lot subdivision on a 3.6-acre lot at 5019 Myrtle Drive. The General Plan designation is Rural Residential; Zoning classification is RR-20 (Rural Residential, 20,000 square foot minimum lot size); APN 117-050-8. CEQA: Categorically exempt under CEQA Guidelines Section 15332
“In-Fill Development Projects”. Project Planner: Lorna Villa @ (925) 671-3176

B. Cardenas Market Appeal (PL19101 – AP) - Appeal of the Zoning Administrator’s approval of the Administrative Design & Site Review (PL18394 - DR), 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 a project, the project is categorically exempt under CEQA Guideline Sections 15061(b)(2) and (3), 15301, 15302, 15304, 15305, and 15321. Project Planner: Sarah Yuwiler @ (925) 671-3465

6. COMMISSION CONSIDERATIONS

7. STAFF REPORTS AND ANNOUNCEMENTS

8. COMMISSION REPORTS AND ANNOUNCEMENTS

9. FUTURE PUBLIC HEARING ITEMS

10. ADJOURNMENT

Next Meeting: Regular Meeting
Date: 9/18/2019 – 6:30 PM

ADA NOTICE AND HEARING IMPAIRED PROVISIONS - The Council Chamber is equipped with a T-Coil Hearing Loop. This system allows “T” coil reception of the audio proceedings. Please switch your hearing aid or cochlear device to the “T”, “T” Coil or telephone position. If you would like better audio reception, a loop receiver that picks up the audio loop is available from the City Clerk.

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) 671-3031, at least five days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.
A regular meeting of the Planning Commission, City of Concord, was called to order by Chair Barbour at 6:30 P.M., August 7, 2019, in the City Council Chamber.

1. **ROLL CALL**

   **COMMISSIONERS PRESENT:** Chair Ray Barbour  
   Vice Chair John Mercurio  
   Commissioner Jason Laub  
   Commissioner Craig Mizutani  
   Commissioner Mark Weinmann

   **STAFF PRESENT:** Mindy Gentry, Planning Manager/Secretary to the Planning Commission  
   Josh Clendenin, Senior Assistant City Attorney  
   Lorna Villa Associate Planner  
   Frank Abejo, Principal Planner  
   Sgt. Shawn Phalen, Police Department

2. **PLEDGE TO THE FLAG**

   Commissioner Laub led the pledge.

3. **PUBLIC COMMENT PERIOD**

   No public comment was heard.

4. **CONSENT CALENDAR**

   **APPROVAL OF MINUTES**

   No public comment was heard.

   Motion was made by Commissioner Laub and seconded by Commissioner Weinmann to approve the meeting minutes of July 17, 2019. The motion was passed by the following vote:

   AYES: Laub, Weinmann, Barbour  
   NOES: None  
   ABSTAIN: Mercurio, Mizutani  
   ABSENT: None
5. PUBLIC HEARINGS

7-Eleven Finding of Public Convenience and Necessity (PL19091 – UP) – Application for a Use Permit to allow an existing convenience store to sell beer and wine and a request to issue a Finding of Public Convenience and Necessity (FOPCN) authorizing the Department of Alcoholic Beverage Control (ABC) to approve a Type 20 liquor license for the sale of beer and wine at the Clayton Valley Shell and 7-Eleven convenience store at 1500 Kirker Pass Road. CEQA: Pursuant to the California Environmental Quality Act (CEQA), Guideline Section 15301 Class 1 (Existing Facilities), the project is categorically exempt. The General Plan designation is Neighborhood Commercial; Zoning classification is NC (Neighborhood Commercial); APN 118-031-039. **Project Planner: Lorna Villa @ (925) 671-3176**

Lorna Villa, Associate Planner, gave a presentation and answered questions from the Planning Commission regarding the Type 20 liquor license and if it only relates to the sales of beer and wine, whether the applicant could have applied for the license when he first opened the 7-Eleven, if the security plan was reviewed by staff and the Police Department, would hard cider would be permitted, would conditions of approval be different if the location was in a low crime area, clarification on the FOPCN process, and if the liquor license runs with the business.

Frank Abejo, Principal Planner, clarified the difference in ABC license types.

Sgt. Phalen gave a presentation and answered questions from the Planning Commission regarding the authorization to arrest trespassers, the review of the security plan, if the conditions of approval are consistent with other FOPCN approvals, three-pack beer sales as opposed to single and six-pack beer sales, and Alcohol Beverage Control operations.

Amir Hatambeiki, the owner, answered questions from the Planning Commission pertaining to the timing of the application for the Type 20 ABC liquor license and explained why the license was not applied for when he converted the business to a convenience store, why he wants to include beer and wine sales, and the location of the beer and wine within the store.

Public Comment

Patricia, a neighbor, expressed her concerns with the addition of alcohol sales and commented on the ongoing issues with crime and consistent loitering around the existing 7-Eleven.

Commissioner Laub asked Sgt. Phalen for an explanation on what triggers the Police Department to revoke an approval of a liquor license. He also stated he has confidence in the Police Department being responsive and handling any calls that might come in concerning the business.
Commissioner Mizutani stated he would be in support of the project but wanted to be sure the conditions of approval are followed and enforced.

Vice Chair Mercurio mentioned that the workers need to be mindful of things occurring around the business and adhere to the conditions of approval and the Concord sign ordinance.

Commissioner Weinmann expressed his support of the 9:30 pm alcohol sales cut-off and was hoping more of the neighbors were in attendance to express their feelings on this proposal.

Chair Barbour asked staff to reference hard cider in the conditions as he feels this is the same as beer and wine and was also hoping the conditions mentioned the purchase of a six-pack rather than a three-pack. He further mentioned that based on the number of letters in support of this business, he was also inclined to support the project.

Motion was made by Commissioner Laub and seconded by Vice Chair Mercurio to adopt Resolution No. 19-12PC approving Use Permit (PL19091-UP) and the Finding of Public Convenience and Necessity request to allow a Type 20 liquor license for Clayton Valley Shell and 7-Eleven convenience store, subject to the Conditions of Approval set forth in Attachment A to Resolution No. 19-12PC. The motion was passed by the following vote:

AYES: Laub, Mercurio, Barbour, Mizutani, Weinmann
NOES: None
ABSTAIN: None
ABSENT: None

6. COMMISSION CONSIDERATIONS

There were none.

7. STAFF REPORTS / ANNOUNCEMENTS

There were none.

8. COMMISSION REPORTS / ANNOUNCEMENTS

There were none.

9. FUTURE PUBLIC HEARING ITEMS

Planning Manager Mindy Gentry announced the August 21st meeting will likely be cancelled though the September 4th meeting will have items to discuss.
10. **ADJOURNMENT**

Vice Chair Mercurio moved to adjourn at 7:49 P.M. Commissioner Mizutani seconded the motion. Motion to adjourn was passed by unanimous vote of the Commissioners present.

APPROVED:

Mindy Gentry
Planning Manager / Secretary to the Planning Commission

Transcribed by Grant Spilman,
Administrative Coordinator
REPORT TO PLANNING COMMISSION

DATE:  September 4, 2019

SUBJECT:  MYRTLE CREEK ESTATES TENTATIVE MAP AND TREE REMOVAL PERMIT AMENDMENT (PL19099 - TMA, RTA)

Recommendation:  Move to continue the public hearing to September 18, 2019.

I.  Introduction

   A.  Application Request

       Application for an amendment to an approved Tentative Major Subdivision Map, Design and Site Review and Tree Removal Permit for a seven-lot subdivision on a 3.6-acre lot.

       Location

       The project site is located at the northeast corner of Myrtle Drive and Ayers Road at 5019 Myrtle Drive, APN 117-050-008.

   B.  Applicant/Owner

       Cyrus Land Development
       Jackie Seeno
       4021 Port Chicago Highway
       Concord, CA 94520

II.  Background

       Staff request a continuation of this item to September 18, 2019, in order for the applicant to make additional map revisions consistent with their request.
III. **Motion**

**Project Approvals**

I (Comm. ______) hereby move that the Planning Commission move to continue the public hearing to September 18, 2019. (Seconded by Comm. _______.)

Prepared by: [Signature]  
Lorna Villa  
Associate Planner  
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lorna.villa@cityofconcord.org

Reviewed by: [Signature]  
Mindy Gentry  
Planning Manager  
925-671-3369  
mindy.gentry@cityofconcord.org
AGENDA ITEM

REPORT TO PLANNING COMMISSION

DATE: September 4, 2019

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

Recommendation: Adopt Resolution No. 19-14PC denying the appeal of the Zoning Administrator approval of the modified Cardenas Market Administrative 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 Guidelines Sections 15061(b)(2) and (3), 15301, 15302, 15304, 15305, and 15321.

I. Introduction

A. Application Request

Appeal of the Zoning Administrator approval of the amended Cardenas Market Administrative Design and Site Review application 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.

The Zoning Administrator upheld staff’s recommendation to deny the appeal of the Design and Site Review on July 17, 2019. The Zoning Administrator’s decision was appealed on July 26, 2019 by the Law Offices of Dana Dean on behalf of Monument Business Owners Coalition (“MBOC”) (“Appellant”).

B. Location

The project site is located at 2250 Monument Boulevard, Suite F (APN 129-170-026)
A. Appellant
   Law Offices of Dana Dean
   On behalf of the Monument Business Owners Coalition
   283 East H Street
   Benicia, CA 94510

II. Background

Cardenas Markets LLC ("Cardenas") seeks to occupy the former Safeway store, which has been vacant for seven years. Although a grocery store use is permitted by right in the Regional Commercial district, Cardenas applied for a Design and Site Review application, pursuant to Concord Development Code (CDC) Section 18.415.020, to request façade, roof and parking lot improvements, which would be reviewed administratively by planning staff. During the application review process, on March 1, 2019, staff was notified by the owner of the property that his sibling had cut down 19 trees on the subject site. These trees were part of the original Use Permit approval of the Safeway store site (UP 58-81); accordingly, the trees were considered protected trees under the City’s Municipal Code (Chapter 8.40) and could only be removed after obtaining a Tree Removal Permit. At that time, staff decided to include a Tree Removal Permit with its design review application because Cardenas had included 45 trees in its submitted landscape plan.

Staff approved the Cardenas Market Administrative Design and Site Review application and Tree Removal Permit on May 24, 2019 (See Exhibit A to Zoning Administrator Order #19-10ZA, attached as Attachment 3). The Law Offices of Dana Dean, on behalf of the Monument Business Owners Coalition (hereafter referred to as “MBOC” or “Appellant”), filed a timely appeal of the approval on June 3, 2019 (See Exhibit B to Attachment 3).

On July 17, 2019, the Zoning Administrator held a de novo review and hearing on the appeal. At the hearing, staff recommended that the Tree Removal Permit be removed from the planning approval because it was determined that code enforcement of the Municipal Code violations was the appropriate method to address the unauthorized tree removal by the property owner. The Zoning Administrator agreed with staff and removed the Tree Removal Permit from the Zoning Order. After considering all public testimony, including comments provided by the Appellant, the Zoning Administrator denied the appeal and upheld staff’s approval of the Design and Site Review application, subject to modified conditions of approval. Included in Zoning Administrator Order No. 19-10ZA, the Zoning Administrator modified staff’s recommended Conditions of Approval with the following: (1) removal of six surplus parking spaces, to be replaced by landscaping; (2) allowing the approved landscape plan to qualify towards any required replacement landscaping as determined by Code Enforcement in connection with unpermitted on-site tree removals; and, (3) requiring the installation of a 5-foot pedestrian walkway within the parking lot subject to review and approval by the Transportation Division. (Attachment 3).

On July 26, 2019, staff received an appeal (Attachment 5) of the Zoning Administrator decision from the Law Offices of Dana Dean on behalf of the MBOC. Pursuant to CDC Section 18.400.020, the Planning Commission is the review authority for appeals of decisions made by the Zoning Administrator.
The July 17, 2019 Zoning Administrator Staff Report, included as Attachment 4, provides important background information (pages 2-4) and project details (pages 5-7) for the Planning Commission’s consideration of this appeal.

Attorneys for Cardenas Markets LLC (“Cardenas”) have also submitted two letters dated August 16, 2019, in response to MBOC’s appeal. These letters are included as Attachments 6 and 7 and are incorporated herein for the record.

Further, on August 27, 2019 the Attorneys for Cardenas Markets LLC submitted a subsequent letter (Attachment 8) requesting the removal of the additional conditions that where added by the Zoning Administrator. As of the publishing of this staff report, time did not allow for staff to address the concerns brought up in the letter therefore, staff will include them in the presentation at the Planning Commission meeting.

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

The Design and Site Review approval is not subject to the California Environmental Quality Act of 1970, as amended (CEQA), because the activity is not a “project” pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065 as the permit approval will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.

As indicated in detail above, 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 Concord Development Code. 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.¹

In the alternative, if the Design and Site Review approval is deemed to be a “project” under CEQA, the approval is categorically exempt under CEQA Guidelines Section 15061(b)(2) (projects are exempt as categorical 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 following categorical exemptions available under the CEQA Guidelines apply: a) Section 15301 (“Existing Facilities”); b) Section 15302 (“Replacement or Reconstruction”); c) Section 15304 (“Minor Alterations to Land”); d) Section 15305 (“Minor Alterations in Land Use Limitations”); and, e) Section 15321 (“Enforcement Actions by Regulatory Agencies”). These categorical exemptions apply because the project consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements, and consists of code enforcement actions undertaken to enforce the City’s tree preservation ordinance.

Additionally, because the site is not located in a sensitive environment, in an historical district, scenic highway or on a site identified to be on a Hazardous Waste and Substances Site List, there is no cumulative impact of successive projects of the same type in the same place, and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, none of the exceptions to the exemptions apply under CEQA Guidelines Section 15300.2.

Finally, the common sense exemption applies as it can be seen with certainty that there is no possibility that the Design and Site Review approval will 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”.

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:

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 for a grand opening scheduled on August 28, 2019. 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 and Site Review process, staff has been able to facilitate the intent of Goal LU-9, “Well Designed Development” and
associated Principle 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. Additionally, the Zoning Administrator included a condition of approval at the Zoning Administrator hearing which requires the installation of a 5-foot pedestrian walkway within the parking lot.

Parking

Minor modifications to the angles of the parking stalls in front of the building have been made 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. The Zoning Administrator further requested the removal of the six surplus parking spaces (above the code requirement), to be replaced by landscaping as an added condition of approval.

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 the existing parking lot trees (ash trees) had been 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 the 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 have been 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 2).

V. Appeal/Analysis

Pursuant to Chapter 18.510 of the Development Code, an appeal may be initiated by the applicant, property owner or any interested person. Appeals of a Zoning Administrator’s decision may be appealed to the Planning Commission, which is heard again on a de novo basis; in other words, the Planning Commission may consider new materials and testimony in addition to what was considered in the original decision and at the Zoning Administrator hearing. Following the hearing, the Planning Commission shall “affirm, modify, or reverse the original decision or remand the matter” to the Zoning Administrator.

The July 26, 2019 appeal identifies concerns raised by MBOC (Attachment 5), which generally are focused on CEQA objections to the City’s decision to prosecute the improper tree removal through its code enforcement remedies instead of handling the improper removals through the planning process. Legal counsel for Cardenas Market have submitted detailed responses to the arguments raised in the appeal as they related to appellant’s CEQA and non-CEQA objections (Attachments 6 and 7), which are incorporated herein for the record.

In addition to the responses raised by Cardenas’ attorneys, staff has included its comments below:

A. Appellant’s CEQA Arguments Related to the Tree Removal Issue.
Staff Response: Appellant contends that the City’s decision to prosecute the unpermitted tree removal as a code enforcement remedy is “in error and an abuse of discretion.” The appellant also states that the City’s Municipal Code must also require the applicant to seek a Tree Removal Permit as well.

The purpose of the City’s tree preservation ordinance, which is codified in Chapter 8.40 of the City’s Municipal Code, is to protect large, mature trees within the City, and to serve as complementary regulations to the Development Code where construction and development are proposed. (Municipal Code Section 8.40.130). Subsection (d) of this code provision (“Coordination with applications for development”) states that any application to remove a protected tree as part of a development application is to be submitted to the Planning Division and be subject to the relevant development regulations.

However, in this instance, the removal of the 19 trees was not part of Cardenas’ application, nor was it part of the development process. Instead, the property owner took it upon himself to remove the trees without consulting with Cardenas or the City. Therefore, as it is not part of the development application, Appellant’s argument that a Tree Removal permit is also required is not supported by the City’s code.

As part of the administrative approval, staff had initially decided to issue a Tree Removal Permit retroactively as part of the Design and Site Review process. However, in response to the MBOC’s first appeal, staff determined that the findings to approve a Tree Removal Permit could not be supported or made because staff was unable to assess the health of each removed tree, which is a required finding for a Tree Removal Permit. Therefore, as the appeal to the Zoning Administrator was under de novo review, staff recommended that the Tree Removal Permit be removed from the planning process and alternatively referred the matter to code enforcement to commence actions against the property owner for violation of the City’s Municipal Code, which is permitted under Municipal Code Section 8.40.150(f): “Enforcement. Any person, including but not limited to the property owner, the person performing the work, and/or any other responsible person, who violates any provision of this Division or any condition imposed upon any permit issued hereunder shall be liable to the City for a civil penalty to be determined by the City based on the value of the tree and the extent of the damage done.”

The City clearly has the discretion under its general police powers to enforce its Municipal Code in a manner as deemed appropriate. Given the fact that the property owner removed the trees and not the applicant, the City may, based on its police powers, enforce the code violation against the property owner.

Appellant argues that the tree removal itself is subject to CEQA. However, because the actions of removing the trees was not something pre-approved by the City, CEQA does not apply. Pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065, the tree removal is not a project because it is not 1) an activity directly undertaken by any public agency; 2) an activity undertaken by a person which is supported, in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more
Moreover, CEQA only applies to discretionary projects that are submitted to the City. (Public Resources Code Section 21080(a)). CEQA Guidelines Section 15357 defines a “discretionary project” to be a project that “requires the exercise of judgment or deliberation when the public agency or body decides to approve or disprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statues, ordinances, regulations, or other fixed standards.” Here, the City did not approve the removal of the 19 trees prior to their removal, nor was the removal submitted as part of Cardenas’ development application. Instead, the City is seeking to enforce its Municipal Code standards regarding tree preservation against the property owner. Therefore, the tree removal is not a discretionary project under CEQA.

The appellant also contends that there are significant urban decay and traffic impacts that could occur as a result of the Cardenas Design and Site Review approval that should trigger CEQA review. However, Appellant has provided no factual or statistical data to support these arguments. Case law has suggested that, without relevant studies or surveys, conclusionary remarks concerning urban decay are not enough to constitute substantial evidence that the project might lead to significant urban decay impacts. (See 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 to operate in a long-vacant grocery store site will cause urban decay in the neighborhood.

Appellant also provided no evidence that traffic will be significantly impacted because of the grocery store’s operations. In 1981, the shopping center (which included the former Safeway site) was developed as part of a Planned Development use permit. At that time, the area was zoned Planned District and a use permit was required. Since that time, and as part of the 2012 Development Code Update, the area was rezone to Regional Commercial (RC). In updating the Land Use Tables for the RC District, retail uses (including a grocery store use) are now allowed by right, or with a zoning clearance.

In connection with the 2012 Development Code and Land Use Tables update, the City adopted a Supplemental Environmental Impact Report (SEIR) to the 2030 General Plan EIR on July 24, 2012. Included in this SEIR are traffic studies that evaluated the new code changes and changes to the Land Use Tables (including the zoning clearance approval of retail uses). Therefore, any traffic impact that could be caused by a retail store was evaluated at that time. Here, as there is no substantial evidence that the proposed grocery store will significantly increase traffic to the area, no new traffic studies are warranted.

B. Appellant’s Argument that the ZA’s Design Review Approval was Not Supported by Findings.

Staff response: The Appellant states that the “Conditions of Approval fail to require landscaping of 45 (or 57) trees, which further demonstrates the City’s error in and abuse of discretion in finding that the project’s landscaping meets current requirements or provides a
significant upgrade and improvement to the site.” However, to the contrary, the City is requiring the installation of 45 trees as part of a landscaping plan that addresses the site as a whole (which was not proposed by the applicant originally), and substantial fines based on the value of the trees associated with the unpermitted removal of the protected trees through the code enforcement process. Moreover, the staff report and zoning order for the Zoning Administrator hearing presented all of the required findings for the administrative design and site review approval and further are listed in the attached Planning Commission resolution (Attachment 1).

C. Appellant’s Due Process Arguments.

The Appellant states that it has been denied due process protections at the Zoning Administrator hearing because it was not given adequate notice of the hearing, staff report and documents related to Safeway’s 1981 use permit in time for the July 17 Zoning Administrator hearing.

However, staff provided more notice of the hearing than what is required under the Government Code. Staff informed the appellant of the hearing date (about a week after the appeal was filed) prior to issuing the formal public notices. Additionally, public notices were sent to the appellant and surrounding business ten (10) days prior to the hearing date, which complies with the Government Code notification requirements. The applicant also timely posted notices at the site regarding the hearing date.

The Zoning Administrator hearing was considered a “special meeting” because the hearing fell outside of the regularly scheduled Zoning Administrator meetings. Government Code Section 54956 requires that agendas be posted within 24-hours of a special meeting. The Zoning Administrator hearing was held at 9:00 a.m. on July 17, 2019; therefore, notice of the agenda was required to be posted by 9:00 a.m. on Tuesday, July 17, 2019. Here, the agenda was posted and Appellant was provided an electronic link to the agenda packet at approximately 7:00 p.m., on Monday, July 15, 2019, which is more than the 24 hours required notice. In other words, while appellant states that they received less than 24 hours’ notice of the agenda packet, in fact they received the information 38 hours in advance of the meeting.2

Appellant has also submitted multiple Public Records Act requests to the City in connection with the pending Design and Site Review approval and the shopping center’s development in 1981. Pursuant to the Public Records Act (Government Code Section 6250 et seq.), the City is required to acknowledge and determine whether it possesses disclosable records responsive to the request within 10 days. There is no requirement in the Public Records Act to produce the records within a certain time frame. Although the City does not necessarily maintain its records in the requested categories by appellant and many of the documents originated 38 years ago, the City timely responded and has provided several hundred pages of documents to appellant. Staff asserts that the City has fully complied with the Act in responding to Appellant’s multiple Public Records Act requests.

2 Staff notes that on July 11, 2019 appellant contacted the City and indicated that it might ask for a continuance of the July 17, 2019 Zoning Administrator hearing, to be confirmed by appellant on Monday, July 15. Staff did not receive confirmation of appellant’s request for a continuance and proceeded to post the agenda and staff report on Monday evening.
Appellant’s attorney was also provided the opportunity to give a presentation at the Zoning Administrator’s hearing and representatives of Appellant spoke at public comment at the July 17, 2019 hearing.

VI. Public Contact

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

VII. Summary and Recommendation

Staff recommends the Planning Commission 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 Planning Commission adopt Resolution No. 19-14PC denying the appeal and upholding the modified approval of the Cardenas Market Design and Site Review.

VIII. Motion

Staff recommends the Commission adopt Resolution No. 19-14PC denying the appeal by MBOC with the following motion:

I (Comm. ______) hereby move that the Planning Commission adopt Resolution 19-14PC denying the appeal of the Zoning Administrator’s approval of the modified Cardenas Market Design and Site Review Application subject to the Conditions of Approval set forth in Attachment A to Resolution 19-14PC (Seconded by Comm. ______.).

Prepared by: Sarah Yuwiler
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Reviewed by: Mindy Gentry
Planning Manager
925-671-3369
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Attachments:
1. Resolution No. 19-14PC, Denying the Appeal
2. Project Plans date stamped received May 14, 2019
3. Zoning Administrator Order #19-10ZA (with exhibits)
   - Exhibit A: Administrative Design and Site Review Approval
   - Exhibit B: Appeal of Administrative Design Review filed by the Law Offices of Dana Dean
   - Exhibit C: Modified Administrative Design and Site Review Approval with Conditions
4. Staff Report to Zoning Administrator dated July 17, 2019 - (only Exhibits D, E & F as the others are referenced as Exhibit A & B of Attachment 3 above)
5. Copy of Zoning Administrator Appeal filed by the Law Offices of Dana Dean
6. Letter 1 CEQA Issues Raised dated August 16, 2019
7. Letter 2 Issues Raised in Cardenas Market Appeal unrelated to CEQA dated August 19, 2019
8. Removal of Additional Conditions Letter dated August 27, 2019
BEFORE THE PLANNING COMMISSION
OF THE CITY OF CONCORD,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A RESOLUTION DENYING AN APPEAL
(PL19101-AP) OF THE ZONING
ADMINISTRATOR APPROVAL FOR THE
MODIFIED CARDENAS MARKET
ADMINISTRATOR DESIGN AND SITE REVIEW
(PL18394- DR)

WHEREAS, on November 21, 2018, WSCS Design, on behalf of Cardenas Market, submitted an application for Administrative Design and Site Review 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, pursuant to the provisions of the California Environmental Quality Act of 1970, as amended (“CEQA”), the Administrative Design and Site Review permit is not a “project” pursuant to Public Resources Code Section 21065 and CEQA Guidelines Section 15378 as the activity 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 Design and Site Review Permit 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”), 15305 (“Minor alterations to land use alterations”), and 15321 (“Enforcement Actions by Regulatory Agencies”) because the Design and Site Review Permit consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements, and code enforcement activity. Also, the “common sense exemption” of CEQA Guidelines Section 15062(b)(3) applies as the Design and Site Review Permit does not have the potential for causing a significant effect on the environment. Additionally, because the site is not located in a sensitive environment in an historical district, scenic highway or on a site identified to be on a Hazardous Waste and Substances Site List, there is no cumulative impact of successive projects of the same type in the same place, and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, none of the exceptions to the exemptions apply under CEQA Guidelines Section 15300.2.; and

WHEREAS, on May 24, 2019, staff issued an Administrative Design and Site Review approval and a Tree Removal Permit, herein after referred to as “Administrative Approval;” and

WHEREAS, on June 3, 2019, the City received an appeal of the Administrative Approval (hereinafter referred to as “Appeal to ZA”), filed by the Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition (“MBOC”); 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 Appeal to ZA; 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 determined that the unauthorized removal of the trees from the property
should be addressed as a code enforcement issue, instead of issuing a Tree Removal Permit for trees that had already been removed. Accordingly, staff proposed modified Conditions of Approval, which removed any reference to a Tree Removal Permit and included conditions that require replacement of the removed trees, for the Zoning Administrator’s review; and

WHEREAS, on July 17, 2019, after considering testimony and information received at the public hearing and the oral and written reports from staff, as well as other documents contained in the record of proceedings relating to the project, the Zoning Administrator denied the appeal and upheld staff’s Modified Administrative Approval (ZA Order 19-10ZA); and

WHEREAS, on July 26, 2019, the Zoning Administrator’s decision for the denial of the appeal of the Design and Site Review Approval was appealed by the Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition (hereinafter referred to “Appeal to PC”); and

WHEREAS, the Planning Commission, after giving all public notices required by State law and the Concord Municipal Code, held a duly noticed public hearing on September 4, 2019 on the Appeal to PC; and

WHEREAS, the Planning Commission considered testimony and information received at the public hearing and the oral and written reports from City staff dated September 4, 2019 (including the staff report to the Zoning Administrator dated July 17, 2019), as well as other 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 (hereinafter referred to as “Project Information;” and

WHEREAS, on September 4, 2019 the Planning Commission, after consideration of all pertinent plans, documents and testimony, declared their intent to deny the appeal and approve the Cardenas Market Administrative Design and Site Review application (hereinafter “Design and Site Review Permit”); and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby deny the Appeal to PC (PL19101-AP) and approves the Cardenas Market Design and Site Review Permit (PL18394-DR), subject to the Conditions of Approval contained herein as Attachment A, and further makes the following findings:
1. The recitals above are true and correct and are incorporated herein by reference.

   **CEQA**

2. The Design and Site Review Permit is not a “project” pursuant to Public Resources Code Section 21065 and CEQA Guidelines Section 15378 as the activity will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. Moreover, a grocery store use is permitted by right and the scope of the City’s 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 criteria outlined in the Concord Development Code. Accordingly, no further environmental review is necessary as the Design Review approval does not contemplate the use of the site and is not considered to be a discretionary project approval under CEQA.

3. In the alternative, if deemed to be a “project” under CEQA, the Design and Site Review Approval is categorically exempt pursuant to CEQA Guidelines Section 15061(b)(2) because the activity consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements, and consists of separate code enforcement prosecution of the unauthorized tree removal, the activity qualifies for the following exemptions under CEQA: CEQA Guidelines Sections 15301 (“Existing Facilities”); 15302 “Replacement or reconstruction”); 15304 (“Minor alterations to land”); 15305 (“Minor alterations to land use alterations”); and 15321 (“Enforcement Actions by Regulatory Agencies”). Additionally, the “common sense exemption” of CEQA Guidelines Section 15062(b)(3) applies as the Design and Site Review does not have the potential for causing a significant effect on the environment.

4. Additionally, because the site is not located in a sensitive environment in an historical district, scenic highway or on a site identified to be on a Hazardous Waste and Substances Site List, there is no cumulative impact of successive projects of the same type in the same place, and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, none of the exceptions to the exemptions apply under CEQA Guidelines Section 15300.2.
General Plan

5. The Design and Site Review Permit for Cardenas Market 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.

6. 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.

7. The Design and Site Review Permit 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.

8. 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.

Design and Site Review

9. The Design and Site Review Permit is consistent with the General Plan as explained in Findings 5 - 8 above.

10. The Design and Site Review Permit 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 Design and Site Review Permit 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 Design and Site Review Permit 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 Cardenas Market 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 Design and Site Review Permit 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 Design and Site Review Permit 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 Design and Site Review Permit of the Cardenas Market 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 Design and Site Review Permit 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**

11. 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**

12. 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.

13. The Design and Site Review Permit 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.

14. In approving the Design and Site Review Permit, the Planning Commission has imposed Conditions of Approval, as included in Attachment A, deemed necessary to:

a. Ensure that the Design and Site Review Permit conforms to the General Plan and other applicable plans or policies adopted by the Council; and

b. Ensure that the Design and Site Review Permit meets the requirements of the RC zoning district, applicable provisions of the Concord Municipal Code and other standards in the Development Code.

13. This resolution shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED** this September 4, 2019, subject to the Conditions of Approval set forth as Attachment A, by the following vote:

**AYES:** Commissioner -
NOES: Commissioner –
ABSTAIN: Commissioner –
ABSENT: Commissioner –

Mindy Gentry
Planning Manager

Attachment A – Design and Site Review Conditions of Approval
ATTACHMENT A
FINAL 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:

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<th>Manufacturer</th>
<th>Sample Number</th>
<th>Material / Color</th>
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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. **Remove the six (6) surplus parking spaces and replace with landscaping for review and approval by the Planning Division, prior to Certificate of Occupancy.** *(ZA)*

14. **The approved landscape plan received xxx and as modified by the Conditions of Approval, shall qualify towards any required replacement landscaping as determined by Code Enforcement in connection with the unpermitted on-site tree removals.** *(ZA)*

15. 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)*

16. 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. A 5-foot wide pedestrian walkway shall be constructed within the parking lot subject to review and approval by the Transportation Division prior to Certificate of Occupancy. *(ZA)*

37. 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)*

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

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

41. 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)

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

43. All new utilities shall be constructed underground prior to Certificate of Occupancy. (ENGR)

44. The vacant dirt property adjacent to the building shall be hydroseeded prior to Certificate of Occupancy. (ENGR)

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

SOLID WASTE/RECYCLING

46. 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)

47. 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. (CCCSD, 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)
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)

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 29, 2019. (PLNG)

A request for a time extension from the expiration date of July 29, 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)
PROPOSED OCCUPANCY:

FOR REFERENCE ONLY. INFORMATION ON T.I. PERMIT

GROUP M

GROUP S - 1

GROUP F - 1

CONSTRUCTION:

FOR REFERENCE ONLY. INFORMATION ON T.I. PERMIT

TYPE 5B

FIRE SPRINKLERS:

FIRE SPRINKLERS TO BE MODIFIED UNDER T.I. PERMIT.

NO FIRE SPRINKLERS MODIFICATION UNDER THIS PERMIT.

COORDINATED WITH FIRE DEPARTMENT REGARDING COMMENTS.

BUILDING AREA:

FOR REFERENCE ONLY. INFORMATION ON T.I. PERMIT

42660 SF

PROJECT DESCRIPTION:

NEW CARDENAS MARKET TI, @ LOCATION SHOWN.

MARKET SHALL INCLUDE GENERAL RETAIL SPACE.

TORTILLERIA, MEAT MARKET, BAKERY, AND COMMERCIAL KITCHEN AND DINING AREA.

PARKING REQUIRED:

EXISTING PARKING TO REMAIN WITH THE SAME SQUARE FOOTAGE.

HOURS OF OPERATION

7:00 AM TO 10:00 PM MONDAY THROUGH SUNDAY

OWNER OF BUILDING

OAKGROVE, LLC

C/O RICK BRUZZONE

1660 OLYMPIC BLVD. SUITE 210

WALNUT CREEK, CA 94596

TENANT

CARDENAS MARKETS

2501 E. GUASTI RD. ONTARIO, CA 91761

TEL: (909) 923-7426

FAX: (909) 635-3157

CONTACT:

XAVIER GUZMAN

O: 909.923.7426 EXT. 1855

C: 714.343.4410

EFAX 844-206-6544

CARDENAS MARKETS INC. 2501 E GUASTI RD., ONTARIO CA 91761

DESIGNER:

WADE SHUEY

W.S.C.S DESIGN

1844 W 11TH. STREET SUITE D.

UPLAND, CA 91786

TELEPHONE: 909.262.9766

CIVIL ENGINEER

JEFFERY C. VAN DAM

VAN DAM ENGINEERING

1844 W 11TH. STREET SUITE D.

UPLAND, CA 91786

TELEPHONE: 909.643-07

PROJECT ADDRESS:

2250 MONUMENT BLVD.

CONCORD, CA 94520

COUNTY NAME:

Contra Costa

PARCEL NUMBER

129-170-26

DEFERRED SUBMITTALS:

DEFERRED SUBMITTALS SHALL BE REVIEWED BY THE PROJECT ARCHITECT OR ENGINEER OF RECORD AND CERTIFIED PRIOR TO SUBMITTAL FOR PLAN REVIEW. A SEPARATE PLAN REVIEW AND FEE SHALL BE REQUIRED FOR ALL DEFERRED SUBMITTALS.

1.

EXTERIOR BUILDING SIGNAGE SHALL BE UNDER SEPARATE PERMIT - SHALL BE SUBMITTED AND APPROVED BY PLANNING BUILDING AND SAFETY PDR - 000 Cover Sheet

PDR - 000 Cover Sheet

PDR - 100 Site Plan - Existing

PDR - 102 Site Plan

PDR - 103 Site Plan- Enlarged

PDR - 104 Floor Plan

PDR - 105 Roof Plan

PDR - 106 Elevations - New

PDR - 107 Elevations - Existing

PDR - 108 Trash Enclosure

PDR - 109 Cart Containment Plan

PDR - 110 Site Specs

PDR - 111 Security Plan


D900. Details - Trash Enclosure.

L1 Planting Plan

L2 Irrigation Plan

L3 Details & Specs

L4 Landscape Specifications

E100 Photometric Site Plan

E101 Cutsheets

Facade 1

Trash Enclosure 1

Trash Enclosure 2

Facade 2

Facade 3

Grocery Market T.I. for:

CARDENAS

2250 Monument Blvd. Concord, CA 94520

Facade 1

Facade 2

Facade 3
NOTE:
- All existing parking and ADA compliant areas to be maintained.
- New concrete walkways to receive same finish and tooled joint pattern and spacing as existing concrete walk.
- With a 5% max slope in the direction of travel, and a 2% max cross slope.
- SLOPE: 0.33% MAX

Key Notes:
- 3-69 NEW CONCRETE WALK TO RECEIVE SAME FINISH AND TOOLED JOINT PATTERN AND SPACING AS EXISTING CONCRETE WALK. WITH A 5% MAX SLOPE IN THE DIRECTION OF TRAVEL. AND A 2% MAX CROSS SLOPE.
- 3-55 SAWCUT AND REMOVE EXISTING CONCRETE FLATWORK AS REQUIRED TO INSTALL NEW CONCRETE WALKWAYS WITH LESS THAN 5% SLOPE IN THE DIRECTION OF TRAVEL AND 2% CROSS SLOPE AS SHOWN.
- 2-503 EXISTING LANDSCAPING TO BE REMOVED.
- 2-486 DERO - SWERVE RACK SECURITY BIKE RACK @ 24" O/C. (EACH RACK TO ACCOMMODATE TWO BIKES (INSTALLED PER MANUFACTURER SPECS. (SHEET PDR-110)
- 2-243 SAW CUT AND REMOVE ASPHALT TO ACCOMMODATE NEW PLANTER AS NECESSARY.
- 2-241 EXISTING CONCRETE CURB TO BE REMOVED.
- 2-213 EXISTING CONCRETE NON-CONFORMING CURB RAMP AND WALK TO BE SAWCUT AND REMOVED AS REQUIRED TO INSTALL NEW CONFORMING HANDICAP ACCESSIBLE CURB RAMP (LEAVE 1" FLOW LINE INTACT).
- 2-189 NEW DISABLED VAN PARKING SPACE, WITH 8'-0" MINIMUM WIDTH UNLOADING AREA AND PAINTED SIGN, WHEEL STOP AND SYMBOL. 4" WIDE DIAGONAL STRIPES TO BE PAINTED AT 3'-0" O/C (BLUE TRAFFIC PAINT).
- 2-182 NEW CONCRETE SLOPED WALK WITH 1:12 ADA SLOP MAX.
- 2-168 EXISTING PARKING STRIPING TO BE REMOVED (BLACKED OUT).
- 2-165 4" WIDE PAINTED PARKING STRIPE (WHITE TRAFFIC PAINT).
- 2-144 PRECAST CONCRETE WHEEL STOP (5'-0" LONG).
- 2-124 GRIND ASPHALT SURFACE TO PREPARE FOR TOP COAT AS NECESSARY, WITH A 5% MAX SLOPE IN THE DIRECTION OF TRAVEL. AND A 2% MAX CROSS SLOPE @ ADA PARKING.
- 1-138 REMOVE EXISTING DISABLED SIGN AND PATCH CONCRETE.
- 1-124 36" WIDE YELLOW DETECTABLE WARNING WITH TRUNCATED DOMES AT SHADED AREA WHERE PATH OF TRAVEL CROSSES (OR ADJOINS) HAZARDOUS VEHICULAR AREAS PER 2016 CBC OR APPROVED EQUAL.
**Roofscreen NC3 Frame**

Design, Quantity & Type of Fastener determined by Structural Calcs provided by Roofscreen Mfg. 

- **Base Cap** to **Base Support** using bolts w/ sealing washers.
- **Base Connector**, **Typ RotoLock Connection**
- Attach using thread cutting screws. ∅2 1/2" End Connector, **Typ**
- Attach End Connector using Tek Screws. ∅2 1/2" End Connector, **Typ**
- Attach Base Cap, **Typ**
- Attach Base Support, **Typ**
- Attach End Connector using Tek Screws.
- **Base Support, Typ**
- **Base Cap, Typ**
- **HAT CHANNEL, Typ**
- Attach HAT Channel using Tek Screws. ∅2 1/2" End Connector, **Typ**
- Attach Panel using Tek Screws. 

**Distance Between Base Supports** determined by Structural Calcs. 

- **Hat Channel, Typ**
- **ATTACH HAT CHANNEL USING TEK SCREWS**
- **7.2 Rib Panel**
- **ATTACH PANEL USING TEK SCREWS**

**Max Height Above Average Level of Adjoining Ground Adjacent to Building**

- **TRIM CAP**
- **ATTACH FIELD CONNECTOR USING TEK SCREWS**
- **CRIMPED TUBE END, Typ**
- **OPTIONAL END CONNECTOR**
- **FIELD CONNECTOR, Typ**
- **ATTACH FIELD CONNECTOR USING TEK SCREWS**

**Note:**

- **T.O.S. = TOP OF SCREEN**

**1" = 10'-0"**

**Roof Plan - Proposed - DR**

- **Grocery Market T.I. for:** Cardenas Market Inc. Store #224
- **Revision Number**
- **Date**

**Key Notes**

- **7-80 EXISTING BUILT-UP ROOFING TO REMAIN. ENSURE ALL PENETRATIONS ARE SEALED PER ROOFING MANUFACTURERS SPECIFICATIONS**
- **10-97 EXISTING WALKING SURFACE TO REMAIN**
- **15-181 EXISTING SERVICE SINK TO REMAIN**
- **15-538 EXISTING EXHAUST FAN TO REMAIN**
- **15-542 NEW EXHAUST FAN (SEE MECHANICAL PLANS)**
- **15-785 A/C UNIT AND DUCTWORK (SEE MECHANICAL PLANS)**
- **15-792 ROOF VENT HATCH TO REMAIN**
- **15-876 NEW MAKEUP AIR UNIT, SEE MECHANICAL PLAN**
- **15-909 OUTSIDE AIR INTAKE**
- **15-941 NEW STEEL MECHANICAL SCREEN - SEE ROOF PLAN**
- **16-249 EXISTING CONDUITS TO REMAIN**

**NOTE:**

- **DETAIL 182/D401 = 2/PDR105**
- **DETAIL - 182/D401 = 2/PDR105**

**NOTE:**

- **T.O.S. = TOP OF SCREEN**

- **1/2" = 1'-0"**
Level One
0' - 0"

Floor Plan - Enlarged Trash Enclosure - DR

Elevation - Front TE - DR

Elevation - Rear TE - DR

Elevation - Left TE - DR

Elevation - Right TE - DR

Material Schedule - Trash Enclosure

<table>
<thead>
<tr>
<th>Mark</th>
<th>Material Type</th>
<th>Manufacturer</th>
<th>Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>MTE1</td>
<td>STEEL ROOF ME</td>
<td>TAL ME TAL SALE</td>
<td>7/8&quot; CORRUGATED ROOF GALVANIZED STEEL</td>
</tr>
<tr>
<td>MTE2</td>
<td>8X8X16 SLUMP BLOCK</td>
<td>PAINTED DUNN EDWARDS PAINT</td>
<td>CHAMPAGNE (DEC723)</td>
</tr>
<tr>
<td>MTE3</td>
<td>RIBBED PANEL</td>
<td>POWDER POATED ROOF SCREEN</td>
<td>ALMOND</td>
</tr>
<tr>
<td>MTE4</td>
<td>EXISTING SLUMP BLOCK WALL CAP</td>
<td>PAINTED DUNN EDWARDS PAINT</td>
<td>NUETRAL VALLEY (DES6119)</td>
</tr>
<tr>
<td>MTE5</td>
<td>FASCIA TRIM &amp; STEEL STRUCTURE</td>
<td>DUNN EDWARDS PAINT</td>
<td>DEEP CRIMSOM (DEA152)</td>
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</tbody>
</table>

Key Notes

<table>
<thead>
<tr>
<th>Key Value</th>
<th>Keynote Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-53</td>
<td>WOVEN OPEN WELDED WIRE MESH GUARD WITH 2&quot; X 2&quot; SQUARE WEB W/ 1&quot;X1&quot; STEEL ANGLE FRAME SECURED STEEL STRUCTURE</td>
</tr>
<tr>
<td>4-47</td>
<td>NEW REINFORCED SLUMP BLOCK CMU WALL</td>
</tr>
<tr>
<td>5-641</td>
<td>TRASH ENCLOSURE STEEL GATE (SEE GATE DETAILS)</td>
</tr>
</tbody>
</table>

PDR - 108
Trash Enclosure
NOTE: WARNING SIGN TO BE PLACED ON SHOPPING CART END OVER STEEL PLATE

3" = 1'-0"
Security Plan

General Notes:
1. Recording device shall record and save recording for a minimum of one week.
2. Interior surveillance system under separate permit.

Site Plan - Security

Grocery Market T.I. for:
Cardenas Market Inc.
Store #224

2250 Monument Blvd.
Concord, CA 94520

Security Plan

Revision Number Description Date
1" = 20'-0" Site Plan - Security 08-29-2018

PDR - 111
GENERAL NOTE:
1. SEAL INTERIORS OF TRASH ENCLOSURE WALLS, ONE COAT OF PRIMER. TWO COATS OF ELASTOMERIC PAINT TO MATCH EXTERIOR COLOR OF TRASH ENCLOSURE.
PLANTING SPECIFICATIONS

DESIGN CONSIDERATIONS

1. PLANT SPECIFICATIONS
   - All plants shall be of healthy, hardened-off stock, in accordance with the plant specifications provided by the designer.
   - Plants shall be selected based on their ability to thrive in the specific site conditions.
   - All plants shall be disease-free and free of pests.

2. PLANTING METHODS
   - All plants shall be planted at the proper planting depth as specified in the plant specifications.
   - All plants shall be staked and firmly anchored to prevent wind damage.

3. PLANTING SCHEDULE
   - Planting shall be scheduled in accordance with the seasonal conditions and the specific site conditions.
   - All plants shall be watered regularly to ensure proper establishment.

IRRIGATION SPECIFICATIONS

1. IRRIGATION SYSTEM
   - All irrigation systems shall be designed and installed in accordance with the latest plumbing codes and regulations.
   - Irrigation systems shall be designed to meet the water demand of the site.
   - All irrigation systems shall be equipped with proper drainage systems.

2. IRRIGATION SCHEDULE
   - Irrigation shall be scheduled based on the plant specifications and the seasonal conditions.
   - All irrigation systems shall be monitored and adjusted as necessary to meet the water demand of the site.

3. IRRIGATION MAINTENANCE
   - All irrigation systems shall be regularly maintained to ensure proper function.
   - All irrigation systems shall be serviced and repaired as necessary to ensure proper function.

4. IRRIGATION TESTING
   - All irrigation systems shall be tested after installation to ensure proper function.
   - All irrigation systems shall be tested annually to ensure proper function.

5. IRRIGATION STORAGE
   - All irrigation systems shall be designed to store water in compliance with the latest plumbing codes and regulations.
   - All irrigation systems shall be equipped with proper drainage systems.
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, denied the appeal and upheld 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
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:

Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
### Approved Building Colors and Materials

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### Plan Details

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Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
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)

Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
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. *(PLNG)*

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

**SHOPPING CARTS**

22. 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)*

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. *(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. *(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 *(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. *(PD)*

**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. *(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. *(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. *(ENGR, TRANS, PD)*

Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
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 hydroseeded prior to occupancy approval. *(ENGR)*

Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
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. (CCCSD, 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:  A- Approved Plans
B- Arborists Report Received 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

Superseded by Zoning Order #19-10ZA & Conditions of Approval Exhibit C
Grocery Market T.I. for:

Cardenas

2250 Monument Blvd. Concord, CA 94520

The applicant acknowledges being advised by the City of Concord to prepare a property survey in connection with this building permit. Applicant has elected to not prepare a survey and agrees to make necessary corrections, including but not limited to building alterations, upgrades, or demolition to correct zoning or building code violations resulting from inaccurate site plan information. Applicant further acknowledges that failure to correct such violations in a timely manner may result in penalties, including but not limited to fines and permit revocation.
Key Notes

1. **Proposed Site Plan - New Enlarged ADA - DR**

2. **Existing Site Plan - Demo Enlarged ADA - DR**

3. **Proposed Site Plan - New Enlarged ADA - DR**

4. **Site Plan - New Enlarged - Path Of Travel - DR**

**NOTE:**

- **Remove existing concrete ramp to remain.
- Sawcut and remove existing concrete as required to install new 4'-3" square x 12" deep concrete pad footing with (10) #4 bars each way.
- Sawcut and remove existing concrete flatwork as required to install new concrete walkways with less than 5% slope in the direction of travel and 2% cross slope as shown.
- Existing tree and root system to be removed.
- New landscaping this area (see landscaping plan).
- Existing landscaping to be removed.
- DERO - Swerve Rack Security Bike Rack @ 24" O/C. (Each rack to accommodate two bikes (installed per manufacturer specs. (Sheet PDR-110)
- Saw cut and remove asphalt to accommodate new planter as necessary.
- Existing concrete curb to be removed.
- Existing concrete walkway or ramp to be removed.
- Existing concrete non-conforming curb ramp and walk to be sawcut and removed as required to install new conforming handicap accessible curb ramp (leave 1" flow line intact).
- New disabled van parking space, with 8'-0" minimum width unloading area and painted sign, wheel stop, and symbol. 4" wide diagonal stripes to be painted at 3'-0" O/C (blue traffic paint).
- Existing parking striping to be removed (blacked out).
- 4" wide painted parking stripe (white traffic paint).
- Provide 4" wide painted diagonal stripes (white traffic paint) with 8" high lettering as shown.
- Grind asphalt surface to prepare for top coat as necessary, with a 5% max slope in the direction of travel, and a 2% max cross slope at ADA parking.
- New 6" high concrete curb at planters and parking edges.
- Remove existing disabled sign and patch concrete.

**grocery market t.i. for:**
Cardenas Market Inc.
Store #224

**paid to:**
PDR - 103

**design:**
WCS Design

2250 Monument Blvd.
Concord, CA 94520

**scale:**
1/8" = 1'-0"
ATTACH BASE CAP TO BASE SUPPORT USING BOLTS W/ SEALING WASHERS

ATTACH USING THREAD CUTTING SCREWS

∅ 2 1/2 " END CONNECTOR, TYP

ATTACH END CONNECTOR USING TEK SCREWS

BASE CAP, TYP

BASE SUPPORT, TP

ATTACH BASE CONNECTOR USING TEK SCREWS

∅ 2 1/2 " TUBING 11ga OR 16ga, TYP

CRIMPED TUBE END, TYP

OPTIONAL END CONNECTOR

FIELD CONNECTOR, TYP

ATTACH FIELD CONNECTOR USING TEK SCREWS

DISTANCE BETWEEN BASE SUPPORTS DETERMINED BY STRUCT. CALCS

HAT CHANNEL, TYP

ATTACH HAT CHANNEL USING TEK SCREWS

7.2 RIB PANEL

ATTACH PANEL USING TEK SCREWS

MAX HEIGHT ABOVE AVERAGE LEVEL OF ADJOINING GROUND ADJACENT TO BUILDING TRIM CAP

NOTE:

T.O.S = TOP OF SCREEN

1" = 10'-0"
Materials Schedule - Trash Enclosure

<table>
<thead>
<tr>
<th>Material Schedule</th>
<th>Mark Material Type</th>
<th>Manufacturer</th>
<th>Color Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>MTE1</td>
<td>STEEL ROOF METAL</td>
<td>SALE 7/8&quot;</td>
<td>CORRUGATED ROOF GALVANIZED STEEL</td>
</tr>
<tr>
<td>MTE2</td>
<td>8X8X16 SLUMP BLOCK</td>
<td>PAINTED</td>
<td>DUNN EDWARDS PAINT CHAMPAGNE (DEC723)</td>
</tr>
<tr>
<td>MTE3</td>
<td>RIBBED PANEL</td>
<td>PAINTED</td>
<td>POWDER POATED ROOF SCREEN ALMOND</td>
</tr>
<tr>
<td>MTE4</td>
<td>EXISTING SLUMP</td>
<td>PAINTED</td>
<td>BLOCK WALL CAP PAINTED DUNN EDWARDS PAINT CHAMPAGNE (DEC723)</td>
</tr>
<tr>
<td>MTE5</td>
<td>FASCIA TRIM</td>
<td>PAINTED</td>
<td>DUNN EDWARDS PAINT NUETRAL VALLEY (DES6119)</td>
</tr>
<tr>
<td>MTE6</td>
<td>ROOF TRIM</td>
<td>PAINTED</td>
<td>DEEP CRIMSOM (DEA152)</td>
</tr>
</tbody>
</table>

Key Notes

1-53 WOVEN OPEN WELDED WIRE MESH GUARD WITH 2" X 2" SQUARE WEB W/ 1"X1" STEEL ANGLE FRAME SECURED STEEL STRUCTURE

4-47 NEW REINFORCED SLUMP BLOCK CMU WALL

5-641 TRASH ENCLOSURE STEEL GATE (SEE GATE DETAILS)

15-479 (5) - YARD TRASH BINS PROVIDED MT. DIABLO RESOURCE RECOVERY
NOTE: WARNING SIGN TO BE PLACED ON SHOPPING CART END OVER STEEL PLATE

3" = 1'-0"
Security Plan
Grocery Market T.I. Inc.
2250 Monument Blvd.
Concord, CA 94520

08-29-2018
18-430

Cardenas Market Inc.
Store #224

Revision Number Description Date
1 " = 20'-0"

Site Plan - Security

GENERAL NOTES:
1. RECORDING DEVICE SHALL RECORD AND SAVE RECORDING FOR A MINIMUM OF ONE WEEK
2. INTERIOR SURVEILLANCE SYSTEM UNDER SEPARATE PERMIT
Arborist Report
March 28, 2019

Tree Removal Permit Requested for Recent Unauthorized Tree Removal

Prepared for: Rick Bruzzone
Durgin Otterson Bruzzone LLP
1660 Olympic Boulevard, Suite 210
Walnut Creek, CA 94596-5127
925-322-6132 (general office)
925-322-6142 (direct)
800-948-5939 (fax)

Prepared by: Tom Arrington
ISA Certified Arborist #WE-3070A
4100 Fariss Lane
El Sobrante, CA 94803
Tree Removal Permit Requested for Recent Removal of Unauthorized Trees

Background

When the 19 canopy parking lot trees were removed from the parking lot at 2250 Monument Blvd, Mr. Bruzzone was unaware that a tree removal permit was required by the City of Concord. These trees were protected under a Condition of Approval for the original site. Mr. Bruzzone is preparing to upgrade the parking lot for Cadenas Market. This report will document:

1. Trees on the property that were removed;
2. Trees that are remaining;
3. Trees that will be replanted in the new parking lot.

Trees on the property that were removed:

Photos #1, #2, #3, #4 show dated Google Earth images of the parking lot at 2250 Monument Blvd. On photo #1, the trees that are numbered 1 through 19 have been completely removed. See photos #7, #8, #9, #10, and #11 which show the current treeless parking lot.

Data from Google Earth suggests that these canopy parking lot trees were Ash Trees ranging in trunk size from 6 - 24 inches in diameter. Estimated heights ranged from 15 - 50 feet high with 5 – 20 foot widths.
These trees appeared to be in fair health. Photo #9 shows that some of the
trees had outgrown their planting area and were uplifting the surrounding asphalt
of the parking lot.

Trees that are remaining:
The Sweet Gum trees along the sidewalk of Monument Blvd still exist and
appear to be in fair health (see photos #5 and #6). These trees will not be affected
by the work proposed for the parking lot upgrade.

Trees that will be replanted in the new parking lot:
The 3:1 tree mitigation plan called for 57 new trees to be replanted for the
removal of the 19 unauthorized trees. Because the mitigation falls short by 12
trees, Landscape Plans by Olive Street has proposed 24 inch box tree replacements
instead of the 15 gallon size. These include:

14 Drake Elms: The US Forest Service reports — “the Drake Elm makes an ideal shade,
specimen, street or parking lot tree, provided it is trained and pruned to allow for
vehicular and pedestrian clearance below…. tree has been successfully grown in
urban areas where air pollution, poor drainage, compacted soil, and/or drought are
common”.

24 Crape Myrtles: Once established, the Crape Myrtle is drought tolerant and requires
little water which makes it a good water wise choice. Is well-suited for hot, sunny
climates and grows well in limited soil space.

7 Eastern Redbuds: The Eastern Redbud (a small ornamental tree) adapts well to multiple
environments and requires little maintenance, once established.

ISA Certified Arborist #WE-3070A   Tom Armitage    Date: 3/28/19
Photo #2
Google Earth 11/2018

Ash Tree
Ash Trees
Photo #6 taken 3/28/19
Photo #11 taken 3/28/19 of planter area in front of store. Google image indicates large tree was removed from this area 3/2017. The adjacent planter area has identical results.
I hereby appeal the decision / requirement of the Planning Division in approving / denying the application of Cardenas Market for Administrative Design Review and Tree Removal Approval on May 24, 2019.

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

Please see letter attached.

Monument Business Owners Coalition

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

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

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

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
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.¹ As such, the 5/24/19 Decision should be reversed and further review should be required prior to any future approval.

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

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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-bruzzzone.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 of 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.\textsuperscript{33}

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{33} 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, "Drip line 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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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.

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 (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 analyze 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 Redev. 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  Add to My Plant List
Fraxinus latifolia

© 2008 Jean-Pol GRANDMONT

Estimated Plant Range | 2 |
Cascade Range from southwestern British

tunk diameter of 30-80 centimeter, and it is

It is usually found in riparian corridors
leaflet ovate, 6-12 centimeter long and 3-4

dioecious, meaning that male and female

The tree reaches 20-30 years of age. It is

| Google |

| Annual Precip. ? | 6.1" - 117.4" |
| Summer Precip. ? | 0.15" - 4.04" |
| Coldest Month ? | 28.9°F - 59.0°F |
| Hottest Month ? | 49.9°F - 84.1°F |
| Humidity ? | 0.01 vpd - 35.01 vpd |
| Soil Description | Typically found in poorly drained, moist bottom land with deep soil rich in humus |
| Drainage | Slow |
| Sunset Zones ? | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 |
| Companion Plants | Use with other wetland-riparian trees and shrubs such as Maples (Acer spp.), Alders (Alnus spp.), Dogwood (Cornus spp.), California Walnut (Juglans californica or hindii), Sycamore (Platanus racemosa), Cottonwood (Populus spp.), Currant/Gooseberry (Ribes spp.), wild Rose (Rosa spp.), and wild grape (Vitis californica or girdiana). Also works well with various wetland grasses and grass-like plants such as Sedges (Carex spp.), Spike rush (Eleocharis spp.), Rushes (Juncus spp.), and Akakia Sacaton (Sporobolus airoides) |
| Wildlife Attracted | Butterflies are attracted to plants in the Frasinus genus, including the Pale Swallowtail, Two-tailed Swallowtail, and Western Tiger Swallowtail butterflies which use these as host plants |
| Butterflies hosted ? | Western Tiger Swallowtail Papilio rutulus, Mourning Cloak Nymphalis antiopa, Two-tailed Swallowtail Papilio multicaudata, Polyphemus Moth Antherea polyphemus |
| SHOWALL >> | Western Tiger Swallowtail Papilio rutulus, Mourning Cloak Nymphalis antiopa, Two-tailed Swallowtail Papilio multicaudata, Polyphemus Moth Antherea polyphemus |

**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 |

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 Conservancy of Herbs. Sunset information provided by Jestion Flore Project. Propagation from seed information provided by the Santa Barbara Botanic Garden from "Seed Propagation of Native California Plants" by Dana E. Emery. Sources of plant photos include CalPhotos, Wikipedia Commons, and independent plant photographers who have agreed to share their images with iCalscape. Other general sources of information include CalFia, CNPS Manual of Vegetation Online, Region Flore Project, Las Pilates, The Xeriscope, and information provided by CNPS volunteer editors, with special thanks to Don Rideout. Climate data used in creation of plant range maps is from PRISM Climate Group, Oregon State University, using 30 year (1961-1990) annual normals at an 800 meter spatial resolution.

Links: Jestion Flore Tazara Pape CalPhotos Wikipedia CalFia
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\(^1\) 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

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\(^1\) 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/Rezoning
- 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

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!
## EXHIBIT C

### FINAL 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:

#### Approved Building Colors and Materials

<table>
<thead>
<tr>
<th>Material/Color</th>
<th>Manufacturer</th>
<th>Sample Number</th>
<th>Color</th>
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<tbody>
<tr>
<td>Slump Block: Body</td>
<td>Dunn Edwards Paint</td>
<td>DEC723</td>
<td>Champagne</td>
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<td>Roof Trim</td>
<td>Dunn Edwards Paint</td>
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<td>Deep Crimson</td>
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<tr>
<td>Fascia Trim &amp; Steel</td>
<td>Dunn Edwards Paint</td>
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<td>Neutral Valley</td>
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<td>Roof Screen</td>
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<td>Almond</td>
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#### Approved Trash Enclosure Colors and Materials

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<th>Sample Number</th>
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<td>DEC723</td>
<td>Champagne</td>
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<tr>
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<td>Prepared by</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. Remove the six (6) surplus parking spaces and replace with landscaping for review and approval by the Planning Division, prior to Certificate of Occupancy.  *(ZA)*

14. The approved landscape plan received xxx and as modified by the Conditions of Approval, shall qualify towards any required replacement landscaping as determined by Code Enforcement in connection with the unpermitted on-site tree removals.  *(ZA)*

15. 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)*

16. 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*

17. 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)*

18. 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. A 5-foot wide pedestrian walkway shall be constructed within the parking lot subject to review and approval by the Transportation Division prior to Certificate of Occupancy. *(ZA)*

37. 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)*

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

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

41. 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)*

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

43. All new utilities shall be constructed underground **prior to Certificate of Occupancy.** *(ENGR)*

44. The vacant dirt property adjacent to the building shall be hydoseeded **prior to Certificate of Occupancy.** *(ENGR)*

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

**SOLID WASTE/RECYCLING**

46. 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)*

47. 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. *(CCCSD, 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 29, 2019. (PLNG)

55. A request for a time extension from the expiration date of July 29, 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)
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 Permitapplication (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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1As 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.
C. Appellant
Law Offices of Dana Dean
On behalf of the Monument Business Owners Coalition
283 East H Street
Benicia, CA 94510

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, 2019, 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 an 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”.

\(^2\) 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 Furniture Depot</td>
<td>Regional Commercial</td>
</tr>
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</table>

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 to 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 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 unwarranted 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 are not subject to the California Quality Act of 1970, as amended (CEQA), 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
Monument Business Owners Coalition
1099 Reganti 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
Santiago Morales
Antonio Lopez
Los Rancheros
El Molino
El Rancho

Ignacio Lopez
Roberto Cortez
Arigel J. Gomez
Mercado Del Sol
Concord Produce
Las Montañas

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

Monument Business Owners Coalition
1099 Reganti 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,

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
TO: City Council or Planning Commission
City of Concord
1950 Parkside Drive
Concord, CA 94515

Attachment 5

Concord

NOTICE OF APPEAL
CMC Chapter 18.510

I hereby appeal the decision / requirement of the Zoning Administrator
(ADMINISTRATOR OR COMMISSION)
in approving / denying the application of Cardenas Market
(NAME OF APPLICANT)
for Administrative Design Review and Tree Removal Approval on July 17, 2019, 20
(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

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

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

FOR STAFF USE ONLY

FILE NUMBER  FILE TITLE

RECEIVED BY

PROJECT PLANNER

CITY CLERK USE ONLY

Received written appeal on ________________

Scheduled for Council agenda of ____________________________ Set for Public Hearing on ____________________________

O Copies distributed to appropriate parties

CITY CLERK
July 26, 2019

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

Dear City of Concord Planning Commission:

This correspondence shall serve as an appeal ("Appeal") of the decision of the Zoning Administrator that occurred on July 17, 2019 ("Decision") to the Planning Commission on behalf of Monument Business Owners Coalition. The Decision approved an Administrative and Site Review and determined that no tree removal permit was necessary for the removal of 19 trees, PL18394 – DR, RT and PL19101 – AP\(^1\) ("Project"). The Decision is expressed in the ZA Order No. 19-10ZA dated on or about July 17, 2019 and its 3 attachments, including its Exhibit C showing the Modified Conditions of Approval ("Order"). The site location is 2250 Monument Boulevard, Suite F (APN 129-170-026) and the Project applicant is Cardenas market ("Applicant"). The site location has been vacant since 2012. Order, page 1.

Monument Business Owners Coalition ("MBOC"), has been an interested party since the Fall of 2018 and timely appealed staff’s May 24, 2019 approvals of the Project to the Zoning Administrator on June 3, 2019. The Zoning Administrator heard that appeal de novo on July 17, 2019 and rendered his final Decision, which was in error and adverse to MBOC’s interests and requires this further Appeal to the Planning Commission.

The Decision must be reversed by the Planning Commission because:

1. The Decision is not in compliance with the purposes of the development code;
2. There are specific facts that are in error or an abuse of discretion;
3. There are specific facts of the record which are inaccurate; and/or

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\(^1\) The Decision reverses Staff’s prior determination to require a Tree Removal Permit for 19 mature trees that were destroyed without the required permits.
The City’s New Decision that the Subject Tree Removal is Merely a Code Violation which No Longer Requires a Tree Removal Permit is in Error and an Abuse of Discretion.

The city of Concord ("the City’s") newest finding that the Applicant does not require a tree removal permit for the unpermitted destruction of the 19 mature and protected trees ("Trees") is in error and an abuse of discretion. The City determined that the unpermitted tree removal of 19 mature and protected is solely a matter for Code enforcement. ZA Order NO. 19-10ZA ("Order"), page 3, number 2. The City further finds that the tree removal of the protected trees no longer requires a permit under Concord Municipal Code ("CMC") 8.40.140 and 18.310.030.

In support of its erroneous determination, the staff report cites to CMC 8.40.150(f). (Report to Zoning Administrator, p. 3.), which states:

*Enforcement.* Any person, including but not limited to the property owner, the person performing the work, and/or any other responsible person, who violates any provision of this Division or any condition imposed upon any permit issued hereunder shall be liable to the City for a civil penalty to be determined by the City based on the value of the tree and the extent of the damage done.

However, nothing in this section imposing civil liability on the violator relieves the tandem requirement that is set forth in CMC 8.40.140, which states:

It shall be unlawful for any person to remove, or cause to be removed, any protected tree from any parcel of property in the city without first obtaining a permit to do so; provided, however, that in cases of emergency when a tree is hazardous or dangerous to life or property, it may be removed by order of the Chief of Police, by the Chief of the Contra Costa County Consolidated Fire District, or by the Director of Public Works. Provided, further, in emergency situations only where the public health and safety is affected, any duly authorized representative of any public utility or of the city may remove trees which interfere with the safe and efficient operation of the public service for which they are responsible. Non-protected may be removed without a permit...

CMC 18.310.020 similarly requires:

The provisions of this chapter shall apply to the removal or relocation of any protected tree in all zoning districts when the removal or relocation is associated with a proposal requiring a planning permit pursuant to the Concord Development Code. This shall include tree removal or relocation on undeveloped property in order to facilitate development, and removal
or relocation on developed property to facilitate building construction, expansion, renovation, or other property improvements. The provisions of this chapter shall not apply to the removal of trees which are not associated with a planning or building permit. Such activities are governed by Chapter 8.40 CMC...

... D. Activities Requiring a Tree Permit. Any activity that is subject to a planning permit as required in Division VII of this title (Permits and Permit Procedures) shall be required to obtain a tree permit prior to:
1. The relocation, removal, cutting-down, or other act that causes the damage or destruction of a protected tree;
2. Any grading, paving, or other ground-disturbing activity within the tree protection zone (TPZ) where the encroachment exceeds 20 percent of the protected zone.

Further, CMC 18.310.060 requires a finding of infeasibility that the protected tree cannot be preserved and then requires a minimum of a 3:1 ratio for replacement.

While the City may enforce the unpermitted tree removal through civil fines, it also must require that the applicant obtain a permit for the removal of the protected trees in accordance with chapters 8.40 and 8.310. The applicant must comply with all of the sections of the Code. Moreover, the Code sections of civil enforcement and permit requirements are not exclusive to each other, but rather both are applicable, cumulative and both must be given meaning.


If the City were to allow such large-scale protected tree removal without the required permit would reward illegal conduct and unpermitted activity. It would be discriminatory to all of the other permit applicants for tree removal permits. It sets bad precedent in the City. Why would anyone obtain the required tree permit, when you can simply cut down protected trees and then face a minor code enforcement issue later, all the while remaining unaccountable for having to obtain a permit, including discretionary permits, such as tree removal permits? This more lenient standard for skipping the permit requirement for tree removal would foreseeably result in cumulative
effects under CEQA based on other people cutting down protected trees without a permit.

As such, the City is not at liberty to arbitrarily waive some of its Code sections pertaining to permitting requirements for the tree removal when the permit was required in the first place. This would be in direct contradiction to the City’s own Code. The only manner in which the City may sever a part of its Code is by legislative activity or if it is declared invalid by a court of competent jurisdiction. CMC 1.05.060. Neither situation is present here. Rather, each section of the Code must “be construed with a view to effect its objects and to promote justice.” CMC 1.05.090. The City’s proposed interpretation by cherry picking which Code sections to apply, while ignoring other Code sections, does not effect its objects or promote justice. Rather, such interpretation is arbitrary and capricious and subject to an ordinary writ action.

The City abused its discretion in reversing its prior determination to require a tree removal permit – a permit which is unequivocally required under its own Code. CMC 8.40.140 and 18.310.030. Further, such reversal of the prior permit requirement is not supported by substantial evidence. Rather it is arbitrary and capricious and wholly lacking in evidentiary support.

**The Required Tree Removal Permit is a Discretionary Determination that Is Subject to CEQA. The City’s Determination that CEQA does not Apply to the Removal of the Protected Trees without a Permit is an Abuse of Discretion.**

The City further abused its discretion and was in error when it determined that CEQA did not apply to unpermitted Tree removal. The scheme of the City’s Code is designed to require the City’s discretionary approval for the removal of any of protected trees, much less 19 of them being removed all at once. CMC 8.40.140. As a discretionary approval of a Project that may have a potentially significant impact, it is subject to CEQA. This being the case here, an Initial Study must be done to analyze and disclose other impacts of the whole of the action of the Project, including but not limited to impacts related to Tree removal, traffic, urban decay and cumulative impacts.

**The City Made a Finding that the 19 Trees were a Condition of Approval Mitigation Measure for the Prior Development of the Market. Without such Mitigation Measure in Effect, the Project may have Potentially Significant Impact(s).**

CEQA is triggered when one of the mitigations for the prior project (Safeway) has been destroyed. Attached and incorporated herein by this reference is Exhibit 1 and 2,

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2 8.40.140 states, "It shall be unlawful for any person to remove, or cause to be removed, any protected tree from any parcel of property in the city without first obtaining a permit to do so;..." The only exception to this code requirement is in the case of an emergency. It is undisputed that an emergency did not exist here. On the contrary, the trees were not only protected they were in “fair health” according to the Arborist Report. See also CMC 8.40.150.
showing true and correct copies of the Use Permit 58-81, dated on or about November 5, 1981 and the Design Review Board Action, dated December 7, 1981.

The City originally determined that the Trees are protected under the Code because they were required mitigation under the prior conditions of approval for the 1980s Safeway development.

Under CEQA once a mitigation is removed, such as is the case here, there is necessarily a potentially significant impact that must be studied under CEQA.

The Conditions of Approval for the Project state that CEQA does not apply. (Order, page 3). This is because the City claims that the Modified Administrative Approval will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. The City's determination is in error and an abuse of discretion. There is the direct physical change in the environment related to the removal of the protected Trees and removal of a prior mitigation. Once CEQA environmental review is required for the tree removal, then all of the impacts listed in Appendix G must be studied as a part of that permit. As is further detailed below such environmental impacts of this Project include but not limited to traffic and urban decay.

In essence, the City proposes a modification to the original mitigation measures for the original conditions of approval. The original mitigation measures required that trees be planted circa 1981. Now the City proposes to substitute the following modifications to those original mitigation measures – to remove the 19 mature protected Trees and allow for replacement of the mature trees with a ratio of young trees.

CEQA is triggered by such a proposal to modify the mitigation measures. The agency must give a legitimate reason(s) for making such changes and support such reasons with substantial evidence. *Napa Citizens for Honest Gov’t v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 359. Here, the modifications to the prior mitigation measures would allow a new significant impact to occur or would increase the severity of a significant impact. The newly planted trees, do not have the same environmental value as trees that are nearing 40 years of age. Pub. Resources Code §21166, CEQA Guidelines §15162.

The City proposes a mitigation ratio for the illegally removed trees of 3:1. However, the City falls short of providing the public with meaningful analysis as to the effectiveness of that ratio. This is especially so because Use Permit 58-81 specifically calls for “canopy trees.” Young trees will take several decades to reach the canopies that the trees planted in the 1980s had.

Changing the mitigation measure to allow the Applicant to start over again with tree planting creates additional environmental impacts that are potentially significant. The City abused its discretion in modifying the original mitigation measures without the required analysis under CEQA and such finding is not supported by substantial evidence.
nor has the City articulated legitimate reasons and is thus not in accordance with the law.

**In Addition to Being Mitigation Measures, the 19 Trees are Protected Under Additional Protection under the Code.**

The CMC requires a tree removal permit for removal of protected trees. CMC 8.40.140 and 18.310.020 states that a tree removal permit is required before a single protected tree is cut down. Here, according to the City the Trees are protected because they were prior mitigation measures for the original development of the supermarket. Additionally, they are also protected under the CMC because some had trunks as large as 24 inches, which is an additional reason that such trees are protected. See Exhibit 3 showing a true and correct copy of the Arborist Report for “Tree Removal Permit Requested for Recent Unauthorized Tree Removal,” prepared by Tom Arrington, dated March 28, 2019, page 1.

Notably, since the trees were cut down illegally and without a permit, the Arborist Report could not obtain the information that was required to be included in such report, such as the number of trees that would be protected by having trunks of 24 inches or more at 54 inches above the ground. In regard to Appeal Point #7 in the Zoning Administrator Report, the staff responds to the comment that the Arborist Report fails to identify all of the required standards pursuant to the Code. The Report notes that it would have been impossible for the Arborist to comply with this requirement because the Report happened after the trees were removed. This illegal felling of trees is anything but typical. As the Code states the typical situation is that an arborist report normally is prepared as part of the permitting process before trees are removed. This fact solidly supports one of Appellant’s points that the situation at hand is not typical and not ministerially or administratively addressed by Code enforcement, or even addressed by any of the standard-oriented provisions set forth in the Code. Rather, this is an atypical situation, requiring the City’s discretion because the Tree removal was also a Code violation, in addition to requiring a permit.

CEQA applies to the required a discretionary tree removal permit because the removal of the protected trees is outside of the Code. Accordingly, by definition it is not a matter of a ministerial application of the Code. CEQA further applies because there is a fair argument that there may be a potentially significant impacts related to the removal of 19 mature protected trees. The City must require CEQA analysis of how such impacts will be mitigated and how long that mitigation will take to reduce such impacts to less than significant levels.

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The City’s Alternative Determination that a CEQA Exemption Applies to the Removal of the Protected Trees without a Permit is also in Error and an Abuse of Discretion.

The City made a determination that if the Modified Administrative Approval is a project under CEQA, then the Approval is categorically exempt pursuant to Guideline §15061(b)(2) based on Guidelines section 15301 ("Existing Facilities"); 15302 ("Replacement or reconstruction"); 15304 ("Minor alterations to land"); 15305 ("Minor alterations to land use alterations"); and 15062(b)(3) (Common sense exemption). Order, page 3, number 2.

As established above, the Project may have potentially significant impacts related to the modification of the prior mitigation measures, as well as urban decay and traffic problems, as is further discussed below. Accordingly, any categorical exemption is improper when a Project may have potentially significant impacts requiring mitigation. Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, 1102. PRC 21084(a). The Order sets forth a mitigation for tree replacement. Order, page 2, lines 13-14. As such, an exemption is not a legal possibility for the City’s treatment of this Project, since a mitigation is required. Additionally, the Conditions of Approval have a gap in that the City is stating that the Trees are being mitigated through the Conditions, while also claiming that the Project is exempt. It is difficult to follow the City’s bridging between the evidence and its findings. The Project’s Conditions must, but fail to require the minimum ratio for the number of replacement trees. Conditions, pages 4-5 compared to Order, page 2, lines 13-14. To omit this important requirement piecemeals the Project and is not allowed under CEQA as is further discussed below.

The City may not allow a categorical exemption when it is relying on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. Salmon Protection, supra, at 1102, 1108, stating, that reliance on mitigation measures is inappropriate whether those measures are “included in the application or later adopted.” Here the City must require the mitigation measure that the Applicant replace the felled protected trees with a 3:1 ratio in order to attempt to avoid the potentially significant environmental impacts.3

The City fails to provide any meaningful analysis for its claim of exemptions, but rather concludes this is so. The public nor the decision makers (Planning Commission) can follow the analytical gap from the evidence to the findings. It is a bare conclusion in contradiction to the requirements of CEQA.

The project is not exempt from CEQA for any of the reasons that are claimed by the City. For example, the City claims the Project is exempt pursuant to Guidelines §15301: “Existing facilities.” The felling of the 19 mature protected trees is a part of the whole of

3 There is insufficient and incomplete analysis without CEQA review to determine if such a ratio satisfies the environmental impacts of the removal of the 19 protected mature canopy trees in this instance.
this Project. The protected trees were cut down, in the course of Cardenas applying for the permits for the exterior changes, including changes to the parking lot and landscaping, where the trees were located. As such the 15301 exemption cannot possibly apply to the situation at hand because the trees were existing, but were cut down as part of this Project. The change between 19 mature canopy trees and no trees, but plans for planting more young trees is not “negligible” as would be required for this exemption to be applicable.

Similarly, the City’s claim that the Project is exempt pursuant to Guidelines §15302: “Replacement or reconstruction.” There is no information in the record to demonstrate when and if the replacement values of the new young trees will serve the same mitigation for the mature protected trees that were removed. Young trees do not have the same capacity to serve the same ecological values as the mature canopy trees. Therefore, this exemption is not applicable to the situation at hand.

Similarly, the City’s claim that the Project is exempt pursuant to Guidelines §15304: “Minor alterations to land.” This exemption is inapplicable to mature, scenic trees. Zischke and CEB Practice Under the Environmental Quality Act, Kostka and Zischke, (2009), §5.82.

Similarly, the City’s claim that the Project is exempt pursuant to Guidelines §15062(b)(3): “Common sense.” It is not common sense to conclude that removal of 19 mature trees is exempt from CEQA. On the contrary, the opposite is true. The burden to demonstrate that this exemption applies. Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n (2007) 41 Cal.4th 372, 386. There is no evidence, much less substantial evidence in the record, that the Project, inclusive of the tree removal will not have a significant impact. This is so whether the City considers it a Code violation or requires a Tree Removal Permit.

There is no analysis in the Record that the proposed mitigation is sufficient for one, much less all 19 trees. Moreover, the 19 trees are mitigation measures and potentially significant environmental impacts once removed. Thus, their removal triggers CEQA, such that the common sense exemption cannot apply. The City must analyze and disclose potentially significant impacts because of the need related to the removed protected mature trees.

For the foregoing reasons, the exemptions do not apply. Rather CEQA applies because potentially significant impacts have been identified related to tree removal.

**Even if a Categorical Exemption Applies, the Exceptions to that Exemption Applies and the City must Require Environmental Review Pursuant to CEQA.**

If there is a reasonable possibility that an activity will have a significant effect on the environment due to “unusual circumstances” an agency may not find that the activity is
categorically exempt from CEQA. Guidelines 15300.2(c). *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204. Here, there are unusual circumstances for the unprecedented and drastic removal of the 19 protected trees, without the required feasibility study under CMC 818.310.060 is an “unusual circumstance.”

It is unusual to have an Applicant wholly violate the Code pertaining to protection of trees for 19 protected mature trees. This is especially so when one considers the cumulative effects of tree removal by other would be required permit holders who may also circumvent permit requirements of the Code, in part based on the City’s leniency to the permit violators in this instance. Guidelines §15300.2(b) states that none of the categorical exemptions apply with the cumulative impact of successive projects of the same type in the same place over time is significant.

**There are Potentially Significant Impacts of the Project to Trees.**

The mature protected trees that were felled as part of the Project to make room for landscaping and parking lot improvements provided shade, aesthetics, cooling, habitat and mitigation. There is a fair argument that their removal caused potentially significant environmental impacts. As such CEQA analysis is required. See Exhibit 4 showing an email from Rick Bruzzone to John Mantagh, dated 3/1/19 re: 4 Corners; Cardenas; Tree Removal.

**There are Potentially Significant Impacts of the Project to Urban Decay.**

Cardenas is a grocery store specializing in Mexican foods inclusive of prepared foods. The existing environment already has approximately 20 existing Mexican markets and 6 Mexican restaurants. The overlap in these uses provides a fair argument that the new specialty Mexican market, Cardenas, may create potentially significant environmental impacts related to urban decay. The City must require adequate environmental review to disclose and analyze such impacts.

**There are Potentially Significant Impacts of the Project to Traffic.**

The Use Permit (shown in Exhibit 1) required that a traffic study be done prior to the Design Review Board approval “to properly address the impacts both present and future of the proposed median opening on Monument Boulevard. We have requested this traffic study as part of the prior environmental review for the original Safeway in the 1980s, however, as of this writing we have yet to receive it. As such, our ability to fully comment to the City on traffic has been unfairly limited.

At any rate, any prior traffic study from the 1980s must be updated as part of the approvals associated with the current Project. Environmental review is required at this time due to the existing traffic problems in the area and the potentially significant impacts and more severe impacts to traffic associated going from a vacant store to a
Cardenas market. The Cardenas market will create more severe significant impacts related to traffic that did not exist with it vacant or as in years past when the Safeway was in operation. *Inter alia* this is because of the recent and intense commercial development which has caused well known traffic problems in the area from the freeway and past Costco, near to the site.

**The City's Attempt to Exclude the Tree Removal from the Project is Contrary to CEQA's Prohibition Against Piecemealing.**

The definition of "project" in Guidelines 15378(a) includes an activity supported or authorized by a public agency if the "whole of an action" has a "potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment."

The City cannot solely address the Project's removal of the 19 mature trees as a Code violation severed from the Project because that would piecemeal the Project. Here the site description for the project includes is as follows: “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.” Report, p. 4. The Detailed Project Description includes, but is not limited to, “...a new trash enclosure, parking lot improvements for compliance with the Americans with Disabilities Act (ADA), landscaping...” Report, p. 5. The Report further describes the Project’s changes to Parking as changes to the angles of parking lines for ADA purposes, landscaping areas [including where the felled trees were previously located]. Report, p. 6-7. The Report admits that the new landscaping plan includes landscaping at the location of the felled trees, as well as addressing landscaping for the entire parcel. *Id.* at 7.

Clearly the tree removal by the owner (a Bruzone brother) is part of the whole of the action. Here, the express words of the lawyer/owner acknowledges that he assumes that his brother cut the trees down "because he knew new trees were being planted, and he didn’t like the old trees, he thought he would start the process by removing the old trees so new ones could replace them." See exhibit 4, showing and email from Rick Bruzone to John Montagh and Valerie Barone, both of the City of Concord, dated March 1, 2019.

The landscaping, where the removed trees once stood, is undisputedly part of the Administrative Design and Site Review Project. In fact, it specifies the ratio for tree replacement for the removed trees – 45 replacement trees for the 19 that were cut down. Report, p. 8.4

The “whole of the action” for the Administrative Design and Site Review must include the tree removal of the 19 protected trees, regardless of what the City calls it – a code enforcement or its own discretionary tree removal permit per CMC 8.40.140. The term

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4 The previous number of replacement trees was 57 trees, which is proper because of the minimum mitigation ratio of 3:1 set forth in the Code and 3 x 19 (removed trees) = 57. 18.310.060(A).
“project” refers to the whole of an action and to the underlying activity being approved, not to each governmental approval. Guidelines 15378(a), (c)-(d); Association of a Cleaner Env’t v. Yosemite Community College Dist. (2004) 116 Cal. App. 4th 629, 637. A public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. Orinda Ass’n v. Board of Supervisors (1986) 182 Cal. App. 3d 1145, 1171.

Even if the dramatic illegal removal of the protected trees was not deemed a part of the Administrative Design & Site Review Project, it is still subject to CEQA. Private activities are subject to CEQA if they involve government participation, financing or authorization. PRC §21065(b)-(c), Guidelines §§15002(c), 15377. An agency must consider compliance with CEQA in connection with each discretionary decision to approve an activity that may impact the environment. Azusa Land Reclamation Co. v. Main Sain Gabriel Basin Watermaster (1997) 52 Cal.App. 4th 1165, 1190. Even if the change in position in responding to the removal of 19 protected trees was proper by a Code enforcement action rather than a tree removal permit, which it is not, it is still a discretionary decision by the City it is still a discretionary decision by the City to determine “the extent of the damage done” which is the open ended criteria for which the City must determine the civil penalty to be assessed. CMC 8.40.150(f). As a discretionary decision with potentially significant impacts, it is a decision that is subject to CEQA, even as a Code enforcement procedure. It is a “project” under CEQA because it commits the City to a definite course of action; is discretionary, and may have a physical impact on the environment. Moreover, there are cumulative impacts that the City must consider in responding with a minor code enforcement action for its removal of 19 protected trees without a permit because such a stance will and perhaps already has encouraged owners/tenants to blatantly violate the Code and essentially have minor repercussions for doing so.

Finally, another argument in support of the City’s proper determination that CEQA applies to the City’s determination with respect to the removal of 19 protected trees is that the Code enforcement action is the functional equivalent of a tree removal permit. This is because no permit was obtained in the first place, but a permit is ordinarily required. If the City allows the applicant to skip the permit step by calling it a Code enforcement issue, then the Code enforcement action pursuant to 8.40.150(f) is the functional equivalent of a permit – a discretionary permit, subject to CEQA.

**There are Specific Facts of the Record which are Inaccurate.**

The City’s factual errors pertain to the protected trees. The City states that the trees were protected citing only to the fact that the trees are protected because they were part of the environmental mitigation measures for the prior Safeway development in the 1980s. (See CMC 18.310.040 (A)(4).) As noted above, some of the trees were protected
under an additional CMC section because they were of the size and character warranting such protection. (CMC 18.310.040(A)(2).)

Another factual error that the City repeats is that the removal of the 19 mature trees is purportedly and typically rectified through the Code enforcement process. Order, page 2, lines 10-14; see also Report to Zoning Administrator, page 8. There is nothing typical about this situation in “Tree City USA” Concord, when an owner or tenant remove 19 mature/protected trees without a permit and without documentation. Code violation is appropriate and a permit is also required. The City’s factual finding that this is typical is in error.

Next, the City errs in its factual finding that the owner of the property owner, not the applicant cut down the trees. (Report, page 14.) The distinction is inconsequential, as CEQA does not care what individual cut down the protected trees, but only that an environmental impact has been caused. Moreover, the Code equates owners and tenants for purposes of the Code. CMC 1.05.100. Further yet, the application form for the Project Name Cardenas Markets (illuminated Signs) filed a sign application on February 7, 2019, as shown is Exhibit 6, a true and correct copy which is attached hereto showing the sign application form signed by Rick Bruzzone, as Attorney for owner. The same type of application further shows that the City’s distinction between the owner and tenant is inconsequential as it related to potentially significant impacts under CEQA.

**Administrative Design Review is not the Proper Level of Review because the City must make Discretionary Determinations.**

As articulated above the Project includes the owner’s removal of the 19 mature protected trees. Despite that, the City Report cites to CMC 18.415.040 (3) as an example of minor projects/improvements not requiring a discretionary permit approval. CMC Chapter 18.415.040 (3) states:

> 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, the City’s interpretation is not in compliance with the purposes of the development Code because removal of mature protected trees can not be construed as

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5 CMC 18.310.040(A)(2) states, “Other trees with a diameter of 24 inches or more as measured 54 inches above the ground (e.g.,  diameter at breast height) or more or a multi-stemmed nonnative tree where the sum of all stem diameters is 24 inches or more as measured 54 inches above the ground[.]”

6 CMC 1.05.100, entitled, “Definitions and rules of construction” states, that “Owner” applied to a building or land shall include any part owner, joint owner, tenant, tenant in common, or joint tenant of the whole or a part of such building or land.
an upgrade to conform the project to the Code. On the contrary, the City admits that the unpermitted tree removal for 19 protected trees is a Code violation, inter alia.

Moreover, the City cannot ignore the portion of its own Code wherein a permit is required for the removal of protected trees in order to avoid environmental review, though that is exactly what the City appears to be doing in this instance. Therefore, the Design and Site review must be governed by CMC 18.415.020(A)(2), stating that design and site review shall be required “prior to substantial alteration of any landscaping or site topography.” Here, there was a substantial alteration to landscaping – removal of 19 mature protected trees.

In addition, the Project includes portions of the site to be repaved or slurry sealed, including the site where the coffee kiosk was previously located. Report p. 7. Here 18.45.020 states that Design and site review shall be required prior to any new tenant improvement subject to the provisions of Chapter 18.535. Chapter 18.535 includes repaving. Therefore, this Project must go through Design and Site review. Further yet, additional subsections to 18.415.020 state that Design and site review shall be required, “4. Prior to construction or alteration of any new parking lot improvements or alteration to existing parking lots including circulation, layout, or dimensions;..6. Prior to any improvement on property adjacent to or including a creek as defined in CDC 18.305.020;”

Because the above referenced criteria exist requiring Design and Site Review, contrary to the City’s determination, the Project is not subject to the exceptions in 18.415.040(C) allowing for a mere administrative review. Accordingly, the City’s interpretation that the level of review is administrative and subject to the exceptions set forth in 18.415.040(C) is not in compliance with the purposes of the development Code. The City’s interpretation allowing for mere administrative review is an abuse of discretion and such decision is unsupported by the record.

In addition to the discretionary approval required for the Design and Site Review, the fact that a Tree Removal Permit is required, including all of its discretionary determinations related to a finding of infeasibility (CMC 18.310.020(D) and 18.310.070), provides an addition reasons that an administrative review is an inadequate level of review. Rather, the Design Review Board must further review this Project. 18.415.040(C), (E); 18.415.060.

**The Planning Division Failed to Make the Requisite Findings for Design Review Approval Pursuant to 18.415.090(C).**

The findings in support of the Administrative Design and Site review that the City’s finding under 18.415.090(C) that the landscaping plan meets current requirements or provide a significant upgrade and improvement to the site and the appearance of the neighborhood are in error and unsupported by the Record.
The City admits that, “[a]ll the parking lot trees have been removed without approval.” Yet it nonetheless finds that the project conforms to 18.415.090. This finding is in error because the removal of the 19 trees is not severable from the Project, rather it is part of the Project as the trees were removed to make way for the new landscaping plan. However, the tree removal cannot possibly meet the current requirements because the City admits that the removal of 19 protected mature trees were in violation of the Code and unpermitted. Moreover, the City’s finding that the landscaping, including the tree removal, is a “significant upgrade and improvement” to the site is in error and an abuse of discretion because mature trees are better than new trees in terms of aesthetics, carbon neutralization, shade, appearance, etc. Moreover, the City failed to make a finding that even if the Project’s 45 new trees mitigate for the removal of the Project’s 19 old protected mature trees in the future, it does not disclose when that will be – when will the biomass of the new trees be the equivalent to the old trees. The time in the interim is a potentially significant impact that the City fails to analyze or disclose.

Moreover, the Conditions of Approval fail to require landscaping of 45 (or 57) trees, which further demonstrates the City’s error in and abuse of discretion in finding that the project’s landscaping meets current requirements or provides a significant upgrade and improvement to the site.

**Procedural Due Process Failures and other Procedural Defects Prejudices Appellant.**

Constitutional safeguards include due process – Appellant must receive a fair trial, including but not limited to adequate notice and an opportunity to be heard. MBOC has not had a fair trial in this matter before the Zoning Administrator. MBOC has not had sufficient notice related to the July 17, 2019 Zoning Administrator’s hearing of its appeal or the Planning Commission hearing related to this appeal. Similar procedural defects are lining up for the upcoming hearing before the Planning Commission because the City has failed to timely produce information that it has discussed in the Record for this Project.

**The City Provided Insufficient Notice of Major Issues Related to its Approval of the Project by the Zoning Administrator.**

The staff report for the July 17, 2019 hearing for the first appeal from staff to the Zoning Administrator provided insufficient notice to meaningfully engage in the process. In fact, the staff report announcing these major changes was not posted on the City’s website until after hours on the Monday before the hearing on Wednesday morning, providing the public and appellants less than 24 hours to understand the changes and meaningfully comment to the agency. Worse yet, the City references and discusses items for which it failed to notice, including downgrading the public process by changing the requirements for the unpermitted tree removal from requiring a use permit to merely a code violation to a use.
The Constitutional Problems Related to Lack of Notice and Lack of a Fair Trial Continue Today.

A Public Record Act ("PRA") Request was sent to the City on May 31, 2019 asking for the environmental review associated with the 1981 Use Permit for the Safeway Store ("Request"). Please see Exhibit 6 a true and correct copy of the PRA Request, dated May 31, 2019 is attached hereto.

The City responded that the documents would likely be available by June 24. And thereafter, on or about July 8 provided 370 responsive documents in complete response to the Request. In reviewing those documents, it became clear that the City was in possession of additional responsive documents. On or about July 19, 2019 in email correspondence with the City, we requested the additional responsive documents to the May PRA request.

As of this writing on Friday afternoon, July 26, 2019, the City's response to the May 31, 2019 Request remains incomplete. Therefore, I respectfully reserve the right to make comments on new material at the hearing to the Planning Commission. Meanwhile, MBOC is prejudiced by not having notice of the documents that the City discusses, and therefore also not having an opportunity to be heard. For example, the City identifies mitigation of the trees for the prior market, but the City has not yet produced the documents pertaining to those mitigation measures.

The City's failure to provide the documents on which it is privy to knowing but failing to provide to the public is highly unfair and prejudicial to MBOC.

The City has Failed to Provide Monument Business Owners Coalition an Opportunity to be Heard on Several of the Issues that it has Discussed Related to this Project.

MBOC is foreclosed upon commenting on issues for which it has insufficient notice. MBOC is prejudiced by its inability to comment and be heard on issues for which the City has thus far failed to produce as part of the Record in this Project.

Conclusion

Based on the foregoing we request that the Planning Commission reverse the Decision of the Zoning Administrator and require a Tree Removal Permit; require environmental review for the whole of the action, including updated analysis and disclosure related to traffic and urban decay. This is because there is a fair argument that the Project may have a potentially significant effect on the environment; there has not been a fair trial and there have been abuses of discretion in that the City has not proceeded in the manner required by law; the Decision is not supported by the Findings, and the Findings are not supported by the evidence. MBOC further requests that the Planning
Commission require Design Review for the Design Review and Site Design Approval based upon its discretionary determinations that are necessarily a part of the subject approvals.

Thank you for your consideration and review of this appeal.

Sincerely,

Amber Kemble  
Attorney for Monument Business Owners Coalition

**Exhibit Attachments:**

1. Letter from Law Offices of Dana Dean to the Zoning Administrator, re: appeal to the Zoning Administrator, dated June 3, 2019

2. Arborist Report, dated March 28, 2019

3. Conditions of Approval for Use Permit 58-81

4. Design Review Board Action

5. Email from Rick Bruzzone to John Mantagh, dated 3/1/19 re: 4 Corners; Cardenas; Tree Removal

6. Letter from Law Offices of Dana Dean to the City of Concord, re: Public Record Act Request dated May 31, 2019

7. Application signed by owners, Bruzzone, dated February 2019
Date: November 5, 1981

Parcel No.(s): 129-170-019, 013 and 021

Applicant: Russel J. and Milton F. Bruzzone

NAME: 284-4369

899 Hope Lane, Lafayette, CA 94549

CITY: Telephone

Street Address: approved

The Concord City Planning Commission on November 4, 1981

Your application for a 67,990 sq. ft. expansion of the shopping center at the southeast corner of Monument Boulevard and Oak Grove Road; application covers Phase I, (Buildings F, G, H, J and K) of the approved preliminary development plan (PDP 4-81)

Location: Southeast corner of Monument Blvd. and Oak Grove Road.

subject to the following conditions:

1. Preliminary elevations for the free-standing Buildings F and G shall be submitted to the Planning staff for review prior to submittal of plans to the Design Review Board.

2. Nonconforming ground sign shall be removed with construction of Phase I. Replacement sign shall meet requirements of Table A of the Sign Ordinance and shall be approved by the Design Review Board.

3. The new parking area in front of Buildings H, J and K shall be landscaped with canopy trees in accordance with the Neighborhood Commercial District requirements. This will entail the addition of tree wells midway in each of the 7 parking aisles.

4. The service/delivery area for the new Safeway shall be designed to include a screen wall that will effectively obscure the loading dock from Monument Boulevard and better contain delivery activities.

5. Preliminary elevations submitted for the new Safeway and adjacent buildings (Buildings H, J, and K) are not implicitly deemed acceptable by approval of this Use Permit. Final building design shall be approved by the Design Review Board.

Note: Planning staff believes that the design of the new Safeway requires further study and refinement in areas of building mass and proportions and design details. The submitted design appears regressive in its architectural character; and certainly falls short to the quality of design approved for the new Safeway on Willow Pass Road, both in terms of architecture and treatment of graphics. Staff will be pleased to work with the developer and his architect to arrive at a more pleasing design solution that can still embody the desired "Town and Country" theme for the shopping center.


(Continued on page 2)

Planning Commission Action is appealable to the City Council if filed within ten (10) calendar days of the action. “Notice of Appeal” form is provided by the Planning Department. No Building Permit may be issued during the appeal process. The Building Division must be contacted prior to start of work on the project and prior to occupancy of the building. If the option granted by this Use Permit is not exercised within one year from the date above, this Use Permit shall become null and void. If any of the above conditions are violated, this Use Permit may be revoked.

Concord City Planning Commission

by Peter H. Hirano, Planning Director
7. Any consideration of the addition of an automatic teller machine is subject to review and approval of the Planning Commission.

8. Prior to Design Review Board approval, a traffic study will be required to properly address the impacts both present and future of the proposed median opening on Monument Boulevard.

9. Make right-of-way dedications and/or private temporary construction easements as may be required by the Contra Costa County Flood Control District for Pine Creek.

10. The proposed bridge across Pine Creek will have to be reviewed by the Contra Costa County Flood Control District.


   Engineering Comment: Offsite Arterial Street Improvement Fees will be payable with the Building Permit.


cc: Perata, Sylvester and Mutter, Inc.
   954 Risa Road
   Lafayette, CA 94549

If the option granted by this Use Permit is not exercised within one (1) year from above date, this Use Permit will become null and void.

CONCORD CITY PLANNING COMMISSION

by

Peter H. Hirano, Planning Director
Date December 7, 1981
Project BRUZZONE/FOUR CORNERS SHOPPING CENTER EXPANSION
Applicant Russell and Milton Bruzzone, 899 Hope Lane, Lafayette, CA 94549
Parcel No. 129-170-019, 013 and 021
Architect/Designer Perata, Sylvester and Mutter, Inc. 954 Risa Road, Lafayette, CA 94589
Landscape Architect/Designer Thomas Baak and Assoc., 1629 North Main St., Walnut Creek, CA 94596
On December 3, 1981

The Concord Design Review Board reviewed plans for the above noted development, located at the southeast corner of Monument Boulevard and Oak Grove Road.

Architecture and landscape plans approved for Buildings H and J, subject to the following:

1. Building H to be constructed with Building J and storefront to be closed in, whether or not leased.
2. Replace carobs with other appropriate trees; Final selection to be approved by staff.
3. Additional tree to be placed in parking rows as per City ordinance.
4. Equipment screens to have staggered slats so that equipment is not visible.

Sign approved, with 2 "S" logos, and main sign on wall to left of entrance, internally illuminated letters as shown on Page 2 of architect's plans dated November 17, 1981.

Projects approved, subject to conditions by the Design Review Board, require the submittal of amended plans to the Planning Department that incorporate all conditions imposed by the Board. The staff must certify that these final plans are in accord with the action of the Board, prior to approval of plans for a building permit.

Action taken by the Design Review Board is appealable to the City Council if said appeal is filed in writing on forms provided by the Planning Department within ten (10) calendar days of the date of action. There is a $50 appeal fee.

Approval by the Design Review Board does not waive the requirements of the Consolidated Fire District, County Water District, County Flood Control District, or the Concord Engineering and Building Divisions. Any changes required by the above agencies which alter the exterior appearance of the project may require further review by the Board.
Arborist Report
March 28, 2019

Tree Removal Permit Requested for Recent Unauthorized Tree Removal

Prepared for: Rick Bruzzone
Durgin Otterson Bruzzone LLP
1660 Olympic Boulevard, Suite 210
Walnut Creek, CA  94596-5127
925-322-6132 (general office)
925-322-6142 (direct)
800-948-5939 (fax)

Prepared by: Tom Arrington
ISA Certified Arborist #WE-3070A
4100 Fariss Lane
El Sobrante, CA 94803
Tree Removal Permit Requested for Recent Removal of Unauthorized Trees

Background

When the 19 canopy parking lot trees were removed from the parking lot at 2250 Monument Blvd, Mr. Bruzzone was unaware that a tree removal permit was required by the City of Concord. These trees were protected under a Condition of Approval for the original site. Mr. Bruzzone is preparing to upgrade the parking lot for Cadenas Market. This report will document:

1. Trees on the property that were removed;
2. Trees that are remaining;
3. Trees that will be replanted in the new parking lot.

Trees on the property that were removed:

Photos #1, #2, #3, #4 show dated Google Earth images of the parking lot at 2250 Monument Blvd. On photo #1, the trees that are numbered 1 through 19 have been completely removed. See photos #7, #8, #9, #10, and #11 which show the current treeless parking lot.

Data from Google Earth suggests that these canopy parking lot trees were Ash Trees ranging in trunk size from 6 - 24 inches in diameter. Estimated heights ranged from 15 - 50 feet high with 5 – 20 foot widths.
These trees appeared to be in fair health. Photo #9 shows that some of the
trees had outgrown their planting area and were uplifting the surrounding asphalt
of the parking lot.

**Trees that are remaining:**

The Sweet Gum trees along the sidewalk of Monument Blvd still exist and
appear to be in fair health (see photos #5 and #6). These trees will not be affected
by the work proposed for the parking lot upgrade.

**Trees that will be replanted in the new parking lot:**

The 3:1 tree mitigation plan called for 57 new trees to be replanted for the
removal of the 19 unauthorized trees. Because the mitigation falls short by 12
trees, Landscape Plans by Olive Street has proposed 24 inch box tree replacements
instead of the 15 gallon size. These include:

14 Drake Elms: The US Forest Service reports – “the Drake Elm makes an ideal shade,
specimen, street or parking lot tree, provided it is trained and pruned to allow for
vehicular and pedestrian clearance below…. tree has been successfully grown in
urban areas where air pollution, poor drainage, compacted soil, and/or drought are
common”.

24 Crape Myrtles: Once established, the Crape Myrtle is drought tolerant and requires
little water which makes it a good water wise choice. Is well-suited for hot, sunny
climates and grows well in limited soil space.

7 Eastern Redbuds: The Eastern Redbud (a small ornamental tree) adapts well to multiple
environments and requires little maintenance, once established.

ISA Certified Arborist #WE-3070A  Tom Amington  Date: 3/28/19
Photo #6 taken 3/28/19
Photo #7
taken 3/28/19
Photo #8 taken 3/28/19
Photo #11 taken 3/28/19 of planter area in front of store. Google image indicates large tree was removed from this area 3/2017. The adjacent planter area has identical results.
EXHIBIT 4
From: Montagh, John <John.Montagh@cityofconcord.org>
Sent: Friday, March 01, 2019 1:34 PM
To: Abejo, Frank <Frank.Abejo@cityofconcord.org>
Subject: Fwd: 4-Corners; Cardenas; Tree Removal
Importance: High

Sent via the Samsung Galaxy S7 edge, an AT&T 4G LTE smartphone

-------- Original message --------
From: Rick Bruzzone <Rick.Bruzzone@DOBLawyers.com>
Date: 3/1/19 12:14 PM (GMT-08:00)
To: "Montagh, John" <John.Montagh@cityofconcord.org>, "Barone, Valerie" <Valerie.Barone@cityofconcord.org>
Cc: "Brian Braaten (bbraaten@CMKTS.COM)" <bbraaten@CMKTS.COM>, "Ted Bruzzone (tbruzone@nearon.com)" <tbruzone@nearon.com>, "Brian Herbst (bherbst@gmail.com)" <bherbst@gmail.com>, "Cindy Bruzzone (cindyt271@gmail.com)" <cindyt271@gmail.com>
Subject: 4-Corners; Cardenas; Tree Removal

John and Valerie,

I was horrified to now learn from Brian Braaten of Cardenas that brother Steve, on his own, cut down all the trees in the Cardenas parking field. Brian too is horrified and is concerned this might delay their opening. See the attached video I just received.

I am truly sorry this has happened but unfortunately, my brother marches to his own drummer and has been known to act impulsively.

I am not in regular communication with Steve and I can only assume he thought the parking field, including trees, in front of Cardenas had to be refurbished in connection with the Cardenas’ opening, and because he knew new trees were being planted, and he didn't like the old trees, he thought he’d start the process by removing the old trees so new ones could replace them.

Rest assured new trees will be planted.
Again I am truly sorry.

I'm out of the office from noon for most of the afternoon. Brian Braaten can discuss this further in my absence. His cell phone number is (626) 708-8217.

Rick

Rick Bruzzone
Durgin Otterson Bruzzone LLP
1660 Olympic Boulevard, Suite 210
Walnut Creek, CA 94596-5127
925-322-6132 (general office)
925-322-6142 (direct)
800-948-5939 (fax)
rick.bruzzone@doblawyers.com
www.doblawyers.com
EXHIBIT 5
APPLICATION FORM

Date Received by Planning

PROJECT INFORMATION:

PROJECT NAME
CARDENAS MARKETS (ILLUMINATED SIGNS)

PROJECT SITE ADDRESS/LOCATION
2250 Monument Blvd, Concord, CA 94520

PROJECT DESCRIPTION (Provide brief description and submit a more detailed description as an attachment.)
Illuminated Channel letters and monument sign refacing.

NOTE: All applicants are encouraged to hold a neighborhood meeting with nearby property owners and tenants early in the development review process. Planning Division staff will work with applicants to schedule the neighborhood meeting.

APPLICANT’S CONTACT INFORMATION

NAME/COMPANY: Kaled Serdio SIGNUM LUX CORP
ADDRESS: 2313 E Philadelphia St suite N
CITY, STATE: Ontario, CA
ZIP: 91761
BUSINESS PHONE: 909-215-2449
FAX: EMAIL: Kaled@signumlux.com

PROPERTY OWNER’S CONTACT INFORMATION

NAME/COMPANY: Rick Bruzzone
ADDRESS: 1660 Olympic Blvd, Suite 210
CITY, STATE: Walnut Creek, CA
ZIP: 94596
BUSINESS PHONE: 925-692-4192
FAX: EMAIL: Rick.Bruzzone@hoblawyers.com

Agent Authorization Note: If the Applicant is not the Property Owner, then the Property Owner must sign below to authorize the Applicant as his/her official representative.

KALED SERDIO
Owner, authorize

The undersigned, i.e., the Property Owner, will act as the official representative on my behalf for this project and in all matters relating to this application. I have read and agree with all of the above (application must be signed by property owner).

February 7, 2019

FOR PLANNING DIVISION USE ONLY:

FILE NAME:

FILE NUMBERS:

APPLICATION RECEIVED BY:

PLANNER:

ASSOCIATED FILES:

ENGINEER:

APPLICATION FORM (Rev. 8-17)
PROJECT NAME: CARDENAS MARKETS SIGNS  FILE NUMBER: 

PLEASE INCLUDE ALL RELEVANT CONTACT INFORMATION

PROJECT MANAGER CIVIL ENGINEER

NAME/COMPANY: ________________________________  NAME/COMPANY: ________________________________
ADDRESS: ____________________________________  ADDRESS: ____________________________________
CITY, STATE: ___________________ ZIP: __________  CITY, STATE: ___________________ ZIP: __________
BUSINESS PHONE: ___________ CELL: ___________  BUSINESS PHONE: ___________ CELL: ___________
FAX: ___________________ EMAIL: ___________________  FAX: ___________________ EMAIL: ___________________

ARCHITECT LANDSCAPE ARCHITECT

NAME/COMPANY: ________________________________  NAME/COMPANY: ________________________________
ADDRESS: ____________________________________  ADDRESS: ____________________________________
CITY, STATE: ___________________ ZIP: __________  CITY, STATE: ___________________ ZIP: __________
BUSINESS PHONE: ___________ CELL: ___________  BUSINESS PHONE: ___________ CELL: ___________
FAX: ___________________ EMAIL: ___________________  FAX: ___________________ EMAIL: ___________________

OTHER OTHER

NAME/COMPANY: ________________________________  NAME/COMPANY: ________________________________
ADDRESS: ____________________________________  ADDRESS: ____________________________________
CITY, STATE: ___________________ ZIP: __________  CITY, STATE: ___________________ ZIP: __________
BUSINESS PHONE: ___________ CELL: ___________  BUSINESS PHONE: ___________ CELL: ___________
FAX: ___________________ EMAIL: ___________________  FAX: ___________________ EMAIL: ___________________

I hereby authorize employees of the City of Concord to enter upon the subject property, as necessary, to inspect the premises and process this application.

CERTIFICATION:
I hereby certify that the statements furnished above, and in the attached exhibits, present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge.

[Signature]

Date: ____________________________

Signature: ☐ Owner  ☐ Authorized Agent  Storing for Owner

For: CARDENAS MARKETS SIGNS
May 31, 2019

Joelle Fockler, MMC
City of Concord, Clerk
Concord Civic Center
1950 Parkside Drive
Concord, California 94519
cityclerk@cityofconcord.org

Sent by email and U.S. Mail

Re: Public Records Request Pursuant to Gov. Code §6250 et seq.

Dear Ms. Fockler:

Pursuant to California Government Code Section 6250 et seq., the Public Records Act, I request that the City of Concord ("City") make available to me the following:

Any and all "public records", as that term is defined by Government Code Section 6252(e), which includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics ["record(s)"], which pertain to the information listed in the categories below.

For purposes of this Public Records Act request, the term "pertain(s)" and "pertaining", shall include any writing which evidences, is about, relates to, constitutes, supports, repudiates, ratifies, memorializes, explains, addresses, comments upon, criticizes, or describes the particular topic or described subject matter. The term "writing" ("Writing") shall mean any handwriting, typewriting, printing, Photostatting, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored, including but not limited to electronically stored information.
With regard to the following categories, any reference to “City” shall include the City of Concord as a public entity, any City commission, department, official, staff member, employee, and/or agent. Please provide complete responses to the following requests:

1) All Writings pertaining to the property, use, business, occupancy, licensing, approvals, permitting, and/or the like, for the location of 2250 Monument Boulevard (APN 129-170-026) in Concord from January 1, 2017 to May 31, 2019, between the City and Cardenas Market and its representatives, agents, and/or anyone acting on the behalf of Cardenas Market;

2) All Writings from January 1, 2017 through May 31, 2019 between the City and Monument Business Owners Coalition (“MBOC”) and/or its representatives, agents, and/or anyone acting on the behalf of MBOC;

3) All Writings pertaining to the original Conditions of Approval and any and all mitigation and environmental review for the development of the site located at 2250 Monument Boulevard (APN 129-170-026) for the buildings and other development that are present today.

Pursuant to Government Code Section 6253(c), please notify me within ten days (10) of receipt of this request of your determination regarding whether this request, in whole or in part, seeks copies of disclosable public records in your possession and the reasons for such determination. Should you decide that any of the requested material is not to be disclosed, pursuant to Government Code Section 6255, please describe the material withheld and specify in detail the statutory or administrative basis for withholding the requested material. If the requested material is disclosable, please inform me of when and where the records can be made available.

Thank you in advance for your prompt attention to this matter. Please do not hesitate to contact me at the telephone number above should you have any questions or need further clarification of this request. I look forward to your response.

Sincerely,

[Signature]

Amber Kemble

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

NOTICE OF APPEAL
CMC Chapter 18.510

Planning Division
(ADMINISTRATOR, OR COMMISSION)

Cardenas Market
(NAME OF APPLICANT)

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

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

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

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

HOME PHONE 707-747-5206
BUSINESS PHONE 707-747-5206

FOR STAFF USE ONLY

ASSESSOR'S PARCEL NUMBER(S) MUNICIPAL CODE SECTION

FILE NUMBER FILE TITLE NAME OF RESPONSIBLE PLANNER REVIEWED BY (PLANNING STAFF)

RECEIVED BY PROJECT PLANNER

FOR STAFF USE ONLY

Received written appeal on June 3, 2019

Scheduled for Council agenda TBD

Set for Public Hearing on TBD

0 Copies distributed to appropriate parties

CITY CLERK USE ONLY

City Clerk

June 3, 2019

TBD

July 1, 2019

TBD

July 1, 2019

TBD

July 1, 2019

TBD
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.¹ As such, the 5/24/19 Decision should be reversed and further review should be required prior to any future approval.

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

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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://dotblawyers.com/rick-bruzzzone.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,5 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
criterion); and

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

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 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), 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.

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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35 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.

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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 (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 Redev. 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,

[Signature]

DANA DEAN
Attorney for MBOC

cc: clients
Oregon Ash  Add to My Plant List
Fraxinus latifolia

© 2008 Jean-Pol GRANDMONT

Show all photos

Estimated Plant Range (2)
Cascade Range from southwestern British
Columbian coast to southeastern Nevada.
The species is typically found in riparian corridors
and along the banks of streams and rivers, where it
prefers moist, well-drained soils. It is usually found
in areas where the soil is rich in organic matter.

**Annual Precip.** 6.1" - 17.4"
**Summer Precip.** 0.10" - 4.04"
**Coldest Month** 28.0°F - 59.0°F
**Hottest Month** 84.0°F - 94.1°F
**Humidity** 0.1" - 0.10" vpd

**Soil Description** Typically found in well-drained, moist soils rich in organic matter.
**Drainage** Slow
**Sunset Zones** 1, 2, 3, 4
**Companion Plants** Use with other riparian and wetland species such as Dogwood (Cornus sp.), Alder (Alnus sp.), and Willows (Salix sp.).
**Wildlife Attracted** Butterflies and other pollinators are attracted to plants in the Parthenium genus, including the Pale Swallowtail, Two-tailed Swallowtail, and Western Tiger Swallowtail butterfly species that feed on host plants.

**Show All >>**

**Western Tiger Swallowtail**
**Mourning Cloak**
**Two-tailed Swallowtail**
**Polyphemus Moth**

**Landscaping Information**

**Ease of Care** Very Easy
**Water Requirement?** Extremely Low
**Propagation?** Very Low
**Common Uses** Low
**Nurseries** Moderate - High

**Nurseries**
- Bay Native Nursery
- California Flora Nursery
- Central Coast Wildlife
- COA Native Plant Nursery
- East Bay Wilds
- Flora Native Nursery
- Forest Native Nursery
- Fuller Foliage
- Las Pillas Native Nursery
- Native Nursery
- The Wasteland Nursery
- Walker Avenue Nursery

Print Plant Sign Print Plant Label

Sources Include: Wikipedia. All text shown in the "About" section of these pages is available under the Creative Commons Attribution-ShareAlike License. Plant observations and data provided by the participants of the California Committee of Native Plants. Data information provided by the Rancho Santa Fe Botanic Garden from "Seed Propagation of Native California Plants." Data from "Seed Propagation of Native California Plants." Data information provided by the San Diego Botanic Garden and the San Diego Botanic Garden from "Seed Propagation of Native California Plants." Data information provided by the California Native Plant Society.

Lives: Bayer, Sotelo, Tuckin, Pape, CalPhotos, Wikipedia, Califlora
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\(^1\) 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/Rezoning, 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.
EXHIBIT 3
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!
August 16, 2019

VIA FEDEX

Ray Barbour, Chair
John Mercurio, Vice Chair
Jason Laub, Commissioner
Craig Mizutani, Commissioner
Mark Weinmann, Commissioner
Concord Planning Commission
c/o Grant Spilman, Administrative Coordinator
1950 Parkside Drive
Concord, CA 94519

Re: LETTER 1 - California Environmental Quality Act (“CEQA”) Issues Raised in Cardenas Market Appeal (PL19101-AP)

Dear Chair Barbour, Vice Chair Mercurio and Concord Planning Commissioners:

This is letter 1 of 2.

We represent Cardenas Markets LLC (“Cardenas”) in the present appeal submitted by the Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition (“MBOC”) on July 26, 2019.

The present MBOC appeal of the Zoning Administrator’s approval of the administrative design review application is without merit. We ask the Planning Commission to uphold the Administrative Design and Site Review approval decisions of the Zoning Administrator and City staff. The MBOC, in its appeal, raises several baseless California Environmental Quality Act (“CEQA”) issues in an attempt to interfere with our client’s ability to operate its otherwise by right grocery store, consistent with law, zoning and City staff recommendations.

Because the MBOC appeal attempts to raise multiple CEQA issues and inaccurately represents the applicability of CEQA to the present case, we would like to take this opportunity to supplement the Zoning Administrator’s already clear and accurate representations of CEQA.

Executive Summary:

The Planning Commission should find in favor of Cardenas Concord. Neither Cardenas nor the City are in violation of the California Environmental Quality Act (“CEQA”) by allowing the store to remain open. The Zoning Administrator’s earlier decision should be upheld.

LEGAL4237303717
Our client operates a chain of specialized grocery stores and now seeks to open a new store ("Cardenas Concord") in the City of Concord ("City"). Cardenas has received its temporary certificate of occupancy for its new store and has worked diligently with the City's staff to find a design acceptable for the neighborhood. Cardenas seeks to revitalize a grocery store shopping plaza that has stood vacant since 2012 when a Safeway grocery store vacated by serving as the new anchor tenant for the development at 2250 Monument Boulevard ("Grocery Store Site").

The Grocery Store Site is zoned Regional Commercial, which allows for a grocery store with a Zoning Clearance. Cardenas seeks to do nothing outside upgrading and occupying a previously vacant grocery store with another grocery store consistent with zoning and to the neighborhood’s enhancement. Cardenas will upgrade the building with various aesthetic and design improvements that were carefully crafted in consultation with City staff. In addition, the new Cardenas store will create lasting quality jobs and revitalize this portion of Monument Boulevard.

The design review approval is the item to consider for CEQA analysis as to if it arises to the level of a “project” under CEQA.

Under CEQA, only “projects” are reviewed. The current design review approval is not a CEQA “project” because a “project” under CEQA is an activity that has the potential for a direct physical change or a reasonably foreseeable indirect physical change in the environment. The present design review of grocery store as a new tenant of a former grocery store site is not a CEQA “project” because such effects are not reasonably foreseeable. The government approval is not for the zoning to allow for a grocery store or even the construction of the original store. Those approvals happened long ago. The current case is about a new tenant coming into the property and making related updates and improvements.

Regardless, even if CEQA were to apply, the Cardenas Concord approval would be exempt under CEQA. Cardenas seeks to install tenant improvements to an existing building, with façade changes, improved parking lot and landscaping. These changes primarily concern aesthetics, and were done both in consultation with and at the direction of City staff. CEQA allows exemptions for existing facilities (Cardenas is occupying a former Safeway grocery store); replacement or reconstruction (Cardenas is primarily repairing, replacing and reconstructing); and minor alterations to land or land use (Cardenas is making small design element changes to best fit with their modern grocery store design). See CEQA Guidelines Sections 15301, 15302, 15304 and 15305.

CEQA also provides for a common sense exception. Cardenas Concord, as a matter of common sense, falls under this exception. Cardenas Concord is by right under zoning. A former grocery store used to occupy the Grocery Store Site. Cardenas Concord is not fundamentally altering the land use or environment in any way. Finding otherwise would lead the City down the precedential path of needing to conduct a CEQA analysis anytime a potential business competitor opens its doors in Concord or whenever a tenant occupies a space.

At the core of the appeal, MBOC principally makes arguments related to urban decay and the landlord’s removal of trees. MBOC argues that these issues trigger CEQA. These arguments seek to confuse and are not applicable.

MBOC attempts to implicate CEQA through making an economic argument that Cardenas Concord will put a series of other stores and restaurants out of business, leading to significant
environmental decay through urban decay. MBOC’s economic argument, even if case law could support it, is counterintuitive and MBOC has not presented facts to support its arguments.

Cardenas Concord occupies a location previously occupied by a Safeway, which was vacated in 2012. The new Cardenas Concord removes urban blight; it does not create blight. MBOC has not submitted any factual support that Cardenas Concord would place its coalition members out of business, creating displacement. Furthermore, even if MBOC coalition stores and restaurants were to close, the urban decay would only have a potential for a significant impact if the MBOC could successfully present an argument that these business footprints would not be substantially replaced. The standard business cycle is not appropriate grounds for a CEQA claim: potentially significant impacts related to displacement that would translate to potentially significant effects on the environment.

Cardenas Concord is only occupying a 42,000 SF building, a much smaller footprint than new full service grocery stores such as Safeway, Albertsons, Ralphs, and Save Mart. Furthermore, as Concord has other grocery stores, it would be difficult to imagine that Cardenas is harming the community by offering another grocery store option. Healthy competition is usually considered a benefit to residents and the economy alike. Cardenas Concord has cooperated with City at every stage and sought to create an aesthetically pleasing store that will revitalize a long vacant stretch of Monument Boulevard. Cardenas Concord seeks to create jobs and opportunity in Concord.

Additionally, much of MBOC’s remaining argument relates to the unpermitted tree removals. The landlord, not Cardenas, removed trees from the parking lot without a permit before the final design application was accepted. Cardenas is not a supporter of unpermitted tree removal generally and did not remove the trees at issue. The landlord removed the trees and the City is addressing this through the appropriate enforcement actions. Unfortunately, the trees have already been removed. So, if there needs to be a separate environmental review for how to mitigate the tree removals, it should be limited to this issue, not Cardenas Concord as whole. Furthermore, it is our client’s position that this remains an issue between the City and the landlord.

While MBOC has attempted numerous meritless CEQA arguments in this appeal, MBOC has not offered a compelling legal or factual rationale to constrain our client’s business further and keep a properly zoned grocery shopping center vacant.

Procedural and Factual Background Related to CEQA:

On September 10, 2018, MBOC sent the City of Concord a letter outlining their concerns regarding Cardenas Concord occupying the former Safeway location at 2250 Monument Boulevard. The letter expressed MBOC’s request for the City to prepare an Environmental Impact Report (EIR) related to traffic, circulation, parking, urban decay and economic considerations.

The City responded to the MBOC in a letter dated September 21, 2018. The City’s letter explained that CEQA was not applicable because it applies only to discretionary projects. Cardenas Concord, the City staff explained, as a grocery store use, is allowed by right per existing Regional Commercial “RC” zoning (a Zoning Clearance).
On November 6, 2018, counsel for MBOC, the Law Offices of Dana Dean, sent the City another letter, conveying MBOC’s interest in the approval of Cardenas Concord with notification requests.

On November 21, 2018, the City received Cardenas Concord’s Design Review application related to store improvements, design, landscaping and other items.

On December 18, 2018, City staff deemed this application incomplete and Cardenas followed up on supplementary documentation.

On March 1, 2019, the landlord removed all of the existing protected trees located in the parking lot without obtaining the proper authorization or a Tree Removal Permit.

On May 15, 2019, City staff deemed Cardenas Concord application complete, a final submittal.

On May 24, 2019, an administrative approval of Cardenas Concord’s Design and Site Review application was issued and the approval was subject to a ten-day appeal period.

On June 3, 2019, the City staff received an appeal from the Law Offices of Dana Dean on behalf of the MBOC.

MBOC challenged the staff determination that the decision (1) was not in compliance with the purposes of the Concord Municipal Code (CMC), (2) was made in error and was an abuse of discretion, (3) involved inaccurate information, and (4) was 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.

On July 17, 2019, the Zoning Administrator conducted a de novo review and issued a decision. In preparation of that de novo review, City staff conducted additional analysis of the Design Review approval and Tree Removal Permit and submitted revisions to the conditions of approval. Staff noted that the March 1, 2018 removal of the trees was by the owner of the property (and not Cardenas). Staff also noted that unpermitted removal of protected trees is normally addressed through the City’s code enforcement process. City staff noted that 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 for Cardenas Concord that included new trees to replace the removed trees. However, after further consideration, staff concluded that the best method to address the tree removal code violation would be through the code enforcement process. Therefore, staff determined that a tree removal permit was no longer required.

The Zoning Administrator found in favor of Cardenas on the CEQA issues based on reasoning that echoes the staff recommendations and report.

On July 26, MBOC filed this appeal to the Planning Commission.
The Permit Approvals for the Improvements/Opening is not a CEQA Project:

Because of the de novo nature of this Planning Commission appeal, we would like to supplement the Zoning Administrator’s already well-reasoned analysis of the CEQA issues in further support of Cardenas Concord.

Case law on the definition of a “project” under CEQA is complex. However, at its core, a “project” is “an activity which may cause [...] a direct physical change in the environment,” Cal. Pub. Res. Code § 21065. The “project” is not the approval itself, but the development or other activities that will result from the approval. *Citizens for a Green San Mateo v. San Mateo County Community College Dist.* (App. 1 Dist. 2014) 173 Cal.Rptr.3d 47, 226 Cal.App.4th 1572. The environmental review accompanying the first discretionary approval must evaluate the impacts of the ultimate development authorized by that approval. *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (App. 4 Dist. 2009) 101 Cal.Rptr.3d 81, 178 Cal.App.4th 1225, as modified. CEQA does not target projects which will have a significant effect, but those that may have a significant effect. *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 60 Cal.Rptr.3d 247, 41 Cal.4th 372, 160 P.3d 116, as modified, rehearing denied, motion to recall remittitur denied, on remand 78 Cal.Rptr.3d 691, 164 Cal.App.4th 1. See Public Resources Code Section 21065 and CEQA Guidelines Section 15378.

The Design Review approval is the item to consider for CEQA analysis as to if it arises to the level of a “project” under CEQA. See CEQA Guidelines Section 15378 and Public Resources Code Section 21065. Such approval is not a “project” because the permit approval will not cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.

The Grocery Store Site is already zoned for a grocery store and previously operated as a Safeway grocery store. Grocery store use is permitted on the property as a matter of right. Further City review is limited to design review. City staff determined that 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. Basically, the change the Cardenas Concord represents in the addition of a tenant with some relatively minor updates to the building. MBOC has represented an illogical interpretation of CEQA. If the City were to have to require an Initial Study under CEQA every time there were a change of tenants or design changes to a building already in line with current zoning, it would create an unreasonable restraint on commercial activity and the ability of Concord to have a viable business environment. A full Initial Study and CEQA analysis just to open a grocery store on the grounds of a former grocery store would be an unreasonable burden for our client. Such precedent would likely not only be an unreasonable burden, but also an unworkable barrier for smaller businesses.

The Tree Removals are Not a CEQA Project

Because City staff recommended that the unauthorized tree removal issue be treated as a code enforcement issue instead of issuing a Tree Removal Permit, MBOC’s tree removal concerns are misplaced. The tree removals are no longer part of our client’s application. Therefore, if the tree removals are not even up for review in this current case, they cannot implicate a CEQA
issue. In essence, this issue became moot because the City is no longer asking for such a permit from Cardenas. This makes sense since the landlord, not Cardenas, removed the trees.

Hence, you cannot have a CEQA “project” based on a permit that is no longer being applied for or issued.

**Economic Arguments (Urban Decay):**

MBOC argues that Cardenas Concord will cause urban decay by competing with the already existing 20 Mexican markets and 6 Mexican restaurants.

Assuming that MBOC can overcome the hurdle that Cardenas Concord is not a “project” under CEQA, MBOC offers no evidence to support this urban decay argument, such as a health impact study or economic data. Additionally, MBOC does not present a compelling case that our client’s grocery store would be a direct competitor with already existing Mexican markets and restaurants. Even if Cardenas Concord did compete directly with these markets and restaurants, it seems unlikely (and MBOC has presented no compelling evidence otherwise) that competition from Cardenas Concord would be so fierce as to put these markets and restaurants out of business.

MBOC’s argument is difficulty to accept because CEQA does not require an analysis of social or economic impacts generally. See State CEQA Guidelines, 14 Cal.Admin.Code, §§ 15131, 15131(a); *No Slo Transit, Inc. v. City of Long Beach*, 197 Cal. App. 3d 241, 256, 242 Cal. Rptr. 760, 768 (Ct. App. 1987). So, even if MBOC were to present compelling economic evidence, MBOC has not presented a clear reason under CEQA as to why any sort of CEQA environmental analysis is required.

Without anything in the record to support the proposition that Cardenas Concord will cause urban decay or that such decay would implicate CEQA, we request the Planning Commission to find in favor of the Cardenas Store. Moreover, we believe that record indicates that opposite and that the Concord Store will likely revitalize the neighborhood by serving as the tenant for previously vacant building and creating sustainable jobs for the community. As the Zoning Administrator points out, Cardenas Concord is a key example of the land use policies adopted in the general plan because the new business will stimulate economic development and raise the standard of retail enterprises in the area, revitalizing a shopping center that has been vacant for an extended period. See Policy E-4.1.1, Policy E-4.1.2, Policy Goal E-5, Land Use Principal LU-1.1, Land Use Policy LU-2.1.1, Land Use Goal LU-9, Land Use Principal LU-9.1, and Policy Land Use LU-9.3.

Furthermore, when urban decay issues have been successfully raised in CEQA cases, these scenarios are easily distinguishable because they involve significant changes in land use. For example, urban decay was found to be a CEQA issue warranting environmental analysis in the case of the approval of a 234-acre regional shopping center project on undeveloped agricultural land. *California Clean Energy Comm. v. City of Woodland*, 225 Cal. App. 4th 173, 170 Cal. Rptr. 3d 488 (2014). Similarly, CEQA review was required in the case of the approval of two proposed retail supercenter shopping centers, approximately 3.6 miles apart. Although the centers did not trigger a conclusive presumption of urban decay, because there was evidence suggesting that the economic and social effects caused by the proposed shopping centers ultimately could result in urban decay or deterioration, the lead agency was obligated to assess. *Bakersfield...*

The present case is easily distinguishable. Cardenas Concord is leasing an already existing and zoned retail center. There is no major land use change. There was a pre-existing store. Cardenas Concord is by right. Cardenas Concord is not a supercenter grocery store, but modest in size for the area compared to major stores. Furthermore, MBOC has not offered serious evidence to dispute the City’s own fact-finding. Thus, CEQA case law on urban decay does not apply to the simple opening of a grocery store here.

Even if the Planning Commission were to find that urban decay issues are appropriate issues for CEQA analysis if, in fact, there were a CEQA “project” not subject to exemption, the facts make clear here that opening of Cardenas Concord would not fit into this case law. While we believe that the Concord Project is not a CEQA “project” and, if it were, exemptions would apply, MBOC’s urban decay argument lacks a factual basis and MBOC has presented no compelling evidence to the contrary. Cardenas Concord will create jobs and provide an attentive tenant to a shopping center that has lacked an anchor tenant since 2012. It would be illogical to identify this investment in Concord and its workforce as a trigger of urban decay.

CEQA Exemptions:

If Cardenas Concord were a “project”, it would, in the alternative, likely be exempt.

If the Design Review approval is deemed to be a “project” under CEQA, the approval would likely be also categorically exempt. See CEQA Guidelines Section 15061(b)(2) (certain projects are exempt as categorically exemptions apply), and (b)(3) (the activity is covered by the common sense exemption: CEQA applies only to projects which have the potential for causing a significant effect on the environment).

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”) all apply to Cardenas Concord. The potential CEQA “project” would be categorically exempt because the project consists of tenant improvements to an existing building, with façade, parking lot and landscaping improvements. Additionally, because the site, confirmed in City staff findings, is not located in a sensitive environment, an historical district, scenic highway or on a hazardous waste site, 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.

CEQA also provides for a common sense exception. Cardenas Concord, as a matter of common sense, falls under this exception. Cardenas Concord is by right. A former grocery store used to occupy the Grocery Store Site. Cardenas Concord is not fundamentally altering the land use or environment in some way even though the store might be a slightly more specialized grocery store in terms of the items it carries and the demographic of customer it targets. Finding otherwise would lead the City down the precedential path of needing to conduct a CEQA analysis anytime a potential business competitor opens its doors in Concord or whenever a tenant occupies a space.
MBOC’s Appeal:

In the appeal, MBOC makes the following CEQA arguments.

1. “If the City were to allow such large-scale protected tree removal without the required permit it would reward illegal conduct and unpermitted activity.” Page 3.

In this argument, MBOC fundamentally seeks to confuse the issues. The City did not allow for the tree removal without the required permit. The landlord violated the tree removal rules, not Cardenas. No one is being rewarded. The City will pursue code enforcement (the actual and specific tool for violations of code). To the extent MBOC feels code enforcement is an inadequate consequence for breaking the code or to the extent that MBOC feels that Cardenas (a tenant) should be punished for a landlord’s code violation, that is outside the realm of a CEQA analysis and this Planning Commission appeal. Cardenas is the tenant and the permit under review on appeal no longer concerns the tree removal or their replacements.

Furthermore, even if CEQA review were required, the landlord removed the trees in March 2019 and Cardenas Concord’s permit application was not deemed final until May 2019. CEQA review compares a baseline of a “project” to its foreseeable consequences. The baseline does not capture the environmental consequences of prior illegal or unpermitted activities. See Eureka Citizens for Responsible Government v. City of Eureka (2007) 147 Cal.App.4th 357, 371 [baseline not adjusted for unpermitted playground improvements (“As appellants acknowledge, however, preparation of an EIR is not generally the appropriate forum for determining the nature and consequences of prior conduct of a project applicant [and Cardenas, not the landlord is the applicant here], and environmental impacts should be examined in light of the environment as it exists when a project is approved [and the approval here is after the tree removal]”)]. See also Riverwatch v. Cty. of San Diego, 76 Cal. App. 4th 1428, 1453, 91 Cal. Rptr. 2d 322, 339 (1999), as modified (Jan. 12, 2000) (“[W]e believe a more prudent method of dealing with alleged prior illegality is to rely in the first instance on direct enforcement by the agencies charged with the responsibility of doing so[…]”). See also Fat v. Cty. of Sacramento, 97 Cal. App. 4th 1270, 1278, 119 Cal. Rptr. 2d 402, 408 (2002) (no change in baseline because of illegal and unpermitted airport expansion).

2. “This more lenient standard for skipping the permit requirement for tree removal would foreseeably result in cumulative effects under CEQA based on other people cutting down trees without a permit.” Pages 3-4.

Here, MBOC essentially argues that by using code enforcement instead of a permit for tree removal that it will lead to scenario where others that want to cut down trees will do so without a permit, electing for code enforcement instead. This, in turn, will have a foreseeable cumulative effect on the environment under CEQA. Even if this were the case that the City’s enforcement regime incentivizes breaking the law instead of going through the permit process at such a scale to have cumulatively significant environmental effects, MBOC misses the fundamental issue here. The “project” here under CEQA is the design and site approval for Cardenas Concord. Even if this were to be expanded into the opening and operations of the store itself as the “project,” MBOC’s argument does not apply. The City’s decision to seek code enforcement against the landlord instead of making the landlord retroactively apply for a permit is a prosecutorial discretion issue, not a CEQA “project”. Furthermore, code enforcement programs are generally exempt from CEQA. See Apartment Ass’n of Greater Los Angeles v. City of Los
3. “The City […] was in error when it determined that CEQA did not apply to unpermitted Tree removal. The scheme of the City’s Code is designed to require the City’s discretionary approval for the removal of any protected trees, much less 19 of them being removed all at once. […] As a discretionary approval of a Project that may have a potentially significant impact, it is subject to CEQA. […] An Initial Study must be done to analyze and disclose other impacts of the whole of the action of the Project, including but not limited to impacts related to Tree removal, traffic, urban decay and cumulative impacts.” Page 4.

Again, this argument is inapplicable as described above. The CEQA “project” is not the tree removal. The landlord removed the trees and the City is addressing this through code enforcement, not the design permit. Furthermore, the tree removal was a baseline condition by the time the permit was deemed final. So, the impacts of the tree removal would not be studied under CEQA because that is the baseline.

4. “The City made a finding that the 19 trees were a condition of approval mitigation measure for the prior development of the market. Without such mitigation measure in effect, the project may have potentially significant impacts.” Page 4. “Under CEQA once a mitigation is removed, such as is the case here, there is necessarily a potentially significant impact that must be studied under CEQA.” Page 5.

Again, this argument is inapplicable as described above. The “project” is not the tree removal. The City never approved the tree removal and is now seeking code enforcement. Cardenas did not remove the trees. Even if a mitigation measure for the approval of the original store were removed, the appropriate response would be the restoration of the mitigation measure. For example, if the original Safeway store were still in operation and the landlord were to remove the trees without a permit, the response under CEQA, code enforcement, zoning, etc. would be to enforce against the bad actor and remedy as necessary. Here, MBOC’s logic would, instead, imply that CEQA would require the Safeway to shut down, and conduct an environmental analysis on how to deal with the removed trees before the store could reopen. This makes no sense and is not required by CEQA.

5. Changing the mitigation measures: “Now the City proposes to substitute the following modifications to those original mitigation measures – to remove the 19 mature protected Trees and allow for replacement of the mature trees with a ratio of young trees. CEQA is triggered by such a proposal to modify the mitigation measures” citing Napa Citizens for Honest Gov’t v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 359. Page 5.

MBOC is correct that mitigation measures adopted under CEQA and then deleted or changed must be supported by an environmental analysis. However, again, MBOC is confusing the issues. The mitigation for the removal of the trees by the landlord is not the “project” now up on appeal even if a “project” were to exist. The removal of the trees are not a necessary effect on the environment caused by either the opening of Cardenas Concord or the application subject to the current appeal. The tree removal already happened and if, for some reason, the decision to analyze how best to mitigate for the removal of the trees is subject to CEQA, such decision will occur when the landlord applies to the appropriate government entity for such a permit.
Because the tree issue has been bifurcated from how to deal with Cardenas Concord’s design permit, the replacement and removal of the trees are not a necessary consequence of Cardenas Concord’s permit approval or its opening. As such, MBOC’s argument is misplaced.

6. “The City must require CEQA analysis of how such impacts [the tree removals] will be mitigated and how long that mitigation will take to reduce such impact to less than significant levels.” Page 6.

Again, MBOC’s argument is misplaced. If, for whatever reason, the City did have to undergo a CEQA analysis for making sure the right steps are taken to mitigate for the removed trees, then that would be the appropriate time to analyze such impacts. Right now, that decision is not being considered.

7. The CEQA exemptions (existing facilities, minor alterations, minor alterations to land use, and common sense) do not apply because “any categorical exemption is improper when a Project may have potentially significant impacts requiring mitigation [citing the removal of the trees, urban decay and traffic as such impacts]. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102. PRC 21084(a).” Page 7.

MBOC is conflating the issues. An activity that may have a significant effect on the environment cannot be categorically exempt from CEQA generally. *Salmon Prot. & Watershed Network v. Cty. of Marin*, 125 Cal. App. 4th 1098, 1107, 23 Cal. Rptr. 3d 321, 326 (2004), as modified on denial of reh’g (Jan. 18, 2005). However, Cardenas Concord’s permit is not a “project” under CEQA. Even if it were, the tree issue is not at play. Furthermore, the urban decay and traffic arguments are not compelling. It is difficult to imagine these issues would be potentially significant as a matter of common sense, as described in greater detail elsewhere in this letter.

8. “The City may not allow a categorical exemption when it is relying on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply.” *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098 at 1102 and 1108. Page 7.

MBOC is conflating the issues. The current issue on appeal is not a CEQA “project.” Even if it were, Cardenas Concord is not relying on mitigation measures for urban decay or traffic. The trees are the landlord’s issue, not Cardenas Concord’s issue. Even if Cardenas Concord were to have to undergo a CEQA analysis for the trees, the destruction of the trees are part of its baseline since the destruction occurred prior to the completion of the project’s application. See the above baseline discussion; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371; *Riverwatch v. Cty. of San Diego*, 76 Cal. App. 4th 1428, 1453, 91 Cal. Rptr. 2d 322, 339 (1999), as modified (Jan. 12, 2000); *Fat v. Cty. of Sacramento*, 97 Cal. App. 4th 1270, 1278, 119 Cal. Rptr. 2d 402, 408 (2002). So, there is no need for further analysis or mitigation measures.

9. “The protected trees were cut down, in the course of Cardenas applying for the permits for the exterior changes, including changes to the parking lot and landscaping, where the trees were located. […] [T]he 15301 [existing facilities] exemption cannot possibly apply to the situation at hand because the trees were existing, but were cut down as part of the Project.” Page 8.
The record is clear that the landlord cut down the trees. Even if the landlord did it for Cardenas Concord’s best interest, this was done on the landlord’s own initiative and prior to submittal of Cardenas Concord’s final application. Prior illegality and baseline issues are explained above. The conclusion here is the same. Regardless, MBOC is again confusing the issues. The existing facility here that would be exempt is the store and its operations, not these existing trees. Even if there were no exemptions for removal of the trees and their replacements, that gets MBOC no closer to its argument that the existing store is somehow not exempt.

10. Exemption 15302 does not apply (replacement or reconstruction) because there is nothing in the record to indicate “when and if the replacement values of the new young trees will serve the same mitigation for the mature protected trees that were removed.” Page 8.

MBOC is confusing issues. The exemption applies to Cardenas Concord, not the landlord’s need to replace or reconstruct the trees. Regardless, code enforcement’s remedies and the reliance on the City for the expert opinions of arborists and specialized City staff contradicts MBOC’s argument. There seem to be ample amounts of evidence that the City would and does require replacement trees to mitigate for what was removed.

11. Exemption 15304 (minor alterations to land) does not apply because it “is inapplicable to mature, scenic trees.” Page 8.

MBOC is confusing issues. Similar to the above issues, the trees are not the potential project here.

12. The common sense (15062(b)3) exemption does not apply because it is not common sense to conclude the removal of the 19 trees exempt from CEQA. Page 8.

MBOC confuses issues. If there were a “project” under CEQA, the tree removal is not part of it. The landlord removed the trees and the consequences are the landlord’s responsibility at this stage. Cardenas Concord no longer includes the trees as part of its application and what happens with the trees (including how they are replaced and mitigated) is not affected by Cardenas Concord’s permit or opening.


MBOC confuses the issues. Cardenas Concord no longer includes the trees as part of its application and what happens with the trees (including how they are replaced and mitigated) is not affected by Cardenas Concord’s permit or opening. Thus, the unusual circumstance MBOC relies on is unrelated.

14. No “categorical exemptions apply with the cumulative impact of successive projects of the same type in the same place over time is significant.” Page 9.

This objection makes little sense. MBOC has not identified “successive projects of the same type in the same place over time.” If anything, the opposite is true. Cardenas Concord seeks to replace one vacant grocery store, not successively open multiple stores in the same place.

MBOC has not offered any evidence that the opening of the market will lead to decay. If anything, the opposite seems true. See the economic argument section.

16. There are potentially significant traffic impacts. Whatever traffic analysis and environmental review that was done in the 1980s when a market was first approved, has changed. There are potentially significant impacts associated with going from the vacant store to an open store. Pages 9-10.

MBOC is making an irrelevant argument. Yes; it is possible that traffic patterns have changed since a market was first approved. Yes; it is possible, even probable, that traffic will increase to the market once it is open compared to a vacant store. Even if this were a “project” under CEQA, these concerns do not matter. CEQA does not require periodic re-dos of prior environmental analyses. CEQA does not require an environmental analysis every time a store opens or closes. This is the heart of the existing facility exemption. § 15301. Existing Facilities (which includes “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures”). Finding otherwise would result in an unworkable set of burdens for the City and any potential business. In effect, MBOC is arguing that a new CEQA analysis is required every time traffic patterns change. CEQA does not require this constant stream of environmental analyses. In addition, such an interpretation would lead to impractical results, making every business and tenant changeover subject to constant environmental reviews.

17. The tree removal should be considered part of the whole action for the administrative design and site review approval because a CEQA project refers to the whole action, not just the underlying activity being approved. Pages 10-11.

Even if this were the case, the trees were already removed by the time the design application was complete. So, tree removal is the baseline. Thus, under MBOC’s argument, the actual analysis would be to compare the replacement trees (by permit or code enforcement) to the baseline of removed trees. The common sense impact comparison here weighs future replacement trees to a baseline of no trees. Thus, any future scenario would only have positive environmental effects.

18. Even if the tree removals are not part of the design and site review approval, it is still subject to CEQA because private activities are “subject to CEQA if they involve government participation, financing or authorization.” Page 11.

Even if MBOC’s argument were to apply and a CEQA analysis were to be required, it is not appropriate to the present appeal of the design and site review permit. This would be done when the landlord or code enforcement presents a plan to remedy the tree removal. MBOC is conflating government actions.

19. “Code enforcement action is the functional equivalent of a tree removal permit.” Therefore, CEQA should apply because this is the functional equivalent of a discretionary permit. Page 11.

Even if code enforcement is the functional equivalent of a tree removal permit, it is not a tree removal permit. The two are actually very distinct. One is an approval process and one is an
enforcement action. Here, MBOC argues that enforcement discretion and actions should be subject to CEQA. This is, on its face, inconsistent with CEQA. CEQA specifically exempts this under section 15321 (Enforcement Actions by Regulatory Agencies).

The exemption:

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:
(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement.
(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.
(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction.
(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.


Conclusion:

MBOC has not presented a viable legal issue on appeal. As such, we urge the Planning Commission to find in favor of Cardenas.

Thank you for your time and please let me know if you have any questions or concerns that we can address. Cardenas looks forward to long and productive future in Concord.

Very truly yours,

COZEN O’CONNOR

By: Richard H. Close, Esq.

RC

cc: Susanne Brown, City Attorney (Via Fed Ex)
Margaret Kotzebue, Senior Assistant City Attorney (Via Fed Ex)
Sarah Yuwiler, Project Planner (via Fed Ex & Email: Sarah.Yuwiler@cityofconcord.org)
Joelle Fockler, City Clerk, for file re Cardenas Market Appeal (PL19101-AP) (Via Fed Ex)
August 19, 2019

VIA FEDEX

Ray Barbour, Chair
John Mercurio, Vice Chair
Jason Laub, Commissioner
Craig Mizutani, Commissioner
Mark Weinmann, Commissioner
Concord Planning Commission
c/o Grant Spilman, Administrative Coordinator
1950 Parkside Drive
Concord, CA  94519

Re: LETTER 2 - Issues Raised in Cardenas Market Appeal (PL19101-AP) – Unrelated to California Environmental Quality Act (“CEQA”)

Dear Chair Barbour, Vice Chair Mercurio and Concord Planning Commissioners:

This is letter 2 of 2.

We represent Cardenas Markets LLC (“Cardenas”) in the present Appeal submitted by the Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition (“MBOC”) on July 26, 2019.

MBOC seeks to use this Appeal to interfere with and prevent legitimate business competition entering the City of Concord. The present MBOC Appeal of the Zoning Administrator’s approval of the administrative design review application lacks a legitimate basis in law and fact. We ask the Planning Commission to uphold the Administrative Design and Site Review approval decisions of the Zoning Administrator and City staff.

Because the MBOC Appeal attempts to raise multiple issues and inaccurately represents both facts and law in the present Appeal, we would like to take this opportunity to supplement the record and support the Zoning Administrator’s already clear and accurate representations of both law and fact.

The MBOC, in its Appeal, raises several baseless California Environmental Quality Act (“CEQA”) issues in an attempt to interfere with our client’s ability to operate its otherwise by-right grocery store, consistent with law, zoning and City staff recommendations.
We have addressed these issues in a complementary CEQA letter. Much of the facts and procedural history of this Appeal can be found in our CEQA letter included in our materials submitted to this Commission.

**Executive Summary:**

The Planning Commission should find in favor of Cardenas Concord. The administrative design review approval was issued in compliance with the Concord Municipal Code (“CMC” or “Code”).

At the core of the Appeal, MBOC principally makes arguments related to urban decay and the landlord’s removal of trees. MBOC argues that these issues trigger a major violation of the City’s Code that require the present approval to be rescinded, denied or reviewed at a different level of scrutiny or process. These arguments seek to confuse and are not applicable.

The current Administrative Design and Site Review application pending appeal concerns standard tenant improvements and updates to a previously vacant grocery store. Our client is only seeking to open a by-right facility. These applications are subject to an administrative review process, which Cardenas has diligently complied with.

Much of MBOC’s argument relates to the removal of trees from the parking lot without a permit. The landlord, not Cardenas, removed the trees before the final design application was accepted. Cardenas is not a supporter of unpermitted tree removal and did not remove the trees at issue. The landlord removed the trees and the City is addressing this through the appropriate enforcement actions. Unfortunately, the trees have already been removed.

The tree removal is not part of the present design application or this Appeal. So, MBOC’s arguments related to the tree removals are irrelevant. If there needs to be a separate design or permit review for how to mitigate the tree removals, it should be separate and limited to this issue, not Cardenas Concord as whole. Furthermore, it is our client’s position that this remains an issue between the City and the landlord.

MBOC also claims that the design application should be a discretionary, not an administrative review. However, to the contrary, administrative review is appropriate because the project (meaning the action contemplated by the permit now up on appeal) concerns issues of design and tenant improvements that do “not substantially affect the property rights of owners or adjacent parcels”. See CMC 18.415.040. This is the appropriate standard for administrative review. The City has still complied with its design and site review requirements. The City just processed the present application administratively, in line with the City’s standards and Code.

MBOC also raises due process and notice issues. However, MBOC fails to identify specifically where the City failed to comply with the notice or due process requirements for this Appeal or the prior appeal to the Zoning Administrator. MBOC received legal notice and has had ample opportunity to present its case in front of City staff, the Zoning Administrator and this Planning Commission.

Thus, MBOC’s positions mischaracterize the record and law, and MBOC’s Appeal should be denied on all counts.
The Permit Approvals for the Improvements/Opening is Not a Major Project:

Because of the *de novo* nature of this Planning Commission Appeal, we would like to supplement the Zoning Administrator’s already well-reasoned analysis of the issues in further support of Cardenas Concord. Most importantly, the present application on appeal is not a major project for the City subject to a discretionary permit.

The Grocery Store Site is already zoned for a grocery store and previously operated as a Safeway grocery store. Grocery store use is permitted on the property as a matter of right. Further City review is limited to design review. City staff determined that 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 Concord Development Code (“CDC”).

Accordingly, no further 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. Basically, the change the Cardenas Concord application represents is the addition of a tenant with some relatively minor updates to the building.

MBOC has represented an illogical interpretation of the Code. If the City were to have to require a full, non-administrative design review process every time there were a tenant change or design change to a building already in line with current zoning, it would create an unreasonable restraint on commercial activity and burden on the City. Such precedent would likely not only be an unreasonable burden for Cardenas, but also an unworkable barrier for smaller businesses.

**MBOC’s Appeal - Issues Raised Not Related to CEQA:**

In the Appeal, MBOC makes the following arguments distinct from CEQA issues.

MBOC primarily based its arguments in reference to an implausible claim that opening the Cardenas Concord will lead to a mass closure of Hispanic stores and restaurants, causing permanent vacancies that will lead to urban decay. The second scenario MBOC discusses relates to a code violation that occurred in the present parking lot for Cardenas Concord when the landlord (without the knowledge or permission of Cardenas) removed trees without a permit prior to the final application now up on appeal. These arguments seek to confuse and are not applicable to this Appeal about design review.

**The Tree Removals are Not Part of this Design Review Appeal:**

Because City staff recommended that the unauthorized tree removal issue be treated as a code enforcement issue instead of issuing a Tree Removal Permit, MBOC’s tree removal concerns are misplaced. The tree removals are no longer part of our client’s application. Therefore, if the tree removals are not even up for review in this current case, they cannot implicate an appealable issue for the approval of the permit for Cardenas Concord. In essence, this issue became moot because the City is no longer asking for such a permit from Cardenas. This makes sense since the landlord, not Cardenas, removed the trees.

Hence, MBOC argues that the Administrative Design and Site Review permit is defective because our client should be responsible for the landlord’s unrelated tree damage. This is
improper. Cardenas is no longer applying for an unrelated tree permit and, for the purposes of this Appeal, the tree permit is no longer a germane issue. Yes: the landlord damaged the trees, but the City has its own process to address these concerns. MBOC seeks to appeal the design plans for Cardenas by arguing that the design permit does not address the trees. This is exactly what should happen. Our client is not applying for a tree removal permit, has not been asked by the City to apply for a tree removal permit, and the City is not issuing such a permit. So, it does not make any sense as to why MBOC would argue the City should stop the design review permit process and close down a new grocery store based on a permit that is no longer being applied for or issued. The tree issue is not going away. Rather, it is being processed by law as the City sees fit, an issue between landlord and the City, not Cardenas.

Economic Arguments (Urban Decay):

MBOC argues that Cardenas Concord will cause urban decay by competing with the already existing twenty Mexican markets and six Mexican restaurants. However, MBOC offers no evidence to support this urban decay argument, such as a health impact study or economic data. Additionally, MBOC does not present a compelling case that our client’s grocery store would be a direct competitor with already existing Mexican markets and restaurants. Even if Cardenas Concord did compete directly with these markets and restaurants, it seems unlikely (and MBOC has presented no compelling evidence otherwise) that competition from Cardenas Concord would be so fierce as to put these markets and restaurants out of business.

Even if Cardenas Concord were to cause healthy economic competition with other businesses, we request the Planning Commission to find in favor of the Cardenas store. This Appeal relates to administrative design, administrative decision and tenant improvements, not the decision of a landlord to have a grocery store tenant in a building already zoned and built for such a purpose. Using the tenant improvement administrative design process as a mechanism for competitors to prevent another by-right business from opening could chill business investment in the City.

There is no reason why healthy business competition should prevent the opening and operation of Cardenas Concord. Administrative design review permits are tools for the City to ensure businesses conform to design, aesthetic and other City concerns. Such permits are not the proper means for competitors to restrain economic growth and prevent new businesses from investing in Concord, as MBOC seeks.

Moreover, we believe that the record indicates the opposite: the Cardenas Concord store will likely revitalize the neighborhood by serving as the tenant for previously vacant building and creating sustainable jobs for the community. As the Zoning Administrator points out, Cardenas Concord is a key example of the land use policies adopted in the general plan because the new business will stimulate economic development and raise the standard of retail enterprises in the area, revitalizing a shopping center that has been vacant for an extended period. See Policy E-4.1.1, Policy E-4.1.2, Policy Goal E-5, Land Use Principal LU-1.1, Land Use Policy LU-2.1.1, Land Use Goal LU-9, Land Use Principal LU-9.1, and Policy Land Use LU-9.3.

MBOC’s urban decay argument lacks a factual basis and MBOC has presented no compelling evidence to the contrary. Cardenas Concord will create jobs and provide an attentive tenant to a shopping center that has lacked an anchor tenant since 2012. It would be illogical to identify this investment in Concord and its workforce as a trigger of urban decay.
Individual Arguments:

The non-CEQA arguments MBOC attempts to raise include the following statements from their Appeal notice:

1. “The City’s New Decision that the Subject Tree Removal is Merely a Code Violation which No Longer Requires a Tree Removal Permit is in Error and an Abuse of Discretion.” Page 2.

2. “In Addition to Begin Mitigation Measures, the 19 Trees are Protected Under Additional Protection under the Code.” Page 6.

3. “There are Specific Facts of the Record which are Inaccurate”. Page 11.

4. “Administrative Design Review is not the Proper Level of Review because the City must make Discretionary Determinations.” Page 12.


9. The City has Failed to Provide Monument Business Owners Coalition an Opportunity to be Heard on Several of the Issues that it has Discussed Related to this Project.”

We will address each of those items individually.

1. MBOC: “The City’s New Decision that the Subject Tree Removal is Merely a Code Violation which No Longer Requires a Tree Removal Permit is in Error and an Abuse of Discretion.” Page 2.

MBOC argues that the City erred when it found that Cardenas does not require a tree removal permit. MBOC argued that the tree removal is not solely a matter for code enforcement. At its core, MBOC is making two arguments: (1) that the City must make Cardenas obtain a tree removal permit for the already removed trees; and (2) that enforcement instead of requiring a permit would amend the code *post hoc*.

MBOC is conflating and confusing the issues. As described above, the landlord, not Cardenas removed the trees. To the degree the City seeks to use code enforcement or require a permit, that is between the property owner and the City. Cardenas Concord is no longer applying for such a permit. Moreover, the City is under no obligation to pursue either the landlord or Cardenas. These are matters of prosecutorial discretion and certainly far beyond the scope of
the tenant improvements Cardenas, the tenant, would like to implement to beautify and otherwise improve the store and neighborhood.

The City’s decision here, contrary to MBOC’s arguments, is plainly logical and straightforward. To the degree future trees need to be removed, a permit is needed. However, for the already removed trees, code enforcement is the logical step forward because code enforcement is the tool designed to remedy violations of the Code. This is the same logic that applies to other areas of law as well as common sense.

MBOC’s post hoc argument is also nonsensical. The City did not amend any part of the Code by enforcing against the bad actor, the landlord. Instead, the City is doing things by the book. The landlord cut down some trees without a permit. Instead of asking the landlord to get a permit retroactively as if nothing happened, the City prefers the code enforcement process specifically designed to deal with violations of the Code. This is not an abuse of discretion; rather, this is enforcement system working as it was designed. MBOC’s incongruous interpretation and argument would render Concord’s code enforcement process and powers meaningless.

Furthermore, MBOC argues that using code enforcement would reward bad actors and lead to a more lenient standard where potential applicants would rather remove trees and undergo code enforcement rather than go through the permit process. Again, MBOC attempts to continue down this irrelevant tree cutting narrative.

Our client did not cut down the trees. MBOC’s tree issue is with the landlord and MBOC may raise the issue with the City’s enforcement staff as appropriate. If a tree removal permit is eventually sought, MBOC may further raise the issue with the applicant for that permit. However, the tree issue is not part of this Appeal. Furthermore, MBOC’s argument is illogical. The City’s code enforcement process is not a reward for the violator. Law and order will not collapse in the City of Concord because the City chooses to use code enforcement to enforce the Code. If MBOC is unsatisfied with the remedies, fines and punishments the City pursues in code enforcement, MBOC is free to discuss such issues with elected officials to have the Code amended.

2. MBOC: “In Addition to Begin Mitigation Measures, the 19 Trees are Protected Under Additional Protection under the Code.” Page 6.

MBOC is correct that the Code requires tree removal permits. Our client does not dispute this. However, the facts are undisputed that the trees were cut down (and not by Cardenas) without a permit. Neither Cardenas, the landlord, MBOC nor the City can go back in time and address the permit issue prior to the removal of the trees. Thus, the City now seeks to enforce its Code against the landlord. Cardenas, this Administrative Design and Site Review, and the opening of Cardenas Concord do not undercut that process. This is not the appropriate venue, permit or process for MBOC to pursue its dissatisfaction with City’s enforcement decisions. When the City decided to address the tree issue directly through code enforcement, Cardenas withdrew its tree removal permit. Thus, this Appeal does not concern a tree removal permit and the issue has long been made moot.

3. MBOC: “There are Specific Facts of the Record which are Inaccurate”. Page 11.
MBOC claims the City made factual errors related to the removed trees. As mentioned above, this is irrelevant to the present Appeal. This Appeal does not concern a tree removal permit and the issue has long been made moot.

Thus, the factual issues MOBC raises are also irrelevant because they all relate to the trees. Furthermore, MOBC argues that the City errs in its finding that the owner or the property (landlord) cut down the trees, not Cardenas.

Yes: in MBOC’s exhibit 5 [not exhibit 6] of the Appeal, the application form for illuminated signs, the application is signed by the owner’s representative. This is because the owner has to sign the application per the application’s own instruction. Yes: Rick Bruzzone did sign as attorney for the property owner. This is irrelevant. Rick Bruzzone did not represent himself as the agent for Cardenas. He just applied for a sign permit as the attorney for the owner. Furthermore, the applicant on this application was Kaled Serdio of Signum Lux Corporation, again, not Cardenas. If anything, this just demonstrates that Rick Bruzzone is not the agent for Cardenas and that Cardenas is separate from the landlord. In addition, to clarify further, Rick Bruzzone is a lawyer, but he is not and never has been the attorney for Cardenas. While he has a law practice and is a co-owner of the property, in no way is he the agent or attorney for Cardenas.

Confusingly, MBOC makes much of Concord Municipal Code section 1.05.100 (the definitions section) on the definition of “Owner.”

Owner. “Owner” applied to a building or land shall include any part owner, joint owner, tenant, tenant in common, or joint tenant of the whole or a part of such building or land.

Again, this is irrelevant to all MOBC’s arguments. This Code definition does not require a tree removal permit that has not been asked for or issued. The Code definition does not alter the City’s logical decision to pursue code enforcement against a violation of the Code rather than seek retroactively to force a tenant to seek a permit for a landlord’s violation of the Code.

4. “Administrative Design Review is not the Proper Level of Review because the City must make Discretionary Determinations.” Page 12.

MBOC argues that this present permit up on appeal was improperly subject to administrative review, requiring the City, instead, to make discretionary determinations. To support this argument, MOBC continues to argue that the tree removal by the landlord is somehow fatal to the design permit. MOBC argues that the City is ignoring its own Code by not requiring a tree removal permit. This is the same argument in a different form. As explained above, neither Cardenas nor the City are seeking to bypass any permit. The trees are not part of this application and the City is addressing through code enforcement.

The next argument relies on CMC 18.45.020, which as MOBC claims, “states that Design and site review shall be required prior to any new tenant improvement subject to the provisions of Chapter 18.535.” However, to the contrary, section 18.45.020 is a table of land use permits for the Downtown Mixed Used, Downtown Pedestrian and West Concord Mixed Use zoning districts. The Cardenas Concord is not in any of these zones. Furthermore, even if it were, the permit required in all three zones for a grocery store is a simple Zoning Clearance (ZC in the table). Cardenas Concord would easily meet the Zoning Clearance standard and MOBC has
offered no plausible argument as to how Cardenas Concord would be inconsistent with current zoning.

Furthermore, the design permits sought by Cardenas Concord fall under the Administrative Design and Site Review exception. CMC 18.415.040. Administrative review is appropriate because the project (meaning the action contemplated by the permit now up on appeal) does “not substantially affect the property rights of owners or adjacent parcels”. In addition, despite being an Administrative Design and Site Review, this is still a type of design and site review. Therefore, the site review requirements are met. This is the whole point of allowing for Administrative Design and Site Review: to create a process for approving design and site review applications. See CMC 18.415.040. Thus, MBOC’s qualms that design and site review must be required are not at issue. The present Appeal is based on the fact that the application went through such review.


This argument again seeks to resurrect the tree removal argument. The City made the requisite findings applicable to the application then before it, which did and does not include the tree removals. The tree issue will be dealt with by code enforcement. If additional trees or landscaping become necessary, the landlord or Cardenas will pursue them through the appropriate application process at the appropriate time and venue. The current Appeal and application no longer concern these trees.


MBOC argues that MBOC did not receive a fair trial in front of the Zoning Administrator. MBOC also claims that the current Appeal before the Planning Commission has similar procedural defects because the City has failed to “timely produce information that it has discussed in the Record for this Project.” However, MBOC failed to note in which way it was not provided sufficient notice of the Zoning Administrator’s hearing or did not receive a fair trial. Moreover, this seems inconsistent with the record since it was MBOC that asked for the Zoning Administrator hearing and MBOC has engaged as an interested party throughout this whole process. Furthermore, on page 3 of the Zoning Administrator’s Order, the Zoning Administrator states that it gave “all public notices required by State law and the Concord Municipal Code […] regarding the subject Appeal”. Thus, MBOC has failed to assert or offer evidence of how procedural due process was violated.


MBOC claims that it was provided insufficient notice related to the Zoning Administrator hearing. MBOC claims that “the staff report […] was not posted on the City’s website until after hours on the Monday before the hearing on Wednesday morning, providing the public and appellants less than 24 hours to understand the changes and meaningfully commend to the agency.” Firstly, MBOC’s math is wrong. Monday evening to Wednesday morning is more than 24 hours, not less. Secondly, MBOC is making up additional procedural due process requirements.
The notice of public hearing before a Zoning Administrator is governed by CMC section 18.500.020. The notice must include:

- **Hearing Information.** The date, time, and place of the hearing, the name of the review authority, a brief description of the city’s general procedures concerning the conduct of hearings and decisions (e.g., the public’s right to appear and be heard), and the phone number and street address of the planning division where an interested person may call or visit to obtain additional information.

- **Project Information.** The name of the project, associated permit types and numbers, and a general explanation of the matter to be considered, the address and assessor parcel number of the property that is the subject of the hearing, and the general plan and zoning designations.

- **Statement on Environmental Document.** A statement that the review authority will consider approval of a proposed negative declaration or certification of a final environmental impact report, if either document has been prepared for the project in compliance with the provisions of the California Environmental Quality Act (CEQA) and the city’s environmental review procedures.

See CMC section 18.500.020.

Because this was not a CEQA permit, the environmental document requirement is irrelevant. Thus, as far as the Hearing Information and Project Information requirements, MBOC does not claim it is missing any of the above information. Additionally, since MBOC appealed to the Zoning Administrator, MBOC knew exactly what the project and issues were and would be. Instead, MBOC complains of not having a staff report for as long as it would have preferred, which is not a legal notice issue.

MBOC had legal notice and an opportunity to present its case in front of the Zoning Administrator. Instead of engaging with the issues, MBOC creates an unfounded notice issue around the timing of a staff report, which is not a relevant legal issue in this Appeal.


MBOC uses this issue to complain of what MBOC feels was an inadequate response to a public records act ("PRA") request for documents from the 1981 use permit for the Safeway store. Despite the City’s production and response, MBOC feels this response was inadequate. This issue is irrelevant to this Appeal. The 1981 permit has nothing to do with the pending matter. MBOC seeks these documents to bolster support for its tree argument, which, as described above, is irrelevant to the present case. Furthermore, the current Appeal is based on the record for currently pending tenant improvements, which is distinct from the original and approved 1981 Safeway. To the extent MBOC feels the City has not complied with the PRA, that is a separate and unrelated issue to this Appeal.

9. **MBOC: The City has Failed to Provide Monument Business Owners Coalition an Opportunity to be Heard on Several of the Issues that it has Discussed Related to this Project.”**

MBOC claims that it is “foreclosed upon commenting on issues for which it has insufficient notice. MBOC is prejudiced by its inability to comment and be heard on issues for which the City
has thus far failed to produce as part of the Record in the Project.” However, MBOC has failed
to identify what is missing from the record. In addition, we do not believe anything is missing
from the record for this otherwise straightforward Administrative Design and Site Review
application. To the degree MBOC seeks to expand the scope of this Appeal outside the
Administrative Design and Site Review application, that is irrelevant and not a proper basis for
appeal.

Conclusion:

MBOC has not presented a viable legal issue on appeal. As such, we urge the Planning
Commission to find in favor of Cardenas.

Thank you for your time and please let us know if you have any questions or concerns that we
can address. Cardenas looks forward to a long and productive future in Concord.

Very truly yours,

COZEN O’CONNOR

By: Richard H. Close, Esq.

RC

cc: Susanne Brown, City Attorney (Via Fed Ex)
Margaret Kotzebue, Senior Assistant City Attorney (Via Fed Ex)
Sarah Yuwiler, Project Planner (via Fed Ex & Email: Sarah.Yuwiler@cityofconcord.org)
Joelle Fockler, City Clerk, for file re Cardenas Market Appeal (PL19101-AP)
(Via Fed Ex)
August 27, 2019

VIA FEDERAL EXPRESS

Ray Barbour, Chair
John Mercurio, Vice Chair
Jason Laub, Commissioner
Craig Mizutani, Commissioner
Mark Weinmann, Commissioner
Concord Planning Commission
c/o Grant Spilman, Administrative Coordinator
1950 Parkside Drive
Concord, CA 94519

Re: Removal of Additional Conditions, Cardenas Market Appeal (PL19101-AP)
Planning Commission Hearing – Wednesday, September 4, 2019

Dear Chair Barbour, Vice Chair Mercurio and Concord Planning Commissioners:

We represent Cardenas Markets LLC ("Cardenas") in the present appeal submitted by the Law Offices of Dana Dean on behalf of the Monument Business Owners Coalition ("MBOC") on July 26, 2019.

On July 17, 2019, the Zoning Administrator denied the earlier level of Appeal and approved the Modified Administrative Approval for Design and Site Review ("Order") for the new Cardenas store in the City of Concord ("Cardenas Concord"). However, the Order imposed additional conditions set forth in Exhibit C to the Order. We would like to request a restoration of our client’s May 24 design review approval ("May 24 Approval") without the additional Zoning Administrator conditions.

May 24 Approval Satisfies the City's Requirements:

The May 24 Approval satisfies the City's regulatory, design review and procedural requirements, Cardenas Concord and City staff arrived at the plans and design for the May 24 Approval through a detailed and productive consultation process that leaves Concord with an attractive and modern shopping center that will revitalize this section of Monument Boulevard. We believe the Zoning Administrator's additional conditions will unnecessarily complicated and delay this revitalization.

We request the removal of the additional conditions. These conditions would have unintended consequences that will result in unnecessary design complexity. These conditions create design conflicts for a project previously and carefully designed to fit City staff recommendations.
The New Conditions Create Additional Review, Operations and Cost Burdens:

The additional conditions will result in a heightened review and plan check process that is otherwise not required. This places our client at a disadvantage, delaying the project for an unknown amount of time with additional costs.

The costs of these changes are also not trivial to the scale of the project. These conditions will result in an extensive and additional capital outlay as the parking lot, its layout and its paths of travel will need to be redesigned and constructed to fit the new conditions.

Because the changes directly impact the ability of customers to access the store and the rest of the commercial center, we believe the changes will have a negative impact on our client's business operations and well as customer access throughout the commercial center. Furthermore, due to the extent of the changes, Cardenas Concord would need additional approvals from the landlord in order to execute such a complicated redesign. This creates an unforeseen burden on and delay for our client's operations.

We Urge Approval Without the Additional Requirements:

These conflicts would make many of the store's design elements infeasible and could make a major redesign necessary. This would fundamentally depart from our client's carefully thought out site and improvement plan that was designed in consultation with City staff. These additional Zoning Order requirements place unnecessary demands on our client.

Our client's plans that the City staff approved are in full compliance with the City of Concord's design requirements. Thus, we request that the Zoning Order's additional conditions are removed and that the original staff approval stand.

If you have any questions about our request prior to the Planning Commission hearing, please contact us. If you have any questions at the Planning Commission hearing, please contact Leticia Espinoza, General Counsel for Cardenas, who will be in attendance.

Thank you for your time and consideration.

Very truly yours,

COZEN O'CONNOR

By: Richard H. Close, Esq.

cc: Susanne Brown, City Attorney (Via Fed Ex)
Margaret Kotzebue, Senior Assistant City Attorney (Via Fed Ex)
Sarah Yuwiler, Project Planner (via Fed Ex & Email: Sarah.Yuwiler@cityofconcord.org)
Joelle Fockler, City Clerk, for file re Cardenas Market Appeal (PL19101-AP) (Via Fed Ex)