



**REGULAR MEETING OF THE
CITY OF CONCORD
PLANNING COMMISSION**

**Wednesday, June 15, 2016
6:30 p.m. – Council Chamber
1950 Parkside Drive, Concord**

Planning Commission Members:

Carlyn Obringer, Chair
Jason Laub, Vice Chair

LaMar Anderson, Commissioner
Ray Barbour, Commissioner

**REGULAR MEETING
6:30 p.m. – Council Chamber**

I. ROLL CALL

II. PLEDGE TO THE FLAG

III. PUBLIC COMMENT PERIOD

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

V. CONSENT CALENDAR

1. [6/1/16 Meeting Minutes](#)

VI. PUBLIC HEARINGS

- 1. [Concord Recycling Center Appeal \(PL16011 – AC\)](#) – Consideration of Pleasant Paper Recycling Inc.’s (dba “Concord Recycling Center”) Appeal of a Planning Division Interpretation of Concord Development Code Section 18.40.010(D) Regarding Outdoor Storage in the Service Commercial (SC) Zoning District and amendments to Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy Way to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and E. The Planning Commission’s consideration of and action on the Appeal does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities they fall within the “common sense” CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Moreover, even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures)**

because, among other things, they involve minor alterations to existing facilities, replacement or reconstruction of existing facilities, and construction and location of limited numbers of new small facilities or structures, all as further detailed in the staff report and attachments thereto. This item was continued from the March 16, 2016 Planning Commission hearing. **Project Planner: Andrew Mogensen @ (925) 671-3332**

2. **Woodside Place Residential Care Facility (PL16070 – UP)** – Application to establish a 12-bed residential care facility for the elderly at 1795 Woodside Court. The General Plan designation is Low Density Residential; Zoning classification is RS-8 (Single-family residential; minimum 8,000 square foot lots); APN: 114-360-017. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15301 Class 1 “Existing Facilities,” and Section 15303 Class 3 “New Construction or Conversion of Small Structures,” and therefore no further environmental review is required. **Project Planner: Frank Abejo @ (925) 671-3128**

3. **DG Concord LLC Amendments (PL15497 – TA, GPA, RZ)** – Application by DG Concord LLC for a proposed amendment to the General Plan, Downtown Specific Plan, Development Code Section 18.45.010(C), and a Change of Zoning from Downtown Mixed Use (DTMU/DMX) to West Concord Mixed Use (WCMU/WMX) for six parcels located on the north side of Concord Avenue between State Highway 242 and Bonifacio Street. An Addendum to the 2012 Supplemental Environmental Impact Report for the 2030 Concord General Plan (SEIR) dated May 2016 has been prepared for consideration with the proposed actions. **Project Planner: Andrew Mogensen @ (925) 671-3332**

4. **Inclusionary Housing Text Amendment to the Development Code (PL16109 – DC)** - Proposal of a text amendment to Section 18.185.020(1) of the Concord Development Code to provide for a Reduction in the Minimum Applicable Project Size, subject to the Inclusionary Housing Ordinance from Five Units to Two Units or more. The proposed changes would reduce the project size for those projects subject to the City’s Inclusionary Housing Ordinance. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as exempt pursuant to 15061(B)(3), and no further environmental review is required. **Project Planner: Joan Ryan @ 925 671-3370**

VII. COMMISSION CONSIDERATIONS

VIII. STAFF REPORTS / ANNOUNCEMENTS

IX. COMMISSION REPORTS / ANNOUNCEMENTS

X. FUTURE PUBLIC HEARING ITEMS

XI. ADJOURNMENT

NOTICE TO PUBLIC

ADA ACCOMMODATION

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

APPEALS

Decisions of the Planning Commission on use permits, variances, major subdivisions, appeals taken from decisions of the Zoning Administrator or staff interpretations of the Zoning Code may be appealed to the City Council. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.

APPLICANT'S SUBMITTAL OF INFORMATION

Submittal of information by a project applicant subsequent to the distribution of the agenda packet but prior to the public hearing may result in a continuance of the subject agenda item to the next regularly scheduled Planning Commission meeting, if the Commission determines that such late submittal compromises its ability to fully consider and evaluate the project at the time of the public hearing.

CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the Planning Commission, provided that any Commissioner, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the Chair may defer action on the particular item and place the same on the regular agenda for consideration in any order s/he deems appropriate.

CORRESPONDENCE

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

HEARINGS

Persons who wish to speak on hearings listed on the agenda will be heard when the hearing is opened, except on hearing items previously heard and closed to public comment. Each public speaker should limit their comments to three (3) minutes or less. The Chair may grant additional time. The project applicant normally shall be the first person to make a presentation when a hearing is opened for public comment. The project applicant's presentation should not exceed ten (10) minutes unless the Chair grants permission for a longer presentation. After the public has commented, the item is closed to further public comment and brought to the Planning Commission level for discussion and action. Further comment from the audience will not be received unless requested by the Commission. No public hearing or hearing shall commence after 11:00 p.m. unless this rule is waived by majority vote of the Commission.

MEETING RECORDS

Planning Commission meetings are available for viewing on the City's website, www.cityofconcord.org and at the Concord Public Library. Copies of DVDs of the Planning Commission Meeting are available for purchase. Contact the Planning Division at (925) 671-3152 for further information.

NOTICE TO THE HEARING IMPAIRED

The Council Chamber is equipped with Easy Listener Sound Amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the Easy Listener Phonic Ear Personal Sound Amplifier from the staff for personal use during Commission meetings.

ROUTINE AGENDA ITEMS AND CONTINUED ITEMS

All routine and continued items will be considered by the Planning Commission at the beginning of the meeting. There will not be separate discussions of these items unless a request is made prior to the time the Planning Commission considers the motions.

SPEAKER'S CARD

Members of the audience who wish to address the Planning Commission should complete a speaker's card available in the lobby or at the front bench. Submit the completed card to staff before the item is called, preferably before the meeting begins.

TELEVISED MEETINGS

All Planning Commission meetings are broadcast live on Astound Broadband channel 29 and Comcast channel 28. The meeting is replayed on the Thursday following the meeting at 8:00 a.m., 2:00 p.m. and 8:00 p.m. Replays are also broadcast on Fridays and Saturdays. Please check the City website, <http://www.cityofconcord.org/about/citynews/tvlistings.pdf> or check the channels for broadcast times.

NEXT PLANNING COMMISSION MEETINGS:

July 6, 2016: 6:30 pm – Council Chamber

July 20, 2016: 6:30 pm – Council Chamber

REGULAR MEETING OF THE
CITY OF CONCORD PLANNING COMMISSION
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA

Wednesday, June 1, 2016

A regular meeting of the Planning Commission, City of Concord, was called to order by Chair Obringer at 6:34 P.M., June 1, 2016, in the City Council Chamber.

I. ROLL CALL

COMMISSIONERS PRESENT: Chair Carlyn Obringer
Vice Chair Jason Laub
Commissioner LaMar Anderson
Commissioner Ray Barbour

STAFF PRESENT: Laura Simpson, Planning Manager
Margaret Kotzebue, Special Counsel
Frank Abejo, Senior Planner
Ray Kuzbari, Transportation Manager

II. PLEDGE TO THE FLAG

Commissioner Barbour led the pledge.

III. PUBLIC COMMENT PERIOD

No public comment was heard.

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

None were announced though Planning Manager Laura Simpson mentioned there is a benched item relating to Woodside Place which will be heard at the June 15th Planning Commission meeting.

V. CONSENT CALENDAR

No public comment was heard.

APPROVAL OF MINUTES

Motion was made by Vice-Chair Laub, and seconded by Commissioner Barbour to approve the meeting minutes of May 18, 2016. The motion was passed by the following vote:

AYES: Laub, Barbour, Anderson, Obringer
NOES: None
ABSTAIN: None
ABSENT: None

VI. PUBLIC HEARINGS

There were none.

VII. STUDY SESSION

Veranda Shopping Center (PL15466 – TA, UP, RT, DR) – Frank Abejo, Senior Planner @ (925) 671-3128

Senior Planner, Frank Abejo, presented the report and answered questions from the Planning Commissioners.

Jerry Hittleman, of Rincon, clarified a question from the Commission about the signs associated with CenterCal.

Transportation Manager, Ray Kuzbari, clarified a question pertaining to bike lanes and Diamond Boulevard.

Jeff Hill, from CenterCal Properties, explained the project background and answered questions from the Planning Commission.

Rob Budetti, architect from Architects Orange, explained the architecture associated with the project.

VIII. COMMISSION CONSIDERATIONS

There were none.

IX. STAFF REPORTS / ANNOUNCEMENTS

There were none.

X. COMMISSION REPORTS/ANNOUNCEMENTS

Chair Obringer announced the upcoming Fourth of July parade and how to be a participant or volunteer for the event.

XI. FUTURE PUBLIC HEARING ITEMS

Planning Manager Laura Simpson announced the June 15 Planning Commission meeting will contain several items including a continued Appeal of the Concord Recycling Center, a Rezoning amendment from Concord Mazda, and a proposal to revise the Inclusionary Housing Ordinance pertaining to the affordable housing development fee and that Andrew Mogensen will be sitting in for her at that meeting.

Robert Lane, from the Faith Alliance for Moral Economy, announced an upcoming forum titled “Raise the Roof!” which will address the housing crisis in Concord on Saturday, June 25th from 9 am to 12:30 pm at Saint Bonaventure Catholic Church.

XII. ADJOURNMENT

Commissioner Barbour moved to adjourn at 9:00 P.M. Vice Chair Laub seconded the motion. Motion to adjourn was passed by unanimous vote of the Commissioners present.

APPROVED:

Laura Simpson
Planning Commission Secretary
Planning Manager

Transcribed by Grant Spilman,
Administrative Coordinator

DRAFT



REPORT TO PLANNING COMMISSION

DATE: June 15, 2016

SUBJECT: CONSIDERATION OF PLEASANT PAPER RECYCLING INC.'S (DBA "CONCORD RECYCLING CENTER") APPEAL OF A PLANNING DIVISION INTERPRETATION OF CONCORD DEVELOPMENT CODE SECTION 18.40.010(D) REGARDING OUTDOOR STORAGE IN THE SERVICE COMMERCIAL (SC) ZONING DISTRICT.

Recommendation: Adopt Resolution 16-03PC (Exhibit A) denying the appeal.

I. Introduction

The request before the Planning Commission is an appeal of the Planning Division's interpretation of Development Code Section 18.40.010(D). The business/property owner, Shusheng "Harry" Luan ("Appellant") operates Pleasant Paper Recycling, Inc. dba Concord Recycling Center, a legal non-conforming processing facility approved by the Planning Commission through Use Permit 01-00 for 1320 and Use Permit 03-11 for 1313 Galaxy Way ("Use Permits" Exhibits H and I, respectively), both established under the prior Zoning Ordinance before the 2012 Development Code ("Development Code") became effective. Through his attorney, the Appellant explains his position that new Development Code Section 18.40.010(D) automatically enables outdoor storage for their business in the Service Commercial (SC) zoning district.

The appeal by Concord Recycling Center was submitted following a series of correspondence between the Appellant's attorney and City staff stemming from a Notice of Violation (CE150444) issued by the Code Enforcement Division on September of 2015. The Notice of Violation contains a number of corrections related to outdoor storage (among other things) pursuant to the conditions of Use Permits 01-00 and 03-11. This is not a code enforcement hearing, and matters unrelated to Appellant's compliance with applicable outdoor storage requirements are not before the Planning Commission at this time.

Because this matter involves the application of the Development Code to facts specific to the use permits for the 1320 and 1313 Galaxy Way sites, the Planning Commission's consideration of and decision on the appeal is a quasi-judicial action, and would amount to an amendment of the Use Permits with respect to outdoor storage.

The Planning Commission continued this item from their February 17, 2016 meeting and again from their March 16, 2016 meeting in order to allow the appellant time to work on a potential solution for outdoor storage at their recycling business. At the February meeting, staff recommended the Planning Commission deny the appeal but allow the Appellant time to prepare a proposal and exhibits to potentially amend their two existing Use Permits through this appeal process, rather than going through the process of submitting a separate formal Amended Use Permit application at a later date.

Staff met with the appellant on Wednesday, February 24th at City Hall and made a site visit to the property on the morning of Thursday, February 25th. Following those meetings, the appellant submitted plans on Thursday, May 5th (Exhibit B).

A. Request

Appeal of the Planning Division's January 5, 2016 interpretation that new Development Code Section 18.40.010(D) as it pertains to outside storage does not apply to 1313 and 1320 Galaxy Way properties (Exhibit F, "Interpretation").

B. Location

Appellant operates its processing facilities at and owns 1313 and 1320 Galaxy Way, APNs 126-020-073 and 126-451-007. The two parcels that comprise the business are located across the street from one another. Both parcels are within the Service Commercial (SC) zoning district.

C. Appellant

J. Garret Deal, Esq., on behalf of
Shusheng "Harry" Luan
1313 & 1320 Galaxy Way
Concord, CA 94520

Business Owner(s)

Shusheng Luan
5017 Mildred Road
Martinez, CA 94553

II. Background

The Appellant operates processing facilities at 1320 and 1313 Galaxy Way. The Planning Commission approved Use Permit 01-00 for 1320 Galaxy Way on March 15, 2001. A few years later, the Planning Commission approved Use Permit 03-11 (under Resolution 03-18PC) for Concord Recycling Center's expansion into a second building located across the street at 1313 Galaxy Way because the Center could not maintain operations within the existing building.

Each property received its zoning entitlements under former CMC Section 122 ("Zoning Ordinance"). Both properties are located in the former Special Light Industrial (SLI) zoning district, which, subject to securing a Zoning Administrator's permits, allowed recycling facilities when conducted within a building [Former CMC Sec. 122-522(b)(7)]. Subject to securing a conditional use permit, storage was allowed [Former CMC Sec. 122-522(c)(3)]. Use permits would have been approved at the Planning Commission level. Junkyards, storage or baling of scraps, paper, rags, sacks, or metals, not including recycling centers conducted inside a building, were prohibited at the time. Former CMC Sec. 122-522(d)(2).

The Use Permits contain specific conditions of approval (COA) prohibiting the outdoor storage and outdoor sorting of materials (specifically UP 01-00 COA #2 and UP 03-11 COA #11 and 12). Use Permit 03-11 COA #11 allows the applicant to temporarily store "*a maximum of three, empty metal, shipping-style containers in the east side yard for a period not to exceed 24 hours*" at 1313 Galaxy

Way.¹ During both of those hearings, Staff noted in the record that all storage and processing would occur indoors.

In 2012, the City Council approved a new Development Code which eliminated processing facilities and created certain limited outdoor storage rights in the newly established Service Commercial zoning district. Since that time, Appellant has continued operations at both sites as a legal non-conforming use under Development Code Section 18.530 (Nonconforming Uses, Structures, and Parcels) but is prohibited from further expansion.

Appellant's attorney submitted a letter to the City of Concord dated October 29, 2015 (Exhibit C), articulating the position that the Service Commercial zoning district enables them to have outdoor storage, which in effect nullified outdoor storage prohibitions mandated by the Use Permit 01-00 and 03-11. On November 18, 2015, the City notified the Appellant in writing (Exhibit D) that they had the option to revisit the conditions of their Use Permits that regulate outdoor storage through an Amended Use Permit application. This process would allow the Planning Commission to reconsider all of the facts pertaining to the business's operations in relation to outdoor storage at a public hearing.

On December 30, 2015, Concord Recycling Center submitted a letter (Exhibit E) to the City requesting an interpretation of Section 18.40.010(D). That letter reiterated their position that changes in the Development Code now allowed outdoor storage at their business because the newly defined "purpose" of the Service Commercial District, as set forth in subsection (D), stated that "the district provides areas for that typically require outdoor storage and activities with higher volumes of truck traffic, noise and visual impacts." Concord Recycling Center contends that because "outdoor storage" was included in the code's description of "typical uses" for this district, outdoor storage was automatically permitted for their business.

On January 5, 2016, Planning Manager Laura Simpson provided an Interpretation in response to Concord Recycling Center's request. The Interpretation concluded that Concord Recycling Center was expressly not allowed to conduct outdoor storage at either site pursuant to the conditions of their existing Use Permits. In addition, Ms. Simpson pointed out that their "processing facility" was now considered a legal, non-conforming use under the 2012 Development Code and that the use could not now be enlarged or expanded. Ms. Simpson also advised Concord Recycling Center that they could submit an application to amend their existing User Permit to allow outdoor storage and she also notified them of their appeal rights of her Interpretation. (Exhibit F "Interpretation").

On January 11, 2016, the Appellant filed a formal Notice of Appeal referencing the Interpretation (Exhibit G "Appeal"), asserting that the Development Code automatically allows outdoor storage in the Service Commercial (SC) zoning and negates any existing use permit prohibitions on outdoor storage.

As stated above, following the two Planning Commission meetings (on February 17, 2016 and March 16, 2016), staff worked with Appellant to determine if a solution could be reached on Applicant's wish to use outdoor storage at the property and to consider whether the existing Use Permits could be amended to provide for outdoor storage as requested by Appellant.

¹ But see further discussion below under Section V.D, "Use Permit Amendments."

Staff met with the appellant on Wednesday, February 24th at City Hall and made a site visit to the property on the morning of Thursday, February 25th. The appellant agreed to develop and submit plans to identify a potential screening solution that could conform to the conditions of approval under Use Permits 1-00 and 03-011. Those plans were submitted to the Planning division on May 5, 2016 and are attached to this staff report as Exhibit B.

III. General Information

A. General Plan

The General Plan designation in 2000 and 2003, at the time the Planning Commission approved the Use Permits, was Industrial/Business Park. The current General Plan designation is SC (Service Commercial).

B. Zoning

At the time the Use Permits were approved, the sites were zoned Special Light Industrial and processing facilities were allowed, including with outdoor storage subject to certain requirements as this report discusses in Section II. Background, above. The site is currently zoned SC (Service Commercial) and processing facilities are prohibited unless they are legal non-conforming uses.

C. CEQA² Status

The Planning Commission's consideration of and action on the Appeal and potential amendments of Use Permit 01-00 for 1320 Galaxy Way and Use Permit 03-11 for 1313 Galaxy Way allowing outdoor storage pursuant to Development Code Sections 18.200.170(D) and (E) does not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities they fall within the "common sense" CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Moreover, even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures) because, among other things, they involve minor alterations to existing facilities, replacement or reconstruction of existing facilities, and construction and location of limited numbers of new small facilities or structures, all as further detailed in this staff report and attachments hereto.

² California Environmental Quality Act of 1970, Public Resources Code § 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA.")

IV. Description of Business

Concord Recycling Center consists of two processing facilities located at 1313 and 1320 Galaxy Way. The facilities accept both commercial (large-scale) and residential (small-scale) deliveries of materials including scrap metals, e-waste, clothing, California Redemption Value (CRV) materials, and non-CRV plastics. According to the information identified in their existing Use Permits, residential drop off of material is conducted at their 1320 Galaxy Way building. Large commercial deliveries are accepted and processed across the street at 1313 Galaxy Way. Processing takes place wholly within their two existing warehouses which are 27,200 and 18,480 square feet in size respectively.

After employee and customer parking areas, driving aisles, and fire clearances are accounted for, both properties have a very limited amount of available space for outdoor storage. Use Permit 01-00 identifies 21 parking spaces at 1320 Galaxy Way, while Use Permit 03-11 identified 32 parking spaces at 1313 Galaxy Way. Use Permit 03-11 COA #11 allows up to three empty containers to be stored for up to 24 hours within the 40'x100' yard located on the east side of the building located at 1313 Galaxy Way. The space available for outdoor storage at 1320 Galaxy Way is limited to a 20'x100' rear yard which is faced by the building's two rear roll-up doors.

V. Analysis

Appellant seeks general outdoor storage rights pursuant to Development Code Section 18.40.010(D) (Exhibit E), which describes the purpose of the Service Commercial zoning district as follows:

Section 18.40.010, Purpose

D. SC – Service Commercial. The SC district is applied to areas of the city appropriate for commercial uses such as automobile services, auto-oriented uses, light industry, contractors' yards, and building materials storage, at up to 0.8 FAR. The SC district also allows retail, personal service, restaurant, and offices uses. The SC district is found on Monument Boulevard, Detroit Avenue, Cloverdale Avenue, on the east side of Market Street south of Concord Avenue, and Galaxy Way at Via de Mercados. The SC district provides areas for uses that typically require outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts. The SC district is consistent with and implements the service commercial (SC) land use designation of the general plan.

The Interpretation concluded that such general outdoor storage rights were an impermissible expansion of a legal non-conforming use. Appellant has appealed the Interpretation and submitted prior correspondence as evidence supporting their position:

- Correspondence from the Appellant dated October 29, 2015 (Exhibit C)
- Correspondence from the City dated November 18, 2015 (Exhibit D)
- Correspondence from the Appellant dated December 30, 2015 (Exhibit E)
- Correspondence from the City dated January 5, 2016 (Exhibit F, Interpretation)
- Notice of Appeal filed on January 11, 2016 (Exhibit G, Appeal)

Appellant did not request an interpretation as to whether it should be accorded limited outdoor storage rights pursuant to Development Code Sections 18.200.170(D) and (E).

On January 29, 2016, City staff advised the Appellant that their appeal of the Zoning Interpretation amounts to a de facto request to amend the Use Permits as to outdoor storage (Exhibit H) and that the Planning Commission has discretion to deny the appeal but to amend the Use Permits in order to allow outdoor storage, pursuant to Development Code Sections 18.200.170(D) and (E).

The Planning Commission held a public hearing on February 17, 2016 to consider the Appellant's request. At the February hearing staff recommended the Planning Commission deny the appeal and impose conditions to allow the Appellant to submit an application to amend the Use Permits in order to allow outdoor storage, pursuant to Development Code Sections 18.200.170(D) and (E). Staff recommended this action be completed within four months of the decision due to the pending Code Enforcement action, which has been delayed since November of 2015 in order to accommodate this appeal.

At the February 17, 2016, Planning Commission hearing, the Appellant requested and was granted a continuation of the hearing to March 16, 2016, so that they could prepare a potential solution to amend their existing Use Permits in accord with Development Code Sections 18.200.170(D) and (E) prior to the Planning Commission's decision. The Appellant did not produce a solution by the March 16, 2016 hearing date and again requested a continuation. The Planning Commission granted a continuation of the Appeal to a date uncertain.

The Appellant submitted plans to the Planning Division on May 5, 2016 (Exhibit B) which were reviewed by staff for conformance with the Development Code, particularly Sections 18.200.170(D) and (E).

Outdoor storage is governed by Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), at Subsections B (Large Collection Facilities), D (Processing Facilities) and/or E (All Collection and Processing Facilities). These sections provide for certain requirements for outdoor storage, including but not limited to location and screening restrictions for the outdoor storage.

Staff found the submitted plans to be incomplete, out of conformance with the Development Code requirements, and lacking the level of detail necessary for the purpose of amending the Appellant's Use Permits. For instance, the submitted plans did not identify sight-obstructing screening gates and the proposed chain link fencing with vinyl slats is considered inadequate for screening purposes and prohibited when visible from a public right-of-way under Section 18.150.040.

Following a review of the plans (Exhibit B), staff contacted the Appellant on May 12, 2016 and recommended they revise and resubmit their proposed plans prior to Planning Commission consideration. The Appellant requested the Appeal instead move forward without further revisions to the plans.

A. Authority Regarding Interpretation of the City's Ordinances

The Use Permits were approved at the Planning Commission level; consequently, the Planning Division and Zoning Administrator do not have the authority to effectively amend those Use Permits by allowing outdoor storage. However, the Planning Commission does have that ability, and the Planning Division advised the Appellant that the Appeal could be heard before the Planning Commission as a de facto Use Permit amendment request (Exhibit H). Although the appellant had initially agreed to that approach (Exhibit K, Tuesday 2/2/2016 3:59 PM email from J. Garrett Deal, Esq.), staff found the submitted plans dated May 5, 2016 (Exhibit B) to be inadequate for the purpose of amending their Use Permits.

The Development Code constitutes Title 18 of the Concord Municipal Code. Cities have broad latitude to interpret their own municipal codes³ and courts will follow an agency's interpretation of its own laws and regulations unless clearly erroneous or unauthorized.⁴ Concord's interpretation of its Development Code is subject to this deference.⁵ As detailed below, the City has satisfied applicable legal requirements with respect to both the Interpretation, and in connection with the analysis in this staff report.

Per Development Code Section 18.10.060, the Planning Division is enabled to interpret any provision of the development code or its application to a specific site. Planning Division decisions are appealable to the Zoning Administrator, but may be referred to the Planning Commission, as is the case here (Development Code Sec. 18.510).

Because the Planning Commission's review of this matter on appeal is "de novo" under Development Code Section 18.510.050(C), the Planning Commission may consider new materials and testimony in addition to the original application, plans, and related project materials that were the subject of the original decision.

B. Development Code Land Use Classifications.

Although the Service Commercial zoning district now contains regulations that permit outdoor storage and activities for certain specific land uses, the regulations do not provide a blanket allowance. Instead, Table 18.40.020 expressly identifies Outdoor Storage as being permitted in the Service Commercial zoning district under certain conditions when associated with specific land uses. Table 18.40.020 (page 8) references additional requirements where applicable.

³ See *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021; *MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219.

⁴ See *Carson Harbor Village v. City of Carson* (1999) 70 Cal.App.4th 281, 287.

⁵ *Concord Development Code §18.10.060*; See *Dept. of Health Services of County of Los Angeles v. Civil Service Commission* (1993) 17 Cal.App.4th 487, 494.

Table 18.40.020 Office and Commercial Districts (Excerpt) Allowed Uses and Permit Requirements						ZC – Permitted Use, Zoning Clearance AP – Administrative Permit Required MP – Minor Use Permit Required UP – Use Permit Required – Use Not Allowed
Land Use Classifications	Permit Required by District					Additional Requirements
	CO	CMX	NC	SC	RC	
Recycling Facilities						
Small Collection Facility	–	–	AP	AP	AP	CDC 18.200.170, Recycling facilities
Large Collection Facility	–	–	–	UP	–	CDC 18.200.170, Recycling facilities
Processing Facility	–	–	–	–	–	CDC 18.200.170, Recycling facilities

C. Interpretation Letter

Appellant asserts that the 2012 Development Code’s creation of the Service Commercial zoning district and allowing outdoor storage in that district automatically supplants those aspects of their Use Permits prohibiting, and that Development Code Section 18.40.010(D) allows Appellant the right to unencumbered outdoor storage.

However, the Development Code concurrently eliminated processing facilities in the Service Commercial zoning district. While Appellant’s processing facilities may continue operations as a legal non-conforming use under Development Code Chapter 18.530 of the Development Code, that chapter also contains specific provisions which limit expansion of legal non-conforming uses, all as further detailed in the Interpretation.

Appellant narrowly reads Development Code Section 18.40.010(D) (Purpose), which contains an establishing statement indicating the nature and type of uses that are typically found in the Service Commercial district. However, Development Code Chapter 18.40 at Table 18.40.020, imposes additional outdoor storage requirements on recycling facilities (under which use category Appellant’s processing facilities fall). Development Code Chapter 18.200 (Standards for Specific Uses) at Sections 18.200.170(D) and (E), (Recycling Facilities) also contains specific provisions under which processing facilities and recycling centers may have limited outdoor storage. Appellant did not request an interpretation as to whether it should be accorded such outdoor storage thereunder.

The City has a special interest in regulating outdoor storage to prevent nuisances and protect public health, and a legal obligation to enforce stormwater pollution control. Stormwater runoff from materials stored outdoors at a processing facility are not the same as those stored at a commercial nursery or a business selling building materials. For these reasons, it is

important to maintain the authority to be able to evaluate and determine appropriate conditions of approval for outdoor storage on a case by case basis.

D. Use Permit Amendments

At the February 17, 2016 meeting (and again at the March 16, 2016 meeting), the Planning Commission provided Appellants with the opportunity to amend the existing Use Permits to allow outdoor storage, in conformance with subsections (D) and (E) of Development Code Section 18.200.170.

Under today's Development Code definitions, based on their operations, both the 1320 and 1313 Galaxy Way facilities would be considered "processing facilities" and thus could be considered legal non-conforming uses since processing facilities are no longer allowed at those locations. However, the previous Zoning Ordinance did not differentiate between types of recycling facilities so that facilities which would be characterized as processing facilities under the current Development Code,⁶ were subject to the same standards as all recycling facilities.

The Planning Commission issued the Use Permits for each property. It appears from the applicable staff reports that limited outdoor storage was contemplated, as detailed below, which may have been the reason Planning Commission, rather than Zoning Administrator, approvals were secured.

- 1320 Galaxy Way. On March 15, 2000, the Planning Commission approved Use Permit 1-00 for a paper, plastic, glass, and metal recycling facility. A copy of that approval is attached as Exhibit I and incorporated by reference. Although Condition of Approval #2 states that "there shall be no outside storage or sorting of any recycled materials" the staff report acknowledged that outdoor storage would occur. Specifically, the March 15, 2000 staff report at page 3 acknowledged that loading of recycled materials "could not be accomplished within the building," and that staff considered outdoor storage of empty containers "acceptable but would prefer the loaders to be stored inside the building when not in use." It is our understanding that the 1320 Galaxy Way facility has availed itself of those limited outdoor storage exceptions since the project was established.
- 1313 Galaxy Way. On August 6, 2003, the Planning Commission passed Resolution 03-18 PC approving Use Permit 03-011 for a recycling facility within a two story building. A copy of that approval is attached as Exhibit J and incorporated by reference. Condition of Approval #11 prohibits outdoor storage and/or sorting of recyclable materials, plastic storage

⁶ Development Code Section 18.20 defines various type of recycling facilities as follows:

Recycling Facilities. "Small collection facility" means a facility that occupies less than 500 square feet and may include a mobile unit, single and bulk reverse vending machines, kiosk-type units that may include permanent structures, and unattended containers placed for the donation of recyclable materials. "Large collection facility" means a facility that occupies more than 500 square feet and may include permanent structures as well as mobile units, bulk reverse vending machines, and kiosk-type units. "Processing facility" means a building or enclosed space that includes equipment for baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials, except ferrous metals other than food and beverage containers. This classification includes both light- and heavy-processing facilities, the former of which is typically less than 45,000 square feet.

containers, bins, and palettes, but provides an exception for storage of three empty metal shipping containers for a period of 24 hours from delivery. However, Condition of Approval #12 provides that "at the end of each business day, nothing shall be stored outside of the warehouse building including all trucks, trailers, empty dumpsters, contains, bin, pallets, loose paper, scrap metal, glass, and the like" thus suggesting that outdoor storage during business hours is permitted. The August 6, 2003 staff report supports the concept that the limits on outdoor storage were flexible in that page 4 describes outdoor delivery and storage of containers filled with materials as well as empty containers, and page 7 allows 24 hour outdoor storage of three empty metal shipping containers (COA #11).

Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities) provides as follows:

18.200.170(D) Processing Facilities

1. Processing facilities shall be located at least 500 feet from an R district or residential use.
2. Processors shall operate in a fully enclosed building, except for incidental storage, or within an area enclosed on all sides by a solid masonry wall not less than eight feet in height and landscaped on all street frontages.
3. If the facility is open to the public, parking shall be provided for a minimum of 10 customers or the peak load, whichever is higher, unless otherwise approved by the review authority.
4. One parking space shall be provided for each commercial vehicle operated by the processing center, in addition to the parking required in Table 18.160.040, Parking Requirements by Land Use.
5. Power-driven processing shall be permitted, provided all noise-level requirements are met.

18.200.170(E) All Collection and Processing Facilities.

1. No facility or storage area shall occupy a required front or corner side yard, and all requirements applicable to the principal structure on the site shall apply to collection and processing facilities except as otherwise provided in this section.
2. A large collection or processing facility may accept used motor oil for recycling from the generator in compliance with California Health and Safety Code Section 25250.11.
3. All exterior storage of material shall be in sturdy containers or enclosures that are fully covered, secured, and maintained in good condition. Storage containers for flammable material shall be constructed of nonflammable material. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing.

4. Noise levels generated by the facility shall not exceed 60 decibels (dBA) as measured at the property line of an R district or otherwise shall not exceed 70 dBA.
5. All facilities shall be administered by on-site personnel during hours the facility is open. If a large collection or processing facility is located within 500 feet of an R district, it shall not be in operation between the hours of 7:00 p.m. and 8:00 a.m.
6. The site of the facility shall be kept free of litter and any other undesirable material. Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.
7. Except as otherwise provided herein, sign regulations shall be those provided for the district in which the facility is located. In addition, each facility shall be clearly marked with the name and phone number of the facility operator and the hours of operation.
8. No facilities shall collect household waste or flammable waste products.
9. No dust, fumes, smoke, vibration, or odor above ambient levels may be detectable on neighboring properties.

Staff has acknowledged that the appellant has a history of code enforcement actions against each of its sites. Some involve the question of the scope of outdoor storage allowed; those issues would be resolved should the Planning Commission find that limited outdoor storage is permitted pursuant to Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), at Subsections D (Processing Facilities) and E (All Collection and Processing Facilities). As indicated in the Development Code excerpt above and discussed at the February 17, 2016 Planning Commission hearing, in order to avail itself of limited outdoor storage, the Appellant was required to demonstrate that all exterior storage of material would be kept within an area enclosed on all sides by a solid masonry wall not less than eight feet in height and landscaped on all street frontages. Visibility into the storage areas was required to be screened with a solid, sight-obstructing fence. All materials are required to be in fully covered, sturdy containers or enclosures. No outdoor storage, excluding truck trailers and overseas containers, could be visible above the height of the fencing. Furthermore, no facility or storage area could occupy a required front or corner side yard.

As indicated above, on May 5, 2016, the Appellant submitted plans to the City as an attempt to comply with the outdoor storage regulations imposed by Section 18.200.170(D) and (E) (Exhibit B).

After reviewing the submitted May 5, 2016 plans, staff does not believe that the Appellant has adequately demonstrated that the above screening requirements will be met. The submitted plans do not identify that the site will be enclosed on all sides by a solid masonry wall not less than eight feet in height in accord with Section 18.200.170(D). The Appellant's submitted

plans identify chain link fencing with vinyl slats along the entire perimeter of 1320 Galaxy Way and no gate at the entry. A masonry block wall is proposed along a portion of 1313 Galaxy Way, but no design for a screening gate has been identified and the precise location of a wall along the street frontage is unclear. After reviewing the plans, Staff offered the Appellant the opportunity to revise the plans further, but they declined and requested this item instead move forward for Planning Commission consideration.

VI. Public Contact

Notification of the hearing for this continued item was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel, and has been published in the Contra Costa Times, as required by the Concord Municipal Code. This item was posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

Staff received one email addressed to the Planning Commission regarding the proposed appeal from a neighboring business prior to the filing of this staff report (Exhibit L).

VII. Summary and Recommendations

General outdoor storage is only permitted for certain specified land uses within the Service Commercial zoning district. The permitting process exists because it is in the interest of the City to be able to review and consider the unique conditions of outdoor storage on a case by case basis.

Processing facilities are no longer an allowed use in the Service Commercial District. The Appellant has the right to continue their operations as a legal non-conforming use but must also continue to adhere to the conditions of approval within their Use Permits. Changes in the 2012 Development Code do not automatically apply to Appellant because their operations constitute a legal non-conforming use that cannot be expanded or intensified without an amendment to the Use Permits.

Staff respectfully recommends that the Planning Commission deny Concord Recycling Center's Appeal. This action would have the effect of requiring the Appellant to continue to adhere to the existing conditions of approval under their established Use Permits (UP 01-00 (1320 Galaxy Way) and UP 03-13 (1313 Galaxy Way) . Should the Appellant fail to comply with those conditions, the City, in its sole discretion, may initiate use permit revocation proceedings.

Staff recommends the Commission deny the Appeal by adopting the attached Resolution.

VIII. Motion

Denial of Appeal and Amendment of Use Permits With Respect to Outdoor Storage

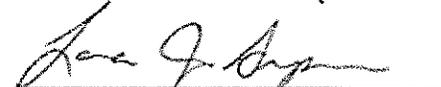
I (Comm. _____) hereby move that the Planning Commission adopt Resolution 16-03PC denying the Pleasant Paper Recycling Inc.'s (dba "Concord Recycling Center") Appeal. (Seconded by Comm. _____.)

Prepared by:



Andrew J. Mogensen, AICP
Principal Planner
andrew.mogensen@cityofconcord.org

Reviewed by:



Laura Simpson
Planning Manager
laura.simpson@cityofconcord.org

Exhibits:

- A. Planning Commission Resolution 16-03PC
- B. Appellant's Proposed Screening Plans, dated May 5, 2016
- C. Correspondence from the Appellant dated October 29, 2015
- D. Correspondence from the City dated November 18, 2015
- E. Correspondence from the Appellant dated December 30, 2015
- F. Correspondence from the City dated January 5, 2016 (Interpretation)
- G. Filed Notice of Appeal dated January 11, 2016 (Appeal)
- H. Correspondence from the City dated January 29, 2016
- I. Use Permits 00-1 (Staff Report and Approval)
- J. Use Permits 03-11 (Staff Report and Resolution)
- K. Tuesday 2/2/2016 3:59 PM email from J. Garrett Deal. Esq
- L. Email dated June 7, 2016 from General Manager of Royal Wholesale Electric

1 **WHEREAS**, the Concord Development Code became effective on August 23, 2012, at which
2 time the zoning designation for the Site changed from Special Light Industrial (SLI) to Service
3 Commercial (SC); and

4 **WHEREAS**, the current use of the properties constitutes a “processing facility” under the
5 Concord Development Code. Section 18.40.020, Table of Permitted Uses, prohibits processing
6 facilities in the Service Commercial zoning district, thus rendering Appellant’s processing facilities
7 legal non-conforming uses; and

8 **WHEREAS**, Concord Development Code Section 18.530.020 provides that a use of land that
9 was legally established and has been maintained prior to the adoption or amendment of the
10 development code may be continued; and

11 **WHEREAS**, after analysis of relevant facts and provisions of the Development Code in its
12 entirety, the Planning Division determined that Section 18.40.010(D) establishes the purpose of the
13 Service Commercial zoning district but does not contain provisions enabling or regulating the use of
14 outdoor storage for processing facilities; and

15 **WHEREAS**, other sections of the Development Code contain specific provisions regulating
16 the allowed use of outdoor storage for processing facilities; and

17 **WHEREAS**, the Planning Division further determined that all conditions of approval
18 established under the facility’s Use Permits continue to be valid and applicable to the Site; and

19 **WHEREAS**, Appellant did not request an interpretation as to whether it should be accorded
20 limited outdoor storage rights pursuant to Development Code Sections 18.200.170.D. and E; and

21 **WHEREAS**, on January 5, 2016, the Planning Division issued an official interpretation that
22 Concord/Pleasant Hill Recycling Center is classified as a Processing Center, a use which is not
23 allowed under the Service Commercial (SC) zoning that applies to the subject property at 1320 and
24 1313 Galaxy Way. Because the use was approved via the Use Permits prior to the SC zoning
25 designation in 2012, the current use is legal non-conforming. Legal non-conforming uses may not be
26 expanded or intensified, and can continue to exist only in compliance with the original permit
27 approval. Furthermore, Development Code Chapter 18.200 (Standards for Specific Uses) at Sections
28

1 18.200.170.D. and E., contains specific provisions under which processing facilities and recycling
2 centers may have limited outdoor storage (“Interpretation”); and

3 **WHEREAS**, on January 11, 2016, Appellant appealed the Planning Division’s interpretation,
4 specifically requesting an “Interpretation of Concord Municipal Code Section 18.40.010(D)
5 prohibiting outside storage.”; and

6 **WHEREAS**, on January 29, 2016, City staff advised the Appellant that their appeal of the
7 Zoning Interpretation amounts to a de facto request to amend the Use Permits as to outdoor storage
8 (Exhibit F) and that the Planning Commission has discretion to deny the appeal but to amend the Use
9 Permits in order to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and
10 E; and

11 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
12 and the Concord Municipal Code, held a duly noticed public hearing on February 17, 2016 to consider
13 the Concord Recycling Center Appeal (PL1600011); and

14 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
15 testimony, materials, and information received, including the oral reports from City staff and
16 Appellant, the written report from City staff dated February 17, 2016 and all attachments thereto, the
17 Appeal, exhibits of correspondence presented, and all other pertinent plans, documents, testimony,
18 other materials, and information contained in the record of proceedings relating to the Use Permits,
19 the Interpretation, and the Appeal, which are maintained at the offices of the City of Concord Planning
20 Division (collectively, “Record”); and

21 **WHEREAS**, the Planning Commission continued the public hearing to March 16, 2016 to
22 allow the Appellant time to propose a potential solution to resolve issues with outdoor storage at the
23 processing facility; and

24 **WHEREAS**, at the March 16, 2016 Planning Commission hearing, the Appellant requested
25 and was granted a continuance by the Planning Commission to a date uncertain in order to allow them
26 additional time to continue working on a potential solution; and

27 **WHEREAS**, the Appellant submitted a set of site plans and material examples for the
28

1 Planning Commission's consideration on May 5, 2016; and

2 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
3 and the Concord Municipal Code, again held a duly noticed public hearing on June 15, 2016 to
4 consider the Appeal; and

5 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
6 testimony, materials, and information received, including the oral reports from City staff and
7 Appellant, written reports from City staff dated February 17, 2016, March 16, 2016, and June 15,
8 2016, and all attachments thereto (collectively, "Staff Report"), the Appeal, exhibits of
9 correspondence presented, the Appellant's proposed plans submitted on May 5, 2016, public
10 comments, and all other pertinent plans, documents, testimony, other materials, and information
11 contained in the record of proceedings relating to the Use Permits, the Interpretation, and the Appeal,
12 which are maintained at the offices of the City of Concord Planning Division (collectively, "Record");
13 and

14 **WHEREAS**, on June 15, 2016, the Planning Commission, after consideration of all pertinent
15 plans, documents and testimony, including the Appellant's proposed plans dated May 5, 2015,
16 declared their intent to deny the Appeal (PL1600011) pursuant to the conditions of the Appellant's
17 existing Use Permits and Development Code Sections 18.200.170.D. and E.

18 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission
19 does hereby make the following findings:

20 General

- 21 1. The recitals above are hereby incorporated in to the findings by reference.
- 22 2. The Planning Commission has reviewed, considered, and evaluated the Record.
- 23 3. The Planning Commission's decision is based on its interpretation of the Development Code
24 and the land use aspects of outdoor storage with respect to Appellant's processing facility use at the
25 Site and the Use Permits; the Planning Commission has not based its decision on any actual or alleged
26 code enforcement violations, as those matters are within the purview of and are being reviewed by the
27 Concord Police Department's Code Enforcement Division.

1
2 CEQA

3 4. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §
4 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the
5 California Code of Regulations (collectively, “CEQA”), the Planning Commission’s consideration of
6 and action on the Appeal, and amendments of Use Permit 01-00 for 1320 Galaxy Way and Use Permit
7 03-11 for 1313 Galaxy Way allowing outdoor storage pursuant to Development Code Sections
8 18.200.170.D. and E, action does not constitute a “project” within the meaning of Public Resources
9 Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has
10 no potential for resulting in either a direct physical change in the environment, or a reasonably
11 foreseeable indirect physical change in the environment. Even if such activities did constitute a
12 project under CEQA, the activities fall within the “common sense” exemption set forth in 14 Cal Code
13 Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no
14 possibility that the activity in question may have a significant effect on the environment....”
15 Moreover, even if the activities did not qualify for the common sense exemption, they are exempt
16 pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or
17 Reconstruction), and 15303 (New Construction or Conversion of Small Structures) because, among
18 other things, they involve minor alterations to existing facilities, replacement or reconstruction of
19 existing facilities, and construction and location of limited numbers of new small facilities or
20 structures, all as further detailed in the staff report and attachments thereto.

21 5. The foregoing CEQA determination reflects the independent judgment and analysis of the City
22 as the lead agency for this matter.

23 Appeal

24 6. The Planning Commission does hereby deny Pleasant Paper Recycling Inc.’s (dba “Concord
25 Recycling Center”) Appeal, pursuant to Development Code Sections 18.200.170.D. and E.:

26 i. Concord Recycling Center is classified as a “Processing Facility,” a use which is not
27 allowed under the Service Commercial (SC) zoning designation that applies to the subject property at
28

1 1320 and 1313 Galaxy Way. A “Processing Facility” is defined in Section 18.20.020 to mean “a
2 building or enclosed space that includes equipment for baling, briquetting, crushing, compacting,
3 grinding, shredding and sorting of source-separated recyclable materials, except ferrous metals other
4 than food and beverage containers. This classification includes both light- and heavy-processing
5 facilities, the former of which is typically less than 45,000 square feet”; and

6 ii. Concord Recycling Center’s Use Permits 1-00 and 03-11 were approved prior to the
7 Service Commercial (SC) zoning designation in 2012 and the current use of a Processing Facility is
8 legal non-conforming. Legal non-conforming uses may not be expanded or intensified, and can
9 continue to exist only in compliance with the original Use Permit approvals; and

10 iii. As a legal non-conforming use, Concord Recycling Center has continued to exercise its
11 authority to operate under the Use Permits, and must also accept the permits’ burdens (conditions of
12 approval); and

13 iv. Concord Development Code Section 18.40.010(D) establishes the Purpose of the
14 Service Commercial zoning district and does not contain provisions enabling or legalizing the use of
15 outdoor storage. Other provisions of the Development Code such as Chapter 18.40 at Table 18.40.020
16 and Sections 18.200.170.D. and E. contains specific provisions for limited outdoor storage.

17 Effective Date

18 7. In accordance with City of Concord Municipal Code Section 18.500.080, approvals, or other
19 decisions of the Planning Commission shall become effective on the 11th calendar day following the
20 date the decision is rendered, if no appeal is filed.

21 **PASSED AND ADOPTED** this 15th day of June, 2016, by the following vote:

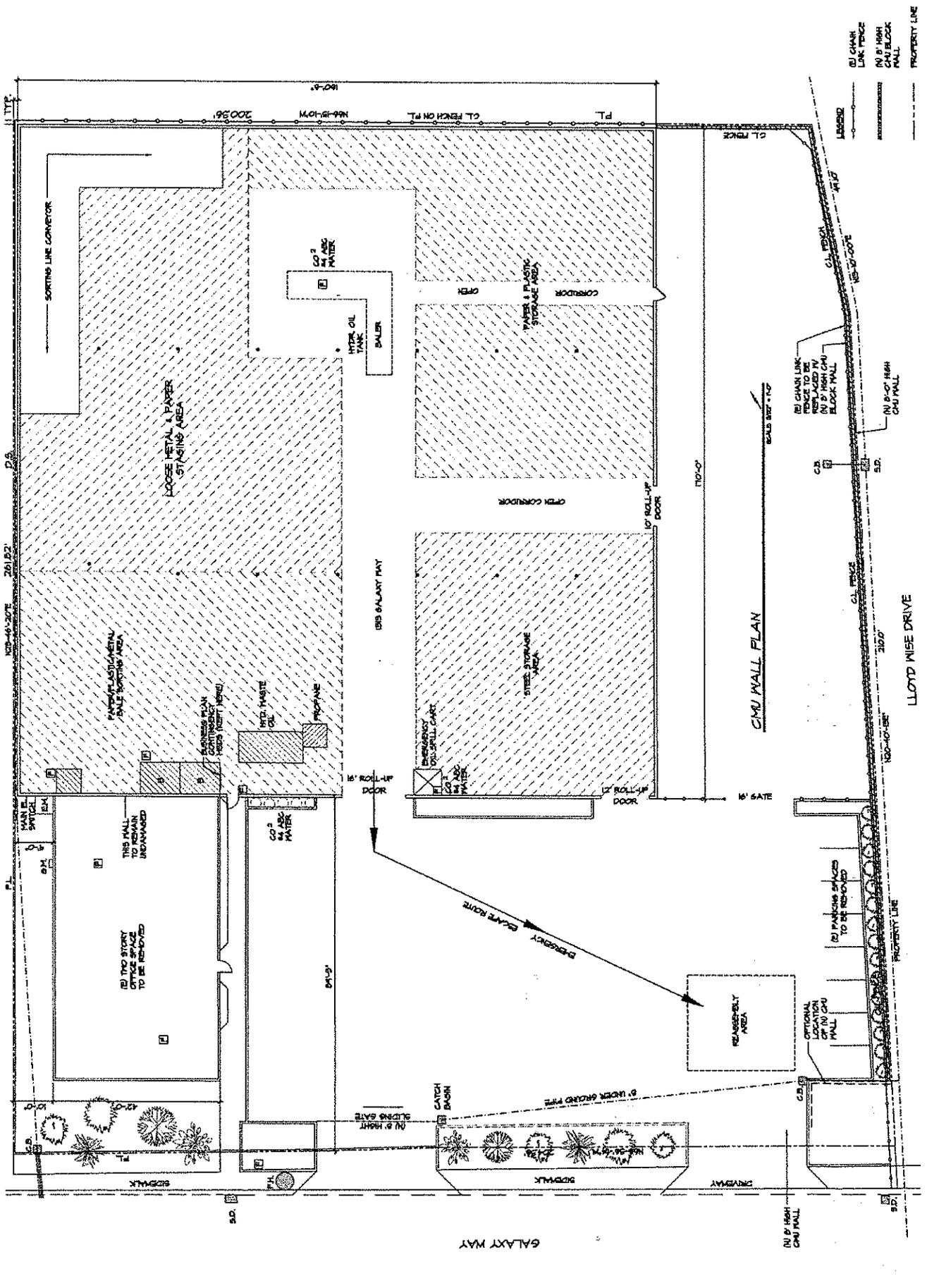
22 **AYES:**

23 **NOES:**

24 **ABSTAIN:**

25 **ABSENT:**

26 _____
27 Laura Simpson, AICP
28 Secretary to the Planning Commission



12' CHAIN LINK FENCE
 10' 8" HIGH CMU BLOCK WALL
 PROPERTY LINE

CMU MALL PLAN

LLOYDS DRIVE

GALAXY WAY

10 PARKING SPACES TO BE PROVIDED

OPTIONAL LOCATION OF (10) CMU MALL

REASSEMBLY AREA

THIS MALL TO REMAIN UNOCCUPIED

(1) TWO STORY TO REMAIN TO BE PROVIDED

REPLACE EXISTING METAL PALE YARDING AREA

LOOSE METAL & PAPER STAGING AREA

CO2 GAS TANK

HYDRANT OIL TANK

BALER

PROPANE

HYDRO WASTE OIL

BUS GARAGE RAY

STREET STORAGE AREA

EMERGENCY ROLL-UP CART

CO2 GAS TANK

12' ROLL-UP DOOR

15' ROLL-UP DOOR

6' GATE

100'-0" WIDE

100'-0" WIDE

100'-0" WIDE

100'-0" WIDE

100'-0" WIDE

110'-0"

261.87'

180'-4"

144'-10"

200.36'

180'-4"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

110'-0"

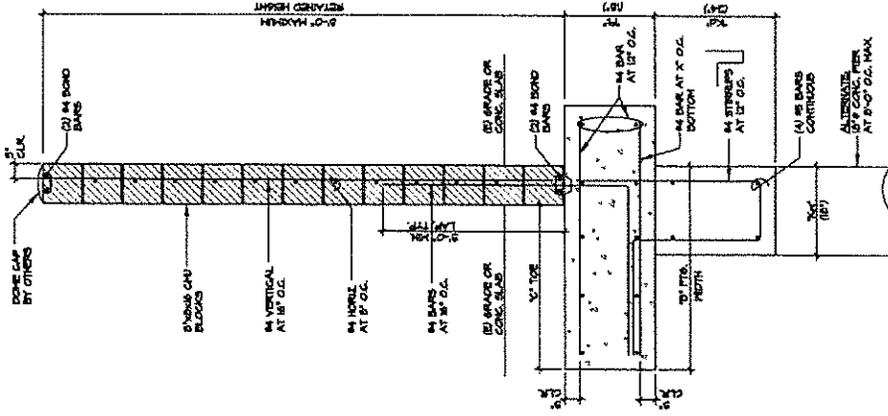
110'-0"

110'-0"

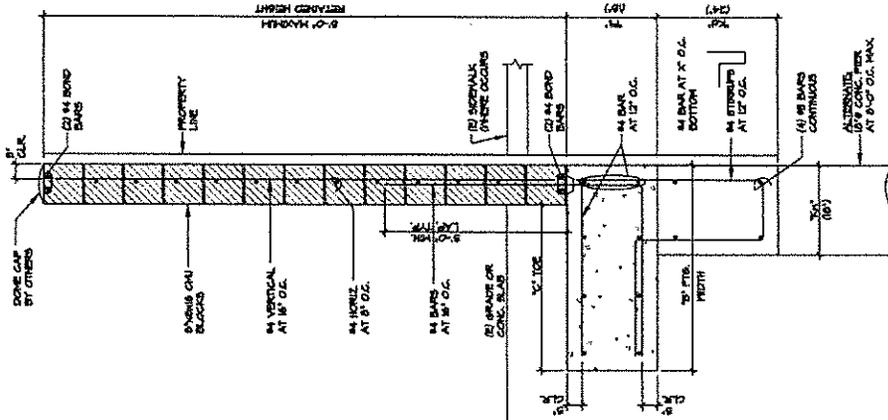
110'-0"

110'-0"

110'-0"



2 SITE RETAINING WALL



1 SITE RETAINING WALL

REVISIONS	DATE	DESCRIPTION

K. J. P.
 drafting and design services
 125000 Lehigh Ave.
 Allentown, PA 18103
 Phone: 610-261-7924

Project Resid.
 New Oak Falls
 125000 Lehigh Ave.
 Allentown, PA 18103



Product Data Sheet

PRODUCT NAME

Precision Concrete Masonry Units

MANUFACTURER

Basalite Concrete Products, LLC
605 Industrial Way
Dixon, CA 95620-9779
(800) 776-6690
(707) 678-1901
www.basalite.com

**PART 1 - GENERAL
SUBMITTAL**

Submit color samples for selection from manufacturer's offering. Submit product data sheet, certifications, and sample(s) of each color specified.

QUALITY ASSURANCE

Certifications: Concrete blocks for finishing shall conform to ASTM C90-08.

Units may contain pre-consumer and post-consumer recycled content. Contact your Basalite Architectural representative for details.

Basalite products offer high thermal mass properties, regional materials and low life-cycle costs, mold resistance and will last the life of the building. No VOC's. Available in a wide color selection. In addition, custom colors can be provided. Precision units are ideal for exterior applications. The structural integrity of these units results in a one-step, single-trade installation process, allowing a finished surface both interior and exterior.

Fire Resistance: Define hourly ratings required by NCMA TEK Notes, available at www.ncma.org.

Field Constructed Mock-Ups: Construct a sample panel(suggestion), no less than 4' x 4', of each color and size units to be used in the project.

A full size unit is preferred to illustrate color and texture for approval. Manufacturer suggests a sample panel installed at the jobsite prior to installation of any Basalite product. This panel will represent both the quality and range of the product and the workmanship to expected for the project. Either the owner or architect for the project must approve the panel.

DELIVERY, STORAGE AND HANDLING

Basalite CMU (concrete masonry units) shall be delivered to the jobsite. Store pallets in single stacks on level ground and cover with waterproof covering (e.g., tarpaulins) to protect the blocks from inclement weather. Handle blocks carefully to avoid breakage and damage to the finished surfaces.

PROJECT/SITE CONDITIONS

Protection of Work: Cover walls each day after installation to keep open walls protected and dry. After units are installed they should be protected from damage by other trades performing operations that can stain or otherwise damage the finished surfaces by covering walls with plastic. Corners should be protected from damage after installation.

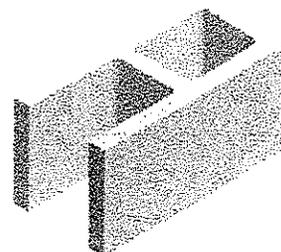
PART 2 - PRODUCTS

PRODUCT NAME

Precision Concrete Masonry Units

MANUFACTURER

Basalite Concrete Products, LLC
605 Industrial Way
Dixon, CA 95620-9779
(800) 776-6690
(707) 678-1901
www.basalite.com



RELATED MATERIALS

Colored matching or contrasting mortar is available from Basalite. Consult the manufacturer at www.basalite.com for mortar type, colors available, and specifications.

SIZES AND SHAPES

- Nominal 2", 4", 6", 8", 10" and 12" and 16" standard block widths are available
- Nominal 8" high and 16" long
- Half units available as well.
- High-strength units for special structural requirements and over-sized units are also available.

MASONRY CLEANERS

Carefully follow manufacturer's instructions. Use Custom Masonry Cleaner by PROSOCO. Light sand blast method is acceptable. Do not high-pressure power-wash walls.

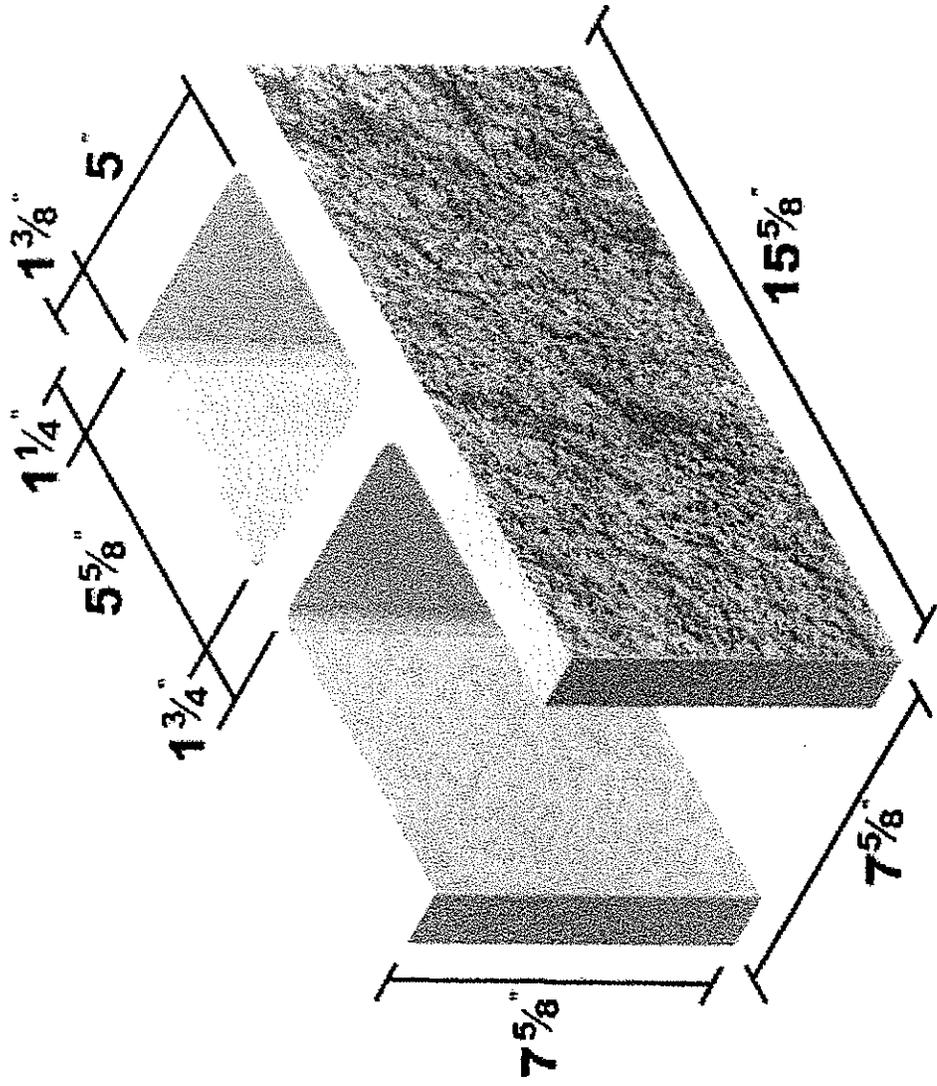
Follow all safety and environmental regulations.

Sample cleaning on test panel recommended for final approval of the best method for that texture.

PART 3 - EXECUTION

LAYING MASONRY WALLS

Draw blocks from more than one pallet at a time during installation. Refer to NCMA TEK Notes, available at www.basalite.com, for Hot and Cold weather construction practices.





**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94588

T 925 935 9400
F 925 933 4126
www.msregal.com

Bryan W. Wenter, AICP
Direct Dial: 925 941 3268
bryan.wenter@msregal.com

October 29, 2015

VIA E-MAIL AND U.S. MAIL

Victoria Walker
Community and Economic Development Director
City of Concord
1950 Parkside Drive
Concord, CA 94519
E-Mail: Victoria.Walker@cityofconcord.org

**Re: Concord Recycling Center (aka Pleasant Paper Recycling, Inc.)
1320 and 1313 Galaxy Way, Concord**

Dear Victoria:

Thank you again for the time you and your colleagues spent this Tuesday discussing the above-referenced matter. As you know, Miller Starr Regalia, along with the Law Offices of Ray T. Rockwell, represents Shusheng "Harry" Luan, the owner of Pleasant Paper Recycling, Inc., doing business as Pleasant Hill Recycling Center and Concord Recycling Center ("CRC"), located at 1313 and 1320 Galaxy Way (individually, a "Property" and collectively, the "Properties").

CRC operates in the City of Concord pursuant to two Use Permits issued by the Planning Commission, one in 2000 for 1320 Galaxy Way, and one in 2003 for 1313 Galaxy Way. CRC's business is now a legal nonconforming use as a result of the 2012 "Concord Development Code Project," which defines CRC as a "processing facility" and provides that such facilities are not allowed in the Service Commercial Zoning District where CRC resides.

This letter addresses the September 11, 2015 Notice of Violation (Case Number CE15044) the City's Code Enforcement Unit sent to CRC and our Tuesday meeting. In particular, because we understand City staff agree that it makes sense to address the land use issue raised in the Notice of Violation prior to, and separately from, the code enforcement issues that do not relate to land use,¹ this letter focuses solely on

¹ As we discussed, CRC has already resolved several code enforcement issues the City previously raised in connection with the Properties, and it is committed to addressing, and will address, each of the remaining alleged violations promptly upon resolution of the land use issue concerning outside storage.

the outside storage that occurs at the Properties as a necessary part of this successful local business.

The key issue is whether outside storage may occur at the Properties given that the Use Permits prohibit outside storage, while the underlying Service Commercial zoning district allows outside storage as a permitted use. For the reasons explained below, we believe there are two possible interpretations, one of which is fair and reasonable and clearly legal and the other of which is unnecessarily conservative and arguably illegal. We respectfully request that the City choose the fair and reasonable approach, which is warranted because:

- (1) CRC runs a successful recycling operation that employs approximately 25 employees whose livelihoods depend on CRC's continuing viability;
- (2) CRC provides a valuable service to the community, consistent with General Plan Principle PF-1.5, assisting Concord's waste diversion efforts (as the City itself has recognized; see Attachment #1) and decreasing the amount of solid waste that ends up in landfills, littered on streets, or dumped in waterways;
- (3) Concord General Plan 2030 expressly promotes economic development and the pillars of business retention, expansion, and attraction (see, e.g. General Plan at 2-5), and the City's business retention program states that it "greatly values its existing Concord companies and is poised to assist in their growth and expansion" (See Attachment #2);
- (4) CRC would relocate to another community if not allowed to have outside storage at its Properties; and
- (5) Concord is entitled to extreme deference in the interpretation and application of its land use regulations.

The fair and reasonable approach is one that allows CRC to have outside storage at both Properties. It recognizes that while the Use Permits the Planning Commission approved in the early 2000's under the provisions of an earlier zoning district prohibited CRC from storing and/or sorting recyclable materials outside, the Service Commercial zoning district the City Council created in 2012 that now applies to the Properties expressly allows such use. According to the Concord Development Code:

"[t]he SC [Service Commercial] district provides areas for uses that *typically require outdoor storage* and activities with higher volumes of truck traffic, noise, and visual impacts." (Development Code § 18.40.010(D), emphasis added.)

The City's highest legislative body has more recently decided that "outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts" are appropriate and allowed by right in CRC's zoning district. The City thus has authority, under Article XI, section 7 of the California Constitution, to conclude that CRC's zoning allows for outside storage, irrespective of the Use Permits. There is nothing in the state's Planning and Zoning Laws and nothing in the City's Development Code that compels the City to reach any other conclusion. Indeed, the City is "entitled to considerable deference" in interpreting its own Development Code. See, e.g., *Gray v. County of Madera*, 167 Cal.App.4th 1099, 1129-30 (2008).

If the City desires to work with CRC and for CRC to continue to assist the City's recycling efforts, the City should exercise its discretion to read the foregoing Development Code provision to trump the conflicting provision in the Use Permits. The City has all of the authority it needs to make that fair and reasonable choice, and it is difficult to see why the City would choose an interpretation that gives CRC the Hobson's choice of needing to amend its Use Permits to allow outside storage when it cannot amend the Use Permits because its business is a legal nonconforming use.

The unnecessarily conservative approach is one that applies a narrow reading of the Development Code to an important existing local business simply because one of its provisions potentially allows—but does not compel—such an interpretation. As a result, the unnecessarily conservative approach erects obstacles to the continuing viability of that business. Thus, regardless of the myriad reasons the City should choose to work with the business, the unnecessarily conservative approach actively makes it more difficult, if not impossible, for that business to succeed in Concord.

Here, the unnecessarily conservative approach is one that concludes CRC cannot have outside storage because the business is a legal nonconforming use and the Use Permits happen to prohibit outside storage, despite the fact CRC is in a zoning district that expressly allows outside storage as well as other more impactful activities.² Given the clear hierarchy of law regulating local land use (see, e.g., *DeVita v. County of Napa*, 9 Cal.4th 763, 772-73 (1995) (quoting *Leshner Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) and *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176, 1183 (1984); see also *Curtin's California Land Use & Planning Law*, Cecily Talbert Barclay and Matthew S. Gray, Chapter 2 (Solano Press, 34th ed. 2014) and *California Land Use Practice* § 1.12 (Continuing Education of the Bar 2006)), the

² It bears noting that the only reason outside storage is a question, under the Service Commercial zoning, is that the Use Permits prohibit outside storage. But even though CRC is a nonconforming use as a result of the way the Development Code defines recycling facilities, if the Use Permits did not prohibit outside storage and were otherwise the same in every respect, there would be no question that CRC could have outside storage as a normal part of its business.

Victoria Walker
October 29, 2015
Page 4

City Council-approved Development Code sits above the Planning Commission-adopted Use Permits. And because the Service Commercial zoning expressly allows outside storage, the better legal analysis is that the zoning effectively overrides the conflicting provision in the Use Permits.

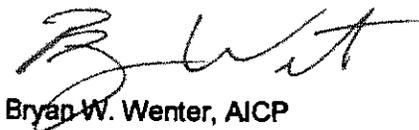
To the extent Concord has the power to interpret its Development Code in such a crabbed fashion, there is nothing that requires the City to do so and, as highlighted above, there are many reasons the City should instead choose a fair and reasonable interpretation that is equally if not more well supported under the circumstances. For example, the "processing" that occurs at CRC, as that term is defined in the Development Code, takes place *inside* the buildings on its Properties. CRC's core function thus occurs indoors, where its impacts are the least intense. CRC seeks simply to store recyclable materials outdoors until they can be brought indoors for "processing" or, once "processed," until they can be removed from the Properties for delivery to recyclers in other communities.

As we explained during our meeting, and as we hope our efforts demonstrate, we are committed to productively resolving the City's concerns. So that CRC may continue to operate in Concord, we respectfully request that the City reach the fair and reasonable conclusion articulated in this letter.

We greatly appreciate your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

BWW

Attachments: #1 (Copy of plaque from City of Concord)
#2 (Business Retention Program flyer)

cc: Laura Simpson, Planning Manager
Susanne Brown, Senior Assistant City Attorney
Ray Rockwell, Esq.

CITY OF CONCORD
1950 Parkside Drive
Concord, California 94519-2578
FAX:

CITY COUNCIL
Timothy S. Grayson, Mayor
Laura M. Hoffmeister, Vice Mayor
Edi E. Birsan
Daniel C. Helix
Ronald E. Leone

Telephone:



Thomas J. Wentling, City Treasurer
Valerie J. Barone, City Manager

November 18, 2015

Bryan Wenter, AICP
Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596

RE: Pleasant Hill Recycling Center

Dear Mr. Wenter:

This letter is in response to your letter dated October 29, 2015, to Victoria Walker, Community and Economic Development Director for the City of Concord.

As Victoria indicated in her e-mail to you dated November 2, 2015, because the original Use Permit for the Pleasant Hill Recycling Center was approved by the Planning Commission in a public hearing and because the current conditions of the use are governed by a Conditional Use Permit, any proposed amendments to the Conditional Use Permit will need to be reviewed and considered by the Planning Commission at a public hearing.

Currently there are ongoing Code Enforcement violations related to outdoor activities on your client's property. Please advise us of your client's intent to apply for an amendment to the Conditional Use Permit as soon as possible. Failure to apply for an application by December 31, 2015, will result in renewed Code Enforcement action.

An application to amend a Use Permit may be obtained from the Permit Center located at 1950 Parkside Drive, Building D, in Concord. The planner assigned to this project, should an application be submitted, will be Andrew Mogensen. He may be contacted at Andrew.mogensen@cityofconcord.org or at 925-671-3332.

Sincerely,

Laura Simpson
Planning Manager

cc: Victoria Walker, Community and Economic Development Director
Lance Bayer, Special Counsel
Susanne Brown, Senior Assistant City Attorney

2255 Morado Avenue, Suite 200
Pleasant Hill, California 94523
tel 925 532 7785 fax 925 262 2379

email garret@rrlegal.com

December 30, 2015

Via Hand-Delivery

Victoria Walker
Community and Economic Development Director
City of Concord
1950 Parkside Drive
Concord, CA 94519

Andrew Mogensen
Principal Planner
City of Concord
1950 Parkside Drive
Concord, CA 94519

Re: **Concord Recycling Center (aka Pleasant Paper Recycling, Inc.)**
1320 and 1313 Galaxy Way, Concord

Dear Ms. Walker and Mr. Mogensen:

As you know, our office represents Concord Recycling Center, also known as Pleasant Paper Recycling, Inc. ("CRC"). This letter is a request for an interpretation, pursuant to City of Concord Municipal Code section 18.10.060, to allow CRC to conduct limited outside storage consistent with its applicable zoning status (Concord Municipal Code section 18.40.010(D)). For the reasons below, CRC hereby requests such an interpretation.

CRC operates in the City of Concord pursuant to two Use Permits issued by the Planning Commission, one in 2000 for 1320 Galaxy Way, and one in 2003 for 1313 Galaxy Way. CRC's business is now a legal nonconforming use as a result of the 2012 "Concord Development Code Project," which defines CRC as a "processing facility" and provides that such facilities are not allowed in the Service Commercial Zoning District where CRC resides.

The key issue is whether outside storage may occur at the Properties given that the Use Permits prohibit outside storage, while the underlying Service Commercial zoning district allows outside storage as a permitted use. For the reasons explained below, we believe there are two possible interpretations, one of which is fair and reasonable and clearly legal and the other of which is

unnecessarily conservative and arguably illegal. We respectfully request that the City choose the fair and reasonable approach.

The fair and reasonable approach is one that allows CRC to have outside storage at both Properties. It recognizes that while the Use Permits the Planning Commission approved in the early 2000's under the provisions of an earlier zoning district prohibited CRC from storing and/or sorting recyclable materials outside, the Service Commercial zoning district the City Council created in 2012 that now applies to the Properties expressly allows such use. According to the Concord Development Code:

“[t]he SC [Service Commercial] district provides areas for uses that *typically require outdoor storage* and activities with higher volumes of truck traffic, noise, and visual impacts.” (Development Code § 18.40.010(D), emphasis added.)

The City's highest legislative body has more recently decided that “outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts” are appropriate and allowed by right in CRC's zoning district. The City thus has authority, under Article XI, section 7 of the California Constitution, to conclude that CRC's zoning allows for outside storage, irrespective of the Use Permits. There is nothing in the state's Planning and Zoning Laws and nothing in the City's Development Code that compels the City to reach any other conclusion. Indeed, the City is “entitled to considerable deference” in interpreting its own Development Code. *See, e.g., Gray v. County of Madera*, 167 Cal.App.4th 1099, 1129-30 (2008).

If the City desires to work with CRC and for CRC to continue to assist the City's recycling efforts, the City should exercise its discretion to read the foregoing Development Code provision to trump the conflicting provision in the Use Permits. The City has all of the authority it needs to make that fair and reasonable choice, and it is difficult to see why the City would choose an interpretation that gives CRC the Hobson's choice of needing to amend its Use Permits to allow outside storage when it cannot amend the Use Permits because its business is a legal nonconforming use.

The unnecessarily conservative approach is one that applies a narrow reading of the Development Code to an important existing local business simply because one of its provisions potentially allows—but *does not compel*—such an interpretation. As a result, the unnecessarily conservative approach erects obstacles to the continuing viability of that business. Thus, regardless of the myriad reasons the City *should* choose to work *with* the business, the unnecessarily conservative approach actively makes it more difficult, if not impossible, for that business to succeed in Concord.

Here, the unnecessarily conservative approach is one that concludes CRC cannot have outside storage because the business is a legal nonconforming use and the Use Permits happen to prohibit outside storage, despite the fact CRC is in a zoning district that expressly allows outside

storage as well as other more impactful activities.¹ Given the clear hierarchy of law regulating local land use (see, e.g., *DeVita v. County of Napa*, 9 Cal.4th 763, 772-73 (1995) (quoting *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) and *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176, 1183 (1984); see also *Curtin's California Land Use & Planning Law*, Cecily Talbert Barclay and Matthew S. Gray, Chapter 2 (Solano Press, 34th ed. 2014) and California Land Use Practice § 1.12 (Continuing Education of the Bar 2006)), the City Council-approved Development Code sits above the Planning Commission-adopted Use Permits. And because the Service Commercial zoning expressly allows outside storage, the better legal analysis is that the zoning effectively overrides the conflicting provision in the Use Permits.

To the extent Concord has the power to interpret its Development Code in such a crabbed fashion, there is nothing that requires the City to do so and, as highlighted above, there are many reasons the City should instead choose a fair and reasonable interpretation that is equally if not more well-supported under the circumstances. For example, the "processing" that occurs at CRC, as that term is defined in the Development Code, takes place *inside* the buildings on its Properties. CRC's core function thus occurs indoors, where its impacts are the least intense. CRC seeks simply to store recyclable materials outdoors until they can be brought indoors for "processing" or, once "processed," until they can be removed from the Properties for delivery to recyclers in other communities.

Accordingly, we respectfully requests that the City interpret its applicable Municipal Code provisions to allow CRC to conduct limited outside storage consistent with its applicable zoning regulations.

Very truly yours,

LAW OFFICES OF RAY T. ROCKWELL



J. Garret Deal

It bears noting that the only reason outside storage is a question, under the Service Commercial zoning, is that the Use Permits prohibit outside storage. But even though CRC is a nonconforming use as a result of the way the Development Code defines recycling facilities, if the Use Permits did not prohibit outside storage and were otherwise the same in every respect, there would be no question that CRC could have outside storage as a normal part of its business.

CITY OF CONCORD
PLANNING DIVISION
1950 Parkside Drive, MS/53
Concord, California 94519-2578
FAX: (925) 671-3381



Telephone: (925) 671-3152

January 5, 2016

J. Garret Deal
Law Offices of Ray T. Rockwell
2255 Morello Avenue
Pleasant Hill, CA 94523

Re: Concord/Pleasant Hill Recycling Center

Dear Mr. Deal:

I am in receipt of your letter of December 30, 2015, in which you requested a zoning interpretation to allow your client, Concord/Pleasant Hill Recycling Center, to conduct limited outside storage at 1320 and 1313 Galaxy Way. Pursuant to Concord Municipal Code Section 18.10.060, this letter serves as an official interpretation that Concord/Pleasant Hill Recycling Center is classified as a Processing Center, a use which is not allowed under the Service Commercial (SC) zoning that applies to the subject property at 1320 and 1313 Galaxy Way. However, because the use was approved via Use Permit prior to the SC zoning designation in 2012, the current use is legal non-conforming. Legal non-conforming uses may not be expanded or intensified, and can continue to exist only in compliance with the original permit approval. Outdoor storage was expressly prohibited by the use permit.

You have requested an interpretation to allow the existing business, located at 1320 and 1313 Galaxy Way, to have limited outside storage based on Development Code section 18.40.010(D):

“SC-Service Commercial. The SC district is applied to areas of the city appropriate for commercial uses such as automobile services, auto-oriented uses, light industry, contractors’ yards, and building materials storage, at up to .8 FAR. ... The SC district provides areas for uses that typically require outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts. The SC district is consistent with and implements the service commercial (SC) land use designation of the General Plan.”

On November 18, 2015, I responded to a similar letter from Bryan Wenter dated October 29, 2015. Copies of both Mr. Wenter’s letter and my letter are enclosed for your convenience. I again cannot make the zoning interpretation you have requested because given the activities undertaken at Concord/Pleasant Hill Recycling Center, that business is classified as a “processing facility” under the current Development Code, which was adopted and became effective in 2012. You and Mr. Wenter both assert that the City Council intended to allow outdoor storage in the SC zoning district via its adoption of the 2012 Development Code. But

you each disregard the fact that the City Council also prohibited all but incidental storage for processing facilities where this use is allowed in other zoning districts, imposed specific restrictions on such outdoor storage pursuant to Section 18.200.170.D and E, and explicitly prohibited processing facilities in the SC zoning district. As such, your client's business was rendered a legal non-conforming use.

Pursuant to Concord Development Code Section 18.530.030 Nonconforming uses and nonconforming structures:

A. Nonconforming uses. A nonconforming use may be continued or replaced; provided that:

1. The use shall not be enlarged or expanded in size or capacity, or extended to occupy a greater area of land or building floor area than it legally occupied before it became nonconforming.

and

2. The use shall not be intensified so that the hours of operation are extended, the number of employees are increased, the occupancy capacity is increased, the volume of traffic or noise generated by the use is increased, or a greater amount of parking is required; and

5. An existing use that is authorized by a previously approved use permit, but is not allowed by the development code in its current location, may continue to exist in compliance with the original permit approval and shall be deemed nonconforming.

Your client exercised its authority to operate its processing facility under the use permit, and must thus also accept the permit's burdens (conditions of operation) (Sports Arenas Properties, Inc. v. City of San Diego (1985) 40 Cal.3d 808, 815). As was indicated in my letter of November 18, 2015, to change the existing conditions of approval, the Planning Commission must amend the existing Use Permit. To request this action, your client may submit a complete application to amend the existing Use Permit to allow outdoor storage. The application would be considered by the Planning Commission at a noticed public hearing.

To the extent that you disagree with this interpretation you have the right to appeal to the Planning Commission. Appeals and the required filing fee must be filed with the Planning Division or City Clerk within ten (10) calendar days of the date of this letter (i.e., by 5:00 p.m. on January 15, 2016). The appeals procedure is set forth in Development Code Section 18.510, a copy of which is enclosed for your convenience. The fee is composed of four elements: 1) Appeal fee to Planning Commission = \$99.00, 2) Public Notice in newspaper = At cost, 3) Poster Board for Site = \$12.00, 4) Mailed Notice to property owners within 300 feet of the site = \$250.00, for a TOTAL of \$361.00 + the cost for the public notice in the newspaper (to be determined after appeal filing).

Please feel free to contact me if you have any questions or would like further information on either this decision or the appeal process.

Sincerely,

Laura Simpson
Planning Manager

Enclosures:

- A: Bryan Wenter letter dated October 29, 2015
- B: Laura Simpson letter dated November 18, 2015
- C: J. Garrett Deal letter dated December 30, 2015
- D: March 17, 2000 Pleasant Paper Use Permit (UP 1-100)
- E: Requirements for Outdoor Storage

cc: Victoria Walker, CED Director
Brian Libow, Interim City Attorney
Susanne Brown, Senior Assistant City Attorney



NOTICE OF APPEAL
[Concord Municipal Code 2901(b)]

TO: City Council
City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578

FOR STAFF USE ONLY	
PUBLIC NOTICE FEE \$	_____
<i>(According to Fees and Charges Resolution)</i>	
DATE PAID	<u>1-11-16</u>
FEE REC'D BY	<u>LV</u>
DATE	<u>1-11-16</u>

I hereby appeal the ^{interpretation} decision / requirement of the Planning Division
(ADMINISTRATOR OR COMMISSION)

in approving / ^{interpretation} denying the application of Pleasant Paper Recycling, Inc.
(NAME OF APPLICANT)

for limited outside storage on January 5, 2016
(TITLE OF ITEM BEING APPEALED)

Please indicate the specific action(s) or requirement(s) being appealed: Interpretation of Concord
Municipal Code section 18.40.010 (D) prohibiting outside
storage. For further discussion in compliance with Concord
Municipal Code sections 18.510.030 (A)(1-4), please see
attached Exhibits. Appellant is willing to have its appeal
heard as soon as possible.

Shuheng "Harry" Luan
(PRINT) NAME OF APPELLANT

[Signature]
SIGNATURE OF APPELLANT / REPRESENTATIVE

APPELLANT'S ADDRESS <u>1313 & 1320 Galaxy Way, Concord, CA 94520</u>	HOME PHONE	BUSINESS PHONE <u>(925) 689-3900</u>
ADDRESS FOR NOTICES <u>J. Garret Deal, Esq.</u>		BUSINESS PHONE <u>(925) 932-7785</u>

FOR STAFF USE ONLY			
ADDRESS OF PROPERTY INVOLVED <u>1313 and 1320 Galaxy Way</u>			
ASSESSOR'S PARCEL NUMBER(S) <u>126-020-073 and 126-451-007</u>		MUNICIPAL CODE SECTION	
FILE NUMBER <u>PL1600011-AG</u>	FILE TITLE	NAME OF RESPONSIBLE PLANNER	REVIEWED BY (PLANNING STAFF) <u>LV</u>
RECEIVED BY	PROJECT PLANNER <u>A. Mogensen</u>		

CITY CLERK USE ONLY	
Received written appeal on _____	
Scheduled for Council agenda of _____	to set for Public Hearing on _____
<input type="checkbox"/> Copies distributed to appropriate parties	DEPUTY CITY CLERK

CITY OF CONCORD
PLANNING DIVISION
1950 Parkside Drive, MS/53
Concord, California 94519-2578
FAX: (925) 671-3381



Telephone: (925) 671-3152

January 29, 2016

J. Garret Deal
Law Offices of Ray T. Rockwell
2255 Morello Avenue
Pleasant Hill, CA 94523

VIA EMAIL (Garret Deal, garret@rtrlegal.com)
(Original via Regular Mail)

Re: Concord/Pleasant Hill Recycling Center

Dear Mr. Deal:

Your appeal of the Concord Planning Division's January 5, 2016 outdoor storage zoning determination is tentatively scheduled for review by the Planning Commission on February 17, 2016. Based upon the facts outlined in your letter of January 11, 2016, upon which the appeal is based, it appears that you are requesting that changes in the Development Code subsequent to the granting of the use permits in this case, which permit outdoor storage in the Service Commercial (SC) District, also be applied to your client's processing facilities at 1313 and 1320 Galaxy Way, so as to allow outdoor storage to take place.

The use permits for both properties prohibit outdoor storage with certain enumerated exceptions. To the extent that you wish to avail yourself of outdoor storage opportunities beyond those specifically identified in either use permit, for all practical purposes your appeal appears to be a de facto request to amend the use permits with respect to outdoor storage. Should the Planning Commission deny your client's appeal by disagreeing that the current code's allowance of outdoor storage in the zoning district applies to the Galaxy Way properties, the hearing will be conducted as a use permit amendment request, limited only to the outdoor storage issue. This will enable the Planning Commission to take meaningful action if it determines that some degree of outdoor storage should be allowed. Given that narrow scope, and so that your client need not pay two application fees for the same request, the Planning Division has opted not to ask that you complete the traditional use permit amendment application or pay additional fees.

If you do want to raise additional use permit issues with the Planning Commission (i.e. other than outdoor storage), you will be required to apply for a use permit modification and pay all related fees. Copies of those applicable forms were previously sent to you by Principal Planner Andrew Mogensen via email on November 20, 2015 and are available

on the Planning Division's website. If you need additional time to submit your application, we would agree to delay the Planning Commission hearing of the Zoning Determination appeal, so that all issues can be considered at the same time. Please be aware that such use permit amendment hearing on issues other than outdoor storage would be conducted *de novo*, which means that all aspects of the 1313 and 1320 Galaxy Way use permits would be open for review and modification, not simply the items your client desires to change.

The Zoning Determination appeal hearing is currently set for February 17, 2016. Please let us know on or before February 2nd whether you wish to seek a use permit amendment/modification for either or both properties beyond the outdoor storage issue. If we do not hear from you by that date, we will conduct the hearing as a use permit amendment relating only to outdoor storage.

For mailing purposes, please also advise us whether Bryan Wenter, Esq. of Miller, Starr & Regalia remains counsel to your client, or whether you have supplanted him.

Please feel free to contact me at (925) 671-3369 if you have any questions or need additional information. We appreciate your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Simpson".

Laura Simpson, AICP
Planning Manager

16ltr.008
Cc via email:

Brian Libow, Interim City Attorney
Susanne Brown, Senior Assistant City Attorney
Victoria Walker, Community Development Director
Andrew Mogensen, Principal Planner



REPORT TO PLANNING COMMISSION

DATE: March 15, 2000

SUBJECT: PLEASANT PAPER RECYCLING USE PERMIT (UP 1-00)
Application for a paper, plastic, glass, and metal recycling facility in an existing 18,480 square foot building at 1320 Galaxy Way, parcel 126-451-007. General Plan designation is Industrial/Business Park. Zoned Special Light Industrial (SLI) District.

Report in Brief

This is an application for a public recycling facility for recyclable goods that include paper, plastic, glass, and metals. The use is proposed in an existing 18,500 square foot building and will be open to the public. The only external change to the building will be two roll-up doors at the southwest corner of the building. The interior of the building will be used for storing and packaging the recycled materials and will also be used for an office (See Exhibit A).

Background

The following is a summary of the characteristics of the site, surrounding land uses, and General Plan policies affecting the project site and proposed development.

Site Characteristics

The project site is located on the south side of Galaxy Way (See Exhibit B). The site is .66 acres. There is an existing 18,500 square foot building. There are 21 existing parking spaces at the site. There is some landscaping at the front of the building facing Galaxy Way.

Surrounding Land Uses

Surrounding uses are industrial type uses. An access easement to Via de Mercados is located at the south end of the building.

General Plan Policies

Objective 6.2 Ensure that development within industrial/business park areas is compatible in terms of function, appearance, and safety concerns.

Policy 6.2.1 Promote research and development and similar types of light industrial uses in areas designated for industrial/business park uses.

Policy 6.2.2 Make use of all available fiscal and policy avenues to strongly encourage employment-generating high-technology and light industries wishing to locate in Concord.

Previous Approvals

ZAP 7-78-On May 11, 1978 this site was approved for a storage yard.

Discussion

State law passed in 1989 required cities to to reduce waste disposed at landfills by 50 percent by December 31, 2000. Presently, the City has reduced waste disposal by 35 percent. If the 50 percent reduction is not achieved, the City would be subject to fines. The City has implemented new green waste and paper recycling programs that are designed to help the City achieve the required 50 percent reduction.

The City tracks recycling progress through two systems of measurement. One is based on the quarterly reports landfills provided to the County, which the County forwards to the City. If less waste is placed in the landfill from Concord, the City's recycling rate is better. The state also allows the City to track individual recycling to show how much of the total waste stream is recycled. Under state Waste Board rules, the City can use either the first landfill-based tracking method, or the individual tracking method, whichever gives us the higher recycling rate.

Project Description

This is a proposed recycling facility for the public for recyclable goods including paper, plastic, glass and metal. The proposed use would occupy all of the approximately 18,500 square foot building. The only proposed exterior change to the building would be to add two roll up doors at the southwest corner of the building. The interior of the building would be remodeled as a warehouse to store the recycled material. It would also include an office at the northeast side of the building.

The hours of operation are proposed to be 6:00AM to 7:00 PM Monday through Saturday. The facility would be open to the public from 6:00AM to 6:00PM. There are six full time and two part time employees proposed and the anticipated number of customers a day is 30-50. This operation is presently being conducted in Pleasant Hill. The project sponsor has indicated that the majority of the customers are from Concord and are both residents and representatives from local companies.

Traffic

The recycling facility would ship one truckload a day of recycled materials to other facilities that process recycled material to reuse for paper or metal products. The trucks would pull into the site from Galaxy Way and turn into the proposed rollup doors at the southwest corner of the building. Once the truck is loaded, it would exit via the access easement to Via de Mercados. Documentation of the rights to use the access easement that has been provided by the project sponsor (Exhibit C).

Noise

The project sponsor has indicated that noise sensitive activities like the breaking of glass materials would take place inside the building. The General Plan indicates the acceptable levels of new daytime noise sources are 50 dB average hourly, and 65 to 70 dB maximum level. It is unlikely that project generated noise levels would exceed this standard since all breaking of glass would take place inside the building. In addition, most land uses in the vicinity are not highly sensitive to noise. However, staff recommends that the Commission authorize the Chief of Planning to impose additional noise mitigation requirements if the City receives noise complaints about the facility.

Parking

The parking will be sufficient for this project. The ratio for this site is one space per 1000 which would require 19 spaces and there are presently 21 spaces at the site.

Landscaping

There is an existing landscaping strip along the front of the property that is presently well maintained.

Loading

The proposed facility would require the use of two hydraulic loaders to place containers of recycled material onto trucks. The loading of these containers requires substantial clearance and could not be accomplished within the building. The required loading activity is proposed to occur at the rear of the site. The loading activity would not require the dumping of material but rather the loading of filled containers onto a truck. Empty containers are returned to the site for reuse. Staff consider this activity to be acceptable but would prefer the loaders to be stored inside the building when not in use.

Fiscal Impact

There are no significant fiscal impacts that would result from this project.

Public Contact

Notification of this public hearing has been provided as required by State law and the Concord Municipal Code. The agenda for this meeting has been posted.

Environmental Status

The application has been determined to be Categoricaly Exempt from CEQA, as a Class Exemption, pursuant to Section 15301 of CEQA.

Alternatives for Recommendation

1. Approve the proposed use permit with findings and conditions of approval.
2. Deny the project.

Recommendation for Action

Alternative #1 above.

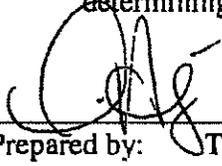
Findings for Approval

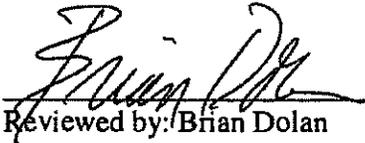
1. The project as conditioned, is compatible with the site and the surrounding areas and is consistent with the goals and objectives of the General Plan.
2. The project complies with the zoning ordinance and other applicable ordinances.
3. The proposed project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.
4. The proposed facility would help the City of Concord reach its recycling goals.

Conditions of Approval

1. Project development shall conform to plans submitted to the City dated February 17, 2000 as modified by conditions of approval below.
2. There shall be no outside storage or sorting of any recycled materials.
3. Starting July 15, 2000 and every year after that, the operators of the recycling facility shall provide a comprehensive annual report to the City listing the tonnages of each major category of material accepted for recycling at the facility for the twelve month period of July 1 of the preceding year to June 30th of the reporting year. The annual report shall include all materials accepted for recycling e.g. glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each category shall be expressed as total tonnages of these materials accepted for recycling from all sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive, Concord, CA 94519.
4. If the City receives noise complaints regarding the recycled facility, the Chief of Planning may require additional mitigation measures to reduce average and

impulsive noise levels on the site. The standard presented in Table 2 of the Noise Element of the City of Concord General Plan shall be used as a guideline in determining these measures.


Prepared by: Talin Aghazarian
Planner


Reviewed by: Brian Dolan
Principal Planner

Enclosures: Exhibit A -- Site Plan
Exhibit B -- Location Map
Exhibit C- Title Report for Access Easement (to be provided at the hearing)
Exhibit D- Engineering Comments
M:\CD\PLANNING\PC\Staff Reports\1999 Staff Reports\recyclingfacility3-15-00.doc

CITY OF CONCORD
PERMIT CENTER
1950 Parkside Drive MS/53
Concord, California 94519-2578

Telephone: (925) 671-3454
Fax: (925) 671-3381



CITY COUNCIL
Helen M. Allen, Mayor
Laura M. Hoffmeister, Vice Mayor
Bill McManigal
Mark A. Peterson
Michael A. Pastrick

Lynnet Keihl, City Clerk
Thomas Wendling, City Treasurer

Edward R. James, City Manager

March 17, 2000

Dan Helix
Helix Real Estate Services
4701 Clayton Road
Concord, CA 94520

Re: **PLEASANT PAPER RECYCLING USE PERMIT (UP 1-00)**

Dear Mr. Helix:

At a regular meeting of the City of Concord Planning Commission on March 15, 2000 a public hearing was held on your application for a paper, plastic, glass, and metal recycling facility in an existing 18,480 square foot building at 1320 Galaxy Way, parcel 126-451-007. The General Plan designation is Industrial/Business Park and the property is zoned Special Light Industrial (SLI) District.

We are pleased to inform you that the Planning Commission, on a vote of 4-0, approved the application with the following environmental determination, findings and conditions:

Environmental Status

The application has been determined to be Categorical Exempt from CEQA, as a Class Exemption, pursuant to Section 15301 of CEQA.

Findings for Approval

1. The project as conditioned, is compatible with the site and the surrounding areas and is consistent with the goals and objectives of the General Plan.
2. The project complies with the zoning ordinance and other applicable ordinances.
3. The proposed project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.
4. The proposed facility would help the City of Concord reach its recycling goals.

Conditions of Approval

1. Project development shall conform to plans submitted to the City dated February 17, 2000 as modified by conditions of approval below

2. There shall be no outside storage or sorting of any recycled materials.
3. Starting July 15, 2000 and every year after that, the operators of the recycling facility shall provide a comprehensive annual report to the City listing the tonnages of each major category of material accepted for recycling at the facility for the twelve month period of July 1 of the preceding year to June 30th of the reporting year. The annual report shall include all materials accepted for recycling e.g. glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each category shall be expressed as total tonnages of these materials accepted for recycling from all sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive, Concord, CA 94519.
4. If the City receives noise complaints regarding the recycled facility, the Chief of Planning may require additional mitigation measures to reduce average and impulsive noise levels on the site. The standard presented in Table 2 of the Noise Element of the City of Concord General Plan shall be used as a guideline in determining these measures.

Engineering and Transportation Department Conditions

1. Submit grading, erosion control and improvement plans for necessary improvements to the Engineering Division for review prior to approval. Include, at a minimum, the following on the site improvement plans:
 - a. Coverage of the entire property and adjacent areas including existing conditions and proposed improvements.
 - b. Location of existing trees (specifically showing type, diameter, dripline, and elevation at trunk). Clearly delineate trees to be removed by centering a bold "X" at the trunk location.
 - c. Proposed demolition. Clearly indicate those improvements to remain or be replaced.
 - d. Frontage improvements to be repaired or replaced.
 - e. Proposed drainage system that will convey on-site runoff to an adequate downstream facility.
 - f. Provide cross-sections through the site and abutting parcels showing, in sufficient detail, the existing and proposed grades at the site and on abutting properties.
 - g. Utility plans that include backflow preventors on the domestic, fire, and irrigation water lines, and an area drain to the sanitary sewer for any proposed trash enclosures. Clearly identify all existing utilities to be abandoned due to replacement, relocation, or demolition, and state the proposed method of abandonment.
 - h. Proposed signing and striping improvements.
-

2. Repair and/or replace deficient frontage improvements along the Galaxy Way frontage. The limits of this work will be as determined by the Engineering Division.
3. Construct all new utilities underground and coordinate all work related to the construction.
4. Submit plans showing the location of improvements that could affect sight distance to the Engineering Division for review and approval.
5. Submit a geotechnical report pursuant to CMC Section 4432 that addresses and provides recommendations for any grading, drainage, retaining walls, and pavement structural sections.
6. Design the on-site drainage system so that the existing downstream storm drain system(s) can adequately carry the 10-year peak runoff. Otherwise, replace the existing downstream storm drain to an appropriate size that can adequately carry the 10-year peak runoff. Drainage improvement plans and calculations are subject to review prior to approval by the Engineering Division. Show storm drain lines to be maintained by the City in both plan and profile.
7. Install and maintain fossil filters in all on-site storm drain inlet structures. Plans and maintenance schedules are subject to review and approval by the Engineering Division.
8. Coordinate all required and necessary facility adjustments, relocations, or additions with the appropriate utility companies.
9. Post a security acceptable to the City to secure the implementation of any required erosion control measures.
10. Provide a cash deposit to cover the City's costs associated with monitoring compliance with mitigation measures and conditions of approval. The deposit will be placed in a refundable deposit account and any unused funds will be returned at the completion of all mitigation measures. The amount of the deposit will be estimated based upon the time between environmental clearance and project acceptance following completion of all mitigation measures.
11. Comply with any conditions imposed by the City of Concord Transportation Division.

Municipal Code Requirements

1. Connect all buildings to the sanitary sewer collection facilities of the City of Concord and pay all current sewer connection and service fees before issuance of a Certificate of Occupancy.
2. Comply with the requirements imposed by the Contra Costa County Fire Protection District. The City is not responsible for the collection of fees or enforcement of requirements imposed by the Fire Protection District.

3. Grading, erosion control, and improvement plans are subject to review and approval by the Engineering Division prior to the issuance of grading, encroachment, and building permits. Grading and encroachment permits may be issued prior to approval of completed plans if authorized by the City Engineer.
4. Submit a geotechnical report with the site grading and improvement plans.
5. Include an erosion control plan with the grading plans for review by the Engineering Division. Comply with applicable provisions of the Grading Ordinance and the Storm Water Management and Discharge Control Ordinance.
6. Obtain an encroachment permit from the City prior to performing any work within the public right-of-way.
7. Comply with the requirements of the Contra Costa County Health Department for the abandonment of any existing septic tanks or wells.

Required Fees

1. Pay Offsite Street Improvement Program (OSIP) fees. The OSIP fees shall be the fees in effect at the time the building permit application is filed and is accepted as being substantially complete by the Building Division. The current OSIP fee is \$5.20 (per gross sq. ft.) for commercial, \$4.16 for office, \$3.40 for industrial, and \$0.95 for mini-storage, and shall be paid prior to issuance of a Certificate of Occupancy.
2. Pay the required Grading Permit fee before issuance of a grading permit.
3. Pay the current sewer connection and service fees before issuance of a Certificate of Occupancy.
4. Pay Encroachment Permit fee for any work within the public right-of-way. Prior to the issuance of an encroachment permit, the following are required:
 - a. Payment of inspection fee based on 9% of the estimated cost of improvements.
 - b. Payment of plan check fee based on the rate set forth in the Resolution of Fees and Charges, currently \$63.00 per hour, or at cost if consultant services are required.
 - c. Provision of a "restoration bond" to restore public improvements to their original condition of work is stopped and developer is unable to complete development of the property.
5. Provide a warranty bond in the amount of 15% of the estimated cost of public improvements within the street right-of-way before acceptance of the improvements by the City.

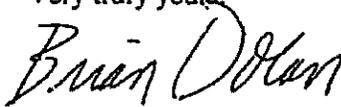
6. Pay the required Drainage fees before issuance of a building permit. The fee is currently \$410.00 per acre.

All items necessary for the application for Design Review Board approval shall be made within 30 days of approval of this Use Permit.

This action of the Planning Commission may be appealed to the City Council within ten (10) calendar days of the date of the Planning Commission action. Forms for this purpose are available in the Planning Division office. Other materials necessary for submittal along with the appeal form include a \$58.00 fee and stamped, addressed envelopes for notification to property owners and occupants within 300 ft. of the project site.

Please contact Talin Aghazarian at 671-3070 if you have any questions regarding the Planning Commission's action.

Very truly yours,



Brian Dolan
Principal Planner

BD/cpd

- c: Alex Pascual, Engineering Division
Bob Clarke, Engineering Division
Cathy Armstrong, Engineering Division
Julie Flowers, Engineering Division
Vance Phillips, Building Division
Bill Lewis, Contra Costa County Fire Protection Dist., 2010 Geary Rd, Pleasant Hill, CA 94523
Peter J. & Helen Frumentti, 1320 Galaxy Way, Concord, CA 94520
Shusheng "Harry" Luan, 305-B Country View Lane, Pleasant Hill, CA 94523



REPORT TO PLANNING COMMISSION

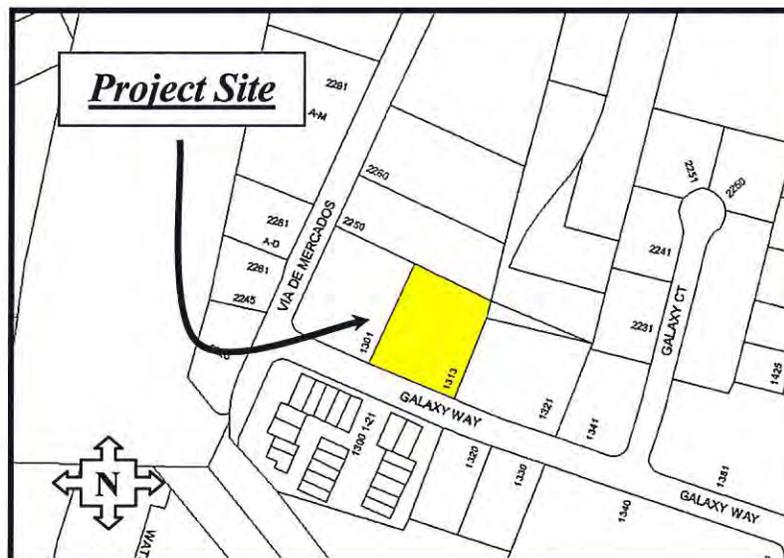
DATE: August 6, 2003

SUBJECT: CONCORD RECYCLING CENTER USE PERMIT (UP 03-011)**Recommendation:** Adopt Resolution No. 03-18PC, approving Concord Recycling Center Use Permit (UP 03-011).**I. Introduction****A. Application Request**

Application to locate a 27,200 square foot recycling center and a 6,048 square foot future office within a two-story 33,248 square foot building.

B. Location

The subject site is located at 1313 Galaxy Way; APN: 126-020-073.



C. Applicant
 Concord Recycling Center
 Attn: Harry Luan
 1320 Galaxy Way
 Concord CA 94520
 (925) 684-3900

Owner(s)
 J. Gordon Holmes
 3815 Happy Valley Road
 Lafayette CA 94549
 (925) 284-7303

II. Background

Recently, five uses have been proposed and/or approved at the subject site. In July of 1988, staff approved a business license for York International Paper Company. The company operated a paper and bindery business from the warehouse portion of the building until 1997. Wang Laboratories established an electronic parts and equipment business from the office portion of the building between 1990 and 1999.

A Zoning Administrator's permit was approved November 24, 1998 for the Concord Sports Center to establish a commercial recreation facility with two indoor fields for hockey, volleyball, and soccer at the subject site. During the months that followed, neighborhood complaints were filed with the City regarding the operation of the business and eventually the City Council revoked the Zoning Administrator's Permit in 2001.

In February of 2002, Cooks Collision approached the City to establish an auto body repair facility at the site. The Zoning Administrator confirmed that the business was prohibited under the regulations governing the SLI zoning district. Cooks Collision appealed staff's interpretation of the zoning ordinance on March 29, 2002. The Commission overturned the Zoning Administrator's interpretation of the SLI ordinance May 1, 2002 stating that the proposed automotive use would be appropriate at the site given similar approvals in the area. Cook's Collision did not pursue a use permit application subsequent to the Commission's determination.

The subject application was filed May 27, 2003; the Development Advisory Committee subsequently reviewed the application on June 24, 2003. Staff determined the application was incomplete and required the applicant to revise the project plans and submit additional application materials for staff's review. The project application was subsequently deemed complete on July 9, 2003. Since that time, the project plans have been modified in response to comments from public agencies and staff.

III. General Information

A. **General Plan**

The General Plan land use designation is Industrial/Business Park.

B. **Zoning**

The zoning classification is SLI (Special Light Industrial).

C. **CEQA Status**

Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, and pursuant to Section 15301 (Existing Facilities), the project is classified as a Categorical Exemption and therefore no further environmental review is required.

D. Site Description

The project site is located along Galaxy Way near Via De Mercados. The site measures 1.27 acres in area and is square in shape with little variation in topography along the length of the site. The north and south frontages measure approximately 200 feet in length and the west and east frontages approximately 260 feet in length. A drainage easement measuring 10 feet in width and approximately 260 feet in length is located along the east property line and is recorded in favor of the City of Concord. It has been determined that the construction of buildings is prohibited in this area, however parking and landscaping is acceptable.

A 33,248 square foot concrete tilt up building is located at the northwest corner of the site. The "L-shaped" building is segregated into a 6,048 square foot, two-story office building (nearest Galaxy Way) and a 27,200 square foot, one-story warehouse building. The building measures 26 feet in height. Surface-level parking is provided along the project frontage and within a fenced side yard area along the east property line. Street trees, shrubs, and ground cover are located along the project frontage and a portion of the side yard areas.

E. Surrounding Land Use

Road One vehicle storage yard and B&D Towing are located to the north of the site. The Independent Electric Supply Company is located to the east of the site beyond Lloyd Wise Drive (see note below). A multi-tenant professional and warehousing building named Mercados Industrial Park is located to the south of the site beyond Galaxy Way. Tom Duffy Company Wholesale Flooring Products is located to the west of the site. All of the surrounding properties have a General Plan land use designation of Industrial/Business Park and a zoning designation of SLI.

Note: Lloyd Wise Drive is a non-exclusive roadway and utility easement that connects Concord Avenue with Galaxy Way (between the Concord Saturn and Acura automobile dealerships) along the project's east boundary.

IV. Detailed Project Description**A. Description of Business**

The proposed business would be an expansion of the Pleasant Hill Recycling Center located at 1320 Galaxy Way, across the street in a southeast direction from the subject site. The existing facility accepts both commercial (large-scale) and residential (small-scale) deliveries of materials, whereas the proposed facility would assume all commercial deliveries (in the amount of 1,000 pounds or greater) of "non-toxic materials including scrap metal, glass, plastic, and paper" for both businesses. Deliveries of less than 1,000 pounds would be refused and redirected to the existing recycling facility at 1320 Galaxy Way however employees would be given the authority to accept smaller deliveries if they were deemed to be of adequate size for processing at the site. Between nine and 15 truck trips are anticipated each day (please refer to the applicant's statement for additional detail regarding the types of vehicle trips and deliveries). All large vehicle traffic would enter and exit the building via a 16-foot wide roll-up door along the south building elevation with the exception of those

vehicles receiving outgoing shipments of materials. Semi trucks receiving outgoing shipments access the building by means of a receiving dock located behind a 12-foot wide roll-up door also along the south elevation. Pick-up trucks would exit the building through a ten-foot wide roll-up door located along the east building elevation.

As recyclable materials are delivered, an employee weighs each vehicle upon entering the building and then directs the driver to the appropriate sorting area within the warehouse to unload the materials. In cases where a large delivery is made, a truck would leave its container (and materials) inside the warehouse for sorting and return to the facility within 24 hours to retrieve the empty container. Once the materials are delivered, they are then sorted and stored in dumpsters and/or freestanding metal bunkers, gathered into bales, palletized, and stored for shipment off-site.

The proposed hours of operation are Monday through Saturday from 3:00 a.m. to 11:00 p.m., although it is anticipated that most activity would occur between the hours of 5:00 a.m. and 9:00 p.m. A total of five employees would be on-site during business hours. One employee would weigh incoming vehicles and direct traffic inside the building, two employees would operate the balers, and two employees would operate forklifts inside the building. The applicant notes that when large deliveries are made or “special projects” are being processed, employees from Pleasant Hill Recycling Center would be asked to assist in the work effort, thereby increasing the number of employees by two or three persons onsite for a short period of time.

The applicant is the “master leaseholder” for the building. The subject use permit is a request to use the warehouse portion of the building only. The 6,048 square foot office space would be marketed for lease to the public should the use permit be approved.

B. Development Regulations

The site is within the SLI District, which allows “light industrial, wholesale, and limited retail uses.” The proposed development regulation standards are listed below as they relate to the proposed project. These development regulations are included as final conditions of approval of the project should the Commission approve the use permit.

Standards	Required (Minimum)	Provided (Minimum)
Lot Area (sq. ft.)	20,000	57,420
Lot Width (ft.)	100	204
FAR	N/A	N/A
Yards (ft.)		
Front	21	18.5*
Side	Aggregate of 20	39
Corner Side	N/A	N/A
Rear	0	1
Building Height (ft.)	35	26
On-site Parking (stalls)	54	32 [†]

*Existing condition

[†]Please refer to the Analysis section for additional information

C. Site Planning/Circulation/Parking

The existing building is located at the northwest corner of the site along the north property line oriented parallel to Lloyd Wise Drive. The building is setback 29 feet from Galaxy Way, 50 and 93 feet from the wholesale flooring products use to the west and the electric supply company to the east, respectively, and one foot from Road One vehicle storage facility contiguous to the north. The building measures approximately 160 feet in width and 240 feet in depth. These setbacks provide for a 18.5 foot front yard landscaped area contiguous to the office portion of the building, a ten foot wide landscape planter along Galaxy Way, and ten- and four-foot wide side yard landscaped areas along the west and east property lines, respectively.

Two, 30-foot wide driveways are located along the project frontage and provide two-way vehicle access to the interior of the site. The entire site would be accessible to the public with the exception of a portion of the east side yard area that would be closed by a fence during non-business hours. Drive aisles measuring approximately 27 to 44 feet in width accommodate two-way vehicle circulation. A raised sidewalk is located along the east façade of the office building providing pedestrian access to the building via an entry door located along the same elevation. Access to the warehouse is provided by an entry door along the south elevation of the warehouse portion of the building.

A total of 32 surface-level parking stalls are provided onsite for use by customers and employees; 28 stalls are located along Galaxy Way and contiguous to the building and four parallel stalls are located within a fenced side yard area along the east property line.

D. Building Architecture

The existing two-story building measures 33,248 square feet in area and 26 feet in height. The building is "L-shaped" and is segregated into a 6,048 square foot office building and a 27,200 square foot warehouse building. The concrete tilt-up building incorporates two unique elevations to distinguish the office use from the warehouse use. The exterior of the office portion of the building consists of painted wood lap siding whereas the exterior of the warehouse portion of the building consists of painted concrete panels. The upper portions of the building and the metal roll-up doors are painted teal to contrast with the gray building body color. The applicant is not proposing to upgrade the exterior of the building.

E. Landscaping/Walls/Fencing

The applicant is proposing to maintain the existing landscaping onsite and augment the perimeter and parking lot planting areas as necessary. The landscape plan provides a front and side yard landscape area contiguous to the two-story office portion of the building and landscape islands throughout the parking lot. "Drake Elm" trees have been planted along the Galaxy Way frontage along with "Nichol's Peppermint" trees along the west property line contiguous to the building. Shrubs such as "Privet, Xylosma, Star Jasmine, and Escallonia" are planted along the project frontage. "Wild Strawberry" groundcover is used to supplement those areas where tree and shrub planting does not occur.

The applicant proposes to use the existing perimeter chain link fence to secure the site as well as an existing sliding chain link fence to secure the east side yard parking area after hours. The applicant proposes to modify the design of the sliding fence such that one half of the gate would swing open and the other half of the gate would slide. The applicant also proposes to affix a green-colored canvas material (similar to the material used to screen views of tennis courts) to the exterior of the east property line fence to screen motorists views of the east side yard area along Lloyd Wise Drive.

“Wall-Pak” light fixtures are located along the south and east building elevations to illuminate the parking lot areas and to provide security lighting. No new lighting is proposed for use with the building.

F. Signs

The installation of new signs is not proposed as part of the subject use permit application. The applicant has informed staff that he does not want to attract residential (small-scale) deliveries to the site with additional signage. The applicant would inform commercial clients of the new location. Should the applicant determine that tenant identification is needed at a later date, a separate application would be filed with the Planning Division. Staff is proposing a condition of approval that would require the applicant to obtain the City’s approval of a sign permit prior to the installation of any signage at the site.

G. Grading/Drainage/Seismic

No grading or installation of new drainage facilities are proposed as part of the use permit application. An existing storm drain system is located along the south (Galaxy Way) and east (Lloyd Wise Drive) project frontages. Onsite catch basins collect surface water run-off and direct the water to a downstream facility. The project would rely on the existing storm drain system, sewer system, and utilities located along Galaxy Way for service to the building.

V. Analysis

A. General Plan and Zoning Consistency

The site has a General Plan land use designation of Industrial/Business Park. The proposed recycling center is consistent with the identified list of uses in the General Plan such as “light industrial and warehousing uses with limited public access.” Furthermore, the site is within the SLI Zoning District, which allows “recycling centers when conducted within a building.”

B. Description of Business

The applicant explains that the proposed business would represent an expansion of the Pleasant Hill Recycling Center. The Planning Commission approved a use permit for the existing business March 15, 2000 to establish an 18,000 square foot recycling facility located at 1320 Galaxy Way. Over the past 18 months, staff has been working with the applicant to ensure fire and building code compliance and to address the Planning Division’s conditions of

approval. The applicant has made progress in resolving the majority of the code violations and worked to clean up and organize the parking lot areas where outdoor storage is occurring. The applicant explains that the violations are a result of an inadequate tenant space, therefore, it has been necessary to modify the building and store materials outside to accommodate the amount of materials that are being delivered to the site. It is also anticipated that by expanding the business and rerouting all of the commercial-sized deliveries to 1313 Galaxy Way, the remaining violations can be cured.

Pursuant to the SLI ordinance, "recycling centers are conditionally permitted uses when conducted in a building." The applicant explains that a portion of the proposed business operation would be conducted outdoors. Specifically, metal, shipping-style containers would be stored in the east side yard parking area once they are emptied inside the building.

Given the City's experience monitoring Pleasant Hill Recycling Center, it is staff's opinion that the potential exists for similar violations to occur at the subject site. However, it is also staff's opinion that by relocating large-scale commercial deliveries to the proposed building, which is approximately 1/3 larger than the existing facility, many of staff's concerns related to outdoor storage of materials would be addressed given the large size of the facility. Staff recognizes that there may be a need to use a portion of the side yard area to store empty containers and that the use of space would be temporary in nature. The applicant maintains that he understands the intent and purpose of the SLI ordinance and could operate the business pursuant to the restrictions related to recycling facilities. As such, a condition of approval is included that would prohibit the operation of the recycling facility from occurring outdoors, with the exception of those activities noted above. Staff has specified that a maximum of three, empty metal, shipping-style containers may be stored in the east side yard area for a period of time not to exceed 24 hours from the date that they are delivered. Plastic storage containers, bins, wire baskets, palletes, and the like are not permitted outdoors at any time.

C. Site Planning/Circulation/Parking

The site plan design is acceptable in terms of traffic safety, vehicle maneuverability, access, vehicle queuing, and pedestrian circulation. The building is situated on the lot so that parking is provided at the front of the property contiguous to the primary building entries and in the east side yard area for employees of the recycling business. The Transportation Division staff has verified that the existing vehicle circulation provides adequate turning radii for emergency vehicles and large trucks delivering.

The City's parking ordinance provides flexibility in determining the required number of parking spaces by allowing individual uses to be calculated separately. Accordingly, staff has calculated the required number of parking stalls for the office portion of the building separately from the required number of parking stalls for the warehouse portion of the building. The Municipal Code requires that for office "properties located outside of the Central Concord Redevelopment Area, the required parking is one parking space for each 300 square feet of gross floor area." Accordingly, the applicant is required to provide 20 parking stalls for use with the office. In addition, the Municipal Code requires "one (1) parking space for each two (2) employees in the maximum work shift, or one (1) space for each eight hundred (800) square feet of gross floor area, whichever is greater" for wholesale and

warehouse uses. According to the parking requirement mentioned above, staff has determined that the latter of the two requirements would necessitate more parking, specifically, an additional 34 parking stalls would be required for the warehouse use.

According to the applicant, a maximum of five employees would be on-site at any one time. In staff's opinion, the later of the two requirements is unreasonable and conflicts with the intent and design of the proposed project. In particular, it has been demonstrated that there would be a maximum of five employees on-site at any one time and that based on staff's experience processing the use permit application for the applicant's existing use, the proposed recycling center would generate a low numbers of trips and demand very low numbers of parking stalls. Instead, staff recommends that the Commission rely on the parking requirement based on the number of employees. Based on staff's interpretation, the applicant would be required to provide three stalls for use with the recycling center and would therefore exceed the minimum parking requirements for both a future office tenant and the proposed recycling center.

D. Landscaping/Walls/Fencing

The applicant has submitted a previously approved landscape plan to explain to staff what landscaping has been installed at the site. Staff has determined that the plan is comprehensive is its use of trees, shrubs, and groundcover for the site. Based on staff's experience reviewing plant palettes for similar sites, it appears that the use of drought resistant materials has been considered. Staff conducted an inspection of the property and found the landscaping to be in adequate condition however the site has not been properly maintained and requires weeding. Staff also noticed that some of the plantings did not appear to have been installed onsite or have been neglected to a point where additional planting is required or replacement planting is needed.

Staff has included a condition of approval that the applicant install additional landscaping and/or augment that which is existing to reflect the landscape plan that was previously approved for the site. As with all new development projects, staff is also requiring the applicant to enter into a landscape maintenance agreement to ensure that the site is properly maintained in perpetuity.

VI. Fiscal Impact

The proposed would have a negligible fiscal impact on the City.

VII. Public Contact

Notification was mailed to all owners and occupants of property within 300 feet of the subject parcel. The applicant has also contacted neighboring businesses to solicit their support of the proposed

business and will present the Commission with that correspondence at the hearing. The item has been published in the Contra Costa Times, as required by the Concord Municipal Code, and has been posted at the Civic Center and at the subject site at least ten days prior to the public hearing.

VIII. Summary and Recommendations

Staff supports the proposed use permit application as the site plan and building design relates well to the adjacent land uses and minimizes any potential negative impacts. The site plan design is acceptable in terms of traffic safety, vehicle maneuverability, access, vehicle queuing, and pedestrian circulation. Ample parking would be provided for both a future office use and the proposed recycling center while balancing the requirement for landscaping onsite. The proposed use of the property would fill a warehouse vacancy and establish a tenant presence that would maintain the site, the building, and landscaping on a regular basis.

Staff recommends that the Commission consider staff's report, allow the applicant to make a presentation and answer any questions from the Commission, take public testimony, and close the public hearing upon completion of public testimony. Based on the analysis contained in this report, staff recommends approval of the use permit application.

IX. Motion

Project Approvals

I (Comm. _____) hereby move that the Planning Commission adopt Resolution No. 03-18PC approving the Concord Recycling Center Use Permit (UP 03-011) subject to the Conditions of Approval set forth in Attachment A to Resolution No. 03-18PC. (Seconded by Comm. _____.)

Prepared by: _____
 G. Ryan Lenhardt
 Senior Planner

Reviewed by: _____
 Deborah Raines
 Planning Manager

Exhibits:

- A - Planning Commission Resolution No. 03-18PC
- B - Applicant's project description date stamp received June 23, 2003*
- C - Project plan sheets 1-2 and 4 and 6 date stamp received July 15, 2003 and sheets 3 and 5 date stamp received July 16, 2003*
- D - Environmental Impact Fact Sheet date stamp received May 27, 2003*

* *Not available electronically.*

1 2. The project is consistent with the General Plan policies and land use
2 designation.

3 3. That the project will not be detrimental to the health, safety and general welfare
4 of persons residing or working in the neighborhood of such project.

5 4. That the project will not be injurious or detrimental to property or
6 improvements in the neighborhood in that the project will be designed to be compatible with the
7 adjoining industrial development and that the maintenance of the parking lot, building exteriors and
8 landscaping will be secured through a separate maintenance agreement.

9 5. The project meets or exceeds the performance standards outlined in the City of
10 Concord's General Plan.

11 6. This resolution shall become effective immediately upon its passage and
12 adoption.

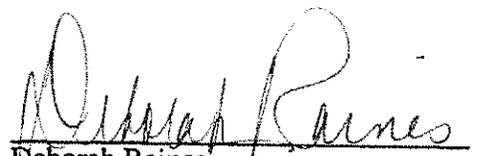
13 **PASSED AND ADOPTED** this 6th day of August, 2003, by the following vote:

14 **AYES:** Commissioners Bjerke, Shinn, Brumley, Sylls

15 **NOES:** Commissioner Costa

16 **ABSTAIN:**

17 **ABSENT:**

18
19 
20 Deborah Raines
Secretary to the Planning Commission

21 Attachments:

22 A – Final Conditions of Approval

23 cc: Bob Clarke, Public Works-Engineering Services
24 Vance Phillips, Building and Neighborhood Services
25 Johnny Young, Contra Costa County Fire Protection District

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ATTACHMENT A
FINAL
CONDITIONS OF APPROVAL
CONCORD RECYCLING CENTER USE PERMIT
UP 03-011

THE PROJECT SITE IS LOCATED AT
1313 GALAXY WAY
APN: 126-020-073

Description

- 1) These conditions apply to and constitute the approval of a Use Permit to operate a recycling center within a two-story 33,248 square foot building (27,200 square foot recycling center and a 6,048 square foot future office); the following uses are permitted. (PLNG)
- Recycling of non-toxic materials including scrap metal, glass, plastic, and paper. This approval does not constitute authorization to use any portion of the 6,048 square foot "office" portion of the building.

The following are the development regulation standards established by these permits: (PLNG)

Total Site Area	57,420 sq. ft.
Building Height	26 feet
Setbacks:	
Front yard setback	18.5 feet
Side yard setbacks (aggregate)	39 feet
Rear yard setback	1 foot
Parking:	
Standard Stalls	32

- 2) The authorized hours of operation shall be Monday through Saturday from 3:00 a.m. to 11:00 p.m. (PLNG)

1 Exhibits

2 3) The following exhibits are incorporated as conditions of approval, except where specifically
3 modified by these conditions: (PLNG)

	<u>Date Received</u>		<u>Sheet Name/</u>
	<u>by City</u>	<u>Prepared by</u>	<u>Number</u>
4			
5	Cover Sheet	July 15, 2003	Gilbert Fitch & Assoc. 1
6	Existing Site Plan	July 15, 2003	Gilbert Fitch & Assoc. 2
7	Proposed Site Plan	July 16, 2003	Gilbert Fitch & Assoc. 3
8	Existing Landscape Plan	July 15, 2003	Gilbert Fitch & Assoc. 4
	Existing Grading & Drainage Plan	July 16, 2003	Gilbert Fitch & Assoc. 5
	Office Space	July 15, 2003	Gilbert Fitch & Assoc. 6

9 *All construction plans shall conform to these exhibits unless minor modifications are approved*
10 *by staff or modified by the following conditions. Where a plan or further information is*
11 *required by these conditions, it is subject to review and approval by the Planning Division,*
Building Division, and/or Engineering Services/Current Development Division as necessary.

12 4) Minor modifications including but not limited to the site design, grading, building design,
13 building colors or materials, and landscape material may be allowed subject to the approval of
14 the Planning Division if found to be in substantial conformance with the approved exhibits.
Substantial modifications shall require appropriate staff approval or applicable approving body
review. (ALL)

15 5) This entitlement is granted for the buildings, roadways, parking areas, landscaping, lighting,
16 colors and materials, and other features that are included as part of the formal application and
17 exhibits. Compliance with these conditions is required for all permits and final inspections
18 associated with this entitlement. Unless specified otherwise in these conditions, upon final
19 inspection of each building, all additions, landscaping, colors, materials, and lighting changes
to individual properties shall be in conformance with the City of Concord Code of Ordinances.
(PLNG)

20 6) Prior to the issuance of a certificate of occupancy, the applicant shall submit an annotated copy
21 of Conditions of Approval noting how each listed and attached condition has been satisfied.
(PLNG)

22 7) All conditions shall be included as a separate plan sheet(s) to be attached to all building,
23 grading, and site work permit plan check sets submitted for review and approval by the City.
24 These conditions of approval shall be attached at all times to any grading and construction
25 plans kept on the project site. It is the responsibility of the applicant/property owner to ensure
26 that the project contractor is aware of, and abides by, all conditions of approval. It is the
responsibility of the applicant/property owner to ensure that the project landscape contractor is
aware of and adheres to the approved construction plans where applicable, the landscape and
irrigation plans, and all conditions of approval. (ALL)

- 1 8) Within 30 days of the date of the Planning Commission's final project approval, the applicant
2 shall submit to the Planning Division two copies of a revised set of project plans that are in
3 substantial compliance with the plans approved by this action and the conditions of approval
4 contained herein. This submittal shall occur prior to filing an application for site demolition,
5 grading, construction, or other like permit. **(PLNG)**
- 6 9) Prior to building occupancy, the applicant shall request, at least two weeks in advance, a field
7 inspection to be conducted and approved by Planning Division staff prior to completion of all
8 site improvements. Such improvements shall be completed and approved by the Planning
9 Division staff, including but not limited to all buildings, streets, driveways, parking lots,
10 landscaping, irrigation, signs, lighting, walls, and trash enclosures. **(PLNG)**
- 11 10) Applicant shall maintain and keep in clean and good condition any and all exterior
12 improvements for the area adjacent to the building out to the street curb. Said improvements
13 shall include but are not limited to landscaping and street trees, sidewalks, parking areas, street
14 furniture, trash receptacles and enclosures, except for landscaped planters and street trees
15 which are maintained by the City. **(PLNG)**
- 16 11) There shall be no outdoor storage and/or sorting of recyclable materials permitted at any time.
17 All deliveries of materials shall occur inside the warehouse building at all times. Exceptions
18 to this condition include the temporary storage of a maximum of three, empty metal, shipping-
19 style containers in the east side yard area for a period of time not to exceed 24 hours from the
20 date that they are delivered. Plastic storage containers, bins, wire baskets, palettes, and the like
21 are not permitted outdoors at any time. **(PLNG)**
- 22 12) At the end of business each day, nothing shall be stored outside of the warehouse building
23 including trucks, trailers, empty dumpsters, containers, bins, pallets, loose paper, scrap metal,
24 glass, or the like with the exception of those items referred to in condition number 11 above.
25 All roll-up doors shall be closed and sliding/swinging fences secured and locked at the end of
26 business each day. **(PLNG)**
- 27 13) Starting July 15, 2004 and every year thereafter, the operators of the recycling facility shall
28 provide a comprehensive annual report to the City listing the tonnages of each major category
of material accepted for recycling at the facility for the twelve month period of July 1st to June
30th of the previous year. The annual report shall include all materials accepted for recycling,
e.g., glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each
category shall be expressed as total tonnages of these materials accepted for recycling from all
sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive,
Concord CA 94519. **(PLNG/CMGR)**
- 14) The Commission's approval of the associated use permit does not constitute the approval of
any signs for the project. A separate application for tenant signage must be submitted to the
Planning Division for their review and determination of the required review process. **(PLNG)**
- 15) No person shall, upon any property owned or leased by him and contiguous to or along any
public street, place, or sidewalk, construct, set up, or maintain any hazardous fence, including
but not limited to any barbed wire, razor wire, ultra barrier, or electrified fence or enclosure.
(PLNG)

- 1
2 16) Staff and the applicant shall report to the Planning Commission no later than February 18,
3 2004 with an update of how Pleasant Hill Recycling Center at 1320 Galaxy Way and the
4 subject business at 1313 Galaxy Way are complying with the conditions of approval associated
5 with their business. (PLNG)

6
7
8
9 ARCHITECTURAL

- 10 17) The installation of television or radio antennae or satellite reception dishes are prohibited
11 unless the necessary Zoning Administrator permit is obtained from the City pursuant to §122-
12 981, "Antennas and Wireless Communications Facilities," or unless said antenna(s) is/are
13 exempt from permit requirements pursuant to §122-982, "Exceptions and Special
14 Regulations." (PLNG)

15 LANDSCAPING

- 16 18) Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise
17 maintained as necessary. Plant materials shall be replaced as needed to maintain the site in at
18 least the condition that was identified as part of the approved landscape plan.
- 19 A) Be in compliance with the landscape plan date stamp received by the Planning Division
20 July 15, 2003 as approved by the Planning Commission;
21 B) Be in compliance with the State Model Water Efficient Landscape Ordinance. (PLNG)
- 22 19) Prior to a final landscape inspection, the applicant shall:
- 23 A) Install all landscaping so as to be consistent with the approved landscape plans referred to
24 in condition of approval #3. (PLNG)

25 PARKING

- 26 20) All full-sized perpendicular parking stalls shall measure a minimum of nine feet (9'-0") in
27 width by nineteen feet (19'-0") feet in depth and all full-sized parallel parking stalls shall
28 measure a minimum of nine feet (9'-0") in width by twenty-three feet (23'-0") feet in depth.
All parking stalls shall be striped. Wheel stops shall be provided for perpendicular stalls
unless they are fronted by concrete curbs, in which case sufficient area shall be provided at the
front of the parking stall to accommodate the overhang of automobiles. (PLNG)
- 21 21) Each lot or parking structure where parking is provided for the public as clients, guests, or
22 employees shall include parking accessible to handicapped or disabled persons as near as
23 practical to a primary entrance and in accordance with the standards for number of stalls, size,
24 location, signing, and markings/stripping set forth in Chapter 71 "Site Development
25 Requirements for Handicapped Accessibility" of Title 24 of the California Code of
26 Regulations. (BLDG)

1 LIGHTING

- 2 22) The applicant shall replace the existing building wall-mounted "Wal-Pak" light fixtures with
3 an attractive light fixture approved by Planning staff. Said approval shall occur within 120
4 days (e.g., December 6, 2003) of the approval of the use permit. (PLNG)
- 5 23) All existing and approved exterior building lighting and/or parking lot lighting fixtures shall be
6 installed in a manner that glare is shielded and substantially directed away from surrounding
7 properties and rights-of-way; and exterior lighting is directed to provide illumination for safety
8 without creating excessive light during the evening hours. All exterior light fixtures depicted
9 on this plan shall have fully recessed lenses and cut-off features (i.e. glare shields) that limit
10 illumination at the property line. A note shall be placed on the plan that states, "All down cast
11 light fixtures shall be installed and permanently maintained in a horizontal position." Such
12 plans shall be reviewed and approved by the Design Review Board, Planning Division,
13 Building Division, and Police Department prior to issuance of a building permit and
14 installation at the site. (PLNG/ENGR)

15 SOLID WASTE/RECYCLING

- 16 24) The applicant shall comply with the provisions of the City of Concord Code of Ordinances and
17 the Clean Water Act and consult with the local franchised waste hauler regarding enclosure
18 design, access requirements, and the number of required individual refuse receptacles based
19 upon waste pickup schedules. Verification of these facilities shall be made by the City and
20 approved by the Planning Division prior to building permit issuance and said facilities shall be
21 installed prior to final building occupancy. (PLNG)
- 22 25) All trash enclosures shall consist of a solid masonry wall and incorporate the same
23 architectural treatment and use the same approved exterior materials and colors of the main
24 building. The height of the enclosure walls and door(s) shall be the same or greater than the
25 height of the bins within the enclosure. The trash enclosure shall be covered and include a
26 roof which will be designed to prevent rain water from penetrating the interior of the enclosure
27 and preclude trash from being blown outside of the bins. The trash enclosure shall be sewered
28 to prevent contaminated water from entering the storm drain system. All trash enclosures shall
incorporate opaque gates consisting of solid metal material as determined by the Planning
Division. (PLNG/ENGR)
- 29 26) The trash bins and all refuse shall be stored within an approved enclosure with the doors
closed at all times or located within a building whenever possible except when the bins are
being accessed to be emptied. (PLNG)

30 NPDES/CLEAN WATER

- 31 27) Prevent site drainage from draining across sidewalks and driveways in a concentrated manner.
32 (ENGR)

- 1 28) Verify that the two existing inlets inside the building are connected to a sanitary sewer line. If
2 not connected, connect the two existing inlets inside the building to a sanitary sewer line
3 (using Central Contra Costa Sanitary District criteria) in order to prevent contaminated water
4 from entering the storm drain system. (ENGR)
- 5 29) Install appropriate clean water device at all private storm drain locations immediately prior to
6 entering the public storm drain system. Implement Best Management Practices (BMP's) at all
7 times to comply with the CITY OF CONCORD Stormwater Management and Discharge
8 Control Ordinance. (ENGR)
- 9 30) Comply with the requirements of Regional Water Quality Control Board regarding issuance of
10 an Industrial Storm Water General Permit for recycling centers. (Contact person: Alexa
11 LaPlant at 510-622-2400.) Submit evidence of compliance to Engineering Services prior to
12 issuance of building permit. (ENGR)

9 AGREEMENTS, FEES, BONDS

- 10 31) Within thirty days of billing by the City, the applicant shall pay a Condition Compliance Fee
11 per City Resolution 02-6042.2, "Fees and Charges for Various Municipal Services." Said fee
12 shall reimburse the City for implementation of the Planning Division's Conditions of Approval
13 and shall apply to staff work performed from the time of project approval to issuance of final
14 certificate of occupancy. (PLNG)
- 15 32) Upon issuance of the certificate of occupancy, the applicant shall pay a Document Imaging
16 Fee per City Resolution 02-6042.2, "Fees and Charges for Various Municipal Services." Said
17 fee shall reimburse the City for implementation of the Planning Division's Document Imaging
18 and File Retention programs. (PLNG)
- 19 33) Prior to issuance of the Certificate of Occupancy for the building, the applicant shall submit to
20 the City for review and approval by the Planning Division and City Attorney's Office, a
21 "Agreement for Maintenance of Building Exteriors, Landscaping, and Parking Lot Areas" for
22 all building and landscaping at the site. The agreement shall address the repair, replacement
23 and maintenance of all parking and driving surfaces, pedestrian walkways, landscaping,
24 irrigation equipment, and building exterior colors and materials. (PLNG)

21 CONSTRUCTION ACTIVITIES

- 22 34) Construction activities shall be:
- 23 **Monday through Friday** 7:30 a.m. to 6:00 p.m.
- 24 **Saturday** 8:00 a.m. to 5:00 p.m.
- 25 **Sunday*** 8:00 a.m. to 5:00 p.m.

26 *The Building Official in coordination with the Planning Manager is authorized to modify the
27 permitted hours of construction under any issued building permit. (BLDG/PLNG)

- 28 35) No equipment shall be started or staging area be established on the streets before or after the
approved and specified hours of construction. (PLNG/ENGR/BLDG)

1 36) The applicant is responsible for ensuring that no debris or construction scrap material is placed
2 on any adjoining lot, open space area, or street, and that any such material stored on an
3 adjoining site shall be completely removed and the site cleaned prior to occupancy.
(PLNG/ENGR/BLDG)

4 LEGAL

5 37) Applicant shall defend, indemnify and hold harmless the City, its agents, officials, and
6 employees from any claim, action, or proceeding against the City or its agents, officials, or
7 employees in any action to attack, set aside, void or annul, the approval of this permit. The
8 City shall promptly notify applicant of any claim, action, or proceeding and the City shall
cooperate fully in the defense. Further, the City shall select the attorneys who will defend
such proceeding and shall control any litigation thereof. (PLNG)

9 38) This action may be appealed to the City Council within ten (10) calendar days of the date of
10 the Planning Commission's action. Other materials necessary for submittal along with the
11 appeal form include a fee and stamped, addressed envelopes for notification to property
12 owners and occupants surrounding the project site (please contact the Planning Division for
specific information regarding this matter). (PLNG)

13 39) The permit and approval shall expire in one year from the date on which they became effective
14 unless a building permit is obtained and construction begun within the one year time period.
The effective date of the permit and approval is August 6, 2003. (PLNG)

15 OTHER/MISCELLANEOUS

16 40) The location of any outdoor pad-mounted transformers, above-ground and/or at-grade utility
17 equipment, irrigation control boxes, fire district back flow prevention devices, and the like
18 shall be adequately screened or vaulted to eliminate any view of the structures from the public
19 right of way to the satisfaction of the Planning Division and the City Engineer prior to the
20 issuance of the first project permit. (PLNG/ENGR)

21 41) Obtain an encroachment permit from the City prior to performing any work within the public
22 right-of-way or public easements. (ENGR)

23 42) Comply with the requirements imposed by the Contra Costa Fire Protection District. The City
24 is not responsible for the collection of fees or enforcement of requirements imposed by the
25 Fire District. (ENGR)

26 43) Comply with the requirements of the City Standard Plans S-34 and S-36 for sight distance,
27 sidewalk, back up fencing geometrics at intersection, and corner setback requirements.
28 (ENGR)

FINAL

REGULAR MEETING OF THE
CITY OF CONCORD PLANNING COMMISSION
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA
August 6, 2003

A regular meeting of the Planning Commission, City of Concord was called to order by Chair Sylls at 7:00 p.m., Wednesday, August 6, 2003, in the City Council Chamber.

PLEDGE TO THE FLAG

The pledge to the flag was led by
Commissioner Shinn

ROLL CALL

COMMISSIONERS PRESENT:

Chair Gene Sylls; Vice Chair Guy Bjerke;
Commissioner Bill Brumley, Commissioner
Kevin Costa; Commissioner William Shinn

COMMISSIONERS ABSENT:

None

STAFF PRESENT:

Deborah Raines, Planning Manager; Mark
T. Boehme, Assistant City Attorney; Cathy
Munneke; Principal Planner; G. Ryan
Lenhardt, Senior Planner; Eric Luchini,
Assistant Planner; Bob Clarke, Senior Civil
Engineer

PUBLIC COMMENT PERIOD

There were none.

ADDITIONS/CONTINUANCES/WITHDRAWS

Deborah Raines, Planning Manager, announced that public hearing Item 1 is being requested for a continuance.

CONSENT CALENDAR

A) None

PUBLIC HEARINGS

- 1. **Latter Day Saints Distribution Center Ground Sign (UP 03-010)** - Application for a non-illuminated 30-square foot ground sign at 2400 Monument Boulevard. The General Plan land use designation is Regional Commercial/Industrial Business Park; zoning classification is PD (Planned District); APN: 129-040-015. Project Planner: Nicole Miller @ 671-3083. *(Continued from 7/16 meeting.)*

Chair Sylls opened the public hearing on this item, and seeing none, he brought the matter back to the Commission for action.

Chair Sylls asked for a motion.

Comm. Bjerke moved that the Planning Commission continue Item 1 to the Planning Commission meeting of September 3, 2003.

Comm. Shinn seconded the motion.

AYES: Bjerke, Shinn, Brumley, Costa, Sylls

NOES: None

ABSTENTIONS: None

ABSENT: None

- 2. **Concord Recycling Center (UP 03-011)** – Application to locate a 27,200-square foot recycling center and a 6,048-square foot future office within a two-story 33,248-square-foot building at 1313 Galaxy Way. The General Plan land use designation is Industrial/Business Park; zoning classification is SLI (Special Light Industrial); APN: 126-020-073. Project Planner: G. Ryan Lenhardt @ 671-3162.

G. Ryan Lenhardt, Senior Planner, summarized the staff report and recommended that the Commission adopt Resolution No. 03-18PC, approving the Concord Recycling Center Use Permit (UP 03-011).

Mr. Lenhardt clarified that three pieces of correspondence from neighboring businesses had been benched tonight. He noted that staff is proposing changes to two of the conditions of approval. One, additional language should be included at the end of the first sentence of Condition 12 to read, "*with the exception of those items referred to in Condition 11 above*" to clarify that the temporary storage of metal bins is acceptable. He also indicated that Condition 40 is not relevant to this so it should be deleted. He further added that staff discussed both changes with the applicant and he had no objection.

Comm. Costa asked Mr. Lenhardt if Mr. Plog's letter reflected all comments expressed to staff. Mr. Lenhardt responded that the letter accurately depicted the conversations he had with Mr. Plog.

Dan Helix, applicant, stated that a number of recycling sites had diminished and the demand for those services has increased significantly. He noted that environmentally it is great that the public, public agencies and private companies have risen to the challenge of recycling rather than wasting precious resources such as metals, plastics and paper. He believed the City of Concord should be commended as a leader in the County as always meeting or exceeding the recycling percentages as mandated by the State of California. He explained that he had several meetings with staff and spoken with several neighbors and customers of the operation collecting over 80 signatures in support of the use. He added that the proposed location would provide the ability for Pleasant Hill Recycling to improve service, guarantee a reduction of the magnitude of the operation at the 1320 Galaxy Way site, and eliminate any safety concerns by moving the paper recycling to a building equipped with a sprinkler system. He further noted that he concurred with the conditions of approval as proposed by staff.

Comm. Bjerke asked Mr. Helix if the nine to 15 truck trips anticipated to this site per day are additional truck trips or redirected truck trips. Mr. Helix responded that it would be a combination of both.

Comm. Bjerke asked Mr. Helix to address the reduction in the magnitude. Mr. Helix responded that reduction in magnitude would occur at the 1320 Galaxy Way site.

Mr. Luan, owner, added that currently they have five trucks per day and they plan for some increase with the new facility. Comm. Bjerke clarified that the nine to 15 truck trips would be moved from 1320 Galaxy Way to 1313 Galaxy Way and that number anticipates some growth in the recycling business. Mr. Luan responded in the affirmative.

Chair Sylls opened the public hearing on this item.

Larry Plog, 275 Brownstone Rd., Oakley, expressed concern for the appearance of the proposed location. He stated that in the General Plan it indicated that recycling centers

should be conducted within a building and provided photographs showing material outside for the Commission's consideration. He also noted that his tenants located in his existing building across the street are complaining about the odor, noise and garage. He further indicated that he is opposed to this project.

Dennis Plog, 1330 Galaxy Way, Concord, stated that the facility smells, it's very noisy and there are several transients going in and out the facility. He explained that no improvements had been done in two years even after the applicant received complaints. He further added that Galaxy Way had changed from industrial to office and believed Galaxy Way is not the appropriate site for a large scale recycling center.

Comm. Brumley asked Mr. Plog what draws the transients to this site. Mr. Plog responded that the transients sell recyclables to this company.

David Weuenschwander, 1300 Galaxy Way, Unit 20, Concord, President of Mercados Industrial Owners Association, stated that they are located directly across from 1313 Galaxy Way. He explained that the units range in size from 1,500 sq. ft. to 3,000 sq. ft. and they have a variety of uses located at the site. He noted that as an Association they recognize the rights of individuals and organizations to engage in lawfully approved businesses. He stated that he appreciated the recycling center, which helped him receive a certification from the County. He further expressed concern for having a salvage operation located across the street and pointed out that the greatest concerns are the appearance, odor, dust, dirt, noise and the transients.

Comm. Shinn asked Mr. Weuenschwander if there had been incidents where transients have posed a threat to staff. Mr. Weuenschwander responded that he had not seen any transient posing a safety threat.

Comm. Bjerke asked Mr. Weuenschwander if the Association had worked with the applicant regarding the 1320 property. Mr. Weuenschwander responded that the Association had not instructed management nor had the Board officially worked with the applicant in any way.

Jeff Paul, 1321 Galaxy Way, Concord, noted that Independent Electric Supply is opposed to this site for the recycling center. He stated that employees, customers and the owner of the property are very concerned about this facility being located at 1313 Galaxy Way. He added that they do not desire the mess, eyesore and odor that would be associated with this facility. He also expressed concern for the decrease in property values due to this recycling center as well as safety and security. He further indicated that many health concerns have been noted from businesses across the street and believed it is in the best interest of this business park and the City of Concord for this application to be denied.

Dan Helix Sr., owner of the building at 1320 Galaxy Way, noted that he purchased the property because it was located in a Light Industrial area. He stated that the recycling center is performing a valuable service for the community and area. He added that recycling is not very active in his opinion and believed that the intent to move the paper

operation within the proposed building is a good faith gesture on the part of the recycling company. He also indicated that the owner of the recycling company would incur great expense to lease the building. He noted that he is pleased because it would significantly reduce the amount of recycling that would occur at the 1320 Galaxy Way site. He believed that by moving across the street they would be in accordance with their use permit. He pointed out that if the recycling center cannot conduct the operation entirely within the purview of that building that they are representing, then the City has the ability to stop operations and rescind the use permit. He further stated that he is very supportive of this application.

Frank Shultz, Saturn of Concord, expressed concern for the transients and truck access to the property. He also expressed concern for the amount of dust that would accumulate on the vehicles parked in the back lot from this facility. He further noted that there is an odor on any given morning depending on the environmental conditions.

Mr. Helix noted that the intent is to remove the paper operation to the other site in order to have indoor room at 1320. He stated that the intent of the owner is to comply with each condition of approval, which was discussed in great length as to what would be realistic. He noted that there are challenges with site and smell, but pointed out that the recycling center is not the only use that has an odor. He explained that the proposed site is larger in order to accommodate the paper operation. He added that the truck access would be through Commerce or Via De Mercados. He further indicated that if the Commission approved this use permit, the neighboring businesses would be pleasantly surprised.

Comm. Bjerke noted that recycling is a permitted use in this zoning district provided that it is operated inside a structure and asked Mr. Helix that by moving into the proposed location that the balance of the business would be conducted indoors. He further noted that Condition 11 relating to hours of operation inside and outside troubles him. Mr. Helix responded that as far as 1313 Galaxy Way is concerned none of that would be outdoors. Comm. Bjerke asked Mr. Helix if the new site were approved, would the balance of the operation at 1313 be able to be conducted indoors. Mr. Helix responded that 1320 drop-off of bottles and metals would be off loaded outdoors and then moved indoors, but 1313 would be conducted indoors.

Mr. Lenhardt added that due to the design of 1313 Galaxy Way it is impossible for customers, public or commercial deliveries to occur inside the building. He explained that the delivery of materials must occur outside the building because the building is not physically large enough to accommodate large vehicles nor is the floor plan designed for drive-through traffic. He also pointed out that staff recognized that the current operation did not comply with the use permit conditions as approved by the Commission in 2000. He noted that the applicant clarified and anticipates that if this use permit were approved and commercial deliveries would be taken across the street, enough space would be freed-up within the exterior of the existing building to accommodate the smaller deliveries being received, therefore eliminating the need to store any excess material outdoors. He further stated that the day-to-day deliveries that are occurring currently would continue to occur in the parking lot.

Comm. Costa expressed concern for approving the first application and receiving something entirely different. Mr. Lenhardt responded that there is no reference in the original conditions indicating where materials should be dropped-off, picked-up or sorted.

Chair Sylls asked Mr. Helix if 1313 Galaxy Way would be the commercial component of what is occurring at 1320 Galaxy Way, so it would be a mixture of glass, plastic and paper or paper alone. Mr. Helix deferred that question to Mr. Luan. Mr. Luan responded that it will be mainly paper.

Chair Sylls asked Mr. Luan what is creating the odor at his facility. Mr. Luan responded that the odor is from garbage being collected in the paper recycling bins. Chair Sylls asked Mr. Luan if glass off-loading could be conducted at 1313 Galaxy Way in order to minimize the noise, since it must happen outside. Mr. Luan responded that the receiving part of glass could happen away from the street and from Mr. Plog's office, if the new proposed location is approved.

Comm. Bjerke asked Mr. Luan if the permit is approved what is the anticipated timeframe to have the new site up and running and the old site to the cleaner standard. Mr. Luan responded that all improvements could potentially be accomplished in one month.

There being no further public testimony on this item, Chair Sylls closed the public portion of the testimony and brought the matter back to the Commission for discussion and action.

Comm. Costa commented that had the City had the staff present today these issues would not need to be addressed. He stated that the area had turned into a very nice industrial park. He indicated that this is a salvage operation and it is having a negative impact on its neighbors. He noted that he visited the site and could not believe the poor appearance of the facility compared to the rest of the neighborhood. He proposed that they deny this with prejudice to allow the applicant to come back at some point, so the issues could be addressed at the current location.

Comm. Brumley believed the intent is to try and clean up the facility by moving across the street. He hoped the applicant would follow through with the intent because he supports that action of locating across the street. He expressed concern for the street and desired a condition prohibiting trucks being left out in the street with garbage. He further believed that the intent is to move the heaviest equipment across the street, which he could support.

Mr. Lenhardt noted that staff met with the owner of the property, operator, and representatives from the City Attorney's office to address this issue because there is a violation of the conditions of approval. He stated that regardless of what action is taken on this application, staff would be pursuing the violations with the applicant, and it is

expected that within 90 days, the site should be cleaned up completely with no outdoor storage whatsoever.

Comm. Shinn expressed concern for the number of code violations surrounding this application and asked staff if they could use Condition 13 as a mechanism for staff to provide a report to the Commission to view the use. Mr. Lenhardt responded in the affirmative.

Comm. Bjerke stated that with the help of facilities such as this, the City of Concord is able to attain the recycling goal mandated by the State. He noted his desire to make the proposed solution work without making the same mistakes that the previous Commission made three years ago. He suggested including a condition of approval that staff would provide a six (6) month status report on the applicant's adherence to the use permit discussed tonight and the previously approved use permit in 2000 in order to evaluate whether or not compliance is occurring. He further noted that he would be supportive of a motion to approve this application with changes to the conditions as represented by staff, with an additional condition asking for a status report on both use permits to come back to this Commission in six (6) months.

Chair Sylls agreed with Comm. Bjerke that this is a potential solution to a problem. He noted that the applicant and business owner indicated that they would do their best to clean up the facility at the existing location and work with the neighbors to be a compatible business. He further noted that he could support the project as well.

Chair Sylls asked for a motion.

Comm. Bjerke moved that the Planning Commission adopt Resolution No. 03-18PC, approving Concord Recycling Center Use Permit (UP 03-011) subject to conditions of approval set forth in Attachment "A" to Resolution No. 03-18PC, with the changes as recommended by staff to Condition 11 and Condition 12; the deletion of Condition 40; and with new Condition 16 that staff would provide to the Commission in six (6) months a report on the status of the conditions of approval with this use permit as well as the use permit previously approved for 1320 Galaxy Way.

Through the Chair, Ms. Raines respectfully requested clarification of the new Condition 16 and suggested modifying the language to read, "*applicant*" rather than "*planning staff*" return with the status report. Comm. Bjerke commented that he had no objection to that addition to Condition 16, but desired planning staff to spend some amount of analysis reviewing what is presented.

Comm. Shinn seconded the motion.

AYES: Bjerke, Shinn, Brumley, Sylls

NOES: Costa

ABSTENSTIONS: None

ABSTENT: None

Chair Sylls announced that the Commission would take a ten-minute recess and then reconvene with the next agenda item.

3. **Olivera Crossing Shopping Center (UPA 03-009, DR 03-016)** – Application to renovate 31,950 square feet of existing retail space and to construct 21,100 square feet of new retail space at the existing commercial center located at the southwest corner of Port Chicago Highway and Olivera Road. The General Plan land use designation is Neighborhood/Community Commercial; zoning classification is NC (neighborhood Commercial); APN's: 110-035-008, -011 and -012. Project Planner: Eric Luchini @ 671-3140.

Eric Luchini, Assistant Planner, summarized the staff report and recommended that the Commission adopt Resolution No. 03-17PC, approving the Olivera Crossing Shopping Center Use Permit Amendment/Master Sign Program (UPA 03-009) and Design Review (DR 03-016).

Mr. Luchini noted recommended changes to the conditions of approval as follows:

- Condition 31 should be eliminated as it is covered in Condition 34.
- Condition 34 should state, *"The guarantee bond shall be posted prior to occupancy."*
- Condition 65 should read, *"Submit necessary details with the site improvement plans to ensure safe ingress and egress for the joint use driveway at the westerly end of the Olivera frontage consistent with the approve site plan."*
- Condition 87 should be eliminated as it is covered through Conditions 90-94.
- New Condition 94 should state, *"Noise producing site preparation and construction activity shall be limited to the days and hours set forth below; Monday – Friday, 7:30 a.m. to 6:00 p.m. Construction on Saturdays shall be based on prior approval of the Planning, Building and Engineering Divisions."*

Comm. Costa asked Mr. Luchini if there was a change regarding the Taco Bell being redesigned and rebuilt as a combined restaurant. Mr. Luchini responded that there was a change subsequent to the study session meeting. He explained that after further discussion with the applicant, they have not completed the final leasing arrangements, so it could be either Taco Bell or Taco Bell combined with another restaurant.

Comm. Bjerke asked Mr. Luchini to address the Key Housing Opportunity site issue for the Commission's review. Mr. Luchini responded that the site is designated the Key Housing Opportunity site and based upon that designation a component of affordable

housing would be required. He stated that the applicant indicated to staff that they wanted to keep this as a commercial center and that based upon that, staff recommended that the applicant conduct a feasibility analysis based upon a mixed-use concept. He further noted that the applicant provided an analysis based on two different mixed-use concepts that indicated it was not economically feasible for residential development to occur on this site.

Gary Ward, 2030 Franklin St., Fourth Floor, Oakland, VP of Mason McDuffie Financial Corporation, stated that they are pleased with the application before the Commission and believed it represents overall what everyone desired. He stated that the existing tenants located at the center have been very patient and they are now solidifying their design to know the cost, then they would discuss the matter with the tenants. He also identified the issue that staff discussed regarding consolidating parcels, which they did not desire and would rather maintain flexibility. He also pointed out that there were some environmental issues attached to the corner parcel and they would assume to isolate it to that one area. He also explained that they felt that the 7-11 driveway is operating correctly and efficiently and believed that the City's Traffic Engineer agreed. He further noted that all the conditions of approval are acceptable.

Comm. Brumley noted that less than 50% is leased at this point in the center and asked Mr. Ward if that would affect the progress of this development. Mr. Ward responded that at this stage 50% is not that terrible and believed the leasing would improve.

Comm. Costa commented that there is a preference from the neighbors to prohibit a second drive-through at the corner, and asked Mr. Ward if the corner would be a gas station or a restaurant. Mr. Ward responded that at this time they did not have that answer. Comm. Costa noted that would be a big concern to the neighbors. Mr. Ward responded that they are working currently with the service station operator, but they still are not there, but did not desire to be in a position where that is the only use at the corner because then it becomes less economically feasible. He indicated that it is currently a vacant lot, which he did not desire and they wished to have the right to install a gas station or a drive-through.

Chair Sylls opened the public hearing on this item.

Shane Mahoney, 2313 N. 6th St., Concord, representing the Holbrook Association, supported the project and believed it would improve the appearance. They agreed not to oppose any fast food restaurants in order to receive improvements at the center. They expressed concern for the hours of operation for the fast food restaurant and suggested modifying the hours to close at 10:00 p.m. Sunday – Thursday and 11:00 p.m. on Friday and Saturday. They asked that the adult materials be restricted and be placed in the back of the store in order for it not to be accessible to minors. They also requested that a building permit for the corner pad not be issued until substantial construction occurs on the main building. They also expressed concern for the driveway situation as discussed earlier and believed there is a serious problem. He also pointed out that the existing use permit condition located in the City Council Resolution dated June 6, 1983, was imposed

for a good reason. He further asked that one of the conditions be that they hold out the possibility of a traffic barrier, if determined by staff, to be both feasible and legal.

Comm. Costa asked if it is possible to delay the building permit for the corner pad. Mr. Luchini responded that the building permits could be phased, so the applicant would be able to provide plans and working drawings for the main building and then once substantial progress is made they could provide working drawings on the corner pad.

Ellen Williams, 2384 Gehringer Dr., Concord, endorsed the project and believed it is really refreshing to see this type of development take place. She further stated that it would add a great deal to the community. She expressed concern about too many fast food restaurants, but in addition the traffic pattern around Taco Bell is significant and hoped that would be well addressed in the new traffic plan. She further added that she is on the Board with the Chamber of Commerce and discussed the matter with them and they are enthusiastic about this project.

Lee Champagne, 2384 Gehringer Dr., Concord, expressed his appreciation to the applicant for establishing a beautiful piece of architecture. He stated that in reviewing the Master Sign Program he had reservations and asked who would be responsible for continued maintenance of the signage. He further requested that language be added to the conditions of approval addressing the maintenance of the shopping center and who would build the signage.

Mr. Ward commented on Mr. Mahoney's requests and stated that the fast food facilities would be larger and desired the ability to extend the hours and they felt that the hours included in the staff report are correct. He also pointed out that restricting adult material of the liquor store is none of his business and if the Commission felt that was not an appropriate act that would be up to the Commission. He commented on the building permit for the corner to be issued only if the main building is substantially under construction and noted that it was his understanding that he was allowed to move forward with the gas station before construction of the main building. He explained that when a deal happens it happens and he would not wish to lose a deal in that regard. He further indicated that the 7-11 driveway works and reiterated that their desire is to keep the design as it currently exists.

Through the Chair, Ms. Raines pointed out that Bob Clarke is in attendance to answer any questions that the Commission might have.

Bob Clarke, Senior Civil Engineer, stated that two driveways right next to each other, even if wide enough, creates unsafe access. He noted that the solution is to separate the driveways and have a sidewalk and gutter separate them, but this creates further circulation and parking problems for both properties. He explained that staff is not aware of any existing safety problems with the current scenario and it is staff's opinion to leave the driveway as it currently exists.

Comm. Shinn noted that in his opinion there is a safety issue due to excessive rates of speed along with traffic congestion and asked if there is a mitigation measure that could be in place. Mr. Clarke responded that speed bumps could be in place along with a different route rather than a straight route in order to reduce the rate of speed.

Mr. Ward discussed the Master Sign Program and noted that incorporated in the lease agreement is that the building signs are the responsibility of the tenant. He added that they provide the electrical connection and platform for the sign, but the tenants would have it installed at their expense along with maintenance. He pointed out that they maintain the common area signs such as the "Olivera Crossing" sign and the monument sign. He also noted that if it is desired to add that to the Sign Program that would be acceptable. He also indicated that the lease requires timely removal.

Chair Sylls asked Mr. Ward how maintenance would be enforced. Mr. Ward responded that he believed it stated timely, but could not be certain and noted that if they desired to add the word "timely" that would be acceptable.

There being no further public testimony on this item, Chair Sylls closed the public portion of the testimony and brought the matter back to the Commission for discussion and action.

Comm. Costa asked the Assistant City Attorney the options for restricting adult materials. Mark T. Boehme, Assistant City Attorney, responded that the regulation of "harmful material" is addressed under State law and property owners are required to use blinders and make this material not accessible to individuals under the age of 18.

Chair Sylls asked how the concerned citizen would go about trying to correct this problem. Mr. Boehme responded that staff would be happy to receive a call from the public and review the law. Comm. Shinn added that there are regulations and suggested contacting the Police Department and discussing the matter with the owner of the liquor store to move the adult material to the back of the liquor store. He also noted that when hours of operations are extended at fast food restaurants it could cause safety issues such as loitering and suggested that the hours be cut back initially, and if matters calm down, then extend the hours at that point.

Comm. Bjerke agreed with Comm. Shinn and believed they should limit the hours of operation of the freestanding pads to what is currently required. He pointed out that the staff report never discussed the hours of operation for the rest of the building and suggested establishing hours of operation for the entire shopping center. He also understood the concerns regarding adult materials and believed they should have some rules in the General Plan and hoped that as Mason McDuffie renewed leases in this shopping center that they might look at that issue in order to mitigate the situation in the future. He agreed with Comm. Costa regarding the building permits and did not have a concern in that regard. He also suggested adding a condition as to who is responsible for sign maintenance.

Ms. Raines stated that the applicant desires to maintain flexibility to allow a grocery store with a 24-hour operation, so staff would defer to the Commission for direction if limits should be placed on the in-line tenants. She noted that if is the Commission's desire to specify different hours of operation for a gas station at the freestanding pad location, staff would again defer to the Commission in that regard. She also noted that with respect to the Master Sign Program, Condition 47 required the applicant to bring back the Master Sign Program to the Design Review Board for final approval.

Comm. Costa stated that this would be a show piece and would help finish the corridor leading up to the BART station. He suggested a compromise on the hours to 11:00 p.m. Sunday – Thursday and midnight for Friday and Saturday because BART shuts down at midnight. He also agreed with the hours being 24/7 if they decided on a gas station. He stated that the adult materials had been discussed and hoped it could be addressed in the General Plan and Zoning Ordinance. He also commented on a phased building permit and explained that this is a completely different project than Dana Plaza and believed it is not necessary. He pointed out that the driveway was discussed in great length and agreed with Design Review having final review of the Sign Program. He further noted that he is comfortable with moving forward.

Comm. Brumley complimented the applicant for this development and noted that he is very impressed. He also believed that the neighborhood should be proud and hoped they would support that center. He further noted his support for the project.

Chair Sylls believed this is a very handsome project and looks forward to its completion. He expressed concern about the 7-11 driveway, but as indicated there is no solution. He agreed with Comm. Costa's hours of operation. He also noted that at the time of the Dana Plaza project he was a member of the public and the concern then from the neighborhood and Commission was that there was a problem financial situation and the Commission at that time felt that they had to hold the project hostage in order to receive improvements to the rest of the center. He did not believe they are faced with the same type of situation and did not believe it is necessary to add a restriction to the corner pad.

Comm. Bjerke suggested stating, "*that the approved operating hours for a freestanding pad/restaurant pad tenant are as follows:*" with a separate clause stating, "*that a gas station use can be a 24/7 operation.*"

Chair Sylls asked for a motion.

Comm. Costa moved that the Planning Commission adopt Resolution No. 03-17PC, approving the Olivera Crossing Shopping Center Use Permit (UPA 03-009) and Design Review (DR 03-016) subject to conditions of approval set forth in Attachment "A" to Resolution No. 03-17PC, with the corrections and deletion provided by Mr. Luchini and the hours of operation that have been discussed, which are as follows: pad restaurants, Sunday – Thursday closing at 11:00 p.m., Friday and Saturday closing at midnight, with a gas station being able to operate on a 24/7 basis.

Comm. Shinn seconded the motion.

Comm. Bjerke indicated that in his opinion the hours of operation should be closing at 10:00 p.m. Sunday - Thursday and 11:00 p.m. Friday and Saturday.

AYES: Costa, Shinn, Bjerke, Brumley, Sylls

NOES: None

ABSTENSTIONS: None

ABSENT: None

COMMISSION CONSIDERATIONS

There were no Commission Considerations.

STAFF REPORTS/ANNOUNCEMENTS

Ms. Raines reminded the Commission that the Planning Commission would be hosting a special meeting on August 20th at 6:00 p.m. meeting in the Council Chamber and then proceeding to the parking lot to begin a bus tour with respect to the City's General Plan update project. She stated that the purpose of the tour is to review proposed opportunity areas that would be the most likely to experience change in the next 20 years. She noted that the Commission would receive documents that staff and the consultant have been working on regarding the opportunities and constraints of the identified areas, as well as a map atlas that provides background information on the City's existing resources. She explained that once those maps are distributed to the Commission they would be made available to the public. She also announced that this is an introduction to a workshop with the Planning Commission on September 3 regarding the opportunity areas.

Ms. Raines also announced that Comm. Costa asked about the status of the razor wire that had been installed at the McCall's Landscaping site and she noted that it had not yet been removed, but they promised that it would be removed no later than next Wednesday.

Comm. Brumley reminded Ms. Raines that he would not be in attendance at the August 20th meeting and asked Ms. Raines to save the material that is provided at that meeting.

COMMISSION REPORTS/ANNOUNCEMENTS

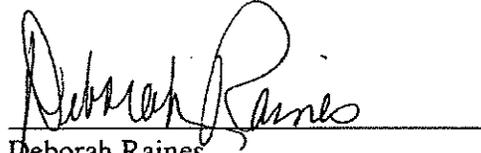
- Liaison Reports

Comm. Shinn noted that Transpac did not have a meeting this month and announced that the next meeting would on the 13th of September.

ADJOURNMENT

BY ORDER OF THE CHAIR, THE MEETING WAS ADJOURNED AT 10:25 p.m.

APPROVED:

A handwritten signature in black ink, appearing to read "Deborah Raines", is written over a horizontal line.

Deborah Raines
Planning Commission Secretary

Transcribed by Jessica Woods

From: Garret Deal <garret@rtrlegal.com>
Sent: Tuesday, February 02, 2016 3:59 PM
To: Simpson, Laura
Cc: Mogensen, Andrew; Brown, Susanne; brianlibow@gmail.com; ray@rtrlegal.com; mike jennings; Bryan Wenter
Subject: Re: Concord Recycling Center appeal hearing

Ms. Simpson,

Thank you for your letter and for the telephone call today. My client would like to proceed with the February 17 Planning Commission hearing regarding outside storage.

We appreciate your efforts here. Please give me a call if you have any questions.

While Mr. Wenter continues to act as co-counsel, please feel free to take him off your mailing list. We can forward correspondence to him.

J. Garret Deal, Esq.

Law Offices of Ray T. Rockwell
2255 Morello Avenue, Suite 160
Pleasant Hill, CA 94523
Tel: (925) 932-7785
Fax: (925) 262-2379

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From: [Odello, Rick](#)
To: [Mogensen, Andrew](#)
Cc: sjordan@centurymgmt.com
Subject: FW: Concord Recycling Center Appeal (PL16011-AC)
Date: Tuesday, June 07, 2016 11:49:50 AM

June 7, 2016

Subject: Concord Recycling Center Appeal

To: Mr. Andrew Mogensen
Principal Planner City of Concord

Please forward my comments below to the Planning Commission of the City of Concord

Outdoor storage would be unacceptable due to the odor and appearance at the Concord Recycling Center on Galaxy Way in Concord

This business has already impacted the upscale industrial park with traffic, undesirable customers, odor, and liter.

In my opinion this operation needs to be looked at as to how they are currently conducting business without consideration to expand

Fork lifts constantly crossing Galaxy Way for one example is very dangerous.

Royal Wholesale Electric and myself have been in this same location since our building was built by the Hofmann Company in 1978 over 38 years ago and have seen a decline in the neighborhood since Pleasant Hill recycling moved in.

This type of operation needs to be in a more Industrial less traffic type of area

I can live with them if they clean up their act but until that can happen I see nothing good with any changes especially environmentally.

Thank you for your time,

Rick

Rick Odello
General Manager
C.E.D. Consolidated Electrical Distributors
Dba Royal Wholesale Electric
1340 Galaxy Way Suite #A - E
Concord CA 94520
Phone 925-671-7870
Fax 925-689-4968
Email rodello@royalconcord.com

DATE: June 15, 2016

SUBJECT: Woodside Place Residential Care Facility (PL16070 – UP)

Recommendation: Adopt Resolution No. 16-13PC, approving the Woodside Place Residential Care Facility (PL16070 – UP).

I. Introduction

A. Application Request

Application for a Use Permit to establish a 12-bed residential care facility for the elderly.

B. Location

The project site is located at 1795 Woodside Place; APN: 114-360-017



C. Applicant

Ian Salalila
Woodside Place, LLC
1795 Woodside Court
Concord, CA 94519

II. Background

On February 24, 2016, Woodside Place, LLC, filed a Use Permit application to operate a 12-bed residential care facility for the elderly (RCFE) at an existing home located at 1795 Woodside Court. An informational meeting was held for the project on March 15, 2016 that was attended by approximately 25 neighbors. A petition opposing the project was submitted at the meeting (Exhibit D). Additional written comments were received following the neighborhood meeting (Exhibit E).

Concerns raised at the meeting, the petition, and written comments include Health and Safety Code issues due to the facility's 12-bed capacity, compatibility with the residential use and character of the area, overconcentration of care facilities at Woodside Court (there is an existing care facility across from the project), security, impacts on property values, property maintenance, changes to the facility's size or type of care (e.g., hospice care) that could intensify its operations, and traffic and parking impacts. A recommendation was made at the March 15th meeting to restrict the facility's parking to Concord Boulevard only. The Transportation Division has reviewed the project and recommends against this restriction for safety reasons.

RCFE's are regulated by the California Residential Care Facilities for the Elderly Act under Health and Safety Code Section 1569-1569.5. The Act defines RCFE's as "*a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, personal care, or health-related services are provided, based upon their varying needs.*" The Act also allows for RCFE's to serve residents under 60 years old who have compatible needs.

Other community care facilities that provide "*nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults,*" are regulated by the California Community Care Facilities Act (CCFA) under Health and Safety Code Section 1500-1518.

State law generally requires local jurisdictions to treat small (i.e., facilities that serves six or fewer persons) RCFEs and community care facilities as residential uses permitted by right in all zoning districts where residential uses are allowed. Although the state may limit issuing licenses to operate a residential care facility in instances of "overconcentration" (or where facilities are located less than 300 feet from one another), this licensing limitation does not apply to RCFEs pursuant to state statute (Health and Safety Code Section 1520.5(f)). Therefore, local jurisdictions cannot deny such facilities for reasons of overconcentration.

III. General Information

A. **General Plan**

The General Plan designation is Low Density Residential.

B. **Zoning**

The site is zoned RS-8 (Single-family residential; minimum 8,000 square foot lots).

C. CEQA Status

Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15301 Class 1 “Existing Facilities,” and Section 15303 Class 3 “New Construction or Conversion of Small Structures,” and therefore no further environmental review is required.

D. Site Description and Context

The approximately 8,000 square foot site is located at the southwest corner of Woodside Court and Concord Boulevard. The property is developed with an approximately 2,357 square foot five-bedroom home with a two-car garage. The property faces Woodside Court and is fenced off along Concord Boulevard.

Woodside Court is a public street/cul-de-sac that serves 12 homes including the subject site. The properties in the neighborhood are all designated as Low Density Residential by the General Plan and zoned RS-8, with lot sizes ranging between 7,900 – 8700 square feet. An existing care facility for six or fewer residents operates at 1790 Woodside Court, across the proposed facility.

IV. Detailed Project Description

The project proposes to establish a 12-bed Residential Care Facility for the Elderly (RCFE) licensed through the State of California’s Community Care Licensing Division, Department of Social Services. The facility would provide 24-hour care for older residents and veterans that are primarily case-managed by Contra Costa County and Veterans Affairs. The facility would provide the following services:

- 24-hour care and supervision for residents;
- assistance with Activities of Daily Living (ADLs) such as bathing, dressing, incontinence care, transfers, personal hygiene, medication management, etc.;
- activity programming catered to physical and psychosocial interests of residents;
- meal planning;
- weekly housekeeping and laundry service; and
- short-term respite care.

The facility will have a total of 5-6 employees consisting of a Certified Administrator, personal care attendants, cook/kitchen helper, and housekeeper/maintenance. There will be no more than two employees on any work shift. Employees would procure supplies and food once every 1-2 weeks, typically from bulk goods retailers like Costco.

Existing floor area will be converted to add a bedroom for a total of six bedrooms with two beds each. Exterior changes to the home will consist of door and window upgrades and the addition of a wheelchair ramp.

According to the applicant, the RCFE license requested with the state does not permit hospice care. However, the facility can request an exception to allow for temporary hospice care in the event a resident becomes terminally or chronically ill during their stay.

Additional information is provided in the applicant's project description, attached as Exhibit B.

V. Analysis

A. General Plan

The proposed RCFE is classified as a residential use and thus consistent with the General Plan's land use designation of Low Density Residential for the site. The General Plan contains the following policy related to care facilities in residential neighborhoods:

Policy LU-1.1.11: Allow residential care and group homes in a manner consistent with State law, while ensuring that the scale, operation, location and other characteristics of these facilities does not adversely impact the character and quality of neighborhoods.

Staff finds the scale, operation, and location of the proposed facility is consistent with the above policy for the following reasons:

- 1) The scale of the 12-bed facility is appropriate because it will not require any significant exterior change or addition to the house that would make it out of character with homes in the neighborhood. Exterior changes are limited to window and door upgrades and the addition of a handicap ramp.
- 2) The facility's location at the entrance of Woodside Court provides easy access to the facility and will reduce traffic going through the neighborhood. The location is also physically suited for the facility because there are no significant access, utility, or physical constraints that require significant changes to the site or neighborhood to allow for the facility.
- 3) Operational impacts will be minimized by conditions of approval that require, among other things, employees to park in the garage at all times, reserving driveway areas for visitor parking and deliveries, a property maintenance agreement, and a process for neighbors to contact the facility regarding operational issues. These conditions are outlined below and will be complied with prior to the City's issuance of a certificate of occupancy :

Parking

The applicant shall develop a parking program for review and approval by the City that notifies residents, employees, visitors and vendors of the following parking restrictions:

- Employees shall park in the garage. On-street parking shall not be used by employees.

- Driveway parking is reserved for visitors and loading only. Visitors and vendors shall use driveway parking when it is available and avoid on-street parking when possible.
- Residents shall not keep personal vehicles at the property.

Property Maintenance

- Trash receptacles shall be stored within an enclosed area screened from public view except when placed outside for scheduled trash pick-up.
- 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, landscaping, irrigation, fences, walls, and other improvements.

Complaint Procedure

Applicant shall develop a procedure for neighbors to contact the facility regarding operational issues. This information shall be provided to all properties within 300 feet of the facility.

B. Zoning

The Development Code defines residential care facility as a “*single-family dwelling unit facility licensed or supervised by a federal or state agency that provides 24-hour nonmedical care, assistance, guidance, counseling, and supervision of unrelated adults or others with special needs.*” The Code further distinguishes small care facilities serving six or fewer residents and large facilities serving seven or more residents. Small residential care facilities are permitted in all Residential Single-family (RS) districts and are not subject to review and approval by the City. Large residential care facilities require a Use Permit to allow the City to impose conditions it deems necessary to ensure operations will not adversely impact neighborhoods. The findings for a conditional use permit approval are listed below in italics followed by staff’s analysis of how the project meets each finding.

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of the Development Code and the Concord Municipal Code.

The proposed facility complies with all applicable provisions of the Development Code and Concord Municipal Code. The Development Code does not have parking standards for large RCFEs. Required parking is determined on a case-by-case basis as part of the Use Permit review. The project proposes four off-street parking spaces provided by the existing two-car garage and two-car driveway. Garage parking will be reserved for employee parking and the driveways reserved for visitors, loading and deliveries. Residents will not have personal vehicles at the facility.

2. *The proposed use is consistent with the general plan and any applicable specific plan.*

As discussed in Section V-A of this report, the proposed care facility is consistent with the General Plan.

3. *The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land use in the vicinity.*

As discussed in Section V-A of this report, staff finds the scale, location, and operational characteristics of the facility will be compatible with surrounding residential uses subject to the City's conditions of approval related to parking, maintenance, etc.

4. *The site is physically suitable for the type, density, and intensity of the proposed use, including access, utilities, and the absence of physical constraints.*

The project site is physically suited for the facility in that there are no significant access, utility or physical constraints that would prohibit the facility from operating at this location. Only minor physical changes are required, such as the addition of a handicap ramp, to accommodate the facility.

5. *Granting the permit would not be detrimental to the public health, safety, or welfare of the persons residing or working in the subject neighborhood or materially detrimental or injurious to property or improvements in the vicinity and zoning district where the property is located.*

The proposed RCFE is a use compatible with residential neighborhoods per state law, the General Plan, and Development Code. In this particular case, the project will be conditioned to minimize its impact on the neighborhood by requiring, among other things, employees to park in the garage at all times, reserving driveway areas for visitor parking and deliveries, a property maintenance agreement, and a process for neighbors to contact the facility regarding operational issues.

VI. Fiscal Impact

The proposed would have a negligible fiscal impact on the City.

VII. 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 Contra Costa Times, as required by the Concord Municipal Code. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

VIII. Summary and Recommendations

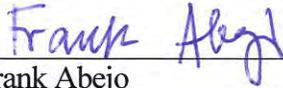
Adopt Resolution 16-13PC approving the Woodside Place Residential Care Facility (PL16070 – UP).

IX. Motion

Project Approvals

I (Comm. _____) hereby move that the Planning Commission adopt Resolution 16-13PC approving the Woodside Place Residential Care Facility (PL16070 – UP), subject to the Conditions of Approval set forth in Attachment A to Resolution 16-13PC. (Seconded by Comm. _____.)

Prepared by:



Frank Abejo
Senior Planner
(925) 671-3128
frank.abejo@cityofconcord.org

Reviewed by:



Laura Simpson
Planning Manager
(925) 671-3369
laura.simpson@cityofconcord.org

Exhibits:

- A - PC Resolution, Conditions of Approval (Attachment A)
- B - Applicant's Project Description date-stamped received February 24, 2016
- C - Applicant's Site Plan and Floor Plan date-stamped received February 24, 2016
- D - Petition of Opposition submitted by neighbors on March 15, 2016
- E - Correspondences

BEFORE THE PLANNING COMMISSION
OF THE CITY OF CONCORD,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A RESOLUTION APPROVING THE WOODSIDE
PLACE RESIDENTIAL CARE FACILITY USE
PERMIT (PL16070-UP)

Resolution No. 16-13 PC

WHEREAS, on February 24, 2016, Woodside Place, LLC, submitted an application for a Use Permit, to allow a 12-bed residential care facility for the elderly at 1795 Woodside Court, APN 114-360-017; and

WHEREAS, on April 15, 2016, the application was deemed complete for processing; 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 June 15, 2016, on the subject proposal; and

WHEREAS, the Planning Commission considered testimony and information received at the public hearing and the oral and written reports from City staff dated June 15, 2016, 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; and

WHEREAS, on June 15, 2016, the Planning Commission, after consideration of all pertinent plans, documents and testimony, declared their intent to approve the subject proposal subject to the Conditions of Approval contained herein as Attachment A.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: that the Planning Commission does hereby approve the Woodside Place Residential Care Facility, subject to the Conditions of Approval incorporated herein as Attachment A, and further makes the following findings:

CEQA

1. The project is Categorical Exempt pursuant to the California Environmental Quality Act (CEQA) of 1970, as amended, pursuant to Section 15301 (Class 1) "Existing Facilities," and Section 15303 (Class 3) "New Construction or Conversion of Small Structures;" and

a. The project does not present any unusual circumstances and there is no reasonable possibility that the project will have a significant effect on the environment

1 due to unusual circumstances;

2 b. There is no indication that the cumulative impact of successive projects of the
3 same type, in the same place, over time is significant;

4 c. There is no indication that the project will have a significant impact on any
5 particularly sensitive environment.

6 d. Therefore, no further environmental review is required.

7 General Plan

8 2. The proposed residential care facility for the elderly is classified as a residential use
9 and thus consistent with the General Plan's Low Density Residential land use designation for
10 the site.

11 3. *Allow residential care and group homes in a manner consistent with State law, while*
12 *ensuring that the scale, operation, location and other characteristics of these facilities does*
13 *not adversely impact the character and quality of neighborhoods (General Plan Policy LU-*
14 *1.1.11).* The proposed facility is consistent with General Plan Policy LU-1.1.11 for the
15 following reasons:

16 a. The scale of the 12-bed facility is appropriate because it will not require any
17 significant exterior change or addition to the house that would make it out of character
18 with homes in the neighborhood. Exterior changes are limited to window and door
19 upgrades, and the addition of a handicap ramp.

20 b. The facility's location at the entrance of Woodside Court provides easy access
21 to the facility and will reduce traffic going through the neighborhood. The location is
22 also physically suited for the facility because there are no significant access, utility, or
23 physical constraints that require significant changes to the site or neighborhood to
24 allow for the facility.

25 c. Operational impacts will be minimized by conditions of approval that require,
26 among other things, employees to park in the garage at all times, reserving driveway
27 areas for visitor parking and deliveries, a property maintenance agreement, and a
28

1 process for neighbors to contact the facility regarding operational issues.

2 Use Permit Findings

3 4. *The proposed use is allowed within the applicable zoning district and complies with all*
4 *other applicable provisions of the development code and the Concord Municipal Code.* The
5 proposed facility complies with all applicable provisions of the Development Code and
6 Concord Municipal Code. The facility's parking needs will be met by four off-street parking
7 spaces provided by the existing garage and driveway. Garage parking will be reserved for
8 employee parking and the driveways reserved for visitors, loading, and deliveries.

9 5. *The proposed use is consistent with the General Plan and any applicable Specific Plan.*
10 The proposed facility is consistent with the General Plan as discussed in findings #2 and #3.
11 There is no Specific Plan that applies to the property.

12 6. *The design, location, size, and operating characteristics of the proposed activity are*
13 *compatible with the existing and future land use in the vicinity.* As discussed in finding #3
14 above, the scale, location, and operational characteristics of the facility will be compatible with
15 surrounding residential uses subject to the City's conditions of approval requiring, among
16 other things, employees to park in the garage at all times, reserving driveway areas for visitor
17 parking and deliveries, a property maintenance agreement, and a process for neighbors to
18 contact the facility regarding operational issues.

19 7. *Granting the permit would not be detrimental to the public health, safety, or welfare of*
20 *the persons residing or working in the subject neighborhood or materially detrimental or*
21 *injurious to property or improvements in the vicinity and zoning district where the property is*
22 *located.* The proposed facility is considered a residential use compatible with residential
23 neighborhoods per state law, the General Plan, and Development Code. In this particular case,
24 the project will be conditioned to minimize its impact on the neighborhood by requiring,
25 among other things, employees to park in the garage at all times, reserving driveway areas for
26 visitor parking and deliveries, a property maintenance agreement, and a process for neighbors
27 to contact the facility regarding operational issues.

- 1 **b. Driveway parking is reserved for visitors and loading only. Visitors and vendors**
2 **shall use driveway parking when it is available and avoid on-street parking when**
3 **possible.**
4 **c. Residents shall not keep personal vehicles at the facility.**

5 **NOISE**

- 6 8. Noise producing site preparation and construction activities shall be limited to the days and
7 hours as set forth below:

8 **Monday through Friday7:30 a.m. to 6:00 p.m.**

9 Construction on Saturdays may be allowed only upon prior approval by the Building,
10 Engineering, and Planning Divisions. No changes to these construction hours shall be allowed
11 without the prior written consent of the City. A contact person shall be available during all
12 construction activities in the evening and on weekends to respond to complaints and take
13 actions.

14 **SOLID WASTE/RECYCLING**

- 15 9. **Trash receptacles shall be stored within an enclosed area screened from public view**
16 **except when placed outside for scheduled trash pick-up.**
17 10. Comply with the provisions of the CMC, Central Contra Costa Sanitary District and the
18 disposal service regarding enclosure design, access requirements, and the number of required
19 individual refuse receptacles based upon waste pickup schedules.

20 **AGREEMENTS, FEES, BONDS**

- 21 11. Provide a **\$1,000** cash deposit to the Planning Division to cover Condition Compliance costs,
22 at the time of submittal of plans and documents to Engineering Services or the Building
23 Division for plan check. Planning staff's time will be charged to this deposit for work
24 performed to implement the Conditions of Approval, from the time of project approval to
25 occupancy approval.
26 12. Pay a Document Imaging fee to the Planning Division to reimburse the City for
27 implementation of the Document Imaging and File Retention programs.
28 13. Comply with the requirements of the Contra Costa 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.

1 14. The permit and approval shall expire in two years from the date on which they became
2 effective unless construction permits are obtained and work has begun. All permits approved
3 concurrently with a Tentative Map shall be valid for the life of the map. The effective date of
the permit and approval is June 27, 2016.

4 15. A request for a time extension from the expiration date of June 27, 2017, can be considered if
5 an application with required fee is filed at least 45 days before the original expiration date,
6 otherwise a new application is required. A public hearing will be required for all extension
7 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.

8 16. The applicant shall defend (with counsel approved by City), indemnify and hold harmless the
9 City, any agency or instrumentality thereof, and its/their respective agents, officers, officials,
10 volunteers, and employees from and against any and all administrative and/or legal claims,
11 actions or proceedings to attack, set aside, void, or annul approval of the project, including
12 without limitation, any related application, permit, certification, condition, environmental
13 determination, other approval, compliance or failure to comply with applicable laws and
14 regulations, and/or processing methods ("Challenge"), with the exception of a Challenge
15 arising out of the City's sole negligence or willful misconduct. The City shall have the right to
16 pre-approve any material decision involved in defending any such Challenge, including
17 settlement, and may (but is not obligated to) participate in the defense of any Challenge. If
18 applicant does not promptly defend any Challenge, City may (but is not obligated to) defend
19 such Challenge as City, in its sole discretion, determines appropriate, all at applicant's sole
20 cost and expense. The applicant shall bear any and all losses, damages, injuries, liabilities,
21 costs, and expenses (including, without limitation, staff time and in-house attorney's fees on a
22 fully-loaded basis, attorney's fees for outside legal counsel, expert witness fees, court costs,
23 and other litigation expenses) arising out of or related to any Challenge ("Costs"), whether
24 incurred by Developer, City, or awarded to any third party, and shall pay to the City upon
25 demand any Costs incurred by the City. No modification of the project, any application,
26 permit, certification, condition, environmental determination, other approval, change in
27 applicable laws and regulations, or change in processing methods shall alter the applicant's
28 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.

Woodside Place, LLC

1795 Woodside Court, Concord, CA 94519

RECEIVED

FEB 24 2016

PLANNING

The property on 1795 Woodside Court, Concord, CA 94519 will be converted into a 12-bed Residential Care Facility for the Elderly (RCFE) which will be licensed by the State of California, Community Care Licensing Division, Department of Social Services (CCLD-DSS).

Our facility will offer:

- 24 hour care and supervision for our residents
- Assistance with Activities of Daily Living (ADLs) such as bathing, dressing, incontinence care, transfers, personal hygiene, medication management, etc
- Full range of Activity Program that will cater to physical and psychosocial interests of our residents
- Nutritious meals and snacks
- Weekly Housekeeping and Laundry Services
- Respite Care services (Short-term)

Employees

There will be staff 24 hours a day, 7 days a week. Total of around 5-6 employees. Facility Staff will be composed of:

- Certified Administrator
- Trained personal care attendants
- Cook/ Kitchen Helper
- Housekeeper/Maintenance

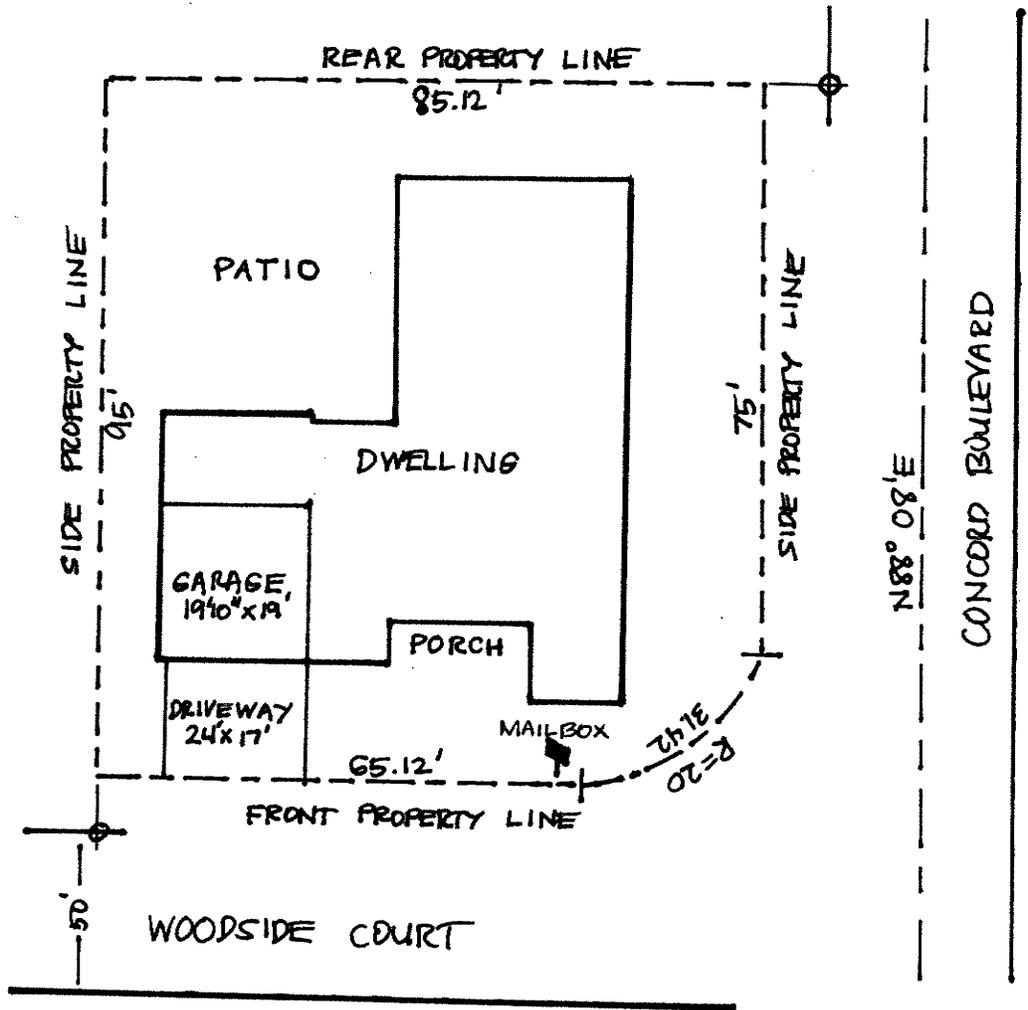
(PLEASE SEE ATTACHED LIC 500 - PERSONNEL SCHEDULE)

Hours of Operation

Office will be open from 8:00am to 5:00pm but facility will operate 24 hours a day, 7 days a week.

Type of Clients:

Our facility will service adults and older adult residents and Veterans. Our clients will primarily be case-managed by Contra Costa County and the Veterans Affairs in Martinez. We will NOT be housing smokers, violent and aggressive residents and persons with criminal records. These are primarily elderly clients who need assistance with Activities of Daily living and medication management.



SITE PLAN

→ N
 SCALE
 1" = 20' 0"

RECEIVED
 FEB 24 2016
 PLANNING

WOODSIDE PLACE, LLC
 1795 WOODSIDE COURT,
 CONCORD, CA 94519
 APN: 114-360-017
 ZONING -RS8
 GP-LOW DENSITY RESIDENTIAL
 DATE PREPARED: 02/23/16

FACILITY SKETCH (Floor Plan)

Applicants are required to provide a sketch of the floor plan of the home or facility and outside yard. The floor sketch must label rooms such as the kitchen, bath, living room, etc. Circle the names of the rooms that will be used by staff/residents/clients/children. Door and window exits from the rooms must be shown in case of an emergency (see Emergency Disaster Plan). Show room sizes (e.g. 8.5 x 12). Keep close to scale. Use the space below. See back for yard sketch.

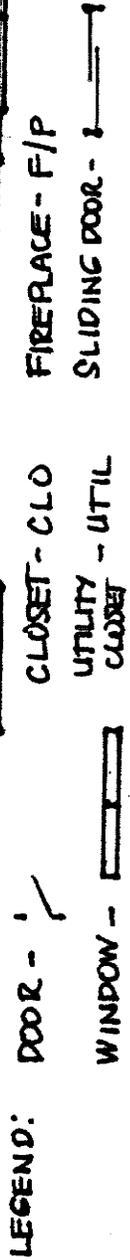
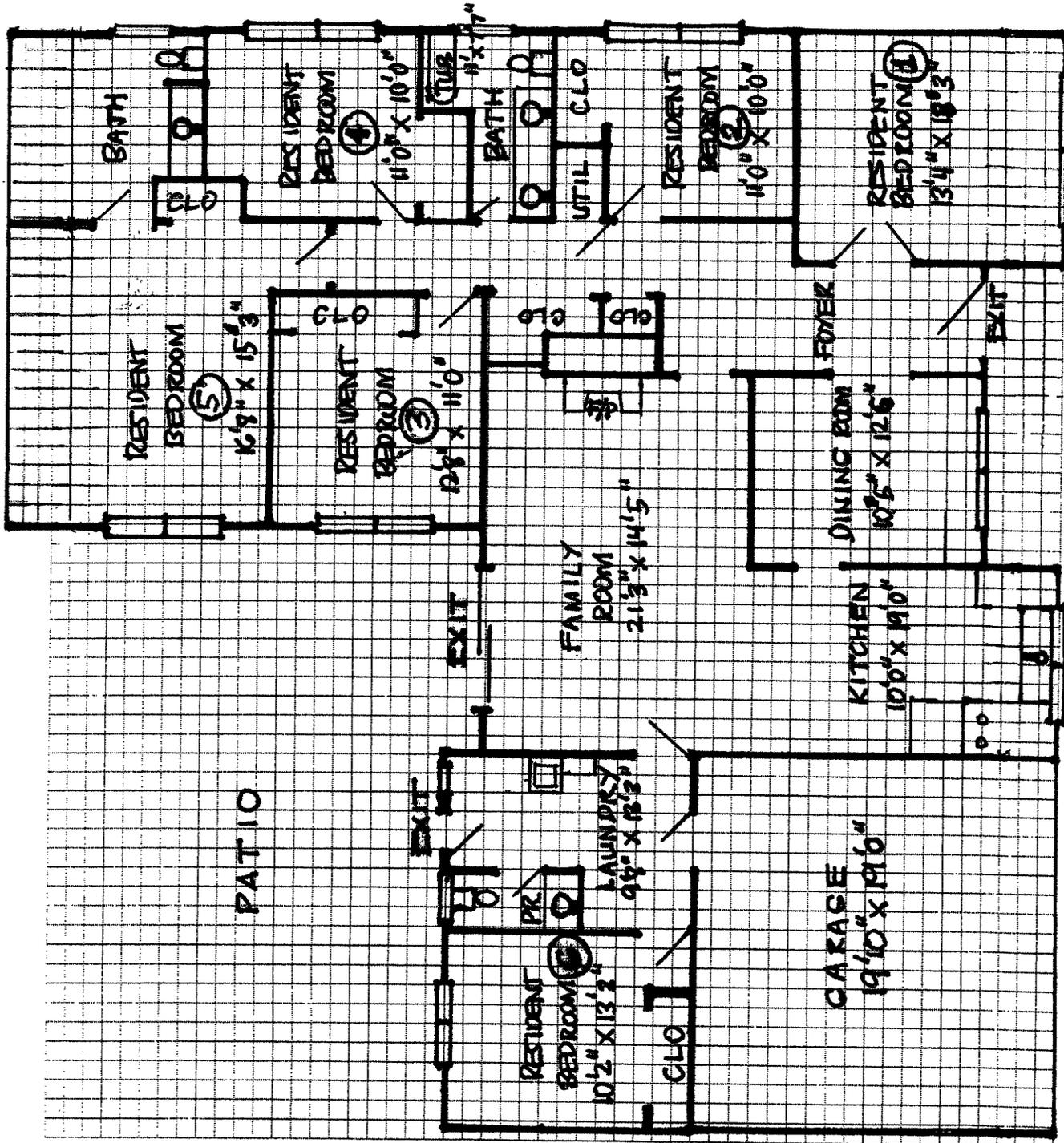
FACILITY NAME:

WOODSIDE PLACE, LLC

ADDRESS:

1795 WOODSIDE COURT, CONCORD, CA 94519

SCALE: 1/8" = 1'



COPY

Petition of Opposition

Representing

Residence of Woodside Court Concord, CA.

We, the Architectural Control Committee and the residence and owners of Woodside Court in California wish to inform the City of Concord and City Planning Commission that the undersigned do not accept, support nor entertain Woodside Place LLC, proposal to establish a 12-bed Elderly Care Facility at 1795 Woodside Court in Concord, CA. 91519. This Petition also includes adjoining property owners.

The concerns and issues leading to our decision to oppose the proposed care facility are as follows:

1. Residential Infrastructure is not equipped:

- Life Safety Fire code- The proposed care facility is significantly over capacity for the single family home construction.
- Life Safety Fire Code and California Building Code-Not equipped with fire sprinkler system or fire alarm system as required for commercial use.
- Life Safety Fire Code- Emergency egress doorway and hallway widths not up to code for proposed commercial use.
- Building Code-Does not have the necessary off-street parking required for a business nor as a multi-family.

2. City Compliance:

- Impact on public safety- The City of Concord has so many care facilities established within Concord but does not have the necessary infrastructure to conduct the required inspections to ensure that the people they are caring for are safe.
- The property is zoned as a RS-8 low-density residential property, not a commercial zone.
- Violation of "Declaration of Restrictions" agreement for subdivision 3777 recorded at the Office of the Recorder of Contra Costa County of California on May 15, 1968, paragraphs #2 and #10.
- Violation of regulations restricting a care facility from being within 300 feet from another care facility.

3. Impact on local residence:

- Volume of traffic would be increased.
- Security of the neighborhood would be negatively impacted.
- Negative impact on property values.
- Parking would be negatively impacted.
- Socio economic development of community would stagnate
- Pride of ownership care of property would be impacted.

We believe that a business of this sort on this small residential court would significantly impact the safety and security of the people it is trying to serve and

compromise the safety, security and the prosperity of the committee. Therefore, we ask that the City and Planning Commission reject the application for permit.

Resident	Address
Ernest Munkle	1777 Woodside Ct
Jay Foster	1777 Woodside Ct
Joseph Laperne	1786 Woodside Court
Russell (1774, 1714)	1786 Woodside Ct
John Barnes	1770 Woodside Ct
Milton Barnes	1770 Woodside Ct
John	1781 Woodside Ct
Dina Hoffman	1757 Woodside Ct
Bob Hoffman	1791 Woodside Ct
Don P. Hochfeldt	3848 Concord Blvd
Jan Hochfeldt	3848 Concord Blvd
John Chapman	3849 Concord Blvd
Betty J Chapman	3849 Concord Blvd
Barbara Whitely	3843 Concord Blvd
James Whitely	3843 Concord Blvd
Garry H. Conway	7771 Woodside Dr
Arlene Johnson	1771 Woodside Ct Concord CA 94519
Edwin Grayda	1780 Woodside Ct. Concord CA
Janet R. Grayda	1796 Woodside Ct. Concord Ca.
Isabella J. Grayda	1796 Woodside Ct. Concord Ca, 94519
Jim Benham	1787 Woodside Ct Concord, CA 94519
LAURA Benham	1787 Woodside Ct., Concord, CA 94519
Miriam Benham	1787 Woodside Ct., Concord, CA
July Becerra Tenorio	1776 Woodside Ct., Concord, CA
Francisco Becerra	1776 Woodside Ct. Concord CA 94519

May 2, 2016

City of Concord Planning Commissioner Carlyn Obringer
1950 Parkside Drive
Concord, Ca. 94519

Subject: Woodside Place Res. Care Facility (PL 16070-UP) 1795 Woodside Ct.

Honorable Commissioner Obringer:

We have lived in our home at 1771 Woodside Court for 46 years, raising our children, working at careers and now retired for 20 years. We have always supported our community either through our work, paying taxes and maintaining our property with pride.

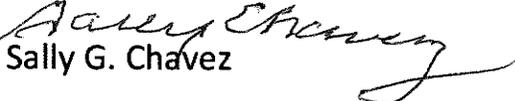
In regard to the above subject application, we are aware of the possibility of change and as citizens of Concord and our neighborhood, we expect to have some say in the rate of change or style of change since it affects our living conditions and quality of life.

Please consider the fact that Woodside Ct. already has a care facility that is fully operational (Eagle's Wing) at 1790 Woodside Ct. In this case, we feel a new 12-bed care facility is a "bit too much" considering our court is only six-homes deep and a cul-de-sac that could cause problems of more vehicles entering, parking and exiting our court. Our court is not designed for another commercial operation. Also, since a traffic signal was installed on Clayton Way and Concord Boulevard, at peak hours it is almost impossible for our residents to leave our Court by car.

We are informed by the Senior Planner, Mr. Frank Abejo, that we have no rights to contest a 6-bed care facility. However, in the matter of a 12-bed care facility, we can express our concerns and request support from our Planning Commission. Therefore, we respectfully request the Commission to reject this proposal for a 12-bed care facility.

Sincerely,


Gilbert D. Chavez


Sally G. Chavez

Abejo, Frank

From: Diana Pola <dpola48@gmail.com>
Sent: Wednesday, May 18, 2016 2:56 PM
To: Zoning
Cc: Abejo, Frank; Simpson, Laura; Mogensen, Andrew; Lenhardt, Ryan; Ryan, Joan; Hamid, Afshan; Villa, Lorna; Spilman, Grant; Gonzalez, Jessica
Subject: Woodside Place, LLC Care Facility PL 16070 UP

It is our understanding that Woodside Place LLC has an application before the City Planning Commission to open a twelve bed care facility On Woodside Court which is a residential court in an area that is already over saturated with these types of facilities.

Our home is on Alray Drive and our yard backs up to homes on Woodside Court. In the past ten years two six bed care facilities have opened in close proximity to our home. In fact, in a stretch of four homes on Alray Drive two of the four homes are now care facilities.

When we learned that the house next door to our home had been sold to someone who planned to open a "care facility" the entire neighborhood banded together to actively protest. The City of Concord sent a representative to a meeting that was held at our home and at that time she told us that as long as the facility did not take in more than six residents it was considered a single family dwelling according to city ordinances. The problem with this is that this is not a single family dwelling, it is a "for profit" business and therefore their focus is not on the home or the neighborhood but rather on their "bottom line".

We are writing to you as people who have firsthand information as to what happens to a neighborhood when these care facilities move in. These facilities change the face of your neighborhood. We no longer have a next door neighbor. We live next door to a business. And unlike a day care or a business with regular daytime hours, this business activity is conducted 24/7. This means daily and nightly visitors, delivery vehicles, ambulances, fire engines, etc. Parking is a significant problem. At one point in time it became so problematic that our mail carrier refused to deliver our mail on days when visitors to the "home" next door blocked his access to our mailbox.

The home next door to us has anywhere from ten to twelve people living in a single family dwelling (formerly a two bedroom home) and a good percentage of those people are most likely in disposable diapers. Yet the facility has one 64 gallon garbage container that is picked up weekly. This is the same size container we used to fill as a family of four. The balance of their waste is accumulated in plastic bags in a corner of the side yard until such time as it can be hauled away. For the first time in thirty years of living in this neighborhood we are seeing neighbors having to deal with cockroach extermination! There does not seem to be any agency that is assigned to review and regulate the operation of these homes and monitor their presence in the community.

I could go on and on but my point is that there needs to be some limit as to how saturated a neighborhood can become with these facilities. The fact that the City of Concord would even consider granting approval of a twelve bed facility in a residential neighborhood is appalling! This is a home that was built as a single family dwelling and would have fifteen to eighteen residents. That is beyond comprehension. I urge you to consider the affect this would have on the residents of Woodside Court and to take a good hard look at what is happening within our once lovely Concord neighborhoods.

Sincerely,

Tom and Diane Pola

MAY 27, 2016

RECEIVED
MAY 27 2016
PLANNING

Woodside Place Residential care facility

To the Concord planning commission:

The residents of Woodside court have gone on record asking you to deny the approval of a twelve bed care facility at 1795 Woodside Court. We have been told that a six bed facility can be placed anywhere in the city limits even though our original CCR's show that no commercial business may be run within this R-8 zoned residential area.

The care facility is certainly a for profit business! The house in question at 1795 Woodside Ct is a five-bedroom home and not a twelve- bedroom hospital building. Although we see the need for these facilities they should be operated within an area zoned for business and on main thoroughfares out on the boulevards where they don't interrupt the flow of traffic in a tiny court setting.

You may or may not be aware that we already have a property at 1790 Woodside Ct which has been used as adult housing for people with special needs. The physical state of that property is an unkempt eyesore and the busses that service it are a constant nuisance as they speed down our street and honk the horn loudly to alert the riders they have arrived. These busses are unable to turn around in our court without backing up several times and the constant beep of the reverse horn is a daily reminder of the peace and quiet one loses adding facilities of this type to your neighborhoods.

We fear that vehicles coming and going to this newly proposed facility will severely impact the little bit of serenity we all moved here for.

There are currently five such facilities being operated within a couple hundred yards of our address and a moratorium on like approvals should be considered as we are already over concentrated here.

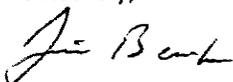
We were told that this newly proposed facility will be serving veterans of our great nation. Stuffing two or three of them into child size bedrooms is a travesty as they deserve far more dignity than that in which to live out their final days.

I imagine they have asked you for a twelve bed facility in order to turn a profit that they can't do in a six bed facility. That home was never intended, zoned or permitted to be a business and the zoning laws should be considered when approving businesses of this type. It is especially a concern at a location with such challenging entrance and egress such as Woodside Ct.

In closing we have fear the desirability and values of our properties will come into question when it comes time to sell as we will have to disclose the numerous for profit businesses the city has allowed in our once quiet and private setting.

Please put yourself in our shoes and consider limiting the facility to six beds or reconsider approving it at all.

Sincerely,



Jim Benham

1787 Woodside Ct



REPORT TO PLANNING COMMISSION

DATE: June 15, 2016

SUBJECT: A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAPS, DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS 18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX) FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.

Recommendation: Adopt Resolutions No. 16-09 PC, 16-10 PC, and 16-11 PC recommending City Council approval and adoption of an Addendum to the 2012 SEIR for an Amendment to the General Plan and Downtown Specific Plan, an Amendment to Section 18.45.010(C) of the Development Code, and a Change of Zoning from Downtown Mixed Use to West Concord Mixed Use.

Report in Brief

The parent company of the Mazda Service Center located at 1951 Concord Avenue approached the City to modify their General Plan land use and zoning designation from Downtown Mixed Use (DMX) to West Concord Mixed Use (WMX). The applicant currently operates a legal non-conforming automotive service center and is unable to modify their building or expand their business operations under the current zoning at this location. Their business and other adjacent automotive businesses on this block were re-designated as Downtown Mixed Use (DMX) in August of 2012, an action which made them legal non-conforming. The applicant is requesting this change to bring their businesses into conformance with an appropriate land use and zoning designation that would remove the current limitations on their use as a legal non-conforming use.. The proposed change would also necessitate the removal of these six parcels from the Downtown Specific Plan boundary area and require a minor revision to the description of the general location of West Concord Mixed Use in the Development Code. There is no development project associated with the proposed change in land use and zoning at this time.

I. Introduction

A. Application Request

Application for an Amendment to the General Plan, Amendment to the Downtown Specific Plan, Change of Zoning, and Amendment to the Development Code Section 18.45.010(C) for six parcels located on the north side of Concord Avenue between State Highway 242 and Bonifacio Street for the purpose of bringing the existing land uses into conformity with a more appropriate designation in the General Plan and Zoning Code.

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE
BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

June 15, 2016

Page 2

B. Location

The project site consists of six parcels located along the north side of Concord Avenue, from east to west:

- 1771 & 1775 Concord Avenue, APN 112-101-025, .82 Acres
- 1757 Concord Avenue, APN 112-101-016, .64 Acres
- 1701 Concord Avenue, APN 112-101-022, .95 Acres
- 1651 Concord Avenue, APN 112-101-029, .93 Acres
- 1581 Concord Avenue, APN 112-101-030, 3.32 Acres
- 1501 Concord Avenue, APN 121-101-031, 1.117 Acres



- C. Applicant/Owner**
DG Concord LLC.
Will Steadman, Chief Strategy Officer
1651 Concord Avenue
Concord CA 94518

II. Background

The current General Plan was adopted in 2007, followed by a comprehensive update of the Development Code and Zoning Map which became effective in August, 2012. Due to the size and scale of

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE
BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

June 15, 2016

Page 3

both projects, it was expected that amendments would be needed from time to time following implementation. A number of “clean-up” amendments have been approved by City Council over the past few years in order to be responsive to the needs and interests of the community and to resolve identified land use and Development Code issues. These amendments are always reviewed first by the Planning Commission to provide a recommendation, with a final determination made by the City Council.

The Concord Mazda dealership is divided between a showroom located on a small parcel at 1891 Market Street zoned West Concord Mixed Use (WMX) and a legal but non-conforming Service Center located at 1651 Concord Avenue in the Downtown Mixed Use (DMX) zoning district. Mazda has discussed potentially unifying their dealership into one contiguous site on Concord Avenue in the future. However, the existing DMX zoning district prohibits new automotive land uses such as car dealerships and prevents existing legal non-conforming automotive businesses from expanding or modifying their operations. Three of the five other businesses on this block of Concord Avenue are also legal non-conforming automotive-related businesses.

After conducting some research, it was determined by staff that modifying the General Plan land use and zoning designations for all six properties on this block from DMX to WMX would resolve the current limitations which came into effect in 2012. This action would bring all of the existing legal non-conforming automotive uses into General Plan and zoning conformance.

Concord Development Code Section §18.455.020, Initiation of Amendment, says that an amendment to the General Plan, Development Code, and zoning can only be initiated by either the property owner, the City Council, Planning Commission, or a verified petition of at least 50 residents of the City. Last summer, the Mazda ownership, DG Concord LLC made a good faith effort to contact the five other adjacent property owners suggesting they serve as co-applicants to this proposal. However with the exception of the adjacent City-owned (former Redevelopment) parcel, the Mazda ownership received either no response or a lack of interest from the other businesses and property owners to serve as co-applicants. Per Concord Development Code Section §18.455.020, the applicant made a formal request to the City Council to be granted permission to submit an application to change the General Plan and zoning land use designation of the remaining adjacent properties that were not owned by the applicant. Following public notification of all the affected property owners, the City Council heard their request on February 23, 2016 and unanimously approved a motion to allow DG Concord LLC. to proceed with this application.

Planning staff later hosted a publically noticed neighborhood meeting to discuss this proposal on April 11th, 2016 at the Permit Center Conference Room in City Hall, inviting all of the affected businesses and all residents and property owners within 500 feet of the site. The applicant attended the meeting to answer questions. Two people attended the neighborhood meeting and neither attendee had any comments or concerns regarding the proposal.

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE
BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

June 15, 2016

Page 4

III. Discussion and Analysis

The applicant proposes to modify the land use and zoning designation for six parcels located on the north side of Concord Avenue between the Highway 242 northbound on-ramp and Bonifacio Street from Downtown Mixed Use (DTMU/DMX) to West Concord Mixed Use (WCMU/WMX) (Exhibit A). From east to west, these parcels include three automotive businesses, a vacant parcel owned by the City of Concord, the Mazda Service Center, the Premier Inn motel, and Chili’s restaurant. The applicant currently operates the Mazda Service Center at 1651 Concord Avenue, located at the center of the subject area. The Table of Permitted Uses in Development Code Section 18.45.020 prohibits automobile sales, leasing, service and repair activities in the Downtown Mixed Use (DMX) zoning district.

Because the automotive businesses located within the subject area are all legal non-conforming under the DMX zoning, they are currently unable to expand or modify their businesses. As per Development Code Section 18.530.030, this limitation includes a prohibition on enlarging their buildings, expanding their business operations in size or capacity, modifying hours of operation, increasing the number of their employees, or occupying a greater area of land than they legally occupied prior to their zoning being changed in 2012. The other two existing businesses within the subject area, a motel and restaurant, are permitted uses in both the current DMX and proposed WMX zoning district. The proposed change in land use would have no effect on the motel and restaurant.

Effect on Future Development Standards

Development Standard	Existing (DMX/DTMU)	Proposed (WMX/WCMU)
Residential Density (du/net acre) Minimum Maximum	33 du/net acre 100 du/net acre	N/A (no residential uses allowed)
Maximum Floor Area Ratio (FAR)	6.0	4.0
Maximum Building Height	200 feet	140 feet
Setbacks (minimum feet)		
Front	10	10
Interior Side	0	10
Corner Side	10	10
Rear	0	0
Allowable Land Uses	Offices, retail, hotels, restaurants, residential	Automotive uses and dealerships, hotels, restaurants, retail showroom/warehouse

Changing the zoning from DMX to WMX would reduce the density of future development and prohibit future residential uses while enabling certain other land uses, like automotive uses or showrooms, that

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE
BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

June 15, 2016

Page 5

are not currently permitted. The current DMX zoning designation allows for higher density developments with a higher floor area ratio and zero setbacks on the side and rear, as well as residential uses. The WMX zoning does not permit residential uses but has a lower Floor Area Ratio, resulting in a lower building density. The Addendum to the Final Supplemental EIR prepared for this project provides an analysis of maximum build-out scenarios under the proposed change of land use and zoning, identified on page 17 (Exhibit B).

The parcels in question are located in a transition area between a number of different zoning designations, including Public/Quasi-Public to the north, North Todos Santos to the Northeast, Service Commercial and High Density Residential to the south across the street, and West Concord Mixed Use to the West. Changing the zoning to WMX at this location maintains a consistent transition and would not result in spot zoning or land uses incompatible with the surrounding area.

Amendments to the Downtown Specific Plan and Development Code

In order to accommodate a change to the General Plan land use and zoning designations, this proposal will need to remove the six parcels from the boundary of the Downtown Specific Plan and update the Development Code's description of the location of the West Concord Mixed Use zoning district boundary. This particular block is located at the outer fringe of the downtown area and will not create an inconsistency in the Downtown Specific Plan. There are no unique projects or policies identified in the Downtown Specific Plan that apply specifically to the parcels proposed for amendment.

Development Code Section 18.15.020 adopted the City's Zoning Map (which is also included in the City's General Plan 2030) and incorporated the Zoning Map into the Development Code by reference. Accordingly, in approving the change in land use and zoning designation, the boundaries of the City's Zoning Map would also need to be changed for the six subject parcels.

Development Code Section 18.45.010 describes the boundary area of WMX as being "*applied to the area between Highway 242, south of Concord Avenue and the Walnut Creek Channel, south of Concord, and areas of the City appropriate for a mix of schools, commercial, office, retail, multi-tenant office/warehouses, and institutional development at up to 4.0 FAR.*" However, there are existing properties zoned WMX which are not located between Highway 242 and Concord Avenue. Staff proposes to modify this sentence in the Development Code with the following updated language to accommodate those existing properties and this proposed Amendment:

"The WMX district is applied to the area ~~between Highway 242 west of Downtown, south of~~ along Concord Avenue and the Walnut Creek Channel, ~~south of Concord,~~ and adjoining areas of the city appropriate for a mix of schools, commercial, office, retail, multi-tenant office/warehouses, and institutional development at up to 4.0 FAR."

The proposed language partially serves as a code clean-up item by deleting an erroneous reference to "south of Concord" and is consistent with the description of the West Concord land use area in the General

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
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MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
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Plan. This action will also accommodate a handful of properties located to the east of Highway 242 along Market Street which are currently zoned WMX.

California Environmental Quality Act (CEQA)

The City of Concord (with the assistance of Rincon Consultants, Inc.) has prepared an Addendum to the 2012 SEIR¹ dated May 2016 (“Addendum”), attached as Attachment B and hereby incorporated by reference. CEQA recognizes that between the date an environmental document is completed and the date a project is fully implemented, a change may occur that affects the environmental document; this could include one or more of the following: the project may change; the environmental setting in which the project occurs may change; laws, regulations, or policies may change; and/or previously unknown information may become available. CEQA requires a project’s lead agency to evaluate these changes before proceeding with a project, in order to determine whether they may affect the conclusions of the environmental document. CEQA Guidelines Section 15162 states that when an EIR has been certified or a negative declaration adopted for a proposed project, no subsequent EIR shall be prepared for that project unless the Lead Agency determines that certain conditions have occurred, based on substantial evidence and in light of the whole record. CEQA Guidelines Section 15164 states that the lead agency or responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 have occurred.

The Addendum evaluates potential environmental impacts that could result from the Amendments, and considers potential impacts in comparison with the revised 2012 SEIR, to determine whether impacts associated with the Amendment are consistent with the impact analysis provided in the 2012 SEIR, and whether additional mitigation measures are required to minimize or avoid potential impacts. As discussed in detail in the Addendum, potential impacts associated with the Amendments are consistent with potential impacts characterized and mitigated in the 2012 Final SEIR. Substantive revisions to the 2012 Final SEIR are not necessary because no new significant impacts or impacts of substantially greater severity than previously described would occur as a result of the Amendment. Therefore, the following determinations have been found to be applicable:

- No further evaluation of environmental impacts is required for the proposed project;
- No subsequent EIR is necessary per CEQA Guidelines Section 15162; and
- This Addendum is the appropriate level of environmental analysis and documentation for the proposed project in accordance with CEQA Guidelines Section 15164.

¹ The Development Code was adopted after undergoing through environmental review. Specifically, on April 11, 2012 the City of Concord (with the assistance of Michael Brandman Associates) prepared a Concord Development Code Final Supplemental Environmental Impact Report and Mitigation Monitoring and Reporting Program, and adopted the Findings of Fact and Statement of Overriding Considerations (collectively, the “2012 SEIR”), prepared and circulated in accordance with CEQA.

**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
FOR SIX PARCELS LOCATED ON THE NORTH SIDE OF CONCORD AVENUE
BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

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The addendum to the SEIR was posted on the City's website for public review and a copy was made available upon request in the Permit Center in accordance with CEQA. The City will review any new development at a project level to conduct the appropriate level of environmental review, as required by CEQA.

Fiscal Impact

Approval of the proposed actions will have no fiscal impact on the City. Any required fees necessary to review and process this proposal have been paid by the applicant.

Public Contact

All appropriate public notices of this agenda item have been posted. The Addendum to the 2012 SEIR has been posted online and made available at the Permit Center for public review. All property owners, businesses, and residents within 500 feet of the proposed area were notified by mail in advance of this public hearing and an advertisement was posted in the local newspaper. No public comments were received regarding this proposal prior to the completion of this staff report.

IV. Recommendation

The purpose of prohibiting a land use in the Development Code is to discourage the long-term continuance of nonconformities, providing for their eventual elimination. Since the West Concord Mixed Use zoning district was established in 2012, Concord Avenue has seen substantial changes, including the growth and expansion of automotive dealerships and businesses along the corridor. The six parcels in question are a transition area between multiple different adjacent land use and zoning districts.

Staff is supportive of the proposal because it creates a better fit for the existing automotive-oriented businesses, the change is consistent with other businesses along the Concord Avenue corridor, and the new zoning designation would not result in any noticeable changes to the surrounding area. The proposed WMX zoning has less intensive development standards than the current zoning. No residential properties are located within the boundaries of the proposed applications and all but two existing businesses within the proposed areas are automotive-related (the Chili's Restaurant and Premier Inn on Concord Avenue are permitted uses in both WMX and DMX zoning). Future residential mixed use developments are unlikely at this location, given the proximity to the adjacent 242 freeway and Concord Avenue's status as a major arterial roadway.

V. Motion

I (Comm. _____) hereby move that the Planning Commission adopt Resolutions 16-09 PC, 16-10 PC, and 16-11 PC, which recommend City Council approval and adoption of the Addendum to the 2012 SEIR for the West Concord Mixed Use General Plan Amendment and Amendment to the Downtown Specific Plan, the Text Amendment to Development Code Section 18.45.010(B), and the Change of Zoning from Downtown

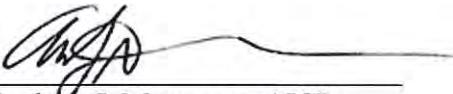
**A PROPOSED AMENDMENT TO THE GENERAL PLAN AND ZONING MAP,
DOWNTOWN SPECIFIC PLAN, AND DEVELOPMENT CODE SECTIONS
18.15.020 AND 18.45.010(C) TO CHANGE THE ZONING FROM DOWNTOWN
MIXED USE (DTMU/DMX) TO WEST CONCORD MIXED USE (WCMU/WMX)
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BETWEEN STATE HIGHWAY 242 AND BONIFACIO STREET.**

June 15, 2016

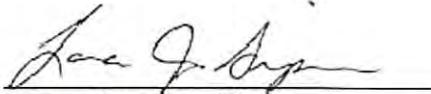
Page 8

Mixed Use to West Concord Mixed Use for six parcels located on the north side of Concord Avenue between Highway 242 and Bonifacio Street. (Seconded by Comm. _____.)

Prepared by:

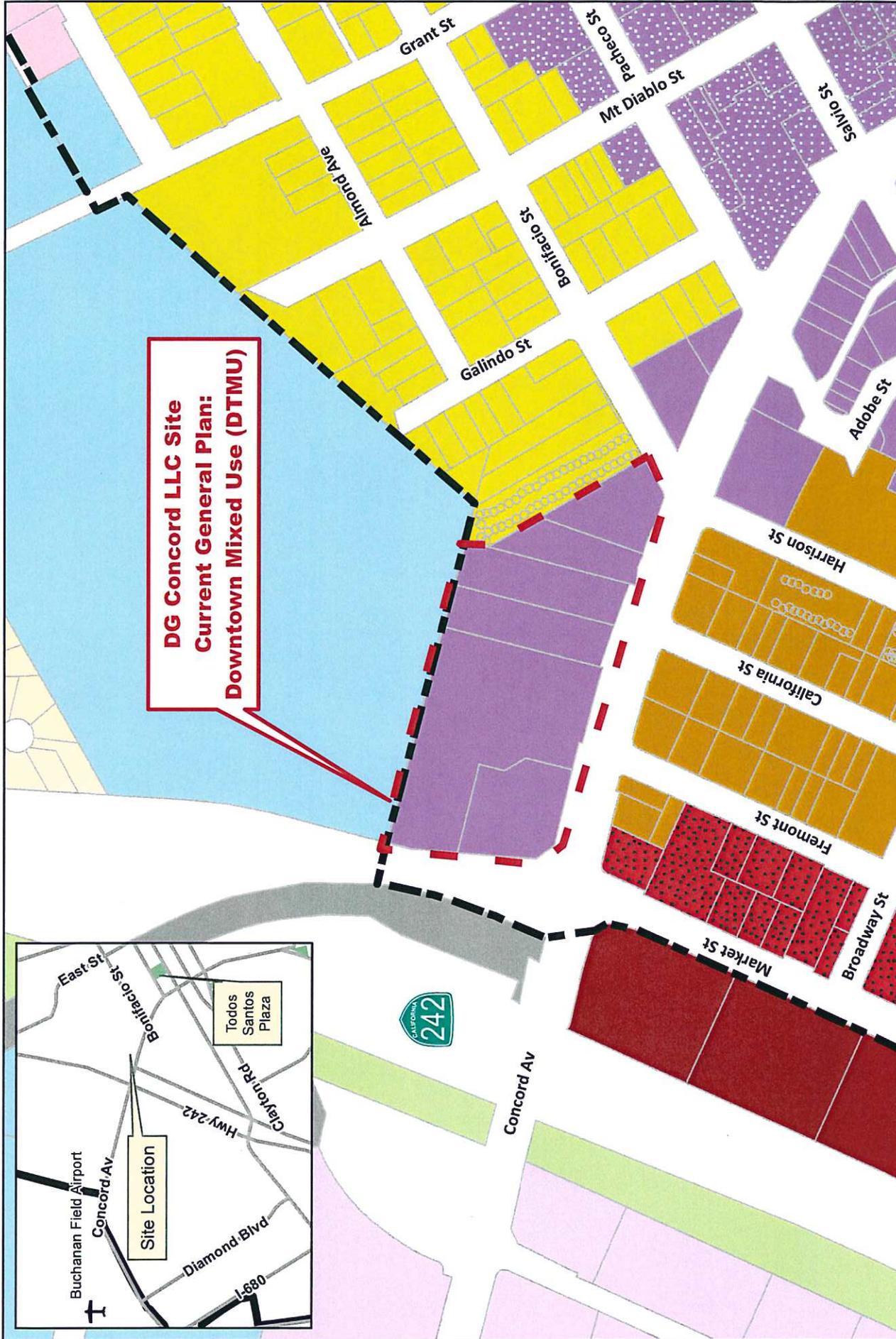

Andrew J. Mogensen, AICP
Principal Planner
andrew.mogensen@cityofconcord.org

Reviewed by:


Laura Simpson, AICP
Planning Manager
laura.simpson@cityofconcord.org

Exhibits:

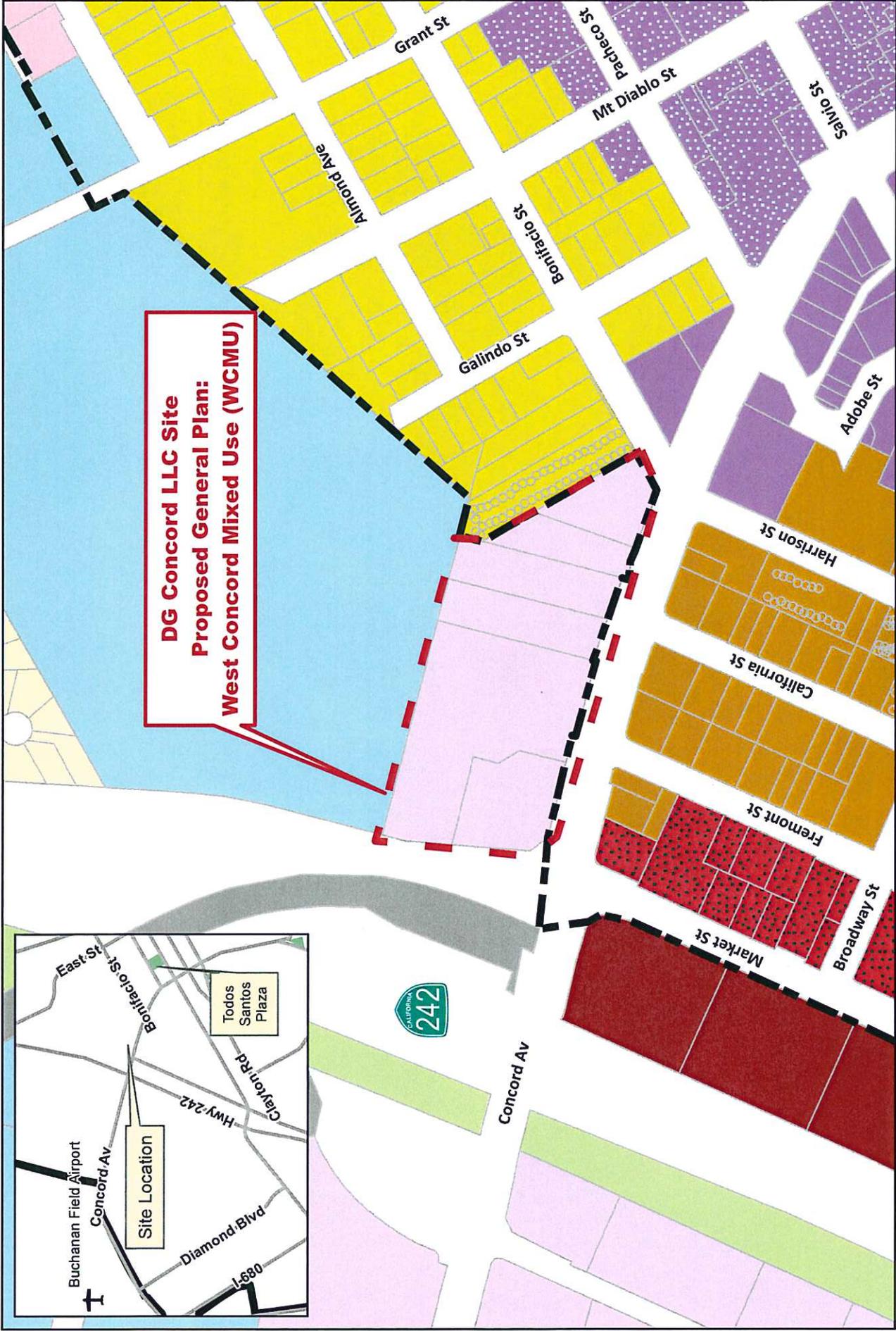
- A. Map Exhibits: Proposed Areas for Amendment
 1. General Plan Amendment from Downtown Mixed Use to West Concord Mixed Use and Detachment from the Downtown Specific Plan
 2. Change of Zoning
 3. Site Photos
- B. Addendum to the City of Concord's 2030 General Plan Update Final Supplemental Environmental Impact Report (SEIR) (also Attachment 1 to Resolution 16-09PC)
- C. Resolution 16-09PC and SEIR Addendum
- D. Resolution 16-10PC and General Plan and Zoning Map Amendment Attachment
- E. Resolution 16-11PC and Development Code Section 18.45.010C Attachment



DG Concord LLC Site
Current General Plan:
Downtown Mixed Use (DTMU)

Current General Plan Land Use and Downtown Specific Plan Boundary

- Legend**
- Current Downtown Specific Plan Boundary
 - Current Downtown Specific Plan Boundary
 - General Plan 2030 Land Use**
 - Low Density Residential (LDR)
 - Medium Density Residential (MDR)
 - High Density Residential (HDR)
 - North Todos Santos (NTS)
 - Community Office (CO)
 - Commercial Mixed Use (CMU)
 - Regional Commercial (RC)
 - Service Commercial (SC)
 - Downtown Pedestrian (DTPD)
 - Downtown Mixed Use (DTMU)
 - Public/Quasi-Public (PQP)
 - Parks and Recreation (P)
 - Business Park (BP)
 - Open Space (OS)
 - West Concord Mixed Use (WCMX)

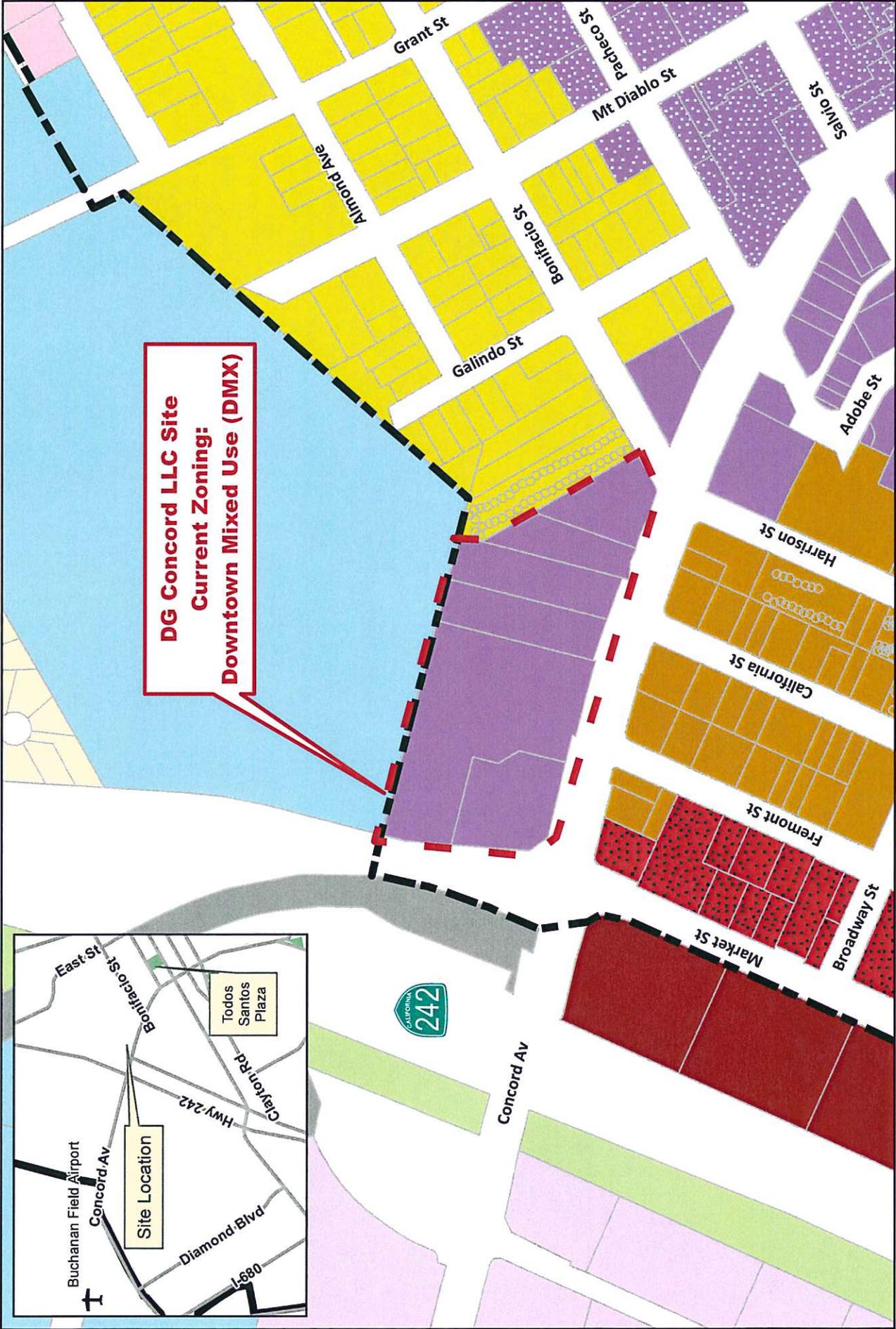


**DG Concord LLC Site
Proposed General Plan:
West Concord Mixed Use (WCMU)**

Proposed General Plan Land Use and Downtown Specific Plan Boundary

Legend

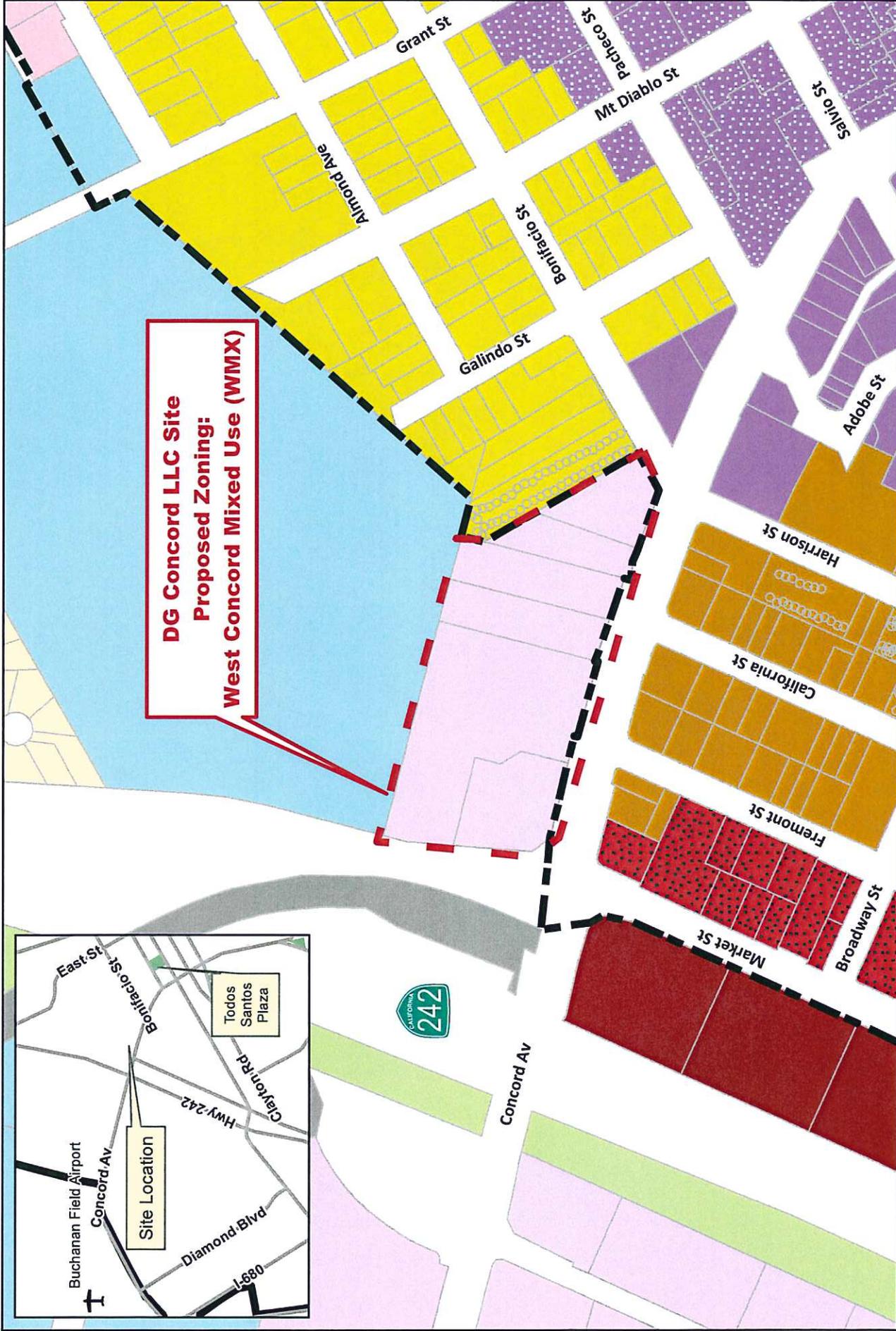
- Proposed Downtown Specific Plan Boundary
- General Plan 2030 Land Use**
 - Low Density Residential (LDR)
 - Medium Density Residential (MDR)
 - High Density Residential (HDR)
 - North Todos Santos (NTS)
 - Community Office (CO)
 - Commercial Mixed Use (CMU)
 - Regional Commercial (RC)
 - Service Commercial (SC)
 - Downtown Pedestrian (DTPD)
 - Downtown Mixed Use (DTMU)
 - Public/Quasi-Public (POP)
 - Parks and Recreation (P)
 - Business Park (BP)
 - Open Space (OS)
 - West Concord Mixed Use (WCMU)



DG Concord LLC Site
Current Zoning:
Downtown Mixed Use (DMX)

Current Planning Land Use Zones and Downtown Specific Plan Boundary

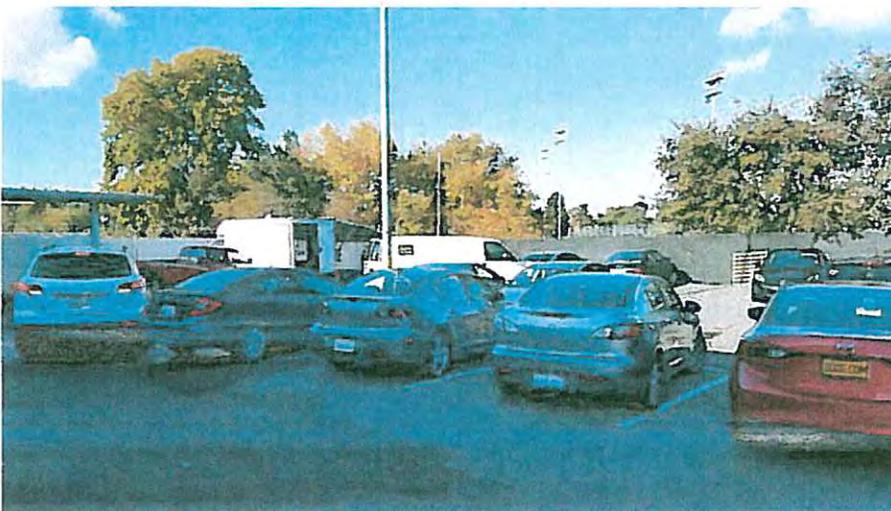
- Legend**
- North
 - Current Downtown Specific Plan Boundary
 - Planning Land Use Zones**
 - Single Family Residential (RS6)
 - Residential, Medium Density (RM)
 - Residential, High Density (RH)
 - North Todos Santos (NTS)
 - Community Office (CO)
 - Commercial Mixed Use (CMX)
 - Regional Commercial (RC)
 - Service Commercial (SC)
 - Downtown Pedestrian (DP)
 - Downtown Mixed Use (DMX)
 - Public/Quasi-Public (PQP)
 - Parks and Recreation (PR)
 - Office Business Park (OBP)
 - Open Space (OS)
 - West Concord Mixed Use (WCMX)

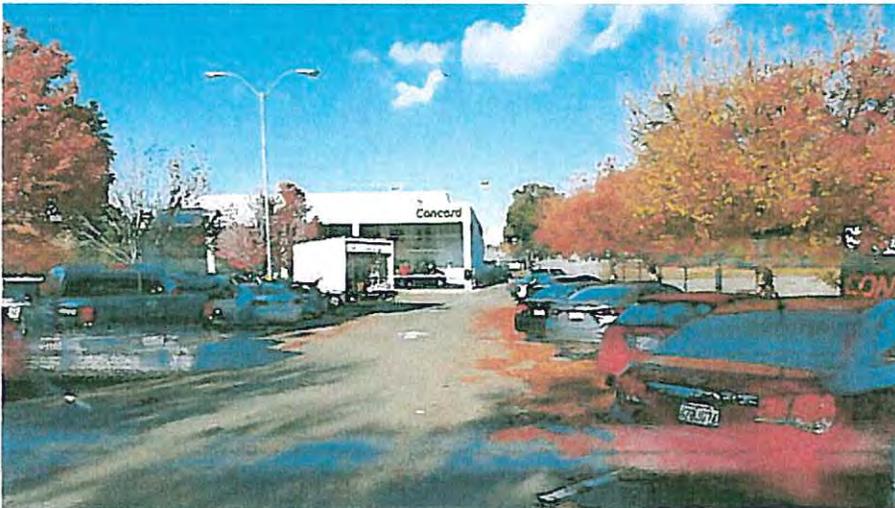
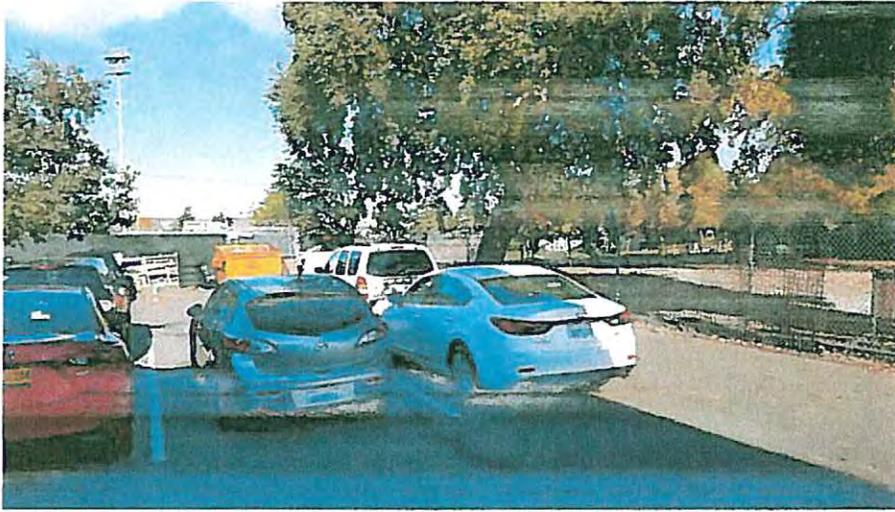


DG Concord LLC Site
Proposed Zoning:
West Concord Mixed Use (WMX)

Proposed Planning Land Use Zones and Downtown Specific Plan Boundary

- Legend**
- North
 - Proposed Downtown Specific Plan Boundary
 - Planning Land Use Zones**
 - Single Family Residential (RSF)
 - Residential, Medium Density (RM)
 - Residential, High Density (RH)
 - North Todos Santos (NTS)
 - Community Office (CO)
 - Commercial Mixed Use (CMX)
 - Regional Commercial (RC)
 - Service Commercial (SC)
 - Downtown Pedestrian (DP)
 - Downtown Mixed Use (DMX)
 - Public/Quasi-Public (PQP)
 - Parks and Recreation (PR)
 - Office Business Park (OBP)
 - Open Space (OS)
 - West Concord Mixed Use (WMX)







1 (collectively, “CEQA”); and

2 **WHEREAS**, on June 24, 2014, the City Council adopted Resolution No. 14-4823.1,
3 approving the Addendum to the Final Supplemental Environmental Impact Report (SEIR) to the 2030
4 Concord General Plan EIR for the Concord Development Code Project and adopting the Downtown
5 Concord Specific Plan General Plan Amendment (PL14160-GP) as Volume IV to the Concord 2030
6 General Plan (“Downtown Specific Plan”); and

7 **WHEREAS**, DG Concord LLC., (“Applicant”) has requested to Amend the General Plan
8 Land Use and Zoning designation for six parcels located along the north side of Concord Avenue
9 between Highway 242 and Bonifacio Street from Downtown Mixed Use (“DMX”) to West Concord
10 Mixed Use (“WMX”) and to remove the parcels from the boundary of the Downtown Specific Plan in
11 order to bring existing legal non-conforming automotive-oriented land uses into conformance with an
12 appropriate land use designation; and

13 **WHEREAS**, the Applicant has also requested to amend Sections 18.15.020 and 18.45.010(C)
14 of the Concord Development Code (“Amendment”) in order to address minor technical errors such
15 that the location of the West Concord Mixed Use Zoning District in the Development Code to be
16 consistent with the description identified within the General Plan; and

17 **WHEREAS**, Government Code section 65800 *et seq.* provides for the amendment of any and
18 all adopted City of Concord (“City”) zoning laws, ordinances, rules and regulations; and

19 **WHEREAS**, the City has complied with the requirements of the Local Planning Law
20 (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with
21 respect to approval of amendments to Title 18 of the Concord Municipal Code (“Development
22 Code”); and **WHEREAS**, the Amendment does not make substantial changes to the Development
23 Code or substantial changes with respect to the circumstances under which the Development Code
24 would be implemented which would require revisions to the 2012 SEIR due to new significant
25 environmental effects or a substantial increase in the severity of previously identified significant
26 effects and there is no new information that would require preparation of a subsequent or
27 supplemental EIR under CEQA Guidelines Section 15162; and

1 **WHEREAS**, as only minor technical changes or additions were required to the 2012 SEIR, an
2 Addendum (“Addendum”, attached hereto as Exhibit 1 and incorporated by reference) was prepared in
3 accordance with all legal requirements, including CEQA Guidelines Section 15164; and

4 **WHEREAS**, the Planning Commission, after giving all public notices required by State Law
5 and the Concord Municipal Code, held a duly noticed public hearing on June 15, 2016, on the
6 Addendum and Amendment; and

7 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
8 information, testimony, and comments received during the public review process, including
9 information received at the public hearing, the oral report from City staff, the written report from City
10 staff dated June 15, 2016, materials, exhibits presented, pertinent maps, plans, reports, studies,
11 memoranda, the Addendum, the Amendment, the General Plan, the General Plan FEIR, the Reuse
12 Plan FEIR/Addendum, the 2012 SEIR, the 2014 Addendum, the City of Concord Municipal Code, the
13 Development Code, the Downtown Specific Plan, applicable City laws and regulations, and all
14 associated approved and certified environmental documents, and all other information that constitutes
15 the record of proceedings on which the Planning Commission has based its decision are maintained at
16 the offices of the City of Concord Planning Division (collectively, “Project Information”); and

17 **WHEREAS**, at such public hearing, the Planning Commission considered the 2012 SEIR and
18 the Addendum in accordance with the requirements of CEQA; and

19 **WHEREAS**, on June 15, 2016, the Planning Commission, after consideration of all pertinent
20 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
21 Addendum and adoption of the Amendment.

22 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

23 Recitals

- 24 1. The Planning Commission finds that the above recitals (which are hereby incorporated by
25 reference) are accurate and constitute findings in this matter and, together with the Project
26 Information, serve as an adequate and appropriate evidentiary basis for the findings and
27 actions set forth in this Resolution, and further makes the following findings:
28

1 General

- 2 2. The Planning Commission has reviewed, considered, and evaluated all of the Project
3 Information prior to acting upon the Addendum or the Amendment.
- 4 3. The documents and other materials that constitute the record of proceedings upon which the
5 Planning Commission has based its recommendation are located in and may be obtained from
6 the City of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.
- 7 4.

8 CEQA Addendum

- 9 5. Based on the Project Information, the Planning Commission makes the findings set forth
10 below with respect to the Addendum:
- 11 a. The findings above are hereby incorporated by reference.
- 12 b. The Addendum represents the appropriate level of environmental review, is the
13 appropriate environmental document, for the Amendment.
- 14 c. The Planning Commission considered the 2012 SEIR and the Addendum in accordance
15 with the requirements of CEQA.
- 16 d. The Addendum reflects the independent judgment and analysis of the City as the lead
17 agency for the Amendment.
- 18 e. Based on substantial evidence in the whole record before the City, the Amendment
19 does not make substantial changes to the Development Code or substantial changes
20 with respect to the circumstances under which the Development would be implemented
21 which would require revisions to the 2012 SEIR due to new significant environmental
22 effects or a substantial increase in the severity of previously identified significant
23 effects and there is no new information that would require preparation of a subsequent
24 or supplemental EIR under Public Resources Code Section 21166 or CEQA Guidelines
25 Section 15162. Therefore, none of the elements set forth in Public Resources Code
26 Section 21166 or CEQA Guidelines Section 15162 exist and a subsequent or
27 supplemental EIR or negative declaration is not required.
- 28

1 f. No substantial changes have occurred with respect to traffic and freeway operations
2 that would cause new or substantially more severe significant environmental effects
3 than were identified in the 2012 SEIR, all mitigation measures were within the
4 jurisdiction of the City to adopt and will remain in place and continue to be
5 implemented and enforced, and the Statement of Overriding Considerations remain in
6 effect. The mitigation measures and Statement of Overriding Considerations
7 associated with certification of the 2012 SEIR addresses the environmental effects of
8 the project.

9 g. As only minor technical changes or additions were required to the 2012 SEIR, the
10 Addendum was prepared in accordance with all legal requirements, including CEQA
11 Guidelines Section 15164.

12 6. The Planning Commission hereby recommends that the City Council approve and adopt the
13 Addendum and reaffirm the Statement of Overriding Considerations.

14 Effective Date

15 This resolution shall become effective immediately upon its passage and adoption.
16

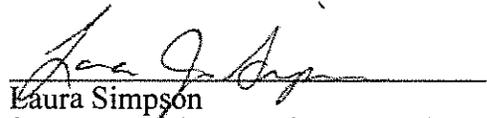
17 **PASSED AND ADOPTED** this 15th day of June, 2016 by the following vote:

18 **AYES:**

19 **NOES:**

20 **ABSTAIN:**

21 **ABSENT:**

22 
23 Laura Simpson
24 Secretary to the Planning Commission

25 Attachments:

26 1 – Addendum
27
28

1 (collectively, “CEQA”); and

2 **WHEREAS**, on June 24, 2014, the City of Concord adopted the Downtown Concord Specific
3 Plan General Plan Amendment (PL14160-GP), identified as Volume IV to the Concord 2030 General
4 Plan (“Downtown Specific Plan”); and

5 **WHEREAS**, Government Code section 65800 *et seq.* provides for the amendment of any and
6 all adopted City of Concord (“City”) zoning laws, ordinances, rules and regulations; and

7 **WHEREAS**, the City has complied with the requirements of the Local Planning Law
8 (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with
9 respect to approval of amendments to Title 18 of the Concord Municipal Code (“Development
10 Code”); and

11 **WHEREAS**, on July 24, 2012, the City Council adopted Chapter 122 of the Concord
12 Municipal Code (“Development Code”), to ensure consistency with General Plan policies, and an
13 update of its zoning maps to ensure consistency with the adopted General Plan Map; and

14 **WHEREAS**, on July 22, 2014, the City Council adopted Ordinance No. 14-2, which
15 reformatted and renumbered Chapter 122 into Title 18 of the Concord Municipal Code
16 (“Development Code”); and

17 **WHEREAS**, Section 18.455 of the City’s Development Code provides procedures for general
18 plan, specific plan, development code, or zoning map amendments; and

19 **WHEREAS**, DG Concord LLC (“Applicant”) has requested to Amend the General Plan Land
20 Use designation and Zoning for six parcels located along the north side of Concord Avenue between
21 Highway 242 and Bonifacio Street from Downtown Mixed Use (“DTMX”) to West Concord Mixed
22 Use (“WCMX”) and to remove the parcels from within the boundary of the Downtown Specific Plan
23 (“Amendment”) in order to bring existing legal non-conforming automotive-oriented land uses into
24 conformance with an appropriate land use designation; and

25 **WHEREAS**, the six parcels are located in a transitional area and are bounded by six different
26 General Plan land use designations, including West Concord Mixed Use, North Todos Santos, Service
27 Commercial, Regional Commercial, Public/Quasi Public, and High Density Residential; and

1 **WHEREAS**, the existing restaurant, hotel, and automotive land uses on the six parcels
2 proposed for Amendment all conform to the description of land uses identified under the West
3 Concord Mixed Use designation in the General Plan; and

4 **WHEREAS**, the West Concord Mixed Use land use designation and development standards
5 are less intensive than the current Downtown Mixed Use designation; and

6 **WHEREAS**, Government Code section 65800 *et seq.* provides for the amendment of any and
7 all adopted City of Concord (“City”) zoning laws, ordinances, rules and regulations; and

8 **WHEREAS**, the City has complied with the requirements of the Local Planning Law
9 (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with
10 respect to approval of amendments to Title 18 of the Concord Municipal Code (“Development
11 Code”); and

12 **WHEREAS**, the City notified and invited all Tribal Agencies identified by the Native
13 American Heritage Commission to formal consultation on the proposed General Plan Amendment on
14 March 15, 2016, in accord with Government Code §65300 *et seq.*, and no responses, comments, or
15 requests for consultation were received from Tribal Agencies during the notification period regarding
16 the proposed Amendment; and

17 **WHEREAS**, after providing public notice to all affected property owners and businesses of
18 the six parcels, on March 1, 2016, the City Council of the City of Concord motioned to allow the
19 Applicant to proceed with this Amendment in accord with Section 18.455.020 of the Development
20 Code; and

21 **WHEREAS**, a publicly noticed neighborhood meeting was held on April 11, 2016 at City
22 Hall to discuss the proposed Amendment with affected property owners, businesses, and residents;
23 and

24 **WHEREAS**, the Amendment does not make substantial changes which would require
25 revisions to the 2012 SEIR due to new significant environmental effects or a substantial increase in
26 the severity of previously identified significant effects and there is no new information that would
27 require preparation of a subsequent or supplemental EIR under CEQA Guidelines Section 15162; and
28

1 **WHEREAS**, as only minor technical changes or additions were required to the 2012 SEIR, an
2 Addendum (“Addendum”) was prepared in accordance with all legal requirements, including CEQA
3 Guidelines Section 15164; and

4 **WHEREAS**, the Planning Commission, after giving all public notices required by State Law
5 and the Concord Municipal Code, held a duly noticed public hearing on June 15, 2016, on the
6 proposed General Plan Amendment; and

7 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
8 information, testimony, and comments received during the public review process, including
9 information received at the neighborhood meeting, public hearings, the oral report from City staff, the
10 written report from City staff dated June 15, 2016, materials, exhibits presented, pertinent maps,
11 plans, reports, studies, memoranda, the Addendum, the Amendment, the General Plan, the Downtown
12 Specific Plan, the General Plan FEIR, the Reuse Plan FEIR/Addendum, the 2012 SEIR, the 2014
13 Addendum, the City of Concord Municipal Code, the Development Code, applicable City laws and
14 regulations, and all associated approved and certified environmental documents, and all other
15 information that constitutes the record of proceedings on which the Planning Commission has based
16 its decision are maintained at the offices of the City of Concord Planning Division (collectively,
17 “Project Information”); and

18 **WHEREAS**, at such public hearing, the Planning Commission considered the 2012 SEIR and
19 the Addendum in accordance with the requirements of CEQA; and

20 **WHEREAS**, on June 15, 2016, the Planning Commission, after consideration of all pertinent
21 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
22 Addendum and adoption of the Amendment.

23 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

24 Recitals

- 25 1. The Planning Commission finds that the above recitals (which are hereby incorporated by
26 reference) are accurate and constitute findings in this matter and, together with the Project
27
28

1 Information, serve as an adequate and appropriate evidentiary basis for the findings and
2 actions set forth in this Resolution, and further makes the following findings:

3 General

- 4 2. The Planning Commission has reviewed, considered, and evaluated all of the Project
5 Information prior to acting upon the Addendum or the Amendments.
- 6 3. The documents and other materials that constitute the record of proceedings upon which the
7 Planning Commission has based its recommendation are located in and may be obtained from
8 the City of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.

9 CEQA

- 10 4.
- 11 5. Based on substantial evidence in the whole record before the City, the Amendment to the
12 General Plan and Zoning Map does not make substantial changes which would require
13 revisions to the 2012 SEIR due to new significant environmental effects or a substantial
14 increase in the severity of previously identified significant effects and there is no new
15 information that would require preparation of a subsequent or supplemental EIR under Public
16 Resources Code Section 21166 or CEQA Guidelines Section 15162. Therefore, none of the
17 elements set forth in Public Resources Code Section 21166 or CEQA Guidelines Section
18 15162 exist and a subsequent or supplemental EIR or negative declaration is not required.
- 19 6. No substantial changes have occurred with respect to traffic and freeway operations that would
20 cause new or substantially more severe significant environmental effects than were identified
21 in the 2012 SEIR, all mitigation measures were within the jurisdiction of the City to adopt and
22 will remain in place and continue to be implemented and enforced, and the Statement of
23 Overriding Considerations remain in effect. The mitigation measures and Statement of
24 Overriding Considerations associated with certification of the 2012 SEIR addresses the
25 environmental effects of the project.
- 26 7. As only minor technical changes or additions were required to the 2012 SEIR, the Addendum
27 was prepared in accordance with all legal requirements, including CEQA Guidelines Section
28

1 15164.

2 8. The Addendum represents the appropriate level of environmental review, is the appropriate
3 environmental document, for the Amendment.

4 9. The Planning Commission considered the 2012 SEIR and the Addendum in accordance with
5 the requirements of CEQA and recommended that the City Council approve and adopt the
6 Addendum and reaffirm the Statement of Overriding Considerations.

7 Findings Regarding General Plan and Zoning Map Amendment

8 10. The General Plan Map Amendment would amend the Land Use Diagram Map of the 2030
9 General Plan for six parcels from Downtown Mixed Use to West Concord Mixed Use as
10 identified in "Attachment 1."

11 11. The General Plan Map Amendment would amend the boundary of the Downtown Concord
12 Specific Plan General Plan Amendment, Volume IV of the Concord 2030 General Plan, by
13 removing the six parcels identified in Attachment A from the boundary of the Downtown
14 Specific Plan.

15 12. The Zoning Map Amendment would amend the Zoning Map to be consistent with the
16 concurrent General Plan Map Amendment.

17 13. The Amendment provides for continuing internal consistency with the other elements of the
18 General Plan and furthers the goals and objectives of the General Plan Consistent with General
19 Plan Objective.

20 14. All of the existing land uses and structures located on the six parcels being amended conform
21 to the description of land uses and standards identified in the West Concord Mixed Use land
22 use designation of the General Plan.

23 15. The West Concord Mixed Use land use designation will not be detrimental to public interest,
24 health, safety, convenience or welfare to the City, or would result in an intensification of use
25 as the Amendment will align the existing land uses with a more appropriate land use
26 designation for automotive oriented businesses.

27

28

1 16. The Amendment will not result in any new or changed conditions that could impact adjacent
2 land uses or the Downtown area, as the Amendment is being done to restore the legal
3 conformity of existing automotive land uses, consistent with those found along the Concord
4 Avenue corridor.

5 17. The affected parcels are physically suitable, including an absence of physical constraints,
6 access compatibility with adjoining land uses, and provision of utilities, for the change in
7 zoning designation.

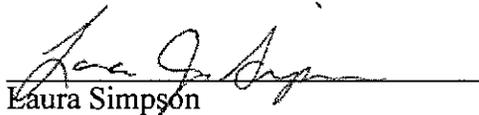
8 18. The Planning Commission hereby recommends that the City Council approve and adopt the
9 Amendment to the General Plan and the Land Use Diagram designations, and Downtown
10 Specific Plan in connection with the six parcels located on the north side of Concord Avenue
11 between Highway 242 and Bonifacio Street.

12 Effective Date

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

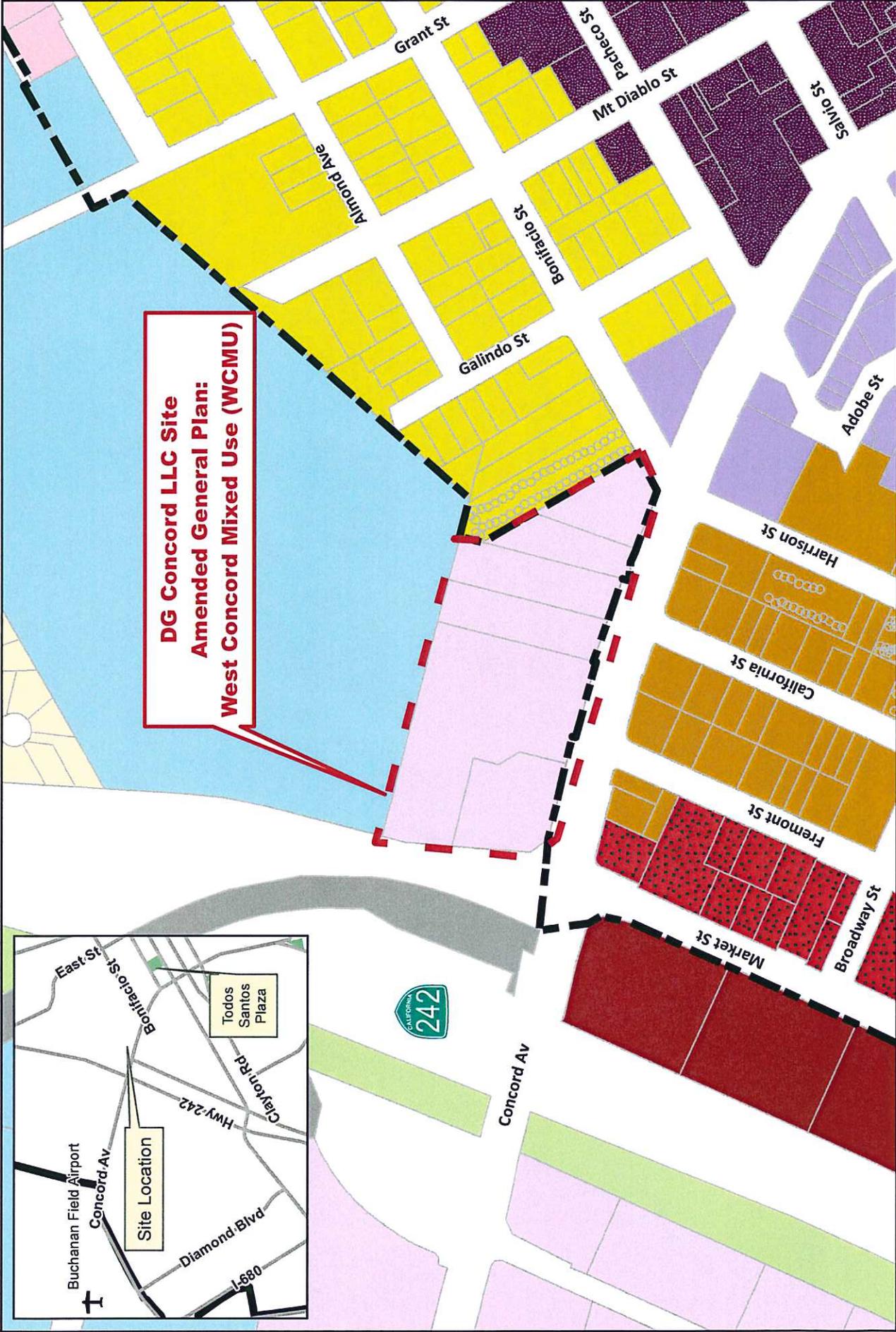
14
15 **PASSED AND ADOPTED** this 15th day of June, 2016 by the following vote:

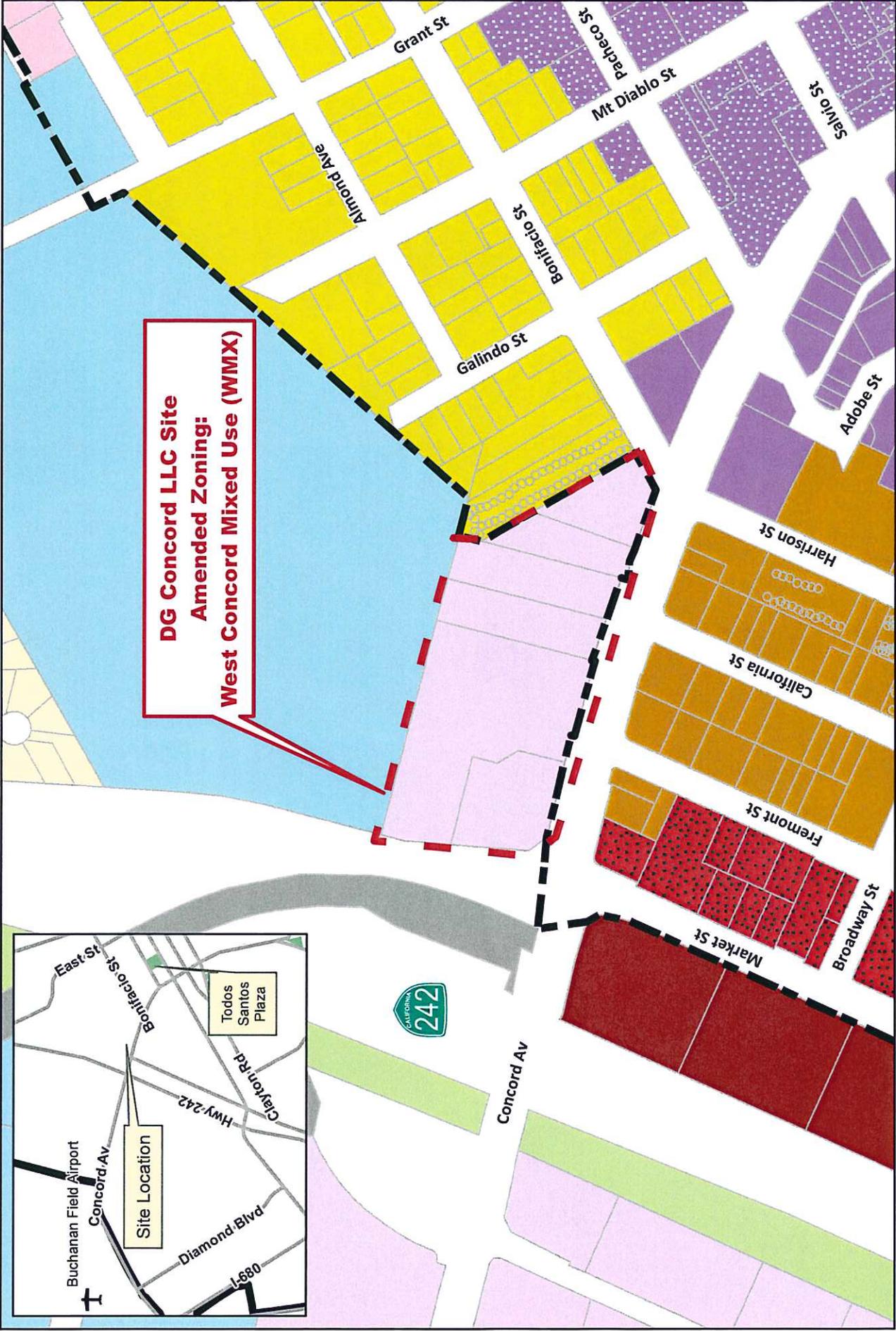
- 16 **AYES:**
17 **NOES:**
18 **ABSTAIN:**
19 **ABSENT:**

20 
21 Laura Simpson
22 Secretary to the Planning Commission

23 Attachment:

24 1 – General Plan Amendment and Change of Zoning Map Exhibit
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26
27
28





Amended Zoning Districts and Downtown Specific Plan Boundary

Legend



Amended
Downtown Specific
Plan Boundary

1 related General Plan Amendment on January 24, 2012 (“Reuse Plan FEIR/Addendum”); and

2 **WHEREAS**, the General Plan FEIR and Reuse Plan FEIR/Addendum together constitute a
3 comprehensive evaluation of the environmental impacts of the Concord General Plan; and

4 **WHEREAS**, on July 10, 2012, the City Council certified the Concord Development Code
5 Final Supplemental Environmental Impact Report and Mitigation Monitoring and Reporting Program,
6 and adopted the Findings of Fact and Statement of Overriding Considerations (collectively, the “2012
7 SEIR”); and

8 **WHEREAS**, the 2012 SEIR was prepared and circulated in accordance with the California
9 Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and
10 implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations
11 (collectively, “CEQA”); and

12 **WHEREAS**, on June 24, 2014, the City of Concord adopted the Downtown Concord Specific
13 Plan General Plan Amendment (PL14160-GP), identified as Volume IV to the Concord 2030 General
14 Plan (“Downtown Specific Plan”); and

15 **WHEREAS**, the City of Concord initiates regular and routine Development Code Clean-Up
16 Amendments to ensure consistency with the General Plan; and

17 **WHEREAS**, Section 18.455 of the Development Code provides procedures for general plan,
18 specific plan, development code, or zoning map amendments; and,

19 **WHEREAS**, on March 1, 2016, the City Council of the City of Concord approved a motion to
20 allow DG Concord LLC. (“Applicant”) to proceed with an Amendment to the Development Code in
21 accord with Section 18.455.020 of the Development Code; and

22 **WHEREAS**, the proposed Development Code Amendment (“Amendment”), as identified in
23 the June 15, 2016 Planning Commission staff report and attached to this Resolution as “Attachment 1”
24 and incorporated by reference, is necessary in order to improve the accuracy of the Development Code
25 and achieve consistency with description of the West Concord Mixed Use designation in the General
26 Plan; and

27 **WHEREAS**, the proposed Amendment to Section 18.45.010C of the Development Code
28

1 clarifies the general location of the West Concord Mixed Use zoning district to align with the
2 description identified in the General Plan and deletes an error; and

3 **WHEREAS**, This amendment to the Development Code is consistent with the Zoning Map
4 and Districts as identified in Development Code Section 18.15.020; and

5 **WHEREAS**, a publicly noticed neighborhood meeting was held on April 11, 2016 at City
6 Hall to discuss the proposed Amendment with affected property owners, businesses, and residents;
7 and

8 **WHEREAS**, the Amendment does not make substantial changes which would require
9 revisions to the 2012 Supplemental Environmental Impact Report prepared for the 2030 General Plan
10 due to new significant environmental effects or a substantial increase in the severity of previously
11 identified significant effects and there is no new information that would require preparation of a
12 subsequent or supplemental EIR under CEQA Guidelines Section 15162; and

13 **WHEREAS**, as only minor technical changes or additions were required to the 2012 SEIR, an
14 Addendum (“Addendum”) was prepared in accordance with all legal requirements, including CEQA
15 Guidelines Section 15164; and

16 **WHEREAS**, the Planning Commission, after giving all public notices required by State Law
17 and the Concord Municipal Code, held a duly noticed public hearing on June 15, 2016, on the
18 proposed Amendment; and

19 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
20 information, testimony, and comments received during the public review process, including
21 information received at the neighborhood meeting, public hearings, the oral report from City staff, the
22 written report from City staff dated June 15, 2016, materials, exhibits presented, pertinent maps,
23 plans, reports, studies, memoranda, the Addendum, the Amendment, the General Plan, the Downtown
24 Specific Plan, the General Plan FEIR, the Reuse Plan FEIR/Addendum, the 2012 SEIR, the 2014
25 Addendum, the City of Concord Municipal Code, the Development Code, applicable City laws and
26 regulations, and all associated approved and certified environmental documents, and all other
27 information that constitutes the record of proceedings on which the Planning Commission has based
28

1 its decision are maintained at the offices of the City of Concord Planning Division (collectively,
2 “Project Information”); and

3 **WHEREAS**, at such public hearing, the Planning Commission considered the 2012 SEIR and
4 the Addendum in accordance with the requirements of CEQA; and

5 **WHEREAS**, on June 15, 2016, the Planning Commission, after consideration of all pertinent
6 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
7 Addendum and adoption of the Amendment.

8 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

9 Recitals

- 10 1. The Planning Commission finds that the above recitals (which are hereby incorporated by
11 reference) are accurate and constitute findings in this matter and, together with the Project
12 Information, serve as an adequate and appropriate evidentiary basis for the findings and
13 actions set forth in this Resolution, and further makes the following findings:

14 General

- 15 2. The Planning Commission has reviewed, considered, and evaluated all of the Project
16 Information prior to acting upon the Addendum or the Amendment.
- 17 3. The documents and other materials that constitute the record of proceedings upon which the
18 Planning Commission has based its recommendation are located in and may be obtained from
19 the City of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.

20 CEQA

- 21 4.
- 22 5. Based on substantial evidence in the whole record before the City, the Planning Commission
23 has determined that the Amendment does not make substantial changes which would require
24 revisions to the 2012 SEIR due to new significant environmental effects or a substantial
25 increase in the severity of previously identified significant effects and there is no new
26 information that would require preparation of a subsequent or supplemental EIR under Public
27 Resources Code Section 21166 or CEQA Guidelines Section 15162. Therefore, none of the
28

1 elements set forth in Public Resources Code Section 21166 or CEQA Guidelines Section
2 15162 exist and a subsequent or supplemental EIR or negative declaration is not required.

- 3 6. No substantial changes have occurred with respect to traffic and freeway operations that would
4 cause new or substantially more severe significant environmental effects than were identified
5 in the 2012 SEIR, all mitigation measures were within the jurisdiction of the City to adopt and
6 will remain in place and continue to be implemented and enforced, and the Statement of
7 Overriding Considerations remain in effect. The mitigation measures and Statement of
8 Overriding Considerations associated with certification of the 2012 SEIR addresses the
9 environmental effects of the project.
- 10 7. As only minor technical changes or additions were required to the 2012 SEIR, the Addendum
11 was prepared in accordance with all legal requirements, including CEQA Guidelines Section
12 15164.
- 13 8. The Addendum represents the appropriate level of environmental review, is the appropriate
14 environmental document, for the Amendment.
- 15 9. The Planning Commission considered the 2012 SEIR and the Addendum in accordance with
16 the requirements of CEQA and recommended that the City Council approve and adopt the
17 Addendum and reaffirm the Statement of Overriding Considerations.

18 Amendment

- 19 10. The Planning Commission does hereby recommend that the City Council adopt an Ordinance
20 to approve the Amendment, and change the Land Use and Zoning Designation for the six
21 described parcels from DMX to WMX, consistent with the revision exhibit identified in
22 Attachment 1.

23 Findings Regarding the Amendment to Development Code

- 24 11. The Amendment to the Development Code is consistent with the General Plan, as amended,
25 and will not be detrimental to the public interest, health, safety, convenience or welfare of the
26 City;
- 27 12. The affected parcels are physically suitable, including absences of physical constraints, access,
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1 compatibility with adjoining land uses, and provision of utilities, for proposed or anticipated
2 uses and/or development.

3 Effective Date

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

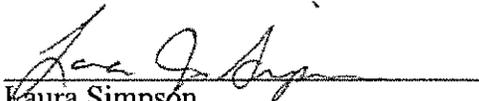
5 **PASSED AND ADOPTED** this 15th day of June, 2016 by the following vote:

6 **AYES:**

7 **NOES:**

8 **ABSTAIN:**

9 **ABSENT:**

10 
11 Laura Simpson
12 Secretary to the Planning Commission

13 Attachment:

14 1 – Section 18.45.010C Amendment Exhibit
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Attachment 1

18.45.010(C) Purpose.

C. WMX – West Concord Mixed Use. The WMX district is applied to the area ~~between Highway 242 west of Downtown, south of~~ along Concord Avenue and the Walnut Creek Channel, ~~south of Concord,~~ and adjoining areas of the city appropriate for a mix of schools, commercial, office, retail, multi-tenant office/warehouses, and institutional development at up to 4.0 FAR. The WMX district allows new automobile dealers, shopping centers, hotels, restaurants, office buildings and multi-tenant commercial spaces, including contractor showrooms and storage uses when located entirely within a building and public/quasi-public uses. The WMX district does not allow residential uses. The WMX district is consistent with and implements the West Concord mixed-use (WCMU) land use designation of the general plan. [Ord. 14-3 § 1; Ord. 12-4. DC 2012 § 122-153].



REPORT TO PLANNING COMMISSION

DATE: June 15, 2016

SUBJECT: AFFORDABLE HOUSING DEVELOPMENT CODE CHANGES

Recommendation: Adopt Resolution No. 16-05PC recommending the City Council pass an Ordinance approving the Development Code Amendment (PL160109-DC) to Sections 18.185.020 and 18.185.040 to reduce the minimum applicable project size subject to the Affordable Housing Ordinance, from five to two units.

I. Introduction

On March 28, 2016, the Housing and Economic Development Committee discussed a staff proposal to encourage the creation of affordable housing by updating the City's Inclusionary Housing requirements within the City's Affordable Housing Ordinance. Staff examined a couple of components for change including:

Increasing Affordable Housing Fees - Increasing the City's Affordable Housing Fees as a result of the preparation of a Nexus Analysis and Financial Feasibility Study was discussed. Staff encouraged a number of changes to the way fees are implemented which are tentatively planned to be considered by the City Council on July 12, 2016.

Reducing the Applicable Project Size – Reducing the minimum applicable project size within the City's Affordable Housing Ordinance, for which projects would be subject to the Inclusionary Housing Ordinance was also discussed at the Committee meeting. The Committee supported reducing the applicable project size from five units to two. Thus, all developers would participate in addressing the challenge of meeting the City's needs for affordable housing, even if at a reduced level. The Committee recommended change requires a text amendment to the Development Code, and thus review by the Planning Commission with a recommendation to Council, and is the basis for this report.

Staff recommends the Planning Commission adopt Resolution No. 16-5 (Exhibit A), recommending the City Council pass an Ordinance approving the Development Code Amendment (PL160109-DC) to Sections 18.185.020 and 18.185.040 to reduce the minimum applicable project size, subject to the Affordable Housing Ordinance, from five units to two units.

II. Background

On January 5, 2015, the Housing Element Update 2014-2022 was adopted by City Council; it includes a number of policies intended to support production of more affordable housing. One program for creating additional affordable housing identified in the City's Housing Element was Program H-1.5.8 encouraging the City to prepare a Nexus Study that can be used to update the City's Affordable Housing Fees and adopt a new fee rate based on the study that is equal to or less than the maximum fee identified in the Study, as appropriate, in order to encourage more affordable housing.

To implement this program, the City engaged Keyser Marston Associates to prepare a nexus analysis and financial feasibility analysis to validate the level of Affordable Housing Fees that could currently be justified in Concord based on providing a reasonable level of profit for developers. After review of the analyses and some modifications, the Housing and Economic Development (HED) Committee recommended revisions to the City's affordable housing fees to implement Program H-1.5.8 to:

- Generate additional fees for use in the City's affordable housing program;
- Provide more equity in payment of fees among projects, revising fees from a per unit basis to a per square foot basis, and requiring fees for rental projects as well as ownership projects; and
- Reduce the applicable project size, subject to the City's Affordable Housing Ordinance from five units down to two; with reduced fees for those projects.

The focus of this report is regarding the third bullet, based on the need for a City-initiated text amendment to facilitate the change. The other two bulleted items will be reviewed directly with the City Council, since they relate to fee adjustments.

III. California Environmental Quality Act (CEQA)¹

The City Council adopted Resolution No. 15-2 on January 6, 2015, adopting a Negative Declaration for the Housing Element 2014-2022 General Plan Amendment to the Housing Element as Volume V of the *Concord 2030 General Plan* ("Approved Project"). The proposed Development Code changes are minor in nature and the codification of existing policy within the City's Housing Element, which is the result of State legislative action, do not make substantial changes to the Approved Project or substantial changes with respect to the circumstances under which the Approved Project would be undertaken which would require revisions to the Negative Declaration due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects, there is no new information that would require preparation of a subsequent or supplemental EIR or negative declaration under Public Resources Code Section 21166 or CEQA Guidelines Section 15162, none of the elements requiring a subsequent or supplemental negative declaration under Public Resources Code Section 21166 or CEQA Guidelines Section 15162 are met. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as exempt pursuant to 15061(B)(3), falling within the "common sense" exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." and no further environmental review is required. Moreover, future projects would undergo individual CEQA review.

IV. Discussion

At the March 28 2016, HED Committee meeting on the Nexus Analysis and Feasibility Analysis, the Committee members expressed a commitment to affordable housing. The minutes are provided as Exhibit B. The Planning Commission does not typically review fee modifications and is not being asked to do so in this case. However, in connection with the review of the City's

¹ California Environmental Quality Act (CEQA) of 1970, Public Resources Code § 21000, et seq., and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations, all as amended from time to time.

affordable housing fee program, staff is proposing a related modification that necessitates a text amendment to the Development Code, requiring the Planning Commission's review and recommendation to the City Council. Specifically, staff is proposing the applicable project size within the Affordable Housing Ordinance (Sections 18.185.020 and 18.185.040), be reduced from 5 units to 2 units or more. The purpose is to be able to generate fees even from small projects, even if at lower levels, to support the premise that "everybody shares the burden of affordable housing."

V. Analysis

18.185.020 and 18.185.040 Affordable Housing Ordinance

The City's current code provisions in Sections 18.185.020 and 18.185.040 of the Affordable Housing Ordinance set forth the minimum project size subject to the ordinance. Staff is proposing to revise the existing language in these sections of the Development Code to reduce the minimum applicable project size from five units to two units. Red line changes are shown in Attachment 1 to Exhibit A.

Smaller projects will have a smaller yet reasonable obligation, and fees will be modified toward a scalable fee structure that is based on square footage and project size rather than a flat per unit fee. Smaller infill projects (2-9 units in size) will have a lower fee, yet still contribute to the affordable housing challenge with fees based on a sliding scale linked to project size; for example, 2 units at \$2/sq. ft.; 3 unit projects at \$3/sq. ft., etc. As a comparison, staff will be recommending the Council adopt a (3-year) phase-in of higher in-lieu fees (\$8 to \$10 per sq. ft.) for projects of 10 units or more. Exhibit B (March 28 HED minutes) has been included for additional background information. However, the fee issues will be reviewed and approved as a City Council agenda item in July.

VI. Fiscal Impact

The adoption of the proposed Development Code updates will have no fiscal impact on the City. The Planning division's efforts are supported by the City's General Reimbursement Fee.

VII. Public Contact

All appropriate public notices of this agenda item have been posted. An advertisement was posted in the newspaper in accord with the public notification requirements. Interested stakeholders were e-mailed the staff report.

VIII. Summary and Recommendations

Staff recommends the Planning Commission adopt Resolution 16-05PC, recommending the City Council pass an Ordinance approving the Development Code Amendment (PL160109-DC) to Sections 18.185.020 and 18.185.040 to reduce the minimum applicable project size, subject to the Affordable Housing Ordinance, from five units to two.

IX. Motion

I (Comm. _____) hereby move that the Planning Commission adopt Resolution 16-05PC, recommending the City Council pass an Ordinance approving the Development Code Amendment

(PL160109-DC) to Sections 18.185.020 and 18.185.040 to reduce the minimum applicable project size, subject to the Affordable Housing Ordinance, from five units to two. (Seconded by Comm. ____)

Prepared by: 
Joan Ryan, AICP
Senior Planner
(925) 671-3370
Joan.ryan@cityofconcord.org

Reviewed by: 
Laura Simpson, AICP
Planning Manager
(925) 671-3369
Laura.simpson@cityofconcord.org

EXHIBITS

- Exhibit A: Planning Commission Resolution 16-05PC
Attachment 1: Amendment –Redline of Revisions to Inclusionary Housing Requirements Ordinance
- Exhibit B: March 28, 2016 HED Committee Minutes

BEFORE THE PLANNING COMMISSION
OF THE CITY OF CONCORD,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING THE CITY
COUNCIL PASS AN ORDINANCE APPROVING
THE DEVELOPMENT CODE AMENDMENT
(PL160109-DC) TO SECTIONS 18.185.020 AND
18.185.040 TO REDUCE THE MINIMUM
APPLICABLE PROJECT SIZE, SUBJECT TO THE
AFFORDABLE HOUSING ORDINANCE, FROM
FIVE TO TWO UNITS.

/ Resolution No. 16-05 PC

WHEREAS, the City of Concord adopted the 2030 Urban Area General Plan on October 2, 2007 (“General Plan”); and

WHEREAS, the City of Concord concurrently certified the Final Environmental Impact Report for the 2030 Urban Area General Plan on October 2, 2007 (“General Plan FEIR”); and

WHEREAS, the City of Concord amended the General Plan on January 24, 2012 to incorporate an Area Plan for the Concord Reuse Project; and

WHEREAS, the City of Concord certified a Final Environmental Impact for the Concord Reuse Project Plan in February 2010 and an Addendum to that FEIR which covered the Area Plan and related General Plan Amendment on January 24, 2012 (“Reuse Plan FEIR/Addendum”); and

WHEREAS, the General Plan FEIR and Reuse Plan FEIR/Addendum together constitute a comprehensive evaluation of the environmental impacts of the Concord General Plan; and

WHEREAS, on July 10, 2012, the City Council certified the Concord Development Code Final Supplemental Environmental Impact Report and Mitigation Monitoring and Reporting Program, and adopted the Findings of Fact and Statement of Overriding Considerations (collectively, the “2012 SEIR”); and

WHEREAS, the 2012 SEIR was prepared and circulated in accordance with the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, “CEQA”); and

WHEREAS, on July 24, 2012, the City Council adopted Chapter 122 of the Concord

1 Municipal Code (“Development Code”), to ensure consistency with General Plan policies, and an
2 update of its zoning maps to ensure consistency with the adopted General Plan Map; and

3 **WHEREAS**, Government Code section 65800 *et seq.* provides for the amendment of any and
4 all adopted City of Concord (“City”) zoning laws, ordinances, rules and regulations; and

5 **WHEREAS**, the City has complied with the requirements of the Local Planning Law
6 (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with
7 respect to approval of amendments to Chapter 18 of the Concord Municipal Code (“Development
8 Code”); and

9 **WHEREAS**, on October 9, 2012, the City Council adopted Ordinance No. 12-5 amending the
10 Development Code to correct minor technical errors and omissions and to provide clarification of
11 terms and procedures; and

12 **WHEREAS**, on September 24, 2013, the City Council adopted Ordinance No. 13-71 further
13 amending the Development Code to correct minor technical errors and omissions and to provide
14 clarification of terms and procedures; and

15 **WHEREAS**, on June 24, 2014, the City Council adopted Resolution No. 14-4823.1,
16 approving the Addendum to the Final Supplemental Environmental Impact Report (SEIR) to the 2030
17 Concord General Plan EIR for the Concord Development Code Project and adopting the Downtown
18 Concord Specific Plan General Plan Amendment (PL14160-GP) as Volume IV to the Concord 2030
19 General Plan (“2014 Addendum”); and

20 **WHEREAS**, on June 24, 2014, the City Council adopted Ordinance No. 14-6 further
21 amending the Development Code to provide clarification of terms and procedures; and

22 **WHEREAS**, on January 6, 2015, the City Council adopted Resolution No. 15-2 adopting a
23 Negative Declaration for the Housing Element Update 2014-2022 General Plan Amendment (PL14-
24 339 GP) to the Housing Element as Volume V of the Concord 2030 General Plan, and adopted
25 Resolution No. 15-4823.1 adopting the Housing Element Update 2014-2022 General Plan
26 Amendment to the Housing Element (“Approved Project”); and

27 **WHEREAS**, the City has initiated a subsequent Development Code text amendment to reduce
28

1 the applicable project size from five units to two units within Sections 18.185.020 and 18.185.040 of
2 the Affordable Housing Ordinance within the Development Code; and

3 **WHEREAS**, such text amendment is in the form of the proposed Development Code
4 Amendment PL160109-DC (“Amendment”) attached hereto as Attachment 1 and incorporated by
5 reference), in order to implement Policy H-1.5 and Program H-1.5.8 of the City’s Housing Element
6 Update 2014-2022; and

7 **WHEREAS**, the proposed Development Code changes are minor in nature and the
8 codification of existing policy within the City’s Housing Element, which is the result of State
9 legislative action, do not make substantial changes to the Approved Project or substantial changes
10 with respect to the circumstances under which the Approved Project would be undertaken which
11 would require revisions to the Negative Declaration due to new significant environmental effects or a
12 substantial increase in the severity of previously identified significant effects, there is no new
13 information that would require preparation of a subsequent or supplemental EIR or negative
14 declaration under Public Resources Code Section 21166 or CEQA Guidelines Section 15162, none of
15 the elements requiring a subsequent or supplemental negative declaration under Public Resources
16 Code Section 21166 or CEQA Guidelines Section 15162 are met. Pursuant to the provisions of the
17 California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as
18 exempt pursuant to 15061(B)(3), and no further environmental review is required. Moreover, future
19 projects would undergo individual CEQA review; and further, staff believes the Amendment falls
20 within the “common sense” exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding
21 projects where “it can be seen with certainty that there is no possibility that the activity in question
22 may have a significant effect on the environment...”; and

23 **WHEREAS**, the Planning Commission, after giving all public notices required by State Law
24 and the Concord Municipal Code, held a duly noticed public hearing on June 15, 2016, on the Text
25 Amendment; and

26 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
27 information, testimony, and comments received during the public review process, including
28

1 information received at the public hearing, the oral report from City staff, the written report from City
2 staff dated June 15, 2016, materials, exhibits presented, pertinent maps, plans, reports, studies,
3 memoranda, the Addendum, the Amendment, the General Plan, the General Plan FEIR, the Reuse
4 Plan FEIR/Addendum, the 2012 SEIR, the 2014 Addendum, the City of Concord Municipal Code, the
5 Development Code, applicable City laws and regulations, and all associated approved and certified
6 environmental documents, and all other information that constitutes the record of proceedings on
7 which the Planning Commission has based its decision are maintained at the offices of the City of
8 Concord Planning Division (collectively, "Project Information"); and

9 **WHEREAS**, at such public hearing, the Planning Commission considered the 2012 SEIR and
10 Negative Declaration for the Housing Element Update 2014-2022 in accordance with the requirements
11 of CEQA; and

12 **WHEREAS**, on June 15, 2016, the Planning Commission, after consideration of all pertinent
13 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
14 Amendment.

15 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

16 Recitals

17 1. The Planning Commission finds that the above recitals (which are hereby incorporated by
18 reference) are accurate and constitute findings in this matter and, together with the Project
19 Information, serve as an adequate and appropriate evidentiary basis for the findings and actions set
20 forth in this Resolution, and further makes the following findings:

21 General

22 2. The Planning Commission has reviewed, considered, and evaluated all of the Project
23 Information prior to acting upon the Amendment.

24 3. The documents and other materials that constitute the record of proceedings upon which the
25 Planning Commission has based its recommendation are located in and may be obtained from the City
26 of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.

1 CEQA

2 4. The City Council makes the findings set forth below with respect to CEQA:

3 a. The findings above are hereby incorporated by reference.

4 b. Based on substantial evidence in the whole record before the City, The City Council
5 adopted Resolution No. 15-2 on January 6, 2015, adopting a Negative Declaration for the Housing
6 Element 2014-2022 General Plan Amendment to the Housing Element as Volume V of the *Concord*
7 *2030 General Plan* (“Approved Project”). The proposed Development Code changes are minor in
8 nature and the codification of existing policy within the City’s Housing Element, which is the result of
9 State legislative action, do not make substantial changes to the Approved Project or substantial
10 changes with respect to the circumstances under which the Approved Project would be undertaken
11 which would require revisions to the Negative Declaration due to new significant environmental
12 effects or a substantial increase in the severity of previously identified significant effects, there is no
13 new information that would require preparation of a subsequent or supplemental EIR or negative
14 declaration under Public Resources Code Section 21166 or CEQA Guidelines Section 15162, none of
15 the elements requiring a subsequent or supplemental negative declaration under Public Resources
16 Code Section 21166 or CEQA Guidelines Section 15162 are met.

17 c. In addition, the proposed code amendments will have minimal impact on the
18 environment in that most all affected parcels would already be developed. Pursuant to the provisions
19 of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as
20 exempt pursuant to 15061(B)(3) falling within the “common sense” exemption set forth in 14 Cal.
21 Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is
22 no possibility that the activity in question may have a significant effect on the environment...”no
23 further environmental review is required. Moreover, future projects would undergo individual CEQA
24 review.

25 d. The City considered the Project Information, including the 2012 SEIR and the 2014
26 Addendum in accordance with the requirements of CEQA.

27 e. The CEQA analysis represents the appropriate level of environmental review, is the

1 appropriate environmental document, for the Project.

2 f. The CEQA findings and recommendation reflect the independent judgment and
3 analysis of the City as the lead agency for the Amendment.

4 g. The Planning Commission hereby recommends that the City Council adopt the CEQA
5 findings.

6 Amendment

7 5. Based on the Project Information, and all oral and written testimony submitted on this item,
8 the Planning Commission makes the findings set forth below with respect to the Amendment:

9 a. The findings above are hereby incorporated by reference.

10 b. The proposed Amendment is consistent with the policies in the General Plan and is
11 necessary in order to implement the policies within the Housing Element Update.

12 c. The proposed Amendment would not be detrimental to the public interest, health,
13 safety, convenience, or welfare of the City.

14 6. The Planning Commission does hereby recommend that the City Council adopt an Ordinance
15 to approve the Amendment, consistent with the revisions in Attachment 1 hereto.

16 Affordable Housing Ordinance - Applicability.

17 7. In an effort to increase Affordable Housing, the minimum project size for applicability under
18 the Affordable Housing Ordinance would be reduced from Five units to Two Units.

19 Effective Date

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

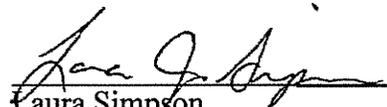
21 **PASSED AND ADOPTED** this 15th day of June, 2016 by the following vote:

22 **AYES:** None

23 **NOES:** None

24 **ABSTAIN:** None

25 **ABSENT:** None

26 
27 Laura Simpson
28 Secretary to the Planning Commission

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Attachment:

1 – Amendment: Redline of revisions to Section 18.185.020 and 18.185.040 Affordable Housing Ordinance

AFFORDABLE HOUSING

Sections:

- 18.185.010 Purpose.
- 18.185.020 Applicability.
- 18.185.030 Review authority.
- 18.185.040 Inclusionary housing requirements.
- 18.185.050 Density bonus program.
- 18.185.060 Affordable housing incentive program.
- 18.185.070 Affordable housing agreements.
- 18.185.080 Application requirements and review.
- 18.185.090 Duration of affordability.
- 18.185.100 Compliance monitoring fees.

18.185.010 Purpose.

A. The purpose of this chapter is to facilitate and encourage the development of housing affordable to a broad range of households with varying income levels within the city. It is intended to implement the city's general plan housing element policies and programs pertaining to the need for housing affordable to persons of very low, low and moderate income. In addition, this chapter is intended to ensure that at least a minimum percentage of units affordable to very low, low, and/or moderate income individuals is included within new residential developments and that appropriate incentives are established to encourage the inclusion of affordable units beyond the stated minimum. This chapter is further intended to allow for density bonuses and related incentives consistent with state density bonus law.

B. Terms referenced in this section are defined in CDC 18.20.030 under the subheading "Affordable Housing Definitions."

18.185.020 Applicability.

A. The provisions of this chapter apply to all development containing **five two** or more residential units. More specific applicability provisions are noted below:

1. CDC 18.185.040 (Inclusionary housing requirements) requires the inclusion of a minimum percentage of affordable housing units in all projects with **five two** units or more. Its intent is to integrate affordable housing throughout areas of the city where housing is permitted. An option

for payment of in-lieu fees is provided in the event that development of inclusionary units as part of the project is not feasible. The requirements of CDC 18.185.040 apply in all districts where residential uses are permitted.

2. CDC 18.185.050 (Density bonus program) allows increased housing densities with a corresponding increase in affordable housing units consistent with state of California density bonus requirements. It applies in all districts where residential uses are permitted.

3. CDC 18.185.060 (Affordable housing incentive program) includes additional incentives for projects incorporating affordable units and permits density bonuses above those provided under CDC 18.185.050, in accordance with the Concord housing element. CDC 18.185.060 is only applicable in specified districts where high density multifamily housing and residential mixed-use development is permitted. The provisions of CDC 18.185.060 are intended as an alternative to those in CDC 18.185.050 for qualifying projects, and are not cumulative. Projects using the density bonus provisions of CDC 18.185.060 are not eligible for additional bonuses under CDC 18.185.050.

B. Affordable housing units are units which are specifically designated for very low, low income, or moderate income households. They may be developed in all districts that allow residential uses. Affordable housing developments may consist of owner-occupied units or rental units.

C. The standards in this chapter are supplemental to, and supersede when in conflict with, the standards in the applicable districts in Division II of this title (Zoning Districts – Uses and Standards) and in other divisions of the development code, except that the provisions of Chapter 18.530 CDC (Nonconforming Uses, Structures, and Parcels) and Chapter 18.535 CDC (Nonconforming Physical Improvements/Property Upgrades) shall apply in all cases. [Ord. 12-4. DC 2012 § 122-577].

18.185.030 Review authority **SHARE**

A. The community and economic development department shall be the review authority for new affordable housing developments. All applications for density bonuses, concessions, incentives, and waivers shall be reviewed by the community and economic development director.

B. Design and site development review, as described in Chapter 18.415 CDC, is required for all new affordable housing developments in all districts. This includes projects in which only a portion of the units are designated as affordable as well as those that are 100 percent affordable.

C. Projects containing affordable housing units are subject to all permit requirements and permitting procedures established by Division VII of this title (Permits and Permit Procedures). All predevelopment and public notice provisions established by that division shall apply.

D. The review authority for density bonuses and for the modifications to development standards identified in CDC 18.185.060 shall be the city of Concord community and economic development department. Staff may deny a density bonus by making certain findings as described in CDC 18.185.050(l)(2). Such denials are appealable to the city council. As indicated by Division VII of this title (Permits and Permit Procedures), planning commission and/or city council approval shall only be required where a use permit or major subdivision approval is required, where a decision is being appealed, or where actions related to financial incentives or agreements are included.

18.185.040 Inclusionary housing requirements.

A. Applicability. The following requirements shall apply to all residential projects of five two or more units. No application for a general plan amendment, rezoning, tentative subdivision map, parcel map, use permit, design and site development review, hillside development plan, or building permit for a residential project shall be approved, nor shall any such residential project be constructed or occupied, without compliance with this chapter, except as noted in subsection (B) of this section (Exemptions).

1. All residential ownership projects shall either include the minimum number of inclusionary units required under subsection (C) of this section (Required Number of Inclusionary Units), or if eligible, pay the in-lieu fee determined pursuant to subsection (D) of this section (In-Lieu Fees).
2. Residential rental projects shall either include the minimum number of inclusionary units required under subsection (C) of this section (Required Number of Inclusionary Units), or if eligible, pay the in-lieu fee determined pursuant to subsection (D) of this section (In-Lieu Fees), only in the event that the project:
 - a. Receives a direct financial contribution from the city or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code; or
 - b. Is subject to a development agreement.
3. An affordable housing agreement governing the number, size, and location of affordable units, and terms of their use, shall be required pursuant to CDC 18.185.070.

4. If affordable rental housing units are required, the city shall require as a condition of city assistance that the affordable housing agreement include the applicant's agreement to any limitation on rents in consideration for the city assistance to ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code).

B. Exemptions. This chapter shall not apply to the following:

1. A residential project consisting solely of the construction of one to four single-family dwelling units; or
2. The reconstruction of any dwelling units that were destroyed by a fire, flood, earthquake, or other act of nature; or
3. Residential rental projects that are not either: (a) receiving a direct financial contribution or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code; or (b) subject to a development agreement.

C. Required Number of Inclusionary Units.

1. Basic Requirement. The required number of inclusionary units to be provided shall vary depending upon the total number of dwelling units in the project and the income category for the inclusionary units being provided. Within the parameters set forth in Table 18.185.040, the applicant may choose which income category of inclusionary units to provide.

**Table 18.185.040
Required Percentage of Inclusionary Units**

Project Size and Type	Inclusionary Requirement
Residential Ownership Projects	Either 10 percent at moderate income, or six percent at low income
Residential Rental Projects (not otherwise exempt)	Either 10 percent at low income, or six percent at very low income

2. Fractional Units. When the application of the percentages set forth above results in a number that includes a fractional unit, the fraction shall be rounded up to the next whole number if the fraction is one-half or more. If the result includes a fraction below one-half, the applicant shall

have the option of either rounding up to the next whole number and providing an additional inclusionary unit, or paying an in-lieu fee as provided in subsection (D) of this section (In-Lieu Fees).

3. Blended Income Levels for Inclusionary Units. A developer may request that the development project include inclusionary units affordable to a mix of income levels (very low, low and moderate) instead of a single income level. Authority to approve a particular mix of income levels shall rest with the final city review authority for the underlying application.

4. Projects of five Two to Nine Units. The developer of a residential project containing from five two to nine units, inclusive, shall have the option of either providing one inclusionary unit or paying an in-lieu fee as provided in subsection (D) of this section (In-Lieu Fees).

5. Rental Alternative. As an alternative to providing ownership inclusionary units on site in residential ownership projects as required by subsection (A) of this section, and pursuant to Government Code Section 65589.8, the applicant for a residential ownership project may provide rental inclusionary units. In such cases, the number of rental units provided shall be such that at least 10 percent of the total number of units in the project (including the ownership and rental units) are affordable to low income households or at least six percent of the total number of units in the project (including the ownership and rental units) are affordable to very low income households. To ensure compliance with the Costa-Hawkins Act (Civil Code Sections 1954.51 through 1954.535), the city may only approve such a proposal if the applicant agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

D. In-Lieu Fees.

1. Amount. A fee may be paid in lieu of providing inclusionary units for a residential project as provided in subsections (C)(2) (Fractional Units) and (4) (Projects of Five Two to Nine Units) of this section and for a residential project which contains less than 20 acres in gross land area. The fee shall be set by resolution of the city council and shall be an amount sufficient to pay the proportionate cost of providing inclusionary units elsewhere in the city. The fee may be periodically reviewed and updated by the city.

2. Use. All fee revenues shall be deposited in a restricted fund earmarked for housing developments affordable to very low, low, and/or moderate income households. Fees may also be used for administration of city affordable housing programs and to administer fair housing requirements for affordable units.

3. Timing of Payment. In-lieu fees shall be paid prior to issuance of a certificate of occupancy or prior to building permit issuance, for projects for which a certificate of occupancy is not issued; or as otherwise provided in the conditions of approval.

4. Purpose of In-Lieu Fees. Nothing in this title shall deem or be used to deem the in-lieu fee authorized in this section as an ad hoc exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in Building Industry Association of Central California v. City of Patterson, 171 Cal.App.4th 886 (2009). Any in-lieu fee adopted by the city council is a menu option that may serve as an alternative to the provision of on-site inclusionary units as otherwise required by subsection (C) of this section.

5. The planning division or review authority may permit a developer to pay in-lieu fees rather than fulfilling the requirements of an executed inclusionary housing agreement requiring the construction of below market rate units if the reduced market price of the proposed units falls to within 15 percent of the "affordable price" for a moderate income four-person household.

E. Duration of Affordability. The duration of designated affordable inclusionary units shall conform to CDC 18.185.090.

F. Design Standards. The following design standards shall apply to all inclusionary units constructed pursuant to this chapter:

1. Inclusionary units shall be dispersed throughout the residential project and shall have access to all on-site amenities that are available to market rate units.

2. The construction quality and exterior design of inclusionary units shall be comparable to the market rate units. However, inclusionary units may be smaller in size, developed on smaller lots, and/or have alternative interior finishes.

3. The average number of bedrooms for all inclusionary units must be equivalent to the average number of bedrooms for market rate units within the same residential project.

G. Timing of Construction and Occupancy. All inclusionary units must be constructed and occupied prior to or concurrently with the market rate units within the same residential project. For phased residential projects, the inclusionary units may be constructed and occupied in proportion to the number of dwelling units in each phase of the project.

H. Development Incentives.

1. The city may grant one or more of the following affordable housing development incentives in order to mitigate the financial impact of this chapter's requirements on a particular residential project:

a. Provision of housing set-aside funds, tax exempt financing, or other financial assistance, as approved by the city council.

b. A density bonus, incentive, concession, or waiver authorized pursuant to CDC 18.185.050 (Density bonus program).

c. Modification of zoning or development standards as described in CDC 18.185.060 (Affordable housing incentive program) for projects seeking a density bonus above and beyond the inclusionary housing requirements, as negotiated with and approved by the city. Authority to act on a request for these development incentives shall rest with the final review authority regarding the underlying application.

d. Expedited processing of a development application and/or deferral of development fees, as authorized by the city manager or designee. The terms and payment schedule for any deferred development fees shall be subject to the approval of the city manager or designee. Fees shall not be deferred any later than occupancy of the first dwelling unit in the residential project.

2. No development incentive shall be provided by the city pursuant to this section unless the applicant enters into an affordable housing agreement consistent with CDC 18.185.070.

I. Off-Site Alternatives.

1. As a complete or partial alternative to the provision of on-site inclusionary units pursuant to this chapter, an applicant for a residential project may propose a plan for providing affordable housing units at an off-site location within the city of Concord, as follows:

a. Acquire existing unrestricted multifamily units located elsewhere within the city and rehabilitate those dwelling units. At least two rehabilitated dwelling units shall be provided for each inclusionary unit required pursuant to this chapter.

b. Construct new affordable residential dwelling units. At least two new dwelling units shall be provided for each inclusionary unit required pursuant to this chapter.

2. Any new or rehabilitated dwelling units shall be regulated pursuant to an affordable housing agreement, as applicable, between the developer and the city pursuant to CDC 18.185.070 (Affordable housing agreements).

3. All off-site inclusionary units must be rehabilitated or constructed and occupied prior to or concurrently with the market rate units for the related residential project. For phased residential projects, the inclusionary units may be constructed and occupied in proportion to the number of dwelling units in each phase of the project.

4. The applicant may partner with a nonprofit affordable housing provider in order to meet its inclusionary housing obligations through one of the alternatives set forth in this section.

5. Authority to act on off-site alternative proposals shall rest with the final city review authority regarding the underlying application.

J. Waivers or Adjustments. The city council may approve a reduction or waiver of the requirements of this chapter for residential projects which: (1) are the subject of a disposition and development agreement, owner participation agreement, acquisition agreement, or other arrangement with the city of Concord; and (2) are receiving assistance from the city of Concord, such as relocation of occupants, acquisitions and disposition of land for site assemblage, use of eminent domain, write-down of land costs, fee waivers, or other forms of direct city assistance. The city may also adjust or waive the requirements of this chapter if the applicant demonstrates that its strict application would affect a taking of private property without just compensation or otherwise constitute a violation of the United States Constitution, California Constitution or other applicable federal or state laws. Any applicant requesting a reduction or waiver must submit a pro forma and such other financial analysis sufficient to support a determination that the reduction or waiver is necessary to ensure the economic feasibility of the project. Consistent with its responsibilities under the Public Records Act, the city shall take reasonable steps to protect the confidentiality of any proprietary financial information submitted by the applicant.

K. Allocation Priority. In the event that there exists a greater number of qualified persons than the number of available inclusionary units for any residential project subject to this chapter, then first priority for allocating available inclusionary units shall be given to qualified purchasers or renters who live or work within the city of Concord.

CITY COUNCIL COMMITTEE**HOUSING & ECONOMIC DEVELOPMENT**

Ron Leone, Chair
Dan Helix, Committee Member

5:30 p.m., Monday, March 28, 2016

**Building D, Permit Center Conference Room
1950 Parkside Drive, Concord**

- ANNOTATED AGENDA -

ROLL CALL: All present

STAFF PRESENT: Jovan Grogan, Laura Simpson, Victoria Walker

MEMBERS OF THE PUBLIC WHO ADDRESSED THE COMMITTEE: George Fulmore, Betty Gabaldon

PUBLIC COMMENT PERIOD: George Fulmore and Betty Gabaldon both spoke on issues related to rent control.

1. **CONSIDERATION** – Presentation of the Housing In-lieu Fee Nexus Study and Fee Recommendations. Report by Laura Simpson, Planning Manager.

ACTION: The HED Committee members approved of staff recommendations with two modifications as shown below:

Ownership Projects

- Change the in-lieu fee from a flat, per unit fee to a scalable fee based on the size of the unit, in dollars per square feet to provide more equality among project sizes.
- Lower the threshold to collect fees from those projects that are 2-9 units in size to support the concept that “everyone pays” (Note: would require a Code text amendment).
- Reduce the fee for those smaller projects to coordinate with a sliding scale based on project size; for example 2 units - \$2/sq. ft.; 3 unit projects - \$3/sq. ft., etc. (Note: this would require an ordinance change, as currently the Inclusionary Ordinance only covers those projects of 5 units and greater.)

CITY COUNCIL COMMITTEE

- Phase in schedule, such that planning applications for projects that have not been deemed complete by January 1, 2017, would be subject to new fees, based on the following incremental increases over the next three years.
 - January 2017 - \$8/sq. ft.
 - January 2019 - \$9/sq. ft.
 - January 2021 - \$10/sq. ft.
- In an effort to encourage high density (33 du or more), for-sale condominium units, treat such units as rentals for the purpose of collecting fees.

Rental Projects

- Fee would remain \$0 until July 1, 2018.
- Fee would apply to 2 unit buildings or greater.
- Planning applications for multi-family rental projects that have not been deemed complete by July 1, 2017, would be subject to the fee.
- Rental In-Lieu fee would start out very small in July 2018 with incremental increases, as shown in bullet below, but the initiation of the fee would be postponed if at least 600 units were not yet under construction by April 2018.
- Phase-in for Rental Project In-Lieu fees, would be based on the following incremental increases over three years. Staff would return to Council prior to incorporating into the fee schedule in May 2018.
 - July 2018 - \$3/sq. ft.
 - July 2020 - \$4/sq. ft.
 - July 2022 - \$5/sq. ft.

The HED Committee modified the staff recommendations in two ways: they expanded the intervals for staging fee increases for ownership and rental units from one year to two-year intervals, and they increased the threshold number of building permits issued from 500 to 600 units, before the rental fee would be implemented. The HED Committee did not recommend moving forward with a study of commercial linkage fees.

2. **ADJOURNMENT** at 6:15 p.m.

Reviewed by:



Jovan Grogan, Deputy City Manager

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) 671-3361, at least five days in advance of the meeting. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

CITY COUNCIL COMMITTEE

Distribution: City Council
Valerie Barone, City Manager
Jovan Grogan, Deputy City Manager
Brian Libow, Interim City Attorney
Victoria Walker, Community & Economic Development Director
John Montagh, Housing & Economic Development Manager
Laura Simpson, Planning Manager
Joan Ryan, Senior Planner
Joelle Fockler, City Clerk