
City of Concord
City Manager's Office
MEMORANDUM

July, 6, 2015

TO: Honorable Mayor Grayson & City Council Members

FROM: Valerie J. Barone, City Manager 

SUBJECT: **Removal of Item 5.c from the Council's July 7, 2015 Council Meeting Agenda**—Item 5.c: Consideration of an Ordinance amending the West Concord Mixed Use Zoning District (WMX).

Item 5.c is a public hearing on proposed text amendments in the WMX Zoning District. I have removed this item from the July 7, 2015 Council agenda to allow time for additional staff review before Council consideration.

The item will require new public noticing before Council can consider it at a future public hearing.

Staff has attempted to contact all interested parties to this item and inform them that the item has been removed from the agenda.



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: July 7, 2015

SUBJECT: WEST CONCORD MIXED USE TEXT AMENDMENT TO THE DEVELOPMENT CODE (PL15132-DC)

Report in Brief

Staff recommends that the City Council adopt Resolution No. 15-50 to approve and adopt an Addendum to the 2012 Supplemental Environmental Impact Report (SEIR) for a West Concord Mixed Use zoning text amendment to the Development Code, and adoption of a zoning text amendment (Amendment), to the West Concord Mixed Use zoning district within the Development Code. The proposed Resolution is attached to this staff report as Exhibit C and incorporated by reference. Staff also recommends that the City Council introduce Ordinance 15-7, by reading of the title only and waiving further readings, attached as Exhibit D to this staff report, and incorporated by reference.

Background

On June 17, 2015, the Planning Commission held a public hearing to consider a text amendment to the West Concord Mixed Use (WMX) zoning district. Exhibit A shows the location of the WMX district within the city. At the meeting, the Planning Commission proposed revisions to the draft text amendment and approved a resolution recommending forwarding to City Council for approval the resulting West Concord Mixed Use Text Amendment to the Development Code (“Amendment”) which is attached hereto as Exhibit B in order to bring the Development Code into alignment with the 2030 Urban Area General Plan (“General Plan”).

Pursuant to the City’s General Plan, the West Concord Mixed Use (WCMU) land use designation is intended to allow a mix of office and commercial development, “including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses. Public /quasi-public uses are allowed...[and] a campus-like office environment.” Certain land uses, such as recycling centers, and cabinetry fabrication, are inconsistent with this description. The proposed text amendment removes those uses from the WMX zoning district because they do not conform to the WMX purpose statement under the Development Code or the uses envisioned for the WCMU land use designation under the General Plan. Additionally, the Planning Commission proposed that rather than eliminating Building Materials, Sales and Services, as a permitted use in the WMX, that use should be permitted, subject to a Minor Use Permit. This would allow conditions to be placed on a project as needed to mitigate project impacts, and would provide the opportunity for a public hearing on these types of projects.

The City Council adopted a new Chapter 122 of the Concord Municipal Code, known as the “Development Code”, which became effective on August 23, 2012. The intent of the Development Code was that it be an up-to-date, user-friendly document. Due to the size and scale of the project, it was expected that a number of amendments would be needed during the initial phases of implementation. Since adoption of the Development Code, City staff has undertaken several “clean-up” amendments. Those amendments were reviewed by both the Planning Commission and the City Council, and ultimately adopted by the City Council at several hearings from 2012 through 2014.

The current proposed amendment to remove certain industrial activities will ensure consistency between the General Plan (WCMU land use designation) and the Development Code (WMX zoning district).

Concurrently, but as a separate agenda item, staff is proposing to amend the Industrial Mixed Use (IMX) zoning district to allow outdoor activities, facilities or storage with approval of a Use Permit. In effect, the IMX uses will be expanded to allow for outdoor facilities, storage, or activities that are more appropriate in this industrial zone, and WMX will allow only uses that fit with the character of the WMX zoning district. Overall, this will enhance the economic vitality of the City by creating a better fit for businesses within the WMX and IMX districts, while allowing for additional business opportunities in the IMX District.

California Environmental Quality Act (CEQA)¹

Staff believes the Amendment falls 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...”

In the interest of transparency, however the City of Concord (with the assistance of Rincon Consultants, Inc.) has also prepared an Addendum to the 2012 SEIR² dated July 2015 (“Addendum”), attached to Exhibit C as Attachment 2 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

¹ 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”).

² 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.

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 Amendment, 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 Amendment 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.

The Development Code is a policy document that does not commit the City to any specific project. The City will review new development at a project level to conduct the appropriate level of environmental review, as required by CEQA.

Discussion

The following section discusses the recommended changes to certain Development Code provisions regulating the WMX zoning district, as well as related General Plan inconsistencies. Such changes are in the form of the proposed Amendment, attached as Exhibit A to this staff report. These changes will prohibit the establishment of certain new industrial land uses in the WMX zone. Existing businesses of that type currently operating in the WMX will become legal non-conforming land uses. They will be allowed to continue operation, but will not be allowed to expand or enlarge their facilities. These changes will also require a Minor Use Permit for certain use classifications.

Table 18.45.020 Downtown Districts - Allowed Uses and Permit Requirements. In the Table 18.45.020 of allowed uses in Downtown Districts, one use will be changed from requiring a Zoning Clearance to one requiring a Minor Use Permit, two land use classifications will no longer be permitted, and one will have an added qualification. Those items are listed below in the order they appear in the proposed Amendment:

- *Building Materials Sales and Services with no outdoor storage* will change from a land use that is permitted with a Zoning Clearance to a use permitted with a Minor Use Permit. *Building Materials Sales and Services with outdoor storage* is changed from requiring a Use Permit to not permitted. CDC 18.200.160. *Outdoor sales and displays* will be deleted.
- Under *Contractors, Special Trade - Cabinet Shop* will change from requiring a Zoning Clearance to not permitted.

- Under *Recycling Facilities, a Small Collection Facility* will change from requiring an Administrative Permit to not permitted.
- Under *Manufacturing, Processing, the Artisan/Custom Product* will still be permitted with a Zoning Clearance, but no outdoor storage or outdoor activities will be allowed.

Additional minor corrections are shown in Exhibit A.

Development Code, Chapter 18.20 General Terms, Article I, 18.20.020 Use classifications.

This section under General Terms is proposed to be amended as follows;

“Building materials sales and services” means an ~~indoor or outdoor~~ establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. ~~Includes stores with indoor service areas.~~ Establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in “Wholesaling, distribution.” Does not include large format retail home stores in buildings over 80,000 square feet (see “Big box” under “Retail Sales”), nor show room stores with contractor sales and assembly, which are classified as “Warehouse show room with assembly and sales” under “Manufacturing, processing.” Contractors, Special Trade. “Cabinet shop” means a facility that provides ~~indoor and outdoor~~ carpentry workspace, as well as areas where finished products are sold.

Analysis

The purpose of the Development Code is to implement the policies of the General Plan, including fostering harmonious and workable relationships among land uses. (Development Code Section 18.10.020.) As such, the General Plan prevails over any conflicting language in the Development Code. (Development Code Section 18.10.040.B.)

City staff has identified inconsistencies between the Development Code’s WMX zoning district land use table, the stated purpose of that zoning district, and the General Plan’s vision for the WCMU land use designation. Staff proposes to correct such inconsistencies via the Amendment.

Development Code Section 18.45.010 defines WMX – West Concord Mixed Use as follows:

The WMX district is 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. 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.

The General Plan identifies the City's vision for the West Concord Mixed Use (WCMU) zoning designation:

This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses. Public/quasi-public uses also are allowed. Residential development is not allowed in this mixed-use category, as it is intended to create a campus-like office environment. The maximum FAR is 4.0.

The General Plan also designates the WCMU area as an Employment District in Central Concord, which is typically characterized by low to high rise office, technology and other job generating land uses. In the General Plan, Policy LU-5.1.3 calls for: Provide sites for professional, administrative, and headquarters office space in Central Concord and other transit-oriented development (TOD) locations.

Because of the WMX/WCMU location, visitors to Concord necessarily form their first impressions of the City when exiting either I-680 or Highway 242. Those freeways afford Concord visitors efficient access to Concord's downtown streets and shopping areas. Given that gateway location, a number of hotel, restaurant, and office uses have located in the area. Neither the General Plan nor the Development Code vision for WMX includes certain industrial uses. Certain uses, such as cabinet shops and recycling centers, are incompatible with surrounding businesses and would diminish the perception of that area as an economically viable and attractive location for the types of businesses and job generation the City envisions.

In addition, "Building Materials, sales and services" is currently allowed with a Zoning Clearance. However, this type of business has impacts that can be conditioned to fit to the General Plan vision, by requiring a Minor Use Permit. It appears that the tables of permitted uses for the WMX district erroneously allowed "building materials sales and services" with a Zoning Clearance, and permitted other industrial uses, including recycling centers, and cabinet shop, which are inconsistent with that vision and the General Plan.

The use classification of "Building Materials, sales and services" means an indoor or outdoor establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping material including rock, stone and masonry products to the general public. While outdoor storage is addressed, outdoor activities are not.³ This type of use could generate noise and dust

³ The Development Code contains other irregularities that will need to be addressed. For example:

- The Development Code contains "outdoor storage" and "outdoor storage/activities" definitions which are not necessarily consistent among use classifications. Staff feels that the Development Code would benefit from consistent definitions, clarification as to whether and what types of outdoor storage and/or activities are appropriate for the type of use or zoning district, and a reevaluation of the level of review needed.
 - The Development Code currently contains a "Manufacturing, processing" use classification which lists "Artisan/custom product", "Industry, heavy", "With no outdoor storage/activities", "With outdoor storage/activities", "Warehouse show room with assembly and sales", and "Artisan/custom product" as separate uses within that category. Staff feels that the two outdoor storage/activities items are use characteristics rather than use types in and of themselves.
 - Staff feels that it may be beneficial to create an "Industry, light" category under the "Manufacturing, processing" use classification and place "Building Materials, sales and services", "Cabinet shop", and "Artisan/custom product" within that category, with "Warehouse show room with assembly and sales" classified under a different use category.
- Staff intends to review those issues on a City-wide basis and consider proposing Development Code amendments to address items of concern.

from cutting of lumber, stone, and masonry materials (whether associated with indoor or outdoor storage or activities) on a daily basis. In addition, a large volume of truck and vehicular traffic associated with pick-up and delivery of building materials would occur – both at and around the site. Based on land use characteristics, “Building Materials, sales and services” uses could be incompatible with the surrounding hotel, restaurant and office uses, if not properly conditioned. Therefore, the proposed amendment requires a Minor Use Permit for this use classification.

A “Cabinet shop” use falls under the “Contractors, Special Trade” use classification and means a facility that provides indoor and outdoor carpentry workspace, as well as areas where finished products are sold. At present, cabinet shops are allowed in the WMX district subject to a Zoning Clearance. With respect to outdoor storage and activities, construction of cabinetry and related activities would generate noise and dust particles throughout the day. Even if limited to indoor activities, a cabinet shop use would raise concerns similar to those discussed above in connection with the “building materials sales and services” use, and is seen as an industrial activity that would not fit with the character of the WMX District.

The Development Code currently allows “small collection facilities “(a subset of “Recycling Facilities”⁴) in WMX subject to an administrative permit: “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. These recycling facilities include drop off, collection and processing of recyclable materials that requires sorting, crushing, and grinding of metals, plastics, or e-waste. These activities are not administrative or professional office uses, nor retail, warehouse or showroom uses, and raise noise, dust, traffic, and other issues similar to those discussed above in connection with the building materials, sales and services and cabinet shop uses. They fall into the industrial category and are not consistent with the character of the WMX District.

“Artisan/custom product” means an establishment that manufactures and/or assembles small products primarily by hand, including jewelry, pottery, and other ceramics, as well as small glass and metal art and craft products, where any retail sales are incidental to the manufacturing activity. Because the classification contemplates small scale hand fabrication, staff has fewer concerns than with building materials sales and services or cabinet shops. However, since this use can also be characterized as industrial, staff proposes prohibiting any type of outdoor storage/activities in order to avoid the concerns discussed above in the building materials sales and services or cabinet shops analyses.

The descriptions under General Terms for Building Materials Sales and Services and Cabinet Shop will have the references to indoor or outdoor deleted from the descriptions, as a use permit will now be required for outdoor activities.

⁴ The other two types of “Recycling Facilities” (Large collection facility” and “Processing facility”) are currently prohibited in WMX.

Fiscal Impact

Adoption of the Amendment will have a negligible fiscal impact on the City.

Public Contact

Property owners in the WMX District were notified by mail of the public hearing on the proposed Amendment. Notice of this hearing was published on a 1/8 page advertisement in the Contra Costa Times, as required by State Law and the Concord Municipal Code. Notice for this meeting has also been posted at the Civic Center.

Recommendation for Action

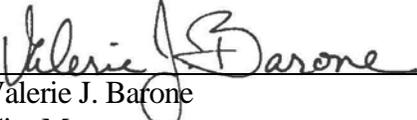
The Addendum finds that adoption of the Amendment would not result in new or substantially more severe environmental effects than those analyzed in the 2012 SEIR, and no new or revised mitigation measures are required.

The Amendment will reconcile inconsistencies between the General Plan and the Development Code by disallowing certain industrial uses in the WMX zoning district, and furthering the General Plan's vision of a campus-like environment developed with a mix of office and commercial development and similar job-generating land uses for that part of the City.

Staff recommends adoption of Resolution No. 15-50 to approve and adopt an Addendum to the 2012 Supplemental Environmental Impact Report (SEIR) for a West Concord Mixed Use zoning text amendment to the Development Code, and adoption of a zoning text amendment (Amendment), to the West Concord Mixed Use zoning district within the Development Code; and introduction of Ordinance 15-7 (Exhibit D), by reading of the title only and waiving further readings.

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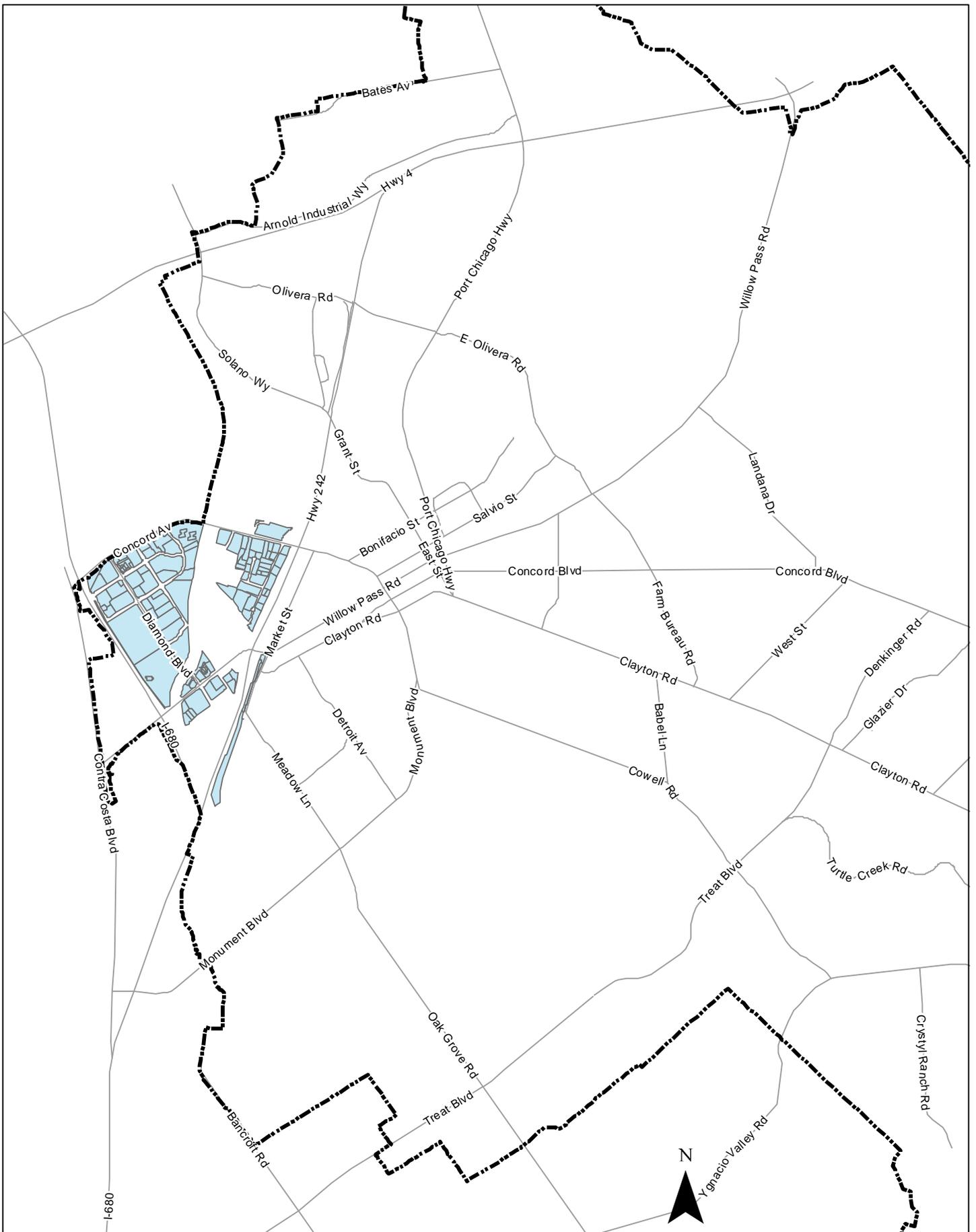
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Valerie J. Barone
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- Exhibit A: WMX zoning district map
- Exhibit B: WMX text amendment
- Exhibit C: Resolution approving Addendum to 2012 SEIR for WMX text amendment
- Exhibit D: WMX Amendment Ordinance
- Exhibit E: PC Resolution 15-07

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Legend

-  Concord City Limit
-  Parcels Zoned WMX

City of Concord
Zoning Map Effective
August 23, 2012

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EXHIBIT B

- 1) *Development Code, Article II (Zoning Districts – Uses and Standards), Division 5 Downtown Districts (DP, DMX, and WMX), Table 122-154.1 (Office and Commercial Districts – Allowed Uses and Permit Requirements), Land Use Classifications; Office, Commercial, and Retail Services, Permit Required by District, is amended as follows; all other Allowed Uses and Permit Requirements in the Table remain unchanged:*

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Office, Commercial, and Retail Uses				
Adult, Day Care Center	--	AP ⁽¹⁰⁾	--	
Adult-Oriented Business	--	--	--	§122-726 - 741 Adult-Oriented Business
Animal Services				
Boarding, Kennel	--	AP	UP	
Dog Day Care, Training	--	AP	ZC	
Grooming	ZC	ZC	ZC	
Hospital, Veterinary Clinic	--	ZC	ZC	
Antique, Collectible Store	ZC	ZC	ZC	
Automobile Sales and Rental/Leasing				
Auction	--	--	--	
Brokers, Office Only	ZC ⁽¹⁾	ZC ⁽¹⁾	ZC	
Brokers, Office w/Vehicle Display	--	--	ZC	
Dealership, New	--	--	ZC	
Dealership, Used	--	--	--	
Dealership, Motorcycles	--	--	ZC	
Rental	--	--	AP	
Automobile Services and Repair				
Car Wash, Attended	--	--	UP	§122-622 Gas Stations & Car Wash
Car Wash, Unattended	--	--	--	§122-622 Gas Stations & Car Wash
Gas Station	--	--	UP	§122-622 Gas Stations & Car Wash
Maintenance Services	--	--	ZC	
Major Repair/Body Work	--	--	--	
Minor Repair	--	--	ZC	
Banks and Financial Services				
Bank, Credit Union	ZC ⁽³⁾	ZC ⁽³⁾	ZC	
Bank w/Drive-Through Service	--	--	UP	§122-619 Drive Through Facilities
Check Cashing Business	--	--	--	
Building Materials Sales and Services				
No Outdoor Storage	--	--	-- ZC	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
w/Outdoor Storage	--	--	MPUP	§122-629 Outdoor Sales & Display
Business Support Services	ZC ⁽¹⁾	ZC	ZC	
Catering Service	ZC ⁽¹⁾	ZC	ZC	
Eating and Drinking Establishments				
Bar, Night Club, Lounge	AP	AP	AP	§122-621 Entertainment Uses
Restaurant, Full Service	ZC	ZC	ZC	
Restaurant, Limited Service	ZC	ZC	ZC	
Restaurant, w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Restaurant, w/Live Entertainment	AP	AP	UP	§122-621 Entertainment Uses
Fitness Facility, Health Club	ZC ⁽¹⁾	ZC	ZC	
Office, Commercial, and Retail Uses (cont.)				
Food, Beverage Sales				
Convenience Store, no Alcohol Sales	ZC	AP	ZC	
Convenience Store, w/Alcohol Sales	--	--	--	§122-617 Alcoholic Beverage Sales
Grocery Store	ZC	ZC	ZC	
Liquor Store	--	--	--	§122-617 Alcoholic Beverage Sales
Hotel, Motel	UP ⁽¹⁾	UP	UP	
Maintenance Services				
Office w/No Outdoor Storage/or Activities	--	--	ZC	
Office w/Outdoor Storage/or Activities	--	--	--	
Nursery, Pre-school, Childcare	UP ⁽¹⁾	MP	AP	§122-618 Child Day Care Facilities
Office				
Administrative, Information Processing	ZC ⁽¹⁾	ZC	ZC	
Medical, Dental	ZC ⁽¹⁾	ZC	ZC	
Professional	ZC ⁽¹⁾	ZC	ZC	
Personal Services				
General	AP ⁽³⁾	ZC	ZC	
Improvement, Instructional	ZC ⁽¹⁾	ZC	ZC	
Restricted	--	--	UP	
Repair Service, Appliance & Small Equipment	--	--	UP	
Retail Sales				
Big Box	--	UP	UP	
General	ZC	ZC	ZC	
Nursery, Garden Center	--	--	ZC	§122-629 Outdoor Sales & Display
Restricted	--	--	UP	
w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Secondhand Sales	--	AP	AP	

Business Park and Industrial Uses

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Auto Wrecking, Dismantling Yards	--	--	--	
Contractors, Special Trade				
Cabinet Shop	--	--	-- ZC	
Contractor Office, No Outdoor Storage	--	--	ZC	
Contractor Yard, Outdoor Storage	--	--	--	
Fleet-Based Service	--	--	UP	
Freight and Truck Terminal	--	--	--	
Heavy Vehicle and Large Equipment, Sales/Rental, Service and Repair				
Commercial Vehicles and Equipment	--	--	--	
Business Park and Industrial Uses (cont.)				
Recreational Vehicle	--	--	--	
Laboratory, Research, and Development	AP ⁽¹⁾	AP ⁽¹⁾	AP ⁽¹⁾	
Manufacturing, Processing				
Artisan/Custom Product, with no outdoor storage or activities	--	--	ZC	
Industry, Heavy	--	--	--	
Within a Building	--	--	--	
w/Outdoor Storage or Activities	--	--	--	
Warehouse Show Room w/Assembly & Sales	--	--	ZC	
Media Production Facility	ZC ⁽¹⁾	ZC	ZC	
Storage				
Hazardous Materials	--	--	--	
Self-Storage Facility, Mini-Storage	--	--	--	
Vehicle	--	--	--	
Towing Service	--	--	--	
Warehouse, w/No Outdoor Storage	--	--	--	
Warehouse, w/Outdoor Storage	--	--	--	
Wholesaling, Distribution	--	--	--	

Residential Uses				
Bed and Breakfast Inn	AP	AP	--	
Dwelling, Dwelling Unit, Housing Unit				
Single Family, Detached	--	--	--	
Single Family, Detached – Small Lot Subdivision	--	--	--	
Single Family, Attached	--	--	--	
Secondary Living Unit	--	--	--	§122-631 Secondary Living Unit
Duplex	--	--	--	
Multi-family	UP	UP	--	
Family Day Care Home, Small	ZC ⁽¹⁰⁾	ZC	--	§122-618 Child Day Care Facilities
Family Day Care Home, Large	MP ⁽¹⁰⁾	MP	--	§122-618 Child Day Care Facilities
Group Housing	--	UP	--	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
Home-based Business	ZC ⁽¹⁰⁾	ZC	--	§122-623 Home-based Business
Live/Work Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Mixed Use Projects	UP	UP	---	
Mobile Home Park	--	--	--	
Residential Care Facility, Small	ZC	ZC	--	
Residential Care Facility, Large	--	UP	--	
Residential Facility for Seniors, Assisted Living	UP ⁽¹⁰⁾	UP	--	
Residential Uses (cont.)				
Work/Live Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Public/Quasi-Public and Recreational Uses				
Airport	--	--	--	
Ambulance Service	--	--	--	
Cemetery, Columbarium, Mausoleum	--	--	--	
Conference, Convention Facility	--	UP	UP	
Cultural Institution	ZC	ZC	MP	
Emergency and Homeless Shelter	--	--	--	§122-620 Emergency & Homeless Shelter
Government Office	ZC ⁽¹⁾	ZC	ZC	
Farmers Market	UP	UP	UP	
Funeral Parlor, Mortuary	--	--	UP	
Heliport	--	--	--	
Library	ZC ⁽¹⁾	ZC	ZC	
Medical Services				
Hospital, Medical Center	--	--	--	
Medical Marijuana Dispensary	--	--	--	
Medical Clinic	--	--	--	
Nursing Facility/Extended Care	--	UP	--	
Urgent Care Facility	--	--	ZC	
Meeting Facility, Public/Private	AP ⁽¹⁾	AP	AP	
Military	--	--	--	
Parking Facility	--	AP	AP	
Public Maintenance and Service Facility	--	--	--	
Recreational Facilities				
Bingo Hall	--	--	UP	
Commercial Recreation, Indoor	AP	AP	AP	
Golf Course, Country Club	--	--	--	§122-626 Mechanical & Elec. Games
Park and Recreation Facility	ZC	ZC	ZC	
Residential Recreation Facility	ZC	ZC	--	
Sports and Entertainment, Assembly	--	--	--	§122-621 Entertainment Uses
Sports and Recreation Facility	--	--	UP	§122-626 Mechanical & Elec. Games
Recycling Facilities				
Small Collection Facility	--	--	-- AP	§122-630 Recycling Facilities

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Large Collection Facility	--	--	--	
Processing Facility	--	--	--	
Religious Facility	--	--	UP	
Schools				
Elementary, Middle, Secondary	UP ⁽¹⁾	UP	--	
College, University	AP ⁽¹⁾	AP	AP	
Public/Quasi-Public and Recreational Uses (cont.)				
Trade School, Vocational Training	AP ⁽¹⁾	AP	AP	
Social Svc Facility, Community Organization	UP ^(1,2)	MP/AP ^(7,8)	AP	
Theater, Auditorium	UP	UP	UP	§122-626 Mechanical & Elec. Games
Utility Facility, Transmission Towers	--	--	--	
Wireless Telecommunication Facility	§§122-664 - 668 Wireless Communication Facilities			

Open Space and Agricultural Uses				
Companion Animal, Horses, Fowl	--	--	--	
Community Gardens	UP	UP	UP	
Crop Production, Orchard, Vineyard	ZC	ZC	ZC	
Livestock, Grazing	--	--	--	
Mining and Quarrying	--	--	--	

- (1) Not allowed on ground floor.
(2) Allowed on upper floors subject to Use Permit approval.
(3) Allowed to occupy up to 20 % gross area of shopping center or multi-tenant building, or 20% street frontage of one building.
(7) Allowed on ground floor subject to a Minor Use Permit approval.
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(10) Allowed with residential use only.

- 1) *Development Code, Chapter 18.20 General Terms, Article I , 18.20.020 Use classifications. is amended as follows;*

“Building materials sales and services” means an ~~indoor or outdoor~~ establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. ~~Includes stores with indoor service areas.~~ Establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in “Wholesaling, distribution.” Does not include large format retail home stores in buildings over 80,000 square feet (see “Big box” under “Retail Sales”), nor show room stores with contractor sales and assembly, which are classified as “Warehouse show room with assembly and sales” under “Manufacturing, processing.”

Contractors, Special Trade.

“Cabinet shop” means a facility that provides ~~indoor and outdoor~~ carpentry workspace, as well as areas where finished products are sold.

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

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

6 **WHEREAS**, the City has complied with the requirements of the Local Planning Law
7 (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with
8 respect to approval of amendments to Chapter 122 of the Concord Municipal Code (“Development
9 Code”); and

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

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

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

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

23 **WHEREAS**, the City has initiated a subsequent Development Code text amendment to further
24 address minor technical errors, omissions, and clarification of terms and procedures in the
25 Development Code, including correction of an inconsistency with the General Plan; and

26 **WHEREAS**, such text amendment is in the form of the proposed Development Code
27 Amendment PL15132-DC (“Amendment”) attached to the June 17, 2015 staff report as Exhibit A (an
28 additional copy of the Amendment is attached hereto as Attachment 1 and incorporated by reference),

1 in order to improve the accuracy of the Development Code and its standards and further achieve
2 internal consistency and consistency with the rest of the Concord Municipal Code; and

3 **WHEREAS**, staff believes the Amendment falls within the “common sense” exemption set
4 forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with
5 certainty that there is no possibility that the activity in question may have a significant effect on the
6 environment...”; and

7 **WHEREAS**, the Amendment does not make substantial changes to the Development Code or
8 substantial changes with respect to the circumstances under which the Development Code would be
9 implemented which would require revisions to the 2012 SEIR due to new significant environmental
10 effects or a substantial increase in the severity of previously identified significant effects and there is
11 no new information that would require preparation of a subsequent or supplemental EIR under CEQA
12 Guidelines Section 15162; and

13 **WHEREAS**, as only minor technical changes or additions were required to the 2012 SEIR, an
14 Addendum (“Addendum”, attached hereto as Attachment 2 and incorporated by reference) was
15 prepared in accordance with all legal requirements, including CEQA 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 17, 2015, on the
18 Addendum and 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 public hearing, the oral report from City staff, the written report from City
22 staff dated June 17, 2015, materials, exhibits presented, pertinent maps, plans, reports, studies,
23 memoranda, the Addendum, the Amendment, the General Plan, the General Plan FEIR, the Reuse
24 Plan FEIR/Addendum, the 2012 SEIR, the 2014 Addendum, the City of Concord Municipal Code, the
25 Development Code, applicable City laws and regulations, and all associated approved and certified
26 environmental documents, and all other information that constitutes the record of proceedings on
27 which the Planning Commission has based its decision are maintained at the offices of the City of
28 Concord Planning Division (collectively, “Project Information”); and

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

3 **WHEREAS**, on June 17, 2015, the Planning Commission, after consideration of all pertinent
4 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
5 Addendum and adoption of the Amendment.

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

7 Recitals

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

12 General

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

18 CEQA Exemption

- 19 4. The Amendment falls within the “common sense” exemption set forth in 14 Cal. Code Regs.
20 Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no
21 possibility that the activity in question may have a significant effect on the environment...”

22 Addendum

- 23 5. Based on the Project Information, the Planning Commission makes the findings set forth
24 below with respect to the Addendum:
- 25 a. The findings above are hereby incorporated by reference.
- 26 b. The Addendum represents the appropriate level of
27 environmental review, is the appropriate environmental document, for the
28 Amendment.

1 c. The Planning Commission considered the 2012 SEIR and the
2 Addendum in accordance with the requirements of CEQA.

3 d. The Addendum reflects the independent judgment and analysis
4 of the City as the lead agency for the Amendment.

5 e. Based on substantial evidence in the whole record before the
6 City, the Amendment does not make substantial changes to the Development
7 Code or substantial changes with respect to the circumstances under which the
8 Development would be implemented which would require revisions to the 2012
9 SEIR due to new significant environmental effects or a substantial increase in
10 the severity of previously identified significant effects and there is no new
11 information that would require preparation of a subsequent or supplemental
12 EIR under Public Resources Code Section 21166 or CEQA Guidelines Section
13 15162. Therefore, none of the elements set forth in Public Resources Code
14 Section 21166 or CEQA Guidelines Section 15162 exist and a subsequent or
15 supplemental EIR or negative declaration is not required.

16 f. No substantial changes have occurred with respect to traffic and
17 freeway operations that would cause new or substantially more severe
18 significant environmental effects than were identified in the 2012 SEIR, all
19 mitigation measures were within the jurisdiction of the City to adopt and will
20 remain in place and continue to be implemented and enforced, and the
21 Statement of Overriding Considerations remain in effect. The mitigation
22 measures and Statement of Overriding Considerations associated with
23 certification of the 2012 SEIR addresses the environmental effects of the
24 project.

25 g. As only minor technical changes or additions were required to
26 the 2012 SEIR, the Addendum was prepared in accordance with all legal
27 requirements, including CEQA Guidelines Section 15164.
28

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

3 Amendment

4 7. Based on the Project Information, and all oral and written testimony submitted on this item,
5 the Planning Commission makes the findings set forth below with respect to the Amendment:

6 a. The findings above are hereby incorporated by reference.

7 b. The proposed Amendment is consistent with the policies in the General Plan
8 and is necessary in order to improve the accuracy of the Development Code and its standards
9 and further achieve internal consistency and consistency with the rest of the Concord
10 Municipal Code.

11 c. The proposed Amendment would not be detrimental to the public interest,
12 health, safety, convenience, or welfare of the City.

13 8. The Planning Commission does hereby recommend that the City Council adopt an Ordinance
14 to approve the Amendment, consistent with the revisions in Attachment 1 hereto.

15 Effective Date

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

17
18 **PASSED AND ADOPTED** this 7th day of July, 2015 by the following vote:

19 **AYES:**

20 **NOES:**

21 **ABSTAIN:**

22 **ABSENT:**

23
24
25 _____
Joelle Fockler
City Clerk

26 Attachments:

- 27 1 – Amendment
28 2 – Addendum

EXHIBIT C.1.

- 1) *Development Code, Article II (Zoning Districts – Uses and Standards), Division 5 Downtown Districts (DP, DMX, and WMX), Table 122-154.1 (Office and Commercial Districts – Allowed Uses and Permit Requirements), Land Use Classifications; Office, Commercial, and Retail Services, Permit Required by District, is amended as follows; all other Allowed Uses and Permit Requirements in the Table remain unchanged:*

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Office, Commercial, and Retail Uses				
Adult, Day Care Center	--	AP ⁽¹⁰⁾	--	
Adult-Oriented Business	--	--	--	§122-726 - 741 Adult-Oriented Business
Animal Services				
Boarding, Kennel	--	AP	UP	
Dog Day Care, Training	--	AP	ZC	
Grooming	ZC	ZC	ZC	
Hospital, Veterinary Clinic	--	ZC	ZC	
Antique, Collectible Store	ZC	ZC	ZC	
Automobile Sales and Rental/Leasing				
Auction	--	--	--	
Brokers, Office Only	ZC ⁽¹⁾	ZC ⁽¹⁾	ZC	
Brokers, Office w/Vehicle Display	--	--	ZC	
Dealership, New	--	--	ZC	
Dealership, Used	--	--	--	
Dealership, Motorcycles	--	--	ZC	
Rental	--	--	AP	
Automobile Services and Repair				
Car Wash, Attended	--	--	UP	§122-622 Gas Stations & Car Wash
Car Wash, Unattended	--	--	--	§122-622 Gas Stations & Car Wash
Gas Station	--	--	UP	§122-622 Gas Stations & Car Wash
Maintenance Services	--	--	ZC	
Major Repair/Body Work	--	--	--	
Minor Repair	--	--	ZC	
Banks and Financial Services				
Bank, Credit Union	ZC ⁽³⁾	ZC ⁽³⁾	ZC	
Bank w/Drive-Through Service	--	--	UP	§122-619 Drive Through Facilities
Check Cashing Business	--	--	--	
Building Materials Sales and Services				
No Outdoor Storage	--	--	-- ZC	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
w/Outdoor Storage	--	--	MPUP	§122-629 Outdoor Sales & Display
Business Support Services	ZC ⁽¹⁾	ZC	ZC	
Catering Service	ZC ⁽¹⁾	ZC	ZC	
Eating and Drinking Establishments				
Bar, Night Club, Lounge	AP	AP	AP	§122-621 Entertainment Uses
Restaurant, Full Service	ZC	ZC	ZC	
Restaurant, Limited Service	ZC	ZC	ZC	
Restaurant, w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Restaurant, w/Live Entertainment	AP	AP	UP	§122-621 Entertainment Uses
Fitness Facility, Health Club	ZC ⁽¹⁾	ZC	ZC	
Office, Commercial, and Retail Uses (cont.)				
Food, Beverage Sales				
Convenience Store, no Alcohol Sales	ZC	AP	ZC	
Convenience Store, w/Alcohol Sales	--	--	--	§122-617 Alcoholic Beverage Sales
Grocery Store	ZC	ZC	ZC	
Liquor Store	--	--	--	§122-617 Alcoholic Beverage Sales
Hotel, Motel	UP ⁽¹⁾	UP	UP	
Maintenance Services				
Office w/No Outdoor Storage/or Activities	--	--	ZC	
Office w/Outdoor Storage/or Activities	--	--	--	
Nursery, Pre-school, Childcare	UP ⁽¹⁾	MP	AP	§122-618 Child Day Care Facilities
Office				
Administrative, Information Processing	ZC ⁽¹⁾	ZC	ZC	
Medical, Dental	ZC ⁽¹⁾	ZC	ZC	
Professional	ZC ⁽¹⁾	ZC	ZC	
Personal Services				
General	AP ⁽³⁾	ZC	ZC	
Improvement, Instructional	ZC ⁽¹⁾	ZC	ZC	
Restricted	--	--	UP	
Repair Service, Appliance & Small Equipment	--	--	UP	
Retail Sales				
Big Box	--	UP	UP	
General	ZC	ZC	ZC	
Nursery, Garden Center	--	--	ZC	§122-629 Outdoor Sales & Display
Restricted	--	--	UP	
w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Secondhand Sales	--	AP	AP	

Business Park and Industrial Uses

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Auto Wrecking, Dismantling Yards	--	--	--	
Contractors, Special Trade				
Cabinet Shop	--	--	-- ZC	
Contractor Office, No Outdoor Storage	--	--	ZC	
Contractor Yard, Outdoor Storage	--	--	--	
Fleet-Based Service	--	--	UP	
Freight and Truck Terminal	--	--	--	
Heavy Vehicle and Large Equipment, Sales/Rental, Service and Repair				
Commercial Vehicles and Equipment	--	--	--	
Business Park and Industrial Uses (cont.)				
Recreational Vehicle	--	--	--	
Laboratory, Research, and Development	AP ⁽¹⁾	AP ⁽¹⁾	AP ⁽¹⁾	
Manufacturing, Processing				
Artisan/Custom Product, with no outdoor storage or activities	--	--	ZC	
Industry, Heavy	--	--	--	
Within a Building	--	--	--	
w/Outdoor Storage or Activities	--	--	--	
Warehouse Show Room w/Assembly & Sales	--	--	ZC	
Media Production Facility	ZC ⁽¹⁾	ZC	ZC	
Storage				
Hazardous Materials	--	--	--	
Self-Storage Facility, Mini-Storage	--	--	--	
Vehicle	--	--	--	
Towing Service	--	--	--	
Warehouse, w/No Outdoor Storage	--	--	--	
Warehouse, w/Outdoor Storage	--	--	--	
Wholesaling, Distribution	--	--	--	

Residential Uses				
Bed and Breakfast Inn	AP	AP	--	
Dwelling, Dwelling Unit, Housing Unit				
Single Family, Detached	--	--	--	
Single Family, Detached – Small Lot Subdivision	--	--	--	
Single Family, Attached	--	--	--	
Secondary Living Unit	--	--	--	§122-631 Secondary Living Unit
Duplex	--	--	--	
Multi-family	UP	UP	--	
Family Day Care Home, Small	ZC ⁽¹⁰⁾	ZC	--	§122-618 Child Day Care Facilities
Family Day Care Home, Large	MP ⁽¹⁰⁾	MP	--	§122-618 Child Day Care Facilities
Group Housing	--	UP	--	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
Home-based Business	ZC ⁽¹⁰⁾	ZC	--	§122-623 Home-based Business
Live/Work Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Mixed Use Projects	UP	UP	---	
Mobile Home Park	--	--	--	
Residential Care Facility, Small	ZC	ZC	--	
Residential Care Facility, Large	--	UP	--	
Residential Facility for Seniors, Assisted Living	UP ⁽¹⁰⁾	UP	--	
Residential Uses (cont.)				
Work/Live Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Public/Quasi-Public and Recreational Uses				
Airport	--	--	--	
Ambulance Service	--	--	--	
Cemetery, Columbarium, Mausoleum	--	--	--	
Conference, Convention Facility	--	UP	UP	
Cultural Institution	ZC	ZC	MP	
Emergency and Homeless Shelter	--	--	--	§122-620 Emergency & Homeless Shelter
Government Office	ZC ⁽¹⁾	ZC	ZC	
Farmers Market	UP	UP	UP	
Funeral Parlor, Mortuary	--	--	UP	
Heliport	--	--	--	
Library	ZC ⁽¹⁾	ZC	ZC	
Medical Services				
Hospital, Medical Center	--	--	--	
Medical Marijuana Dispensary	--	--	--	
Medical Clinic	--	--	--	
Nursing Facility/Extended Care	--	UP	--	
Urgent Care Facility	--	--	ZC	
Meeting Facility, Public/Private	AP ⁽¹⁾	AP	AP	
Military	--	--	--	
Parking Facility	--	AP	AP	
Public Maintenance and Service Facility	--	--	--	
Recreational Facilities				
Bingo Hall	--	--	UP	
Commercial Recreation, Indoor	AP	AP	AP	
Golf Course, Country Club	--	--	--	§122-626 Mechanical & Elec. Games
Park and Recreation Facility	ZC	ZC	ZC	
Residential Recreation Facility	ZC	ZC	--	
Sports and Entertainment, Assembly	--	--	--	§122-621 Entertainment Uses
Sports and Recreation Facility	--	--	UP	§122-626 Mechanical & Elec. Games
Recycling Facilities				
Small Collection Facility	--	--	-- AP	§122-630 Recycling Facilities

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Land Use Classifications	Permit Required by District			Additional Requirements
	DP	DMX	WMX	
Large Collection Facility	--	--	--	
Processing Facility	--	--	--	
Religious Facility	--	--	UP	
Schools				
Elementary, Middle, Secondary	UP ⁽¹⁾	UP	--	
College, University	AP ⁽¹⁾	AP	AP	
Public/Quasi-Public and Recreational Uses (cont.)				
Trade School, Vocational Training	AP ⁽¹⁾	AP	AP	
Social Svc Facility, Community Organization	UP ^(1,2)	MP/AP ^(7,8)	AP	
Theater, Auditorium	UP	UP	UP	§122-626 Mechanical & Elec. Games
Utility Facility, Transmission Towers	--	--	--	
Wireless Telecommunication Facility	§§122-664 - 668 Wireless Communication Facilities			

Open Space and Agricultural Uses				
Companion Animal, Horses, Fowl	--	--	--	
Community Gardens	UP	UP	UP	
Crop Production, Orchard, Vineyard	ZC	ZC	ZC	
Livestock, Grazing	--	--	--	
Mining and Quarrying	--	--	--	

- (1) Not allowed on ground floor.
(2) Allowed on upper floors subject to Use Permit approval.
(3) Allowed to occupy up to 20 % gross area of shopping center or multi-tenant building, or 20% street frontage of one building.
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City of Concord

West Concord Mixed Use (WMX) District Development Code Revisions Project

**Addendum to the
Final Supplemental
Environmental
Impact Report to the
2030 Concord General
Plan Environmental
Impact Report**



July 2015

**Addendum to the
Final Supplemental Environmental
Impact Report (EIR) to the
2030 Concord General Plan EIR
for the
West Concord Mixed Use (WMX) District
Development Code Revisions Project**

Prepared by:

City of Concord
Community and Economic Development Department
1950 Parkside Drive, MS/53
Concord, California 94519
Laura Simpson, Planning Manager

Prepared with the assistance of:

Rincon Consultants, Inc
180 Grand Avenue, Suite 400
Oakland, California 94610

July 2015

This report prepared on 50% recycled paper with 50% post-consumer content.

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1.0 PURPOSE OF ADDENDUM

This document is an Addendum to the City of Concord 2030 *General Plan Update Final Supplemental Environmental Impact Report (SEIR)*, prepared in compliance with the California Environmental Quality Act (CEQA) 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. The purpose of this Addendum is to analyze the environmental impacts of proposed restriction of specific activities within the City's West Concord Mixed Use Zoning District (WMX District), as defined in the Concord Development Code (CDC) which is codified as Title 18 of the Concord Municipal Code (City of Concord, 2015). Section 3 of this Addendum defines the "proposed project" and describes the proposed WMX District revisions in detail.

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.

The 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 one or more of the following situations has occurred, based on substantial evidence and in light of the whole record:

- 1) *Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
- 2) *Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
- 3) *New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:*
 - a. *The project will have one or more significant effects not discussed in the previous EIR or negative declaration,*
 - b. *Significant effects previously examined will be substantially more severe than shown in the previous EIR,*



- c. *Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or*
- d. *Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

The 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 above have occurred. The CEQA *Guidelines* further specify that a brief explanation of the decision not to prepare a subsequent EIR should be included in one of the following: the Addendum itself, the Lead Agency's findings on the project, or elsewhere in the record. Per the CEQA *Guidelines*, an Addendum does not need to be circulated for public review but can be included in or attached to the final EIR (in this case, the Final SEIR) prior to making a decision on the project.



2.0 BACKGROUND

This section provides an overview of the General Plan EIR, the 2012 SEIR, and a 2014 Addendum to the 2012 SEIR, to provide context for this Addendum (to the 2012 SEIR).

2.1 CONCORD 2030 GENERAL PLAN AND FINAL EIR

In October 2007, the Concord City Council adopted the *Concord 2030 Urban Area General Plan* (General Plan), which provides a framework for city development, and articulates a vision for the City over a 20-year period. The General Plan includes a number of key themes and initiatives, such as the integration of economic development into land use planning, greater support of mixed-use development and transit-supportive land uses around the Downtown Bay Area Rapid Transit (BART) station and transportation corridors, and an emphasis on preserving environmental resources and community assets.

The City also certified a *Final Environmental Impact Report* (EIR) for the General Plan in 2007. The General Plan EIR evaluated potential environmental consequences of the General Plan and alternatives at a programmatic level, meaning that specific impacts of individual actions were not identified, but a characterization was provided of the types of impacts that could occur as a result of the overall development direction described in the General Plan, and mitigation measures were identified to reduce or avoid potential adverse environmental effects associated with the General Plan. Subsequent projects that are proposed within the General Plan area are subject to project-specific environmental review, and may “tier” that review off of the programmatic General Plan EIR, in order to streamline analyses while providing consistency in mitigation strategies throughout the area.

The General Plan provides the basis for establishing and setting priorities for detailed plans and implementing programs such as the Zoning Ordinance, which specifies what types of activities may occur within certain land use districts.

The General Plan EIR determined that the proposed policies of the General Plan would avoid or eliminate most potentially significant impacts associated with implementation of the General Plan, although significant unavoidable impacts would occur in the issue area of transportation, and no feasible mitigation measures for physical improvements were identified that would reduce impacts to freeways, freeway ramps, or roadway segments to a level of less than significant. Accordingly, the City adopted a Statement of Overriding Considerations for these significant and unavoidable impacts per CEQA *Guidelines* Section 15093. As described above, project-specific environmental review will be prepared for proposed actions within the General Plan area.

2.2 2012 SUPPLEMENTAL EIR

Following certification of the 2030 General Plan and General Plan EIR, conditions arose which warranted preparation of a Supplemental EIR. Specifically, an SEIR was prepared to address the *Concord Development Code Project*, which included the following components:



- 1) Amendments to the General Plan text and Land Use Map;
- 2) Adoption of the new Concord Development Code; and
- 3) A new zoning map.

The CDC identifies land use districts throughout the Concord Planning Area Sphere of Influence (SOI), as guided by land use designations defined in the 2030 General Plan. The SEIR, which was certified in 2012, described potential environmental impacts under a number of environmental issue areas that could occur in association with the proposed changes listed above (including adoption of the CDC, which would be amended by the proposed project to restrict certain uses and activities within the WMX District). The SEIR also identified methods by which potential impacts of the CDC could be mitigated or avoided.

The 2012 SEIR used an Initial Study to determine which environmental issue areas suggested by the CEQA Guidelines should be examined in detail in the SEIR, for their potential to result in significant impacts and require changes to the 2030 General Plan EIR. These issue areas include the following:

- Air Quality;
- Greenhouse Gas Emissions;
- Noise;
- Public Services and Utilities; and
- Transportation/Traffic. (City of Concord, 2012)

The 2012 SEIR identifies mitigation measures where necessary to minimize or avoid potentially adverse impacts under the issue areas listed above. This Addendum to the 2012 SEIR will consider whether prohibiting certain uses and activities within the WMX District would result in impacts that are consistent with those impacts already characterized in the 2012 SEIR, or if there is potential for new impacts to occur. If this Addendum determines that the proposed project could result in impacts not previously characterized, or if previously identified mitigation measures would not sufficiently reduce or avoid impacts of the potential project, these differences will be discussed in the analysis provided in Section 4, and new mitigation measures will be identified where necessary.

The 2012 SEIR identified significant unavoidable impacts to the issue area of transportation, specifically with regards to freeway traffic, and determined that this potential impact of actions assessed in the SEIR would be the same as characterized in the traffic and transportation analysis provided in the General Plan EIR.

2.3 ADDENDUM TO THE SUPPLEMENTAL EIR (2014)

In 2014, following certification of the 2012 SEIR, the City of Concord prepared the *City of Concord Downtown Concord Specific Plan* (Specific Plan) and an Addendum to the 2012 SEIR was prepared to incorporate the new Specific Plan, which was not addressed in the 2030 General Plan. In addition to implementation of the Specific Plan, the 2014 Addendum also addressed changes to local, state, and federal regulations (federal and state air quality standards), and changes to environmental data (state greenhouse gas inventory data, and county water supply



data). The 2014 Addendum revised the following issue area sections of the 2012 SEIR, based on changes to agency regulations and new data:

- Air Quality;
- Greenhouse Gas Emissions; and
- Public Services and Utilities. (City of Concord, 2014a)

The 2014 Addendum introduced new mitigation measures in the issue area analyses listed above; as an Addendum to the 2012 SEIR, these new mitigation measures are included as part of the 2012 SEIR, and would therefore be applicable to potential impacts associated with the currently proposed CDC revisions, as discussed in Section 4. The 2014 Addendum also addressed the Transportation/Traffic section of the 2012 SEIR, but determined that no new impacts would occur as a result of implementation of the Specific Plan.

The 2014 Addendum to the SEIR determined that no substantive revisions to the SEIR are required because no new significant impacts or impacts of substantially greater severity would result from the Specific Plan or regulatory updates; therefore, significant unavoidable impacts to the issue area of transportation would be the same as characterized in the 2012 SEIR and the General Plan EIR.

2.4 CONCORD NAVAL WEAPONS STATION REUSE PROJECT AREA PLAN

The Concord Naval Weapons Station (CNWS), a former military base located adjacent to the north of the City of Concord, was closed by the U.S. Navy in 2005; at that time the City undertook a seven-year community-based visioning and planning process that culminated in the adoption of the Concord Reuse Project (CRP) Area Plan. The CRP Area Plan details the community's desired use of the CNWS property. In addition to the CNWS property, the CRP Area Plan also encompasses the North Concord-Martinez BART station, public street rights-of-way, and a portion of the Diablo Creek Golf Course; total planning area is approximately 5,200 acres. (City of Concord, 2012b; City of Concord, 2014b)

A Final Programmatic EIR and Mitigation Monitoring and Reporting Program for the CRP Area Plan were certified, and the City's 2030 General Plan was amended to include the CRP Area Plan. The CRP Area Plan is an implementing format for amendment of the 2030 General Plan to include the vision of the Reuse Plan. A Statement of Overriding Considerations for the CRP Area Plan was adopted in 2012 to recognize that benefits of the Plan outweigh unavoidable significant impacts identified in the following issue areas: Land Use; Transportation; Visual Resources; Air Quality; Noise and Vibration.

The CRP Area Plan does not encompass any areas identified as WMX District, and does not impose any requirements or restrictions on allowable uses within the WMX District areas, including the potential outdoor uses and activities assessed in this Addendum.



3.0 PROPOSED WEST CONCORD MIXED USE (WMX) DEVELOPMENT CODE REVISIONS

Chapter 18.45 of the CDC, *Downtown Districts (DP, DMX, and WMX)*, defines the uses allowed within the downtown zoning districts, the type of permit or approval required for each use, and basic development standards for sites and proposed buildings. The proposed West Concord Mixed Use (WMX) Development Code Revisions Project (“proposed project”) would revise the CDC provisions for the WMX District to prohibit certain uses that are currently allowed in this district. The current CDC’s definition of the WMX District as assessed in the 2012 SEIR is provided below. The proposed CDC revisions to restrict certain uses from the WMX District would not alter the WMX language provided below.

WMX – West Concord Mixed-Use. *The WMX district is 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. 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]. (City of Concord, 2012a)*

Implementation of the proposed project would prohibit certain types of uses from occurring in the WMX District. These changes are reflected in proposed revisions to CDC Table 18.45.020 – *Downtown Districts, Allowed Uses and Permit Requirements*. Following is an excerpt from Table 18.45.020 of the CDC, which shows the proposed WMX District revisions in underline/strikeout text. All other portions of Table 18.45.020 not shown below would remain the same as provided in CDC Chapter 18.45, *Downtown Districts (DP, DMX, and WMX)*.

**Table 1
 West Concord Mixed Use District – Revisions to
 Allowed Uses and Permit Requirements**

Land Use Classification	Permit	Additional Requirements
Office, Commercial, and Retail Uses		
Building Materials Sales and Services		
No Outdoor Storage	<u>ZC</u> --	§122-629 Outdoor Sales & Display
w/Outdoor Storage	<u>UP</u> --	
Business Park and Industrial Uses		
Contractors, Special Trade		
Cabinet Shop	<u>ZC</u> --	
Manufacturing, Processing		
Artisan/Custom Product, <u>with no outdoor storage or activities</u>	ZC	
Public/Quasi-Public and Recreational Uses		
Recycling Facilities		
Small Collection Facility	<u>AP</u> --	§122-630 Recycling Facilities
Large Collection Facility	--	
Processing Facility	--	



In the table above and in the following tables, “--” indicates that the identified use is prohibited. Thus the proposed project would amend Table 18.45.020 to specify that the following would no longer be allowable within the WMX District: 1) building materials sales and service, 2) cabinet shops, 3) outdoor storage and activities associated with artisan/custom product businesses; and 4) small recycling collection facilities.

The City is also considering a variation on this approach to the revisions which would retain Building Materials Sales and Service as an allowed use within the WMX District, but subject to issuance of a Use Permit or Minor Use Permit. This Addendum analyzes the proposed revisions as described above; the impacts identified in this Addendum would be similar but slightly reduced under the Use Permit or Minor Use Permit variation for Building Materials Sales and Service compared to the approach described above. This is because the variation would result in less potential redistribution of Building Materials Sales and Service uses in the city, and would allow a higher level of City planning and environmental review for new building materials sales and service uses in the WMX District. Therefore the analysis herein would cover adoption of either approach.

The following text expands upon the overview provided in Table 1 to provide a more detailed discussion of the proposed changes to allowable uses within the WMX District.

- Office, Commercial, and Retail Uses.** This land use classification would no longer allow uses under the “Building Materials Sales and Services” category, either with or without outdoor storage facilities. This restriction will affect any future project that would provide building materials sales and services within the WMX District, but would not prohibit such uses from occurring in other districts where allowed per the CDC. The table below indicates that Building Materials Sales and Services uses are permitted in several of the “Office and Commercial” Districts, including Neighborhood Commercial (NC), Service Commercial (SC), and Regional Commercial (RC), as well as several of the “Business Park and Industrial Districts” Districts, including Office Business Park (OBP), Industrial Business Park (IBP), and Industrial Mixed Use (IMX). The table below also indicates the permits required for Building Materials Sales and Services uses within these districts.

Table 2
Alternate Permitted Use Areas – Office, Commercial, and Retail

Land Use Classification – Building Materials Sales and Services	Permit Required by District ¹					
	<u>NC</u>	<u>SC</u>	<u>RC</u>	<u>OBP</u>	<u>IBP</u>	<u>IMX</u>
No Outdoor Storage	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>
With Outdoor Storage	--	<u>AP</u>	<u>UP</u>	--	<u>ZC</u> ²	--

* **Permits.** ZC: Permitted Use, Zoning Clearance; AP: Administrative Permit Required; UP: Use Permit Required; --: Use Not Allowed.

¹ Permitted Building Materials Sales and Services uses are contingent upon compliance with CDC 18.200.160, Outdoor Sales and Displays.

² Outdoor sales, activities, or storage allowed in side or rear yards when enclosed by an eight-foot-tall masonry wall and materials do not exceed wall height.

- Business Park and Industrial Uses.** This land use classification will no longer allow “Cabinet Shop” uses under the “Contractors, Special Trade” category. In addition,



“Artisan/Custom Product” uses under the “Contractors, Special Trade” category would be restricted from including outdoor storage or activities. These restrictions will affect any proposed project that would provide cabinetry and special trade uses within the WMX District, but would not prohibit such uses from occurring in other districts, as allowed per the CDC. The table below indicates that Cabinet Shop and Artisan Custom Product uses under the Contractors Special Trade classification are permitted in several of the “Business Park and Industrial Development” Districts, including: Office Business Park (OBP), Industrial Business Park (IBP), Industrial Mixed Use (IMX), and Heavy Industrial (HI). Cabinet Shop and Artisan Custom Product uses may also be permitted in the following “Office and Commercial” District: Service Commercial (SC).

Table 3
Alternate Permitted Use Areas – Business Park and Industrial

Land Use Classification – Contractors, Special Trade	Permit Required by District*				
	OBP	IBP	IMX	HI	SC
Cabinet Shop	ZC ¹	ZC	ZC ¹	ZC	ZC
Artisan, Custom Product	ZC ¹	ZC ²	ZC ²	ZC ²	ZC

* **Permits.** ZC: Permitted Use.

¹ No outdoor facilities, storage, or activities are allowed.

² Outdoor sales, activities, or storage allowed in side or rear yards when enclosed by an eight-foot-tall masonry wall and materials do not exceed wall height.

- **Public/Quasi-Public and Recreational Uses.** This land use classification will no longer allow “Small Collection Facility” uses under the “Recycling Facilities” category. The CDC already restricts other Recycling Facilities uses within the WMX District; therefore, with the proposed WMX revisions to Recycling Facilities uses, no Recycling Facilities uses would be permitted within the WMX District. Such uses would not be prohibited from occurring in other districts, as allowed per the CDC. The table below indicates that Small Collection Facility uses under the Recycling Facilities classification are permitted in the Public / Quasi-Public (PQP) District, as well as in several of the Business Park and Industrial Development Districts (OBP, IBP, IMX, HI), and several of the Office and Commercial Districts (NC, SC, RC).

Table 4
Alternate Permitted Use Areas – Public/Quasi-Public and Recreational

Land Use Classification – Recycling Facilities	Permit Required by District*							
	PQP	OBP	IBP	IMX	HI	NC	SC	RC
Small Collection Facility	AP	AP	AP	AP	AP	AP	AP	AP

* **Permits.** AP: Administrative Permit Required.

* Permitted Building Materials Sales and Services uses are contingent upon compliance with CDC 18.200.170, Recycling Facilities.

Thus, although the proposed WMX revisions would restrict certain land uses and activities from areas where they are currently permitted, such uses and activities are permitted in other areas throughout the Concord Planning Area SOI, including (as applicable) Office, Commercial, and Retail Uses; Business Park and Industrial Uses; and Public/Quasi-Public and Recreational Uses. The proposed restriction of certain land uses and activities from the WMX District is



expected to remain consistent with the 2030 General Plan, as the WMX District partially implements the West Concord Mixed Use (WCMU) land use designation of the General Plan:

West Concord Mixed Use (WCMU). This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses. Public/ quasi-public uses also are allowed. Residential development is not allowed in this mixed-use category, as it is intended to create a campus-like office environment. The maximum FAR is 4.0. (City of Concord, 2007)

The proposed project would not change the language of the 2030 General Plan; it would change the language of the CDC which implements General Plan and land use designations included therein, as was analyzed in the 2012 SEIR. As shown above, the 2030 General Plan does not define the WCMU land use designation with specificity to cabinet shops or building materials sales; rather, that level of specificity was introduced with the WMX District designation in the CDC and 2012 SEIR.

The proposed project would only apply to the WMX-zoned areas of the Concord Planning Area SOI. As shown on Figures 1 and 2, there are several WMX-zoned areas within the Concord Planning Area SOI, all clustered at the intersection of Interstate 680, State Route 242, and Willow Pass Road in the City of Concord, bounded to the north by Concord Avenue. Walnut Creek and its surrounding riparian area is situated in a north-south alignment through approximately the center of this area, with Interstate 680 to the west and State Route 242 to the east. A tributary to the creek separates from the main channel approximately 0.25 miles south of Concord Avenue and runs in a southeast direction to existing drainage facilities adjacent to State Route 242.

The largest WMX District is west of Walnut Creek, bounded by Walnut Creek to the east, Interstate 680 to the west, and Concord Avenue to the north. The second-largest WMX District is east of Walnut Creek, bounded by the drainage to the west, Concord Avenue to the north, State Route 242 to the east, and the drainage tributary to the south. A small WMX District is located north of Concord Avenue, and several additional WMX parcels are located in the southern portion of the project area, clustered at the intersection of Willow Pass Road (southwest/ northeast) and Diamond Boulevard (northwest/southeast). Other land use zones in the this area include the following:

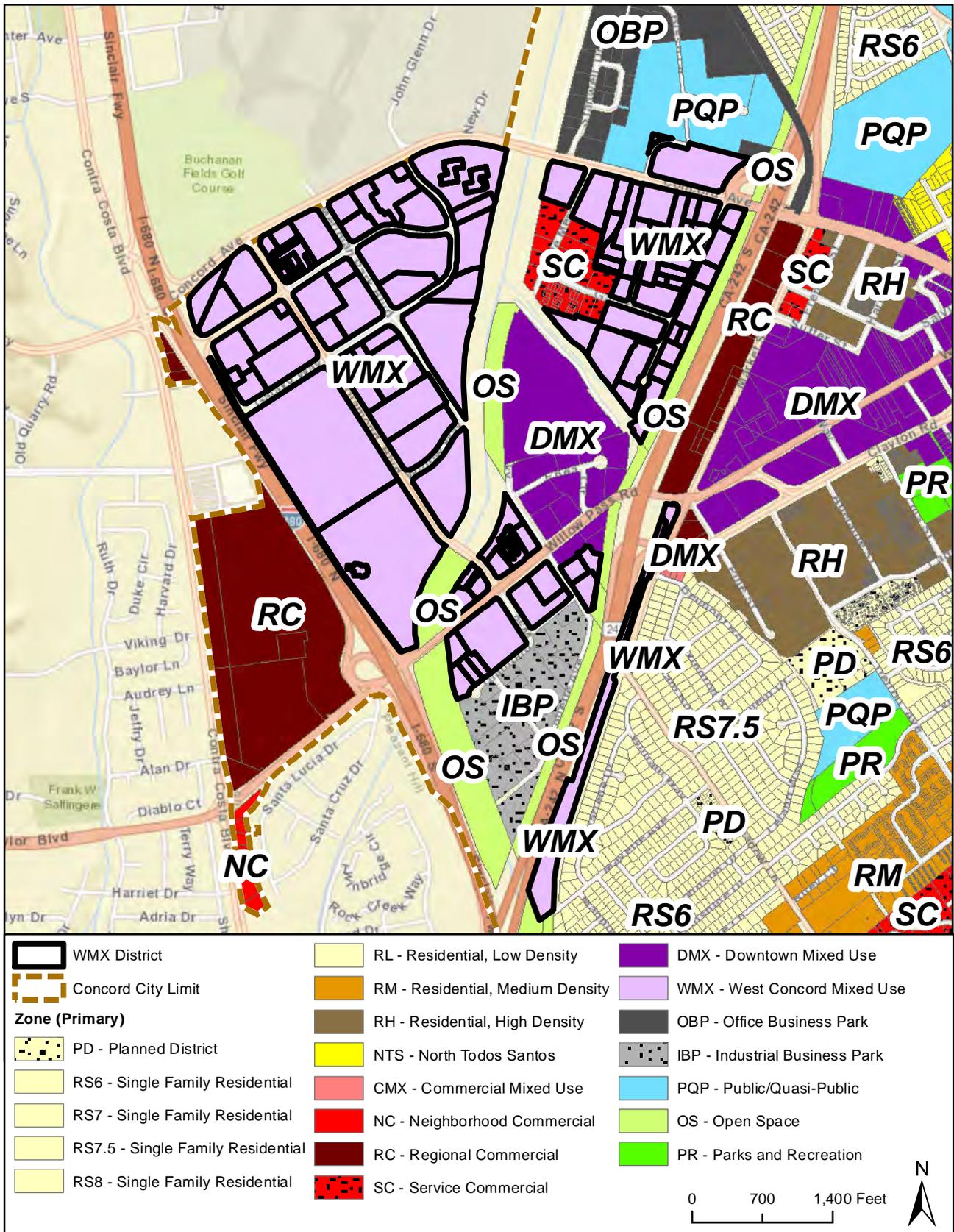
- Open Space (OS) runs through the WMX District in two strips, both situated in north-south alignments, with the eastern OS area adjacent to the west of State Route 242;
- Downtown Mixed Use (DMX) is located between the two OS swaths, between SC and WMX District to the north, and WMX to the south (this DMX area consists entirely of the Waterworld California recreational development including parking);
- Service Commercial (SC) is located north of the DMX area, surrounded to the north, east, and south by WMX and to the south and west by OS;
- Industrial Business Park (IBP) is located in the southern project area, adjacent to the south of the southern-most WMX District, and bounded to the west and east by OS areas adjacent to Interstate 680 and State Route 242, respectively.



Existing land uses in the WMX District consist almost exclusively of commercial developments, including large buildings and associated parking areas. The overall area is characterized by generally flat topography and is almost entirely paved. There are some trees and ornamental vegetation around the borders of the WMX District, and along property lines within the areas, but there is no substantial open space or native vegetation.

The impact analysis provided in this Addendum assesses whether restriction from the WMX District of the types of uses described above would be consistent with the impact analysis provided in the 2012 SEIR, which amended the 2030 General Plan to include the current CDC. Uses within the WMX District would continue to be required to be consistent with development standards included in the CDC. Chapter 18.150 (General Development Standards) of the CDC addresses development standards associated with the details of site planning and project design, while Chapter 18.200 (Standards for Specific Uses) of the CDC establishes broader regulations for certain land uses within individual districts. These standards are discussed throughout the impact analysis, as applicable.

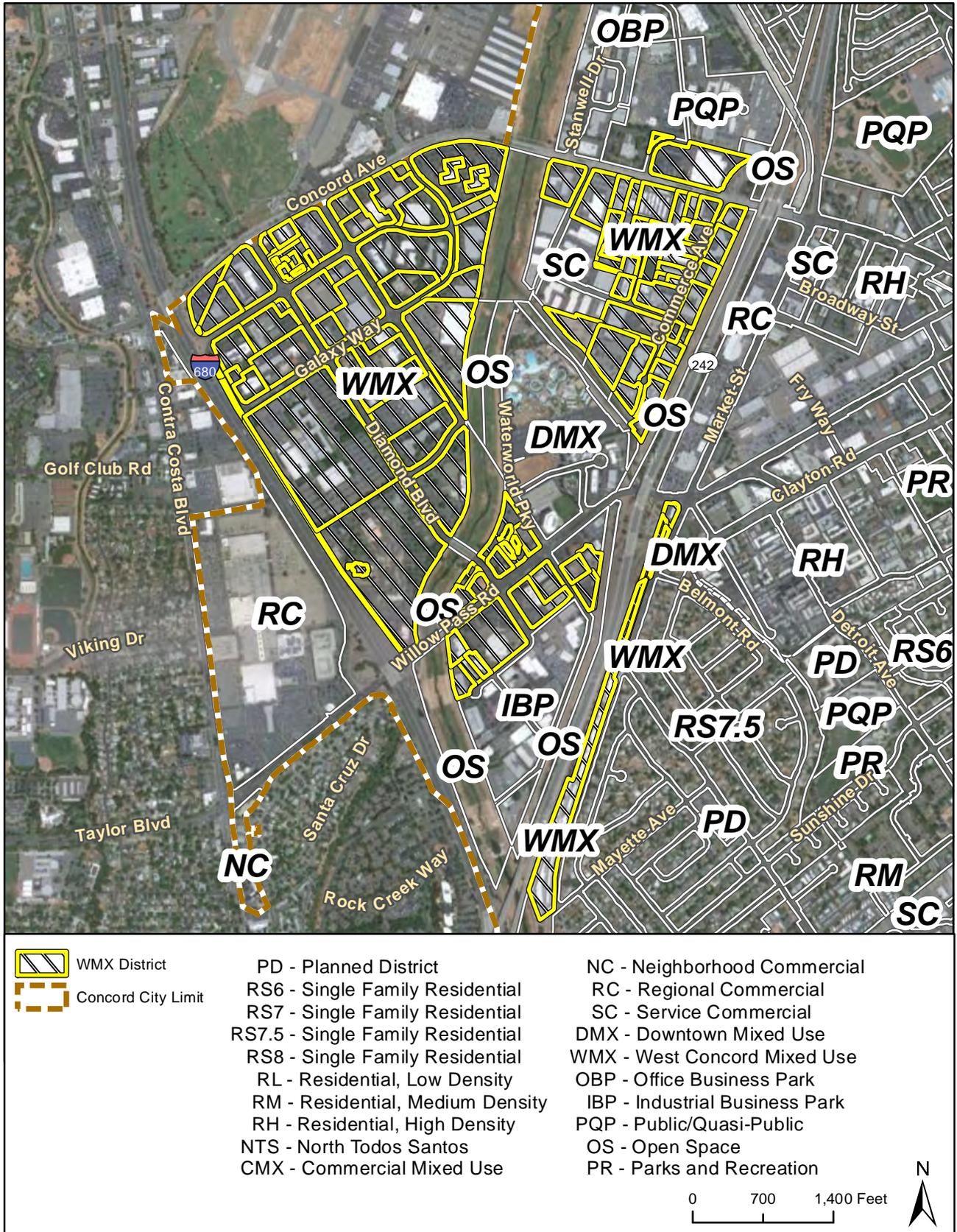




Imagery provided by National Geographic Society, ESRI and its licensors © 2015.
 Zoning data from City of Concord Zoning Map, August 23, 2012.

WMX District

Figure 1



Imagery provided by National Geographic Society, ESRI and its licensors © 2015.
 Zoning data from City of Concord Zoning Map, August 23, 2012.

WMX District

Figure 2

4.0 ENVIRONMENTAL CHECKLIST AND IMPACTS OF PROPOSED CHANGES TO THE SEIR

This Addendum evaluates potential environmental impacts that could result from the proposed project, which would revise allowable uses within the WMX District. The WMX District was introduced to the Zoning Map via the 2012 SEIR. The existing environmental conditions on and near the WMX-zoned areas are substantially the same under present conditions as described in the 2012 SEIR; the analysis below provides updates where necessary to characterize potential impacts.

Appendix G of the CEQA *Guidelines* provides a checklist of environmental issues areas that are suggested as the issue areas that should be assessed in CEQA analyses. As mentioned above, the 2012 SEIR only addressed in detail five of the 17 suggested environmental issue areas, because the Initial Study prepared for the SEIR determined that other issue areas would not have potential to result in significant adverse environmental impacts. Of the five issue areas addressed in the 2012 SEIR, the 2014 Addendum only addressed four issue areas, as it was determined that one of the five (Noise) would not have potential to result in significant adverse environmental impacts. As with the 2014 Addendum, this Addendum also tiers off the 2012 SEIR and addresses the issue areas discussed in detail in that document; however, in order to provide a thorough and conservative analysis of potential impacts associated with allowing outdoor uses and activities in the WMX District, this Addendum addresses each of the 17 environmental issue areas suggested by Appendix G of the CEQA Guidelines, as listed below.

- Aesthetics
- Agriculture and Forestry
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology / Water Quality
- Land Use / Planning
- Mineral Resources
- Noise
- Population / Housing
- Public Services
- Recreation
- Transportation / Traffic
- Utilities / Service Systems

As noted above, this Addendum tiers off of the 2012 SEIR, as amended by the 2014 Addendum. Therefore, potential environmental impacts of the proposed project are considered in comparison with the revised 2012 SEIR, to determine whether impacts associated with the WMX revisions are consistent with the impact analysis provided in the 2012 SEIR, and whether additional mitigation measures are required to minimize or avoid potential impacts. For the purposes of this impact analysis, the “Approved Project” refers to the actions approved by the 2012 SEIR, including as amended by the 2014 Addendum to incorporate the Downtown Specific Plan (General Plan Land Use Map; Concord Development Code; Zoning Map).

Where impacts are identified in the following analysis, discussion of previously identified mitigation measures (from the 2012 SEIR), revised/updated mitigation measures (from the 2014 Addendum), and existing laws and regulations are also discussed as relevant to the avoidance of potential impacts. Where applicable, the existing CDC provisions would be implemented for



compliance with the 2030 Concord General Plan goals and policies, as discussed throughout the impact analysis provided below.

4.1 AESTHETICS

The Initial Study prepared for the 2012 SEIR determined that Aesthetic impacts would be less than significant with no mitigation required. Proposed changes to the WMX District would prohibit the following uses/activities within this District: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. Potential impacts to aesthetics associated with these uses and activities would be avoided within the WMX District, although such uses and activities may redistribute to the other areas within the Concord Planning Area SOI where such uses and activities are permitted (see Section 3 of this Addendum). This redistribution would not introduce new uses or activities to other Districts within the SOI where these uses are already permissible, and would be contingent upon the issuance of permits, as described in Section 3, to ensure consistency with the CDC.

The proposed project would not introduce new impacts to Aesthetics, and would be consistent with the impact analysis provided in the 2012 SEIR.

Effects and Mitigation Measures

No new or substantially more severe effects would occur related to Aesthetics, and no new or revised mitigation measures are necessary.

Conclusion

Less than Significant Impact (Same as Approved Project)

4.2 AGRICULTURE AND FORESTRY

The Initial Study prepared for the 2012 SEIR determined that potential impacts to Agriculture and Forestry would be less than significant with no mitigation required. The proposed project would not include uses or activities related to Agriculture and Forestry, and would not introduce uses or activities to areas designated for agriculture or forestry. The proposed project would not introduce new impacts to Agriculture and Forestry, and would be consistent with the impact analysis provided in the 2012 SEIR.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Agriculture and Forestry, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Same as Approved Project)



4.3 AIR QUALITY

The Initial Study prepared for the 2012 SEIR determined that impacts to Air Quality would be potentially significant, and this issue was therefore analyzed in the 2012 SEIR. The 2012 SEIR determined that impacts would be less than significant with mitigation measures that require performance measures incorporated into the Concord Citywide Climate Action Plan (CAP). The CAP is a document that includes policies, measures, and strategies to improve the health, safety, mobility, and livability of the greater community and serves as a “qualified GHG reduction plan,” and prioritizes GHG reduction measures to comply with California environmental and land use planning laws.

In addition, as discussed in Section 2.3, an Addendum to the 2012 SEIR was produced in 2014 to assess the *City of Concord Downtown Specific Plan*, as well as changes to local, state, and federal air quality regulations that occurred after certification of the 2012 SEIR. The WMX District areas are not located in the Specific Plan area and the 2014 analysis of the Specific Plan does not place restrictions or mitigation requirements on potential land uses and activities in the WMX District; however, the updated air quality regulations addressed in the 2014 Addendum are applicable to the proposed project, and are presented below.

- **Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 2 - New Source Review.** This rule requires any new source resulting in an increase of any criteria pollutant to be evaluated for adherence to Best Available Control Technology (BACT).
- **BAAQMD Regulation 2, Rule 5 - New Source Review of Toxic Air Contaminants.** This rule applies to pre-construction review of new and modified sources of toxic air contaminants, contains project health risk limits, and requires Toxics Best Available Control Technology.
- **Climate Action Plan.** The CAP was adopted in July 2013 in response to mandates from the State of California intended to reduce the emission of greenhouse gases statewide, because of their contribution to global climate change. The CAP is anticipated to bring the amended General Plan into compliance with regional and statewide GHG emission reduction goals, and incorporate regional reduction targets developed pursuant to Senate Bill 375 (Sustainable Communities and Climate Protection Act of 2008). The CAP contains the performance measures identified in the 2012 SEIR (City of Concord, 2013).

Proposed changes to the WMX District would prohibit the following uses/activities within this District: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. Potential air quality impacts from these uses would be associated with emissions from the use of vehicles and equipment, including vehicles traveling to and from the sites where these uses are available. With the restriction of these uses from the WMX District, such emissions could redistribute to other areas where the uses would remain permitted, but would not increase them. Such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts to air quality.



Effects and Mitigation Measures

No new or substantially more severe effects would occur to Air Quality, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.4 BIOLOGICAL RESOURCES

The Initial Study prepared for the 2012 SEIR determined that potential impacts to Biological Resources would be less than significant with no mitigation required.

As described in Section 3, the WMX District affected by the proposed project is almost entirely developed and characterized by commercial uses, with surfaces almost entirely paved. Biological resources within the WMX District are generally absent. Walnut Creek and its associated riparian area adjacent to the WMX District, but this would not be altered or otherwise affected as a result of the proposed land use restrictions.

The restriction of land uses within the WMX District may result in the redistribution of such uses to other areas where they are allowable. Such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts to biological resources.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Biological Resources, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.5 CULTURAL RESOURCES

The Initial Study prepared for the 2012 SEIR determined that potential impacts to Cultural Resources would be less than significant with no mitigation required.

The restriction of certain land uses and activities from the WMX District would not involve any ground-disturbing activities and would have no potential to encounter or otherwise disturb cultural resources. Restricted uses may redistribute to other districts where such uses are allowable. Such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts to cultural resources.



Effects and Mitigation Measures

No new or substantially more severe effects would occur to Cultural Resources, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.6 GEOLOGY/SOILS

The Initial Study prepared for the 2012 SEIR determined that potential impacts to Geology/Soils would be less than significant with no mitigation required. Potential outdoor uses and activities that could be allowed under the proposed CDC revisions would occur in areas subject to geology- and soil-related hazards, including as related to seismic events and soil stability.

The restriction of certain land uses and activities from the WMX District may result in the redistribution of such uses to other districts where they are allowable, contingent upon permit conditions, but such redistribution would not introduce new impacts to geology/soils not previously analyzed, would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts to geology and soils.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Geology/Soils, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.7 GREENHOUSE GAS EMISSIONS

The Initial Study prepared for the 2012 SEIR determined that potential impacts associated with greenhouse gas (GHG) emissions would be potentially significant, and this issue was therefore analyzed in the SEIR, which determined that impacts would be less than significant with mitigation measures that require performance measures incorporated into the CAP. In addition, as described in Sections 2.3, the 2014 Addendum to the 2012 SEIR assessed state GHG inventory data that was developed following certification of the 2012 SEIR, and introduced updated mitigation requirements for GHG emissions to address the CAP; the 2014 Addendum updated the 2012 SEIR and the mitigation requirements included therein are applicable to land uses and activities that may redistribute through the Concord Planning Area SOI as a result of restricting them from the WMX District. As discussed in the Air Quality analysis above, the CAP was adopted in 2013 and contains the performance measures identified in the 2012 SEIR, as updated by the 2014 Addendum (City of Concord, 2013).



The potential redistribution of certain land uses and activities that could occur as a result of the restriction of land uses and activities within the WMX District would not result in new emissions not previously anticipated. The proposed project would not result in new impacts to greenhouse gas emissions, as the revisions would not result in increases in the subject uses.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Greenhouse Gas Emissions, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.8 HAZARDS AND HAZARDOUS MATERIALS

The Initial Study prepared for the 2012 SEIR determined that impacts to Hazards and Hazardous Materials would be less than significant with no mitigation required. The proposed project would restrict certain land uses and activities from the WMX district, where such uses and activities are currently allowed. As such, the potential use, handling, and storage of hazardous materials that could occur in associated with the following activities would not occur in the WMX District: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. These uses and activities may redistribute to other areas where the uses are permitted, as described in Section 3. Such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts associated with hazards and hazardous materials.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Hazards and Hazardous Materials, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.9 HYDROLOGY / WATER QUALITY

The Initial Study prepared for the 2012 SEIR determined that impacts to Hydrology / Water Quality would be less than significant with no mitigation required.

As described in Section 3, Walnut Creek and an associated tributary run between areas designated as WMX District. These features are not included within the WMX District and would not be altered or otherwise affected by the restriction of certain uses from the WMX District. Nor would any changed or new uses be allowed that could result in impacts to these



watercourses. Uses and activities that would be restricted from the WMX District under the proposed project may redistribute to other districts where they are permitted; such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. Therefore, the proposed project would not introduce new impacts associated with hydrology and water quality.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Hydrology and Water Quality, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.10 LAND USE / PLANNING

The Initial Study prepared for the 2012 SEIR determined that impacts to Land Use / Planning would be less than significant with no mitigation required.

As previously discussed, the proposed WMX revisions would amend the CDC (as addressed in the 2012 SEIR) to restrict certain uses and activities from the WMX District, which may result in the redistribution of uses to other areas, where they would be subject to permit requirements and are anticipated to have already been accounted for in the land use planning processes reflected in the General Plan and associated CDC. As described in Section 4.1 (Aesthetics), the restriction of certain land uses from the WMX District may result in the area having a less industrial character, and would be consistent with the General Plan. The proposed project would not introduce new impacts associated with land use and planning.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Land Use and Planning, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.11 MINERAL RESOURCES

The Initial Study prepared for the 2012 SEIR determined that no impacts to Mineral Resources would occur. The restriction and potential redistribution of previously described land uses and activities from the WMX District would not require a source of mineral resources, and would not restrict or otherwise adversely affect mineral resources in the area. The proposed project would not introduce new impacts associated with mineral resources.



Effects and Mitigation Measures

No new or substantially more severe effects would occur to Mineral Resources, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.12 NOISE

The Initial Study prepared for the 2012 SEIR for the Approved Project determined that impacts to Noise would be potentially significant, and this issue was therefore analyzed in the SEIR, which determined that impacts would be less than significant with no mitigation measures required, as compliance with 2030 General Plan Policies would reduce or avoid potentially adverse impacts of CDC implementation related to noise.

The proposed project would restrict certain land uses and activities from the WMX District, where such uses and activities are currently allowed. As such, potential noises associated with the following uses and activities would not occur in the WMX District: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. These uses and activities may redistribute to other areas where the uses are permitted, as described in Section 3. Such redistribution would be subject to the issuance of appropriate permits, and is anticipated to have already been planned for in the affected districts. The WMX District and surrounding areas (described in Section 3) are largely characterized by commercial uses, and noise associated with the aforementioned uses would be consistent with the surrounding area. Section 18.150.130 (*Performance Standards*) of the CDC stipulates that all noise emanating from a subject site must comply with the noise standards in the Safety and Noise Element of the 2030 General Plan, and that an acoustic study may be required for the introduction of any new noise sources/exposure that exceeds levels deemed normally acceptable by the General Plan. Redistributed uses as affected by the proposed WMX District revisions would be subject to issuance of permits; in considering these, consistency with General Plan requirements will be considered, including as related to noise, and project modifications may be required as conditions of approval in order to ensure that neighboring residential uses aren't adversely affected by increased noise levels. The proposed project would not introduce new noise-related impacts.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Noise, and no new mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)



4.13 POPULATION / HOUSING

The Initial Study prepared for the 2012 SEIR determined that impacts to Population / Housing would be less than significant with no mitigation required. The proposed project would restrict certain land uses and activities from the WMX District, where such uses and activities are currently allowed; these uses are not residential and would not require the construction of new residential areas. The potential redistribution of land uses and activities to other districts within the Concord Planning Area SOI would not alter housing demands. The proposed project would not introduce new impacts associated with population and housing. No impact to population and housing would occur.

Effects and Mitigation Measures

No new or substantially more severe effects would occur related to Population and Housing, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.14 PUBLIC SERVICES

The Initial Study prepared for the 2012 SEIR determined that potential impacts associated with Public Services would be less than significant with no mitigation required, where “Public Services” includes fire protection, police protection, schools, and parks. The SEIR also includes a “Public Services and Utilities” analysis (SEIR Section 3.4), which addresses water supply reliability. The 2014 Addendum to the SEIR includes analysis of water supply reliability using updated County water supply data that was not available at the time of preparation of the 2012 SEIR. Water supply reliability relevant to the current proposed project analyzed in this addendum is discussed in Section 3.16 (Utilities).

The restriction of certain land uses and activities from the WMX District may result in the redistribution of such uses and activities to other districts within the Concord Planning Area SOI; this would not alter public services demands in the SOI, including as related to fire and police protection, schools, parks, or other public services. The proposed project would not introduce new impacts to public services, and no impact would occur.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Public Services, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)



4.15 RECREATION

The Initial Study prepared for the 2012 SEIR determined that potential impacts to Recreation would be less than significant with no mitigation required. The restriction of certain land uses and activities from the WMX District and potential redistribution of such uses and activities to other areas in the SOI would not introduce new recreational demands or facilities, and would have no impact on recreation. The proposed project would not introduce new impacts to recreation, and no impact would occur.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Recreation, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)

4.16 TRANSPORTATION / TRAFFIC

The Initial Study prepared for the 2012 SEIR for the Approved Project determined that potential impacts to Transportation/Traffic would be potentially significant, and this issue was therefore analyzed in the SEIR, which determined that impacts would be significant and unavoidable even with the implementation of General Plan policies and mitigation measures to improve circulation and service levels throughout the City.

The proposed project would restrict the following land uses from the WMX District, and would avoid traffic associated with such uses within the WMX District: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. These uses may redistribute to other areas in the Concord Planning Area SOI, and associated traffic would also redistribute. As discussed in Section 3, if these uses and activities occur in other districts within the Concord Planning Area SOI, they would be subject to permit conditions and requirements. In addition, it is expected that districts allowing these uses have planned for associated traffic.

As the project would not increase the subject uses within the city, no change in impacts to the overall circulation would occur. Similar to under existing conditions, new traffic from specific projects would be evaluated for localized impacts when and if proposed. The proposed project would not introduce new uses and activities and would not increase existing adverse traffic conditions. The proposed project would not introduce new impacts to traffic and transportation, and no impact would occur.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Transportation / Traffic, and no new or revised mitigation measures are necessary.



Conclusion

No Impact (Less than Approved Project)

4.17 UTILITIES / SERVICE SYSTEMS

The Initial Study prepared for the 2012 SEIR determined that impacts to Utilities / Service Systems would be less than significant with no mitigation required. The restriction and potential redistribution of certain land uses and activities from the WMX District would not increase demands on utilities and service systems. Such demands may occur in other districts allowing the identified uses and activities, but would be contingent upon the issuance of permits and require project by project evaluation, and would not introduce new impacts to utilities and service systems.

Effects and Mitigation Measures

No new or substantially more severe effects would occur to Utilities / Service Systems, and no new or revised mitigation measures are necessary.

Conclusion

No Impact (Less than Approved Project)



5.0 CONCLUSION

As discussed in detail in the preceding sections, potential impacts associated with restriction of the following land uses from the WMX District are consistent with potential impacts characterized and mitigated in the 2012 SEIR: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. Substantive revisions to the 2012 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 proposed project. 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.

Pursuant to CEQA Guidelines Section 15164(c), this Addendum will be included in the public record for the 2012 SEIR to the General Plan EIR. The Concord Development Code is available on the City's website at <http://www.codepublishing.com/ca/concord/>.

5.1 DECISION NOT TO PREPARE SUBSEQUENT EIR

As outlined in CEQA Guidelines Section 15164 (*Addendum to an EIR or Negative Declaration*) of the State CEQA Guidelines, a Lead 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 calling for preparation of a subsequent EIR have occurred. As discussed in the impact analysis provided in Section 4, the proposed WMX District revisions are consistent with the 2012 SEIR, which revised the 2030 General Plan to include the current CDC. The restriction of the following land uses from the WMX District would not introduce any new significant environmental impacts beyond those which have already been identified and characterized in the 2012 SEIR: building materials sales and services; cabinet shops; outdoor storage and activities associated with artisan/custom product businesses; and small recycling collection facilities. None of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR have occurred or would occur as a result of the proposed project. Therefore, this Addendum to the 2012 SEIR is consistent with CEQA, and this Addendum is the appropriate level of environmental documentation to provide under CEQA. This Addendum will be considered by the City of Concord in making a decision on the proposed project.



REFERENCES AND PREPARERS

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List of Preparers

This Addendum was prepared by Rincon Consultants, Inc. under contract to the City of Concord. Persons and firms involved in data gathering, analysis, project management, and quality control include:

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ORDINANCE NO. 15-7

AN ORDINANCE AMENDING THE CONCORD MUNICIPAL CODE BY ADOPTING AN AMENDMENT TO THE 2012 DEVELOPMENT CODE; VOLUME 1, DATED JULY 24, 2012 (FORMERLY CHAPTER 122 (ZONING) OF THE CONCORD MUNICIPAL CODE) TO REVISE ARTICLE II (ZONING DISTRICTS – USES AND STANDARDS), DIVISION 5 DOWNTOWN DISTRICTS (DP, DMS, AND WMX) TABLE 122-154.1 (OFFICE AND COMMERCIAL DISTRICTS – ALLOWED USES AND PERMIT REQUIREMENTS), LAND USE CLASSIFICATIONS; OFFICE, COMMERCIAL, AND RETAIL SERVICES, PERMIT REQUIRED BY DISTRICT

/ Ordinance No. 15-07

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

- 1) *Development Code, Article II (Zoning Districts – Uses and Standards), Division 5 Downtown Districts (DP, DMX, and WMX), Table 122-154.1 (Office and Commercial Districts – Allowed Uses and Permit Requirements), Land Use Classifications; Office, Commercial, and Retail Services, Permit Required by District, is amended as follows; all other Allowed Uses and Permit Requirements in the Table remain unchanged:*

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Office, Commercial, and Retail Uses				
Adult, Day Care Center	--	AP ⁽¹⁰⁾	--	
Adult-Oriented Business	--	--	--	§122-726 - 741 Adult-Oriented Business
Animal Services				
Boarding, Kennel	--	AP	UP	
Dog Day Care, Training	--	AP	ZC	
Grooming	ZC	ZC	ZC	
Hospital, Veterinary Clinic	--	ZC	ZC	
Antique, Collectible Store	ZC	ZC	ZC	
Automobile Sales and Rental/Leasing				
Auction	--	--	--	
Brokers, Office Only	ZC ⁽¹⁾	ZC ⁽¹⁾	ZC	
Brokers, Office w/Vehicle Display	--	--	ZC	
Dealership, New	--	--	ZC	
Dealership, Used	--	--	--	
Dealership, Motorcycles	--	--	ZC	
Rental	--	--	AP	
Automobile Services and Repair				
Car Wash, Attended	--	--	UP	§122-622 Gas Stations & Car Wash
Car Wash, Unattended	--	--	--	§122-622 Gas Stations & Car Wash
Gas Station	--	--	UP	§122-622 Gas Stations & Car Wash

Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Maintenance Services	--	--	ZC	
Major Repair/Body Work	--	--	--	
Minor Repair	--	--	ZC	
Banks and Financial Services				
Bank, Credit Union	ZC ⁽³⁾	ZC ⁽³⁾	ZC	
Bank w/Drive-Through Service	--	--	UP	§122-619 Drive Through Facilities
Check Cashing Business	--	--	--	
Building Materials Sales and Services				
	--	--	--	
	--	--	-MP	
Business Support Services	ZC ⁽¹⁾	ZC	ZC	
Catering Service	ZC ⁽¹⁾	ZC	ZC	
Eating and Drinking Establishments				
Bar, Night Club, Lounge	AP	AP	AP	§122-621 Entertainment Uses
Restaurant, Full Service	ZC	ZC	ZC	
Restaurant, Limited Service	ZC	ZC	ZC	
Restaurant, w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Restaurant, w/Live Entertainment	AP	AP	UP	§122-621 Entertainment Uses
Fitness Facility, Health Club	ZC ⁽¹⁾	ZC	ZC	
Office, Commercial, and Retail Uses (cont.)				
Food, Beverage Sales				
Convenience Store, no Alcohol Sales	ZC	AP	ZC	
Convenience Store, w/Alcohol Sales	--	--	--	§122-617 Alcoholic Beverage Sales
Grocery Store	ZC	ZC	ZC	
Liquor Store	--	--	--	§122-617 Alcoholic Beverage Sales
Hotel, Motel	UP ⁽¹⁾	UP	UP	
Maintenance Services				
Office w/No Outdoor Storage/or Activities	--	--	ZC	
Office w/Outdoor Storage/or Activities	--	--	--	
Nursery, Pre-school, Childcare	UP ⁽¹⁾	MP	AP	§122-618 Child Day Care Facilities
Office				
Administrative, Information Processing	ZC ⁽¹⁾	ZC	ZC	
Medical, Dental	ZC ⁽¹⁾	ZC	ZC	
Professional	ZC ⁽¹⁾	ZC	ZC	
Personal Services				
General	AP ⁽³⁾	ZC	ZC	
Improvement, Instructional	ZC ⁽¹⁾	ZC	ZC	
Restricted	--	--	UP	
Repair Service, Appliance & Small Equipment	--	--	UP	
Retail Sales				
Big Box	--	UP	UP	
General	ZC	ZC	ZC	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
Nursery, Garden Center	--	--	ZC	§122-629 Outdoor Sales & Display
Restricted	--	--	UP	
w/Drive-Through	--	--	UP	§122-619 Drive Through Facilities
Secondhand Sales	--	AP	AP	

Business Park and Industrial Uses				
Auto Wrecking, Dismantling Yards	--	--	--	
Contractors, Special Trade				
Cabinet Shop	--	--	--	
Contractor Office, No Outdoor Storage	--	--	ZC	
Contractor Yard, Outdoor Storage	--	--	--	
Fleet-Based Service	--	--	UP	
Freight and Truck Terminal	--	--	--	
Heavy Vehicle and Large Equipment, Sales/Rental, Service and Repair				
Commercial Vehicles and Equipment	--	--	--	
Business Park and Industrial Uses (cont.)				
Recreational Vehicle	--	--	--	
Laboratory, Research, and Development	AP ⁽¹⁾	AP ⁽¹⁾	AP ⁽¹⁾	
Manufacturing, Processing				
Artisan/Custom Product , with no outdoor storage or activities	--	--	ZC	
Industry, Heavy	--	--	--	
Within a Building	--	--	--	
w/Outdoor Storage or Activities	--	--	--	
Warehouse Show Room w/Assembly & Sales	--	--	ZC	
Media Production Facility	ZC ⁽¹⁾	ZC	ZC	
Storage				
Hazardous Materials	--	--	--	
Self-Storage Facility, Mini-Storage	--	--	--	
Vehicle	--	--	--	
Towing Service	--	--	--	
Warehouse, w/No Outdoor Storage	--	--	--	
Warehouse, w/Outdoor Storage	--	--	--	
Wholesaling, Distribution	--	--	--	

Residential Uses				
Bed and Breakfast Inn	AP	AP	--	
Dwelling, Dwelling Unit, Housing Unit				
Single Family, Detached	--	--	--	
Single Family, Detached – Small Lot Subdivision	--	--	--	
Single Family, Attached	--	--	--	
Secondary Living Unit	--	--	--	§122-631 Secondary Living Unit
Duplex	--	--	--	
Multi-family	UP	UP	--	

Table 122-154.1
Downtown Districts
 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
	DP	DMX	WMX	
Family Day Care Home, Small	ZC ⁽¹⁰⁾	ZC	--	§122-618 Child Day Care Facilities
Family Day Care Home, Large	MP ⁽¹⁰⁾	MP	--	§122-618 Child Day Care Facilities
Group Housing	--	UP	--	
Home-based Business	ZC ⁽¹⁰⁾	ZC	--	§122-623 Home-based Business
Live/Work Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Mixed Use Projects	UP	UP	---	
Mobile Home Park	--	--	--	
Residential Care Facility, Small	ZC	ZC	--	
Residential Care Facility, Large	--	UP	--	
Residential Facility for Seniors, Assisted Living	UP ⁽¹⁰⁾	UP	--	
Residential Uses (cont.)				
Work/Live Unit	UP ⁽¹⁾	UP	--	§122-624 Live/Work or Work/Live Unit
Public/Quasi-Public and Recreational Uses				
Airport	--	--	--	
Ambulance Service	--	--	--	
Cemetery, Columbarium, Mausoleum	--	--	--	
Conference, Convention Facility	--	UP	UP	
Cultural Institution	ZC	ZC	MP	
Emergency and Homeless Shelter	--	--	--	§122-620 Emergency & Homeless Shelter
Government Office	ZC ⁽¹⁾	ZC	ZC	
Farmers Market	UP	UP	UP	
Funeral Parlor, Mortuary	--	--	UP	
Heliport	--	--	--	
Library	ZC ⁽¹⁾	ZC	ZC	
Medical Services				
Hospital, Medical Center	--	--	--	
Medical Marijuana Dispensary	--	--	--	
Medical Clinic	--	--	--	
Nursing Facility/Extended Care	--	UP	--	
Urgent Care Facility	--	--	ZC	
Meeting Facility, Public/Private	AP ⁽¹⁾	AP	AP	
Military	--	--	--	
Parking Facility	--	AP	AP	
Public Maintenance and Service Facility	--	--	--	
Recreational Facilities				
Bingo Hall	--	--	UP	
Commercial Recreation, Indoor	AP	AP	AP	
Golf Course, Country Club	--	--	--	§122-626 Mechanical & Elec. Games
Park and Recreation Facility	ZC	ZC	ZC	
Residential Recreation Facility	ZC	ZC	--	
Sports and Entertainment, Assembly	--	--	--	§122-621 Entertainment Uses
Sports and Recreation Facility	--	--	UP	§122-626 Mechanical & Elec. Games
Recycling Facilities				
Small Collection Facility	--	--	--	

Table 122-154.1 Downtown Districts 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
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Land Use Classifications	Permit Required by District			Additional Requirements
	DP	DMX	WMX	
Large Collection Facility	--	--	--	
Processing Facility	--	--	--	
Religious Facility	--	--	UP	
Schools				
Elementary, Middle, Secondary	UP ⁽¹⁾	UP	--	
College, University	AP ⁽¹⁾	AP	AP	
Public/Quasi-Public and Recreational Uses (cont.)				
Trade School, Vocational Training	AP ⁽¹⁾	AP	AP	
Social Svc Facility, Community Organization	UP ^(1,2)	MP/AP ^(7,8)	AP	
Theater, Auditorium	UP	UP	UP	§122-626 Mechanical & Elec. Games
Utility Facility, Transmission Towers	--	--	--	
Wireless Telecommunication Facility	§§122-664 - 668 Wireless Communication Facilities			

Open Space and Agricultural Uses				
Companion Animal, Horses, Fowl	--	--	--	
Community Gardens	UP	UP	UP	
Crop Production, Orchard, Vineyard	ZC	ZC	ZC	
Livestock, Grazing	--	--	--	
Mining and Quarrying	--	--	--	

- (1) Not allowed on ground floor.
- (2) Allowed on upper floors subject to Use Permit approval.
- (3) Allowed to occupy up to 20 % gross area of shopping center or multi-tenant building, or 20% street frontage of one building.
- (7) Allowed on ground floor subject to a Minor Use Permit approval.
- (8) Allowed on upper floors subject to an Administrative Permit approval.
- (10) Allowed with residential use only.

1) *Development Code, Chapter 18.20 General Terms, Article I , 18.20.020 Use classifications. is amended as follows;*

“Building materials sales and services” means an ~~indoor or outdoor~~ establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. ~~Includes stores with indoor service areas.~~ Establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in “Wholesaling, distribution.” Does not include large format retail home stores in buildings over 80,000 square feet (see “Big box” under “Retail Sales”), nor show room stores with contractor sales and assembly, which are classified as “Warehouse show room with assembly and sales” under “Manufacturing, processing.”

Contractors, Special Trade.

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 122 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**, the City has initiated a subsequent Development Code text amendment to further
23 address minor technical errors, omissions, and clarification of terms and procedures in the
24 Development Code, including correction of an inconsistency with the General Plan; and

25 **WHEREAS**, such text amendment is in the form of the proposed Development Code
26 Amendment PL15132-DC (“Amendment”) attached to the June 17, 2015 staff report as Exhibit A (an
27 additional copy of the Amendment is attached hereto as Attachment 1 and incorporated by reference),
28

1 in order to improve the accuracy of the Development Code and its standards and further achieve
2 internal consistency and consistency with the rest of the Concord Municipal Code; and

3 **WHEREAS**, staff believes the Amendment falls within the “common sense” exemption set
4 forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with
5 certainty that there is no possibility that the activity in question may have a significant effect on the
6 environment...”; and

7 **WHEREAS**, the Amendment does not make substantial changes to the Development Code or
8 substantial changes with respect to the circumstances under which the Development Code would be
9 implemented which would require revisions to the 2012 SEIR due to new significant environmental
10 effects or a substantial increase in the severity of previously identified significant effects and there is
11 no new information that would require preparation of a subsequent or supplemental EIR under CEQA
12 Guidelines Section 15162; and

13 **WHEREAS**, as only minor technical changes or additions were required to the 2012 SEIR, an
14 Addendum (“Addendum”, attached hereto as Attachment 2 and incorporated by reference) was
15 prepared in accordance with all legal requirements, including CEQA 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 17, 2015, on the
18 Addendum and 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 public hearing, the oral report from City staff, the written report from City
22 staff dated June 17, 2015, materials, exhibits presented, pertinent maps, plans, reports, studies,
23 memoranda, the Addendum, the Amendment, the General Plan, the General Plan FEIR, the Reuse
24 Plan FEIR/Addendum, the 2012 SEIR, the 2014 Addendum, the City of Concord Municipal Code, the
25 Development Code, applicable City laws and regulations, and all associated approved and certified
26 environmental documents, and all other information that constitutes the record of proceedings on
27 which the Planning Commission has based its decision are maintained at the offices of the City of
28

1 Concord Planning Division (collectively, “Project Information”); and

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

4 **WHEREAS**, on June 17, 2015, the Planning Commission, after consideration of all pertinent
5 plans, documents, and testimony, declared their intent to recommend approval and adoption of the
6 Addendum and adoption of the Amendment.

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

8 Recitals

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

13 General

14 2. The Planning Commission has reviewed, considered, and evaluated all of the Project
15 Information prior to acting upon the Addendum or the Amendment.

16 3. The documents and other materials that constitute the record of proceedings upon which the
17 Planning Commission has based its recommendation are located in and may be obtained from the City
18 of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.

19 CEQA Exemption

20 4. The Amendment falls within the “common sense” exemption set forth in 14 Cal. Code Regs.
21 Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility
22 that the activity in question may have a significant effect on the environment...”

23 Addendum

24 5. Based on the Project Information, the Planning Commission makes the findings set forth
25 below with respect to the Addendum:

26 a. The findings above are hereby incorporated by reference.

27 b. The Addendum represents the appropriate level of environmental review, is the
28

1 appropriate environmental document, for the Amendment.

2 c. The Planning Commission considered the 2012 SEIR and the Addendum in accordance
3 with the requirements of CEQA.

4 d. The Addendum reflects the independent judgment and analysis of the City as the lead
5 agency for the Amendment.

6 e. Based on substantial evidence in the whole record before the City, the Amendment
7 does not make substantial changes to the Development Code or substantial changes with respect to the
8 circumstances under which the Development would be implemented which would require revisions to
9 the 2012 SEIR due to new significant environmental effects or a substantial increase in the severity of
10 previously identified significant effects and there is no new information that would require preparation
11 of a subsequent or supplemental EIR under Public Resources Code Section 21166 or CEQA
12 Guidelines Section 15162. Therefore, none of the elements set forth in Public Resources Code
13 Section 21166 or CEQA Guidelines Section 15162 exist and a subsequent or supplemental EIR or
14 negative declaration is not required.

15 f. No substantial changes have occurred with respect to traffic and freeway operations
16 that would cause new or substantially more severe significant environmental effects than were
17 identified in the 2012 SEIR, all mitigation measures were within the jurisdiction of the City to adopt
18 and will remain in place and continue to be implemented and enforced, and the Statement of
19 Overriding Considerations remain in effect. The mitigation measures and Statement of Overriding
20 Considerations associated with certification of the 2012 SEIR addresses the environmental effects of
21 the project.

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

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

27 Amendment

1 7. Based on the Project Information, and all oral and written testimony submitted on this item,
2 the Planning Commission makes the findings set forth below with respect to the Amendment:

3 a. The findings above are hereby incorporated by reference.

4 b. The proposed Amendment is consistent with the policies in the General Plan and is
5 necessary in order to improve the accuracy of the Development Code and its standards and further
6 achieve internal consistency and consistency with the rest of the Concord Municipal Code.

7 c. The proposed Amendment would not be detrimental to the public interest, health,
8 safety, convenience, or welfare of the City.

9 8. The Planning Commission does hereby recommend that the City Council adopt an Ordinance
10 to approve the Amendment, consistent with the revisions in Attachment 1 hereto.

11 Effective Date

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

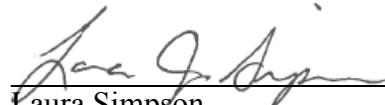
13
14 **PASSED AND ADOPTED** this 17th day of June, 2015 by the following vote:

15 **AYES:** Commissioners McGallian, Laub, Hoag

16 **NOES:** None

17 **ABSTAIN:** None

18 **ABSENT:** Commissioners Avila, Obringer

19 
20 _____
21 Laura Simpson
22 Secretary to the Planning Commission

23 Attachments:

24 1 – Amendment

25 2 – Addendum
26
27
28



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July 2, 2015

VIA EMAIL (CityCouncil@cityofconcord.org)

City of Concord Mayor and City Council
1950 Parkside Drive
Concord, CA 94519

RE: July 7th Council Hearing on City Initiated Amendment to WMX Zoning District

Honorable Mayor Grayson and Council,

Golden State Lumber (GSL) remains concerned about the timing and substance of the City-initiated text amendments to the WMX District affecting the Building Materials Sales and Service (BMS&S) use. GSL has a Zoning Clearance application pending for its property at 2180 Diamond Blvd.

This letter serves four purposes: (1) Summarize GSL's concerns; (2) Request accommodation for a sequence of separate speakers intending to address the Council on July 7th; (3) Introduce for your consideration letters which speak to the issues raised at the Planning Commission's hearing on June 17th; and (4) Offer a constructive alternative to the proposed reclassification of fully enclosed Building Materials Sales and Service uses as "conditional uses" in the WMX District.

GSL has been working through the Zoning Clearance process with City staff for more than a year to confirm that its project is in full compliance with all applicable standards for a BMS&S use. Fully enclosed in a state-of-the-art building with generous landscaping and amenities, the GSL use will enhance this West Concord mixed commercial district. We ask that you review the attached letter to the Planning Commission dated June 15th, along with its three attachments (Attachments 1-4), which outline GSL's objections to the City's contemplated reclassification of GSL from a "permitted" to a "conditional" or "prohibited" use.

Second, Council procedures limit the time allocated during these proceedings to three minutes per speaker. GSL has arranged for six individuals to address separate topics directly related to the proposed text amendment. We ask that they be allowed to speak in sequence.

Third, attached for your review are letters which are responsive to many of the comments aired at the Commission hearing (Attachments 5-8). The first three letters are from a City

Manager, Council Member and Economic Development Director in the Cities of Brisbane, Stockton and San Rafael. These public officials document the positive role of GSL over the past 20+ years to enhance the local business environments, strengthen employment, generate sales tax, and avoid any negative external influences such as the congregation of day laborers. The fourth letter is from the General Manager of Concord Toyota withdrawing his earlier objection to having GSL as a neighbor in the WMX District, on the basis of careful review of our building and operational plans. We urge you to review these testimonials.

Finally, after digesting the thoughtful comments made by the Planning Commissioners on June 17th, we have developed a recommended alternative to their motion. It was clear from the Commission's public deliberations that the primary concerns with certain existing and future uses in the WMX focus on: (a) The unsightliness of certain unenclosed operations (such as equipment storage yards and some semi-public uses); and (b) Noise, dust and other adverse external influences associated with uses which focus on fabrication and/or manufacturing operations involving raw materials, whether enclosed or not (such as cabinet shops). Conversely, the Commission clearly supported enclosed businesses with showrooms which sell a wide range of products to the general public, and wanted to avoid sending an anti-business message to the recovering market.

Attachment 9 presents an alternative text amendment which more precisely addresses the incompatible nature of certain uses in the WMX District (consistent with the Commission's comments). It eliminates the problems caused by imposing ambiguous Use Permit procedures that lack objective standards for judging or discriminating between one type of fully-conforming enclosed business and another. This approach will address the City's concerns while avoiding unnecessary obstacles for businesses looking to locate or expand in Concord – which we believe is the Council's goal.

Golden State Lumber looks forward to becoming a member of the Concord business community, and asks the Council not to adopt a use permit requirement that will apply to its fully compliant and compatible project.

Very truly yours,

ARCHER NORRIS

/s/ Edward L. Shaffer

Edward L. Shaffer

ELS
Attachments



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June 15, 2015

VIA EMAIL

City of Concord Planning Commission
Robert Hoag, Chair
1950 Parkside Drive
Concord, CA 94519

Re: July 17 Hearing on Proposed WMX Zoning Amendment (PL15132-DC):
Response to Staff Report

Honorable Commissioners:

The Commission has scheduled a hearing on July 17 to consider a zoning amendment that would remove three currently permitted uses from the West Concord Mixed Use (“WMX”) District, including “*Building Materials Sales and Service*.” You received in your packet three letters on behalf of Golden State Lumber (“GSL”) objecting to the amendment:

- Letter dated June 1, 2015 by Loewke Planning Associates, identifying existing businesses in the WMX District that will become nonconforming.
- Letter dated June 8, 2015 by Loewke Planning Associates evaluating GSL’s project and the proposed amendment.
- My letter dated June 10, 2015 challenging the claim that the amendment is needed, identifying other zoning use categories that should be treated the same way, and pointing out that CEQA study is needed before the City can decide whether to approve this amendment.

These letters were written before the staff report became available, so we did not know the reasons being cited or the environmental analysis being relied on. This letter addresses details in the staff report. We ask the Commission to consider the information in our four letters, and welcome questions at the July 17 hearing.

1. More CEQA Study is Needed.

As a threshold matter, the City cannot decide this matter until its environmental impacts have been properly evaluated under CEQA. The proposed Addendum attached to the staff report overlooks at least two significant topics. The Commission should require these issues to be studied first, so you fully understand the consequences of amending the zoning.

a. Blight. My letter and the two Loewke letters identified one key topic: whether making 20+ businesses in the WMX District nonconforming uses would lead to their closure, causing blighted conditions harming the surrounding community. Courts have found this to be a serious concern and have overturned City approvals that did not recognize, study and mitigate the problem to avoid impacts. Neither the draft Addendum nor the previous EIR documents consider this question. The staff report does not even acknowledge the issue.

b. Traffic. The staff report and Addendum imply there is a second impact that has not been recognized, regarding traffic. The staff report claims as a reason for the zoning amendment that *“a large volume of truck and vehicular traffic associated with pick up and delivery of building materials would occur”* (page 5). The Addendum notes that if the amendment is passed the affected uses *“may redistribute to other areas in the [city], and associated traffic would also redistribute”* (page 21). The Addendum improperly dismisses this as a concern, based on assuming that *“districts allowing these uses have planned for associated traffic”* and *“no change in impacts to the overall circulation would occur”* so the amendment *“would not introduce new impacts to traffic”* (page 21)

The WMX District sits between I-680 and SR-242, close to convenient highway entrances. This means that almost all truck deliveries and much of the other traffic generated by these businesses use the highways, limiting their intrusion into other areas. Forcing relocation of the existing businesses and pushing new businesses into areas further from the highways will send their traffic onto many more local streets throughout the city. If the staff concern is valid – that these businesses produce a large volume of truck and other traffic – then concern about the resulting traffic impact is reasonable and must be studied.

The Addendum indirectly tries to avoid this topic based on two false assumptions. First, it assumes that such traffic effects already have been studied for the districts where the uses still are allowed. However, by eliminating the WMX District the city will force a higher concentration of such “large truck volume” businesses into the few remaining eligible areas. There is no evidence that the higher concentration of uses and increased truck traffic have been properly studied.

Second, the Addendum dismisses the need to study this problem now by stating that future building materials uses in the other areas would be evaluated at the time they are proposed. CEQA does not allow the City to defer studies in this way, and it also prohibits relying on piecemeal study of individual projects to avoid recognizing their cumulative effects. At some level – even if on a general basis – the traffic effects of this zoning amendment must be considered now, so the Commission and City Council understands the consequences.

2. Staff Relies on Incorrect and Questionable Assumptions.

The staff report attempts to justify the amendment with a variety of claims and assumptions that do not stand up to scrutiny. We ask the Commission to question the basis and need for banning future uses like Golden State Lumber and making so many existing businesses nonconforming uses.

a. Uses are not “Industrial.” The staff report repeatedly refers to sales and service of building materials as “industrial” to justify the amendment. I suspect many of the 20+ companies listed in the July 1 Loewke letter would object to being called industrial, such as businesses selling paint, flooring, carpeting and bath or kitchen fixtures to the general public. They are no different than businesses selling other products, and must be judged on their merits.

b. Businesses do not look “Industrial.” The staff report claims that “[t]he visual appearance of building and accessory structures is typically of an industrial nature” (page 5). Again, I suspect the existing companies would object to this classification. The Design Review Board has approved Golden State Lumber’s design, which provides an attractive appearance.

c. Uses do not conduct outdoor activity. The staff report argues the amendment is needed to prevent outdoor activities such as “cutting of lumber, stone and masonry materials” that might generate noise or dust (page 5). There is no evidence that Golden State Lumber or any of the existing businesses engage in such activity. It is a simple matter to amend the Code to address this narrow concern, without a blanket prohibition on all building material businesses.

d. Truck and traffic volume are not legitimate reasons. The staff report relies on “a large volume of truck and vehicular traffic associated with pick up and delivery of materials” as a reason for the amendment (page 5). This certainly does not justify prohibiting an entire category of uses. Many other businesses generate traffic, including trucks delivering merchandise. In fact, the City encourages business to thrive and attract customers – which means more traffic. Some such as Big Box stores and auto dealers generate much more traffic than Golden State Lumber or the 20+ existing businesses.

e. Policies do not require the amendment. The General Plan designates a large portion of the City as “Central Concord”, which includes the downtown and all the area to the west, including the WMX District. The staff report quotes Policy LU-5.1.3 to justify the amendment: “Provide sites for professional, administrative, and headquarters space in Central Concord and other transit-oriented development (TOD) locations” (page 5). A careful reading of this and other “Central Concord” policies makes it apparent that their intent is to focus on the downtown area. For example, the WMX District is not a TOD location. Furthermore, applying these use restrictions throughout the Central Concord area would require prohibiting auto dealers, and all the commercial businesses along Willow Pass Road. We cannot believe that the City intended to apply these General Plan policies so narrowly.

The General Plan emphasizes promoting job generating land uses. Golden State Lumber will create new, well-paid jobs in Concord. We suspect the 20+ existing businesses also provide good pay and benefits to their workers. Employment-generation is not a basis for prohibiting an entire category of businesses.

f. Recognize effect on nonconforming businesses. The staff report recognizes that existing building material businesses will become nonconforming, and states that they will be allowed to continue operating but will not be allowed to “expand or enlarge their facilities” (page 3). As the July 1 Loewke letter explains, the effect on those businesses will be much more severe than staff admits. The Commission must understand the full nature of these effects.

Future activity by the 20+ nonconforming businesses may be challenged by neighbors, competitors or others seeking to restrict their operations.

- They cannot expand in size or capacity. “Capacity” may translate to altering their interior to handle more merchandise or other activity.
- They cannot “intensify” the use, which the Code describes as:
 - extending hours of operation,
 - increasing the number of employees,
 - increasing occupancy capacity,
 - increasing traffic volume,
 - increasing noise, and
 - requiring more parking.
- Multi-tenant complexes will be limited in replacing a use with another nonconforming use, restricting the owner’s ability to avoid vacancies.
- If a nonconforming use stops operating for more than a year, it cannot reopen and any future use of the property must change (which may happen during an economic downturn or other business problem).
- If the property is damaged (e.g., by fire or earthquake) and the cost of repairs exceeds 50 percent of the assessed value, the business cannot reopen and future uses must be conforming. Given that many commercial properties have relatively low assessed values because they haven’t been sold for a while, this may set a low ceiling on repair costs.
- Violations of the above restrictions are treated as a nuisance which the City is required to enforce – perhaps by closing the business.
- Potential buyers and lenders are likely to be discouraged if a business is subject to these nonconforming restrictions, harming an owner’s ability to sell and making loans more difficult or more expensive.

3. Amendment will Affect Other Businesses.

a. **Nonconforming status will apply to Home Depot.** While not stated in the report, we understand that staff believes the amendment won’t apply to Home Depot because it is a “Big Box” listed under “Retail Sales” in the Code. This is an artificial distinction that will not protect Home Depot from future efforts by competitors, neighbors or others to enforce the nonconforming use restrictions.

The City created “Big Box” as a separate category in order to require use permits for such uses versus small commercial businesses. They still must satisfy all other zoning standards and must be consistent with the General Plan. A large part of Home Depot’s merchandise and activity involves “Building Materials Sales and Services”, causing the same traffic and other effects as cited by the staff report. They even cut lumber for customers.

The staff report concludes that these types of product sales and services “*are incompatible with the surrounding hotel, restaurant and office uses*” (page 6). Courts require cities to follow consistent interpretation of their general plan and zoning, to avoid finding an abuse of discretion. Consistency and compatibility are judged based on the actual uses and activities involved, not the label put on them by the City. It will be challenging for Home Depot or the City to argue that this merchant deserves special treatment and can carry on business that the City has specifically found is not consistent with the General Plan.

b. **Amendment may affect Auto Dealers.** It can be argued that the reasons relied on by the staff report cited above also apply to auto dealers. Open service bays produce noise, odors, fumes, handling of hazardous materials – all “industrial” characteristics. They are supplied by auto carriers and large trucks delivering tires and other supplies. They generate substantial traffic. This type of activity appears “*incompatible with the surrounding hotel, restaurant and office uses.*” Auto dealerships also are not consistent with the General Plan policies for Central Concord cited by staff. After approving this amendment it will be difficult to explain why auto dealers should be treated differently.

Our four letters show that the amendment is not needed to satisfy General Plan consistency, is not justified based on Golden State Lumber’s proposed operations or those of existing businesses in the area, and will have unintended consequences for the City. We urge the Commission to recommend the amendment not be approved.

Very truly yours,

ARCHER NORRIS

/s/ Edward L. Shaffer

Edward L. Shaffer

ELS

cc: Mark Coon, City Attorney
Susanne Brown, Senior Assistant City Attorney
Victoria Walker, Community & Economic Development Director
Laura Simpson, Planning Manager
Andrew Mogensen, Principal Planner
Ryan Lenhardt, Senior Planner
Golden State Lumber representatives



June 1, 2015

Mr. Seth Nobmann
Golden State Lumber Company
855 Lakeville Street, Suite 200
Petaluma, CA 94952

SUBJECT: Proposed City of Concord Zoning Amendment Prohibiting Building Materials Sales & Service Uses in West Concord

Dear Mr. Nobmann

The City of Concord has proposed an amendment to its zoning ordinance which would prohibit "**Building Materials Sales and Service**" uses on properties in the West Concord Mixed Use (WMX) Zoning District. If enacted, this amendment would affect Golden State Lumber's planned facility at the corner of Burnett Avenue and Diamond Boulevard, as well as a substantial number of other existing similar businesses on nearby properties. As a zoning expert with 40 years of professional experience, I have reviewed the proposed prohibition of Building Materials Sales and Service uses in the WMX District in relationship to the City's current Non-Conforming Use Ordinance, and have reached the following conclusions.

1. **Types of Businesses Affected:** The City's contemplated prohibition of Building Materials and Service Uses in the WMX District would affect all existing and future uses covered by the definition contained in Section 18.20.020 of the Zoning Ordinance (attached), including any: "**indoor or outdoor establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plant and landscaping materials including rock, stone, and masonry products to the general public**", including "**stores with indoor service areas**".
2. **Businesses Reclassified as "Non-Conforming":** In addition to prohibiting similar future businesses (such as Golden State Lumber), the City's zoning amendment would reclassify all existing lawfully established Building Materials Sales and Service uses in the WMX Zoning District as "Non-Conforming". Section 18.530.020 of the Zoning Ordinance defines these uses to include any "**use of land and/or a structure that was legally established and has been maintained prior to the adoption or amendment of this development code, but the use is not allowed in the applicable zoning district**".
3. **Existing Businesses Affected:** The diagrams below identify (in pink color) those West Concord properties which are currently zoned "WMX", located generally south of Concord Avenue between Highways 242 and 680. Identified by number and name are the location of the twenty-three (23) existing Building Materials Sales and Service businesses, along with the planned Golden State Lumber business (total of 24 Building Materials Sales and Service businesses). Twenty-one (21) of these businesses are zoned WMX and would be affected by the City's proposal, while the remaining three (3) are zoned Service Commercial (and would not be affected).

4. **Prohibition on Expansion:** The Zoning Ordinance would prohibit any expansion of a Building Materials Sales and Service use in the WMX District if the proposed amendment is adopted. Section 18.530.030A.1 states that any non-confirming 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***”.
5. **Prohibition on Intensification:** The Zoning Ordinance would also prohibit any intensification of a Building Materials Sales and Service use in the WMX District if the proposed amendment is adopted. Section 18.530.030A.2 states that any non-confirming 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***”.
6. **Limitations Affecting Uses in Multi-Tenant Complexes:** The proposed WMX District amendment would severely limit the ability of owners of multi-tenant buildings in which Building Material Sales and Service uses now operate from finding new tenants. Section 18.530.030A.4 states that: “***Nonconforming uses within a multitenant commercial or industrial center or complex may be established or replaced by another similar nonconforming use when the planning division finds: (a) That the new nonconforming use is, as per Division II of this title, land use classification tables, a similar classification to or less intensive than the use previously allowed in the center or complex; (b) That the nonconforming use will not adversely affect or be materially detrimental to adjoining properties; and (c) That the use of the entire center or complex has not been vacant or discontinued for a period of one year or more.***”
7. **Prohibitions on Re-Occupancy of Vacant Buildings:** Under the proposed amendment, if an existing Building Materials Sales and Service use were to discontinue operation for one year, the building could not be used again for any similar use. Section 18.530.040A(1) states that: “***If the nonconforming use of land, a nonconforming use of a conforming structure, a conforming use of a nonconforming structure or use of nonconforming physical improvements is discontinued for a continuous period of 365 calendar days or more, all rights to legal nonconforming status shall terminate.***”
8. **Prohibition on Repair of Damaged Buildings:** The proposed amendment would also prohibit making repairs to any building containing a Building Materials Sales and Service use following a fire or other disaster where the cost of the repairs is substantial. Section 18.530.040B states that: “***Nonconforming status shall terminate if a nonconforming structure, conforming structure occupied by a nonconforming use or nonconforming physical improvements are involuntarily damaged or destroyed by earthquake, explosion, fire, or other calamity...where the cost of repairing or replacing the damaged portion of the nonconforming structure or physical improvements is greater than 50 percent of the assessed value immediately prior to the involuntary damage.***”

9. **City Declaration of Nuisance and Forced Eviction:** The City's proposed prohibition of Building Materials Sales and Service uses in the WMX District would result in these businesses being declared "Nuisances" and being forced to cease operations if any of the above new limitations are not complied with. Section 18.530.070 states that: "***The provisions of this chapter do not allow, and shall not be interpreted to allow, the continuance of a use, structure or physical improvement which is deemed a public nuisance, or which is prohibited or otherwise made unlawful, in whole or in part, by the municipal code. In the event that a nonconforming use, structure or physical improvement is found to constitute a public nuisance, appropriate action shall be taken by the city in compliance with the municipal code. Any violation of the development code can be deemed to be evidence of a public nuisance.***"

10. **Limitations on Sale or Lease of Existing Buildings:** While the City does not have the authority to directly interfere with the private sale or lease of property, the proposed amendment would provide notice to buyers and lenders that Building Materials Sales and Service uses are no longer allowed in the WMX District. Therefore, the buyer or the loan underwriter for acquisition of an existing Building Materials Sales and Service use would be made aware of the foregoing prohibitions. The natural interpretation of this Zoning Ordinance amendment would be to ***discount the value of the property and to impose less favorable conditions on financing for acquisition*** (such as higher interest rates and use limitations).

Conclusions

It is my conclusion that the above effects would occur following adoption of the City's contemplated amendments to the WMX Zoning District. However, in order to adopt the proposed ordinance amendment prohibiting Building Materials and Sales uses, the City must first hold public hearings before its Planning Commission and City Council. In addition, pursuant to the California Government Code, the City Council would need to make the finding that the proposed WMX District amendments serve an important public purpose, and that the amendments are consistent with the Concord General Plan.

In addition, the California Environmental Quality Act (CEQA) requires that before considering such an ordinance, the City must conduct an environmental review of the potential significant effects of forced closure and sustained vacancies of the numerous older, large buildings now housing Building Materials Sales and Service uses within the WMX District.

The Concord 2030 General Plan was updated in 2012. The General Plan's policy for land uses in the West Concord Mixed Use area reads as follows: "***This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom / warehouses.***"

The Development Code regulations in the City's Zoning Ordinance were also adopted in 2012. Section 18.45.010 of the Zoning Ordinance, which established the WMX Zoning District, was subsequently adopted in 2014 (Ordinance No. 14-3). It contains the specific finding that the WMX Zoning District, which currently allows Building Materials Sales and Service uses by right, is: "**consistent with and implements the West Concord mixed-use (WCMU) land use designation of the general plan.**"

Last year, the City adopted a finding of consistency between the WMX Zoning regulations allowing Building Materials Sales and Service uses and the General Plan. It is therefore clear that the currently proposed changes to prohibit these same Building Materials Sales and Service uses may be inconsistent with the General Plan and would clearly affect a number of existing and proposed businesses. Therefore, in my professional opinion, before considering this Zoning Ordinance Amendment, the City should first: (1) **Conduct a full analysis pursuant to CEQA**; (2) Concurrently **consider the necessary amendments to the Concord General Plan to maintain consistency between the General Plan and Zoning**; and (3) **Consider whether a true important public purpose would be served** by this amendment in light of the resulting indirect loss of revenues to the City, and the direct harm caused to individual businesses now operating in or planning to build or expand within the WMX District.

Sincerely,



Richard T. Loewke, AICP

- Attachments: 1. Zoning Section 18.20.020 Use Classifications
2. Ordinance No. 14-8, WMX District
3. Zoning Code Chapter 18.530, Non-Confirming Uses

Chapter 18.20 GENERAL TERMS

Sections:

Article I. Use Classifications

[18.20.010](#) Purpose and applicability.

[18.20.020](#) Use classifications.

Article II. Definitions

[18.20.030](#) Definitions.

Article I. Use Classifications

18.20.010 Purpose and applicability.

Use classifications describe one or more uses of land having similar characteristics but do not list every use or activity that may appropriately be within the classification. If a particular [land use](#) is identified as an example of one category but exhibits the characteristics of another, the [use](#) shall be categorized under the latter.

The planning division shall make the determination as to whether a specific [use](#) is included or not included within a classification based on the characteristics of the [use](#). A specific [use](#) shall not be deemed to be within a classification whether or not named within the classifications if its characteristics are substantially incompatible with those of the typical [uses](#) named within the classification. [Ord. 12-4. DC 2012 § 122-1579].

18.20.020 Use classifications.

“Adult day care center” means a state-licensed facility that provides nonmedical care and supervision for dependent adult clients for periods of less than 24 hours for any client.

“Adult-oriented business” means an [establishment](#) that (A) operates as an [adult arcade](#), [adult bookstore](#), adult novelty store, adult video store, [adult cabaret](#), [adult motel](#), [adult motion picture theater](#), [adult theater](#), [escort agency](#), adult modeling studio; (B) sells or distributes or offers for sale or distribution sexually oriented merchandise or sexually oriented materials; or (C) any other [establishment](#) which offers products, merchandise, services, or entertainment characterized by an emphasis on matters depicting, describing, or relating to [specified sexual activities](#) or [specified anatomical areas](#).

This classification does not include [uses](#) or activities whose regulation is preempted by [state](#) law. This classification applies to all [establishments](#) that provide materials, products, merchandise, services, entertainment, or performances characterized by an emphasis on matters depicting, describing, or relating to [specified sexual activities](#) or [specified anatomical areas](#) when one or more of the following conditions exist:

A. The area devoted to adult merchandise and/or sexually oriented material exceeds more than 20 percent of the total display or floor space area open to the public.

B. The [establishment](#) presents any type of live entertainment characterized by an emphasis on specified sexual activity or [specified anatomical areas](#).

C. The business consists of or involves the sale, trade, display, or presentation of services, products, or entertainment characterized by an emphasis on matter depicting, describing, or relating to [specified sexual activities](#) or [specified anatomical areas](#).

“Airport” means a facility for aircraft take-off and [landing](#) with a runway, helipad, or water surface which also may include support operations, fueling and maintenance facilities, aircraft [storage](#) buildings, public terminals, parking, incidental retail sales, and food services related to airport operations.

“Ambulance service” means a base facility where [emergency](#) vehicles are stored until dispatched, and/or a facility, other than a hospital or fire department, where ambulance vehicles and crews stand by for [emergency](#) calls. This classification may include residential accommodations for [emergency](#) personnel.

Animal Services.

“Boarding, kennel” means a commercial [establishment](#) that provides overnight boarding for [household pets](#) as a paid service and/or breeding services. This classification does not include [animal](#) hospitals that provide 24-hour accommodations for [animals](#) receiving medical services. (See also “Hospital, veterinary clinic” under “Animal Services.”)

“Dog day care, dog training” means a commercial [establishment](#) that provides less than 24-hour keeping, boarding, or training for [household pets](#) as a paid service. This classification does not include facilities that provide overnight accommodations.

“Grooming” means a commercial [establishment](#) that provides [household pet](#) grooming services with no boarding services.

“Hospital, veterinary clinic” means office and indoor medical treatment facilities used by veterinarians, including large and small [animal](#) veterinary clinics, and [animal](#) hospitals. (See also “Boarding, kennel” under “Animal Services.”)

Antennas. (See “Wireless telecommunication facility.”)

“Antique, collectible stores” means a retail [establishment](#) that sells antiques, curios, gifts and souvenirs, and collectible items including sports cards and comic books. This classification does not include stores selling other types of secondhand items, including clothing, [household](#) items, or furniture, including consignment stores or pawn shops. (See “Restricted” under “Retail Sales.”)

Artisan/Custom Product. (See “Manufacturing, [processing](#).”)

Automobile Sales and Rental/Leasing.

“Auction” means a facility that sells new or used automobiles and other vehicles through a bidding process.

“Brokers” means an [establishment](#) engaged in arranging, negotiating, and assisting in the sale of new or used vehicles (not owned by the broker) by acting as an agent of the buyer, seller, or both, including the following:

A. "Office only" means automobile brokers operating within an enclosed office [building](#) with no vehicle display area.

B. "Office with vehicle display" means automobile brokers operating within an enclosed office [building](#) with an indoor or outdoor vehicle display area.

"Dealership" means an [establishment](#) that sells or leases automobiles, motorcycles, trucks for personal [use](#), and vans.

A. "New" means sales or leasing of new automobiles and trucks by new car dealers, including previously owned automobiles, and sales of parts and accessories, [storage](#), and incidental maintenance and repair.

B. "Used" means sales or leasing of previously owned automobiles and trucks by car dealers not affiliated with new car manufacturers.

C. "Motorcycles" means sales of motorcycles or similar vehicles such as motor scooters, mini-bikes, and all-terrain vehicles including repair and sales of parts and accessories as an incidental [use](#).

"Rental" means a facility that rents automobiles, trucks and other passenger vehicles used primarily for personal or business travel. U-haul rentals, large commercial trucks and related vehicles are listed elsewhere under the classification "vehicle and equipment facilities."

Automobile Services and Repair.

"Car wash, attended" means a commercial facility for washing cars where a service attendant washes the vehicle using on-site equipment or the car [operator](#) drives through an automated car washing and drying facility. An [owner](#) or his representative is on location to participate in the operation of the facility.

"Car wash, unattended" means a commercial facility where the car [operator](#) uses water hoses, soap dispensers, drying and other on-site equipment to wash the vehicle with no facility [owner](#) or representative present during the washing. For example, the customer feeds coins into a machine in order to operate the hoses and drying vacuums for a set period of time.

"Gas [station](#)" means a commercial facility that sells gasoline and/or diesel fuel for the on-site fueling of individual vehicles and may include a small mini-mart, minor maintenance/repair facilities and services, and unattended car wash as incidental [uses](#). This classification does not include vehicle or truck rentals such as U-haul rentals or fleet services. (See "Vehicle and Equipment Facilities.")

"Maintenance services" means an [establishment](#) that provides maintenance services as opposed to repair while customers wait, such as oil changes, tune-ups, smog checks, tire sales and installation, auto radio/electronics installation, auto air conditioning/heater service, and the sale of related parts and accessories. There is no overnight [storage](#) and most work is performed within a [building](#) or under covered bays.

"Major repair/body work" means an [establishment](#) that provides major repair that may require vehicles to be stored on an overnight basis such as body and fender work, vehicle painting, transmission shops, exhaust and suspension systems, engine overhauls involving the removal of engine [blocks](#), painting and undercoating, glass replacement, upholstery and convertible top

service, radiator, transmission, and wheel and axle repair. This classification does not include vehicle dismantling or salvaging and tire retreading or recapping.

“Minor repair” means an [establishment](#) that provides repair, service, [alteration](#), restoration, painting, cleaning, or maintenance of automobiles, light-duty trucks, motorcycles, including the sale, installation, and servicing of parts, where repairs are made or service provided in enclosed bays. Activities could include auto detail or brake and muffler work.

This classification does not include automobile repair when incidental to a new car dealership (see “Dealership” under “Automobile Sales and Rental/Leasing”), and dismantling and salvage yards (see “Automobile wrecking, dismantling yard”), or repair of heavy trucks, construction vehicles, motor homes, and recreational vehicles (see “Heavy vehicle and large equipment, sales/rental, service, and repair” under “Vehicle and Equipment Facilities”).

“Automobile wrecking, dismantling yard” means an [establishment](#) primarily engaged in assembling, breaking up, sorting, and the temporary [storage](#) and distribution of recyclable or reusable scrap and waste materials, including auto wreckers engaged in dismantling automobiles for scrap, or the [storage](#) of, sale or dumping of, dismantled, partly dismantled, obsolete or wrecked vehicles or their parts and the incidental wholesale or retail sales of parts from those vehicles. This classification does not include recycling [processing](#) facilities. (See “Processing facility” under “Recycling Facilities.”)

Banks and Financial Services.

“Bank, credit union” means a financial institution that provides retail banking services. Examples include institutions engaged in the on-site circulation of money, including credit unions. This classification does not include check cashing businesses.

“Bank with drive-through service” means a facility where banking services may be obtained by motorists without leaving their vehicles.

“Check cashing business” means an [establishment](#) that provides compensation for checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. This classification also includes [establishments](#) offering deferred deposits, whereby the check casher refrains from depositing a personal check written by a customer until a specific date pursuant to a written agreement as provided in California Civil Code Section [1789.33](#).

This classification does not include [state](#) or federally chartered banks, savings associations, credit unions, or industrial loan companies and retail sellers that cash checks or issue money orders incidental to the main business.

“Bed and breakfast inn” means a residential facility with one or more bedrooms, rented for overnight lodging, where meals may be provided from a single [kitchen](#) for lodgers and residents only.

“Building materials sales and services” means an indoor or outdoor [establishment](#) selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other [building](#) materials, plants and [landscaping](#) materials including rock, stone, and masonry products to the general public. Includes stores with indoor service areas. [Establishments](#) primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in “Wholesaling, distribution.” Does not include large format retail home stores in [buildings](#) over 80,000 square feet (see “Big box” under “Retail Sales”), nor show room

stores with contractor sales and assembly, which are classified as “Warehouse show room with assembly and sales” under “Manufacturing, [processing](#).”

With [Outdoor Storage](#).

“Business support services” means an [establishment](#) that provides goods and services to the general public, as well as to other businesses. Examples include:

- A. Graphics, and advertising services.
- B. Bookkeeping.
- C. Computer-related services.
- D. Copying and blueprint services.
- E. Mailboxes.
- F. Office equipment rental and leasing.
- G. Publishing services.
- H. Secretarial, word [processing](#) and temporary clerical services.
- I. Shipping and mailing services.

This classification does not include professional, executive, or management services. (See “Professional” under “Offices.”)

“Catering service” means a business that prepares food for consumption on the [premises](#) of a client or at any other location separate from where the food was prepared.

“Cemetery, columbarium, mausoleum” means an [establishment](#) that provides land or [structures](#) for the burial of the deceased and/or their cremated remains. This classification excludes crematoriums and mortuaries. (See “Funeral parlor, mortuary.”)

“Child day care” means facilities that provide nonmedical care and supervision of minor children for periods of less than 24 hours. These facilities, all of which are required to be licensed by the California [State](#) Department of Social Services, include the following:

“Family day care home,” as defined by Health and Safety Code Section [1596.78](#), means a home that regularly provides care, protection, and supervision for 14 or fewer children in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, including the following:

- A. Small. A day care facility in a [single-family dwelling](#) where an occupant of the residence provides childcare for six or fewer children under the age of six or up to eight children when two of the children are at least six years of age, including children under the age of 10 years who reside at the residence.
- B. Large. A day care facility in a [single-family dwelling](#) where an occupant of the residence provides childcare for seven to 12 children under the age of six or up to 14 children when two of the children

ORDINANCE NO. 14-3

AN ORDINANCE AMENDING THE CONCORD MUNICIPAL CODE BY ADOPTING AMENDMENTS TO THE 2012 DEVELOPMENT CODE; VOLUME 1, DATED JULY 24, 2012 (FORMERLY CHAPTER 122 (ZONING) OF THE CONCORD MUNICIPAL CODE) ARTICLE II (ZONING DISTRICTS – USES AND STANDARDS), DIVISION 5 (DOWNTOWN DISTRICTS - DP, DMX, AND WMX), SECTION 122-153 (PURPOSE), SUBSECTION (C) (WMX – WEST CONCORD MIXED USE) AND TABLE 122-154.1 FOR CONSISTENCY

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

Section 1. 2012 Development Code, Article II (Zoning Districts Uses and Standards), Division 5 (Downtown Districts - DP, DMX, and WMX), Section 122-153 (Purpose), Subsection (c) WMX – West Concord Mixed Use) is hereby amended to read as follows:

(c) WMX – West Concord Mixed Use. The WMX District is 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. 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.

Section 2. 2012 Development Code, Article II (Zoning Districts Uses and Standards), Division 5 (Downtown Districts - DP, DMX, and WMX), Table 122-154.1 (Downtown Districts – Allowed Uses and Permit Requirements), Public/Quasi –Public and Recreational Uses, Land Use Classifications – Schools is hereby amended as follows:

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Table 122-154.1 Downtown Districts 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
	DP	DMX	WMX	
Public/Quasi-Public and Recreational Uses				
Schools				
Elementary, Middle, Secondary	UP ⁽¹⁾	UP	UP	

Section 3. This Ordinance No. 14-3 shall become effective thirty (30) days following its passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption, including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney’s Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance and once within fifteen (15) days after its passage and adoption, including the vote of the Councilmembers, in the Contra Costa Times, a newspaper of general circulation in the City of Concord.

Timothy S. Grayson
Mayor

ATTEST:

Mary Rae Lehman, CMC
City Clerk

(Seal)

1 Ordinance No. 14-3 was duly and regularly introduced at a regular meeting of the City Council
2 of the City of Concord held on March 11, 2014, and was thereafter duly and regularly passed and
3 adopted at a regular meeting of the City Council of the City of Concord on March 25, 2014, by the
4 following vote:

5 **AYES:** Councilmembers -

6 **NOES:** Councilmembers -

7 **ABSTAIN:** Councilmembers -

8 **ABSENT:** Councilmembers -

9 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and
10 regularly introduced, passed, and adopted by the City Council of the City of Concord, California.
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Mary Rae Lehman, CMC
14 City Clerk
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Chapter 18.530 NONCONFORMING USES, STRUCTURES, AND PARCELS

Sections:

- [18.530.010](#) Purpose.
- [18.530.020](#) Applicability.
- [18.530.030](#) Nonconforming uses and nonconforming structures.
- [18.530.040](#) Loss of nonconforming status.
- [18.530.050](#) Nonconforming parcels.
- [18.530.060](#) Exemptions.
- [18.530.070](#) Nuisance abatement and enforcement.

18.530.010 Purpose.

A. This chapter provides regulations for nonconforming [uses](#), [structures](#), and parcels that were lawful before the adoption or amendment of the [development](#) code, but which would be prohibited, regulated, or restricted differently under the terms of this title or future amendments.

B. It is the intent of the [city](#) to discourage the long-term continuance of nonconformities, providing for their eventual elimination, while allowing them to continue to exist under the conditions identified in this chapter.

C. This chapter does not regulate [nonconforming signs](#) which are subject to the requirements in CDC [18.180.150](#) (Nonconforming and [abandoned](#) signs), or nonconforming parking, subject to the requirements in CDC [18.160.040](#)(F) (Nonconforming Parking).

D. Any [use](#) or [structure](#) which was established or constructed in violation of the applicable zoning regulations in effect at the time of [establishment](#) or construction and which does not conform to the applicable regulations of this [development](#) code is not a nonconforming [use](#) or [structure](#), and the [use](#) or [structure](#) is in violation of this [development](#) code. [Ord. 12-4. DC 2012 § 122-1316].

18.530.020 Applicability.

Nonconforming [uses](#), [structures](#), and parcels may be continued, transferred, or sold only in compliance with the provisions of this chapter.

A. **Nonconforming Uses.** A [use](#) of land and/or a [structure](#) that was legally established and has been maintained prior to the adoption or amendment of this [development](#) code, but the [use](#) is not allowed in the applicable zoning [district](#) or the [use](#) has not been granted a permit(s) required by the applicable zoning [district](#), or the [use](#) is not operated in conformance with applicable performance standards in the [development](#) code.

B. **Nonconforming Structures.** A [structure](#) that was legally constructed prior to the adoption or amendment of this [development](#) code or the [city](#)'s adopted design guidelines, but does not conform to the [development](#) standards in Division II of this title (Zoning [Districts](#) – [Uses](#) and Standards) with the exception of minimum [floor area ratio](#) (FAR).

C. **Nonconforming Parcels/Lots.** A parcel that was legally created prior to the adoption or amendment of this [development](#) code, but does not comply with the current requirements for [lot area](#), width, depth, or

other applicable requirements of this [development](#) code. [Ord. 12-4. DC 2012 § 122-1317].

18.530.030 Nonconforming uses and nonconforming structures.

A nonconforming [use](#) and/or a nonconforming [use](#) of a [structure](#) may continue to exist, including transfers of ownership; provided, that their continuation shall comply with the requirements of this section.

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.
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.
3. The [use](#) may be replaced with another nonconforming [use](#) of a similar classification or a less intensive [use](#) in compliance with subsection (A)(2) of this section.
4. Nonconforming [uses](#) within a multi-tenant commercial or industrial center or complex may be established or replaced by another similar nonconforming [use](#) when the planning division finds:
 - a. That the new nonconforming [use](#) is, as per Division II of this title, [land use](#) classification tables, a similar classification to or less intensive than the [use](#) previously allowed in the center or complex;
 - b. That the nonconforming [use](#) will not adversely affect or be materially detrimental to adjoining properties; and
 - c. That the [use](#) of the entire center or complex has not been vacant or discontinued for a period of one year or more.
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.
6. A [use](#) lawfully existing without a minor [use](#) permit or [use](#) permit that would be required by the [development](#) code to have such a [permit](#) approval in compliance with Division II of this title shall be allowed to operate to the extent that it previously operated (e.g., maintains the same [site](#) area boundaries, hours of operation, etc.) and shall be deemed nonconforming.

B. [Nonconforming Structures](#). A [nonconforming structure](#) may be expanded, enlarged, repaired and maintained as follows:

1. Expansion and Enlargement. [Nonconforming structures](#) may be enlarged or extended to occupy a greater area of land or [building](#) floor area; provided, that any expansion or enlargement complies with all applicable requirements of this [development](#) code and does not increase the degree of nonconformity.
2. Repair, Maintenance and Additional Improvements. A nonconforming [single-family dwelling](#) or duplex may be maintained and repaired at the discretion of the [owner](#). Nonconforming multifamily

and nonresidential [structures](#) may be maintained, repaired and improved as follows:

a. Repairs, Maintenance and Additional Improvements up to 50 Percent of the Value of the [Structure](#).

i. No [structural alterations](#) are allowed except as set forth in subsection (B)(3) of this section, Seismic Retrofitting, [Building](#) and Fire Code Compliance.

ii. The cost of the work done during any 12-month period shall not exceed 50 percent of the value of the [structure](#) as determined by the [building](#) official in compliance with the [building](#) code.

b. Repairs, Maintenance and Additional Improvements Greater Than 50 Percent of the Value of the [Structure](#). Repairs, maintenance and additional improvements performed within a 12-month period, having a total cost greater than 50 percent of the value of the [structure](#), may be authorized through a minor [use](#) permit [approval](#); provided, that the [review authority](#) finds that the work will be a benefit to the [city](#) and the surrounding area.

3. Seismic Retrofitting, [Building](#) and Fire Code Compliance. Repairs, [alterations](#) or reconstruction to reinforce unreinforced masonry [structures](#) necessary to comply with [building](#) code and fire code requirements shall be allowed; provided, that the work is exclusively to comply with applicable earthquake safety standards and the [building](#) code and fire code.

4. For purposes of this subsection, the cost of any required foundation work shall not be counted within the 50 percent limitation. [Ord. 12-4. DC 2012 § 122-1318].

18.530.040 Loss of nonconforming status.

The nonconforming status of a [use](#), [structure](#) or physical improvements shall terminate under the following conditions:

A. Discontinuance.

1. If the nonconforming [use](#) of land, a nonconforming [use](#) of a conforming [structure](#), a conforming [use](#) of a [nonconforming structure](#) or [use](#) of nonconforming physical improvements is discontinued for a continuous period of 365 calendar days or more, all rights to legal nonconforming status shall terminate.

2. The planning division shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, [structures](#), or other components of the nonconformity, disconnected or discontinued utilities, or no business receipts or records to document continued operation.

3. Without further action by the [city](#), any further [use](#) of the land, [structure](#) or physical improvements shall comply with all of the regulations of the applicable zoning [district](#) and all other applicable provisions of this [development](#) code and city-adopted design guidelines.

B. Destruction. Nonconforming status shall terminate if a [nonconforming structure](#), conforming [structure](#) occupied by a nonconforming [use](#) or nonconforming physical improvements are involuntarily damaged or destroyed by earthquake, explosion, fire, or other calamity, except for single-family, duplex and

multifamily [structures](#) as provided by CDC [18.530.060](#)(B), except as follows:

1. Less Than 50 Percent. If the cost of repairing or replacing the damaged portion of the [nonconforming structure](#) or physical improvements is 50 percent or less of the [assessed value](#) immediately before the involuntary damage, the [structure](#) or physical improvements may be restored to the same size, and the [use](#) continued as before; provided, that [permits](#) have been obtained and the restoration work is started within 180 days of the date of the damage, and the work is continuously pursued to completion within 12 months from the date [building](#) permits were issued.
2. Greater Than 50 Percent. If the cost of repairing or replacing the damaged portion of the [nonconforming structure](#) or physical improvements is greater than 50 percent of the [assessed value](#) immediately prior to the involuntary damage, neither the [structure](#) nor the physical improvement shall be reconstructed, repaired, or restored, except in conformity with the requirements of the applicable zoning [district](#). [Ord. 12-4. DC 2012 § 122-1319].

18.530.050 Nonconforming parcels.

A. Legal [Building](#) Site. A nonconforming parcel that does not comply with the applicable area, width, or depth requirements of the [development](#) code shall be considered a legal [building](#) site if it meets at least one of the following criteria, as documented to the satisfaction of the planning division with evidence furnished by the [applicant](#).

1. Approved [Subdivision](#). The parcel was created by a recorded [subdivision](#);
2. Individual Parcel Legally Created By Deed. The parcel is under one ownership and of record, and was legally created by a recorded deed before the [effective date](#) of the zoning amendment that made the parcel nonconforming;
3. [Variance](#) or [Lot Line](#) Adjustment. The parcel was approved through a [variance](#) procedure or resulted from a [lot line](#) adjustment; or
4. Partial Government Acquisition. The parcel was created in compliance with the provisions of this [development](#) code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size is decreased not more than 20 percent and the yard facing a [public right-of-way](#) was decreased not more than 50 percent.

B. [Subdivision](#) or [Lot Line](#) Adjustment.

1. No [subdivision](#) or [lot line](#) adjustment shall be approved that would increase the nonconformity of an existing parcel.
2. No [subdivision](#) or [lot line](#) adjustment shall be approved for a parcel that contains a nonconforming [use](#) on the parcel. [Ord. 12-4. DC 2012 § 122-1320].

18.530.060 Exemptions.

A. Historic [Structures](#). [Nonconforming structures](#) of historical significance may be altered or enlarged without conforming to the zoning [district](#) requirements, provided the historic [structure](#) is:

1. Designated by the [city](#) as an historic [site](#) or [structure](#) as listed in the [general plan](#);

2. Designated as a California [State Historic Landmark](#) or a National Register [Site](#); and
3. Proposed to be altered or enlarged in such a way that once completed the entire [structure](#) represents an authentic replica of the original [structure](#).

B. Nonconforming Residential [Structures](#).

1. Nonconforming single-family, duplex and multifamily [dwelling](#) units that have been involuntarily damaged or destroyed by earthquake, explosion, fire, flood, wind, riot, war, or other calamity, may be reconstructed or replaced with a new [structure](#) using the same [development](#) standards applied to the damaged or destroyed [structure](#) (e.g., [building](#) footprint, [building](#) height, density standards, number of [dwelling](#) units, [setbacks](#), and square footage), provided:

- a. The [applicant](#) provides sufficient documentation supporting the claim that the damage or destruction occurred involuntarily;
- b. There is no expansion of the gross [floor area](#) or number of [dwelling](#) units;
- c. The replacement [structure](#) complies with the [building](#) code, and will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the immediate vicinity of the replacement [structure](#); and
- d. A [building](#) permit is issued no later than 12 months after the date of destruction, and construction is diligently pursued to completion.

2. If the preceding requirements are not met, the replacement [structure](#) shall comply with all of the regulations of the applicable zoning [district](#) in effect on the date of application for a [building](#) permit.

C. Nonconforming Upon Annexation. Nonconforming [uses](#), [structures](#), and/or physical improvements which lawfully exist on the date the property is annexed to the [city](#), and which do not conform to this [development](#) code and the [city](#)'s adopted design guidelines, may continue to exist and, upon annexation, shall be deemed nonconforming and subject to the provisions of this chapter.

D. Approved [Uses](#), [Structures](#) and Physical Improvements Not Yet Established or Constructed.

1. A [use](#), [structure](#) or physical improvements for which a planning or [building](#) permit was approved and issued, but not yet established or construction completed before the [effective date](#) of the ordinance codified in this title, may be completed, provided the work is diligently pursued to completion.
2. If upon [establishment](#) or completion, a [use](#), [structure](#) or physical improvements, referenced in subsection (D)(1) of this section, or parts thereof, are not in compliance with this [development](#) code, they shall be deemed to be nonconforming and shall thereafter be subject to the provisions of this chapter.
3. For the purpose of this section, the provisions of Chapter [18.505](#) CDC (Permit Implementation, Time Limits, Extensions, and Amendments) shall govern the determination of whether the [permit](#) has been exercised in a timely manner.

E. [Floor Area Ratio](#) (FAR) of Existing [Development](#). At the time of adoption of this [development](#) code,

existing [development](#) that does not meet the minimum [FAR](#) standards shall not be classified as nonconforming. [Ord. 12-4. DC 2012 § 122-1321].

18.530.070 Nuisance abatement and enforcement.

A. Violations. [Uses](#), [structures](#) and physical improvements which do not comply with the applicable provisions of this [development](#) code when established are violations of this [development](#) code and are subject to the regulations of the municipal code.

B. Continuance of Public Nuisances Prohibited. The provisions of this chapter do not allow, and shall not be interpreted to allow, the continuance of a [use](#), [structure](#) or physical improvement which is deemed a public nuisance, or which is prohibited or otherwise made unlawful, in whole or in part, by the municipal code (including the [building](#) code and fire code) or by laws enacted by the [state](#) or federal government which are applicable to the [city](#).

C. Enforcement. In the event that a nonconforming [use](#), [structure](#) or physical improvement is found to constitute a public nuisance, appropriate action shall be taken by the [city](#) in compliance with the municipal code. Any violation of the [development](#) code can be deemed to be evidence of a public nuisance. [Ord. 12-4. DC 2012 § 122-1322].

The Concord Municipal Code is current through Ordinance 15-3, passed March 28, 2015.

Disclaimer: The City Clerk's Office has the official version of the Concord Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.



June 8, 2015

Mr. Seth Nobmann
Golden State Lumber Company
855 Lakeville Street, Suite 200
Petaluma, CA 94952

SUBJECT: Issues Raised in Connection with the Application by Golden State Lumber for a Determination of Zoning Consistency in the City of Concord, California

Dear Mr. Nobmann,

Following is a summary of the several issues identified in our review of the application process and procedures used by the City for review of the Golden State Lumber (GSL) application:

- 1. Is GSL a “Building Materials Sales and Service Use”?** Yes. Section 18.20.030 of the Municipal Code contains the definitions used in interpreting and implementing the City’s Development Code (zoning ordinance). It defines Building Materials and Service as *“an indoor or outdoor establishment selling cabinetry, fixtures, flooring, **glass, lumber, paint, wallpaper, and other building materials**, plants and landscaping materials including rock, stone, and masonry products to the general public. Includes stores with **indoor, service areas**. Establishments primarily selling electrical, plumbing, heating, and air conditioning, equipment and supplies are classified in ‘Wholesaling, distribution.’ Does not include large format retail home stores in buildings over 80,000 square feet (see ‘Big box’ under ‘Retail Sales’), nor show room stores with contractor sales and assembly, which are classified as ‘Warehouse show room with assembly and sales’ under ‘Manufacturing, processing’* (emphasis added). GSL meets the “Building Materials Sales and Service” definition because it is a commercial use that primarily sells windows, lumber and other building materials such as hardware to the general public, has an indoor service area, does not provide any of the products meeting the definition of “wholesaling, distribution”, is not a retail home store of over 80,000 square feet (Big Box), and does not provide contractor sales and assembly. GSL is in the same zoning category, and must therefore be treated the same as other building materials sales and service uses focusing on carpet, wood flooring, tile, appliances, paint, granite and marble, kitchen materials, cabinetry, doors and windows, hardware, wall coverings, etc.
- 2. Is the GSL use Permitted by Right in WMX District?** Yes. The site at the southeast corner of Burnett Avenue and Diamond Boulevard is zoned WMX (West Concord Mixed Use District). Code Section 18.45.020 contains Table 18.45.020 which distinguishes between: (a) Uses that are “Permitted” subject to verification of compliance with applicable development standards through the ministerial Zoning Clearance process; (b) Uses that require either a discretionary “Administrative Permit”; (c) Conditional uses that may only be authorized by either a discretionary “Minor Use Permit” or discretionary full “Use Permit”; and (d) Uses that are “Prohibited” in the WMX District. The table lists “Building Materials Sales and Services” uses with no outside storage as being “Permitted”, subject only to Zoning Clearance. Because GSL provides no outside storage, Table 18.45.020 identifies it as allowed by right in this zoning district. The Zoning Clearance process serves the sole purpose of verifying compliance with the development standards of the WMX District.

3. **Is Zoning Clearance a discretionary entitlement process?** No. Section 18.45.030 establishes the building height, floor area ratio, setback, parking and other development standards applicable to the Downtown Districts including WMX, which Building Materials Sales and Service uses such as GSL must comply with. Section 18.25.030 outlines the basis for the staff's determination of whether a use is allowed in any zoning district, including WMX; it states that any use identified as allowable in Table 18.45.020 "*may be established on any parcel within that district, subject to the planning permit requirements of subsection (B) of this section and compliance with all applicable requirements of the development code.*" Thus Section 18.45.030 establishes an absolute right for GSL to locate in the WMX District, subject only to verification of compliance with code requirements through a staff-level administrative verification process. As identified in Table 18.45.020, the applicable development standard verification process for GSL is the Zoning Clearance process. Sub-Section B.1 of 18.25.030 states defines the Zoning Clearance process as follows: "*Use is permitted subject to compliance with all applicable provisions of the development code, subject to obtaining a zoning clearance (Chapter 18.410 CDC), and shown as "ZC" in the tables. A zoning clearance is a stamp, signature, or other official notation on approved plans, business license or similar.*" Because Building Materials Sales and Service uses like GSL are listed by name in Table 18.45.020, a staff-level determination of "similar and compatible" under Sub-Section A.3 is not required. Thus the Zoning Clearance process applicable to GSL consists of a staff-level stamp, signature or notation on plans documenting that the proposed improvements are in compliance with the applicable development standards of Section 18.45.030.

The California Environmental Quality Act (CEQA) Guidelines provide in Section 15268 that "ministerial" projects "*are exempt from the requirements of CEQA*". It lists as examples of ministerial projects, the issuance of building permits and business licenses. Section 15002(i) of the CEQA Guidelines define "ministerial" as follows: "*Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called 'ministerial', and CEQA does not apply.*" Conversely, CEQA distinguishes between ministerial projects which require no discretionary judgment, such as the permitted GSL use, and "discretionary" projects as defined in Section 15357 as follows: "*Discretionary project' means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.*" Therefore, as stated in the CEQA Guidelines, since the Zoning Clearance process applicable to permitted Building Materials Sales and Service uses, such as GSL, "*merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations*", it is by definition ministerial and not discretionary.

4. **Are Permitted Building Materials Sales and Service Uses Consistent with the "Purposes" of the WMX District?** Yes. Section 18.45.010 lists the purpose of the WMX District, and references the subsequent section which identifies Building Materials Sales and Services, like GSL, as permitted uses within the WMX District. It states that the WMX District

applies to the area of west Concord covered by the WCMU designation, and makes the explicit finding that “*The WMX District is consistent with and implements the West Concord mixed-use (WCMU) land use designation of the general plan*” (emphasis added). Section 18.45.010 also states that the WMX District is “*appropriate for a mix*” of non-residential uses including “*schools, commercial, office, retail, multi-tenant office/warehouses, and institutional development at up to a 4.0 FAR*”, and states that it “*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*”. Thus while the WMX District was designed to facilitate a broad range of commercial activities, it explicitly states that one of its basic purposes is to allow commercial uses with showrooms and enclosed storage of materials, such as GSL.

5. **Is the GSL proposal consistent with other General Plan policies?** Yes. As noted under question 4 above, the GSL Building Materials Sales and Service use is fully consistent with the 2030 General Plan Land Use Element’s policy to guide uses in the WCMU area. GSL is part of the Building Materials Sales and Service class of uses listed by name in the WMX District and expressly found by the City in 2014 to be “*consistent with and implement the West Concord mixed-use (WCMU) land use designation of the general plan*”.

As a general commercial use, the GSL business also serves to implement important policies in the Economic Development Strategy of the General Plan, including provision of goods and services to local residents, demand for which is growing and which is not currently being fully provided the Concord market (resulting in retail “leakage”).

The Growth Management Element Policy GM-6.1.2 requires the preparation of a traffic impact study for “*General Plan Amendments and major development projects estimated to generate 100 or more net new peak hour vehicle trips, based on local conditions.*” This policy was included in the Growth Management Element to address those unanticipated traffic considerations associated with proposed amendments to the General Plan, along with major **discretionary** development projects not already analyzed in or otherwise consistent with the Circulation Element of the General Plan which are capable of generating a “net” increase of more than 100 peak hour trips. The term “net” increase means an increase up and beyond those trips generated by the existing or previous uses of property modeled in the General Plan EIR under “baseline” and “cumulative” conditions. The GSL use is a use which is permitted by right, and does not involve any discretionary entitlements, including any amendments to the Concord General Plan. Therefore it is exempt from Policy GM-6.1.2. Even if the GSL project were to involve a discretionary land use entitlement (which it does not), it replaces the former car dealership use at the southeast corner of Burnett Avenue and Diamond Boulevard and would therefore not in any event generate a “net” increase of more than 100 peak hour trips up and beyond the General Plan EIR Baseline or Cumulative Traffic scenarios.

General Plan Circulation Element Figure 5-3 and Concord Municipal Code Section 10.25.010 both designate Burnett Avenue and Concord Avenue as official “*Truck Routes*” where trucks of over 5 tons are allowed to freely travel (the Code also allows movement of trucks of over 5

tons on other non-Truck Routes “*where necessary to traverse to a destination for the purpose of loading or unloading*”). The General Plan states that these Truck Routes are intended for the accommodation of a “*substantial number of trucks moving goods*”, which are “*designed to allow truck traffic to pass through the City with minimal impact on residential neighborhoods*”. GSL’s truck traffic would primarily utilize these designated Truck Routes leading to and from Interstate 680.

6. **What action was taken by the DRB and how does it affect the application?** Action was to assist City staff with the Zoning Compliance verification. Code Section 18.415.020 states that all new buildings (other than individual single family dwellings) are subject to “*Design and Site Review*” prior to issuance of construction permits in order to “*determine compliance with the development code*”. Sub-Section 18.415.040A authorizes City staff to refer this ministerial compliance verification for a permitted use to the DRB (and in the case of conditional uses to the Zoning Administrator or Planning Commission). Sub-Section 18.415.040C specifically authorizes the staff to refer plans for new construction involving permitted uses which do not require a discretionary permit to the DRB. Conversely, Sub-Section 18.415.040D distinguishes between permitted uses such as GSL, and uses which require discretionary permits such as use permits, variances, and the like; it states that for such discretionary uses the Design and Site Review shall be carried out by the discretionary review authority. Lastly, Sub-Sections 18.415.040F and G state that the DRB’s role is to review the Site and Design Review application for compliance with the applicable standards, and to provide a recommendation to the review authority – in the case of GSL, to the planning staff. ***Thus the DRB’s recent unanimous recommendation for approval of the Site and Design Review application of GSL reflected the DRB’s determination that the GSL plans were in full compliance with the applicable development standards.***
7. **Is GSL application consistent with WMX Development Standards?** Yes. The current application satisfies all of the WMX District standards contained in Section 18.45.020, including setbacks, parking, landscape area, floor area ratio, etc. It also complies with all of the General Development Standards of Chapter 18.150 which apply on a City-wide basis, as verified by the DRB. Therefore GSL qualifies for issuance of a Zoning Clearance. As noted under question 3 above, this is a ministerial action which calls for no discretionary judgment, but rather requires an affirmative determination based on the facts of compliance.
8. **Why was a traffic study prepared for the GSL application?** GSL initiated preparation of a traffic study to address concerns voiced by nearby uses and to answer questions about how to safely and efficiently accommodate vehicle movements to and from the planned use. As noted under question 5 above, the traffic study is not a code requirement applicable to GSL.
9. **Is the GSL use as proposed an “Industrial” use?** No. Section 18.20.030 of the City Code defines Building Sales and Service uses as ***commercial*** businesses, in part because they contain showrooms and enclosed warehousing of materials ***offered to the general public***. This section of the Code distinguishes between such general commercial uses and “*establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies*”, which it classifies as “***wholesaling, distribution***”. The Code also makes the

*distinction between such general commercial uses as GSL and “show room stores with contractor sales and assembly” which it classifies as “**manufacturing**” (industrial).*

Interestingly, the City’s proposed prohibition of Building Materials Sales and Service uses would not affect wholesale distribution or manufacturing uses in the WMX District.

10. **Does CEQA apply to the GSL application?** No. As noted under question 3 above, the GSL Zoning Clearance process is by definition ministerial, and CEQA Guidelines Section 15268 states that such ministerial projects “*are exempt from the requirements of CEQA*”.
11. **Why has the City Initiated Changes to WMX District Uses?** Unclear. The public hearing notice dated 6/05/15 states that this City-initiated ordinance amendment would revise the text of the WMX District for the purpose of prohibiting “*building materials sales and service uses, cabinetry and recycling centers.*” It goes on to state that the uses proposed for prohibition “*do not conform to the WMX purpose statement under the Development Code or the uses envisioned for the WCMU land use designation under the General Plan.*” However, as answered under above question 5, Building Materials Sales and Services uses are fully consistent with the purpose statement of the WMX District. In addition, as documented in our opinion letter dated 6/01/15 (attached) these uses proliferate the area covered by the WMX District, creating a synergy between commercial uses selling and servicing a wide range of different building materials, including cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, plants and landscaping materials, rock, stone, masonry products, etc. As concluded in our opinion letter, the City’s proposed prohibition of these uses as a category would create an immediate non-conformity for at least 20 other businesses similar to GSL, and would create a myriad of circumstances under which these long-established businesses may have their values diminished and may be forced to close or move.
12. **Is an Addendum to 2012 SEIR adequate for City’s Ordinance Amendment under CEQA?** No. Section 15164 of the CEQA Guidelines states that an addendum to a previously certified EIR may **not** be used for evaluation of a project like the proposed code amendment prohibiting a broad class of uses if **any** of the circumstances listed in Section 15162 might apply to the project. These circumstances include where:
 - (1) “*Substantial changes are proposed in the project which will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.*” Here, the City’s proposed amendment project would render an entire class of existing businesses as prohibited uses in the WMX District. As documented in our opinion letter, this action may force the closure or relocation of at least 20 existing Building Materials Sales and Service uses, almost all of which are housed in older buildings which were purpose-built to accommodate showrooms and warehousing of stock and materials for sale. The proposed prohibition therefore has a **high likelihood of leaving these purpose-built buildings empty for a long period of time, diminishing their value, and precipitating long-term deferred maintenance.** The number of buildings affected, and the age of these buildings, therefore result in an elevated risk for resulting physical blight within the WMX District. California Courts have held that such blight is a potentially significant environmental impact

which is subject to CEQA (and was not analyzed in the City's original EIR, since this effect was never contemplated by the original authors of the WMX District).

- (2) *“Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.”* Here, it is not a matter of new circumstances under which the original WRX District uses and procedures would be carried out; rather the issue is that a ***new or modified project proposal*** has emerged which requires ***new analysis of different environmental effects***.
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
 - a) *“The project will have one or more significant effects not discussed in the previous EIR or negative declaration;”* (applies to the City's revised project -- see below)
 - b) *“Significant effects previously examined will be substantially more severe than shown in the previous EIR;”*
 - c) *“Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or”*
 - d) *“Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.”*

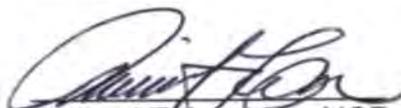
Clearly, the City's new proposal results in an entirely new set of environmental effects. CEQA requires that the potentially significant effects of this new project proposal on at least 20 existing businesses and older buildings be fully evaluated, since the resulting displacement and onset of blight are significant new effects which were not associated with the original WMX District creation and therefore not disclosed in the previously certified EIR from 2012. As part of the new EIR which must be prepared to evaluate the new City proposal, CEQA requires an alternatives analysis be completed to look at options to avoid these potentially significant effects. One such alternative required by law is the “*no project*” alternative.

13. **Are the currently permitted WMX District uses now targeted for prohibition by the City inconsistent with “Uses envisioned for the WCMU land use designation under the General Plan”?** No. As explained under question 5 above, the WMX District was specifically written to permit Building Materials Sales and Service uses, by name. Section 18.45.010 was adopted in 2014 containing the written finding that the WMX Zoning District is: “***consistent***

with and implements the West Concord mixed-use (WCMU) land use designation of the general plan." The Concord 2030 General Plan was updated in 2012 (two years earlier). The General Plan's policy for land uses in the West Concord Mixed Use area reads as follows: "***This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom / warehouses.***" Because the City Council adopted a specific finding of consistency between the WMX District's authorization of Building Materials Sales and Service uses and the intended uses in the General Plan's WCMU Area, the proposed amendments would be inconsistent with the General Plan. Clearly, the General Plan intended to accommodate a wide range of commercial uses including "showrooms/warehouses"; these uses, such as the GSL use, were found to be consistent with the General Plan in 2014.

14. **If the City amends the WMX District to prohibit building materials and sales uses, who will be affected?** At least 20 existing businesses. As noted under questions 2 and 13 above, and documented in the attached opinion letter, the City's proposed ordinance amendment would target the entire class of Building Materials Sales and Service uses (along with two additional categories). This class includes at least 20 businesses which have been operating in the area now zoned WMX for many years. Shown by name and location on pages 2 and 3 of the opinion letter, these business thrive within the current WMX District because of the proximity to one another (synergy), the convenient access to all of Concord and the surrounding area via proximity to two freeways using General Plan designated Truck Routes, and the availability of older buildings which were purpose-built to accommodate the volume of space needed for both showrooms and interior warehousing of materials sold for use in completing home improvements.
15. **How would the City's proposed WMX District amendment affect existing businesses?** They would be made non-conforming. As explained in the attached opinion letter, the 20+ existing Building Materials Sales and Service uses now lawfully located in the WMX District as "permitted uses" would be made non-conforming, and any other similar businesses would be prohibited. Those businesses made non-conforming by the City's proposed action could not be expanded or intensified in any way, even to meet changing market demands. If the buildings these uses occupy were to be destroyed by a natural disaster, they could not be rebuilt. As further explained in our opinion letter, these limitations are likely to devalue properties containing such uses, or even block the refinance or purchase of existing buildings.

Sincerely,



Richard T. Loewke, AICP



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June 10, 2015

VIA EMAIL

City of Concord Planning Commission
Robert Hoag, Chair
1950 Parkside Drive
Concord, CA 94519

Re: July 17 Hearing on Proposed WMX Zoning Amendment (PL15132-DC)

Honorable Commissioners:

The Commission has scheduled a hearing on July 17 to consider a zoning amendment that would remove three currently permitted uses from the West Concord Mixed Use (“WMX”) District, including “*Building Materials Sales and Service.*” We represent Golden State Lumber (“GSL”), which has applied to build and operate a business at 2180 Diamond Boulevard selling lumber, building materials, windows and doors, and related hardware in an enclosed building. GSL opposes the zoning change, which would prohibit their business.

GSL believes the proposed amendment was triggered by the misperception that GSL intends to operate a messy, noisy sawmill. In fact there will be no fabricating or milling work. The commercial business will be an upscale retail home improvement store providing building materials to the general public. It will be an asset to the neighborhood and the city. The amendment is trying to address a problem that does not exist.

The hearing notice states that the uses “*do not conform to the WMX purpose statement or the uses envisioned for the WCMU land use designation under the General Plan.*” This letter is a preliminary response to that claim. We reserve the right to raise additional objections once the staff report is made public and we better understand the reasons used to support the proposal.

1. Use Conforms to the WMX Purpose Statement.

Code §18.45.010.C states the purpose of the WMX District as “*appropriate for a mix of schools, commercial, office, retail, multi-tenant office/warehouses, and institutional development*” that 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 only use specifically prohibited is residential.

There is no definition or restriction provided for the terms “*commercial*”, “*retail*”, “*warehouse*”, “*contractor showroom*” or “*storage uses*”. The intent is to allow a broad range of business use. GSL will operate a retail commercial facility with an office for staff taking orders, a showroom displaying merchandise, and a warehouse area for customers to pick up lumber and building materials. There is nothing to support the claim that Building Materials Sales and Service uses are inconsistent with the purpose statement.

GSL has sent to the Commission a study by planning consultants Loewke Planning Associates, which identified 20+ existing businesses in the WMX District that qualify as Building Materials Sales and Services. The Loewke study describes the ramifications of making those businesses nonconforming uses. It is reasonable to assume that in adopting the zoning regulations the City Council recognized that these and similar businesses make up a large portion of the area’s land uses and comprise an important component in the city’s economic and employment base compatible with the WMX **mixed-use** purpose, and they should be allowed and encouraged to operate.

The new WMX District regulation was adopted in March 2014. Table 18.45.020 listing permitted uses (including “*Building Materials Sales and Services with no outdoor storage*”) was adopted at the same time as the purpose statement. It is reasonable to conclude that the City Council in approving the list of uses determined that they all were consistent with the purpose statement. Nothing has occurred in the past year to reverse this finding or undermine the Council’s discretion in reaching that conclusion.

2. Use is Consistent with the General Plan.

An update to the Concord General Plan (2030 General Plan) was adopted in 2012. The WMX Zoning District was adopted in 2014 for the express purpose of implementing the General Plan. Code §§18.45.010.C concludes by stating: “*The WMX district is consistent with and implements the West Concord mixed-use (WCMU) land use designation of the general plan.*” The City Council adopted the new Code section and made that finding only a year ago. Nothing has changed that justifies reversing that conclusion.

The General Plan created over 20 land use designations covering the city. Some describe types of uses (e.g., “medium density residential”) and are applied to multiple locations, while others set guidelines for specific areas (e.g., “North Todos Santos”). The WCMU designation is described as allowing “*a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses.*” Residential development is specifically prohibited because of its incompatibility with these more intensive uses..

Nothing in this statement supports claiming that GSL in particular, or Building Materials Sales and Services in general, is inconsistent. The area is intended to allow and support a **mix** of commercial activity. Use of the term “*including*” means there is no intent to limit businesses to the four types named. There are no statements limiting the types of commercial development that might apply to Building Materials Sales and Services. There is no indication that the City Council in adopting the General Plan intended to make 20+ existing businesses nonconforming or to force their closure.

As additional support we draw your attention to General Plan Policy LU-4.2.7, which states: *“Facilitate the relocation of gas stations, auto repair, and service uses to service commercial areas throughout the City.”* This shows the City Council did consider whether to move and cluster particular types of uses. If the City had wanted to remove and prohibit the many existing Building Materials Sales and Services from the WCMU area, it would have included a similar policy in the General Plan.

3. Zoning Amendment Requires CEQA Study.

The hearing notice states that the amendment will be supported by an Addendum to the 2012 EIR. This is not appropriate under CEQA. An initial study and formal environmental determination is required before the City can act. The evidence presented in the record shows that the contemplated prohibition of Building Materials Sales and Services uses may have a significant effect on many older purpose-built structures, which may in turn require the preparation of a supplemental EIR or at a minimum a negative declaration.

Section 15164 of the CEQA Guidelines prohibits relying on an addendum to a previous EIR if *“Substantial changes are proposed in the project which will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.”* The proposed zoning amendment will immediately make 20+ businesses in the WMX District nonconforming. As explained in the Loewke study, that will have dire consequences for those businesses, making it difficult or impossible for them to continue operating and forcing them to close. Many of those businesses are located in older buildings that were designed for these types of business activity – thus making it more uncertain if and how they may be reused.

The courts recognize that in such situations there is an elevated risk of blight affecting the surrounding community, caused by buildings standing empty, deteriorating, and attracting graffiti and vandalism. This represents a potentially significant environmental impact that must be studied now because it was not considered in the previous EIR. The zoning amendment may require mitigation measures to protect the neighborhood from these adverse effects. If a new EIR is required, it should include an analysis of possible alternatives to avoid the impacts – including the “no project” alternative.

The study also should evaluate the direct and indirect economic effects on the City and its residents of losing these businesses, such as lost jobs, property and sales taxes, and multiplier benefits enjoyed by other local businesses. While purely economic impacts are not subject to CEQA, their potential to cause indirect physical effects should be considered, and the City should be aware of the economic consequences before it acts.

4. Amendment Should Include Additional Zoning Uses.

If the City insists on declaring Building Materials Sales and Services inconsistent with the WCMU General Plan designation, this will require prohibiting additional types of uses now listed as permitted in the WMX Zoning District. Since the issue is the activity being judged, there is nothing to protect other uses that may be operating under a different zoning label.

Failing to do so would leave the City open to legal challenges if it approves such a use, and existing businesses might face litigation seeking to declare them illegal and subject to the nonconforming use ordinance. There is no logical basis to allow the same uses under a different artificial label. General Plan consistency supposedly is based on ensuring uses in an area are compatible and won't cause problems.

The Code defines Building Materials Sales and Service as:

“[A]n indoor or outdoor establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. Includes stores with indoor service areas. Establishments primarily selling electrical, plumbing, heating, and air conditioning, equipment and supplies are classified in ‘Wholesaling, distribution.’ Does not include large format retail home stores in buildings over 80,000 square feet (see ‘Big box’ under ‘Retail Sales’), nor show room stores with contractor sales and assembly, which are classified as ‘Warehouse show room with assembly and sales’ under ‘Manufacturing, processing’.”

Any business selling or servicing any of the products listed in the definition would be vulnerable, unless the City can adopt a defensible finding that explains why it actually is consistent with the WCMU General Plan designation and not covered by the finding used to prohibit Building Materials Sales and Service.

For example, there is nothing sacred about being a “Big Box”, which the Code identifies separately only so the City can require a use permit. It is simply retail sales in a building over 80,000 square feet. Thus all operations related to building materials would be prohibited.

Other examples include:

- *“Nursery, garden center”* which is a permitted outdoor sales area use under *“Retail Sales”*, but *“plants and landscaping materials”* would be prohibited.
- *“Electrical, plumbing, heating, and air conditioning, equipment and supplies”* business might be vulnerable, unless the City can explain why *“Wholesaling, distribution”* uses are consistent with the WCMU designation when Building Materials Sales and Services are not – especially given that the definition for *“Wholesaling, distribution”* suggests it applies to businesses that sell to contractors, retailers, etc. but not to the general public. There is no logical reason to allow sale of plumbing and electrical supplies but not flooring, paint, etc.
- *”Show room stores with contractor sales and assembly”* supposedly excluded from the Building Materials Sales and Services definition also might be found inconsistent with the WCMU designation under the same argument. They are under the category *“Warehouse show room with assembly and sales”* which is defined as displaying and selling *“cabinetry, fixtures, flooring and other custom-made products”* and allows

assembly and repair work. At a minimum, “*fixtures*” and “*flooring*” must be deleted because they are included in the definition of Building Materials Sales and Services.

- Because we have not yet seen the staff report, we don’t know exactly what reasoning is being used to justify the proposed zoning amendment. However, if it attempts to argue that the WCMU designation is meant to allow only “cleaner” or more “upscale” types of commercial uses, that logic might suggest that auto dealerships and their service facilities also should be prohibited.

Circumstances suggest that this zoning proposal arose from concerns over alleged effects that GSL’s business may have on the area. The amendment raises a number of legal and planning issues, briefly described in this letter. Given the complexity of the legal situation and the focus on GSL, we ask the Commission to allow two GSL representatives to speak for up to 10 minutes each, to address legal/planning arguments and provide a better understanding of the nature of GSL’s proposed operation. We believe this will benefit the Commission by providing a clear and coordinated presentation, versus requiring GSL to arrange more speakers covering separate topics during their three-minute speaking times.

Very truly yours,

ARCHER NORRIS

/s/ Edward L. Shaffer

Edward L. Shaffer

ELS

cc: Mark Coon, City Attorney
Susanne Brown, Senior Assistant City Attorney
Victoria Walker, Community & Economic Development Director
Laura Simpson, Planning Manager
Andrew Mogensen, Principal Planner
Ryan Lenhardt, Senior Planner
Golden State Lumber representatives



CITY OF BRISBANE

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(415) 508-2100
Fax (415) 467-4989

Golden State Lumber
855 Lakeville Street
Petaluma, CA 94952

I am writing on behalf of the City of Brisbane where you have a business that has been operating for over twenty years.

Brisbane has enjoyed a wonderful relationship with your company. Over the years we have had several challenging issues to deal with in regards to your site and the uses in the nearby area. You and your representatives have always provided solid information and assisted the city and its policy makers in making sound decisions.

Sierra Point Lumber, the name you operate under in Brisbane, has been a top sales tax producer for the City, even in challenging economic times, and is clearly one of the growth businesses in our town.

Additionally, your company and employees have been positive players at community events for both the City as well as the Chamber of Commerce. You have supported community charity efforts, fairs, and arts projects.

Sierra Point Lumber is one of the most cherished businesses in Brisbane and we look forward to a long and growing presence of your company in our town.

Sincerely,

Clayton L. Holstine
City Manager
City of Brisbane



ANTHONY SILVA
Mayor

CHRISTINA FUGAZI
Vice Mayor
District 5



CITY OF STOCKTON

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MICHAEL TUBBS
District 6

June 29, 2015

City of Concord
Attn: City Council
1950 Parkside Dr.
Concord, CA 94519

Dear Members of the Concord City Council:

I'm writing this letter to express my appreciation for Golden State Lumber, a responsible corporate citizen of the City of Stockton. Golden State Lumber employs more than 100 people and supplies licensed contractors. Those contractors are associated with fully staffed organizations, and, as a result, day laborers are never found congregating outside Golden State Lumber's facility in our city.

Golden State Lumber is one of our city's top revenue generators and is an active supporter of our community-based organization. Golden State employs people from at-risk backgrounds through its job-training program.

It's my understanding that Golden State Lumber plans to expand operations with a new retail outlet in the city of Concord. This new facility will provide jobs to the City of Concord. The opening of a facility in Concord would also benefit the City of Stockton because the distribution center is located in the council district that I represent. We are hopeful that the city of Concord will issue necessary permits to open a new Golden State Lumber facility.

If I can provide you with additional information about Golden State Lumber, please contact me at 209-937-8279

Sincerely,

MICHAEL TUBBS
COUNCILMEMBER DISTRICT 6



MAYOR GARY O. PHILLIPS
VICE MAYOR DAMON CONNOLLY
COUNCILMEMBER MARIBETH BUSHEY
COUNCILMEMBER KATE COLIN
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

CITY MANAGER'S OFFICE
PHONE: 415-485-3070
FAX: 415-459-2242

June 30, 2015

Concord City Council
City of Concord
1950 Parkside Drive
Concord, CA 94519

To Whom It May Concern:

I was asked to comment on an application by Golden State Lumber to build a new store in Concord. Golden State Lumber has been a solid member of the business community here in San Rafael and I have been impressed with their professionalism and commitment to the community. Golden State Lumber is one of our top 25 sales tax producers in the city and, to my knowledge; we have not received any complaints about their operations.

We have been told that there might be a particular concern with day laborers congregating around the new store. This has not been our experience here in San Rafael. We believe that Golden State Lumber does a good job managing their operations and this helps prevent day laborer issues. In addition, given their business focus on larger professional contractors with full time staff, this reduces the demand for day laborers. While we have issues with day laborers in various other parts of San Rafael, this is not the case in the vicinity of Golden State Lumber.

Thank you for the opportunity to comment on the Golden State Lumber application. They are a good corporate citizen here in the San Rafael community and I think you will benefit from having them in your community. If you have any further questions, please contact me.

Sincerely,

Stephanie Lovette
Economic Development Director



City of Concord

1350 Galindo St.

Concord, CA 94520

June 25, 2015

To Whom it May Concern:

In January 2014, we sent the City a letter opposing the development of the property at Diamond Blvd. and Burnett Ave. by Golden State Lumber. The purpose of this letter is to withdraw any opposition we may have previously had toward such a project. We came to this decision after numerous meetings with the Company's management team and hearing their explanations and reviewing their plans.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Baxley".

Tom Baxley

General Manager

Concord Toyota

"GET YOUR HANDS ON A TOYOTA . . . YOU'LL NEVER LET GO!"

1090 Concord Avenue • Concord, CA 94520 • Phone: (925) 682-7131

Alternative Text Amendment to City of Concord WMX District, Development Code, Article II, Division 5 Downtown WMX District

The following alternative text amendment to the uses and standards of the WMX District are proposed to replace that authored by the Planning Commission at its June 17th hearing, while remaining consistent with the Commission's stated objectives.

The Commission's primary concerns with the current Code focus on two key aspects of certain WMX uses: (a) The unsightliness of unenclosed operations (such as equipment storage yards and some semi-public uses); and (b) Noise, dust and other adverse external influences associated with uses which focus on fabrication and/or manufacturing operations involving raw materials, whether enclosed or not (such as cabinet shops).

The Commission clearly supported enclosed businesses with showrooms which sell a wide range of products to the general public. The Commission also wanted to avoid sending an anti-business message to the recovering West Concord market.

The following alternative text amendment more precisely addresses the incompatible nature of certain uses in the WMX District (consistent with the Commission's comments), while avoiding the establishment of ambiguous Use Permit procedures lacking objective standards for judging or discriminating between one type of fully-conforming enclosed business and another.

Recommended WMX District Code Changes:

1. Use classification under WMX District for "*Building Materials Sales and Services*" to continue to reflect "*ZC – Permitted Use, Zoning Clearance*" for new "**Fully Enclosed**" subcategory. Under "*with Outdoor Storage*" amend classification from "*UP – Use Permit Required*" to "*Use Not Allowed*".

Recommended Amendment to Development Code Chapter 18.20, Article 1 Section 18.20.020 Use Classifications:

2. "*Building materials sales and services*" means *a fully enclosed an indoor or outdoor establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. Includes stores with indoor service areas. Establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in "Wholesaling, distribution." Does not include large format retail home stores in buildings over 80,000 square feet (see "Big box" under "Retail Sales"), nor show room stores with contractor sales and assembly, which are classified as "Warehouse show room with assembly and sales" under "manufacturing, processing." Does not include facilities which process or fabricate finished products using raw materials; these are industrial uses.*

ROSCHA & ODNE LLP

ATTORNEYS AT LAW

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CONCORD, CALIFORNIA 94520
www.ROLawGroup.com

FACSIMILE: (925) 825-0143

July 1, 2015

VIA OVERNIGHT MAIL AND E-MAIL

Concord City Council
Hon. Tim Grayson, Mayor
1950 Parkside Drive
Concord, CA 94519

RE: **West Concord Mixed Use Text Amendment Proposal (PL15132-DC)**
July 7, 2015 City Council Meeting

Honorable Mayor and City Councilmembers:

This office represents the legal interests of Security Owners Corporation, the owner of real property at 2280 Diamond Boulevard, as well as the owners of the property located at 2120 Diamond Blvd. These properties are located within the West Concord Mixed Use District (“WMX”). We also represent numerous other business and property owners in Concord.

The City is considering amending the West Concord Mixed Use Zoning classification to prohibit certain uses, including (i) building materials, sales and services (including lumberyards), (ii) cabinetry, and (iii) recycling centers, because such uses do not comply with the Concord General Plan, and especially the uses envisioned for the West Concord Mixed Use (“WCMU”) land use designation in the General Plan. This matter was heard by the Concord Planning Commission on June 17. However, the Planning Commission decided to change course midstream, and instead of prohibiting building materials sales and services, the Planning Commission proposed to allow the use subject to a use permit.

We assert that such an advisory position is incorrect, and the Concord Zoning Code must be amended to prohibit building materials, sales and services because such a use in the WMX District is inconsistent with the Concord General Plan.

I. **The City is Obligated to Amend the Zoning Code to Comply with the General Plan.**

The General Plan is the comprehensive, long-term plan for the development of the City of Concord, and it is the preeminent land use regulation of the City. *California Government Code* § 65300; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531. The zoning ordinance of Concord must comply with and be consistent with its general plan. *Gov't Code* §

65860; *Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586. A zoning decision made by the local governing body that is not consistent with the general plan is invalid when passed. *Gov't Code* § 65860(a); *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.

To be consistent with a general plan, the various land uses authorized by the zoning ordinance must be compatible with the objectives, policies, programs and general land uses specified in the general plan. *Gov't Code* § 65860(a)(2). If the zoning ordinance is inconsistent with the general plan, the City is required to amend the zoning ordinance so that it is consistent with the general plan. *Gov't Code* § 65860(c); *Corono-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985; *Leshar*, supra, 52 Cal.3d 531.

II. The Zoning Code is Inconsistent with the Concord General Plan.

The uses proposed for removal from the WMX District are not consistent with the policies expressed in the Concord General Plan (“GP”) for the WCMU. First, the General Plan clearly states that building materials should be located in the Service Commercial land use area, and second, the policies and principles of the General Plan for the WCMU are incompatible with building materials facilities.

A. The General Plan Dictates that Building Materials Belong in Service Commercial Areas.

When the Concord General Plan was approved, the City Council declared where it wanted building materials facilities to be located, and it was not in the WCMU but in the Service Commercial land use area.

The General Plan created a Service Commercial (SC) land use designation with the express purpose of providing:

“... sites for commercial businesses that are *not appropriate in other areas* because of high volumes of vehicle traffic and potential adverse impacts on other uses. ... It includes...*building materials*.”

See General Plan, p. 3-15 (Attachment 1) (emphasis added). This is clear and unequivocal. Building materials facilities should be located in the Service Commercial areas, and not in other area such as the WCMU.¹

¹ For an example of what a sister-city has done, lumberyards in Walnut Creek are authorized to exist in the Service Commercial district, and are prohibited in the Office Commercial district.

When it came to defining the uses that should be located in the WCMU, the General Plan does not say that building materials would be appropriate in those areas, likely because the drafters already told us they wanted those uses in the Service Commercial areas. Therefore, the omission of expressly allowing building materials in the WCMU was intentional.

However, the General Plan does tell us that the WCMU allows for a mix of office and commercial development, and it is intended to create a “campus-like office environment.” See General Plan, p. 3-12 (Attachment 2).

It does not get much clearer than this. The General Plan unequivocally states that building materials should be in the Service Commercial area because of potential adverse impacts on other uses, and the WCMU is reserved to foster a campus-like office setting and it does not call for building materials facilities to be located within the area.

Even more telling, the explicit policies in the General Plan also show that buildings materials are inappropriate in, and inconsistent with, the WCMU.

B. Building Materials Uses in the WMX District are Inconsistent with Specific Policies for the WCMU.

Employment districts, including the WCMU, are intended to create a “campus-like office atmosphere” (GP, p. 3-12, Principle LU-5.1), and the General Plan contains the following specific policies for such areas:

- Policy LU-5.1.2 calls for the promotion of “a large, diverse regional office sector to ensure a resilient base.”
- Policy LU-5.1.3 seeks to “provide sites for professional, administrative and headquarters office space.”
- Policy LU-5.1.4 seeks “high quality design and planning of regional offices that establish a cosmopolitan image and contribute to the character of the City, as a whole.”

Lumberyards, building materials facilities, cabinetry facilities, and recycling centers would not be conducive to a campus-like atmosphere and would be inconsistent with Principle LU-5.1, as well as Policies LU-5.1.1 through 5.1.4. A copy of select General Plan Principles and Policies is attached as Attachment 2. A detailed analysis of the inconsistencies between the General Plan and the Zoning Code related to building materials is contained in the Memorandum from the Municipal Resources Group. See Attachment 3.²

² This analysis also rebuts claims that the City is required to perform additional CEQA analysis beyond the proposed Addendum, and that existing businesses would be forced to shut down.

Examples of the inconsistencies abound. Lumberyards and recycling centers would bring heavy trucks rumbling through congested City streets, which would lead to an increase in peak hour traffic trips. Further, if located next to office buildings, lumberyards cause acoustical and visual impacts which reduce the economics of owning and leasing those offices. (See June 29, 2015 letter from Eric Erickson, Colliers International, Attachment 4). Further, based on observed lumberyards in Concord and other jurisdictions, trucks queue and unload in the streets and make wide turns and block traffic when making deliveries.

Lumberyards and recycling centers are not consistent with the City's stated intention of creating a "campus-like atmosphere," do not promote a "regional office sector", do not aide in establishing Concord's "cosmopolitan image", and are wholly inconsistent with the established uses of other businesses and companies currently operating in the immediate vicinity.

C. Building Materials Facilities would Impact Existing Businesses in the WMX.

Locating new building materials facilities in the WMX would have serious consequences for existing businesses, and this is the exact reason the General Plan directs that such uses should be located in the Service Commercial area.

First, the freeway exit off of Interstate 680 delivers vehicles to the Diamond Blvd. / Burnett Avenue intersection, which is a gateway to Concord. Any lumberyard or recycling center located in that area would be a "gateway" project as it is one of the first sites people observe as they exit the freeway and enter the City. The General Plan calls for the City to develop specific gateway criteria and a plan that incorporates mutually complementary designs, signs and themes. (GP, p. 5-25, Policy T-1.2.14)

Lumberyards would not enhance the gateway image that Concord is seeking. In April 2014, the Concord City Council called for polishing the City's tarnished image, and hotels in Concord are embarking on a marketing campaign to bring tourist and business traffic to hotels---allowing lumberyards and recycling centers in the WMX District would certainly not promote tourist and business traffic to the nearby hotels.

Second, building materials/lumberyards bring with them a large number of itinerant workers. Adding additional lumberyards or building materials facilities will only increase the number of itinerant workers loitering in the downtown core adjacent to existing offices, restaurants, and any planned retail uses. Certainly, such increased loitering would not serve the General Plan policy of advancing the cosmopolitan image of the City or of creating a campus-like, office atmosphere.

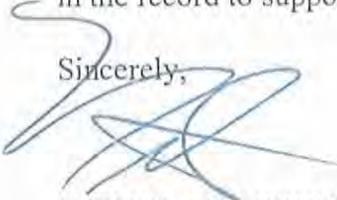
Third, the added diesel particulate matter from delivery trucks, the traffic impacts of large semi trucks attempting to deliver lumber every day, along with the noise from unloading and moving lumber with forklifts would negatively impact adjacent office uses.

III. Summary

The City is on the correct track in amending the Zoning Code to bring it in compliance with the Concord General Plan, and this is not just good policy --- it is required by law. The City has addressed the issue, identified sufficient findings in support of such a decision, and my clients support a proposed text amendment of the WMX zoning district to eliminate building materials, sales and services.

Such an amendment would be best for the area and for the City, and there is substantial evidence in the record to support the City Council taking such action.

Sincerely,



NICHOLAS ROSCHA

NR:kc

Enclosures

cc: Laura Hoffmeister, Vice Mayor
Edi Birsan, Councilmember
Daniel Helix, Councilmember
Ron Leone, Councilmember
Joelle Fockler, City Clerk
Laura Simpson, Planning Manager
Mark Coon, City Attorney
Susanne Brown, Senior Asst. City Attorney
Ryan Lenhardt, Senior Planner
Clients

Regional Commercial (RC)

This designation is intended for large-scale commercial development (greater than 80,000 square feet) that serves both local residents and residents from the surrounding region. A broad range of retail uses and personal services are envisioned, including regional shopping centers, big box retail, home improvement sales and service, and warehouse membership clubs, as well as new auto sales and services, and travel-related services such as hotels, gas stations, and restaurants. The maximum FAR is 0.5.

Service Commercial (SC)

This designation is intended to provide sites for commercial businesses that are not appropriate in other areas because of high volumes of vehicle traffic and potential adverse impacts on other uses. This designation allows small scale commercial uses that provide goods and services to employees, residents and visitors. It includes automotive sales and services, building materials, warehousing, distribution and personal storage located on major arterial streets, as well as retail uses, services, and small offices. The maximum FAR is 0.8.

Concord Reuse Project Non-Residential Development District (CRP-NR)

The CRP-NR designation is mapped on the Concord Reuse Project (CRP) site only. It includes three contiguous areas, as shown on Figure 3-3. These include: (a) a Commercial-Flex district south of Highway 4; (b) a Campus district on the west side of Willow Pass Road south of Mt. Diablo Creek; and (c) a First Responder Training Facility north of Highway 4. Additional information on this category is provided in the text box above.

Business Park/ Industrial

Business Park (BP)

This designation is intended for campus-like office complexes as well as industrial parks, including single and multi-story office, flex-space, and industrial buildings for single and multiple users, light industrial and warehouse uses, and research and development activities. Other uses may include mini-storage, wholesale, bulk retail, and business with limited customer access, commercial recreation, and other uses that require large, warehouse-style buildings. Small-scale retail and service uses serving employees and visitors may be permitted as secondary and accessory uses. This designation may also allow small restaurants, support services, and convenience retail activities at appropriate locations, subject to



3

LAND USE

This element of the General Plan constitutes the framework for land use planning in Concord to the year 2030. To provide context, the evolution of the City is described, and existing land use in the City is summarized. The guiding principles of the land use framework, the General Plan Map, the land use designation system, and the buildout of this Plan to the year 2030 are then presented. The goals, principles, and policies are intended to set the land use framework into motion and shape development for the life of this General Plan.

3.1 BACKGROUND AND CONTEXT: EXISTING LAND USE PATTERN

Historical Land Use Development

Much of Concord's land use pattern can be traced to its evolution as a primary job center within the valley, with the focus on Downtown and subsequently on the radiating transportation corridors. Most of the residential development in the City is low density single-family housing, and much of the commercial development is retail-related. Office, business park, and light industrial uses are located adjacent to transportation infrastructure. Schools and parks are distributed throughout the residential neighborhoods in the City. This existing land use pattern is displayed in Figure 3-1.

Land Use Characteristics

As shown in Table 3-1, single-family residential is the most significant land use within the City limits. Occupying roughly 6,270 acres, it comprises 32 percent of the land within Concord. Commercial and mixed use development is clustered in Concord's Downtown and along the major transportation routes that radiate outward from the Downtown, notably Clayton Road, Monument Boulevard, Willow Pass Road, and areas around the intersection of State Route (SR) 242 and Interstate (I) 680. Industrial uses are primarily situated north of SR 1, and to a lesser extent, south of Monument Boulevard.

Table 3-1: Existing Land Use Acres

Land Use	Incorporated		Unincorporated (within SOI)		Unincorporated (outside SOI)		Total	
	Acres	Percent	Acres	Percent	Acres	Percent	Acres	Percent
Single Family Residential	6,270	32.1%	320	3.2%	--	--	6,590	19.9%
Multi-Family Residential	680	3.5%	--	--	--	--	680	2.0%
Visitor Accommodations	20	0.1%	--	--	--	--	20	0.1%
Commercial Retail	400	2.0%	--	--	--	--	400	1.2%
Auto-Oriented Commercial	90	0.5%	--	--	--	--	90	0.3%
Other Commercial	50	0.3%	--	--	--	--	50	0.2%
Shopping Centers	90	0.5%	--	--	--	--	90	0.3%
Mixed Use	20	0.1%	--	--	--	--	20	0.1%
Office	320	1.6%	--	--	--	--	320	1.0%
Military	145	0.7%	2,500	25.0%	--	--	2,645	8.0%
Public/ Semi-Public	1,260	6.4%	590	5.9%	--	--	1,850	5.6%
Industrial Parks	220	1.1%	80	0.8%	20	0.5%	320	1.0%
General Industrial	340	1.7%	2,160	21.6%	--	--	2,500	7.5%
Parks, Recreation, and Open Space	1,421	7.3%	950	9.5%	3,613	99.4%	5,984	18.0%
Military – Open Space	2,707	13.8%	--	--	--	--	2,707	8.2%
Transportation	108	0.6%	320	3.2%	--	--	428	1.3%
Vacant	170	0.9%	110	1.1%	--	--	280	0.8%
Military – Future Development Area	2,233	11.4%	--	--	--	--	2,233	6.7%
Designated Land Uses Subtotal	16,544	84.6%	7,030	70.3%	3,633	100.0%	27,207	82.0%
Right-of-way, Washes, and Canals	3,006	15.4%	470	4.7%	--	--	3,476	10.5%
Suisun Bay	--	--	2,510	25.1%	--	--	2,510	7.6%
Undesignated Land Uses Subtotal	3,006	15.4%	2,980	29.8%	--	--	5,986	18.0%
Total Land Use	19,550	100.0%	10,010	100.0%	3,633	100.0%	33,193	100.0%

Note: Land Use Acreage Totals are based on mapping estimates and do not necessarily equate to exact ownership acreage.

Source: City of Concord, Contra Costa County Assessor, Dyett and Bhatia, 2006; Arup, 2011
 CRP=Concord Reuse Project

that new uses are compatible with prevailing neighborhood character and maintain and enhance the neighborhood environment.

CRP Neighborhood and Village Districts (CRP-NV)

This designation applies within the Concord Reuse Project (CRP) Area only. It is primarily intended for residential development at densities ranging from 6 to 50 units per net acre. Residential areas are focused around village centers containing a mix of residential, commercial, public, and open space uses. The text box below provides additional detail on allowable uses and intensities within these areas.

Commercial and Mixed Use

Neighborhood Commercial (NC)

This designation is intended for neighborhood commercial centers that provide convenience and comparison goods and services to the local community. The maximum FAR is 0.35. Residential uses are allowed above the ground level at densities from a minimum of 11 units per net acre to a maximum of 24 units per net acre. Examples include neighborhood shopping centers, supermarkets, dry cleaners, video stores, and small restaurants. This designation is distributed throughout the City in order to locate commercial services within close proximity to all of Concord's residents.

Commercial Mixed Use (CMU)

This designation allows for a mix of commercial uses, offices, multi-family uses, and mixed use development. The maximum FAR is 1.0. Densities range from a minimum of 11 units per net acre to a maximum of 40 units per net acre. The designation is intended for use along commercial corridors such as Clayton Road, Monument Boulevard, and Willow Pass Road.

West Concord Mixed Use (WCMU)

This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom warehouses. Public and quasi-public uses also are allowed. Residential development is not allowed in this mixed-use category, as it is intended to create a campus-like office environment. The maximum FAR is 4.0.

standards to minimize impacts on industrial users. Where permitted, storage uses in areas with this designation must be screened by vegetation and other means to maintain community aesthetics. The maximum FAR is 0.8.

Industrial Mixed Use (IMU)

This land use designation is intended for a mix of light industrial, secondary office, service uses (excluding auto-oriented retail services) and live work facilities. Typical uses include warehouse, research and development, wholesale, bulk retail, office space with limited customer access, and artists' studios. Small-scale retail and service uses serving employees, residents, and visitors may be permitted as secondary uses. This designation would allow for live work facilities where appropriate, such as the North Hillcrest area and the southern portion of the Detroit Avenue/Shary Circle area. The maximum FAR is 1.0.

Heavy Industrial (HI)

This designation allows primary manufacturing, refining, and similar heavy industrial activities. It also accommodates warehousing, distribution and port-related uses, with support commercial services and ancillary office space. No retail uses are allowed. This designation is applied primarily to facilities north of SR 4. The maximum FAR is 0.6.

Community Land

Public/Quasi-Public (PQP)

This designation is applied to property owned by governmental entities and to semi-public facilities. It includes Buchanan Field Airport, hospitals, schools, government offices, corporation yards, and public facilities such as recycling centers, sewage treatment facilities, and fire stations. Smaller governmental offices, places of religious assembly not occupying extensive land areas, and similar smaller public facilities are not shown on the General Plan Land Use Map. New public quasi public facilities may be appropriate in any land use designation based on need, subject to environmental review. The maximum FAR is 1.5.

Hospital/Medical Center (H/MC)

The H/MC-designator on the Land Use Map denotes hospital, medical center and related medical uses including "specialty hospitals". This designation is intended for full service hospitals and medical facilities that provide in-patient services for cardiac, orthopedic, and cancer related diseases, and/or similar illnesses and disorders.

Military (MIL)

This designation applies to the Tidal portion of the former Concord Naval Weapons Station, the Military Ocean Terminal Center, and the Coast Guard housing area adjacent to the CRP site. The Tidal Area contains port and industrial buildings, and additional land for support uses and facilities, which will continue to be used by the Army for an undetermined period of time.

Open Space (OS)

This designation is intended for large areas that are necessary for natural resource protection, the managed production of natural resources, the provision of natural resources, outdoor recreation (including trails), scenic value, and the assurance of public health and safety. This designation includes private recreation facilities and larger privately-owned areas dedicated as permanent open space within residential subdivisions.

Concord Reuse Project Open Space (CRP-OS)

This designation includes the portions of the Concord Reuse Project identified for long-term preservation as open space. It is comprised of two "districts" (see Figure 3-3). The Conservation Open Space District includes environmentally sensitive lands and other natural areas in the Los Medanos Hills and along Mount Diablo Creek. Most of this area is planned to become part of a new regional park. The Greenways and Citywide Parks District includes a "frame" of open space and linear parks around future neighborhoods, as well as large areas planned for active recreation.

Active Parks (P)

This designation is intended for improved public park facilities. It includes neighborhood and community parks; public golf courses; and recreational facilities that provide visual open space and serve the outdoor recreational needs of the community. Active parks are also permitted in the other designations on the General Plan Map, and a General Plan Map Amendment is not required if a new park is created.

Wetlands/Resource Conservation (WRC)

This designation applies to wetlands and resource conservation lands. It is intended to protect the wildlife, hydrological, and biological resources in these areas. It allows only very low intensity open space uses that are compatible with and do not disturb the resources to be protected.



Policy LU-3.1.4: Plan for new commercial development to expand or enhance the variety of goods and services to meet region-serving as well as local needs.

Policy LU-3.1.5: Identify new areas for region-serving commercial uses at locations that take advantage of major transportation routes.

These areas include, but are not limited to, Central Concord, North Concord, and the Concord Reuse Project (CRP) area.

Policy LU-3.1.6: Ensure the timely implementation of necessary infrastructure to support existing and new region-serving development.

Policy LU-3.1.7: Capitalize on the opportunity for a new regional center adjacent to the North Concord - Martinez BART Station.

The CRP Area Plan calls for a new regional center including retail, office, and multi-unit residential uses in mid-rise buildings adjacent to the North Concord - Martinez BART Station. Retail and service uses at the center will complement those in other centers in Concord, and provide new shopping, dining, and entertainment choices for residents from across the City and region, as well as future residents of the CRP site and persons working nearby.

Central Concord

Central Concord is the historic, economic, and cultural heart of the City. It encompasses the original townsite that grew into Concord, and this rich historic legacy is visible in the number and variety of historic sites in the area, such as Todos Santos Plaza, the Salvo Pacheco Adobe, and the County Fire House. Central Concord is also a focal point for modern-day activities in the City. Its shopping opportunities, cultural activities, and pedestrian-oriented scale in the Downtown area ensure that it remains a main attraction for residents and visitors alike. Many of the City's major employers are also located in Central Concord, including the Bank of America Concord Technology Center, Chevron Credit Card Center, the Civic Center, and Police Headquarters. The General Plan policies for this area aim



to support the many roles that Central Concord plays in shaping the City's character and development by preserving its historic resources, promoting its social value, and creating an attractive environment in which to do business.

GOAL LU-3: IDENTIFIABLE AND DISTINCTIVE DISTRICTS WITHIN CENTRAL CONCORD

Principle LU-3.1: Promote Central Concord as the economic, social, symbolic and historic center of the City

Policy LU-4.1.1: Continue to expand Central Concord's role as a focal point for business, entertainment, dining, cultural, and civic gatherings.



Policy LU-4.1.2: Integrate the distinct districts within Central Concord with unifying streetscape and pedestrian amenities.

The Concord Downtown Streetscape Improvements includes a detailed list of improvements and phasing concepts along with Concord Downtown Streetscape Design Guidelines, which address private development.

Policy LU-4.1.3: Integrate mixed uses at an urban scale.

Future design guidelines will provide further direction on the design and form of mixed use development.

Principle LU-4: Capitalize on Concord's Sense of Place

Policy LU-4.2.1: Require a mix of uses to promote an active commercial and residential center.

This can be achieved by establishing standards for ground floor retail space and active street frontages, particularly around Los Santos Plaza, and through limitations on uses that would not be compatible with or supportive of a pedestrian environment.

Policy LU-4.2.2: Allow for urban-scale development, including both amenities and services for workers and residents.

Policy LU-4.2.3: Promote pedestrian-oriented urban design.

Policy LU-4.2.4: Encourage new development projects to include amenities for public benefit, such as affordable housing, pedestrian-oriented facilities, and historic preservation.

Pedestrian-oriented facilities are enhanced with amenities such as outdoor seating, plazas, public art, weather protection, transit waiting arcas (benches and shelters), and links to regional trails and bikeways.

Policy LU-4.2.5: Allow multiple anchor uses and mixed use development surrounding Todos Santos Plaza to attract retail clientele and encourage pedestrian activity.

The Development Code will allow for mixed use and will ensure that uses directly facing Todos Santos Plaza activate the street and encourage pedestrian activity.

Policy LU-4.2.6: Limit building heights for new structures in the blocks immediately adjacent to Todos Santos Plaza with an inclined daylight plane requiring upper-story setbacks to ensure sunlight access for public spaces.

This is the preferred approach for height limits around downtown squares. The total amount of floor area will be governed by the floor area ratio.

Policy LU-4.2.7: Facilitate the relocation of gas stations, auto repair, and service uses to service commercial areas throughout the City.

Policy LU-4.2.8: Encourage preservation of historic buildings to the maximum extent feasible.

Policy LU-4.2.9: Designate land around the Downtown BART Station as a transit overlay zone and offer incentives to support the use of mass transit.





Employment Districts

Employment Districts are relatively large areas of the City dominated by low-rise to high-rise office, high technology, light industrial and other job generating land uses. The associated land use designations are Business Park, Heavy Industrial, West Concord Mixed Use, and Downtown Mixed Use. The Concord Reuse Project Area also includes Employment District designations, including TOD Districts and Non-Residential Districts.

GOAL LU-5: A DYNAMIC AND DIVERSIFIED OFFICE SECTOR

Principle LU-5.1: Expand and Enhance Regional Office Uses in Central Concord and the North Concord - Martinez BART Station Area



Policy LU-5.1.1: Maintain and expand Concord as a regional employment center.

The central focus of the City's economic development strategy is to enhance Concord's role as a regional center.

Policy LU-5.1.2: Promote a large, diverse regional office sector to ensure a resilient economic base.

Policy LU-5.1.3: Provide sites for professional, administrative, and headquarters office space in Central Concord and other transit-oriented development (TOD) locations.



Policy LU-5.1.4: Assure high quality design and site planning of regional offices that establish a cosmopolitan image and contribute to the character of the City as a whole.

5.3 GOALS, PRINCIPLES, AND POLICIES

GOAL T-1: A SAFE AND EFFICIENT MULTIMODAL TRANSPORTATION SYSTEM

Vehicular Circulation

Principle T-1.1: Provide an Easily Accessible, Functional, and Attractive Transportation Network.

Policy T-1.1.1: Maintain streets and pavement in optimal physical condition to provide safe and efficient travel.

Policy T-1.1.2: Maintain and upgrade transportation systems to provide smooth flow of traffic, minimize vehicle emissions, and save energy.

Transportation improvements should be consistent with statewide greenhouse gas reduction goals established by Assembly Bill 32, and the land use and transportation policy initiatives established by Senate Bill 375.

Policy T-1.1.3: Unless otherwise specified, the benchmark for the evaluation of intersections and roadway segments is LOS D. In the Downtown area, the benchmark is LOS E, recognizing the more urban, pedestrian-oriented character of this area. The Downtown is defined as the area served by streets designated Downtown in this element. The LOS E benchmark also applies in the Concord BART Station vicinity, the North Concord - Martinez BART Station vicinity, and along the City's transit routes. Transit routes are generally defined as roads with two or more bus transit lines, such as Concord Avenue, Clayton Road, and Treat Boulevard.

Policy T-1.1.4: Require all new development to locate structures to accommodate ultimate street widths and required setbacks.

Policy T-1.1.5: Require all new development to provide adequate right-of-way and to construct ultimate on and off-site improvements.

This policy ensures that land is set aside for needed roadway widening as proposed in this General Plan, for example, for Ygnacio Valley Road, and that traffic signals and other improvements are designed to serve a project at buildout, not just the first phase.

Policy T-1.1.6: Develop and operate a transportation system that directs the flow of vehicle traffic on Residential streets to Community streets and other streets serving a larger geographic area.

Policy T-1.1.7: Provide a high level of multimodal connectivity in the design of the citywide transportation system, particularly in the Concord Reuse Project area.

The roadway, bicycle, pedestrian, and transit network to be developed on the Reuse Project site should provide convenient multimodal access from this area to adjoining neighborhoods, the City, and the region.

- Policy T-1.1.8: Designate and periodically review truck routes to provide for movement of goods throughout the City. Review of truck routes should consider current destinations for trucks, system connectivity, miles of travel, emissions, ease of access to adjacent freeways, level of traffic, presence of nearby schools, the relationship of truck routes to residential neighborhoods, and future connectivity to the Concord Reuse Project site.
- Policy T-1.1.9: Limit new land uses with significant reliance on trucks to parcels fronting designated truck routes, in industrial areas, or within ¼ mile driving distance of freeways.
- Policy T-1.1.10: Discourage new parks, schools, day care centers, and major pedestrian uses from being sited on designated truck routes, or provide additional safety measures.
- Policy T-1.1.11: Consider transferring responsibility for the maintenance of private streets to the City in cases where ownership can also be transferred to the City, and streets can be improved so they meet City standards.
- Policy T-1.1.12: Establish efficient linkages to the regional transportation system for all modes of travel.
- Policy T-1.1.13: Coordinate traffic signal systems with abutting jurisdictions.
- Policy T-1.1.14: Develop a plan for the City's gateways that incorporates mutually complementary design, signs, and themes.

Such a plan shall identify an overall design theme that can be applied at each gateway (See Policy LU-10.1.6).
- Policy T-1.1.15: Enhance the visual quality of public space through the design and landscaping of streets, and the control of visual and functional aspects of abutting improvements.

The City desires to ensure that streets provide an aesthetic driving, walking, and bicycling experience through the review of abutting improvements such as sidewalks, sound walls, and signs.
- Policy T-1.1.16: Continue to provide and enhance landscaped medians and street edges that are visually pleasing and provide shade and buffers for pedestrians and cyclists; landscaping should use native or low-water plants and reduce stormwater runoff to the greatest extent possible.

Concord recognizes that well maintained roads with landscaped medians and edges enhance the City's image as well as adjoining property values. The City will continue its street maintenance and landscaping programs, and complete street upgrades as funding becomes available.

Policy T-1.1.17: Protect views toward hillsides and other regional open spaces along key roadways in Concord.

Treat Boulevard, Ygnacio Valley Road, Kirker Pass Road, and Willow Pass Road are examples of roadways that have views to regional open space areas that the City seeks to preserve.

Policy T-1.1.18: Monitor transportation facility performance as a part of development review and CEQA compliance as development occurs; include bicycle and pedestrian performance, in addition to vehicle performance in this monitoring.

Bicycle and pedestrian performance can be monitored using Multimodal Level of Service calculations or other appropriate methods such as walk or bike audits, surveys, and review of bicycle and pedestrian facility design.

Policy T-1.1.19: Support car sharing programs as a way to reduce the necessity of auto ownership, especially in transit-oriented development areas.

Policy T-1.1.20: Peak hour turn restrictions may be used to prevent cut-through traffic in certain areas.

Principle T-1.2: Ensure that Transportation Improvement Projects are Adequately Funded.

Policy T-1.2.1: Schedule transportation improvement projects in the Capital Improvement Program and Transportation Improvement Program.

The City will continue to fund improvements through a combination of Capital Improvement Program funds, contributions from private land developments, and other funds, as available.

Policy T-1.2.2: Continue to use Off-Site Street Improvement Program (OSIP) monies to fund transportation improvements serving all transportation users and traffic control system upgrades.

Policy T-1.2.3: Use impact fees, development agreements, and other funding mechanisms to construct the transportation system and support Transportation Demand Management programs on the Concord Reuse Project site, including transit services and facilities.

**CONCORD
GENERAL PLAN AND ZONING ORDINANCE CONSISTENCY
ANALYSIS**

July 1, 2015



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CONCORD GENERAL PLAN AND ZONING ORDINANCE CONSISTENCY ANALYSIS

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EXECUTIVE SUMMARY

The City of Concord (“City”) is processing a text amendment to the West Concord Mixed-Use zoning district of the City’s Development Code (zoning ordinance). The text amendment would make certain land uses such as the sales and services of building materials, recycling centers and cabinetry fabrication non-permitted uses in this zoning district. The purpose of the text amendment is to ensure consistency of the Concord Development Code with the City’s West Concord Mixed-Use District as described in the 2030 General Plan.

The scope of the City Council’s decision is straightforward. If the City Council finds that sales and services of building materials, recycling centers, and cabinetry fabrication uses inherently conflict with the intent and vision of the West Concord Mixed Use District, then the City Council should adopt the text amendments to assure consistency of the Development Code with the General Plan.

Municipal Resource Group (MRG) was asked to prepare a planning and zoning review of the text amendment by representatives of Security Owners Corporation. Security Owners Corporation holds property within the West Concord Mixed Use District at 2280 Diamond Boulevard. MRG assigned Paul Richardson the task of preparing the analysis. Mr. Richardson has been a practicing urban planner for municipal agencies from 1980 to 2013 when he joined MRG. His Bio is attached.

Conclusions: MRG agrees with the Concord City staff conclusion presented to the Planning Commission that the heavy commercial uses proposed to be deleted from the West Concord Mixed Use District are necessary in order to maintain vertical consistency of the Development Code with the Concord General Plan. This report also concludes that the California Environmental Quality Act requires the use of an addendum unless certain conditions based on “substantial evidence” arise. However, none of those conditions will result from the action on the amendment.

A. Summary Conclusions

- 1) The Concord Development Code is required to be consistent with the Concord 2030 General Plan both by statute and reviewing court determinations.
- 2) The West Concord Mixed-Use General Plan District neither intends nor provides for heavy commercial uses such as cabinetry fabrication, recycling centers or building material and supply facilities.
- 3) Cabinetry fabrication, recycling centers and building material and supply facilities are clearly envisioned in the SC (Service Commercial) General Plan District where visual, noise, truck traffic and other activities flowing from these uses can be consolidated in designated areas.
- 4) Allowing heavy service commercial activities in the West Concord Mixed Use District, which is intended for campus-like professional office, high-end new car sales together with supporting retail and hospitality services, will directly conflict with the vision expressed in the General Plan and diminishes the likelihood of achieving that vision.

- 5) Allowing these incompatible use types in various and multiple areas of the community diminishes the value of SC designated properties and spreads undesirable activities throughout the community.
- 6) The CEQA Guidelines require that the City prepare an addendum to a previously certified environmental document unless “substantial evidence” has been entered into the record to show there are major revisions required. There has been no substantial evidence entered into the record. The only concern expressed was rendering some existing legacy uses non-conforming. The Concord Development Code provides broad and liberal protection for any potential non-conforming uses.

I. PURPOSE AND METHODOLOGY

The purpose of this report is to determine if elimination of the heavy commercial use types from the West Concord Mixed Use District Development Code are necessary to maintain consistency with the General Plan. MRG was provided several documents relating to this action including materials submitted both in support of and opposition to the amendment, as well as the Planning Commission staff report. MRG independently conducted on-line research of the Concord 2030 General Plan, the Concord Development Code, the State of California Planning Zoning and Development Laws, and the CEQA Guidelines, together with relevant case law.

II. GENERAL PLAN AND ZONING CONSISTENCY

A. STATUTORY AND REVIEWING COURT REQUIREMENTS

According to the California Office of Planning and Research General Plan guidelines, California state law requires each county and city to adopt a general plan “for the physical development of the county or city, and any land outside its boundaries which bears relation to its planning” (Government Code §65300). The California Supreme Court has called the general plan the “constitution for future development.” The general plan expresses the community’s development goals and embodies public policy relative to the distribution of future land uses, both public and private.

Under California Government Code § 65300.5 the General Plan and elements and parts thereof must comprise an integrated, internally consistent and compatible statement of policies for the adopting agency. Both *Sierra Club v. Kern County and Board of Supervisors* (1981) and *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) affirmed internal General Plan consistency requirements. A General Plan is a local constitution intended to guide an effective planning process. The plan must be without internal conflicts and inconsistencies so those subject to the plan can tell what type of development should or should not happen. (Emphasis added)

Under the California Government Code, zoning actions must be consistent with the General Plan. (Gov. Code, Sec. 65680. Moreover, subsection (c) of this code provides:

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

The legislature and the Government Code understand the enormity of a General Plan update by providing that the zoning ordinance be amended “within a reasonable time.” There is also legacy zoning in place that will conflict with newly adopted General Plans. In the case of the West Concord Mixed Use zoning district, the City staff rightfully discovered the inconsistency and advanced the item to the City Council to resolve the inconsistency. It is not unusual or unexpected that during the course of day-to-day administration of the zoning code for staff to discover vestiges from past zoning actions that require text amendments to maintain consistency with the newly adopted General Plan.

For these reasons virtually all cities and counties in California adopt both General Plan and zoning ordinance consistency findings when approving any discretionary or quasi-judicial actions such as subdivision maps, use permits and variances.

B. EXISTING GENERAL PLAN DESCRIPTIONS

MRG evaluated two relevant Land Use designations identified in the General Plan for Development Code and General Plan consistency purposes. Those are the West Concord Mixed Use District and the Service Commercial District. The actual General Plan Descriptions are presented below:

West Concord Mixed Use (WCMU) - This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses. Public/ quasi-public uses also are allowed. Residential development is not allowed in this mixed-use category, as it is intended to create a campus-like office environment. The maximum FAR is 4.0.

Service Commercial (SC) - This designation is intended to provide sites for commercial businesses that are not appropriate in other areas because of high volumes of vehicle traffic and potential adverse impacts on other uses. This designation allows small scale commercial uses that provide goods and services to employees, residents and visitors. It includes automotive sales and services, building materials, warehousing, distribution and personal storage located on major arterial streets, as well as retail uses, services, and small offices. The maximum FAR is 0.8.

The WCMU district depicts a vision between low-scale, high-end “new” car sales with a high intensity office development together with campus-supporting retail. The 4.0 FAR describes a very intense urban area which can be achieved by office and campus development. New auto sales will not approach this FAR.

Most cities nurture and provide for new car sales as they provide robust sales tax that flow into the General Fund and can be used to support a variety of municipal services. And, since these are regional draws, they tend to be located on major transportation corridors and clustered together. MRG believes that the text amendment culls out incompatible and undesirable land use types that conflict with the vision for the WCMU described in the General Plan.

Land in this area should be reserved for “new” auto sales and campus-oriented office with supporting retail and lodging. MRG believes that the text amendment would eliminate use types that are inconsistent with and detract from this vision expressed in the General Plan, bringing the General Plan and Development Code more closely in alignment.

Conversely, the SC District expressly encourages the use types that are proposed to be eliminated from the WCMU District. The SC district specifically talks about the nuisance activities of these uses and how they are more appropriately located in a combined area. Consolidating these use types is typical in most well-planned communities. These activities are necessary for a balanced community and balanced land use. These uses provide employment and needed services to the residents and businesses in the community. However, because of the nuisance activity generated, they tend not to be compatible with residential, professional office, retail, hospitality services and high-end auto sales. Moreover, allowing these uses in different land use categories dilutes the value of the SC district as these use types have more locational flexibility. It also localizes the undesirable aspects of these uses away from designated areas.

C. EXISTING CONCORD DEVELOPMENT CODE PROVISIONS

The downtown zoning districts consist of the Downtown Pedestrian, Downtown Mixed Use and the West Concord Mixed Use Districts. The various use types are designated as permitted with a Zoning Clearance, permitted with an Administrative Permit, permitted with a Use Permit or not permitted. Both cabinet manufacturing shops and indoor building materials uses are permitted with a Zoning Clearance whereas small recycling facilities require a discretionary Administrative Permit. If these use types are allowed to establish, they can irreparably change the character of the district from that envisioned by the General Plan.

D. NONCONFORMING USES

Should the City adopt the text amendment there is the potential for certain existing uses to become non-conforming uses in the WMX district. MRG reviewed a list that suggested 21 businesses could be rendered non-conforming in the WMX District. A review of the list showed that many of the identified uses were neither primarily building supply nor cabinet manufacturing, but rather designer showrooms not affected by the text amendment. While MRG was not able to go store by store and was not able to research city records, we were able to do on-line research of several of the business and compare that to the City Code. The Definition of Building Materials is provided below:

“Building materials sales and services” means an indoor or outdoor establishment selling cabinetry, fixtures, flooring, glass, lumber, paint, wallpaper, and other building materials, plants and landscaping materials including rock, stone, and masonry products to the general public. Includes stores with indoor service areas. Establishments primarily selling electrical, plumbing, heating, and air conditioning equipment and supplies are classified in “Wholesaling, distribution.” Does not include large format retail home stores in buildings over 80,000 square feet (see “Big box” under “Retail Sales”), nor show room stores with contractor sales and assembly, which are classified as “Warehouse show room with assembly and sales” under “Manufacturing, processing.” (Emphasis added)

Based on this definition the following businesses would not be affected by the code change:

Business	Use Type	WMX Permit Type
Pacific Sales Kitchen and Bath	Warehouse Show Room with Assembly and Sales	Zoning Clearance
Home Depot	Big Box	Use Permit
Bebo Interiors	Warehouse Show Room with Assembly and Sales	Zoning Clearance
Standards of Elegance	Warehouse Show Room with Assembly and Sales	Zoning Clearance
Cole's Interiors	Warehouse Show Room with Assembly and Sales	Zoning Clearance
Prosource Kitchen and Bath	Warehouse Show Room with Assembly and Sales	Zoning Clearance
Standards of Excellence	Warehouse Show Room with Assembly and Sales	Zoning Clearance

It is also likely that the flooring and carpet stores may fall into *Warehouse Show Room* use type definition and would be similarly unaffected by the zoning text amendment.

Nonetheless, any uses identified as nonconforming are protected by the Development Code. Those uses are allowed to continue in their present form provided they are not enlarged or expanded. They are allowed to perform ordinary maintenance and repair and can reconstruct any damage provided it does not exceed 50% of the structure's value as determined by the Building Official. This is a generous standard as many agencies use assessed valuation which artificially deflates real value. In addition, the Development Code provides for a minor use permit process to exceed 50% if those improvements benefit the district and surrounding properties. Our conclusion is that the creation of non-conforming uses is not a significantly relevant factor in this matter.

E. SEIR ADDENDUM

MRG reviewed a document prepared by parties opposing the text amendment that suggested these text amendments would render numerous businesses nonconforming, thus resulting in urban decay and hence a full CEQA analysis was necessary and the addendum is not the appropriate environmental document. We disagree with that conclusion. Section 15164 of the CEQA Guidelines entitled ADDENDUM TO AN EIR OR NEGATIVE DECLARATION provides that:

A lead agency or responsible agency *shall prepare* (emphasis added) an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

The relevant condition in Section 15162 is:

- (1) *Substantial changes* (emphasis added) are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

In short, this is a “substantial evidence” test. The evidence to require more than an addendum cannot be based on conjecture, anecdotal or even a fair argument. MRG found no substantial evidence to use anything other than an addendum to support the text amendment action.

In the broad context of the General Plan and Development Code this text amendment is minor and intended to create consistency between the Development Code and General Plan. There are no “substantial” new, traffic, air quality, noise, public service, infrastructure or other impacts that have not been previously analyzed under the prior SEIR. The General Plan describes development intensities in terms of residential density and commercial Floor Area Ratios. None of those intensities are changing as a result of this amendment and, as a result, there are no new broad or substantial environmental impacts.

In the narrow context of the existing building material and cabinet uses, they are protected by the nonconforming use code discussed above. Urban decay will not result from this action as those business and property owners can keep and maintain their investment and live out their useful life under the Development Code until they choose to transition to a conforming use.

The only potential consequence is for those yet unapproved and undeveloped potential future building material and cabinet fabrication uses that would not be consistent with the Development Code for this district. The fact that those uses cannot develop in this district is not a substantial new environmental consequence but rather a business investment and location consequence. These uses are clearly allowed elsewhere in the City, particularly in those General Plan areas designated SC (Service Commercial).

III. SUMMARY CONCLUSIONS

- 1) The Concord Development Code is required to be consistent with the Concord 2030 General Plan both by statute and reviewing court determinations.
- 2) The West Concord Mixed-Use General Plan District neither intends nor provides for heavy commercial uses such as cabinetry fabrication, recycling centers or building material and supply facilities.
- 3) Cabinetry fabrication, recycling centers and building material and supply facilities are clearly envisioned in the SC (Service Commercial) General Plan District where visual, noise, truck traffic and other activities flowing from these uses can be consolidated in designated areas.
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Paul Richardson – Planning & Community Development

As the former Planning, Housing and Redevelopment Director for the City of Roseville and Planning Manager for the City of Walnut Creek, Paul Richardson provides a combination of skills including downtown revitalization, development project management, policy and program administration, as well as organizational leadership. Paul has over 30 years of municipal planning experience, including 25 years as a manager. Specific client services include:

- Comprehensive Greenfield Specific Plans;
- Downtown Revitalization;
- Special Planning Studies; and
- Development Project Management.



Paul provides services to both public and private clients and understands the complexities of the modern development process including environmental analysis, site constraint analysis, architectural and site design review, permitting and agency coordination. He understands the importance of effective presentations before community groups as well as to boards, commissions and councils.

Specifically, Paul oversaw the comprehensive planning process, annexation and development agreements for four major specific plans west of Fiddymont Road in Roseville. These are complete communities providing a full range of infrastructure and services for 19,000 new residential units with associated schools, parks, open space, bike trails, shopping, jobs and funding mechanisms that will be home to 50,000 new residents over the next 30 years.

Paul has also used the specific plan process to guide downtown revitalization efforts both at Walnut Creek and Roseville. Using specific plans with citizens and stakeholders advisory groups, these plans have broad community support and minimize entitlement risk for developers building in challenging downtown areas.

Paul received a B.S. with honors in City and Regional Planning from Cal Poly San Luis Obispo in 1981. His over 30 years of experience include service to the Cities of El Paso de Robles, El Cerrito, Walnut Creek and Roseville, California.



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Mike Oliver – Managing Consultant, Organizational Intervention, Realignment & Development

Mike Oliver leads Municipal Resource Group's Organizational Intervention, Realignment and Development practice area and serves as President. Mike's MRG services to public sector clients include:

- fiscal and operational analysis;
- service realignment and enhancement;
- law enforcement services studies for cities and counties;
- preparation of grand jury investigation responses; and
- alternative service delivery options for local governments.



Mike often serves clients by leading specialist teams in financial interventions, forensic accounting and budget analysis projects. He has assisted a number of cities in restoring their fiscal integrity and addressing the financial challenges facing California's local governments. His consulting activities include developing long-term development strategies for specialty public agencies including county fairs and transportation agencies. Mike often conducts public input and visioning processes and presents findings to elected officials and employees. With over 17 years of consulting experience, Mike has a recognized track record of assisting clients in addressing complex issues.

Mike has served as the City Manager of the Cities of Oakley, Citrus Heights and San Leandro. When Mike was the City Manager of San Leandro, the City created the first joint city-county redevelopment area in the state, induced over 500,000 square feet of commercial development and consolidated the City's Fire Operation with the Alameda County Fire Department. During his tenure as the first City Manager of Citrus Heights the City hired staff, negotiated a police services agreement, established the City's fiscal and expenditure management policies and practices, created the first redevelopment agency and negotiated settlement of the County's \$147 million lawsuit against the City. Today, Citrus Heights has over \$35 million in unencumbered reserves. During his tenure as the first City Manager of the City of Oakley, the City hired staff, built its City Hall, approved the general plan, approved 6,000 residential units and annexed over 2,500 acres of adjacent land.

Mike has presented at League of California Cities, Cal-LAFCO, California Special District and Bond Buyers conferences and professional organizations on a wide variety of subjects. His most recent presentations focus on the options for alternative service delivery and the fiscal issues faced by local government. Mike has his Bachelor's Degree in Political Science and Master's Degree in Public Administration from California State University at Hayward. He has also attended the Senior Government Officials course at the Kennedy School, Harvard College and has participated in training courses at the Menninger Clinic in Topeka, Kansas.



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June 29, 2015

Mayor Tim Grayson
City of Concord
1950 Parkside Drive
Concord, CA, 94520

**RE: PENDING LUMBER YARD USE
2180 Diamond Blvd
Concord, California**

Dear Mr. Mayor:

The proposed lumber yard at 2180 Diamond is not consistent with the goals of the General Plan for this area and I agree with the proposed changes to the zoning ordinance text prohibiting the use. Over the last 16 years I have leased properties both for landlords and to tenants in Downtown Concord. In my experience professional office uses will avoid certain properties and commercial districts that appear too industrial or blighted. It is my opinion that placing a lumber yard in the middle of the West Concord Mixed Use district would create blight and thus impact the values of the office buildings and the development potential of this district.

Allow me to point out my concerns with examples and experiences that you, the City staff, and the Council can observe and make the best informed decision for the community.

Adjacent uses have an effect on extending vacancies. Last year I was the leasing agent for Galaxy Office Park located one block from the proposed site. The east side of 1001 Galaxy looks onto the former dealership property which is now leased to Service Masters. While the Service Masters use is consistent with the zoning, prospective tenants touring vacant space overlooking the employees in the yard maintaining equipment and loading trucks would routinely decline consideration of renting on this side of the building. One Law firm decided that the view was too industrial for their liking and eventually leased at 2300 Clayton Road. Consider how approving the proposed lumber yard would affect the adjacent office building and the one across the street. I can assure the owners that they will experience either a decline in tenant quality, experience higher vacancies, and will have lower rental rates on average because of the lumber yard use.

Outdoor storage all day is outdoor storage. I have leased and sold many properties in the Stanwell Business Park. Consistent with the above example, the business park fails to attract professional office uses like law firms and insurance companies because of the industrial feel of the business park. Prior to the adoption of the current General Plan and Zoning Ordinance for this area, many of the local real estate agents, including myself, provided input to the City on how to improve the area with more professional office uses. The recommended and adopted change was elimination of outdoor storage. Storage does not mean just keeping products outside in the evening. In fact most outdoor yards in Concord experience theft and put all of their product inside for the evening. Then, during the day, palletized materials go outside for order fulfilling and stock rotation. If the lumber yard needs to put inventory outside during the day, they clearly do not have a large enough property to accommodate the use. In the case of 2120 Diamond, the second floor views will be impacted by the proposed use.

After the approval who really polices the use? A couple of months ago we listed a property on Challenge Drive across from White Cap Building Supplies. This tenant routinely loads and unloads their trucks in the middle of the street. You can go there at any time during the business day and observe for yourself. Yes, they are supposed to load on the property in their own yard, but the manager decided to fill the loading area with palletized products. I believe this proposed lumber yard operator would eventually do the same thing, once the dust settles. Even in appropriately zoned areas like Challenge Drive (zoned Industrial Business Park), uses pour onto the street. I would say developing a professional office building next to White Cap would be impractical. In fact the building we were marketing across the street would routinely have customers and employees of White Cap laying on the grass. Yes, this affected the showing of the property and we routinely had to ask the loitering persons to leave.

All of the lumber yards in Concord share the unintended outdoor loitering of men looking for work. At any given time you can go to Home Depot two blocks away and in this zoning district, there are men standing, laying, sitting in the bushes, flagging down cars looking for work. Yes they are off Home Depot property, but they are on the public street in full view. Dolans Lumber on Monument Boulevard told the men to go to the U-Haul center one block away. If you want to pick up a day laborer just go to one of these two businesses. I do not believe that is consistent with the General Plan. In fact the City of Concord has lots of issues with the unorganized assembly of day laborers. Why add another opportunity to congregate? The adjacent office uses will certainly feel the effects of this blight.

Delivery truck drivers just stop wherever they want. In Walnut Creek Piedmont Lumber had a store on North Main Street. Piedmont's delivery drivers would routinely stop their vehicles in the center median because customers were backed up into the street and or blocking the prescribed truck lane. The proposed site plan for the lumber yard appears similar to the former Piedmont site in Walnut Creek. It is evident that delivery vehicles during peak business hours will need to stop in front of the office building then pull into the adjacent left lane to make a wide right turn. The first ingress specifically for delivery trucks will systematically block the 2120 Diamond driveway and cause roadway hazards. In the case of White Cap the store's drivers just park their trucks in the opposite lane with the hazard lights on. In the case of semi-truck deliveries, how could the driver know how to access this yard and where to stop? A 90 to 100 foot truck will stop anywhere they need to, put on hazards and go into the store to ask how to park for loading. It is clear this site does not have the offsite staging or on site turn radius to allow a semi-truck to come through the yard on Diamond and out Burnett or back in or out of either street.

Automotive Sales and Service will give to a higher and better use. In Walnut Creek the city has been encouraging the auto dealers to relocate dealerships to allow for more development in the Downtown Core where the FAR is 6.0. Our office and your City facilitated the relocation of the Lehmers dealership to Market Street to allow for more residential development in the downtown. The West Concord Mixed Use District has an FAR of 4.0 and it seems the use and density of the proposed lumber yard are inconsistent with the goals of the District. Why limit one of the best corners in town to a lumber yard? The Chevron campus will be sold soon to a new developer and you will have an immediate transformation and economic improvement of this area.

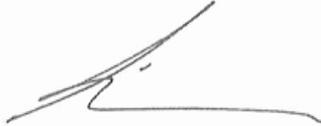
Rents and Values will be discounted by 25%. In my opinion the rental value of the office buildings will be impacted by 25% if you allow for uses like the lumber yard. Rents may go up but not as fast. Similar to Stanwell Business Park, rents do not go up as fast as professional office locations, Low intensive uses survive because of low rents and low value.

Blight might seem like a harsh word but it is what happens when the potential of an area withers. Blight starts with the perception of unsafe conditions and the decline of potential economic uses. Blight has a profound impact on values and the demand for real estate in specific areas. The City enacted the General Plan with specific goals in mind to improve the West Concord Mixed Use District and create a cosmopolitan environment, I believe the examples above show how one use can effect the development

potential of the neighborhood, property values, and potential rents. If you care to tour any of these locations and or discuss my opinions on this matter please feel free to call (925) 279-5580.

Best Regards,

COLLIERS INTERNATIONAL

A handwritten signature in black ink, appearing to read 'Eric Erickson', with a stylized flourish at the end.

Eric Erickson, SIOR, CCIM
Senior Vice President
East Bay Office Team
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License #01177336
(925) 279-5580

cc: John Montag, City of Concord



June 29, 2015

Mayor Tim Grayson
City of Concord
1950 Parkside Drive
Concord, CA, 94520

COPY

**RE: PENDING LUMBER YARD USE
2180 Diamond Blvd
Concord, California**

Dear Mr. Mayor:

The proposed lumber yard at 2180 Diamond is not consistent with the goals of the General Plan for this area and I agree with the proposed changes to the zoning ordinance text prohibiting the use. Over the last 16 years I have leased properties both for landlords and to tenants in Downtown Concord. In my experience professional office uses will avoid certain properties and commercial districts that appear too industrial or blighted. It is my opinion that placing a lumber yard in the middle of the West Concord Mixed Use district would create blight and thus impact the values of the office buildings and the development potential of this district.

Allow me to point out my concerns with examples and experiences that you, the City staff, and the Council can observe and make the best informed decision for the community.

Adjacent uses have an effect on extending vacancies. Last year I was the leasing agent for Galaxy Office Park located one block from the proposed site. The east side of 1001 Galaxy looks onto the former dealership property which is now leased to Service Masters. While the Service Masters use is consistent with the zoning, prospective tenants touring vacant space overlooking the employees in the yard maintaining equipment and loading trucks would routinely decline consideration of renting on this side of the building. One Law firm decided that the view was too industrial for their liking and eventually leased at 2300 Clayton Road. Consider how approving the proposed lumber yard would affect the adjacent office building and the one across the street. I can assure the owners that they will experience either a decline in tenant quality, experience higher vacancies, and will have lower rental rates on average because of the lumber yard use.

Outdoor storage all day is outdoor storage. I have leased and sold many properties in the Stanwell Business Park. Consistent with the above example, the business park fails to attract professional office uses like law firms and insurance companies because of the industrial feel of the business park. Prior to the adoption of the current General Plan and Zoning Ordinance for this area, many of the local real estate agents, including myself, provided input to the City on how to improve the area with more professional office uses. The recommended and adopted change was elimination of outdoor storage. Storage does not mean just keeping products outside in the evening. In fact most outdoor yards in Concord experience theft and put all of their product inside for the evening. Then, during the day, palletized materials go outside for order fulfilling and stock rotation. If the lumber yard needs to put inventory outside during the day, they clearly do not have a large enough property to accommodate the use. In the case of 2120 Diamond, the second floor views will be impacted by the proposed use.

After the approval who really polices the use? A couple of months ago we listed a property on Challenge Drive across from White Cap Building Supplies. This tenant routinely loads and unloads their trucks in the middle of the street. You can go there at any time during the business day and observe for yourself. Yes, they are supposed to load on the property in their own yard, but the manager decided to fill the loading area with palletized products. I believe this proposed lumber yard operator would eventually do the same thing, once the dust settles. Even in appropriately zoned areas like Challenge Drive (zoned Industrial Business Park), uses pour onto the street. I would say developing a professional office building next to White Cap would be impractical. In fact the building we were marketing across the street would routinely have customers and employees of White Cap laying on the grass. Yes, this affected the showing of the property and we routinely had to ask the loitering persons to leave.

All of the lumber yards in Concord share the unintended outdoor loitering of men looking for work. At any given time you can go to Home Depot two blocks away and in this zoning district, there are men standing, laying, sitting in the bushes, flagging down cars looking for work. Yes they are off Home Depot property, but they are on the public street in full view. Dolans Lumber on Monument Boulevard told the men to go to the U-Haul center one block away. If you want to pick up a day laborer just go to one of these two businesses. I do not believe that is consistent with the General Plan. In fact the City of Concord has lots of issues with the unorganized assembly of day laborers. Why add another opportunity to congregate? The adjacent office uses will certainly feel the effects of this blight.

Delivery truck drivers just stop wherever they want. In Walnut Creek Piedmont Lumber had a store on North Main Street. Piedmont's delivery drivers would routinely stop their vehicles in the center median because customers were backed up into the street and or blocking the prescribed truck lane. The proposed site plan for the lumber yard appears similar to the former Piedmont site in Walnut Creek. It is evident that delivery vehicles during peak business hours will need to stop in front of the office building then pull into the adjacent left lane to make a wide right turn. The first ingress specifically for delivery trucks will systematically block the 2120 Diamond driveway and cause roadway hazards. In the case of White Cap the store's drivers just park their trucks in the opposite lane with the hazard lights on. In the case of semi-truck deliveries, how could the driver know how to access this yard and where to stop? A 90 to 100 foot truck will stop anywhere they need to, put on hazards and go into the store to ask how to park for loading. It is clear this site does not have the offsite staging or on site turn radius to allow a semi-truck to come through the yard on Diamond and out Burnett or back in or out of either street.

Automotive Sales and Service will give to a higher and better use. In Walnut Creek the city has been encouraging the auto dealers to relocate dealerships to allow for more development in the Downtown Core where the FAR is 6.0. Our office and your City facilitated the relocation of the Lehmers dealership to Market Street to allow for more residential development in the downtown. The West Concord Mixed Use District has an FAR of 4.0 and it seems the use and density of the proposed lumber yard are inconsistent with the goals of the District. Why limit one of the best corners in town to a lumber yard? The Chevron campus will be sold soon to a new developer and you will have an immediate transformation and economic improvement of this area.

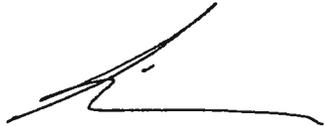
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Best Regards,

COLLIERS INTERNATIONAL

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cc: John Montag, City of Concord



General Steamship International, LTD.

575 Redwood Highway, Suite 200, Mill Valley, California 94941-3007

Tel: (415) 389-5200
Fax: (415) 389-9020
Telex: 149020
Cable: "Gensteamco"

June 10, 2015

City of Concord
1950 Parkside Drive
Concord, CA 94519

**RE: Proposed City of Concord Zoning Amendment Prohibiting Building Material Sales and Services
In West Concord (JUNE 17 Planning Commission Meeting)**

Dear Mayor, Vice Mayor and Council Members,

I am writing this letter to voice my concern over the proposed changes to the Concord Zoning Amendment with regards to the Mixed Use Zoning (WMX) in West Concord. This amendment has to do with prohibiting the sales of "Building Materials and Service". I am opposed to the zoning amendment as it serves an important public purpose. Historically and currently there are a large number of tenants that operate in this area that will no longer be confirming uses. This is an area comprised largely of warehouse spaces and an important resource for local citizens, contractors, and companies to find the goods they need for specific jobs. In my opinion the City is not gaining anything with this amendment, in fact they are doing the opposite which would be to harm local business and Concord residents. I would be interested to know what the City will gain by altering the current zoning.

In addition this amendment is a direct conflict with the Concord 2030 General Plan which was updated in 2012. The General Plan's policy for land uses in the West Concord Mixed Use area reads as follows: ***"This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom / warehouses."***

Furthermore Section 18.42.010 of the Zoning Ordinance, which established the WMX Zoning District, was adopted in 2014 (Ordinance No.14-3). This Ordinance contains specific language the WMX zoning supports the Sales of Building Materials and Services is consistent with the General Plan. The Building Sales and Services uses is "consistent with and implements the West Concord mixed use (WCMU) land use designation of the general plan."

If this amendment is passed it will result in loss revenues to the City of Concord, restrict hiring and expansion of local businesses. Also this will send the wrong message to other business looking to expand into Concord market. Please consider all of these issues on June 17th.

June 10, 2015
City of Concord
Page 2

As an industrial multi-tenant building owner (2500 Bisso Lane) I am extremely concerned that a single council member could put forth such an amendment when it serves no public purpose. The motives behind this action are purely political and do not serve the City of Concord well. Actions like this will severely limit uses and potential tenants in multi-tenant buildings. Please consider how this amendment will impact existing and future uses in the WMX zone when voting on this amendment. In addition please ask yourself what public purpose does this amendment serve and whom will it benefit?

Thank you for your time and consideration.

Sincerely,

Sean Sabarese
Vice President

GSI Properties
575 Redwood Hwy Suite 200
Mill Valley, CA 94941
Phone (415) 310-5775

Pacific Willowick LP

1640 S. Sepulveda Blvd

Suite 214

Los Angeles, CA 90025

(310) 477-5300

Fax: (310) 575-5823

**BENCHED ITEM
HEARING 2**

June 15, 2015

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

Re: Proposed Zoning Amendment – Concord, California

To Whom It May Concern:

This letter is in connection with the City of Concord's proposed zoning amendment in the West Concord Mixed use Zoning District, prohibiting certain uses, including building materials, sales and service.

We currently own a commercial industrial property located 1190 Burnett Avenue, Concord, California where we have numerous tenants who are in the business of supplying building materials, sales and service. We feel that if the above zoning amendment is passed it will be detrimental to our business, in that current tenants who are in the building materials supply business may have to vacate the property. Additionally, it will greatly restrict our leasing activity in the future, causing increased vacancies that will ultimately reduce the value of our property. If this occurs, we will file an appeal with the Contra Costa County Tax Assessor for a reduction in our property taxes.

Therefore, we strongly object to the proposed zoning amendment, and ask that you take our objection into consideration.

Sincerely,



Harvey Rosen
President

ROSCHA & ODNE LLP

ATTORNEYS AT LAW

CONCORD CENTER
2300 CLAYTON ROAD – SUITE 500
CONCORD, CALIFORNIA 94520
www.ROLawGroup.com

TELEPHONE: (925) 602-1400

FACSIMILE: (925) 825-0143

BENCHED ITEM
HEARING 2

June 16, 2015

VIA OVERNIGHT MAIL AND E-MAIL

City of Concord Planning Commission
Robert Hoag, Chair
1950 Parkside Drive
Concord, CA 94519

RE: **WMX Text Amendment Proposal (PL15132-DC)**
June 17, 2015 Planning Commission Hearing

Honorable Commissioners:

This office represents the legal interests of Security Owners Corporation, the owner of real property at 2280 Diamond Boulevard located within the West Concord Mixed Use area, along with several other concerned businesses within the City. We received notice of the Planning Commission hearing set for June 17 regarding a proposed amendment the zoning code and provide the following comments.

As we understand the proposed text amendment, the City is considering amending the West Concord Mixed Use Zoning (“WMX”) classification to prohibit certain uses, including (i) building materials, sales and services (including lumberyards), (ii) cabinetry, and (iii) recycling centers, because such uses do not comply with the Concord General Plan.

The general plan is the comprehensive, long-term plan for the development of the City of Concord, and it is the preeminent land use regulation of the City. *California Government Code* § 65300; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531. The zoning ordinance of Concord must comply with and be consistent with its general plan. *Gov’t Code* § 65860; *Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586.

To be consistent with a general plan, the various land uses authorized by the zoning ordinance **must** be compatible with the objectives, policies, programs and general land uses specified in the general plan. *Gov’t Code* § 65860(a)(2). In fact, if the zoning ordinance is inconsistent with the general plan, the City is required to amend the zoning ordinance so that it is consistent with the general plan. *Gov’t Code* § 65860(c); *Corono-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985; *Leshar*, supra, 52 Cal.3d 531.

I. Inconsistency with Concord General Plan

The uses proposed for removal from the WMX District are not consistent with the policies expressed in the Concord General Plan (“GP”) for the West Concord Mixed Use area (“WMXU”). Specifically, the WMXU is intended to create a “campus-like office atmosphere” (GP, p. 3-12, Principle LU-5.1), and the General Plan contains the following policies for the WMXU area:

- Policy LU-5.1.2 calls for the promotion of “a large, diverse regional office sector to ensure a resilient base.”
- Policy LU-5.1.3 seeks to “provide sites for professional, administrative and headquarters office space.”
- Policy LU-5.1.4 seeks “high quality design and planning of regional offices that establish a cosmopolitan image and contribute to the character of the City, as a whole.”

Lumberyards, building materials facilities, cabinetry facilities, and recycling centers would not be conducive to a campus-like atmosphere and would be inconsistent with Principle LU-5.1, as well as Policies LU-5.1.1 through 5.1.4. A copy of select General Plan Principles and Policies is attached as **Attachment 1**.

For example, lumberyards and recycling centers would bring heavy trucks rumbling through congested City streets, which would lead to an increase in peak hour traffic trips. Lumberyards and recycling centers are not consistent with the City’s stated intention of creating a “campus-like atmosphere,” do not promote a “regional office sector”, do not aide in establishing Concord’s “cosmopolitan image”, and are wholly inconsistent with the established uses of other businesses and companies currently operating in the immediate vicinity. In fact, most cities locate lumberyards and building materials facilities in light industrial zoning districts, and not in downtown core areas reserved for office-campus uses.

In fact, when the General Plan was drafted it was noted that certain commercial uses, such as building services, would not be appropriate in areas such as West Concord Mixed Use, mostly due to volumes of vehicle traffic and possible impacts to adjacent uses. For those types of uses, the Service Commercial (SC) designation was created. It specifically references that building materials are not appropriate in other designated areas, which would include the WMX area. (GP, p. 3-15).

Additionally, as the freeway exit off of northbound I-680 drops vehicles onto Burnett Avenue, any lumberyard or recycling center located in that area would be a “gateway” project as it is one of the first sites people see as they exit the freeway and enter the City. The General Plan calls for the City to develop specific gateway criteria and a plan that incorporates mutually complementary designs, signs and themes. (GP, p. 5-25, Policy T-1.2.14) Neither a lumberyard

nor a recycling center would enhance the gateway image that Concord is seeking. In April 2014, the Concord City Council called for polishing the City's tarnished image, and hotels in Concord are embarking on a marketing campaign to bring tourist and business traffic to hotels---adding lumberyards and recycling centers in the WMX District would certainly not promote tourist and business traffic to the nearby hotels.

Any trip to the existing Home Depot in the downtown area shows you what building materials facilities and lumberyards will bring to the area – loitering adjacent to businesses by individuals looking for work. A prime example is the Home Depot located a few blocks away. Adding additional lumberyards or building materials facilities will only increase the number of itinerant workers loitering in the downtown core adjacent to our existing offices, restaurants, and any planned retail uses. Certainly, such increased loitering would not serve the General Plan policy of advancing the cosmopolitan image of the City or of creating a campus-like, office atmosphere.

II. GSL Opposition

From a review of the agenda item and staff report, it would appear that Golden State Lumber opposes this text amendment.¹ GSL argues that since the zoning code was approved a few years ago, and since the approval contained a finding that the zoning code was in compliance with the general plan, that should be the end of the story. However, when adopted, every resolution approving a zoning code must contain a finding that it is in compliance with the general plan. Therefore, if GSL's logic is followed to its inevitable conclusion, every zoning code would be in compliance as long it contained that finding. In reality, mistakes in adoption of zoning codes are made or circumstances change, and in order to determine if a zoning code complies with a general plan one must not rely on circular reasoning but must actually look to the specific policies of the general plan (e.g., see Section 1, *supra*).²

GSL would also prefer to have the Planning Commission review the merits of their incomplete application at this hearing, which is entirely inappropriate. First, their application remains incomplete, and second, their application and proposed project was not noticed for the June 17 meeting. Regardless, the letters submitted on behalf of GSL present several inaccuracies, including the claim that storage would be entirely indoors.

In reality, GSL has proposed a large awning over their proposed outdoor delivery area, and in their latest re-submittal (which remains incomplete) they admit that deliveries will arrive every

¹ GSL has requested special treatment to have their representatives speak for 10 minutes each. This would be improper. GSL is not the applicant here (the City is), and GSL does not have a complete application that is being considered at this hearing.

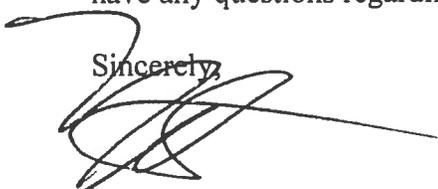
² It is a text amendment to the WMX zoning code that has been noticed and is up for discussion. Accordingly, any effort to have the zoning code amendment denied based on an incomplete application for a specific development, or based on details of any current development application, would be inappropriate.

day, and will be stored outside for pick-up by customers or for delivery, and only those items not taken or delivered would be moved inside at night. They can claim they have no outdoor storage all they want, but in reality lumber product would be stored outside, every single day. Further, the letter from Archer Norris claims that the zoning text amendment will make it “difficult or impossible” for existing building services and sales facilities to operate, and will “force them to close.” This is inaccurate. In reality, even if the zoning code changes, pre-existing uses are allowed to legally continue in effect as non-conforming uses. *Concord Municipal Code § 18.530.010, et seq.*

III. Summary

The City is on the correct track in amending the zoning code to bring it in compliance with the Concord General Plan. The City has addressed the issue, identified sufficient findings in support of such a decision, and we would support the proposed text amendment of the WMX zoning district. We would appreciate the opportunity to further discuss our concerns, and should you have any questions regarding the foregoing, please contact me at the number listed above.

Sincerely,



NICHOLAS ROSCHA

NR:kc

Enclosures

cc: City Clerk
Laura Simpson, Planning Manager
Mark Coon, City Attorney
Susanne Brown, Senior Asst. City Attorney
Ryan Lenhardt, Senior Planner



3

LAND USE

This element of the General Plan constitutes the framework for land use planning in Concord to the year 2030. To provide context, the evolution of the City is described, and existing land use in the City is summarized. The guiding principles of the land use framework, the General Plan Map, the land use designation system, and the buildout of this Plan to the year 2030 are then presented. The goals, principles, and policies are intended to set the land use framework into motion and shape development for the life of this General Plan.

3.1 BACKGROUND AND CONTEXT: EXISTING LAND USE PATTERN

Historical Land Use Development

Much of Concord's land use pattern can be traced to its evolution as a primary job center within the valley, with the focus on Downtown and subsequently on the radiating transportation corridors. Most of the residential development in the City is low density single-family housing, and much of the commercial development is retail-related. Office, business park, and light industrial uses are located adjacent to transportation infrastructure. Schools and parks are distributed throughout the residential neighborhoods in the City. This existing land use pattern is displayed in Figure 3-1.

Land Use Characteristics

As shown in Table 3-1, single-family residential is the most significant land use within the City limits. Occupying roughly 6,270 acres, it comprises 32 percent of the land within Concord. Commercial and mixed use development is clustered in Concord's Downtown and along the major transportation routes that radiate outward from the Downtown, notably Clayton Road, Monument Boulevard, Willow Pass Road, and areas around the intersection of State Route (SR) 242 and Interstate (I) 680. Industrial uses are primarily situated north of SR 4, and to a lesser extent, south of Monument Boulevard.

Table 3-1: Existing Land Use Acres								
Land Use	Incorporated		Unincorporated (within SOI)		Unincorporated (outside SOI)		Total	
	Acres	Percent	Acres	Percent	Acres	Percent	Acres	Percent
Single Family Residential	6,270	32.1%	320	3.2%	--	--	6,590	19.9%
Multi-Family Residential	680	3.5%	--	--	--	--	680	2.0%
Visitor Accommodations	20	0.1%	--	--	--	--	20	0.1%
Commercial Retail	400	2.0%	--	--	--	--	400	1.2%
Auto-Oriented Commercial	90	0.5%	--	--	--	--	90	0.3%
Other Commercial	50	0.3%	--	--	--	--	50	0.2%
Shopping Centers	90	0.5%	--	--	--	--	90	0.3%
Mixed Use	20	0.1%	--	--	--	--	20	0.1%
Office	320	1.6%	--	--	--	--	320	1.0%
Military	145	0.7%	2,500	25.0%	--	--	2,645	8.0%
Public/ Semi-Public	1,260	6.4%	590	5.9%	--	--	1,850	5.6%
Industrial Parks	220	1.1%	80	0.8%	20	0.5%	320	1.0%
General Industrial	340	1.7%	2,160	21.6%	--	--	2,500	7.5%
Parks, Recreation, and Open Space	1,421	7.3%	950	9.5%	3,613	99.4%	5,984	18.0%
Military – Open Space	2,707	13.8%	--	--	--	--	2,707	8.2%
Transportation	108	0.6%	320	3.2%	--	--	428	1.3%
Vacant	170	0.9%	110	1.1%	--	--	280	0.8%
Military – Future Development Area	2,233	11.4%	--	--	--	--	2,233	6.7%
Designated Land Uses Subtotal	16,544	84.6%	7,030	70.3%	3,633	100.0%	27,207	82.0%
Right-of-way, Washes, and Canals	3,006	15.4%	470	4.7%	--	--	3,476	10.5%
Suisun Bay	--	--	2,510	25.1%	--	--	2,510	7.6%
Undesignated Land Uses Subtotal	3,006	15.4%	2,980	29.8%	--	--	5,986	18.0%
Total Land Use	19,550	100.0%	10,010	100.0%	3,633	100.0%	33,193	100.0%

Note: Land Use Acreage Totals are based on mapping estimates and do not necessarily equate to exact ownership acreage.

Source: City of Concord, Contra Costa County Assessor, Dyett and Bhatia, 2006. Arup, 2011
 CRP=Concord Reuse Project

that new uses are compatible with prevailing neighborhood character and maintain and enhance the neighborhood environment.

CRP Neighborhood and Village Districts (CRP-NV)

This designation applies within the Concord Reuse Project (CRP) Area only. It is primarily intended for residential development at densities ranging from 6 to 50 units per net acre. Residential areas are focused around village centers containing a mix of residential, commercial, public, and open space uses. The text box below provides additional detail on allowable uses and intensities within these areas.

Commercial and Mixed Use

Neighborhood Commercial (NC)

This designation is intended for neighborhood commercial centers that provide convenience and comparison goods and services to the local community. The maximum FAR is 0.35. Residential uses are allowed above the ground level at densities from a minimum of 11 units per net acre to a maximum of 24 units per net acre. Examples include neighborhood shopping centers, supermarkets, dry cleaners, video stores, and small restaurants. This designation is distributed throughout the City in order to locate commercial services within close proximity to all of Concord's residents.

Commercial Mixed Use (CMU)

This designation allows for a mix of commercial uses, offices, multi-family uses, and mixed use development. The maximum FAR is 1.0. Densities range from a minimum of 11 units per net acre to a maximum of 40 units per net acre. The designation is intended for use along commercial corridors such as Clayton Road, Monument Boulevard, and Willow Pass Road. .

West Concord Mixed Use (WCMU)

This designation is intended for use in the area generally located between the I-680 and Highway 242 freeways, south of Concord Avenue. It allows for a mix of office and commercial development, including such uses as new auto dealers, hotels, restaurants, and showroom/warehouses. Public/ quasi-public uses also are allowed. Residential development is not allowed in this mixed-use category, as it is intended to create a campus-like office environment. The maximum FAR is 4.0.

Regional Commercial (RC)

This designation is intended for large-scale commercial development (greater than 80,000 square feet) that serves both local residents and residents from the surrounding region. A broad range of retail uses and personal services are envisioned, including regional shopping centers, big box retail, home improvement sales and service, and warehouse membership clubs, as well as new auto sales and services, and travel-related services such as hotels, gas stations, and restaurants. The maximum FAR is 0.5.

Service Commercial (SC)

This designation is intended to provide sites for commercial businesses that are not appropriate in other areas because of high volumes of vehicle traffic and potential adverse impacts on other uses. This designation allows small scale commercial uses that provide goods and services to employees, residents and visitors. It includes automotive sales and services, building materials, warehousing, distribution and personal storage located on major arterial streets, as well as retail uses, services, and small offices. The maximum FAR is 0.8.

Concord Reuse Project Non-Residential Development District (CRP-NR)

The CRP-NR designation is mapped on the Concord Reuse Project (CRP) site only. It includes three contiguous areas, as shown on Figure 3-3. These include: (a) a Commercial-Flex district south of Highway 4; (b) a Campus district on the west side of Willow Pass Road south of Mt. Diablo Creek; and (c) a First Responder Training Facility north of Highway 4. Additional information on this category is provided in the text box above.

Business Park/ Industrial

Business Park (BP)

This designation is intended for campus-like office complexes as well as industrial parks, including single and multi-story office, flex-space, and industrial buildings for single and multiple users, light industrial and warehouse uses, and research and development activities. Other uses may include mini-storage, wholesale, bulk retail, and business with limited customer access, commercial recreation, and other uses that require large, warehouse-style buildings. Small-scale retail and service uses serving employees and visitors may be permitted as secondary and accessory uses. This designation may also allow small restaurants, support services, and convenience retail activities at appropriate locations, subject to

standards to minimize impacts on industrial users. Where permitted, storage uses in areas with this designation must be screened by vegetation and other means to maintain community aesthetics. The maximum FAR is 0.8.

Industrial Mixed Use (IMU)

This land use designation is intended for a mix of light industrial, secondary office, service uses (excluding auto-oriented retail services) and live/work facilities. Typical uses include warehouse, research and development, wholesale, bulk retail, office space with limited customer access, and artists' studios. Small-scale retail and service uses serving employees, residents, and visitors may be permitted as secondary uses. This designation would allow for live/work facilities where appropriate, such as the North Hillcrest area and the southern portion of the Detroit Avenue/Shary Circle area. The maximum FAR is 1.0.

Heavy Industrial (HI)

This designation allows primary manufacturing, refining, and similar heavy industrial activities. It also accommodates warehousing, distribution and port-related uses, with support commercial services and ancillary office space. No retail uses are allowed. This designation is applied primarily to facilities north of SR 4. The maximum FAR is 0.6.

Community Land

Public/Quasi-Public (PQP)

This designation is applied to property owned by governmental entities and to semi-public facilities. It includes Buchanan Field Airport, hospitals, schools, government offices, corporation yards, and public facilities such as recycling centers, sewage treatment facilities, and fire stations. Smaller governmental offices, places of religious assembly not occupying extensive land areas, and similar smaller public facilities are not shown on the General Plan Land Use Map. New public/quasi public facilities may be appropriate in any land use designation based on need, subject to environmental review. The maximum FAR is 1.5.

Hospital/Medical Center (H/MC)

The H/MC-designator on the Land Use Map denotes hospital, medical center and related medical uses including 'specialty hospitals'. This designation is intended for full service hospitals and medical facilities that provide in-patient services for cardiac, orthopedic, and cancer related diseases, and/or similar illnesses and disorders.

Military (MIL)

This designation applies to the Tidal portion of the former Concord Naval Weapons Station, the Military Ocean Terminal Center, and the Coast Guard housing area adjacent to the CRP site. The Tidal Area contains port and industrial buildings, and additional land for support uses and facilities, which will continue to be used by the Army for an undetermined period of time.

Open Space (OS)

This designation is intended for large areas that are necessary for natural resource protection, the managed production of natural resources, the provision of natural resources, outdoor recreation (including trails), scenic value, and the assurance of public health and safety. This designation includes private recreation facilities and larger privately-owned areas dedicated as permanent open space within residential subdivisions.

Concord Reuse Project Open Space (CRP-OS)

This designation includes the portions of the Concord Reuse Project identified for long-term preservation as open space. It is comprised of two “districts” (see Figure 3-3). The Conservation Open Space District includes environmentally sensitive lands and other natural areas in the Los Medanos Hills and along Mount Diablo Creek. Most of this area is planned to become part of a new regional park. The Greenways and Citywide Parks District includes a “frame” of open space and linear parks around future neighborhoods, as well as large areas planned for active recreation.

Active Parks (P)

This designation is intended for improved public park facilities. It includes neighborhood and community parks; public golf courses; and recreational facilities that provide visual open space and serve the outdoor recreational needs of the community. Active parks are also permitted in the other designations on the General Plan Map, and a General Plan Map Amendment is not required if a new park is created.

Wetlands/Resource Conservation (WRC)

This designation applies to wetlands and resource conservation lands. It is intended to protect the wildlife, hydrological, and biological resources in these areas. It allows only very low intensity open space uses that are compatible with and do not disturb the resources to be protected.



Policy LU-3.1.4: Plan for new commercial development to expand or enhance the variety of goods and services to meet region-serving as well as local needs.

Policy LU-3.1.5: Identify new areas for region-serving commercial uses at locations that take advantage of major transportation routes.

These areas include, but are not limited to, Central Concord, North Concord, and the Concord Reuse Project (CRP) area.

Policy LU-3.1.6: Ensure the timely implementation of necessary infrastructure to support existing and new region-serving development.

Policy LU-3.1.7: Capitalize on the opportunity for a new regional center adjacent to the North Concord – Martinez BART Station.

The CRP Area Plan calls for a new regional center including retail, office, and multi-unit residential uses in mid-rise buildings adjacent to the North Concord - Martinez BART Station. Retail and service uses at the center will complement those in other centers in Concord, and provide new shopping, dining, and entertainment choices for residents from across the City and region, as well as future residents of the CRP site and persons working nearby.

Central Concord

Central Concord is the historic, economic, and cultural heart of the City. It encompasses the original townsite that grew into Concord, and this rich historic legacy is visible in the number and variety of historic sites in the area, such as Todos Santos Plaza, the Salvio Pacheco Adobe, and the County Fire House. Central Concord is also a focal point for modern-day activities in the City. Its shopping opportunities, cultural activities, and pedestrian-oriented scale in the Downtown area ensure that it remains a main attraction for residents and visitors alike. Many of the City's major employers are also located in Central Concord, including the Bank of America Concord Technology Center, Chevron Credit Card Center, the Civic Center, and Police Headquarters. The General Plan policies for this area aim



to support the many roles that Central Concord plays in shaping the City's character and development by preserving its historic resources, promoting its social value, and creating an attractive environment in which to do business.

GOAL LU-4: IDENTIFIABLE AND DISTINCTIVE DISTRICTS WITHIN CENTRAL CONCORD

Principle LU-4.1: Promote Central Concord as the economic, social, symbolic, and historic center of the City.

Policy LU-4.1.1: Continue to expand Central Concord's role as a focal point for business, entertainment, dining, cultural, and civic gatherings.



Policy LU-4.1.2: Integrate the distinct districts within Central Concord with unifying streetscape and pedestrian amenities.

The Concord Downtown Streetscape Improvements includes a detailed list of improvements and phasing concepts along with Concord Downtown Streetscape Design Guidelines, which address private development.

Policy LU-4.1.3: Integrate mixed uses at an urban scale.

Future design guidelines will provide further direction on the design and form of mixed use development.

Principle LU-4.2: Capitalize on Downtown's Sense of Place.

Policy LU-4.2.1: Require a mix of uses to promote an active commercial and residential center.

This can be achieved by establishing standards for ground floor retail space and active street frontages, particularly around Todos Santos Plaza, and through limitations on uses that would not be compatible with or supportive of a pedestrian environment.

Policy LU-4.2.2: Allow for urban-scale development, including both amenities and services for workers and residents.

Policy LU-4.2.3: Promote pedestrian-oriented urban design.

Policy LU-4.2.4: Encourage new development projects to include amenities for public benefit, such as affordable housing, pedestrian-oriented facilities, and historic preservation.

Pedestrian-oriented facilities are enhanced with amenities such as outdoor seating, plazas, public art, weather protection, transit waiting areas (benches and shelters), and links to regional trails and bikeways.

Policy LU-4.2.5: Allow multiple anchor uses and mixed use development surrounding Todos Santos Plaza to attract retail clientele and encourage pedestrian activity.

The Development Code will allow for mixed use and will ensure that uses directly facing Todos Santos Plaza activate the street and encourage pedestrian activity.

Policy LU-4.2.6: Limit building heights for new structures in the blocks immediately adjacent to Todos Santos Plaza with an inclined daylight plane requiring upper-story setbacks to ensure sunlight access for public spaces.

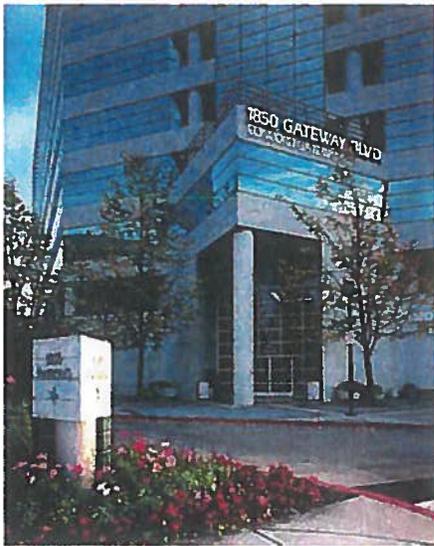
This is the preferred approach for height limits around downtown squares. The total amount of floor area will be governed by the floor area ratio.



Policy LU-4.2.7: Facilitate the relocation of gas stations, auto repair, and service uses to service commercial areas throughout the City.

Policy LU-4.2.8: Encourage preservation of historic buildings to the maximum extent feasible.

Policy LU-4.2.9: Designate land around the Downtown BART Station as a transit overlay zone and offer incentives to support the use of mass transit.



Employment Districts

Employment Districts are relatively large areas of the City dominated by low-rise to high-rise office, high technology, light industrial and other job generating land uses. The associated land use designations are Business Park, Heavy Industrial, West Concord Mixed Use, and Downtown Mixed Use. The Concord Reuse Project Area also includes Employment District designations, including TOD Districts and Non-Residential Districts.

GOAL LU-5: A DYNAMIC AND DIVERSIFIED OFFICE SECTOR

Principle LU-5.1: Expand and Enhance Regional Office Uses in Central Concord and the North Concord - Martinez BART Station Area.



Policy LU-5.1.1: Maintain and expand Concord as a regional employment center.

The central focus of the City's economic development strategy is to enhance Concord's role as a regional center.

Policy LU-5.1.2: Promote a large, diverse regional office sector to ensure a resilient economic base.

Policy LU-5.1.3: Provide sites for professional, administrative, and headquarters office space in Central Concord and other transit-oriented development (TOD) locations.



Policy LU-5.1.4: Assure high quality design and site planning of regional offices that establish a cosmopolitan image and contribute to the character of the City as a whole.

5.3 GOALS, PRINCIPLES, AND POLICIES

GOAL T-1: A SAFE AND EFFICIENT MULTI-MODAL TRANSPORTATION SYSTEM

Vehicular Circulation

Principle T-1.1: Provide an Easily Accessible, Functional, and Attractive Transportation Network.

Policy T-1.1.1: Maintain streets and pavement in optimal physical condition to provide safe and efficient travel.

Policy T-1.1.2: Maintain and upgrade transportation systems to provide smooth flow of traffic, minimize vehicle emissions, and save energy.

Transportation improvements should be consistent with statewide greenhouse gas reduction goals established by Assembly Bill 32, and the land use and transportation policy initiatives established by Senate Bill 375.

Policy T-1.1.3: Unless otherwise specified, the benchmark for the evaluation of intersections and roadway segments is LOS D. In the Downtown area, the benchmark is LOS E, recognizing the more urban, pedestrian-oriented character of this area. The Downtown is defined as the area served by streets designated Downtown in this element. The LOS E benchmark also applies in the Concord BART Station vicinity, the North Concord - Martinez BART Station vicinity, and along the City's transit routes. Transit routes are generally defined as roads with two or more bus transit lines, such as Concord Avenue, Clayton Road, and Treat Boulevard.

Policy T-1.1.4: Require all new development to locate structures to accommodate ultimate street widths and required setbacks.

Policy T-1.1.5: Require all new development to provide adequate right-of-way and to construct ultimate on and off-site improvements.

This policy ensures that land is set aside for needed roadway widening as proposed in this General Plan, for example, for Ygnacio Valley Road, and that traffic signals and other improvements are designed to serve a project at buildout, not just the first phase.

Policy T-1.1.6: Develop and operate a transportation system that directs the flow of vehicle traffic on Residential streets to Community streets and other streets serving a larger geographic area.

Policy T-1.1.7: Provide a high level of multimodal connectivity in the design of the citywide transportation system, particularly in the Concord Reuse Project area.

The roadway, bicycle, pedestrian, and transit network to be developed on the Reuse Project site should provide convenient multimodal access from this area to adjoining neighborhoods, the City, and the region.

- Policy T-1.1.8: Designate and periodically review truck routes to provide for movement of goods throughout the City. Review of truck routes should consider current destinations for trucks, system connectivity, miles of travel, emissions, ease of access to adjacent freeways, level of traffic, presence of nearby schools, the relationship of truck routes to residential neighborhoods, and future connectivity to the Concord Reuse Project site.
- Policy T-1.1.9: Limit new land uses with significant reliance on trucks to parcels fronting designated truck routes, in industrial areas, or within ¼ mile driving distance of freeways.
- Policy T-1.1.10: Discourage new parks, schools, day care centers, and major pedestrian uses from being sited on designated truck routes, or provide additional safety measures.
- Policy T-1.1.11: Consider transferring responsibility for the maintenance of private streets to the City in cases where ownership can also be transferred to the City, and streets can be improved so they meet City standards.
- Policy T-1.1.12: Establish efficient linkages to the regional transportation system for all modes of travel.
- Policy T-1.1.13: Coordinate traffic signal systems with abutting jurisdictions.
- Policy T-1.1.14: Develop a plan for the City's gateways that incorporates mutually complementary design, signs, and themes.
- Such a plan shall identify an overall design theme that can be applied at each gateway (See Policy LU-10.1.6).*
- Policy T-1.1.15: Enhance the visual quality of public space through the design and landscaping of streets, and the control of visual and functional aspects of abutting improvements.
- The City desires to ensure that streets provide an aesthetic driving, walking, and bicycling experience through the review of abutting improvements such as sidewalks, sound walls, and signs.*
- Policy T-1.1.16: Continue to provide and enhance landscaped medians and street edges that are visually pleasing and provide shade and buffers for pedestrians and cyclists; landscaping should use native or low-water plants and reduce stormwater runoff to the greatest extent possible.

Concord recognizes that well maintained roads with landscaped medians and edges enhance the City's image as well as adjoining property values. The City will continue its street maintenance and landscaping programs, and complete street upgrades as funding becomes available.

Policy T-1.1.17: Protect views toward hillsides and other regional open spaces along key roadways in Concord.

Treat Boulevard, Ygnacio Valley Road, Kirker Pass Road, and Willow Pass Road are examples of roadways that have views to regional open space areas that the City seeks to preserve.

Policy T-1.1.18: Monitor transportation facility performance as a part of development review and CEQA compliance as development occurs; include bicycle and pedestrian performance, in addition to vehicle performance in this monitoring.

Bicycle and pedestrian performance can be monitored using Multimodal Level of Service calculations or other appropriate methods such as walk or bike audits, surveys, and review of bicycle and pedestrian facility design.

Policy T-1.1.19: Support car sharing programs as a way to reduce the necessity of auto ownership, especially in transit-oriented development areas.

Policy T-1.1.20: Peak hour turn restrictions may be used to prevent cut-through traffic in certain areas.

Principle T-1.2: Ensure that Transportation Improvement Projects are Adequately Funded.

Policy T-1.2.1: Schedule transportation improvement projects in the Capital Improvement Program and Transportation Improvement Program.

The City will continue to fund improvements through a combination of Capital Improvement Program funds, contributions from private land developments, and other funds, as available.

Policy T-1.2.2: Continue to use Off-Site Street Improvement Program (OSIP) monies to fund transportation improvements serving all transportation users and traffic control system upgrades.

Policy T-1.2.3: Use impact fees, development agreements, and other funding mechanisms to construct the transportation system and support Transportation Demand Management programs on the Concord Reuse Project site, including transit services and facilities.

From: Larry Marks <lmarks5937@yahoo.com>
Date: June 17, 2015 at 8:09:44 AM PDT
To: "Simpson, Laura" <Laura.Simpson@cityofconcord.org>
Cc: "Walker, Victoria" <Victoria.Walker@cityofconcord.org>
Subject: Rezoning along their including Diamond Blvd.

Dear Ms.Simpson and the Concord City Planning Commission,

I am a managing partner of a partnership that owns and manages an office building located at 2120 Diamond Blvd. Diamond Blvd. is one of Concord's most prominent thoroughfares featuring office, hospitality and retail properties. Industrial uses are incompatible with the existing neighborhood and would change its entire nature.

As an example, a lumber yard is being considered for the contiguous site to the north east of our property. This would pose concerns for the tenants of our office building which is adjacent to the proposed lumber yard. Lumber yards in general generate significant amounts of noise and attract a large amount of heavy truck traffic. By their very nature, irrespective of their operator's intention and expertise, they produce noise and materials are delivered in 45 foot truck trailers. These trucks cannot safely enter and exit the site from Diamond Blvd. without impinging on traffic in the opposing lane. The tenants in our office building include agencies of Contra Costa County, General Electric and Farmers Insurance. These tenants did not lease their space with the thought that a substantial industrial project would be in close proximity to their building. Neither did we when we purchased the property.

Thoughtful zoning defines a community and Concord is a wonderful City in which to live and conduct business. Please preserve its existing character.

Respectfully yours,

Larry Marks

lmarks5937@yahoo.com

650-854-0800

From: William Krueger [<mailto:bill@carpetoneplus.com>]
Sent: Wednesday, June 17, 2015 10:25 AM
To: Simpson, Laura
Cc: Jon Matthew Krueger; Jonathan Kendler (jkendler@centurymgmt.com); Tori Fields (tori@psbayarea.com)
Subject: Public Hearing on PL15132-DC

Ms. Simpson,

We wanted to voice our opinion on the proposed hearing to amend the zoning regulations restricting the sales of building materials and services. We strongly oppose this amendment as we currently sell cabinets and our franchisor is suggesting we add other building materials such as lighting, windows and doors. We recently purchased the business in September of last year one of the selling points was the location of the business.

Please consider our opposition to the amendment and make sure the record reflects our opposition.

Thanking you in advance

William Krueger

From: Jonathan Kendler [<mailto:JKendler@centurymgmt.com>]

Sent: Wednesday, June 17, 2015 2:44 PM

To: Simpson, Laura

Subject: West Concord Mixed Use Test Amendment to the Development Code - PL15132-DC

Dear Ms. Simpson,

Century Management is responsible for leasing and management of approximately 125,000 sq ft of light industrial and office space located in the Galaxy Court area within the West Concord Mixed Use zoning district. These properties operate for the benefit of the Community Youth Center, which serves to build a healthy foundation for the future of more than 2,000 underprivileged children by providing access to quality academic tutoring, mentoring and athletic programs. Over the years, the CYC has been able to carry on its mission as a result of the sponsorship of Mr. Ken Hofmann and the Hofmann Family Foundation, but also in large part because of the rents paid by tenants in the Galaxy Court buildings.

It is axiomatic that increased zoning restrictions will narrow the pool of new businesses that are eligible operate in the impacted area and will limit expansion opportunities for existing businesses. Ultimately this will result in decreased employment opportunities for workers, increased vacancy rates, longer duration of vacancy and decreased revenue for businesses and property owners.

Although existing tenants are to be "grandfathered in" as a legal non-conforming use, it is clear that any future plans for lease renewal, premises improvements or business expansion will be negatively impacted and likely prohibited by the proposed zoning amendment. Relocation will become the preferred option for businesses falling under the non-conforming use category.

Staff has declared the fiscal impact of the proposed amendment to be negligible (to the City). Given the above, I'm not so sure that that is true. But one thing is clear, it's fiscal impacts are not negligible to businesses, workers, property owners and the Community Youth Center.

We strongly oppose amendment PL15132-DC. Please submit this letter of opposition to the full Planning Commission in advance of tonight's hearing.

I thank you for your consideration,

Jonathan Kendler
President
Century Management Company
P.O. Box 787
Concord, CA 94522
(925) 588-7450