



Department of Conservation and Development

County Planning Commission

Wednesday, November 8, 2017 – 7:00 P.M.

(continued from September 27, 2017)

STAFF REPORT

Agenda Item # _____

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| Project Title: | Land Use Permit for a 225,950 square foot warehouse to be constructed on two adjoining vacant parcels. |
| County File(s): | LP16-2031 |
| Appellant: | Bryan Wenter, AICP, on behalf of DeNova Homes, Inc. |
| Applicant/Owner: | Ware Malcomb (Applicant) – CP Logistics Willow Pass, LLC (Owner) |
| Zoning/General Plan: | Light Industrial (L-I) / Light Industry (LI) |
| Site Address/Location: | 4000 Evora Road (approximate address) in the unincorporated Bay Point area of Contra Costa County (APN: 099-160-026, 099-160-027) |
| California Environmental Quality Act (CEQA) Status: | Mitigated Negative Declaration, SCH #2017022002 |
| Project Planner: | Stan Muraoka, AICP, Senior Planner (925) 674-7781 |
| Staff Recommendation: | Deny the Appeal and Uphold the Zoning Administrator's Decision (See Section II for Full Recommendation) |

I. PROJECT SUMMARY

This is an appeal of the Zoning Administrator's decision to approve a Land Use Permit for a 225,950 square foot warehouse to be constructed on two adjoining vacant parcels located northwest of Evora Court at the western terminus of Evora Road. The project includes a 1,003-foot eight-inch long, 265-foot wide, 42-foot six-

inch tall warehouse with a driveway that wraps around the building, loading bays along the southern elevation of the building, and parking along the east, north, and west sides of the warehouse. The project also includes landscape plantings in the parking areas, along the edges of the project site, and around the building on the west, north, and east elevations.

II. RECOMMENDATION

Staff recommends that the County Planning Commission:

- A. DENY the appeal.
- B. ADOPT the Mitigated Negative Declaration/Initial Study (MND), consisting of the revised draft MND and the Final MND, and the Mitigation Monitoring Program prepared for this application; and specify that the Department of Conservation and Development (located at 30 Muir Road, Martinez, CA) is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based.
- C. Uphold the Zoning Administrator's decision to approve County File #LP16-2031, based on the attached Findings and subject to the Conditions of Approval.

III. GENERAL INFORMATION AND BACKGROUND

- A. General Plan: Light Industry (LI)
- B. Zoning: Light Industrial (L-I)
- C. California Environmental Quality Act (CEQA) Compliance: A draft Mitigated Negative Declaration/Initial Study (MND), State Clearinghouse number SCH #2017022002, was prepared pursuant to applicable California Environmental Quality Act Guidelines. The draft MND was made available for a 30-day public review period that started on January 31, 2017 and ended on March 2, 2017. Four letters and one email were received by the Department of Conservation and Development (DCD) in response to the publication of the draft MND.

Subsequent to the close of the public review period, the County's Peer Review Biologist conducted a site visit and reported potential significant adverse environmental impacts of the proposed project on biological resources that had not been included in the MND. Pursuant to CEQA Section 15073.5, a revised draft

MND was prepared. The revised draft MND was made available for a 30-day public review period that started on May 10, 2017 and ended on June 9, 2017. Two letters were received by DCD in response to the publication of the revised draft MND.

A Final MND has been prepared that includes the comment letters and email received on the draft MND and revised draft MND, comment summaries, responses to the comments received, and five staff-initiated text changes. A related Mitigation Monitoring Program has been prepared, based on the identified significant impacts and mitigation measures in the Final MND.

- D. Zoning Administrator Decision: The application was heard by the Zoning Administrator on August 7, 2017, at which time the Zoning Administrator received testimony from three persons, including a representative of the property owner, an attorney for the property owner, and an attorney for DeNova Homes, Inc. The Zoning administrator closed the hearing, adopted the MND and the Mitigation Monitoring Program for the project, and approved the project with modifications to the Conditions of Approval to add a Child Care Condition and BMP (Best Management Practices) Air Quality Conditions. The Findings and modified Conditions of Approval are included herein as Exhibit 1.
- E. Appeal of the Zoning Administrator Actions: An appeal of the Zoning Administrator decision was filed on August 17, 2017, within the 10-day appeal period by Bryan Wenter, AICP, of Miller Starr Regalia, on behalf of DeNova Homes.
- F. Request to Continue the Appeal: On September 20, 2017, staff received an email from the appellant, stating that he and the applicant's counsel have been in contact with their respective clients and that collectively, they are requesting that consideration of the appeal be continued to the November 8, 2017 meeting. On September 27, 2017, the Commission continued consideration of this appeal as requested.

IV. SITE/AREA DESCRIPTION

The 15.42-acre project site is comprised of two adjoining Assessor's parcels located 890 feet northwest of the western terminus of Evora Road, which is 1,500 feet (0.28 mile) southwest of the intersection of Willow Pass Road and Evora Road. The site is relatively flat, with a slope of two percent, and is at an average elevation of 145 feet above sea level. The site is essentially a level terrace sited above a portion of the

former Concord Naval Weapons Station to the west and below the Willow Pass Business Park to the east. The project site is not part of the Willow Pass Business Park. Hilly, deed-restricted open space land is located to the north. A vacant, terraced portion of the Willow Pass Business Park is located to the south, as is Highway 4.

A previous proposal for a 98,404 square foot Frito-Lay distribution center on the project site was approved in March 2003; however, the distribution center has not been built. The County issued a grading permit to DeNova Homes, prior to the approval of the distribution center, for grading of the project site and adjacent land in the Willow Pass Business Park following annexation of the area to the Delta Diablo Sanitation District. In addition to grading that occurred in 2002, drainage swales were installed along the perimeter of the project site. Runoff collecting in the swales is directed to a detention basin located northwest of the site.

The Willow Pass Business Park is uphill to the east of the project site, at an average elevation of 190 feet above sea level. The Business Park is characterized by its cluster of eight buildings within an area that is approximately 860 feet long by 500 feet wide on a level terrace facing Highway 4 to the south. Landscaping in the Business Park is relatively sparse, and therefore, the buildings in the Business Park are visible in northward views from Highway 4.

Open space land is uphill north of the site and north of the Willow Pass Business Park. A 750,000-gallon water storage tank that serves the Business Park is located in the open space. This storage tank is 1,015 feet east of the project site and 500 feet northeast of the Business Park. At an elevation of 310 feet above sea level, the tank is visible above the Business Park.

A portion of the former Concord Naval Weapons Station is located downhill to the west of the project site, at an average elevation of 80 feet above sea level. The Concord Naval Weapons Station was decommissioned in 2005 and is currently a major reuse project of the City of Concord. The site is separated from the bulk of the Naval Weapons Station property to the south by Highway 4. A portion of the 48-mile Contra Costa Canal, at an average elevation of 110 feet above sea level, also lies south and west of the project site.

V. PROJECT DESCRIPTION

The proposed project is the construction and operation of a 225,950 square foot, 1,003-foot eight-inch long, 265-foot wide, 42-foot six-inch tall warehouse structure on two adjoining vacant parcels located northwest of Evora Court at the western

terminus of Evora Road (approximate address 4000 Evora Road). Evora Court continues onto the project site as an unpaved road and provides access to the warehouse and access through the eastern portion of the site to an offsite water storage tank located northeast of the site.

The warehouse would be of a contemporary modern architectural style with exterior walls of painted concrete panels interspersed with vision glass and tinted glass. Vertical design elements are incorporated along the (primary) north and east elevations. The “working” south elevation is characterized by its row of truck loading bays.

The proposed project would include the following site improvements: a driveway that wraps around the warehouse, parking along the east, north, and west sides of the building that provide 238 parking spaces, 44 truck loading bays along the southern elevation of the building, 11 trailer storage stalls along the southern edge of the driveway, 16 long term and 12 short term bicycle parking spaces, and exterior lighting consisting of 13 building-mounted lights and 33 lighting poles along the perimeter and in the parking lot. The project includes eight new bio-retention basins along the perimeter and in the parking lot and other stormwater drainage improvements that connect to the existing onsite drainage swales and the existing offsite detention basin. The project also includes substantial landscape plantings in the parking areas, along the edges of the project site, and around the building on the west, north, and east elevations.

The project driveway would be improved to Contra Costa County private street standards. The driveway would connect to Evora Court, a paved private street that provides access to Evora Road. Evora Road is a paved County-maintained street.

VI. APPEAL

An appeal letter from Bryan Wenter, AICP on behalf of DeNova Homes was received on August 17, 2017. Attached to and incorporated by reference to the letter were three letters that had previously been submitted to DCD by Denova Homes, including the March 2, 2017 letter commenting on the draft MND, the March 7, 2017 letter commenting on the project, and the June 9, 2017 letter commenting on the revised draft MND.

Following are comment summaries and responses to the comments in the Wenter appeal letter, the March 2, 2017 DeNova Homes letter, the March 7, 2017 DeNova Homes letter, and the June 9, 2017 DeNova Homes letter. The letters are included in

Exhibit 2 as letters A, B, C, and D, respectively.

- Section A below includes summaries of comments in the Wenter appeal letter (letter A) and staff responses to the comments in letter A.
- Section B includes summaries of comments in the March 2, 2017 DeNova Homes letter (letter B) and the June 9, 2017 DeNova Homes letter (letter D), and staff responses to the comments in letters B and D. The letters are grouped together, because letter B was submitted as comments on the adequacy of the draft MND and letter D was submitted as comments on the adequacy of the revised draft MND, and except for one comment that is only in letter B, letter D includes comments that are the same as or similar to the comments in letter B.
- Section C includes summaries of comments in the March 7, 2017 DeNova Homes letter and staff responses to the comments in letter C.

A. Wenter Appeal Letter

1. General Plan Consistency – Scenic Views

The appellant states that the proposed project is inconsistent with General Plan Transportation and Circulation Element's Scenic Route Policy 5-49. According to the appellant, hiding much of the warehouse from view with trees does not conserve, enhance, and protect the scenic view to the extent possible.

Response: As stated in Section IX.A of the Zoning Administrator staff report (Consistency with the General Plan):

"The project site is located 890 feet north of Highway 4, which is a designated scenic highway between Interstate 80 and Willow Pass Road - Port Chicago Highway, as identified on Figure 5-4 (Scenic Routes Map) of the General Plan Transportation and Circulation Element. The site is visible from the scenic highway portion of Highway 4 as a level terrace below and west of the structures of the Willow Pass Business Park. Along with the Scenic Routes Map, the General Plan includes policies and implementation measures for scenic routes, such as Policy 5-49: *scenic views observable from scenic routes shall be conserved, enhanced, and protected to the extent possible*, and Implementation Measure 5-bh: *develop and enforce guidelines for development along scenic routes to maintain the visual quality of those routes*.

"The proposed project would include a 1,003-foot eight-inch long, 265-foot wide, 42-foot six-inch tall warehouse with a driveway that wraps around the structure. The project also includes a row of 35 Afghan pine trees, spaced 30 feet apart along the southern edge of the driveway to mask the warehouse in offsite views from the south, and a number of deciduous and evergreen trees to soften views of the site from the north and east. When mature, an Afghan pine tree is 30-50 feet tall and 25-30 feet wide. Thus, at maturity, the tree row would be visible from Highway 4 and much of the warehouse would be hidden from view by the trees. This view would be compatible with existing views of the Willow Pass Business Park. In order to ensure that the proposed landscaping will be fully implemented, the Conditions of Approval include requirements for submittal and implementation of a final landscaping and irrigation plan, and a security deposit to ensure implementation of the plan. As conditioned, the proposed project would be consistent with General Plan scenic route policies and implementation measures."

Commercial-industrial development can occur on the project site, because the site has a General Plan land use designation of LI Light Industry, and is in the L-I Light Industrial District. However, development of site should balance the visual elements of visual character, congruence, and coherence in order to be consistent with the Transportation and Circulation Element's Scenic Route policies.

As described in the General Plan Transportation and Circulation Element, a scenic route is a road through a scenic corridor, and a scenic corridor is the adjacent area that can be seen from the road. In assessing views from a scenic route, the components of existing views form the baseline, including visual character, congruence, and coherence.

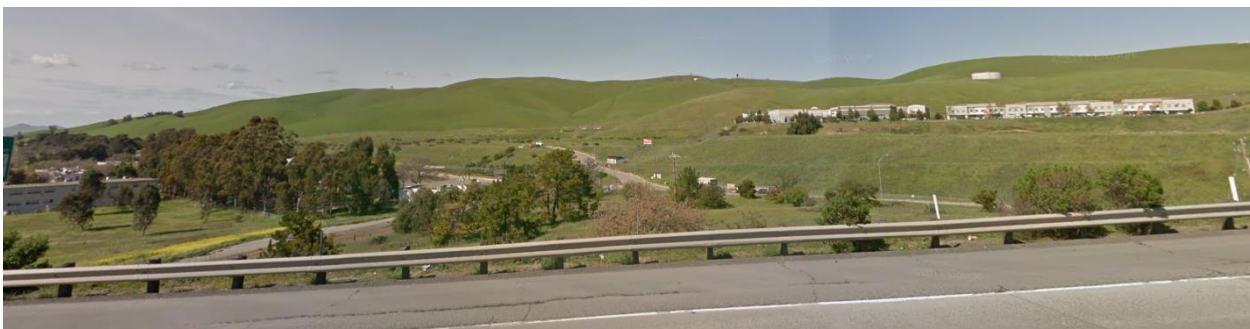
Visual Character: The physical features in the foreground, middle ground, and background of a scenic view form visual character. The overall visual character of the scenic corridor relative to the proposed project consists of views of existing commercial-industrial development and level developable terraces in front of grassland, open space slopes. This overall visual character consists of the following elements:

- the grass-covered ridgeline and the grassland slopes leading up to the ridgeline, and the water tank above the Willow Pass Business Park, form the background;

- a level terrace (project site) and the linear row of buildings of the Willow Pass Business Park form the middle ground; and,
- the trees below the level terrace to the left of the Willow Pass Business Park and other level terraces visible below and in front of the Business Park form the foreground.

Congruence: Congruence is the degree to which past actions have noticeably and unfavorably changed landscape features. Here, the past actions include the grading of terraces by DeNova Homes following the approval of the Frito-Lay distribution center on the project site in March 2003, and the development of the Willow Pass Business Park by Thomas DeNova on land adjacent to the project site, including the buildings in the middle ground and the water tank in the background. These features are encroaching elements in an otherwise intact view of a natural, grassland hillside.

Coherence: The harmony of landscape features that have a discernable pattern or composition, form coherence. The distinctive landscape features include the grassland ridgeline and slopes leading up to the ridgeline in the background, and the trees that dominate the foreground to the left of the Willow Pass Business Park. These landscape features are in harmony and provide coherence to this scenic view.



View of project site and Willow Pass Business Park from Highway 4
Source: Google Maps, accessed 082517.

The proposed project would add landscape trees to the project site, which would alter the existing baseline scenic view by adding trees in the middle ground that would be above and in close proximity to the existing trees in the foreground to the left of the Willow Pass Business Park. Although Condition of Approval #34 (Mitigation Measure Aesthetics 1) in the Zoning Administrator staff report *requires the planting of a minimum of 35 Afghan*

[illegible]

Due to the landscaping and the location of the warehouse in proximity to the existing tree features in the scenic view, the building would blend into the baseline scenic view to the extent possible. With implementation of the Conditions of Approval of the Zoning Administrator staff report, the effects of the warehouse building on visual character, congruence, and coherence would be consistent with Scenic Route Policy 5-49. The proposed project would also be consistent with Implementation Measure 5-bh by allowing development of land in the L-I Light Industrial District in a manner that would maintain the scenic qualities along this portion of Highway 4. Accordingly, the proposed project would be consistent with the General Plan.

2. Aesthetics 1 Mitigation Measure Time Limit

The appellant states that the Aesthetics 1 mitigation measure only requires that trees be kept alive for the first two years, and that the project applicant would not be required to replace any trees that die in the third year or any other future year. The applicant states that the trees are needed to comply with Scenic Route Policy 5-49 and must be maintained throughout the life of the project.

Response: Mitigation Measure Aesthetics 1, which is Condition of Approval #34 in the Zoning Administrator staff report, is as follows:

Aesthetics 1: The following measures are intended to ensure full implementation of the Afghan pine landscaping along the southern edge of the driveway south of the warehouse structure.

- 1. Final Landscaping and Irrigation Plan: Prior to issuance of a grading or building permit, whichever occurs first, the applicant shall submit a final landscaping and irrigation plan prepared by a licensed arborist or landscape architect for review and approval by the Contra Costa County Department of Conservation and Development, Community Development Division (CDD). The plan shall provide for the planting of a minimum of 35 Afghan pine trees of a minimum 24-inch box size. Consideration shall be given to adequate screening of the future warehouse from offsite viewpoints. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County's Water Efficient Landscape Ordinance, if the County's Ordinance has been adopted. Verification of compliance with the Water Efficient Landscape*

Ordinance shall accompany the plan. The plan shall also include an estimate prepared by a licensed landscape architect, arborist, or landscape contractor of the materials and labor costs to complete the improvements (accounting for supply, delivery, and installation of trees and irrigation). The plan shall be implemented prior to final building inspection.

- 2. Required Security to Assure Completion of Plan Improvements: A security deposit shall be required to ensure that the approved landscaping and irrigation plan is implemented and that the Afghan pines become established. Prior to the issuance of a grading or building permit, whichever occurs first, the applicant shall submit a security that is acceptable to the CDD. The security shall be the amount of the approved cost estimate described in mitigation measure #1 above plus a 20% inflation surcharge.*
- 3. Initial Deposit for Processing of Security: The applicant shall pay fees to cover all staff time and materials costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial processing fee deposit of \$100.00.*
- 4. Duration of Security: When the landscaping and irrigation have been installed, the applicant shall submit a letter to the CDD to be composed by the landscape architect, arborist, or landscape contractor, verifying that the installation has been completed in accordance with the approved landscaping and irrigation plan. The County may retain the security for up to 24 months beyond the date of receipt of this letter.*

At 12 and 24 months following completion of implementation of the plan, the applicant shall arrange for the consulting arborist to inspect the trees and to prepare a report on the trees' health. The report shall be submitted for review by the CDD and shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant. Any Afghan pine tree that dies within the first two years of being planted shall be replaced by another Afghan pine tree of the same size.

This measure is a standard Condition of Approval for trees to be planted to ensure that planted trees become established. In general, trees become

established within two years with proper care as stipulated in the final landscaping and irrigation plan. On September 7, 2017, the project applicant submitted a letter of opinion from HortScience, Inc., a firm that has been retained by the County in the past to provide certified arborist services. In its letter, HortScience commented specifically on the Afghan pine trees proposed to be planted on the project site, and states the following: "When installed and cared for utilizing best management principles, Afghan Pines are expected to become established within 24 months of installing and continue [to] thrive for up to fifty or more years."

The time limit on maintaining the trees is set by the LP16-2031 land use permit, which runs with the land. Following is Condition of Approval #1 in the Zoning Administrator staff report, which requires the project applicant to install and maintain the landscaping, including the trees.

Condition of Approval #1: *This Land Use Permit application is APPROVED for the construction and operation of a warehouse, consisting of the following elements:*

- *A 225,950 square foot, 1,003-foot eight-inch long, 265-foot wide, 42 feet six-inch tall warehouse structure;*
- *A driveway that wraps around the warehouse;*
- *Parking along the east, north, and west sides of the building that provide 238 parking spaces, including eight accessible spaces and 15 electric vehicle charging stations;*
- *44 truck loading bays along the southern elevation of the building;*
- *11 trailer storage stalls along the southern edge of the driveway;*
- *16 long term and 12 short term bicycle parking spaces;*
- *Exterior lighting consisting of 13 building-mounted lights and 33 lighting poles;*
- *Eight perimeter and parking lot bio-retention basins and other stormwater drainage improvements that connect to existing onsite drainage swales and the existing offsite detention basin; and*
- *Landscape plantings along in the parking areas, along the edges of the project site, and around the building on the west, north, and east elevations.*

The landscape plantings along the edges of the project site, including along the property boundary facing Highway 4, must be installed and maintained as required by Condition of Approval #1, otherwise the project applicant will be in violation of the land use permit. Further, any change in the project from that approved in Condition of Approval #1, must be reviewed and approved by the CDD and may require modification of the LP16-2031 permit, pursuant to the following Condition of Approval #3.

Condition of Approval #3: Any change from the approved plans shall require review and approval by the CDD and may require the filing of an application to modify this Land Use Permit.

3. MND Mitigation Measures

The appellant states that the mitigation measures in the MND are “unenforceable, uncertain, and vague”, and would not reduce the potential significant impacts of the project.

Response. The MND mitigation measures include:

- one aesthetics measure related to the Afghan Pine trees;
- five biology measures related to bird species, landscaping plant species, and the riparian habitat that has been allowed to grow in the grassy swale drainages;
- six geology measures related to construction drawings for building permits, observation during construction, and certification of site preparation and construction;
- two greenhouse gas measures to meet applicable building standards and greenhouse gas reduction measures; and,
- one noise measure for noise during construction.

Each mitigation measure states the actions that are required to be completed in order to reduce the potential significant impact to a less than significant level. Further, pursuant to CEQA Section 15097, a Mitigation Monitoring Program meeting that includes all of the MND mitigation measures was prepared by staff, and adopted by the Zoning Administrator at its August 7, 2017 meeting. The Mitigation Monitoring program includes identification of the actions required in each measure, the timing of implementation of each measure, the party responsible for implementing the each mitigation, and

verification of compliance with each mitigation requirement. Moreover, all of the MND mitigation measures are included as Conditions of Approval in the Zoning Administrator staff report, and are enforceable as part of the LP16-2031 land use permit.

4. Aesthetics 1 Adequate Screening

The appellant states that mitigation measure Aesthetics 1 is inadequate, because the mitigation needs to identify the screening that is required in order to reduce the potential impact, rather than just considering "adequate screening of the future warehouse from offsite viewpoints."

Response: The mitigation measure is included as Condition of Approval #34 in the Zoning Administrator staff report. The full text of the mitigation measure is included in Section A.2 above.

As stated in the Zoning Administrator staff report for the August 7, 2017 meeting, staff recommended approval of the proposed project based, in part, on the *landscape plantings along in the parking areas, along the edges of the project site, and around the building on the west, north, and east elevations* as shown on the Preliminary Landscape Plan. Mitigation measure Aesthetics 1 requires submittal of a final landscaping and irrigation plan even though the applicant has submitted a Preliminary Landscape Plan, because the preliminary plan does not include irrigation, which needs to comply with the State's Model Water Efficient Landscape Ordinance (MWELo). The Preliminary Landscape Plan will also need to be modified as required by mitigation measure Biology 3, which is Condition of Approval #37 in the Zoning Administrator staff report, to replace plantings that have been identified as invasive plant species. In addition, the Preliminary Landscape Plan may need to be modified as required by mitigation measure Biology 4, which is Condition of Approval #38 in the Zoning Administrator staff report in order *to protect and preserve the onsite riparian habitat associated with the grassy swales, including the established riparian trees*. CDD staff will need to review the modifications that have been made to the landscaping that are necessary to comply with Biology 3 and Biology 4 and make sure that the landscaping will continue to adequately screen the warehouse in views from offsite locations. As written, mitigation measure Aesthetics 1 accommodates the addition of an irrigation plan that is compliant with the MWELo, and any changes to the landscaping that would be required in order to comply with the requirements of mitigation measures Biology 3 and Biology 4, while

continuing to adequately screen the warehouse.

5. Aesthetics 1 Mitigation Measure Time Limit

The appellant states that mitigation measure Aesthetics 1 puts a two-year time limit on how long the applicant is required to maintain the Afghan Pine trees, but that the aesthetic impacts of the project will be there for the life of the project, and therefore, the mitigation measure is temporary and improper.

Response: Mitigation measure Aesthetics 1 does not place a time limit on how long the applicant is required to maintain the landscaping, including the Afghan Pine trees. The full text of mitigation measure Aesthetics 1 is included in Section A.2 above. As stated in the mitigation measure, it is *intended to ensure full implementation of the Afghan pine landscaping along the southern edge of the driveway south of the warehouse structure*. As discussed in Section A.2 above, this mitigation measure is a standard Condition of Approval for trees to be planted to ensure that planted trees become established, typically within a two year time period with proper care as stipulated in the final landscaping and irrigation plan. With implementation of this mitigation measure, CDD staff is assured that the warehouse development will be consistent with the Transportation and Circulation Element's Scenic Route policies.

Regarding the time limit, as stated previously, the project applicant is required to maintain the trees for the duration of the LP16-2031 land use permit, which runs with the land. Pursuant to Condition of Approval #1 in the Zoning Administrator staff report, the applicant must install and maintain the landscaping, including the trees, otherwise the project applicant will be in violation of the land use permit.

6. Proposed Lighting Levels

The appellant makes statements regarding the proposed project's lighting, including a potential nuisance to future occupants of the commercial and residential portion of the Concord Naval Weapons Station, consistency of lighting levels with recommended levels of lighting for safety of exterior areas, and comparability of project lighting with that of the Willow Pass Business Park.

Future occupants of the Concord Naval Weapons Station: The appellant has stated that project lighting would likely be considered a nuisance by persons would be living and/or working in the former Concord Naval Weapons Station.

Response: The City of Concord is engaged in an ongoing, long-term process to reuse and develop the former Concord Naval Weapons Station that was declared surplus property by the U.S. Navy in 2007. The Concord City Council held a study session on the Concord Reuse Project Specific Plan on May 23, 2017, and the Concord Community Advisory Committee has held meetings on the proposed reuse project land use plan, including on September 19, 2017. At this point in time, the characteristics of the future development of the Concord Naval Weapons Station are uncertain, and therefore, pursuant to CEQA Section 15145, would be considered too speculative for environmental review.

Notwithstanding the foregoing, if development of the Concord Naval Weapons Station were to proceed in the near term future, there could be commercial retail development on the south side of Highway 4 west of Willow Pass Road, based on the August 21, 2009, Concord Community Reuse Plan Preferred Alternative Land Use Diagram. This area is 1,450 feet (0.27 mile) south of the project site. In addition, this part of the Concord Naval Weapons Station is physically separated from the project site by Highway 4. Due to the distance between this area and the project site and the intervening presence of Highway 4, project lighting would have a less than significant on future occupants of the Concord Naval Weapons Station.

Recommended levels of lighting for safety of exterior areas: The appellant has stated that no authority is cited in the revised draft MND for the recommended levels of lighting for safety of building exterior areas.

Response: As discussed in the revised draft MND in the response to CEQA Environmental Checklist Question 1.d, *the security lighting would have a maximum illuminance in the north parking lot of 1.02 fc, in the east parking lot of 1.00 fc, and in the truck loading area of 0.27 fc.* The response also states that *these lighting levels are consistent with recommended levels of lighting for safety of commercial/industrial building exterior areas.* The revised draft MND cites the *Footcandle Light Guide* published by the Energy Trust of Oregon. This publication was selected by CDD staff

as it is a readily understandable table of recommended lighting levels, including 0.5 – 2 footcandles of horizontal illumination for the safety of building exteriors. The illumination levels in the table for the safety of building exteriors are consistent with the illumination levels from other sources, such as the *Outdoor Lighting* packet published by the American Planning Association (Planning Advisory Service, PAS EIP-28, October 2010), the *Exterior Lighting for Energy Savings, Security, and Safety* publication published under contract for the U.S. Department of Energy by the Pacific Northwest National Laboratory (PNNL-18173, November 2009), and the *California Outdoor Lighting Standards* staff report published by the California Energy Commission (400-03-015 REV, March 2004). Thus, the cited source in the MND accurately shows the industry standard illumination levels for safety of building exteriors.

Comparison with the Willow Pass Business Park: The appellant has stated that the statement in the revised draft MND that night views (with the project lighting) would be comparable to night views of the Willow Pass Business Park is not analyzed.

Response: Exterior lighting plans and lighting illumination levels are required to be submitted with the construction drawings for a building permit application, as well as for a land use permit application such as the proposed project. CDD staff assessed the project's security lighting based on the submitted exterior lighting plan, and found it to be consistent with lighting plans that are typically submitted for building permits; i.e., the illumination levels are similar to the illumination levels in the construction drawings for approved building permits.

The Site Lighting Plan included in the construction drawings for approved building permit BI388148 for Building E of the Willow Pass Business Park located at 1500 Willow Pass Court (Sheet E2.1 of the construction drawings), has a designed minimum lighting level of approximately 1 footcandle. This illumination level is consistent with lighting levels in construction drawings submitted for other building permits, and is consistent with the lighting levels for the proposed project, as reported in the revised draft MND.

Regarding the night views of the site and the Willow Pass Business Park, due to the security lighting, onsite lighting would be visible in views from offsite locations, including views from Highway 4; however, due to the

distance between project site and Willow Pass Business Park, the night lighting would have less than significant environmental impacts. As discussed above, since the illumination levels of the proposed project and the Willow Pass Business Park are similar, night views of the site would be comparable to night views of the Business Park. Due to the topography and the physical separation of land on the north side of Highway 4 from land on the south side of the highway, lighting in night views from locations south of Highway 4 would be less than significant and, if visible from any viewpoints, would serve as a backdrop to vehicle lights on Highway 4.

7. Construction Air Quality

The appellant makes statements regarding the 0.25-mile distance from sensitive receptors, potential exposure of sensitive receptors located 0.9 mile from the project site, and potential effects on future occupants of the commercial and residential portion of the Concord Naval Weapons Station.

Quarter-mile standard: The appellant states that the air quality analysis is inadequate, because the revised draft MND uses 0.25 miles as a threshold of significance but does not cite the source for that standard.

Response: The CEQA Environmental Checklist Question 3.d asks: *would the project expose sensitive receptors to substantial pollutant concentrations?* The response to this question in the revised draft MND includes the following statement: *Construction and occupancy of the warehouse would not be expected to cause any localized emissions that could expose sensitive receptors (e.g., residences, schools) to unhealthy long-term air pollutant levels, since there are no sensitive receptors within a quarter-mile of the project site.*

The Bay Area Air Quality Management District (BAAQMD) Air Quality Guidelines (May 2010), cited in the revised draft MND, include a 1,000-foot (0.19 mile) zone of influence for air pollutant based risks and hazards. The *Air Quality and Land Use Handbook: A Community Health Perspective* published by the California Air Resources Board (April 2005), recommends a 1,000-foot separation distance from distribution centers for new sensitive receptors.

The one quarter-mile (1,320-foot) standard is used in CEQA Environmental Checklist Question 8.c: *Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?* Typically, hazardous emissions include air-based emissions, and therefore, staff uses the one-quarter mile standard for Question 3.d and Question 8.c for consistency across the CEQA Environmental Checklist questions, as well as to provide a conservative, worst-case assessment of a project's air pollutant-based effects on sensitive receptors.

Sensitive receptors located 0.9-mile from project site. The appellant states that the MND does not explain how sensitive receptors located 0.9 mile from the project site would not be exposed to air pollutants from construction or increased project-related truck traffic.

Response. The response to CEQA Environmental Checklist Question 3.d states: *Construction and occupancy of the warehouse would not be expected to cause any localized emissions that could expose sensitive receptors (e.g., residences, schools) to unhealthy long-term air pollutant levels, since there are no sensitive receptors within a quarter-mile of the project site. The nearest sensitive receptors are homes in Clyde that are 0.9 miles west of the site. Thus, the project would have a less than significant adverse environmental impact on any sensitive receptor due to pollutant concentrations.* The 0.9-mile separation distance is greater than the BAAQMD 1,000-foot zone of influence, and therefore, the proposed project is consistent with the recommended separation distance between distribution center and sensitive receptors.

Future occupants of the Concord Naval Weapons Station. The appellant states that the MNS does not evaluate effects of project air pollutants on future occupants of the Concord Naval Weapons Station

Response. As discussed in Section A.6 above, the City of Concord is engaged in an ongoing, long-term process to reuse and develop the former Concord Naval Weapons Station. At this point in time, the characteristics of the future development of the Concord Naval Weapons Station is uncertain, and therefore, pursuant to CEQA Section 15145, would be considered too speculative for environmental review.

Notwithstanding the foregoing, if development of the Concord Naval Weapons Station were to proceed in the near term future, there could be commercial retail development on the south side of Highway 4 west of Willow Pass Road 1,450 feet (0.27 mile) south of the project site. This distance is greater than the BAAQMD 1,000-foot zone of influence, and therefore, with development of the Concord Naval Weapons Station, the proposed project would remain consistent with the recommended separation distance between distribution center and sensitive receptors.

8. Biology 2 Nesting Buffers

The appellant contends that the MND biology mitigation measures are in error and states that mitigation measure Biology 2 must be corrected to require nesting buffers to remain to August 31 rather than to August 1.

Response: The Biology 2 mitigation includes the following requirement: *Nesting buffers shall be maintained until August 1st unless a qualified ornithologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1, the qualified ornithologist conducting the nesting surveys should prepare a report that provides the details about the nesting outcome and the removal of the buffers.* This mitigation is appropriate and adequate in addressing potential impacts on the loggerhead shrike and horned lark, which are the special status bird species being protected by the Biology 2 mitigation, as explained below.

In the MND response to CEQA Environmental Checklist Question 4.a, Donaldson Associates (*Environmental Initial Study for the Thomas/DeNova LLC Annexation and Light Industrial Development for Delta Diablo Sanitation District*. February 2002) determined that suitable habitat was present on the site for the loggerhead shrike and the horned lark. Also, as reported in the response, Monk & Associates (*Peer Review Study for Contra Costa County's SCH2017022002 MND, Proposed Warehouse at 4000 Evora Road (approximate address), Concord, California*. March 2017) did not observe either species on the project site. Both of these reference documents are cited in the MND.

The Delta Diablo Sanitation District Initial Study prepared by Donaldson Associates included the following mitigations for loggerhead shrikes and horned larks:

Loggerhead Shrikes. *A qualified wildlife biologist will survey the site for nesting loggerhead shrikes no more than 30 days before ground disturbance between February 15 and July 30. Disruption of nesting shrikes and direct mortality of nestlings will be avoided by:*

- 1. Avoiding nesting shrikes by establishing a no-construction buffer zone approximately 100 feet around all occupied nests until reproductive activity is completed, as determined by a qualified wildlife biologist.*
- 2. Remove suitable shrike nesting structures outside the nesting season, which typically occurs between February 15 and July 1.*

Horned Larks. *Direct horned lark mortality and disruption of nesting activity will be avoid by the following:*

- 1. Site clearing and grading will be avoided during the horned lark nesting season, which generally runs from March 1 - July 31.*
- 2. If site clearing is scheduled during the nesting season, a qualified wildlife biologist will survey the site for nesting horned larks no more than 14 days before ground disturbance.*
 - a. If no nesting horned larks are recorded on the site, no additional mitigation measures will be implemented.*
 - b. If nesting horned larks are recorded on the site their nests will be avoided by establishing an exclusion zone around the nest at a radius recommended by a qualified wildlife biologist (approximately 75 feet). No disturbance will occur inside the exclusion zone until a qualified wildlife biologist reports that the construction activity will no longer affect horned lark reproductive behavior at the nest.*

The Loggerhead shrike and the horned lark are both passerine bird species and special-status bird species. Accordingly, the revised draft MND includes a more restrictive mitigation measure for the loggerhead shrike and horned lark based on the following mitigation recommendation for nesting passerine birds in the 2017 Monk & Associates Peer Review Study:

If project site grading or construction would take place during the nesting season (February 1 through August 31), a nesting survey should be conducted on the project site and within a zone of influence around the

project site 15 days prior to commencing with the work. The zone of influence includes those areas off the project site where birds could be disturbed by earth-moving vibrations or noise (for example, along the pond and detention basin and adjacent slopes). If common (that is, not special-status) birds for example, California towhee, western scrub jay, or western meadowlark or other common bird species are identified nesting on or adjacent to the project site, a non-disturbance buffer of 75 feet should be established or as otherwise prescribed by a qualified ornithologist. The buffer should be demarcated with orange construction fencing. Disturbance within the buffer should be postponed until it is determined by a qualified ornithologist that the young have fledged and have attained sufficient flight skills to leave the area or that the nesting cycle has otherwise completed. If special-status passerine birds are identified nesting on the project site or within a zone of influence (for example, tricolored blackbirds or loggerhead shrike), the non-disturbance buffer zone shall be increased to 100 feet or as determined by a qualified biologist after observing the birds and determining how acclimated they are to disturbance.

Typically, most passerine birds in the region of the project site are expected to complete nesting by August 1st. However, many species can complete nesting by the end of June or in early to mid-July. Regardless, nesting buffers should be maintained until August 1st unless a qualified ornithologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1st, the qualified biologist conducting the nesting surveys should prepare a report that provides details about the nesting outcome and the removal of buffers. This report should be submitted to Contra Costa County's Department of Conservation and Development prior to the time that nest protection buffers are removed if the date is before August 1st.

In light of the foregoing, mitigation measure Biology 2 is correct as written.

9. Geology 2 Follow-up Geotechnical Report [Response from Darwin Myers]

The appellant states that the MND geology mitigation measures include improper deferred mitigation, refers to the follow-up geotechnical report required in Geology 2, and contends that the mitigation measure does not provide any standards for evaluation of the report.

Response. On August 23, 2016, Darwin Myers Associates (DMA), the County Peer Review Geologist, submitted a peer review letter (*Geologic Peer Review, LP16-2031 (CP Logistics Willow Pass, Owner), 0 Evora Road, APN 099-160-026 & -027, Bay Point Area, Contra Costa County, DMA project 3044.16*) on the geotechnical investigation completed by Raney Geotechnical for the proposed project (*Geotechnical Investigation, Willow Pass Tilt-Up Building. File No. 192-324. March 2016*). In the peer review letter, DMA concluded that there was sufficient information to deem the land use permit application complete. DMA found that the Raney Geotechnical report provided an assessment of potential geologic, geotechnical and seismic hazards based on their scope of work, which included review of the previous grading of the site, logging of seven exploratory borings, laboratory testing of samples and engineering analysis of the data gathered. Rainey also provided geotechnical recommendations for the proposed warehouse project. The Raney Geotechnical report and the DMA peer review letter are cited in the revised draft MND.

Projects are typically modified during the planning process, as the regulatory context of the project can change (i.e., adoption of the 2016 California Building Code has occurred since the Rainey report was issued) and the standard of care expected from professional engineers is constantly evolving. Moreover, since construction drawings for a building permit are not prepared until the land use permit has been approved, the project geotechnical engineer has not yet had the opportunity to review construction drawings for compliance with its recommendations. Accordingly, DMA recommended the following Geology mitigation measures, which are required either prior to the issuance of building permits or to be completed during construction or are to be completed prior to the final building inspection.

Geology 1: Prior to issuance of construction permits the project proponent shall provide evidence of plan review and approval by the project geotechnical engineer. The recommendations for site grading contained in the approved grading plans shall be followed during construction unless modifications are specifically approved in writing by the Building Inspection Division of the Department of Conservation and Development.

Geology 2: Borehole logs indicate the existing pad soils consist of medium stiff to stiff clays containing variable amounts of silt, sand and gravel. These materials are characterized by slow permeability. The applicant shall submit a follow-up geotechnical report that specifically addresses the

planned design of the bio-retention basins, and their proximity to planned improvements.

Geology 3: During grading and soils preparation work (i.e. lime treatment of soils) the geotechnical engineer shall provide observation and testing services. The intent of this geotechnical monitoring is to (i) verify that geotechnical recommendations are properly interpreted and implemented by the contractor, (ii) view exposed conditions during grading/ soil preparation work to ensure that field conditions match those that were the basis of the geotechnical design report, and (iii) provide supplement recommendations during construction, should they be warranted.

Geology 4: Prior to the issuance of the first building permit, the geotechnical engineer shall certify that all site preparation work is in compliance with recommendations in the approved geotechnical report. During foundation and drainage-related work the geotechnical engineer shall provide observation services to ensure the geotechnical recommendations are properly implemented by the contractor.

Geology 5: Prior to requesting a final building inspection of the warehouse structure, the project proponent shall submit a letter-report from the geotechnical engineer documenting the observation and testing services performed during final grading/ foundation work/ lot drainage. The report of the geotechnical engineer shall also provide a professional opinion on the consistence of the as-graded/ as-built project with recommendations in the approved geotechnical report.

Geology 6: The report of the Corrosion Engineer shall also be provided prior to requesting the final building inspection of the warehouse.

The mitigation measures provide opportunities for DMA, as the County Peer Review Geologist, to review the construction drawings for the building permit for consistency with the Raney recommendations, and to check that the actual construction follows the recommendations. The mitigation measures also allow the geotechnical engineer to offer supplemental recommendations. In addition, the Building Inspection Division may require further details, plan revisions, and/or calculations prior to issuance of construction permits.

With respect to the Geology 2 mitigation measure, in its March 2016 report, Raney provided drainage recommendations based on its investigation for the proposed warehouse project. In the report, Raney emphasized the need for positive drainage away from the foundation of the warehouse. According to DMA, the primary concerns related to the design of the project bio-retention basins include providing suitable support for foundations and curbs constructed near the bio-retention facilities, and the potential for subsurface water from the bio-retention areas to migrate (and possibly build up) beneath pavements and the proposed buildings. However, details needed to determine positive drainage are not available for review until the construction drawings for a building permit are prepared following approval of the land use permit. Thus, the Geology 2 mitigation measure provides the opportunity to review a geotechnical report that is based on the construction details of the bio-retention basins, for consistency with the Raney drainage recommendations in the March 2016 report. The Geology 2 mitigation measure does not improperly defer mitigation.

10. General Plan Land Use Compatibility

The appellant contends the MND inaccurately concludes that the proposed project is compatible with the General Plan land use designation for the project site, and that the project is inconsistent with General Plan Policy 5-49.

Response: CEQA Checklist Question 10.b asks: Would the project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

As stated in the MND response to Question 10.b:

The proposed project would construct and operate a warehouse in the L-I Light Industrial District and would be allowed on the project site with a land use permit. The warehouse would meet all of the development standards of the L-I District, including minimum lot size (7,500 square feet) and maximum building height (3 stories). The warehouse would be sited to be at least 46 feet from the nearest property boundary, and thereby, would meet the minimum setback of 10 feet and the minimum side yard of 10 feet.

The warehouse would also be compatible with the LI Light Industry General Plan land use designation. The warehouse would take up 5.19 acres of the 15.42-acre site. The site coverage would be 34 percent, and would be below the maximum 50 percent site coverage standard for the LI designation. The .034 floor area ratio would be below the maximum 0.67 floor area ratio for the LI designation. The maximum height of 42 feet six inches would be within the maximum 50 foot building height limit for the LI designation.

Regarding the consistency with the General Plan Transportation and Circulation Element, the proposed project would be consistent with the General Plan Transportation and Circulation Element's Policy 5-49, as explained in Section A.1 above, with implementation of the Conditions of Approval of the Zoning Administrator staff report. As stated earlier, due to the landscaping and the location of the warehouse in proximity to the existing tree features in the scenic view, the building would blend into the baseline scenic view to the extent possible.

11. Noise 1 Good Faith Effort

The appellant states that the MND noise mitigation measure to *make a good faith effort to minimize project-related disruptions to adjacent properties* is an improperly deferred mitigation and is vague and unenforceable.

Response. CEQA Checklist Question 12.d asks: *Would the project cause a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?*

As stated in the MND response to Question 12.d, there would be a temporary increase in ambient noise levels during construction of the warehouse structure, driveway and parking lot, which could have a potentially significant impact at nearby offsite locations. Thus, the MND includes the following noise mitigation measures:

Noise 1: The following noise reduction measures shall be implemented during project construction and shall be included on all construction plans.

- 1. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.*

2. *The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing off-site buildings as possible.*
3. *Large trucks and heavy equipment are subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.*
4. *All construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:*
 - *New Year's Day (State and Federal)*
 - *Birthday of Martin Luther King, Jr. (State and Federal)*
 - *Washington's Birthday (Federal)*
 - *Lincoln's Birthday (State)*
 - *President's Day (State and Federal)*
 - *Cesar Chavez Day (State)*
 - *Memorial Day (State and Federal)*
 - *Independence Day (State and Federal)*
 - *Labor Day (State and Federal)*
 - *Columbus Day (State and Federal)*
 - *Veterans Day (State and Federal)*
 - *Thanksgiving Day (State and Federal)*
 - *Day after Thanksgiving (State)*
 - *Christmas Day (State and Federal)*

Noise 1 is not improperly deferred, is not vague, and is enforceable. As evident in Noise 1 above, the requirement to make a good faith effort is part of the package of Noise 1 mitigation measures; i.e., all of the measures of Noise 1 are to be implemented together. For example, if a contractor fails to adhere to measure #4 to limit construction hours to start no earlier than 8:00 A.M. and end no later than 5:00 P.M., that contractor would not be making a good faith effort to minimize disruptions to adjacent properties per measure

#1. Further, all of the mitigation measures are required to be included together on construction drawings, such that all contractors would be aware of these requirements.

12. Traffic Levels of Service

The appellant states that the MND does not identify any threshold of significance, and that the MND misleads the reader by stating that there are no significant adverse impacts.

Response: CEQA Checklist Question 16.a asks: *Would the project conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?*

The MND response to Question 16.a refers to the transportation analysis prepared by Abrams Associates (*Transportation Impact Analysis, Frito Lay Project, Permit App #CDLP 16-02031*, September 2016), which is cited in the revised draft MND. Pursuant to CEQA Guidelines Section 15147 regarding the level of technical detail in an environmental review document, the MND response to Question 16.a appropriately summarizes the information in the *Transportation Impact Analysis* with enough detail to disclose potential significant impacts. As reported by Abrams Associates in its September 2016 *Transportation Impact Analysis*, the Contra Costa County Transportation Authority established traffic level of services (LOS) standards, and has set LOS D as the standard for Willow Pass Road; i.e., levels of service up to and including LOS D would be considered to have a less than significant impact. Using this standard, Abrams Associates evaluated existing and future traffic conditions at the Willow Pass Road at Evora Road intersection, the Willow Pass Road at the Highway 4 westbound off- and on-ramps, and the Willow Pass Road at the eastbound off-and on-ramps, and found no significant traffic impacts. The intersections highlighted by the appellant for baseline and baseline plus project conditions (shown in the table on the following page) either do not degrade in levels of service or go from LOS C to LOS D, the standard for Willow Pass Road.

| Intersection | Willow Pass Rd & Evora Rd | | Willow Pass Rd & Highway 4 Westbound Ramps | | Willow Pass Rd & Highway 4 Eastbound Ramps | |
|------------------------------|---------------------------|-----|--|-----|--|-----|
| | Delay | LOS | Delay | LOS | Delay | LOS |
| Baseline | | | | | | |
| Control | Signalized | | Two-Way Stop | | Two-Way Stop | |
| AM | >80.0 | F | >50.0 | F | 42.1 | E |
| PM | 32.3 | C | 41.4 | E | 23.1 | C |
| Baseline plus Project | | | | | | |
| Control | Signalized | | Two-Way Stop | | Two-Way Stop | |
| AM | >80.0 | F | >50.0 | F | 44.9 | E |
| PM | 41.7 | D | 42.1 | E | 25.3 | D |

Source: Abrams Associates, 2016.

B. DeNova Homes March 2, 2017 and June 9, 2017 letters commenting on MND

The March 2, 2017 DeNova Homes letter (letter B) and the June 9, 2017 DeNova Homes letter (letter D) are grouped together in this section, because letter B was submitted as comments on the adequacy of the draft MND that was published by the Department of Conservation and Development (DCD) on January 31, 2017, and letter D was submitted as comments on the adequacy of the revised draft MND that was published by DCD on May 10, 2017, and except for one comment that is only in letter B, letter D includes comments that are the same as or similar to the comments in letter B. All of the comments in the two letters have been responded to in the August 7, 2017 Final MND, which is Attachment 5 of the Zoning Administrator staff report for its August 7, 2017 meeting. Summaries of the comments in the letters and comment responses from the Final MND are included below. Because letters B and D are letters E and G that are included in Attachment A of the Final MND, the comment responses are taken directly from the Final MND.

1. Disagreement Between Parties (comment 1 letter B, comment 1 letter D)

DeNova Homes cites a disagreement between the partners of Thomas DeNova LLC regarding development of the project site in excess of 110,000 square feet. In letter D, DeNova Homes also contends that additional mitigation required by the County will take away the development value of the remaining parcels in the Willow Pass Business Park.

Response. A disagreement between the partners of Thomas DeNova LLC is a civil matter that is not an environmental review issue. The project site is not part of Subdivision 8918 or Development Plan DP04-3096, and therefore, is not subject to the limits on development that apply to the Willow Pass Business Park that are shown on Table 4 of the approved SD04-8918/DP04-3096 permit. Approval of the proposed project would not require an amendment of the Willow Pass Business Park and would not affect the approved SD04-8918/DP04-3096 permit.

2. Significant Impacts – EIR Required (comment 2 letter B, comment 2 letter D)

DeNova Homes states that the proposed project cannot be approved using the MND because the project has significant impacts on the environment, and that an environmental impact report needs to be prepared. In letter D, DeNova Homes also states that traffic due to truck traffic from the warehouse will require mitigation at the Willow Pass Road/Evora Road intersection.

Response. The MND has evaluated all potential significant environmental impacts due to the proposed project and includes mitigation measures that reduce all potential significant impacts to less than significant levels. Aside from the changes to Section 4 (Biological Resources) in the revised draft MND, a few sections of the draft MND, including Section 16 (Transportation/Traffic), have been revised to add information. The addition of new language to these other sections of the MND is not the result of any new significant adverse environmental impact, does not alter the effectiveness of any mitigation included in the MND, and does not alter any findings in the section. The revisions are consistent with CEQA requirements for a MND. Pursuant to CEQA Guidelines Section 15073.5, preparation of an EIR is not necessary.

3. Requested Notice (comment 3 letter B)

DeNova Homes states that it had requested that the County provide DeNova with notice of all applications filed for development of the project site. DeNova Homes states that it has not received the requested notice, and that notice was not provided to DeNova at its two office locations at 1500 Willow Pass Court and 1200 Willow Pass Court.

Response. DeNova Homes had submitted a request for notice of any applications for Assessor's Parcel Numbers 099-160-026, 099-160-027, 099-160-032, 099-210-016, 099-210-017, and 099-210-018 in a letter dated

September 22, 2015. DCD sent a letter to DeNova Homes dated October 13, 2015, stating that it could provide notice of any discretionary permits for a one-year period, but could not provide notice for non-discretionary approvals that do not require public notification. The one year time period expired on October 13, 2016. DeNova Homes subsequently sent a letter dated March 20, 2017 requesting notification for applications or "any land use related inquiries of any nature whatsoever" for Assessor's Parcel Numbers 099-160-026, 099-160-027, 099-160-032, 099-210-016, 099-210-017, and 099-210-018. DCD sent a letter to DeNova Homes dated March 31, 2017, stating that it would provide notice of any discretionary permit but could not provide notice of non-discretionary items.

The discretionary permit related to the proposed project is Land Use Permit LP16-2031. Permit application LP16-2031 has not previously been scheduled for consideration of approval. LP16-2031 is now scheduled for consideration of approval at the Zoning Administrator meeting on August 7, 2017, and notice has been sent for the meeting. At the meeting, the Zoning Administrator will consider adopting the MND prior to considering approval of LP16-2031. Accordingly, notice has been provided to DeNova Homes in accordance with Section 26-2.2104 of the Contra Costa County Code, which requires that notice be provided no less than ten days prior to the meeting, and Section 26-2.2004 of the County Code, which requires mail notice to be provided "to all owners of real property within three hundred feet of the subject land". Because DeNova Homes has specifically requested notice, it is be included in the notification of the Zoning Administrator meeting.

With respect to notice of the MND, Section 15072 of the Contra Costa County Guidelines for Administering the California Environmental Quality Act, adopted by the Contra Costa County Board of Supervisors on August 3, 2010, stipulates that notice of intent to adopt a mitigated negative declaration be provided by publication in a newspaper of general circulation, or posting of the notice on and off site in the project vicinity, or by mailing to owners and occupants of contiguous property shown on the latest equalized assessment roll. Accordingly, notice was provide to owners and occupants of parcels contiguous to the project site as shown on the latest equalized assessment roll.

4. Inconsistent Aesthetics Analysis (comment 4 letter B, comment 4 letter D)

DeNova Homes states that the aesthetics analysis is internally inconsistent, because the checklist does not note any “potentially significant impacts” but the discussion states that there could be “potentially significant adverse environmental impact on Highway 4 scenic resources.” DeNova Homes also states that the proposed plantings would adversely change the “scenic vista”, and that the MND fails to address the impacts on adjoining landowners.

Response: Regarding internal consistency, the “Environmental Factors Potentially Affected” checklist in the revised draft MND shows the environmental factors that have a “Potentially Significant Impact”. No checkbox in this list is checked to indicate that there is a “Potentially Significant Impact”. Similarly, the checklist in the Aesthetics section of the revised draft MND does not have any checkbox that is checked for a “Potentially Significant Impact”. The Aesthetics checklist does have two checkboxes checked for impacts that would be “Less Than Significant With Mitigation”, including #1.b – scenic resources within a state scenic highway (Highway 4), and #1.c – potential degradation of the existing visual character of the site and its surroundings. The Aesthetics section includes discussions in #1.b and #1.c that indicate that there could be potentially significant impacts and includes mitigation measures that address these potentially significant impacts. With implementation of the mitigation measures, the identified impacts would be reduced to less than significant levels.

The commenter states that the proposed project would adversely change a “scenic vista”. As discussed in #1.a in the Aesthetics section of the revised draft MND, the proposed project has no impact on any scenic vistas as the site is not located near any scenic ridgeways identified in Figure 9-1 (Scenic Ridges & Waterways) of the Contra Costa County General Plan Open Space Element. As discussed in the Open Space Element, scenic vistas include natural ridges, hillsides, and waterways that form the visual identify of the County. The closest identified scenic ridgeway in the Open Space Element is Lime Ridge, located approximately 6 miles to the south of the project site. Lime Ridge would remain visible from areas around the site with the proposed project.

Regarding the visual character of the site and its surroundings, as discussed in #1.c in the Aesthetics section of the revised draft MND, with the proposed landscape plantings, including both deciduous and evergreen trees, the

proposed project would have a less than significant impact on the visual character of the site and its vicinity. The trees would soften views of the warehouse structure and would partially obscure views of the structure. In addition, vertical elements in the design of the warehouse would break up the apparent mass of the structure. Thus, project impacts to views from the south, north, and east would be less than significant. The views would be comparable to views of the existing Willow Pass Business Park, located adjacent to the project site to the east. For persons in the Willow Pass Business Park, views of the project would be similar to existing views of the Business Park.

5. Willow Pass Business Park Prior Approvals (comment 5 letter B, comment 5 letter D)

DeNova Homes states that the MND does not consider the prior approvals of the Willow Pass Business Park that limit development on the project site to 110,000 square feet.

Response: The project site is not part of the Willow Pass Business Park, which is described in the Subdivision 8918 and Development Plan DP04-3096 approval documents and is shown on the Vesting Tentative Map for Major Subdivision 8918 "Willow Pass Business Park". Thus, the limits on development that apply to the Willow Pass Business Park and are shown on Table 4 of the approved SD04-8918/DP04-3096 permit do not include the project site.

6. Traffic Analysis (comment 6 letter B, comment 3 letter D)

DeNova Homes states that the MND's checklist questions are inconsistent with current CEQA Guidelines. DeNova Homes also states that the project trip generation analysis fails to consider the impacts of a warehouse of this size and location, that in 2002, a traffic impact study was prepared for a warehouse/distribution center of 98,400 square feet, that with the original approval, certain traffic improvements were anticipated with development of the project site, and that project traffic would use Evora Court and the easement for access on Evora Court limits the warehouse to no more than 110,000 square feet. In letter D, DeNova Homes also states that the project will impact the Willow Pass Road/Evora Road intersection, that the MND does not account for metering lights on the Highway 4 onramps, and that the MND does not account for the turning radius of trucks.

Response. The Transportation/Traffic checklist questions are the same as the checklist questions on the 2017 CEQA Guidelines Appendix G: Environmental Checklist Form.

Abrams Associates, the project transportation consultants, assessed the transportation-related impacts of a 225,950 square foot warehouse on the project site in its September 2016 Transportation Impact Analysis (TIA). Abrams Associates estimated 804 daily trips for the project, with 68 AM peak period trips and 72 PM peak period trips. Abrams Associates also completed the Traffic Impact Study in November 2002 for the prior 94,400 square foot warehouse/distribution center and estimated 487 daily trips for that project, with 44 AM peak hour and 57 PM peak hour trips.

The 2002 Traffic Impact Study that was prepared for a prior proposed warehouse/distribution center on the project site did not find any significant impacts. The 2002 Study did identify a need to install traffic signals at the Willow Pass Road/Evora Road intersection with development of the surrounding "Leshar property", including the Willow Pass Business Park, but stated that the prior warehouse/distribution center alone would not warrant installation of the signals.

In contrast, the Initial Study prepared for the Willow Pass Business Park project by LSA in August 2005 estimated that the Business Park would generate 6,700 daily trips, with 469 trips in the AM peak hour and 642 trips in the PM peak hour. Consequently, a number of mitigation measures were included in the Initial Study, including a limitation on the square footage that could be developed on each parcel in the Business Park, installation of traffic signals at the Willow Pass Road/Evora Road intersection, and improvements to the Highway 4 ramps on Willow Pass Road. The limitation on the square footage is specific to the parcels within the Willow Pass Business Park and does not apply to the project site.

As evaluated by Abrams Associates using the Contra Costa County Transportation Authority (CCCTA) technical procedures, the proposed project would not have a significant impact on existing traffic congestion in the area. The existing traffic congestion and backups between intersections referred to by the commenter will continue to exist regardless of whether or not the proposed project is constructed. As discussed in Transportation/Traffic section #16.a of the revised draft MND, the project-related traffic would not result in any significant impacts at the Willow Pass Road/Evora Road, Willow

Pass Road/Highway 4 Westbound Ramps, and Willow Pass Road/Highway 4 Eastbound Ramps intersections. Notably, the existing Level of Service (LOS) is at LOS F at the Willow Pass Road/Highway 4 Westbound Ramps, which is the cause of the backups referred to by the commenter.

The Abrams Associates TIA accounted for ramp metering; however, the metering lights were not highlighted in the TIA, because the metering lights are not within any of the study intersections.

The Willow Pass Road/Evora Road intersection was designed to County standards as part of the intersection improvements implemented as part of the approvals for the Willow Pass Business Park. The County standards account for the turning radius of trucks.

Regarding the 110,000 square foot limitation in the easement for Evora Court, the Grant Deed from Rolling Frito-Lay Sales, LP to CP Logistics Willow PASS LLC, recorded in May 2016, conveyed the project site to the applicant/property owner. In the Grant Deed, Evora Court is listed as Parcel Two, which is a "non-exclusive perpetual easement" with no square footage limitation.

7. Insufficient Groundwater (comment 7 letter B, comment 6 letter D)

DeNova Homes states that the December 2008 Willow Pass Business Park CC&Rs limit development on the project site to 100,000 square feet. DeNova Homes contends that, as noted by the CCWD (Contra Costa Water District) in its comment letter, there is insufficient water for this project due to insufficient groundwater if development of the site exceeds 100,000 square feet.

Response: The commenter cites section 4.11 of the CC&Rs:

The Raw Water System and the Potable Water System ("Water System") which provides service to the Project was designed to accommodate presently contemplated and proposed uses. In particular, the Owner of the Frito-Lay Lot may not change the use of the Frito-Lay Lot from a maximum of one hundred thousand (100,000) square feet of office/warehouse (a distribution center) to another use which would require greater fireflow capacity of water consumption unless (a) the Managing Owner determines that the Water System has adequate capacity, or (b) the Owner of the Frito-Lay Lot increases the capacity of the Water System at its own expense

and to the satisfaction of the Managing Owner.

As listed in section 2.13 of the CC&Rs, the Managing Owner is Thomas/DeNova LLC, and as listed in section 2.6 of the CC&Rs, the Declarants are Thomas/DeNova LLC, Thomas Concord LLC, and Meadow Creek Group LLC. The Managing Owner and Thomas Concord LLC executed the Willow Pass Business Park Amended Estoppel Certificate, dated May 17, 2016, and in part #4 Declarant and Managing Owner stated:

Declarant and Managing Owner hereby confirm that the Willow Pass Business Park (WPBP) Water System has adequate capacity for Buyer's proposed development containing one (1) building, not to exceed 226,000 square feet, demised via 4-hour rated fire walls into three (3) adjoining units of no more than 79,000 square feet each.

Regarding the CCWD's statement about insufficient water for the project, the CCWD, in its Comment Letter Regarding the Evora Road Bay Point Project, dated December 27, 2016, stated that:

The Proposed Project is a 225,950 square foot concrete tilt-up speculative warehouse building (APN#s 099-160-026 and 099-160-027) on 15.42 acres. While this facility is within the CCWD service area, the Willow Pass Business Park has elected to use groundwater for potable water service and is accessing Canal Water for landscape irrigation water.

The District has a separate agreement with the Willow Pass Business Park regarding the use of ground water rather than obtaining treated water service from CCWD. In the event that ground water service is not reliable, there are significant facility improvement and charges that would be required for the Willow Pass Business Park to obtain treated water service. The estimated cost of extending treated water to the Willow Pass Business Park is substantial.

As discussed in #17.b and #17.d of the Utilities and Service Systems section of the revised draft MND, the project site is in the CCWD service area, and therefore, CCWD would provide water service in the event that the project does not use ground water. CCWD has not indicated that it could not provide water service. Utilities and Service Systems sections #17.b and #17.d of the revised draft MND is included in the staff-initiated text changes. The text changes are included to more clearly reflect the CCWD Comment Letter.

Text changes to CEQA Environmental Checklist Section 17. Utilities and Service Systems. The corrections to the text of CEQA Environmental Checklist Section 17 that are included in the Final MND are shown below. Deleted text is shown with ~~striketrough text~~ and new text is indicated by double underlined text.

The first full paragraph on page 66 of the Environmental Checklist (Section 17. Utilities and Service Systems, subsection (b)) is revised as follows:

The project site is in the CCWD service area. As described in 17.d below, in the event that the project would not use ground water, water service would be provided by CCWD. The CCWD has ~~not~~ indicated that significant facility improvements would be needed ~~existing water facilities would need to be expanded~~ in order to serve the project. The improvements would be provided by the applicant/property owner at its expense. With the use of ground water or with the installation of these improvements. ~~Thus,~~ impacts of the proposed project on CCWD ~~DDSD~~ facilities would be less than significant.

The paragraph on page 66 of the Environmental Checklist (Section 17. Utilities and Service Systems, subsection (d)) is revised as follows:

The Willow Pass Business Park has an agreement with CCWD, whereby the Business Park uses ground water. The proposed project would use this ground water source or, in the event that the ground water source is not reliable, would request treated water service from CCWD. The CCWD has indicated that significant facility improvements would be needed to serve ~~water service laterals would need to be extended from existing CCWD facilities to the warehouse, at the applicant/property owner's project sponsor's expense.~~ If necessary, CCWD will reviewed the project application documents regarding the provision of new water service pursuant to CCWD water service regulations. With the use of ground water or with the installation of the facility improvements. Accordingly, the impact of providing water service to the proposed project would be less than significant.

8. Underperforming Canal (comment 8 letter B, comment 7 letter D)

DeNova Homes states that the underperforming canal is not discussed in the MND.

Response. The Contra Costa Canal is not part of the proposed project and is not connected to the Willow Pass Business Park drainage system. Further, the proposed project does not create a drainage impact, as described in #9.c in the Hydrology and Water Quality section of the revised draft MND and in prior responses to Comments 2, 3, and 4 above.

Hydrology and Water Quality Comments 2,3, and 4: Hydrology and Water Quality Comments 2, 3, and 4 that were submitted by the Contra Costa Water District and included in the Final MND, and the corresponding staff responses, are as follows:

Comment 2. The MND should include a link to supporting documentation to show that the proposed project would not result in overtopping of the existing drainage facilities. (Email D: Contra Costa Water District 2)

Response. Hydrology and Water Quality section #9.c of the revised draft MND describes the existing drainage facilities that were designed to meet 10-year storm discharges. This section also describes the design of onsite project stormwater control facilities such that post-project runoff would not exceed estimated pre-project rates and durations. Information in this section is based on the Laugenour and Meikle (LM) September 2016 Pre-App 16-0005 Evaluation of Existing Drainage Facilities For Evora Road Industrial Center. LM concluded that existing drainage improvements for the Willow Pass Business Park, as detailed in Leshner Business Park documents, were sized conservatively and would accommodate the proposed project. The September 2016 LM evaluation is a background document for the MND. Subsequently in the February 2017 LP16-2031 Evaluation of Existing Drainage Facilities For Evora Road Industrial Center, LM evaluated the July 2006 Willow Pass Business Park Hydrology Study and concluded that the proposed project is compatible with the existing drainage system. Both the LM February 2017 evaluation and September 2016 evaluation are part of the project case file and are available for review at the DCD offices located at 30 Muir Road, Martinez, CA.

Comment 3: The MND includes contradictory statements. The MND should include a link to supporting documentation to show that the proposed project would not imperil the Contra Costa Canal during heavy rainfall events. (Email D: Contra Costa Water District 3)

Response: As stated in the response to Comment 2 above, information was added to the draft MND in the revised draft MND to clarify the discussion of Hydrology and Water Quality. Hydrology and Water Quality section #9.d of the revised draft MND, refers to the previous discussion in #9.c of how the existing drainage improvements for the Willow Pass Business Park would accommodate the proposed project, because the *"improvements were sized conservatively, assuming industrial land use and associated infiltration/runoff rates across this entire area."* Thus, the proposed project would not create any significant risk due to off-site flooding. As discussed in the response to Comment 2 above, the February 2017 LP16-2031 Evaluation of Existing Drainage Facilities For Evora Road Industrial Center included an evaluation of the July 2006 Willow Pass Business Park Hydrology Study. As described in the Willow Pass Business Park Hydrology Study, runoff from the Business Park's drainage system discharges to a culvert under the Contra Costa Canal, and therefore, would not discharge into the Canal. The referenced LM February 2017 evaluation and September 2016 evaluation are part of the project case file and are available for review at the DCD offices located at 30 Muir Road, Martinez, CA.

Comment 4: There is no way to know if the proposed project would affect the Contra Costa Canal during a heavy rainfall event. (Email D: Contra Costa Water District 4)

Response: As described in #9.e in the Hydrology and Water Quality section of the revised draft MND, describes how the project bio-retention basins and vegetated areas would filter stormwater and reduce the runoff that is directed into the existing drainage swales. As described in #9.c, project runoff would be accommodated by the existing drainage improvements. As evaluated in the LM February 2017 evaluation and described in the July 2006 Willow Pass Business Park Hydrology Study, the existing drainage improvements discharge runoff to a culvert under the Contra Costa Canal.

9. Maintenance of Bioswales (comment 9 letter B, comment 8 letter D)

DeNova Homes states that the MND does not address maintenance of existing bioswales.

Response. The proposed project does not affect the maintenance of existing bioswales for the Willow Pass Business Park. The project site is included in the Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions of the Willow Pass Business Park (CC&Rs), which was executed by Thomas/DeNova LLC, Thomas Concord LLC, and Meadow Creek Group LLC, and recorded on December 18, 2008. Pursuant to the CC&Rs, the applicant/property owner is required to maintain the drainage facilities that would be installed as part of the project, and share in the maintenance of the existing drainage swales and other existing Willow Pass Business Park drainage improvements. Moreover, as stated in the Permit LP16-2031 Staff Report and Conditions of Approval from the Contra Costa County Department of Public Works, dated March 28, 2017, the applicant/property owner is required to submit a stormwater control plan and a stormwater control operation and maintenance plan for approval by the Department of Public Works. The applicant/property owner is subsequently required to enter into a stormwater management facility operation and maintenance agreement with Contra Costa County for the project stormwater facilities.

10. Fire Protection Water Supply (comment 10 letter B, comment 9 letter D)

DeNova Homes states that the MND does not identify water supply for fire protection. DeNova Homes also states that there is reference to a water tank, which would require DeNova's consent.

Response. As discussed in #14.a of the Public Service section of the revised draft MND, fire protection services would be provided to the project site by the Contra Costa County Fire Protection District (CCCFPD). In the CCCFPD comment letter on the proposed project, dated August 18, 2016, CCCFPD stated that an adequate and reliable water supply for fire protection be provided to serve the project. The discussion below in I. Utilities and Service Systems includes reference to the May 17, 2016 Willow Pass Business Park Amended Estoppel Certificate that indicates that water service would be provided by the Willow Pass Business Park Water System.

As described in section 2.19.7 of the CC&Rs, the Willow Pass Business Park Water System includes well water, the 750,000 gallon water storage tank described in the Surrounding Land Uses and Setting section of the revised draft MND, and "raw water" from the Contra Costa Water District (CCWD). The applicant/property owner has not proposed a new water tank as part of the LP16-2031 application; a water tank is not part of the warehouse project scope under LP16-2031.

C. DeNova Homes March 7, 2017 letter

The March 7, 2017 DeNova Homes letter was submitted on March 8, 2017 as comments on the proposed project. In the March 7, 2017 letter, DeNova Homes refers to the development restrictions for the Willow Pass Business Park, the inadequacy of the notice provided to it, and the inadequacy of the MND that it had noted in its March 2, 2017 comment letter on the draft MND (letter B). Responses to these comments are included above in Sections B.5, B.3, and B.2, respectively.

DeNova Homes specifically includes two comments on the proposed project itself in its March 7, 2017 letter, including: (1) the extensive loading docks, and (2) the height of the warehouse structure. Both comments have been responded to in the August 7, 2017 Zoning Administrator staff report. Summaries of the comments in the letters and comment responses derived from the Zoning Administrator staff report are included below

1. Extensive Loading Docks

DeNova Homes states that:

*"In addition to the land uses allowed under Chapter 84-63 (entitled *Land Use Permits for Development Projects Involving Hazardous Waste or Hazardous Material* and which appears to be irrelevant here), the permitted uses include '*industrial uses which do not necessarily require or use...extensive loading docks or similar facilities for the receiving or shipment of raw materials or semi-finished or finished products...*'"*

"The proposed Project includes 44 truck loading bays. Even under the most generous reading of County Ordinance Code section 84-58.402, the applicant and the County cannot reasonably say that 44 truck loading bays are not 'extensive loading docks or similar facilities.' Perhaps a few loading

bays would be permissible under the County Ordinance Code, but 44 truck loading bays can only be described as an extensive use of docks or similar facilities.”

Response: As discussed in Section IX.B of the Zoning Administrator staff report (Consistency with Zoning), warehouse space is generally considered to be storage, and therefore, warehousing is considered to be a commercial land use, which is allowed in the L-I District with a land use permit. Industrial space is typically used to manufacture, fabricate, or assemble products and may include warehouse space. If the proposed project were to be considered as an industrial use, the proposed 44 truck loading bays along the southern elevation of the building would be considered to be “extensive loading docks”, and therefore, would not be permitted by right in the L-I District, but would require approval of a land use permit; i.e., the LP16-2031 land use permit application.

2. Height of Warehouse Structure

DeNova Homes states that:

“In addition, under County Ordinance Code section 84-58.802, ‘[n]o building or structure or part of it shall be more than three stories high above the highest point of ground elevation on the lot on which the building is erected.’ ”

“Further, a 42.5-foot structure exceeds the County Ordinance Code’s height requirement that precludes construction of a building that is more than three stories high. Even assuming that each story is 12 feet high – a generous measurement by any standards – this building exceeds the height of a three story building by at least an additional half-story.”

Response: As shown on the project plans, submitted on July 14, 2016, the proposed warehouse is a single-story structure. As discussed in Section IX.B of the Zoning Administrator staff report (Consistency with Zoning), the one story structure meets the L-I District development regulation for building height. The L-I District allows a three-story structure; however, the maximum building height is not listed in the L-I District regulations. Instead, the maximum building height is listed in the LI General Plan development standards. As discussed in Section IX.A of the Zoning Administrator staff report (Consistency with the General Plan), a maximum building height of 50

feet is allowed in the LI General Plan land use designation, and therefore, the proposed warehouse structure meets this General Plan development standard.

VII. CONCLUSION

Staff has determined that the proposed project is consistent with the L-I Light Industrial District zoning regulations, the LI Light Industry General Plan land use designation, and the General Plan Transportation and Circulation Element policies and implementation measures for scenic routes. Staff has also determined that neither the comments in the Wenter appeal letter, nor the staff responses to the comments, result in any changes to the MND, result in any new significant adverse environmental impact, alter the effectiveness of any mitigation included in the MND, or alter any findings in the MND. The Findings and Conditions of Approval in Exhibit 1 include findings that support adoption of the MND and approval of the land use permit.

Staff recommends that the County Planning Commission deny the appeal and uphold the Zoning Administrator's decision to approve County File #LP16-2031, based on the Findings and subject to the Conditions of Approval. In approving County File #LP16-2031, the Zoning Administrator adopted the Mitigated Negative Declaration prepared for this application, consisting of the revised draft MND and the Final MND, and adopted the Mitigation Monitoring Program. The Mitigation Monitoring Program, revised draft MND, and Final MND are included as attachments to the August 7, 2017 Zoning Administrator staff report in Exhibit 4.

VIII. EXHIBITS

Exhibit 1: Findings and Conditions of Approval

Exhibit 2: Letter of Appeal received on August 17, 2017.

Exhibit 3: Maps and Plans

Exhibit 4: Staff Report for the August 7, 2017 Zoning Administrator Meeting