



INTER DEPARTMENTAL MEMO

Community Development Department

DATE: March 29, 2024

TO: Mayor Bird and Council members

FROM: Raffi Boloyan, Community Development Director

RE: **Additional Correspondence for Public Hearing Item 10.1 on 4/2/24 (Comprehensive Zoning Ordinance Update)**

Staff received two additional written comments on item 10.1 for the 4/2/24 Council meeting on the Comprehensive Zoning Ordinance update and minor General Plan amendments project.

See attached letters from:

- 1) March 25, 2024 letter from Yoche Dehe stating the project is within the aboriginal territories of the Yoche Dehe Wintun Nation and has interest and authority in the area and would like to continue receiving updates; and
- 2) March 28, 2024 letter from Chad Roberts, attorney at Hefner Law, on behalf of Stromer Realty Company that owns a 12 acre site at NE corner of N 1st St and East H St citing concern with the changes to CMX and requesting that single family detached residential uses be allowed in CMX with a Use Permit

Correspondence is attached.

City of Dixon

600 East A Street • Dixon, California • 95620-3697
PHONE (707) 678-7000 • TTY (707) 678-1489



YOCHA DEHE
CULTURAL RESOURCES

March 25, 2024

City of Dixon – Community Development Department
Attn: Raffi Boloyan, Community Development Director
600 East A St.
Dixon, CA 95620

RE: Dixon General Plan YD-04152015-04

Dear Mr. Boloyan:

Thank you for your project notification dated, January 26, 2024, regarding cultural information on or near the proposed Dixon General Plan. We appreciate your effort to contact us and wish to respond.

The Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territories of the Yocha Dehe Wintun Nation. Therefore, we have a cultural interest and authority in the proposed project area and would like to continue to receive updates on the project.

Should you have any questions, please contact:

CRD Administrative Staff
Yocha Dehe Wintun Nation
Office: (530) 796-3400
Email: THPO@yochadehe.gov

Please refer to identification number YD – 04152015-04 in any correspondence concerning this project.

Thank you for providing us the opportunity to comment.

Sincerely,

DocuSigned by:

Yvonne Perkins

8DD0BD089FD6438
Tribal Historic Preservation Officer



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March 28, 2024

City of Dixon
City Council
600 East A St.
Dixon, CA 95620

VIA EMAIL ONLY

**RE: Flexibility for Detached Single Family Residential in New CMX Zone
April 2, 2024 City Council Meeting – Comprehensive Zoning Update**

Dear Mayor Bird and Members of the Dixon City Council:

Our firm represents Stromer Realty Company of California (“Stromer”) and this letter requests that your City Council (“Council”) preserve flexibility in the Comprehensive Update to the Dixon Zoning Ordinance (“Zoning Update”) within the newly created Corridor Mixed Use (“CMX”) Zone to allow single-family detached residential with a conditional use permit (“CUP”). As detailed herein, the proposed rezone of Stromer’s property to CMX along with the proposed limitations on development within this new zone would significantly limit Stromer’s property rights and preclude Stromer from continuing to pursue the mixed-use development plan it submitted to the City for preliminary review on October 23, 2022. The requirement of a CUP to include detached single family residential and smaller parcel sizes to meet the required density would preserve the City’s discretion to determine whether a mixed-use project proposes compatible uses that advance the City’s vision for the new CMX Zone while ensuring the flexibility intended in the General Plan.

As your Council knows, the City’s General Plan created the Corridor Mixed Use (“CMU”) land use designation that included Stromer’s property. In October 2022 and in reliance on the CMU land use designation, Stromer submitted a preliminary application for a mixed-use project that included 60 single family units, 7,200 square feet of commercial space, and a 111,250-square-foot mini-storage facility with an office and mini-storage residence. The mixed-use project would develop approximately 12.3 acres of vacant land that is bordered by North First Street with retail and then single-family residential to the west, East H Street with Dixon Landscape Materials and then single-family residential to the south, Business Park Drive with wholesale and industrial and then agricultural uses to the east, and a mini-storage facility and then a vacant parcel to the north (APNs 0115-190-010, -020, -030, -040, and 0115-010-450).

Stromer’s mixed-use project sought to implement the CMU land use designation, which the General Plan describes as “intended to foster a mix of retail and commercial uses, *supported by housing*.” (General Plan at p. 3-15, emphasis added.) The General Plan further describes the CMU land use designation as follows:

Mixed use can be vertical and/or horizontal, and the allowable range of uses includes large format retail, shopping centers, offices, hotels and housing. On larger sites, more than one use is required. On smaller sites, a single use may be permitted. Allowable FAR is 50% to 200% for single-use developments and 80% to 240% for mixed-use developments (combined residential and non-residential uses). Allowable residential density is 12 to 28 dwelling units per acre, with densities on the lower end of that range where proposed development abuts low density residential development. **Corresponding zoning will be performance-based in order to promote flexibility** and minimize non-conformance issues of existing uses.

(General Plan at p. 3-15, emphasis added.) Notably, the CMU land use designation repeatedly emphasizes the inclusion of housing and need for flexibility in the Zoning Code. While it establishes a required residential density, it does not include any language suggesting that detached residential units should not or could not be included within a horizontal mixed-use project.

Consistent with the flexibility desired in the General Plan, the initial January 2023 Study Session Zoning Update Draft allowed “Single-Unit Dwelling, Detached” in the CMX Zone with a CUP. This flexibility was removed in the latest draft of the Zoning Update with a comment stating only: “Removed per Study Session discussion, GP consistency, and City Atty input.” While there were extensive discussions about the CMX Zone during the first and third Study Sessions, there was no Council direction to remove detached single family residential uses. In contrast to the note, precluding detached single family residential uses in the CMX Zone is inconsistent with the direction in the General Plan CMU land use designation to promote flexibility in the Zoning Code.

Given the timing of Stromer’s preliminary application proposing a mixed-use project including single-family detached units, we are concerned that the change in staff’s recommendation and the limited vacant parcels in the CMU indicate that the change may have been targeted at our client’s parcel and proposed development. (See *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 900 “[E]ven in the case of zoning regulations, to which courts have been traditionally deferential, a more rigorous form of judicial review, fueled by a suspicion of legislative motive, has been employed when the regulation applies uniquely to a single property owner--so-called ‘spot zoning.’”]; *Harris v. County of Riverside* (9th Cir. 1990) 904 F.2d 497, 501-502 [rezone that “‘exceptionally affected’ [a landowner] ‘on an individual basis’ by severely altering the permissible uses of [his] land” triggers the Procedural Due Process Clause].) While City Attorney “input” is also noted as a reason for the change, the only input the City Attorney publicly provided at the third Study Session was to discourage the Council and Planning Commissioners from discussing a particular project. There was no legal reason publicly stated or

legal reason we can surmise that would mandate the removal of single family detached units from the new CMX Zone.

The timing of the change in staff's recommendation also suggests it may have been prompted by Stromer's project. Between the first Study Session on January 31, 2023 when staff proposed including detached single family residential within the CMX Zone and the third Study Session on April 24, 2023 when staff proposed prohibiting detached single family residential, Community Development had formally reviewed Stromer's preliminary application and provided thoughtful feedback in a ten-page letter on February 3, 2023. Critically, in its detailed feedback on Stromer's project, Community Development did not indicate or even suggest that single family detached units were inconsistent with the CMU land use designation or new CMX Zone under consideration. With respect to Stromer's proposed detached single family units, Community Development suggested Stromer consider an increased density and noted that, while "[t]he proposed single family, detached units are attractive overall, [they] may be better suited for an inner part of the project that is separated from North 1st Street by taller apartments." Stromer invested significant financial resources in preparing the preliminary application and refining its project in light of staff feedback in the February 3, 2023 letter. Adoption of a Zoning Code that prohibits single family detached units in the CMX Zone would deprive Stromer of these significant financial investments.

Preserving flexibility in the CMX Zone to allow single family detached residential with a CUP does not commit the City to approving Stromer's mixed-use project. As with any discretionary project, environmental review will be completed and the City will consider the merits of the project, including the compatibility with the neighborhood and surrounding uses and consistency with the General Plan. We understand concerns expressed at the Study Sessions about the potential conflicts that can occur with mixed-use projects that include residential adjacent to gas stations, car washes, tire sales, and similarly intense uses that are generally incompatible with residential uses. Requiring a CUP to include single family detached units in a mixed-use project preserves the City's discretion to evaluate potential conflicts and deny the CUP if the project or adjacent uses are not compatible. Stromer is asking only for the opportunity to continue to pursue the mixed-use project and demonstrate how it is compatible with the surrounding uses and advances the vision for the commercial corridor.

As your Council knows and Director Boloyan recognized during the Study Sessions, the design of a mixed-use development project requires the balancing of a multitude of considerations, including market conditions and the economic viability of the project. Without the ability to even consider the inclusion of detached residential units in a horizontal mixed-use project, mixed-use projects may not be economically feasible and vacant parcels within the corridor may remain undeveloped and thwart the City's economic development goals. An outright prohibition of a residential use contemplated in the General Plan land use designation will also have a substantial economic impact on Stromer and substantially interfere with significant "investment-backed expectations." (See *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124.)

In sum, to preserve flexibility consistent with the General Plan and avoid infringing Stromer's property rights and investment-backed expectations, we request that the Council adopt a Zoning Code that (1) allows Single-Unit Dwelling, Detached uses within a CUP in Table 18.05.020 of the Zoning Code; and (2) allows lot size less than 20,000 with a CUP in Table 18.02.030 of the Zoning Code.

We appreciate the City's efforts to undertake a comprehensive Zoning Update and encourage development that will enhance the vibrancy of the City's downtown area and sustainability of the City's economic base. Stromer is committed to working with the City to implement a mixed-use project consistent with these goals and requests only the flexibility through a CUP to continue the entitlement process on the mixed-use project it has invested significant resources to pursue. If we can provide any additional information or further discussion would be helpful, please do not hesitate to contact me.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By 
Chad E. Roberts

By 
Breann M. Moebius

cc: Jim Lindley, City Manager
Douglas White, City Attorney
Nubia Goldstein, Deputy City Attorney
Raffi Boloyan, Community Development/Planning Director