



# CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Special Meeting  
June 28, 2016

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:09 P.M.

Present: Berman, Burt, DuBois arrived at 6:14 P.M., Filseth, Holman, Kniss, Scharff, Schmid, Wolbach

Absent:

## Agenda Changes, Additions and Deletions

Mayor Burt: Our first item tonight is Agenda Changes, Additions and Deletions. We have to announce that we have an item that was Consent Calendar Item Number 15 from last night, approval of a contract with West Bay Arborists. That's now our Item Number 4 for this evening. Before we hear from members of the public on Oral Communications, I just want to make sure the public's aware that Item Number 2a tonight, the 567 Maybell project, we had our Public Hearing on last Monday, the 20th. We opened and closed the Public Hearing. All public comments were taken on that date, and we rolled over the Council discussion 'til tonight. I want to make sure people understood that process.

## Oral Communications

Mayor Burt: On that note, we have two members of the public to speak on Oral Communications. Our first is Stephanie Munoz, to be followed by Arthur Liberman.

Stephanie Munoz: Thank you, Council Members. I would just like to remind you that we have more density now than we used to have. For most people, that's a bad thing, but it's not entirely bad. It makes possible a more sophisticated civilization and stuff. If you would allow people to have smaller, little parcels, like mini houses—I know a few weeks ago somebody brought that up. You seemed to be agreeable at least to thinking about it. If you would at least turn your minds toward variances and toward a certain type of attitude toward poorer people who can't afford to have a big house or only nine houses on a plot that could hold 10 or 11, I think the town would be happier. I wish you could sort of turn your minds in that direction. Thank you.

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Mayor Burt: Thank you. Our next speaker is Arthur Liberman.

Arthur Liberman: Good evening, Mayor Burt and Council people. I want to commend the Council for rejecting the proposal for the Matadero Creek bike trail last week, suggesting a street-level path instead. You used common sense. I'm a cyclist myself, and I support Council priorities for more bicycle routes in the City. The issue is not with priorities, but how those priorities are implemented and converted into specific plans. I don't want to speak about the specifics of that strange plan, but it's an example of just how far a bureaucratic imperative can drive a project, antagonizing many citizens and spending and wasting City money. I heard that upwards of \$370,000 was spent already just to study the feasibility of that project. The Transportation Division has one inlet to its advanced thinking of bike paths, and that's the Palo Alto Bicycle Advisory Committee (PABAC). Those folks are dedicated cyclists, but they have never seen a bike path they don't like. To have a better bike path layout, one that benefits the general public, they need to open up their community outreach, enlarge their advisory board, include neighbors and pedestrians into their advanced thinking on specific routes. The City also has a priority to create affordable housing. I support that. When that priority was converted into the Maybell project proposed by the Palo Alto Housing Corporation, it ignited a firestorm in my neighborhood. I was president of the Barron Park Association (BPA) at the time. I was witness to how the grassroots of our community just stood up and exploded over what the great majority felt was a project they were unhappy with but was being forced upon them. The Housing Corporation was stubborn and inflexible. On the other hand, the Golden Gate people who came out with this other project reached out, invited the community to provide input, incorporated that into their project plans. That's a model of how things should be done. If it were followed elsewhere, there would be fewer appeals to you by neighbors of developments. My point is that when considering new projects, City officials need to really think about the concerns and opinions of citizens at a very early stage, earlier than what generally happens now, and really listen to them, make an effort to listen to them, not after hiring consultants, not after spending a lot of money on proposals and designs. Thank you.

Mayor Burt: Thank you.

## Action Items

1. ~~CONTINUED PUBLIC HEARING: to Hear Objections to the Levy of Proposed Assessments on the Palo Alto Downtown Business Improvement District; Adoption of a Resolution Confirming the Report of the Advisory Board and Levying Assessment for Fiscal Year 2017 on~~

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~~the Downtown Palo Alto Business Improvement District; and Possible Council Direction on Next Steps.~~

- ~~2. Review of Recommendations From the Storm Drain Blue Ribbon Committee Regarding Future Storm Water Management Funding and Request for Council Direction on Whether to Proceed With a Proposition 218 Hearing and Property Owner Ballot by Mail to Approve Future Storm Water Management Rates (Continued From June 6, 2016).~~
- 2A. PUBLIC HEARING: 567 Maybell Avenue [15PLN-00270]: Approval of Mitigated Negative Declaration and Tentative Tract Map With Lot Size Exceptions to Subdivide Four Parcels Totaling 2.47 Acres Into 16 Single-Family Lots, Ranging from 5,000 SF to 6,186 SF, and one Parcel for a Private Street. Environmental Assessment: Mitigated Negative Declaration. Zoning Districts: R-2 and RM-15 (CONTINUED FROM JUNE 20, 2016).

Mayor Burt: At this time, we're going to commence with the continuation of 567 Maybell, approval of a Mitigated Negative Declaration and a tentative tract map with lot size exceptions to subdivide four parcels totaling 2.47 acres into 16 single-family lots, ranging from 5,000 square feet to 6,186 square feet and one parcel for a private street. The environmental assessment is a Mitigation Negative Declaration. The zoning districts are R-2 and RM-15. This item was continued from June 20th. We had a Staff Report. I don't know whether you have any other things to share. At this time, we are open to having questions from Council Members. I think we went straight to comments from members of the public. Are there questions that colleagues have? Seeing none, we can go into comments. Nobody's wanting to leap.

Council Member Kniss: Pat, you probably want to remind everyone (inaudible).

Mayor Burt: I did.

Council Member Kniss: Did you do that? Thanks.

Mayor Burt: Let me ask Staff to explain a little more on the issue of the pedestrian path consideration and, secondly, on the in-lieu fees. At what point in time did Staff bring forward a recommendation for a pedestrian path?

Jodie Gerhardt, Planning Manager: From the very beginning—Jodie Gerhardt, Current Planning Manager. From the very beginning, Staff along

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with our Transportation Division had looked at this property and had originally asked the applicant to include a through-street to the point that we made sure that that was part of the TIA, the Traffic Impact Analysis. Through conversations with the community, we heard pretty loud and clear that that was not something that the community was looking for. That's the point that we started bringing it forward to hearings, when we sort of minimized that request down to a pedestrian path. It really is to conform to the Comprehensive Plan to have better connectivity to the rest of the neighborhood.

Mayor Burt: Is Staff now proposing a path that would be wide enough for bicycles and pedestrians or what's the design of this?

Hillary Gitelman, Planning and Community Environment Director: Thank you. Hillary Gitelman, the Planning Director. I should mention that Jodie and I are really standing in for the project Staff who were scheduled to go on vacation after yesterday. They won't be here this evening. The request that was part of the discussion at the Planning Commission meeting was for effectively a 5-foot-wide path, so pedestrians only. It would have to be a little wider for fencing and landscaping. Five feet would be the clear area for pedestrian travel.

Mayor Burt: I've heard there was some consideration on whether it might be a controlled access path or an open path. Has that been discussed?

Ms. Gitelman: We actually left open that it could be controlled. Certainly it would primarily serve the residents of the interior parcels that are being developed as part of this map. It's possible that it could be controlled by the private owners in the future. We didn't specify one way or the other.

Mayor Burt: On the issue of the affordable housing onsite or in-lieu fees, one of the considerations for the Council was the amount of the in-lieu fees. We have coming forward in the near future a revision to the in-lieu fees that presumably would increase them. What's the timing on that and how would that interplay with approval of this project? If we basically allowed in-lieu fees, would they be at the current rate or would they be at the new, revised rate when that comes forward?

Ms. Gitelman: Thank you for that question. It's not really a simple explanation. Under the current ordinance, the in-lieu fees would be 7.5 percent of the sale price. They would be payable when the houses sell. Under the proposed new ordinance, the fees would become effective at the time a building permit is issued. It'd be a little sooner. It'd be easier to administer. We are currently drafting an ordinance at the Finance Committee's recommendation, and we have to take that to the Planning

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Commission and then to the Council. Our hope is that we can get that to the Council in August. When we first proposed the fees to the Finance Committee, our recommendation for single-family detached was \$95 a square foot. With that \$95 a square foot, you're correct. It would be more than what we estimate the fees would be under the current ordinance or the 7.5 percent of the sale price. In discussions with the Finance Committee, there were concerns that the residential fees were out of scale with the commercial fees on commercial land uses. The Finance Committee's last recommendation to us involved a \$50 a square foot fee for all residential types, condominiums and single-family detached. With that \$50 a square foot fee, it would actually be quite a bit less than the current in-lieu fees. Obviously this is a policy decision. It will ultimately be up to the full Council, the structure of the fee and the amount that's charged per square foot. If our recommendation holds true, the fees would be collected at building permit issuance, well in advance of the sale of the units.

Mayor Burt: Thank you. Vice Mayor Scharff.

Vice Mayor Scharff: Thanks. A couple of things. First of all, I'm glad that the project is so satisfactory to the neighborhood. People seem enthused about having this project. I think that's a great thing. Obviously the developer did a really good job working with the neighbors and coming to something that everyone seemed happy about. I think that's all really good reasons to support the project. I wanted to make some comments; and they're not against the project. I just think I want to basically state a couple of things that's interesting, that I think we need to think of as a Council. We've looked at a lot of development projects over the past two years. I've heard statements from this Council that we won't approve things that don't meet Code, that we don't want to have exceptions, that we look at the draft Record of Land Use findings whenever we have them. We go through them, and we say, "Does it really meet this? Are we really okay with that?" I'm really glad that we're actually starting to show some flexibility as a Council. When a project is made better and it makes sense to make those exceptions, we don't need to be so fundamentalist about does it meet Code, does it meet the zoning exceptions, and all of that. I'll just point out in Section 4, the exception findings on Page 7 of the Staff Report, where it says the proposed project's exceptions to the zoning standards for lot size, lot width and lot depth for the following and depicted on tentative map of Golden Gate Homes. Then, they say the reason we're granting this is because the neighborhood wants a lower density and not the higher density; therefore, we should grant this. I just want to point out it's outcome based. I think that's fine. I think what we're doing is we're responsive to the neighborhood, and we're making a better project. I think when other projects come before us, we should also ask ourselves, does it make it a

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better project. So far, what I've been hearing previously on this Council is that it doesn't matter if it makes it a better project, if it doesn't meet the exact zoning and the Code, we should turn it down. I'm really glad to say if we vote for this, that we're moving away from that fundamentalist approach that we'd started to take toward zoning. I wanted to say that. The other thing that I wanted to basically comment on was the affordable housing issue. This is a little confusing to me. Every time something comes to our Council, and someone says they need a hardship exception—here, the hardship exception is that it would cost the developer too much money to provide the units onsite as opposed to paying the in-lieu fees. We always ask for documentation. I don't think in seven years of being on Council I've ever actually had someone just say, "It costs too much money," and provide no pro forma, provide no documentation, not prove it. I'd really like to see some proof that they actually need that. On the other hand, there is a good argument that two units in \$4 million homes for affordable housing doesn't necessarily make a lot of sense. I'd be the first to acknowledge that. The issue really here is that it's so much less money that the developer should pay by going ahead with the in-lieu fee. I think the developer should probably pay more than what they're paying in the 7 1/2 percent or they should provide the units. I think there should be some compromise based on "if you want a hardship exemption, how much money can you actually afford? What is your return? Why do you need the hardship exemption? If so, should you pay more?" I don't really believe that, in most circumstances, if a subdivision of 16 units came to this Council of \$4 million homes, we would say, "You don't have to provide the affordable housing per our Code, which requires onsite units." If we're going to make an exception to that Code, which we're doing here, we should have a good reason to do so. I'm fine with being flexible, but the developer should basically set forth why they need that exception. It shouldn't just be "it's too expensive" with no backup of the data. If I had the backup and I had a pro forma, and it said it's too expensive, I'd understand and I'd say, yes, because I believe in being flexible. That may make the most sense, but what is the right amount of the fee given how much money you're going to make, given your return and those kind of things. Those are my initial thoughts on the project.

Mayor Burt: Council Member DuBois.

Council Member DuBois: On the issue of the path, I think Clemo is kind of the best path there is. It's really not that—it's four houses away. I think cutting a path between the homes is going to cut down on the lot size and impact the privacy of those units. \$4.2 million for affordable housing. I think the argument that that can pay for more units elsewhere is actually a good one in this case, given the size of these houses. We have a fee policy. I think we're acting consistently with that practice. I don't think we should

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start making up fees based on profitability. I don't think we've done that with other people in terms of in-lieu fees. There are two exceptions. I think one lot at 5,000 square feet and one that's 5,682. I think we are being responsive to the neighborhood and to the residents. I think we have been responsive in the past, and I hope we'll continue to be responsive. I don't think we should minimize—I think it's extremely rare that we have a developer and a petition from citizens and a whole bunch of people show up two nights to say they support a development. I haven't seen that since I've been on Council. I haven't seen it before I was on Council. I really don't think we should underestimate that. I do want to thank Golden Gate Homes for the process and reaching out and working with the neighbors. I think it was very positive. I'd love to see more projects do this. I'd like to go ahead and move that we approve the Mitigated Negative Declaration and the tract map.

Mayor Burt: You want to be clear on your Motion?

Council Member DuBois: Just move the Staff recommendation.

Mayor Burt: Is there a second?

Council Member Filseth: (crosstalk)

Council Member Berman: Filseth.

**MOTION:** Council Member DuBois moved, seconded by Council Member Filseth to:

- A. Adopt a Mitigated Negative Declaration; and
- B. Approve a Record of Land Use Action, including the Mitigation Monitoring and Reporting Program, for the Tentative Tract Map and related lot size exceptions based on findings and conditions of approval included in the Staff Report.

Mayor Burt: You want to speak to your Motion further?

Council Member DuBois: No, I think I just did.

Mayor Burt: Council Member Filseth, you want to speak to the second?

Council Member Filseth: No.

Mayor Burt: I don't see a lot of lights, so I'll just—there we go. Council Member Kniss.

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Council Member Kniss: We're moving unusually fast tonight. Let me make a couple of comments just as well. This has been an extraordinarily complicated kind of issue. I know many of you—I probably think I've had an email from everybody here. I'd be willing to bet. If you think you sent me an email, put up your hand. We were delighted to hear from you. I would echo a couple of things. There are a couple of exceptions here. I think it's important to note that, because this will happen again. We will have other kinds of development and developments that come to us. People will say, "We've worked this out with the developer. It's going to work well in our neighborhood." I want us to remember that. You all have worked extraordinarily well together. You've been working on this now for a couple of years. I think you have something that is really going to be very desirable in your neighborhood. That, of course, is what—that's what this is all about. Most of what your City Council does is land use. Most of the reason that you come to talk to us for some reason, almost always is land use. Land use almost always involves somebody's money. Not always yours, not always mine, but it's going to involve somebody's money. Land use and land use decisions and zoning are kind of what makes the City world go around. I'm delighted it finally has worked out. I do want to mention that I hope the affordable housing does come to fruition, that we add that into our fund. While we haven't added much affordable housing lately, I hope that's a direction we'll go in, particularly with this kind of in-lieu amount that's going to come to us as a result of the vote that I anticipate we're going to be taking very shortly tonight.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: When a previous project was proposed on this site, opposition was broad across Palo Alto and was based on a number of different concerns. Different people opposed the previous project for different reasons, sometimes mutually exclusive reasons. For those who live in the neighborhood and had, I think, some legitimate concerns about the aesthetics and about safety related to the previous project, I fully respect that and acknowledge that. I was in favor of the prior project, but I understood there were pros and cons. It was a tough call; it was never a perfect project. I don't think this is a perfect project either. I do find it interesting, though, that I remember speaking to a significant number of people about the prior project who said to me, "Look, I'm not opposed to affordable housing. My problem is the single-family homes on the site." I'm just surprised that we haven't heard those people come forward and say, "Where's the affordable housing?" What we're left now with is just the single-family, market rate homes and none of the affordable housing that was previously proposed. For those people who wanted an entirely affordable project previously and said that their only concern was the single-



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family, market rate homes on the site, I note their silence on this project. I will not be supporting this. I think we're rushing this. I don't feel comfortable with the affordable housing not being onsite. I'm not comfortable with rejecting a second pedestrian or bike path two weeks in a row. I will not be supporting the Motion.

Mayor Burt: Council Member Holman.

Council Member Holman: This is an unusual situation and, if you will, predicament for the Council to be in. It seems like this project has been designed basically with Staff getting out of the way. In a way, I sort of appreciate that. I've said before nobody knows how a neighborhood lives better than the people who live in the neighborhood. In a way, I really appreciate the involvement and the engagement. It seems like there's been sort of this negotiation between the developer and the neighbors. That's good. Good on you all. Is this the project that I would design? If it was up to me, not really. Neither was the prior Maybell project, which I voted for. No project is going to be perfect. I do feel like I need to speak to exceptions, though. There are exceptions and there are exceptions. These are ones that the neighbors are here supporting. From their perspective at least, this makes the project better. Most exceptions that we see at the dais are ones that cause the public to react negatively. From my personal perspective, I don't think they usually make the projects better. That's for exceptions. The path. It's not that large of a site. It does have—I'm all for bike and especially ped paths. It's not that big of a site; it does have streets on four sides of a not very large lot. I'm not that wedded to it. It'd be nice, but I'm not that wedded to it. The Below Market Rate (BMR) units, I'd always rather see the BMR units created onsite. I would always rather see that. I truly would. I'm not absolutely convinced by the information the developer has provided. I think that's what Vice Mayor Scharff was saying too. I'm not absolutely committed to thinking that that is accurate or compelling evidence. It's hard. I don't think we're rushing it. It's been going on for a long time in one iteration or another. I'm a little bit hedgy on the BMR units. Given how far this is and the status of this, I'm probably prone to support the project as it is. I'm hedgy on the BMR units.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: A couple of things. First of all, I just want to address briefly what Council Member DuBois said. Maybe I misunderstood. Just to clarify, the below market program states that the housing units have to be onsite. That's not—unless there is an exception, unless you grant an exception based on feasibility. The feasibility people are talking about here is financial feasibility. In this case, a developer has just written a letter that

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says it's financially infeasible with no backup, no proof. Normally we would never take that. We are granting that exception because we like the project and we like the fact—frankly, it's not really good process. I know it's not good process. I think Council Member Holman is speaking to it's not good process. I think it's important to admit and to be honest what we're doing up here. When it comes to exceptions, I actually agree with Council Member Holman on that. My plea is not that we should grant or not grant exceptions based on neighbors; I'm saying we should be flexible on exceptions when they are good exceptions and make the project better. In this case, I do think it makes the project better to have those smaller lots. You fit them in, and it makes sense. I also think that it probably doesn't make sense to have two units onsite given the size. I do think in exchange for not forcing a developer to do that, we should look at what a fair price would be, not just take their word for it. Maybe they're correct. Maybe they can't afford. Maybe the project doesn't work with it, in which case I would be willing to accept that. The problem I have on this is that it doesn't seem that there's any sense of "we don't know the answer." We are a data-driven Council that always drills down, asks the hard questions and then makes the decision in an open and transparent way. We don't paper over stuff. I sort of feel like we're just papering it over literally. We get a letter from the developer, and fine, check that box. That's my concern. I did want to ask Staff about what's included in this Motion. The way I understand it, we're approving the Negative Declaration and Attachment B, which is the draft Record of the City of Palo Alto Lane Use Action for 567 Maybell, which starts on Page 5 of my Packet. Is that correct? Maybe I'm reading it wrong. When I go to conditions of approval, the conditions of approval, as far as I can tell, on Number 3—maybe I read it too quickly and it says something else. When I read Condition Number 3, what am I missing? It says that you have to build the units on sight. That's the condition of approval. If we pass this Motion, they have to build it on site. I just didn't feel right about Council voting to do that when everybody else thinks we're going the opposite. I just wanted to make sure. Maybe I'm reading it wrong.

Ms. Gitelman: Thank you for that question. Actually, Condition Number 3 restates the requirement in the City's Zoning Ordinance that says that the units should be provided onsite unless onsite construction is found to be infeasible. We provided a supplemental memo to the Council dated June 20, which states that absent direction from the City Council at the public hearing to the contrary, Staff will accept the in-lieu payment as satisfying the affordable housing obligation. That would be consistent with that condition.

Vice Mayor Scharff: This is a wonky question. We don't usually put that in the condition of approval that we've looked at and we found it to be

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infeasible. That doesn't go in the conditions of approval? It's just a letter that we do separately?

Ms. Gitelman: We could have done that, but what we did hear was restate the Code provision.

Vice Mayor Scharff: That's fine. Those are my concerns. We'll see where we go from there.

Mayor Burt: Council Member Filseth.

Council Member Filseth: I just want to extend a big thank you to Golden Gate Homes on this. You guys have set the gold standard for neighborhood outreach. Appreciate it very much. I hope very much that we're going to approve this plan tonight. Assuming we do, I wish you good luck and Godspeed on the project. Thanks.

Mayor Burt: I am going to support the proposal principally because our Staff and the neighborhood as a result of the process that was accepted has invested a year or more in bringing this project forward. We're going to do it not because, I think, this truly is the appropriate project for a number of reasons. First, I want to say that I believed at the time that both the project that came to us a couple of years ago and the process that brought it there were flawed. I attempted to have a couple of modifications to the project to make it less onerous. Those failed against a majority of the Council at the time. I had expressed an interest in extending the process, and that failed as well. What we've done is gone to the other end of the pendulum. We now have a process that really—this project is contrary to what were the overwhelming arguments made by the opponents to the previous project. The opponent said that they wanted a project consistent with zoning and consistent with the Comp Plan. I see some shaking heads. For instance, our exception—we had to make four different exceptions here basically because it isn't compliant. That's why we're having to make these exceptions. One is reason why we're—Number 4, the granting of the exception will not violate requirements, goals, policies or spirit of the law. We have to make an exception to that. The statement as a reason is because it is not likely the site will yield multifamily densities given the neighborhood opposition. Not based on the zoning. Just simply based on political opposition. We have under Exception Number 2 a statement that—we have this is not R-1 zoning. That's basically what we have. We have a project that is R-1. Number 2 says that the original intent of the applicant was to develop the property to be consistent with R-2 and RM-15 zoning, which would have included at least 23 dwelling units. Those are the facts and the truth. We do have a project that the applicant has agreed to, but it's really not truthful that this

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is a project that the applicant enthusiastically agreed to. It was because prior proposals by the applicant were pushed back against. That's what occurred. I think we should have the integrity to be honest about what's happened and what we have before us. I do think that their—my greatest concern is not so much the outcome of this particular site. Back when we had the opposition, I said a number of times, "I think the neighborhood opposition, which is the opposition of the side of the neighborhood of this project that are the single-family home occupants." It's important to remember there are four sides to this project. One side is single-family homes. Two sides are higher density, one very high density. One side is a park. Three-quarters are not single-family homes. I would venture that virtually everyone here tonight is from the single-family home neighborhood. We tend, as homeowners, to—I guess I'm seeing a nodding head no. Can anyone who's from a multifamily residence nearby there just raise their hand? We have five. Thank you. We had opposition that was really not so much emotionally based upon consistency with zoning; although, the prior project exceeded the zoning. It was against existing conditions. The emotional attachment, it had been for decades what were essentially single-family homes along Maybell and an orchard behind it. Really, the passions were about—the argument was made don't violate the zoning. Really I think the emotions were don't violate the existing conditions in an unacceptable way. That's, I think, (inaudible). That's not an invalid emotion, but I think we need to be honest about if we have opposition to a project that says it's based upon that we want the zoning followed and we want the Comprehensive Plan followed and then, once that prevailed at the ballot box, we have a project that isn't consistent with the zoning and really isn't consistent with the Comprehensive Plan. It is consistent with the wishes of the neighboring, single-family neighborhood. I'm really concerned about the process that we have going forward. I think we need to reexamine how we deal with projects, especially if a new project, even if an underlying zoning allows for something higher density, if it is different from what has been existing in a neighborhood, we have to acknowledge that that's going to have real concerns unless design and compatibility are good and unless there is a real participation from the outset of the various stakeholders. When I say the various stakeholders, that isn't just the single-family neighbors adjacent. When we had, for instance, the South of Forest Avenue (SOFA) plans, I was head of the University South neighborhood group when we did that. We had a very extensive process that was a multi-stakeholder process, which included about half of the positions in the stakeholder group really being representatives of the neighborhood interests and half being a variety of other interests. There were affordable housing folks and there were daycare representatives, and there were adjacent business representatives. It was a multi-stakeholder group. Through that process, we worked through a bunch of issues, and we came to not only compromises

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but solutions that everybody embraced. We didn't do that investment at the outset here. We came and we've swung back with something else that is basically the wishes of one side that is contrary to our zoning and really, very arguably contrary to the Comp Plan. I see people here like Bob Moss who have berated us, time and again, about not complying consistently with zoning nor with the Comp Plan. We have to have the integrity to say, "Wait a minute. That means we have to try to do that consistently." We can't say, "I want you to do it when it favors me, and I want you to completely ignore it when I want something different." There are processes even to change zoning as well. I don't think this is a rushed process. I'm not going to make that argument, because I think that's a fallacious argument. It's gone through a slow, deliberate process, and it's had plenty of time. I do want to make sure that when we go forward as a community on other projects, we look at early engagement and meaningful involvement with the neighborhood, and with additional interests. As a City Council, we're elected representing the entire community, and that includes the broad community interests. Those of us who are—most of us here on the Council and most of us here in this room are single-family homeowners. That's only about half of the community. We tend to think it's everybody. We tend to think we're everybody and that we're all that matter. It's really not the case. We as Council Members have an obligation to represent the range of interests, the Citywide interests and the neighborhood interests. Not just the Citywide interest which is really where we failed on this initially, and not just the neighborhood, the immediate, single-family neighborhood interests. This is a definition that excludes the Tam Apartments and the other apartments adjacent, because those neighbors are not the ones who advocated for this project. It's a portion of the neighborhood interests that really have determined this project. That's my best effort at being as honest as I can about what has occurred here. My concerns about trying to make sure that we do neither of the first extreme nor the latter extreme going forward, but we come with a better process that will look at a balance of interests. I'll just add when we did the SOFA neighborhood, this neighborhood embraced a multifamily home development and an affordable housing project, and a daycare center and we had a park. That was a big project, and it was different from this. I don't mean to say it was identical. We asked ourselves what are our values, and what tradeoffs are we willing to make, what are the community values, what are our individual values, how do we reconcile them. Out of that, we came up with something that was arguably a pretty good outcome that certainly no one person gets to design the whole thing and say this is exactly what I want; therefore, it's going to happen. Overall, it'll achieve consensus. That's the sort of approach I'd like to see going forward. Pardon the long talk on it, but I think that there was a hesitancy on the Council to really say some of these things. Hopefully at least I've

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expressed them on behalf of some of my colleagues. I think we are ready to go forward. Unless anybody else wishes to speak?

Council Member Kniss: May I ask one clarification?

Mayor Burt: Go ahead.

Council Member Kniss: It now has come up several times. Hillary, would you go through once more what is actually going to be in the in-lieu fee in this particular situation and how it will be calculated? I think the Vice Mayor spoke to that. I think Karen didn't quite ask the amount, but you're concerned about the affordable housing.

Mayor Burt: Can I answer—Council Member Kniss, we don't know. The answer is that it will be the fee in place at the time the building permits are issued. We have in process a revision to the fees which could cause them to either go up or down or stay the same from where they. That's the answer.

Council Member Kniss: That's the part I find troubling.

Mayor Burt: That's the answer.

Council Member Kniss: This is an answer, and a good answer. I think that's one of the things you're hearing us struggle with tonight. Where does this end up and where does the affordable housing actually go in our community? Thanks.

Mayor Burt: Council Member Wolbach, we've all had a go-around. I allowed Council Member Kniss to ask a question for clarification. If we're starting another round of comments, I don't want to do that.

Council Member Wolbach: I was going to respond (inaudible).

Mayor Burt: We got it. Please vote on the board. That passes on an 8-1 vote with Council Member Wolbach voting no and the balance voting yes. Thank you all for coming tonight.

**MOTION PASSED:** 8-1 Wolbach no

Mayor Burt: If people are taking off, we'll give you a moment to leave. We kind of need people to clear out in order to start the next item.

Council took a break from 6:53 P.M. to 7:00 P.M.

3. CONTINUED PUBLIC HEARING: 1601 California Avenue [15PLN-00500]: Request by The Board of Trustees of the Leland Stanford

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Junior University to Amend the Final Map for Tract Number 10281 Recorded January 2015 for the 1451-1601 California Avenue Development, Which Includes a Total of 180 Dwelling Units. Environmental Assessment: City of Palo Alto/Stanford Development Agreement and Lease Project Environmental Impact Report (State Clearinghouse No. 2003082103). Zoning District: Research Park and Alternative Standards Overlay Two (RP(AS2)) District (Continued From June 27, 2016).

Mayor Burt: Our next item is a continued Public Hearing for 1601 California Avenue. A request by the Board of Trustees of Stanford University to amend the final map for Tract Number 10281, which was recorded in January 2015 for the 1451-1601 California Avenue development, which includes a total of 180 dwelling units. The environmental assessment was by the City of Palo Alto and Stanford University Development and the environmental impact report. The Zoning District is the Research Park and alternative standard overlays too. Ms. Gitelman.

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Burt and Council ...

Mayor Burt: I'm sorry. Council Member DuBois needs to announce.

Council Member DuBois: Since this is real property owned by Stanford University and they're a source of income, I'm going to recuse myself from this item.

Mayor Burt: Thank you.

Council Member DuBois left the meeting at 7:02 P.M.

Ms. Gitelman: Thank you, Mayor Burt and Council Members. I'm Hillary Gitelman, the Planning Director. I'm joined by Jodie Gerhardt, who's our Current Planning Manager. Again, Jodie and I are standing in for the Project Planner who had planned to be here yesterday. When the item was continued, it was not consistent with his vacation schedule. Luckily, Jodie has a lot of background on this site, being involved in prior entitlements. We're here to discuss the proposed amendment to the final map for 1601 California Avenue. The project derives from the Mayfield Development Agreement, which was adopted by Stanford and the City in 2005. There was an Environmental Impact Report (EIR) certified to cover that Agreement and subsequent projects under the Agreement. The Agreement itself allows for 180 units on the project site. A tentative map was approved in 2014 to subdivide the parcel. Subsequent to that, the buildings were demolished on the site. This allowed for additional testing for soil contamination as

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anticipated in the EIR. Just a quick project overview. We're talking about six acre site that formerly had an HP building on it. Once the building was demolished, there was a supplemental investigation and risk assessment conducted, which sometimes we return to as a Phase 2 site investigation and a risk assessment. There was identification of TCE contaminants that have resulted in the requested revision to the final map. Just to summarize the site remediation and mitigation that we're talking about. This graphic shows—the shaded area is where soil has been excavated and removed from the site. This soil was contaminated by TCE. The dots that are shown on the map are the hotspots of TCE concentrations that are at 15-25 feet below the basement level and are proposed to remain in place. There's mitigation proposed as part of the final map amendment that involves relocating the homes. Stanford has also proposed slabs and vapor barriers and a number of other things. There will also at some point be a site management plan or land use controls that apply to the open space area which is now where these TCE spots are located. There was extensive characterization of soils and groundwater on this site as well as the chemical constituents. There are experts here tonight who prepared and also experts who reviewed for the State agency Department of Toxic Substances Control (DTSC) the materials and the studies that were conducted. I'm going to invite them to speak to the issue that's been raised about whether any of the contaminated soil conditions on the site could have migrated off the site. I'm not aware of any connection between any offsite contamination and what we're talking about here that would be addressed by the final map amendment. I have two brief pictures in the presentation. This is the layout that was approved previously. This is the proposed layout. You'll notice that the number of homes along California Avenue stays the same. All the street connections to California Avenue stay the same. The revisions maintain the 180 dwelling units that were originally proposed. They redistribute some of the homes, creating that open space in the middle of the site, some smaller lots, increased common area. Some of the units, as a result, will have reduced square footage and fewer bedrooms. I just want to summarize for you the implementation of mitigation measures from the EIR and then the final map findings that will need to be made. The EIR mitigation called for this Phase 2 survey and a work plan and corrective action plan if needed, if the testing found constituents of concern. That has been done. They've conducted the Phase 2 analysis and this risk assessment. They've removed contaminated soils. The State Agency with jurisdiction, DTSC, has concurred with the recommendations in the risk assessment. In terms of next steps, Stanford will submit a preliminary endangerment assessment for review by the State agency. We expect that they will receive a no further action letter probably with conditions. The conditions will probably relate to some kind of land use control or management plan for this open space area that now contains those hotspots of TCE. As the Council's aware, we've received a whole lot of



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public comments regarding this item and the potential for contamination offsite. I want to thank all of those who submitted comments prior to this meeting. I'm sure we'll hear a summary as we move forward into the public comment period. Among the comments we received was a request to delay this action this evening until the DTSC could issues its final action; a request for additional mitigation measures beyond what Stanford has proposed; a request for further site remediation; and a discussion regarding the risk to offsite homes in addition to data secured through actual collecting of additional samples and testing offsite. We understand the DTSC has received and will evaluate the testing that was done by the neighbors. Obviously it's a serious issue, and we look forward to hearing the results of their review. We do not at this point believe that those tests and any contamination that's confirmed would relate to what's happening onsite and the site conditions. Again, I will defer to the experts on this issue. The Staff Report summarizes the findings that need to be made for a final map amendment. I'll just draw your attention to the first one, changes in circumstances that make any or all of the map no longer appropriate or necessary. Obviously in this case, we're referring the changes in conditions and circumstances related to the TCE contamination that was discovered during the anticipated site investigation that was clearly anticipated in the EIR. I'd say, just on top of that, often in California Environmental Quality Act (CEQA) parlance, when we're talking about environmental review, we often talk about changes in circumstances as necessitating additional environmental review. This is really a different context. The EIR anticipated that we would do additional site characterization and take care of any contaminants that were identified. The Record of Land Use Action contains these final map findings, the CEQA determination and provides an opportunity to the Council, if the Council wishes, for additional findings related to some of the mitigation measures that Stanford has proposed, the extraordinary 10-inch slab, the vapor barriers under the homes. We could also use that opportunity to condition the building permit issuance for the seven homes closest to these TCE hotspots, condition those building permits on the no further action just to give us further comfort that that will be taken care of in an expeditious manner. Jodie and I are here to answer any questions you have. At this point, we would recommend you hear from the applicant, the public, and then the applicant will have a short rebuttal. Then, of course, Council questions and comments. Thank you.

Mayor Burt: Thank you. First, do we have any questions of Staff before hearing from the applicant? The applicant has up to 10 minutes to speak. Welcome.

Public Hearing opened at 7:10 P.M.

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Chris Wuthmann, Stanford University Real Estate Office: Thank you. Good evening, Councilors. My name is Chris Wuthmann; I'm with Stanford University Real Estate. I am manager of the California Avenue, now known as University Terrace, housing development. In 2005, the Mayfield Development Agreement and its EIR required Stanford University to obtain review and approval of hazardous material mitigation at the upper California housing development from the California Department of Toxic Substances Control. The purpose of this hearing is to confirm our compliance with oversight by the DTSC and to approve amendment of our subdivision plan for purposes of improved mitigation. While it is not Council's role to evaluate DTSC's scientific and technological judgments, it is important for you to understand how we came to the point of proposing a more conservative layout for part of the proposed site. To begin, while Stanford and Palo Alto knew in 2005 of the likely existence of contaminants on the California Avenue site, Stanford was not able to begin fully evaluating these conditions until 2013, when it began regaining control of the properties and environmental consultants were able to commence the required Phase 2 testing. The results of the investigations of the first two properties, 1451 and 1501 California Avenue, led the DTSC to issue no further action letters in 2013, which stated that the sites did not pose a significant risk to human health or the environment under residential land use. Based in part on these findings, we initiated our development application for the overall property in October 2013 and ultimately received final subdivision map approval in December 2014. We moved forward with our development and subdivision map in this fashion in part because there was great desire by our neighbors, the College Terrace neighborhood, for us to make use of the temporarily available access route from Page Mill Road through the 1450 Page Mill property as long as possible, even though we had not yet regained control of the final portion of the property, i.e., 1601 California Avenue. This decision was well disclosed and discussed by all participants during the development approvals. The final map enabled us to get our first permits for new construction and starting construction within this timeframe did, indeed, prove to be beneficial for the College Terrace neighborhood, as over 11,500 heavy truck trips were able to use the Page Mill access to the site through September 2015. Stanford regained control of the 1601 property at the end of 2014. After the building was demolished, our experts detected elevated levels of TCE in soil vapor samples collected in the vicinity of the sump beneath the former building. This soil vapor was located 14-25 feet below predevelopment grade and located in areas where up to 15 feet of fill is planned to be added on top within the site plan. Notwithstanding the depths of these readings, however, modeling indicated that seven houses in our previous plan would be located over soil vapor concentrations that would potentially cause a greater than one chance in a million risk of cancer if one were to remain indoors 24/7 for 26 years, which is the conservative level of

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health risk applied by the State, at which risk management measures are considered. It would be possible to leave these houses in place by installing in-ground ventilation systems underneath them. If Stanford had elected that approach, the subdivision map would not need to be amended, and we would not need any action by the City of Palo Alto. Stanford decided to take the more conservative route by moving the houses away from the locations of higher vapor concentrations for two reasons, even though it does require us densifying a bit and reducing our total housing square footage somewhat. One, we would prefer not to make it necessary for homeowners to have to check and maintain the functioning of a mechanical system underneath their foundation slabs to mitigate soil vapor intrusion. Two, unlike many developers who may need to maximize development of their property, we are in a position to choose to downsize the project slightly and revise the location of the effected houses. On April 4, DTSC approved this plan as sufficiently characterizing and defining the nature and extent of contamination and as presenting a redevelopment plan posing no significant risk to future site residents within the specific soil and groundwater conditions of the site. This followed six months of review and comment on Stanford's environmental consultant's investigation and analysis, which time period included a transparent process that included meeting with and receiving and responding to comments from the College Terrace community and the Center for Public Environmental Outreach. You have, in your Staff Report, the extensive responses from DTSC to questions raised by neighbors over the past eight months. You will also find in there the peer review of the analysis and plan by Dr. Paul Johnson, the co-creator of the industry standard vapor intrusion model, which was requested by Stanford. As you know, several residents have recently conducted their own sampling of 19 homes in College Terrace adjacent to the project and have implied that TCE from the 1601 site has migrated to some of their dwellings. A quick expert review of their document raises serious questions regarding the scientific validity of its methodology. DTSC has not completed their review of the reported results; however, even if the readings College Terrace residents collected were accurate, they would not change the determination regarding the best layout of residences at 1601 California Avenue. Stanford's environmental consultant intentionally tested most thoroughly in the area along California Avenue to define the extent of contamination and found no evidence of migration toward College Terrace. In a March 18 response to the Computerized Physician Order Entry (CPOE), DTSC stated "the College Terrace community is safe with respect to potential vapor intrusion to constituents detected in soil vapor at University Terrace based on several lines of evidence, including the geologic units at the site, the collection of soil vapor data over 10 years, and the removal of all potential sources of TCE from the site." Most recently in light of College Terrace's just submitted sampling, DTSC communicated to City Staff reiterating its conclusion that

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1601 has been adequately characterized and stated that concern about potential existence of TCE in the College Terrace neighborhood is a separate issue that does not affect the approval of Stanford's 1601 site plan. In conclusion, our request is that, based on DTSC's approval of our revised layout, you approve amendment of our subdivision plan to enable us to implement this mitigation and not have to stop work in the area over the summer. Representatives of DTSC are here this evening to answer questions about analysis and mitigation at the site and the remaining work before closure. Also present are the professionals from Haley and Aldrich, the firm that performed the environmental investigation and analysis, who can also comment on methodological questions about College Terrace's sampling. Annette Walton, Director, Stanford Environmental Management, is here this evening as well. Finally to conclude this presentation, we would like to have our land use attorney, Julie Jones, say a few words about how the process fits within the Development Agreement and the EIR. Thank you.

Julie Jones, Stanford University Land Use Counsel: Good evening. I'm Julie Jones, land use counsel for Stanford on this project. I was actually involved in the preparation or work on the EIR back in 2005 for the Mayfield Development Agreement. I wanted to provide a little bit of background on that Agreement and on the EIR for it, just to be clear about where we are in the process. As Chris mentioned, in 2005 it was known that none of the residential development under the Mayfield Development Agreement would occur until at least 2013 when the leases on the existing properties would expire. It was always known that more work would need to be done and more analysis would need to be done when those properties became available. The properties were characterized. It was known that there was contamination at both of the properties, both for the BMR housing and for this project, for the upper California housing, and that TCE was a commonly used substance in the Research Park. What the EIR did was it identified potentially significant impacts to residents, to construction workers and to the public if levels were at a certain rate and if it could escape. There were three mitigation measures included in the EIR to call for further investigation and compliance with the regulatory agency requirements. In this case, DTSC is the regulatory agency. What the EIR concluded based on those mitigation measures was that any impacts would be reduced to less than significant. Where we are right now is asking whether there is new information, as has been suggested, that would undermine that mitigation measure. Should I continue?

Mayor Burt: Try and take a moment to wrap up. You'll have a rebuttal time ...

Ms. Jones: I will take a moment to wrap up.

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Mayor Burt: There will be a rebuttal time as well at the end.

Ms. Jones: I'll just conclude by saying that the investigation that has been done shows that there are no changes in circumstances that would show a new significant impact or a substantial increase in severity of previously identified impacts. That is the standard under CEQA. That's why we're just implementing the mitigation measure and moving forward.

Mayor Burt: Thank you. We now will go to members of the public. We have two different grouped speaker cards if I'm reading this correctly. The first one is Lenny Siegel speaking on behalf of Sally Heaton, Pat Robinson, Eileen Stolee and Diana Finkelstein. Welcome.

Lenny Siegel speaking for Sally Heaton, Pat Robinson, Eileen Stolee, Diana Finkelstein: Good evening. Tonight I'm here not as a Mountain View colleague but representing the Center for Public Environmental Oversight. We have funding from the United States Environmental Protection Agency (USEPA) to provide technical assistance to communities on vapor intrusion. I have been working with the College Terrace residents since December. Vapor intrusion is the migration of volatile, toxic substances into overlying buildings. When a compound like TCE is in the subsurface, it volatilizes and is actually sucked up by buildings because of the lower vapor pressure inside the building or the air pressure inside the building and the vapor pressure in the soil. It is found in many places like Mountain View, all over the country. It is something that can be resolved easily with a sub-slab depressurization or sub-slab venting system. The proponents here claim that, because of the clay lithology—the soil is clay—that the contamination is isolated and it doesn't move in the groundwater, it doesn't move in the soil. I don't think the evidence backs that up. I'm going to be saying a little bit about technical things. Try to keep it fairly simple, and then explain why I think the mitigation the Department of Toxic Substances Control normally calls for and some of our neighboring communities call for would be more appropriate. The State uses these standards for exposure to TCE in indoor air. That's micrograms per cubic meter. It doesn't really matter what the unit is. It's 0.48 to protect against cancer risk, 2.1 to protect pregnant women because the risk of cardiac birth defects during pregnancy has to occur during the pregnancy. You know it's less than nine months. It turns out that DTSC toxicologists say it could be as short as one day. It's those goals for indoor air that all of the mitigation, all the plans are designed to protect people against. Because there's no indoors now, maybe they should have tested the old buildings before they were torn down. Because there's no indoors now, you can't sample that. What you do is you sample soil gas. A gas is the gas that's within the soil. The soil isn't solid; it's got water and gas in it. There are different versions of the soil gas screening levels that

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are used to predict whether or not you're going to exceed that 0.48 level that is the target indoor air level based on cancer. USEPA would use 16 micrograms per cubic meter, with their default ratio of indoor air to subsurface. California uses 480. Through a complex set of modeling, Haley and Aldrich on behalf of Stanford has created this number of 11,000 to 53,000 based upon depth to predict—those are the numbers that the soil gas would have to exceed to bring indoor air to the level above the 0.48 which is the health-based target. I don't think that's justified. That's basically justified by using the Johnson and Ettinger model and the assertion that this is all uniform clay and, therefore, the pressure differential—there's a lower pressure in the buildings—can't possibly pull up the contamination because there's so much clay and the vapors can't move. This is real important when you get to looking at the map of the site. This is a map of the site. Here is the area that the consultants say is the source of the TCE. Until I talked to DTSC's project manager for this site—it was December or January—she was unaware of a memo written by someone else at DTSC saying the contamination here at 1501 California was there as a result of migration—this would be groundwater migration—from the perceived source. That's over 300 feet. Basically, they've been saying don't worry about the distance that the contamination might move because it's all clay. In fact, there's evidence here, backed by a DTSC letter that says the contamination has moved 300 feet. There's another site here, groundwater on the site, where there's even more contamination in the groundwater. The consultants say, "There really is no groundwater on the site. We can't find it." That's probably a function of when and how and where they looked. That's evidence that the contamination is not isolated, so that the hotspots that they've identified could impact people in the buildings at a closer distance. There is where the testing in College Terrace over here is important. There is soil gas contamination here. It's between the level that EPA uses and the level that the State uses for what's acceptable. The residents weren't comfortable that that was enough evidence that they weren't being exposed. I arranged for one of the top notch samplers for TCE in indoor air and soil gas. He's from San Diego. He came here and he did some sampling. To my surprise they found it. Why is that important for this site? Basically it says there may be what is called a paleo channel, a sand channel, that connects this area to College Terrace. It basically says that you can't rely on the clay to keep stuff from coming up into homes, because it has been found in the homes. You can't rely on it keeping the contamination from moving horizontally. The assumptions that they're using to say that you can simply put a home 50 feet from a very high hotspot, over 53,000 micrograms per cubic meter, is not borne out by the data. We haven't done enough sampling to confirm that the TCE in these homes is coming from this property, but we know of no other source. The fact that it was found in the crawlspace as well as the indoor air suggests it's not

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coming from consumer products. I'm aware of places in Mountain View and southern California where gun cleaner has given a false indicator of vapor intrusion. If it's found in the crawlspace, that's much less likely. Basically we have evidence which calls into question the argument that this stuff can't move more than 50 feet and at low levels it can't move up into the buildings. One more thing about the map. They say they've moved the buildings 50 feet from the hotspots. The five hotspots they have identified are the ones that exceed the site-specific gas screening level that Haley and Aldrich calculated. That's not quite true. Even if you use their numbers, you have Building 30 over here. I can't read it from here, but I'm pretty sure that's where it is. Building 30 is 50 feet from this hotspot; however, there's no sampling between it. Up here you have a building, and there's a lower level sample between the hotspot and the building. Here, we don't know what the levels are. They're saying that they moved it 50 feet from the contamination, but in fact they just moved it 50 feet from where they've sampled. They don't really know how high the contamination is in this area. Of course, you've got areas over here where they're building houses directly over contamination that exceeds Department of Toxic Substances Control default, attenuation factor. Again, they're using the fact that it's clay and a complex model to say, "Don't worry. The number's a couple of orders of magnitude higher than you'd have to trigger a problem." It's really not that hard to solve this problem. This is Department of Toxic Substances Control document on how to mitigate exposure to TCE and other chemicals through vapor intrusion. I contributed to the development of this document. If you look here, it's a great simple diagram. The way you mitigate is you have a pipe beneath the building with holes in it. If it's new construction, it's usually horizontal. A pipe that leads to the top of the building. In many cases, you have a fan to blow out the vapor from underneath. That creates depressurization under the building. If there's a crack or hole that contamination could move between the subsurface and the building and the indoor air, it moves downward. It's very protective. It's inexpensive. It's done all over the country. It grows out of our experience with radon. They could do it. They said they don't want to do it because they don't want homeowners to have to check the monometer, if you've seen a radon system, to see that it's working. It's like saying people can't deal with methane detectors or smoke alarms. It's rather simple to deal with. It's the standard way of mitigating. There are actually two ways. Sub-slab depressurization has a fan. Sub-slab venting doesn't have a fan; it relies on the atmosphere to depressurize the subsurface. Sometimes that's done—we have some buildings in Mountain View where that's done, that aren't directly above plumes as this is. You have the option of monitoring. If you find a problem, then you can install a fan later. It's a lot easier to put a pipe beneath the building or beneath the vapor barrier before you build the building than afterward. That's why it's common practice to do one of these

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things in new construction where TCE and other contaminants are found. Both of those involve vapor barriers. Vapor barriers alone are not considered—one more minute? Vapor barriers are not considered by DTSC to be sufficient mitigation. You do need to do long-term management—I won't go into the details about that—to make sure that things work. Basically, these buildings are proposed to be built close to contamination at very high levels in the soil gas. There's an easy way to protect people. Thank you.

Mayor Burt: Thank you. Our next speaker is Fred Balin, speaking on behalf of Eric Heaton, Ann Balin, Stewart Carl, William Heaton, and Doria Summa. Welcome.

Fred Balin speaking for Eric Heaton, Ann Balin, Stewart Carl, William Heaton, Doria Summa: Good evening. Fred Balin, College Terrace. Mayfield upper California Avenue housing, last Agenda list item before summer break, once again. In June 2014, the hazmat section of your environmental confirmation concluded no new significant impacts. We now know that was not correct, because on the 1601 California Avenue parcel for which a Phase 2 study was not submitted, nine months after your approval, TCE was discovered originating from that site, a significant impact not noted. We also know now that in 2014 the likelihood of TCE contamination from the 1601 California Avenue (Cal. Ave.) site was known but not reported to you. On the adjacent parcel, 1501 Cal. Ave., where a Phase 2 assessment was submitted, TCE was detected in groundwater above maximum contamination level, 50 feet below ground, and the likely source identified as 1601 California Avenue. It's hard to see, but it's in the top, left-hand section of the middle graphic, which is the middle to three properties. The finding was also specifically stated in a letter from DTSC to the applicant six months earlier, as I submitted to you today, but the information was not included in the source references for the environmental confirmation memo or other public communications to the City. Why? Let's move from groundwater to soil gas. The TCE vapor between soil particles. Here's what we faced when we finally received the 1601 Phase 2 risk assessment. Stay calm. Over 50 detection points marked with one or two symbols for screening level, connected to boxes with TCE measures at up to three depths, dotted outline for the former building, housing reorientation plan in the background, small legend at the bottom and measured values ranging from single digits to almost 200,000. Enter the genius of resident scientist Ed Schmidt. This visualization was submitted to DTSC and you. Ed's overseas today. It's based on the very same data and screening level on the other chart. Here, at each detection point, one value, the highest, and represented by the diameter of the symbol, also estimated zones of high and low concentration. It goes over onto the other property as well. How did he do it? Diameter is



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based on the cubed root of the measured value. Below, the last zone creation technique explained. In addition, he superimposes the proposed project design. Why are some homes in the orange zone? As Lenny Siegel explained, the applicant's consultant model lets you increase the screening level by up to two orders of magnitude under certain conditions, up to 11,000 or up to 53,000. With all this in mind, Stanford's consultant created a new graphic, which you've seen already. Better, but now there are three colors for detection points. Royal blue for values below the 480 California default soil gas screening level. Turquoise for values above 480 but below the maximum bonus level in the model. Orange for values that even exceed that level. Five discrete orange detection points from which all houses are proposed to be set back at least 50 feet. With DTSC acceptance, that's all Stanford will be required to do. Required number of units still fit on the site. The TCE can remain in the ground un-remediated. Wait. The applicant says, "We will unilaterally do more." They'll add some dirt and mitigations under the house that are less than the DTSC standard. As for impacts in College Terrace, no. We hired a gas chromatography expert in the field of vapor intrusion to validate the claim. A study was identified, a sampling protocol established, homeowners granted permission. Expert chromatography device and nitrogen cylinder set up in a temperature-controlled location in the neighborhood. Measured values under or within a third of the homes had levels above indoor air target concentrations. Why and what to do. The results and study based on it were submitted to DTSC and we began work on answers to those questions when Staff squeezed this item prematurely onto the calendar under a section of the Code for technical corrections and limited environmental review. We had hard data and presented it to the City Attorney's Office and requested a delay until you have all the facts in front of you. It was passed on to Planning and the City Manager, who said go ahead as planned. All is in order. Offsite problems should not stop the application, and let DTSC make judgments when ready. If you approve now, a complete abdication of responsibility. Whatever DTSC comes up with, they're not the final arbiter here. It is you, the City, the lead agency on the environmental study. DTSC is not CEQA. It's not up to citizens to prove there's a problem, just there is the possibility. We've done more already than any reasonable citizen groups should have to do to have its government act on behalf of health and safety. The new data we have submitted to the Attorney's Office and you is also a changed circumstance under the FEIR, not in the FEIR, not in the environmental confirmation of 2014. You cannot go forward without a proper environmental study of this offsite contamination. What's going on here? Is it because of the applicant? Is Stanford never wrong? Is it just too much of an effort to do the proper job? There are good people in the City, exceptional people. Those who created the online, public records request system that I made use of. Those who enabled me to have the Staff Report 11 days before the meeting rather

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than five, two years ago. The sharp, straight-up Public Works employee who looked at the application and wrote back that this is not a technical correction, this is a revision, until she was overruled or made to change her mind. Listen to what you have tonight. Get a sense of this project. Under no circumstances approve it. Continue it until a proper application comes before you and all the appropriate environmental documents are in. Thank you.

Mayor Burt: Thank you. Our next speaker is Margit Aramburu.

Margit Aramburu: Good evening. Margit Aramburu, Amherst Street/College Terrace resident. I wanted to speak briefly to the review process of the proposed subdivision as a minor amendment. I suggest that the proposed amendment is not minor because it includes changing the size and location of 29 residential lots. The change in the park parcel, changing the right-of-way width and location of the Amherst Street that's an extension of the current street. The addition of a new cul de sac. These together, I do not believe, could in any way be considered a minor amendment. I believe it should be subject to expanded review, which includes review by the Planning and Transportation Commission in a public hearing, which is how the original subdivision was reviewed. In addition, any conditions that are invoked by DTSC for construction on the parcels on the site, I believe, should be amended into the City's original and master approval document, rather than added onto the building permits. It should be part of the permanent record for approvals by the City of this project. Thank you.

Mayor Burt: Thank you. If we have any other speakers who wish to speak, they need to bring a card forward at this time. Our next speaker is Carina Chiang. Welcome.

Carina Chiang: Hello. I'm Carina Chiang, born and raised on Amherst Street, all of my life in College Terrace. We've been hearing about very complex issues. Put aside the TCE. You have a developer who's come before you, and they've said DTSC has approved this. I think we all agree that DTSC's criteria are completely separate from the criteria that the City Council and the Planning and Transportation Commission and Fire Department makes about the safety of its residents, the safety of the living conditions, and the liability the City holds for any future legal issues. What we're looking at is, by the developer's admission, a change of 29 parcels. We are also seeing the addition of a new cul de sac, Amherst Court. You have to make a tight right-hand turn into that with a fire truck. Bowdoin Court has also been changed. It's location has been changed slightly. The new Amherst Street has been made narrower. The City Council, when they spoke with the developer, requested that the developer put sidewalks in on

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both sides so that the pedestrians and the children would be safe. We now have a narrower street and no cross-section indicating the location of those sidewalks that the City has requested. The Council is being asked to summarily approve the changes without review by the Planning and Transportation Commission. The new Amherst Street also has a jog in it. When it meets up with the Amherst Court, when it has to make a 90-degree turn, the turning bulb-out has been reduced. There's less room. There also has not been proper notice provided for the review of this by the Planning and Transportation Commission. We need the Fire Chief to sign off on this new plan with the new cul de sacs that are at 90-degree angles, the narrower roads, the narrower turning radiuses. There's been inadequate review. DTSC criteria are completely independent of the criteria the City needs to consider. Thank you very much for your consideration.

Mayor Burt: Arthur Liberman to be followed by John Brookes.

Arthur Liberman: Good evening, Mayor and Council people. What's really needed for the College Terrace neighbors and the health of the new residents is clean up, not cover up. I was the environmental committee chair for the Barron Park Association for a good number of years, and I learned of the many sites of underground TCE contamination in the Stanford Research Park. The absence of oversight by Stanford over the years resulted in the Hillview-Porter Regional Superfund site where hazardous chemicals reach Matadero Creek, led to the plume of underground contamination under the Veterans Affairs Hospital (VA), and ultimately into much of Barron Park. There are a host of other DTSC-mandated clean-up sites in the Research Park identified by the names of companies who operated there. Teledyne Singer, Watkins-Johnson, Coherent, Varian, Smith Kline, Syntex, Teledyne Mec, Aydin Energy and also at least two other Hewlett Packard sites in addition to the 1601 California Avenue site and the playing fields underneath the Mayfield playing fields. There is ongoing remediation of the contamination at those places. There's pumping of groundwater, injection of oxidizing chemicals and bio agents in an effort to enhance the cleanup. At the Teledyne Singer sight on Porter Avenue, there is where contamination has effected nearby properties including the University Club. Consultants recently did subsurface thermal heating. They dug eight wells in an area where contamination stubbornly remained high and lowered electrical heating coils to heat the subsurface to essentially try to cook the contamination and decompose and break down the volatile organics. The consultants at that site are now conducting soil vapor monitoring and measurements. Indoor air vapor measurements are now required in one of Varian's buildings along Hanover Street by the DTSC. Many of these sites had been plating shops. Stanford allowed Varian and CPI to build a plating shop adjacent to residents in Barron Park. The City

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then allowed CPI to rebuild their shop and load it up with lots of hazardous materials. Pushing through the Stanford plan on a contaminated site at 1601 California Avenue while ignoring the legitimate concerns of the neighboring College Terrace folks smacks of repeating this pattern. Mayor Burt, when we talked about the CPI site, you said you would not want to live on the other side of the fence from a plating shop. Would you or any other Council person want to live on top of a plume of TCE? The fact is there's very significant contamination at this site. The issue is very complex. It's more complex than what the Stanford consultants say. They rely on models to tell you that contamination is contained and there is no effect and there is no concern outside the area and no TCE fumes that leach out of the local area. The measurements by College Terrace residents say that's not true. I'd believe that over model extrapolations. Prudence says you should put the project on pause until further measurements are made that would clarify the issue. Thank you.

Mayor Burt: Thank you. Our next speaker is John Brookes, to be followed by Robert Moss.

John Brookes: Good evening all. Thank you for the opportunity to speak tonight. My name is John Brookes; I am a resident. My wife and I own a home at 1630 South California Avenue, directly across from ground zero if you will. I don't have any formal comments prepared tonight, but I would like to reiterate what my neighbors and friends have said earlier. There appear to be data that needs to be reviewed prior to any further development of this property. I noted with interest earlier Vice Mayor Scharff commented that the Council is data driven and drills down on all issues. I would ask and we would ask respectfully that you do that with this particular issue. Thank you very much.

Mayor Burt: Thank you. Bob Moss to be followed by our final speaker, Stephanie Munoz.

Bob Moss: Thank you, Mayor Burt and Council Members. As you probably know, I'm on the Board of the Barron Park Association Foundation, which was assigned oversight of this area by the EPA in 1989. We were given several large grants to monitor and keep an eye on what was going on there. I'm very familiar with the site. This particular project is not ready for primetime. Stanford has done a really terrible job of evaluating the soil, groundwater, and looking at what kind of contamination might come into the residential buildings that are planned for this site. When Staff says that there's been no change in the contamination level that's allowed, that is false. Three and a half years ago, EPA came in with a much lower level, 0.48 ppb, in any residential areas because exposure of a pregnant woman in

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the first trimester of pregnancy for as little as a week was highly likely to cause birth defects to the fetus. Of course, Stanford would like to ignore that. Those are the facts. Furthermore, any building, especially a residential building built on this site, should not have an underground basement. You can ask Lenny Siegel. There have been no buildings in the Mountain View MAW site built with underground garages since the mid-1990s. They don't do it in Mountain View. Why would we do it in Palo Alto? Second, we must have regular, indoor air monitoring in the residential buildings for at least five years to verify, first of all, that the contamination has been stopped by soil vapor barriers and ventilation. I'll give you an example. In one of the projects in Mountain View, where they had soil vapor barriers and sub-slab ventilation, they tested the houses. One of them, less than a year after construction, had high levels of TCE because the barriers failed. If you don't test, you don't know and you may poison people. This project is not ready for primetime. It has to go back and be completely redone, eliminate the underground garages, require both vapor barriers and constant evaporation of the soil and groundwater, and try to cure the damage underground by eliminating the soil contamination. There's no evidence they're even thinking of that.

Mayor Burt: Thank you. Our final speaker is Stephanie Munoz.

Stephanie Munoz: Thank you, Mayor Burt and Council Members. I'd like to express my appreciation as a Palo Alto taxpayer to all the naysayers who have come from other towns or from around. It seems to me it would be utter insanity for Palo Alto to permit anything but the very highest standard for residences free of industrial contamination. Every day you pick up a newspaper or the magazine, and somebody wants to prosecute a lawsuit. Somebody is inviting the world to join in a suit for things they didn't even had injured them. It would be—all of you are just too smart for that. Thanks to them. However, I'd like to say that I hope you can figure out a way to do the project. It's a good project in concept. It's a good concept. It's sort of a throw-back problem. Fifty years ago, 100 years ago, back when Stanford was founded and Palo Alto was founded to be a nice college town with a lot of residences and some stores, most of the income came from people—the jobs came from elsewhere. They came from San Francisco or maybe from San Jose. I myself went to San Francisco my school career on a Southern Pacific train. After the Sputnik, we were convinced that the previous idea of having industry separated from residences no longer applied because we could have clean industrial parks. The land that Stanford owned was changed in zoning from residences to industry, because this clean industry was going to be compatible with residential use. As it turns out, here's the problem. It isn't all that compatible. What I have to say is when you get this finished, look then at the next phase of residences versus

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money-making opportunities, which is that the housing has to be near enough to the jobs or else have a train or mass transportation so that people can work without tying up the entire City in the Motion of people to their jobs from other places. Do not let Stanford get away with not building housing for its hospital and doctors' offices and other residences. You need that balance of housing. Thank you.

Mayor Burt: Thank you. Now, the applicant has the rebuttal time of three minutes.

Mr. Wuthmann: I'd respectfully request a bit more rebuttal time as I think several people should say a few comments, given the number of comments that have been made by College Terrace folk. We can go quickly. Let me begin by starting with addressing the concern about or allegation that we're radically changing the site plan because 29 parcels are changing. The parcel changes are limited to the interior part of the site, i.e., the non-ARB review part of the site, i.e., the non-California Avenue frontage. They are driven by the need to densify the site to move houses away from localized TCE areas, which is a conservative move. We are not narrowing Amherst Street. That is a misread of the plan. This is not about Stanford being right or wrong or trying to get away with things. This about the DTSC's review of the site, review of the plan, and Haley and Aldrich's sampling and investigation of it. Basically, the allegation has been made that DTSC has made mistakes in its application of standards. I would like DTSC to say a few words in response to that. Also, it basically has been alleged that Haley and Aldrich's sampling has been inadequate. I would like them to be able to respond to that quickly too, if I may please. First of all, it'll be Dr. Kimi Klein, Toxicologist from DTSC.

Dr. Kimi Klein, Department of Toxic Substances Control (DTSC): Good evening. I'm Dr. Kimi Klein. I'm the toxicologist assigned to this site. I've been charged to review the health risk assessment portion of the reports that have been submitted to our department. I've been asked to talk a little bit about the screening levels. I presume that you're speaking of two sets of screening levels. One set of screening levels has to do with what we expect to be the safe levels of TCE in this case in indoor air that we would actually be breathing. There are two different screening levels. One is 0.48 micrograms per meter<sup>3</sup>, a small number. That value represents the amount of TCE that you must breathe every day for your lifetime, for 30 years or so in the same residence, 24/7 basically. We do let you take a couple of days off for vacation a year, but basically it's for your lifetime. I'll just say parenthetically that 30 years in one home is a pretty long time, but this is a very conservative assumption that we use within the regulatory agency. The second screening level is two micrograms per meter<sup>3</sup>, which is a larger

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number. That number represents the amount of TCE that could be indoor air that would really trigger an action. That is to say, we would like to see something to be done about it. The main reason for that is because of what was mentioned before. This is not a value based on the potential of getting cancer, but it is based on the potential of a cardiac defect in a young fetus in the first trimester of pregnancy. That's one set of screening levels that deals with indoor air. There's another set of screening levels which was also presented tonight, that represent the safe level or, we would say, the acceptable level of soil gas in soil that would not cause an increase in those levels in indoor air. As you saw the cartoon before that was presented, there's soil gas down here. Through diffusion and then evection, it can get into indoor air. We have a separate set of screening levels for soil gas. Those levels are much higher than those levels that I just stated. That's because we have to make the assumption about the molecules being able to get from depth to an area by pressure differential between the indoor air and the soil can get into the indoors. Those levels are 16 micrograms per meter<sup>3</sup>, 480 and the last numbers that were greeted with gasps, 11,000 to 53,000 micrograms. The units are all the same for all three of these. I want to just say one thing—I don't see a little light here.

Mayor Burt: Dr. Klein, I've excluded your time from Stanford's rebuttal, given that you are representing the people of California.

Ms. Klein: Thank you. I just want to state somewhat—the difference between the site-specific number that we consider safe at this site of 11,000 to 53,000 is because these other smaller numbers are based on the assumption that soil is made up of sands. That is to say, very permeable, very easily subjected to evictive forces, the forces of pressurization. Also, you can imagine the molecules more easily kind of diffusing through the sand than through a very dense clay which is the case at 1601 South California. That is really the reason for the difference in these values. I'll give up my time to—I think there's another speaker who wants to speak. I'll be very happy to answer any questions later.

Mayor Burt: Thank you. We may have some. Now, we'll continue with Stanford's time.

Susan Gallardo, Haley & Aldrich, Inc.: Good evening. I'm Susan Gallardo. I'm with Haley and Aldrich, environmental consultant on behalf of Stanford. I am a civil engineer. I've been an environmental practitioner for over 30 years. I wanted to just speak a little bit about the sampling program that occurred at the 1601 California Avenue site. I think there's been some questions about the adequacy of the investigation. A site investigation is basically a phased process. We start with a historical review of all the

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information regarding former site operations and features. Then, we go into a phased approach in terms of the sampling. Basically, what I mean by that, sometimes you find something unexpected that causes you to do additional sampling. As you know, sampling has been conducted at this site since 2004 with more of a focus between a timeframe of about 2013 to 2015. During that time, just in terms of general inventory, there's been 118 soil vapor probes that were installed at 51 locations. From those probes, there were 130 samples that were collected over time. We got some temporal indication of what the data would look like. Shallow soil samples were collected during demolition at 16 locations, followed by 23 borings that were installed down to depths of 35 feet or so. This doesn't include prior sampling locations that were extended down as far as about 60 feet at the site. There were over 500 samples that were taken; however, those samples were associated with the remediation of the TCE-impacted soil and not really the subject of our topic tonight. I think the Council has in front of them over 900 pages of analytical data, a 700-page report of the analyses. Thank you.

Public Hearing closed at 8:03 P.M.

Mayor Burt: Thank you. We'll now return to the Council. We need to make any disclosures of ex parte communications that we have had. Vice Mayor Scharff.

Vice Mayor Scharff: I had a conversation with the applicant today. I didn't learn anything that hasn't been already discussed in either the applicant's discussion or by Staff.

Mayor Burt: Council Member Berman.

Council Member Berman: I had a brief phone call with the applicant today, and I didn't learn anything that isn't in the public record.

Mayor Burt: Council Member Holman.

Council Member Holman: I had a brief conversation with, I think, just one member of the public. It was about a letter that had been submitted. The information is contained.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: I had two conversations with the applicant, one several months ago and one yesterday about this, but nothing that's not in the record.



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Mayor Burt: I had a conversation with Jean McCown from the applicant's side as well as Lenny Siegel from the community. We will now continue with returning to the Council for discussion. Council Member Holman.

Council Member Holman: Can I first just address the procedural issue here? The subject has been raised and I have the question too, having served several years on the Planning and Transportation Commission. If there are changes to streets and 29 buildings relocated, it seems to me that should have to go back to the Architectural Review Board (ARB) and to the Planning and Transportation Commission. The project is here for a subdivision map act. Shouldn't we also have to go to the Planning Commission for that? I want to start out with just the procedural question. I'm confused why we're doing the process the way we are.

Cara Silver, Senior Assistant City Attorney: Thank you, Council Member Holman. Cara Silver, Senior Assistant City Attorney. The reason why we are at this juncture is because the tentative subdivision map has already been approved and the final map has already been approved by the Council. Once the final map has been approved and recorded, there are two ways to amend the final map. The first way is to really make technical, minor corrections. That was the procedure that Mr. Balin had indicated in his opening remarks, that he thought was improper. We do agree that this situation does not fit within that statutory procedure. There is a second way, though, to amend a final map. That goes directly to the Council. There is not a requirement that it go to the Planning and Transportation Commission. The Council needs to make the four findings that are in the Staff Report. Basically the bulk of the findings are their changed circumstances, as Director Gitelman mentioned in her opening remarks.

Council Member Holman: What about ARB and circulation, because at least one roadway has changed. Circulation on this site has, thus, changed. The ARB is supposed to look at not only building design, which they're not doing here, but site layout and circulation. That isn't happening here either.

Ms. Silver: This, of course, is governed by the Development Agreement and the particular ARB rules applicable to this site. The application only requires ARB review of the outer area, the California Avenue fronting sites. Because this particular reconfiguration does not touch that area, it was determined it didn't need to go back to ARB for review.

Council Member Holman: The application doesn't require it or the Development Agreement doesn't require it?

Ms. Silver: The application for the new layout does not touch the California Avenue frontage.

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Council Member Holman: I was trying to get at is it the Development Agreement that determines that only the perimeter buildings get reviewed or is it the application? I was ...

Ms. Silver: I see. It's the Development Agreement that specifies a particular Zoning Code standard and ARB review.

Council Member Holman: Would that apply also to any changes to the streets for circulation? Did Fire look at—we have a difference of opinion about whether something changed or not in terms of street width or configuration. Did the Fire Department look at it and what about ARB and the circulation?

Ms. Silver: I'll defer to Jodie on that one.

Ms. Gerhardt: The Fire Department has reviewed the amendment to the subdivision. They signed off on the review pretty quickly and were not even given the re-submittal plans. They were fine with the revisions.

Council Member Holman: I don't think we had anything that indicated that, unless I overlooked it. There's a lot of documentation, so it's possible. Did we have anything that demonstrated that?

Ms. Gerhardt: Working with the Fire Department is part of our regular planning review process. I have a lot of paperwork as well. I'd have to dig through and find it for you.

Council Member Holman: Mayor Burt, I have several questions. Do you want me to hit a few and then come back? I don't want to take up so much time.

Mayor Burt: I realized that I actually need to take a break to be able to confer with Staff on a procedural issue. Let's go ahead and take a five minute break, and then we'll return and continue.

Council took a break from 8:09 P.M. to 8:17 P.M.

Mayor Burt: I know that Council Member Holman has some more questions, but let's go ahead and proceed. Council Member Berman.

Council Member Berman: You have to give me a second to get back in the mindset. I had a couple of questions, some of which have been addressed. One had to do with this issue of horizontal migration that was raised by, I think, Mr. Siegel. What is the applicant's response to concerns that horizontal migration of these vapors might be occurring at this site? What does Staff think about that as well? Let me start with the applicant.

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Ms. Gallardo: Through our investigation, we did an extensive evaluation of what we call lithology or the types of soils beneath the site. Our results actually indicated that the vapors were pretty much where we would have expected them to be, given the fact that we had the vapors because they were in the coarser (inaudible) units.

Council Member Berman: I'm sorry. They were in the what?

Ms. Gallardo: The sand (inaudible) the coarser-grained units. In some cases where we had a lot of the finer-grained clay soils, we actually couldn't even get flow out of those samples. With respect to kind of lateral migration, unlike the figure that's been up on the screen, we actually have surrounded the locations where we have the vapor. Something that's important to understand is that the release of the TCE likely occurred at least about three decades ago. The suspect feature, a sump, where TCE—again, where we understand that it was released, was not in use past that time. Our feeling is that what we're seeing out at the site are basically steady-state conditions. Again, as you saw all along California Avenue, we didn't have concentrations of concern with respect to the vapor.

Council Member Berman: Thanks. Does Staff have any follow-up?

Ms. Gitelman: Thank you, Council. We, of course, reviewed the materials from the applicant's experts and found them to be logical. I would defer to the State representative from DTSC in terms of their evaluation of that material. They did evaluate the risk assessment and accept the conclusion. My presumption is that they agree that this is not a condition of concern.

Council Member Berman: Just so I get an understanding of exactly what's before us today and what Council can do. There are process issues and concerns about whether or not they should have gone back to ARB and some of those issues I'm sure we'll talk about. In addition to that, what is within our purview here? Do we have the ability to require additional mitigations, require Stanford do certain things to ...

Ms. Gitelman: Just in summary, we've put before you a proposed Record of Land Use Action. I think it is possible that you could add some findings and further stipulations to that Record of Land Use Action. In fact, we got a late letter from Mr. Ross that we haven't had an opportunity yet to respond to. One of the issues he raises is about Comprehensive Plan consistency. In response to that comment, we would suggest to the Council that we add to the Record of Land Use Action a reference back to the Record of Land Use Action at the time the tentative map was approved. There's a detailed explanation there that is not in the current materials. I think the Council does have a potential to add to this Record of Land Use Action. We have

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some suggestions about conditions that you could add to reflect the agreement on Stanford's part to undertake certain mitigation measures. I'm sure the applicant would be happy to consider other questions from the Council. At the end of that process, we could review the Record of Land Use Action and talk about the potential additions.

Council Member Berman: Thank you.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. I'm trying to wrap my head around this in a sort of larger thing. What I got from Staff—what is it? The memo that was written in response to, I guess, Mr. Balin's concerns was signed by yourself and the City Manager. What I took out of that memo—I want to make sure I'm understanding it correctly—is that we're looking at the narrow issue of whether or not to approve the subdivision amendment, map act amendment. That regards seven homes which would be moved off of the hotspot site. DTSC has looked at that specific issue and said that is the right thing to do. Is that correct?

Ms. Gitelman: DTSC has looked at the risk assessment and all of the suggestions that Stanford made. That's relocating the homes. It's the 10-inch slab. It's the vapor intrusion barriers and other measures that were included as suggestions in that risk assessment. DTSC, in my understanding, looked at the whole sum total and concurred that if all these things took place, the risk was acceptable.

Vice Mayor Scharff: Is the DTSC person here?

Ms. Gitelman: Yes.

Mayor Burt: That's Dr. Klein.

Vice Mayor Scharff: Dr. Klein. Is that the DTSC person?

Mayor Burt: Yes.

Vice Mayor Scharff: Is it all right if I ask some questions of the DTSC person? If it's fine with the Mayor.

Mayor Burt: That's fine.

Vice Mayor Scharff: My guess of this—I'm not familiar with it. DTSC is the State agency that deals with toxic substances. Department of Toxic Substances, right?

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Mark Piros, Unit Chief DTSC: I'm Mark Piros. I'm Unit Chief who's responsible for the South Bay counties including Santa Clara County. With the cleanup program, what we address is anywhere where there has been releases or suspected releases of hazardous substances is the jurisdiction of our cleanup program. Of course, DTSC also has a hazardous management program which has to do with the day-to-day management of hazardous waste.

Vice Mayor Scharff: What we've been asked to do is approve a subdivision map change, which is moving those houses. DTSC has looked at that and said that that's the appropriate thing to do?

Ms. Klein: Yes, we did look at that. Yes, we concurred that those were the appropriate measures to make, and that they were kind of above and beyond what they could have agreed to do. For example, there's the slab that's going to be under-laying these residences. It's going to be a very thick slab, and they're going to be under a tension. They will be very resistant to cracking. If you had a slab that cracked, of course, then you can imagine that there could be some molecules if present in the subsurface soil could creep up through the slab and into indoor air spaces. That was one item that we were very pleased with, that they were going to put under the residences a thicker slab that was under tension, that would be very resistant to cracking over time. The other thing that they are doing is putting in a vapor barrier which is a sprayed-on vapor barrier that is designed to prevent penetration of molecules of TCE up through that barrier and then into the slab and then up. Another thing I just want to point out is that in our the risk assessment that was performed, we—I think it was mentioned in the formal presentation that the soil vapor plume is actually very deep. It is not close to the surface, but it's rather deep. The risk assessment assumed that depth. In the actual development, there is going to be an additional fill—I think it has already been put in place, I'm not sure—of 10-15 feet of compacted dirt, engineered fill that is going to also provide a deeper cap than was assumed in the risk assessment. For all those reasons for these different lines of evidence, we concurred—I should say the Human and Ecological Risk Division part of DTSC concurred with those recommendations.

Vice Mayor Scharff: What I understood from the Staff Report was that there could be—the building permit wouldn't be issued by our department until there was a no action letter issued by DTSC.

Mr. Piros: That's one point I'd like to clarify. I think this site actually—we're seeing it as two distinctly different areas. There's the area where the development is proposed, that's been primarily addressed by the risk

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assessment. A determination was made there, but you also have the area of significant impact. In the approval letter—it was the supplemental investigation of risk assessment report. In our approval letter, specifically that that area—DTSC had to approve the measures proposed for that area. That area remains to be addressed.

Vice Mayor Scharff: That's what I was trying to understand. You're still looking at this, and that no building permit will be issued until you're satisfied. That's what I took out of the Staff Report. I just wanted to make sure that was correct. Maybe it's not.

Ms. Gitelman: If I could clarify our statement. My understanding is that the area where DTSC still needs to agree to management controls is the open space area where those hotspots occur. What we were suggesting as Staff is one way for us, the City, to ensure that all this reaches a conclusion expeditiously is to say that we will withhold issuing building permits for the seven homes that are closest to those hotspots. That's something we would impose, not DTSC.

Vice Mayor Scharff: Got it. We would impose that. Do you think that's an appropriate thing to impose?

Mr. Piros: Yes.

Vice Mayor Scharff: This is difficult because obviously none of us up here are experts in this area. We obviously have the concern of safety both for the Stanford residents who would be there and for the College Terrace residents. Is there any reason why we wouldn't do this? Why we wouldn't make those changes from a safety perspective?

Mr. Piros: I'm sorry, can you state specifically which changes are you ...

Vice Mayor Scharff: Is there any reason why we wouldn't approve the subdivision map changes tonight, for instance? Is there any reason we wouldn't do that that would enhance safety? That's the real question.

Mr. Piros: Not that I can think of, no. The risk assessment only says did it address the proposed development area. The other area of significant impact still remains to be addressed.

Vice Mayor Scharff: Mr. Siegel raised the issue of putting in the pipe that goes up, that takes out the vapor, basically, and concentrates it, I guess, and distributes it up into the sky. I thought that was a—that's what I took out of his presentation of what he thought should be done. That's obviously not one of the requirements that you have imposed. Obviously, he said he

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spoke with you. I wanted an understanding of why that is not the appropriate solution or why it wasn't imposed or your reaction to that.

Mr. Piros: Why it was not imposed is based on the findings of the risk assessment. We didn't conclude that there is a significant risk in the area. Now, as Mr. Siegel pointed out, what he was discussing is something that is addressed in the DTSC guidance. The primary difference between what Stanford is proposing and what Mr. Siegel is proposing—Stanford is proposing a barrier to keep the TCE from migrating upward in the buildings. What Mr. Siegel is suggesting basically would be the addition of a layer under that barrier, something to—basically you're ventilating out underneath the barrier. Correct me if I'm wrong, Lenny. I think that's the primary difference. He's proposing basically the addition of a layer underneath to give any TCE—here we're talking an area that we determined is relatively low levels of TCE—that migrates upward, give it a pathway to be ventilated out from underneath the building. Again, why we didn't impose it is because we determined—based on our risk assessment, we didn't determine there was a significant risk in that area.

Vice Mayor Scharff: You didn't impose it because you didn't think there was a significant risk in the area.

Mr. Piros: Yes.

Vice Mayor Scharff: Briefly, I guess when I looked at this report—thank you very much for your responses. Those were helpful. What I took out of the Staff Report is that—I guess I didn't see the connection between approving this tonight and what's going on in College Terrace. I just wanted to make sure that I understood it correctly and that Staff is basically saying there is no connection. Mr. Balin's sampling and the information that is helpful to DTSC in terms of any mitigation plan they may come up with or what may go in College Terrace, but there's really no relationship between what we're asked to do tonight and the issues with the College Terrace neighborhood.

Ms. Gitelman: Thank you, Vice Mayor Scharff. Again, I think it's potentially an issue of real concern. We're looking forward to seeing how DTSC evaluates the data that Mr. Balin and the neighbors have submitted to them. Based on what we understand to be the characterization of the soil composition on the site and the evaluation of the risk assessment by DTSC and their conclusions, we don't see the connection between what may or may not exist onsite and the offsite locations.

Vice Mayor Scharff: Thank you.

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Ms. Gitelman: Again, we're laypeople. If you wanted to put the question to the experts retained by Stanford or to DTSC, I think the Council could do so.

Vice Mayor Scharff: I'll put the question, if it's all right with you, to DTSC. The question I just asked.

Jovanne Villamater, DTSC: Hello, my name's Jovanne Villamater. I'm the Project Manager with the Department of Toxic Substances Control. Is there a specific question that you would ...

Vice Mayor Scharff: Yeah. The specific question is what we're asked to do tonight, which is approve the subdivision map act. I saw no connection between doing that and the concerns in College Terrace. My understanding is College Terrace neighbors have submitted to DTSC their samples, their information. I guess I wanted to—I saw no connection between the two. If I'm missing something—I'm not an expert in this area and Staff say's they're not either. Is there a connection between the two or do they run on separate tracks? What happens?

Ms. Villamater: From DTSC's perspective, we have two things going on here. We have the site and whether or not the site has been characterized and the risk assessment is accurate for how the site is right now. There is a concern about whether or not there is an impact on the neighboring community. At this point in time, we do have the information from the community, and we are still evaluating it. We intend to respond to their report via comments and questions and just a general dialog to understand how their study was conducted. However, I do not think that whatever we discover in the neighborhood would impact the decision already made on the site. If we were to find out that there is an impact on the neighborhood, we would figure out a way to try to mitigate what's going on. I do not see that impacting the decision made that there is no significant risk with respect to the development that was planned.

Vice Mayor Scharff: Approving this would in no way be a negative for the neighborhood or impact them in a worse way or make things worse or anything like that (crosstalk)?

Ms. Villamater: I do not see that.

Vice Mayor Scharff: Thank you.

Ms. Villamater: He wants to say something.

Mr. Piros: One thing I'd just like to add too. As far as this being a separate issue, not saying it's—the detections in College Terrace are separate from



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the site. I don't think that was by any means what we were trying to convey. It's not. We don't see a connection between the proposed housing development and what's detected. I just want to make that distinction. We're not saying it's a separate issue from the site. We're saying it is potentially a site-related issue. I just wanted to make that clarification.

Vice Mayor Scharff: That's helpful. Thank you.

Mayor Burt: While you're here, I'd like to ask a follow-up question on the same subject. We have a boundary that's been established on the periphery of the contamination on the site. We had an understanding or an assertion that the clay soils presented horizontal barriers from that area where it's contaminated to beyond there. We've recently seen that we have contamination across the street in College Terrace. Does that imply that the clay separation may not be continuous at all locations from the boundaries that we've found of the contamination on the site to beyond those boundaries?

Mr. Piros: With the investigation that's been done, there has been some variability found in a soil. I won't say it's clay, but usually you talk about finer-grain, siltier-clay soils, so that it is predominantly finer-grain soils that have been found on the site. There has been some variability observed. The other thing too is with soil gas, anytime you have contamination of soil gas, the other thing is there is potential for preferential pathways. Whether you have utilities that have base rock bedding around it, I'm not saying that that's necessarily the case here. I think what's been found at the site is where you have relatively—it's still finer-grain soils but maybe a little bit more permeability that it tends to travel along those channels. As far as just saying it's all clay and it's just this—that's really simplifying it.

Mayor Burt: That's actually what I assumed. From just a general understanding of the way that we have various versions of, we'll call them, subterranean streams but not quite streams in this area. I was trying to find it in our packet, and I regret I couldn't. I'm sure it's in the EIR. The sampling that was done outside of the boundary area along what I'll call the southeast edge of California Avenue, the edge that's part of the site, how extensively did we sample everything in between the areas where contamination was found onsite and the California Avenue edge of the project.

Mr. Piros: I may have to defer to someone else on that. I'm not the technical person on it, so I might have to defer to somebody else on it.

Ms. Gallardo: I'd like to have my colleague also maybe address the question that you're asking about the relationship between the site and what the

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College Terrace study has found so far. There was a figure that was actually a Haley and Aldrich figure that was put up here previously, that showed the area where we have the higher concentrations of TCE at the 1601 California Avenue site and then showed the boring locations between that area and California Avenue. I don't know if that would be helpful to put that back up.

Mayor Burt: If that can be pulled back up, that'd be great. I don't know if anybody knows where it is.

Ms. Gitelman: I think that was one of the public's graphics. That wasn't in our presentation.

Mayor Burt: We'll wait.

Ms. Gallardo: Meanwhile, if it's okay, I'll have my colleague talk about the relationship with the sampling.

Peter Scaramella, Haley & Aldrich: My name is Peter Scaramella. I'm with Haley and Aldrich. There was a preliminary screening done at College Terrace. I think there was 21 homes that were sampled. There was TCE detected, but that's, I would say, a preliminary screening. It's a big leap to then take that data and make conclusions that it's related to the site. We don't know anybody about the buildings, when they were sampled ...

Mayor Burt: You say—I'm sorry. Let me pause there. You say that's a big leap. We had a source on the site, a former Hewlett-Packard (HP) underground sump. It's the only known source of TCE in that immediate area. There could have been incidental dumping on soils in past decades in addition to the sump. When we see TCE including in the subbasement areas, I can understand an assertion that we don't have definitive proof that it is from that location. I don't understand the assertion that it's a big leap to think that it very well may be from that.

Mr. Scaramella: TCE is a very common chemical. It's detected all over the South Bay, in sites in Palo Alto, Mountain View, throughout. It's also in consumer products that are still used today. It's not just associated with Research and Development (R&D) facilities like this one and semiconductors, but also automotive repairs. It's ...

Mayor Burt: We don't have any automotive repairs here. We found it in the—it was found in the crawlspace and not just in the homes. That implies it's not from any consumer products that may have been used there or otherwise. It's coming from the soil. I want to make sure we have a conversation that is not based upon hypotheticals that really aren't well-founded.

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Ms. Gallardo: Just to the hypothetical and not well founded. We've looked at the information that's been generated. We're not questioning the fact whether TCE was detected or not. Right now, in terms of establishing a relationship between the site and what has been detected in College Terrace neighborhood is what we don't know. For instance, as Pete mentioned, TCE is actually found in a number of consumer products. We don't have any information about where the samples were taken relative to what potentially could be in a home. Typically, when you do an indoor air sampling program, one of the things you do is you actually do take an inventory of the products that you have in your home.

Mayor Burt: Just a second. First, my questions were originally directed to DTSC. I'm going to want to return to them in a moment. That seems to be ignoring the crawlspace issue. That's what I had already referred to. Either way, I would be comfortable with an assertion that there has not been able to be established a correlation. I'm very uncomfortable with an assertion that it's a big leap to think there might be. I'll just make that as a personal statement. I'd like to return to the DTSC people. As the objective third party who is acting in the interests of the people, not an applicant and not any particular appellant, but as scientists looking at this as objectively as possible, are you able to think that there could very well be a correlation between the original sump site and what has been found across the street or do you think that that is a remote possibility?

Mr. Piros: Actually I think the way you just stated it actually characterized it pretty well. Given the proximity to this site, you can't discount the site as a potential source of that. I think the thing you just stated, that the correlation hasn't been established, I agree with how you just actually stated it.

Mayor Burt: Thank you. Council Member Schmid.

Council Member Schmid: If I could just follow up that discussion with the DTSC. In our material, we received two notes that the DTSC sent to the College Terrace group and the Public Environment Oversight Group on March 18th. In the one to the Public Environment Oversight Group, there is the section on Page 7 that says data collected at the site adequately characterize the extent of migration of soil vapor. Thus, no additional sampling is necessary. Down below, it says the investigation data consistently indicate the absence of TCE above screening levels outside of the operational area of 1601 South California. That is defined as the residential area as more than 200 feet east of California and does not extend to California Avenue. On Page 2 of the response to the College Terrace Association, there's a sentence that says data collected at the California

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Avenue parcels demarcate the extent of soil vapor impacted by TCE based on the sampling and subsequent evaluation conducted by the State. Soil vapor with TCE at concentrations exceeding screening levels occurs more than 200 feet east of California Avenue and does not extend to California Avenue. Those are pretty clear, definitive statements. That's the material we have to base our decision on. Let me ask again, do you think it would be appropriate for Council Members, depending upon experts from the State, to endorse a zoning map based upon those kind of statements or should we wait for your objective expertise on the information that has come from the California residents west of California Avenue?

Mr. Piros: I think as far as the decision on this site, the data that you have from—as far as making a decision on the zoning map, it's based on data from the site. That's the data that we have at this point.

Council Member Schmid: You clearly extrapolated it and said we do not need to do further sampling. The further sampling has opened up ...

Mr. Piros: At the time with the data we had, that was—we felt that that was the correct conclusion. I think Ms. Gallardo mentioned during her talk that sometimes investigation can be an iterative thing. When you do investigation, you're never going to have 100 percent certainty. In fact, I think there's a USEPA guide that specifically states that, that there's a lot of professional judgment involved. At the time, we believed—we thought it was fairly well delineated. Of course, with the ...

Female: (inaudible)

Mr. Piros: I'm sorry if I didn't state that as I should. I lost my train of thought. As far as the results we just got from the sampling by College Terrace residents is new information which, of course, we have to consider. I'm not sure if the proposed residential development has a lot of bearing which with any investigation or follow-up evaluation that needs to occur to address the results that have been found at College Terrace.

Council Member Schmid: That was one of the fundamental questions that was asked at the beginning.

Mr. Piros: One of the other things I'd mention is there is the area of significant chemical impact, which still remains to be addressed. We need to make a final determination on what's going to occur there. At the least, we're anticipating land use restrictions, but we do need to—in the response to Mr. Siegel's group, I think we did state that there was going to be a summary document that discussed the basis for the action. We are anticipating that there is going to be—we (inaudible) the least land use

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restrictions, but we do need to consider whether other actions need to be taken. We're not done with that area.

Council Member Schmid: Thanks.

Mr. Piros: That's the primary area where the problem appears to have originated.

Council Member Schmid: Thank you very much.

Mayor Burt: Can I try to rephrase Council Member Schmid's question slightly? Do you think that, if you verify the sampling on the west side of California Avenue, it may cause you to want to have additional information about the site itself as a result of potentially finding TCE that may have come from the 1601 source?

Mr. Piros: I think you mentioned just a minute ago about establishing a correlation. I think potentially to establish that correlation, there may be some sampling that may need to occur to establish that correlation.

Vice Mayor Scharff: Can I follow up on that?

Mayor Burt: Thank you. Vice Mayor Scharff.

Vice Mayor Scharff: Mayor Burt's question, the way I understood it—I just want to hone in and make sure I understand it correctly. If the sampling shows that there is TCE on the site and that does show a correlation, would that change any recommendations you have for this particular changes that we're making in terms of the map, what's before us tonight? Or would you come back and say we shouldn't have made these map changes because something else? That's really the question before us; should we make these map changes or not?

Ms. Villamater: No, because if we were able to establish a correlation, we would have to find ways to mitigate the exposure across the street, but it would not change the data that actually has been collected at the 1601 site. No, we would not be changing our determination based on what has been proposed as the layout in that risk assessment.

Vice Mayor Scharff: Any correlation you find or anything else wouldn't change the layout, which is what we're asked to do tonight, to look at the layout.

Ms. Villamater: No, we do not. No.

Vice Mayor Scharff: Thank you.

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Mayor Burt: Council Member Holman.

Council Member Holman: I appreciate this line of questioning. I have a few others, but I'm going to stay focused on follow-up, which is why I put my light in. If there's not a correlation, you said it's not a separate issue earlier. Let's just say that the residents side, the California Avenue neighborhood side, if you do your work and your response to what's been done so far, let's say that indicates there needs to be more testing done, where I'm trying to link these up or not is while I can see the logic of "it doesn't have anything to do with the layout of the project on the east side." This is more of a question for Staff I guess. If we approve the project on the east side and there is mitigation and more tests that need to be done on the west side, who pays? That's the link that I'm wondering if it exists. If we've already approved the Stanford project and mitigation needs to be done, who pays for that?

Ms. Gitelman: A little outside my area of expertise, but I think it's not just a question of whether the testing proves accurate in finding TCE above the thresholds, but can a correlation be established between what is found offsite and this site or some other source. That would determine whose responsibility ...

Council Member Holman: I understand.

Mayor Burt: Can I try and answer that, Council Member Holman? Let me just try and answer your question. The responsible party will pay either way or be pursued either way. We can let the experts from DTSC—that's actually their expertise rather than our Staff.

Council Member Holman: I guess my question is would the neighbors have to—let's just say there is a correlation. Who knows? None of us know exactly at this point in time. Let's just say there is a correlation established. Do the neighbors have to sue to get the mitigation done? What's the mechanism—how does that happen so the neighbors aren't just on the hook for mitigating and remediating what they find on their site? Presuming that there's a connection found.

Mr. Piros: I think it depends on basically what's the mechanism that it's getting there by. One thing I think we have to look at is are there any preferential pathways. I think if there are some preferential pathways, we may ask Stanford to do something in that regards. If it's another source, we'd have to—the State always has the option of taken enforcement action if necessary any time anybody's a responsible party.

Council Member Holman: I'm sorry, go ahead.

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Mr. Piros: I don't know that there is another source. Sounds like this has been a residential area for a long time. Hypothetically speaking, if there was another source, we do have mechanisms of pursuing action by anybody that's caused contamination.

Council Member Holman: There's doesn't have to be a linkage. If something's discovered and there needs to be a mitigation/remediation, that can be enacted by your entity without cost to, in this case, let's say homeowners.

Mr. Piros: We can pursue action. I won't say ...

Council Member Holman: Tell me what that means. Be more specific. Pursuing action, what does that mean?

Mr. Piros: It's hard for me to generalize because it varies specifically. If you do have—any time there is a contaminated site or DTSC has established that somebody has caused a release, we do have enforcement authority. Like I said, that's speaking very generally.

Mayor Burt: Council Member Holman, I think it's an important distinction that that—I'll ask the DTSC folks to confirm my understanding. That's independent of the land use action. It's not contingent on it. It's not actually even related to it. We may wish it were, but it's not.

Council Member Holman: That's what I was trying to determine.

Mayor Burt: That's what I was trying to tell you.

Council Member Holman: The other thing that I wanted to ask you, if I could please. There's been mentioned a couple or three times that it was written somewhere in all this stuff that we have to read that these chemicals are found in paint and all kinds of different things. Some of the levels that have been at least preliminarily discovered in the residential properties, how much—is there any way of knowing how much—let's just use something, paint. How much paint would one have to have onsite to cause those levels of testing results? I'm not asking you for 72 gallons or 15,000 gallons. Is it reasonable to think that a residential property could have that much of something that would contain those TCEs to create that kind of a reading?

Mr. Piros: I don't think it takes much. I think actually Mr. Siegel mentioned one case where somebody with gun cleaner. I believe it was a site in San Leandro where, I think, gun cleaner was also the culprit. That's one example I can give you. If somebody goes to clean their gun and they're using gun cleaner, it can—in the case of one DTSC site in San Leandro, there

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was a significant detection. It was attributed to the person using gun cleaner in the residence.

Council Member Holman: That was a significant reading?

Mr. Piros: Yes. It was above the human health risk-based screening level.

Council Member Holman: I have a couple of other questions, but they aren't related to this specific thing.

Ms. Klein: I just want to interject one thing. When I talked about the screening levels in indoor air, they are very low, 0.48 micrograms per cubic meter. It really doesn't take very much of a consumer product. You could open a marking pen in the vicinity of where the measurement is being taken, and you could possibly see enough of that stuff coming off a marking pen that it would impact the measurement. With respect to TCE, TCE is not only found in gun cleaner or in automotive products, which you said really wouldn't be around, but you would also find it in rug cleaners and arts and crafts adhesives. It is really pretty predominant in a lot of products.

Mayor Burt: Can I quickly ask? Does the presence in the crawlspace significantly imply a different source?

Ms. Klein: I think that the crawlspace issue is one that we can't answer specifically because one of the questions that I would have is what is the configuration of that crawlspace, could it ever have been used as a storage area that somebody would just ...

Mayor Burt: For marking pens or whatever?

Ms. Klein: No. For paint thinners—actually that's not a good example. Rug cleaners or—I don't know. I'm just saying that I don't know, but that was one of the questions that we have about whether there was any use to those crawlspaces.

Mayor Burt: That's the distinction I would make between hypothetical possibilities, and what I was referring to was implication. My question was when we have a series of homes with it in the crawlspace, does that provide an implication that it's not probably from those home usages. Not a proof, an implication.

Mr. Piros: Like I mentioned, I think we cannot discount the data or the sampling results that have been presented to us and the possibility of this site being a source. Again, as we talked about, we have to establish the correlation. Seeing it in the crawlspace—there was one home we saw that



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there was nothing detected in the crawlspace but in the indoor air space we see a detection. To me, that's a little suspect. To me it suggests a source that may be indoor. If you're seeing it in the crawlspace, there is a possibility it may be coming from the subsurface.

Mayor Burt: Thank you. Council Member Wolbach.

Council Member Wolbach: I guess there's really a couple of key questions here that kind of fall under the broader category of how much do we want to apply the precautionary principle here. How much do we want to be very risk averse, potentially to the degree of preventing any action versus how much do we want to move forward in the face of risk and potentially cause harm to residents? That's kind of how I'm looking at this. The two areas of concerns, that a couple of my colleagues have mentioned, is onsite and offsite. On the proposed development and also in the neighboring residences in College Terrace. Let me start with onsite questions and concerns. We've had some discussion about the remediation, the mitigation efforts proposed by Stanford. One of which is moving the properties. The properties are being moved to increase safety to residents on the future site. That's a positive step towards increasing safety in the face of TCE contamination onsite. There is a proposed vapor barrier a significant slab as well as some extra dirt or extra soil. A number of remediation efforts that have been proposed by the applicant to increase safety for future residents on the site. I just want to make sure I'm clear on that after all the discussion we've had. There is a suggestion from some that we go a step further, to include sub-slab depressurization or ventilation, either passive or active ventilation. That's been proposed; it's been discussed this evening. The applicant has not planned to include that. DTSC says that it's not necessary. I would be curious to hear whether that would include any exorbitant cost, whether that's something that in addition to the remediation efforts already proposed, if that's something that the applicant had considered or if it's something that was novel and suggested to the applicant only recently so that they haven't thought about it or if they've gone through thinking about, "Maybe we should put in some sub-slab depressurization or ventilation and it's just way too expensive." I'm just curious how much that's been considered at this point by the applicant.

Mr. Wuthmann: It definitely has been considered prior to Mr. Siegel's suggestions. He has often referred to if it's good enough for Mountain View, it's good enough for Palo Alto. The area of Mountain View where this is primarily being applied, the geologic situation there, conditions are very, very different from the conditions at our site. There is shallow groundwater there. There's a very large groundwater plume there. DTSC commented earlier that what we are proposing is above and beyond, above and beyond

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what typically is proposed with the 10-inch-thick post-tensioned slabs and the vapor barrier on top of moving the houses. Because it's our preference to go that far but not put in a system that requires ongoing maintenance by our faculty and because of the extra comfort provided by the above and beyond we are doing, that is where we are at, at this point.

Council Member Wolbach: How much—just so I have maybe a ballpark of how much ...

Mr. Wuthmann: It's not a cost issue. It's absolutely not a cost issue. There's very significant costs in the foundations we're doing and the vapor barriers we're doing. It's absolutely not a cost issue.

Council Member Wolbach: If it's not a cost issue and it would increase comfort for those of us on the Council and on the Staff and in the community concerned about the safety of future residents, is it something that the applicant could still consider adding in addition to those measures which have already been discussed and proposed?

Mr. Wuthmann: If we were to consider it, it would frankly be at our discretion. It is a—yeah, that's (inaudible). Our feeling is that it is a comfort perception. It is not necessary on top of the mitigations already built into our assembly.

Council Member Wolbach: Thank you for your clear response on that. I will have to consider that response. On neighborhood safety, the other big area of concern here. Let me be clear. I think we're all thinking about these various mitigation efforts, what the right path forward is. I do want to say I do recognize that the purpose of us hearing this tonight, the purpose of the reorganization of the plan is to increase safety. I do want to give the applicant credit for doing that. The question is, is it enough, do we want to go further especially if cost isn't the primary issue. As for neighborhood safety, we've had a lot of discussion about how we can't say for sure that any TCE detected at neighboring properties is necessarily a result of TCE at this property. I don't know that that's even really the relevant question for tonight. The question for tonight, for me at least, is if we allow this project to move forward tonight and construction continues on this site and at a later time it is identified hypothetically, as it is a possibility still, that horizontal movement of TCE from this site may cause TCE contamination at neighboring properties, if we allow this project to move forward, would that in any way inhibit or preclude future mitigation efforts to isolate or remove the TCE at this site? Are we closing any doors in the future if this construction moves forward? That's, I think, my biggest concern. I want to make sure that whatever happens on this site, does adding the homes on

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top of the property mean it's hard to do in the future some kind of additional barriers to prevent horizontal transmission. Does it prevent future opportunities for a deeper cleanup if that's deemed necessary in the future in order to provide additional safety for neighboring residents?

Ms. Villamater: With respect to the onsite development, if there is a correlation made and considering we have removed the source of TCE from the site itself ...

Council Member Wolbach: The sump itself has been removed.

Ms. Villamater: The sump itself, correct. We don't see how it would—considering how it happened approximately 30 years ago, we don't see any of the data that we've collected so far changing if we were to do additional data. That being said, we don't see how if you were to—I don't see us adding additional measures, I should say, to be more protective because we don't anticipate any changes in the data that we've already collected.

Council Member Wolbach: That's reassuring. My question is a little bit different. It is a little bit of a hypothetical and perhaps it's not—it's perhaps a little bit of hypothetical. If we did determine in the future that the TCE that is remaining onsite, as there is some, if we determine in the future that some horizontal transmission of that might be going across the street or going to adjacent properties and creating a contamination at those other properties, would the construction of these homes prevent future cleanup or future horizontal barriers?

Mr. Piros: I think in this case, if anything was to be done, it'd have to be focused in the area of significant impact. Anytime you do a site cleanup, you're usually going to target the source. The term "secondary source" is used too basically where you have remaining high levels of contamination. As far as (inaudible), we're talking about seeing maybe some exceedances of the screening level. In terms of mediation, you look at potential remedial methods. TCE, the type of contaminant we have here, one potential method is soil vapor extraction. Usually when you get to these, you may be above the screening level, but in terms of doing remediation, it's not real effective. We do have some sites where we have soil vapor extraction being done. What we're finding is we're starting to hit the—we're getting so much of a reduction in contaminant concentrations and it starts to level out.

Council Member Wolbach: Point of diminishing returns basically.

Mr. Piros: I'm starting to get tired here, I think. That is what I was trying to say.

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Council Member Wolbach: I'm picking up where you're going. We're on the same wavelength.

Mr. Piros: I know we have a few drycleaner sites in the South Bay, where our target was to get to unrestricted use levels. We're just not getting there. The problem is you have clay soils that tends to limit your movement. We're talking about potential migration, but it also does tend to cause you problems when you're trying to—not only when it's migrating outward but when you're trying to pull it into your extraction well, it tends to limit how well the TCE or other volatile organic compounds are moving through the soil. What I'm saying is that as you radiate out from where we believe the release originated, I don't know that—you look at what remedial methods might be implemented. There's soil vapor extraction and certainly excavation. You're excavating a lot of soil just to get what's in the void space. There's not a lot of contaminant mask there.

Ms. Klein: I just want to add one thing about your question about vapor migration horizontally. The applicant is going to be putting in vapor plugs to prevent any offsite migration due to the utility lines that are being put in. I just wanted to mention that as well.

Council Member Wolbach: That sounds like by allowing this project to move forward, we might decrease the possibility of horizontal transmission rather than increase it or is that just an effort to make sure that the new transmission lines put in as a result of the construction don't cause additional horizontal transmission.

Ms. Villamater: The second.

Council Member Wolbach: Basically it's neutral. If there is a risk of horizontal transmission, this project will neither increase nor decrease that potential transmission. It didn't sound like—I guess I didn't get a super clear answer, but I didn't hear any comments from DTSC that allowing this to move forward would prevent future efforts to remediate or to protect the neighboring communities. If anyone at DTSC has a different thought on that, I'd love to hear it.

Ms. Villamater: I believe what you said is correct.

Council Member Wolbach: I think that's something for me to think about as we move forward. Thanks.

Mayor Burt: Council Member Filseth.

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Council Member Filseth: Thanks very much. Just a couple of questions. I just want to make sure that I understand what you said a minute ago and a little bit earlier correctly. The way we got to this point is there's a plan. We took a bunch of samples and we discovered there's a toxic plume down here. The remediation for that is move some houses over here and do some other stuff. That looks like it'll fix it. The neighbors went out, and they did some of their testing across the street. The reason the remediation will work is because we're making certain assumptions about the soil and the mobility of the vapors through it and so forth. The neighbors went and did some of their own samples. They said, "Wait a second. We're seeing this stuff over here where it's not supposed to be; therefore, your assumptions about how much there is and what the transmissibility through the soil. Therefore, we need to revisit this issue over here on 1601 California. If I understand what I think I heard you say, it's no. Our data on 1601 California is still good. If you've discovered stuff across the street and if it is related to the plume that's under 1601 California, that's an issue we need to deal with across the street, but it doesn't impact anything that we measured on the site itself. Is that right?

Mr. Piros: Yes.

Council Member Filseth: Thank you. The other question is just to what Cory asked a minute ago. I think he's asking if you foresee any circumstance, based on what we find across the street and whether it's related to this, where we might want to come back and dig a great big hole on 1601 California, but we can't because there's houses in the way. I think you said no.

Mr. Piros: I'm sorry. I'm not sure I understand what you said about digging a great big hole.

Council Member Filseth: His question about the modified design and remediation, if I understand it right, is do you foresee any circumstance, based on what we find across the street and so forth, you might come back and say, "We need to dig a big hole in 1601 California in order to get rid of this stuff," but we can't because we built a lot of houses on top of it. You don't think that's likely to happen?

Mr. Piros: I don't foresee that. Usually, if you're going to dig excavation, you have a very significant contaminant source. Like I said, even though we're above screening levels, you're probably not talking massive contaminants. The short answer to your question is no, I don't foresee that we'd need to be digging a great big hole.

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Council Member Filseth: To summarize, the opinion I think we're hearing is that the remediation proposed by Stanford with the 29 units from a perspective of dealing with toxicity issues, which is different from sort of architecture and design issues which a couple of people have brought up too, is at least good enough. Irrespective of what they discovered across the street, you don't think that would render that invalid?

Mr. Piros: No, I don't.

Council Member Filseth: Thanks.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: I really appreciate Council Member Filseth's and Council Member Wolbach's summary of that. That was sort of where I was trying to get to in my head, what you just stated. To summarize in my own way, what I just heard was if we approve this, it does not put the neighbors in any worse situation across the street. Approving this increases safety and makes for a safer and better environment. Therefore, I haven't heard any argument as to why we shouldn't approve this based on the toxicity issues. Would that be a fair summary too?

Mr. Piros: I think so, yes.

Vice Mayor Scharff: With that, I'll move the Staff recommendation.

Council Member Kniss: I'll second it.

**MOTION:** Vice Mayor Scharff moved, seconded by Council Member Kniss to adopt a Record of Land Use Action (ROLUA) regarding the Amendment to the Final Map for Tract Number 10281.

Mayor Burt: You want to speak to your Motion?

Vice Mayor Scharff: I do. Obviously what I'm most concerned about here is making sure that, one, the College Terrace neighbors are not put in any worse situation. I haven't heard anyone articulate why they would suffer from us doing this. The second thing is obviously I wouldn't want the new Stanford residents to be in any danger. Frankly, I think it's unlikely that Stanford would want to put their own residents in danger. I've got to say I think that's unlikely. It is our job to look at that. We have DTSC telling us that what Stanford is doing is appropriate. In fact, they're going above and beyond. Given the fact they're going above and beyond—the only person who has articulated anything that they should do more of is Mr. Siegel. I wasn't completely happy with Stanford's answer; I thought it was not the

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best answer. I didn't DTSC say you should do this. If DTSC told me it would be better to do this or that there's a reason to do it, I would include that in the Motion frankly. I might even be open to including it in the Motion anyway, frankly. That would depend on ... I think we should move forward on this. I hope DTSC will take the neighbors concerns very carefully. I'm sure they will. If there is contamination, I would expect the responsible part, whoever that is, to step up. Hopefully, you guys will use whatever it is to get that done.

Mayor Burt: Council Member Kniss.

Council Member Kniss: Hearing that these two are quite separate, which is certainly what I heard the entire group of you say, I'm seconding this because I think we should follow the recommendations of Staff tonight. I hope we'll continue to be aware of the neighbors' property and whether or not there is any aspect of that that can be faulted on Stanford or in some other way on another—someone way back when, maybe HP. I think you probably cannot tell when that happened. Am I correct?

Mr. Piros: I'm sorry (inaudible).

Council Member Kniss: You probably don't know when the contamination that the neighbors are speaking about could have happened?

Mr. Piros: No.

Council Member Kniss: As I understand it, testing probably wasn't done 30 years ago or 20 years ago. This is troubling. I feel bad for the neighbors, but we've listened now for about 1 1/2 hours of testimony. It's pretty much stayed the same. The consistency is what has made me second the Motion and support the Vice Mayor Scharff's Motion to go forward. .

Mayor Burt: Council Member Holman.

Council Member Holman: We have focused primarily on the issue of the toxics and that's appropriate. I do have a couple of other things to bring up. Before I go there. Because it's so important, I do understand that if there's an issue that has to be remediated, then whoever the responsible party is, then DTSC has the authority to hold that entity responsible and accountable for costs associated with that remediation or mitigation. Correct?

Mr. Piros: Yes.

Council Member Holman: That's not associated with approval of this project then. Just a little clarification, if I can, around some issues around that. I'm

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supposing that the residents have paid for their own testing to this point in time. Can they recoup that cost if it turns out to be—I'm not assuming one way or the other. Let's just say for purposes of conversation, if there is a link determined from the 1601 or whichever site, can the residents recoup the costs of testing? At what point is more testing justified at whose expense?

Mr. Piros: I think as far as recouping the cost, we don't really have a good way to accomplish that for the residents.

Council Member Holman: Say that again please. I'm sorry.

Mr. Piros: As far as recouping the residents' costs if a connection is established, I don't have any past experience with other sites where I've done that. I don't think we have a good mechanism to accomplish that. As far as recouping their costs, I don't think we have a good way to accomplish that. I'm sorry, what was the second part of your question?

Council Member Holman: A tangent to that. Let's just for the sake of conversation say that you take a look at the samples—you have the samples that they have submitted. If there's more testing that is merited, does DTSC pay for that or do the neighbors have to also pay for that? What's the consequence of that?

Mr. Piros: If it appears there is some connection to the site, we'd have to request that Stanford do sampling. I think the first thing we need to do at this point is just—with this being new information, usually when you're—as far as the status in this correlation, usually what you do at the site is you come up with what you consider the conceptual site model. I think that's the first thing we need to do here; revisit our conceptual site model just to try to determine how basically a TCE may have gotten from Point A to Point B.

Council Member Holman: A point that Mr. Siegel brought up, a plan that was up here earlier. If I get this incorrect, you'll correct me. There was one of the homes that had been—I think it was a relocated home—that was 50 feet from the sample site, but not necessarily 50 feet from the contamination. What would be your response to that? Did I capture that correctly?

Mr. Piros: I might have to defer that question.

Ms. Gitelman: Council Member Holman, I think the suggestion was that the site hadn't been characterized adequately by Mr. Siegel. He was saying that it may be 50 feet from the hotspot that's identified, but perhaps not from



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contamination. That's a suggestion that the contamination hadn't been fully identified, I thought.

Council Member Holman: That's correct. I think we're saying the same thing. My question is, is that home far enough away from the point of larger contamination. It wasn't clear if there had been done enough drilling done or sampling done.

Ms. Gallardo: For most of the sampling location ...

Mayor Burt: I'm sorry. I'm sorry. Just a second. Our procedures are that members of the public or the applicants have to be called on to be able to speak. Council Member Holman, if you want to ask a question of the applicant or whoever.

Council Member Holman: You're welcome to respond to the question.

Ms. Gallardo: Sorry about that. For most of the sampling locations, there was an additional sampling location between where we had a higher concentration and then a low concentration before the home. The one location that Mr. Siegel pointed out, there was in fact not an additional sampling location to the home, but one right near or on that same lot, where we did not get an elevated concentration of TCE.

Council Member Holman: If the sampling was on or near the lot and it didn't show much, that doesn't indicate necessarily to me that it was 50 feet from the point of the intense toxic situation.

Ms. Gallardo: Honestly, I have not measured it. At that location, there is not an issue of TCE beneath that home.

Council Member Holman: My other questions have to do with Staff. There was something stated earlier that none of the streets had changed. Looking at the maps, there is a new cul de sac, an Amherst Court. There was a comment made also that there are now no sidewalks on Amherst. Can Staff respond to those questions please?

Ms. Gerhardt: Related to the additional cul de sac off of Amherst, I assume you're wanting to address the fire issue. Is that your concern with that one?

Council Member Holman: Width and fire issue both. Is it navigable? Is it fire accessible? It looks to be a right-angle turn.

Ms. Gerhardt: Yes. That's the same as the other cul de sacs that are within the development. Many years ago when this project was appealed to Council, there were concerns about cul de sacs. There are on the other end

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of the property some much longer, sort of alleyways, cul de sacs. Those were reviewed by the Fire Department at that time. It was found that response time was sufficient. We don't see any issues with the newly proposed cul de sac.

Council Member Holman: What about the removal, if it was removed, of sidewalks on Amherst?

Ms. Gerhardt: To the best of my knowledge, both sidewalks are still proposed. I would ask the applicant to confirm that because I'm coming in late on this project.

Council Member Holman: Please.

Mr. Wuthmann: Both of the sidewalks on Amherst Street are still in the plan as they were when the tentative map and final map were approved. I think what was being referred to is the new cul de sac does not have sidewalks in it, just like the other cul de sacs in the plan do not have sidewalks in them. I think that's what was trying to be stated.

Council Member Holman: The last question, I think, is for Staff. Then, I'll have a couple of comments. The Record of Land Use Action seems to me to be incomplete. You had mentioned the one Comprehensive Plan reference that Bill Ross had mentioned. I don't see anything on here that says, which is typically the case—it's more the architectural review findings. Why wouldn't it be here since the architecture has changed that the plans will be built according to significant—be built—what is the language used? According to the plan set submitted and approved on X date. There's nothing here. It's not clear to me what the Council is actually approving in a specific and identified manner according to the Record of Land Use Action.

Ms. Silver: There is an existing Record of Land Use Action that deals with all of the conditions of approval, the architectural review, all of the standards conditions. That's still operative. This particular Record of Land Use Action is only meant to memorialize this discrete amendment to the final map. That being said, we do recommend that there be at least two modifications. One is, as Director Gitelman mentioned, the incorporation of the consistency findings. Second, a standard indemnification provision.

Council Member Holman: Understanding that the other Record of Land Use Action exists, but there's no reference to, unless I'm not reading this correctly, to these subdivision map plans that have been submitted. How do we know—it talks about the address and such, but how do we know it's this plan set that we're approving? It refers to the tract number and such. How

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do we know it's this plan set that we're approving? Do you find it somewhere or not? No? Can we add that?

Ms. Silver: I see what you're saying. I think you're right. I think we should add a recital "D" clarifying the amendment and identifying the particular application for the final map.

Council Member Holman: I'm presuming that's good with the maker. Would you accept that?

Vice Mayor Scharff: (inaudible)

Council Member Kniss: So do I.

Vice Mayor Scharff: in fact, I'd like to add the other two as well so we don't lose track of them.

Council Member Holman: Adding a reference to the Comprehensive Plan. What was the second one you mentioned, Cara?

Vice Mayor Scharff: It was the standard indemnity agreement and the incorporation of the consistency finding.

Council Member Holman: With the map plans that have been submitted.

Vice Mayor Scharff: With the original map.

Council Member Holman: No, this map plan.

Vice Mayor Scharff: Okay.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion,

A. Including the following additions in the ROLUA:

- i. Incorporated Comprehensive Plan consistency findings; and
- ii. Standard indemnification clause; and
- iii. A reference to the Amending Map of Tract No. 10281.

Council Member Holman: The other thing is—what we have on the plans is just the map. What we have in the Staff Report and in the presentation and such is where the home layout is. What weds the applicant and their approval to the layout that's been presented? I don't find anything that

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weds them to this plan of home design, home layout, street layout. The street layout is on the map, but the homes aren't.

Ms. Silver: You are adopting a separate document which is the final map that is actually approved by the City Engineer.

Council Member Holman: If you look at the maps, there are no buildings indicated about locations and such. It's just the lots.

Ms. Gerhardt: The Development Agreement restricts the areas in which we can regulate. These are homes on the interior of the site and, therefore, not under our discretion other than massing and scale and things of that nature. There are no interior setbacks and things that you would normally think of.

Council Member Holman: There is mass and scale. There's some number of units. Is there no Floor to Area Ratio (FAR) even? I don't recall that long ago. What I'm saying is we're just giving a blank check here, it seems like based on prior approvals, and this is not the same. I'm just trying to get clarity on what it is we're approving and passing on.

Ms. Silver: Basically you're just approving the lot lines at this point. You've already approved all of the architecture that you had purview over under the Development Agreement. Now, you're just simply reconfiguring the actual lot lines and street lines on a map.

Council Member Holman: How do we know the houses are going—what assurance do we have going forward—not that Stanford wouldn't want to do this. What assurance do we have in a record that indicates that, let's say, the home that Mr. Siegel identified is actually going to be 50 feet away from that point? We have a Staff presentation and a Staff Report. How do we know that's where it's going to be located? How do we know that those barriers are going to be created? What do we have that indicates that these mitigations are going to actually happen? It's not in the Record of Land Use Action in front of us tonight.

Ms. Silver: That's a fair point. I think that you do have discretion to impose some additional mitigation measures. DTSC will, of course, will take care of that in their regulatory action. We would also suggest that if you want sort of a belt and suspenders approach that you also adopt as additional mitigation measures in this Record of Land Use Action the mitigation measures that are identified in the Disclosure Statement ...

Council Member Holman: Can you point us to a page? That would be helpful.

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Ms. Silver: It's Packet Page 80 and 81. There are six additional mitigation measures. That would give you some further assurance that the mitigations are being followed.

Council Member Holman: Can I offer that as another Amendment to the maker of the Motion?

Vice Mayor Scharff: (inaudible)

Council Member Holman: It's Packet Pages 80 and 81.

Vice Mayor Scharff: I'm not sure why mine doesn't seem to have Packet Pages in it.

Ms. Gitelman: It's in Attachment C, the correspondence. It follows the newsletter.

Vice Mayor Scharff: Fifteen and 16.

Ms. Gerhardt: Of the correspondence.

Council Member Holman: While you're looking for that, Vice Mayor, I don't see on this that ...

Vice Mayor Scharff: Your question was would I accept these and these were the suggested mitigations if we wanted belt and suspenders ...

Council Member Holman: Additional condition of approval.

Vice Mayor Scharff: I'm fine with that. Put those in.

Council Member Holman: Thank you.

Council Member Kniss: I think I'm fine with that if I find it.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND THE SECONDER** to add to the Motion, "Six Mitigation Measures identified in Environmental Disclosure: University Terrace Project, Palo Alto, California, March 2016, Section 4.1." (New Part iv)

Council Member Holman: The other thing that this doesn't seem to cover is that homes will be at a minimum 50 feet away from any—what's the word I should use there? Point of ...

Ms. Silver: TCE sample location or hotspot.

Council Member Holman: Can we add that too? That's not in here.

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Vice Mayor Scharff: That's not in there, correct. Can I ask Stanford if they have any concerns with that?

Council Member Holman: It's what they're saying they're going to do. Go right ahead.

Mayor Burt: Yes, you may.

Mr. Wuthmann: No, we have no concerns with that. I think that's a good addition. We'd endorse that. That's how the plan has been engineered.

Vice Mayor Scharff: That's fine.

Council Member Holman: Thank you. I think the last question. There are sites that—I'm not sure if it's a question for Staff or DTSC or both. There are parts of these sites that you don't want anybody digging in, you don't want anybody planting a vegetable garden in, you don't want anybody building a basement underneath the house, you don't want people adding houses in these particular areas. Again, we have—especially in this case because we have limited review capability. What happens over time that protects these things from happening?

Ms. Gitelman: One of the conditions that we just added is the site management plan condition. DTSC has indicated there will have to be a site management plan or land use controls in place in that area where the hotspots occur. It's the open space area. That will be taken care of by the mitigation measures you just added to the Record of Land Use Action.

Council Member Holman: Including more minimal but still unsafe activities? This seems to be kind of large scale.

Ms. Gitelman: This is where DTSC would impose any restrictions on digging, on uses of the area or anything like that.

Council Member Holman: Will the site be posted so that people will know don't go there? We tell people call first, don't dig. We make people aware of those kinds of things. Will this site have some kind of notifications like that?

Ms. Gitelman: I don't know. This will be determined in this next phase by DTSC, what these management conditions or what the management plan will consist of.

Council Member Holman: Mr. Mayor, can I ask DTSC that question?

Mayor Burt: Sure.

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Mr. Piros: Usually it's sites where there's contamination remaining above unrestricted use levels. When I say sites in this case, it would be the area where there are going to be no residential units constructed. Typically, what we put in place is a land use covenant with the site owner. You asked a question about signs keeping people out. The big potential risk here is from the soil vapor intrusion. One of the primary restrictions would be against any future building over that area. As far as people entering the area, it's not like there's shallow soil contamination where the people are going to come into contact with it and it's going to cause adverse health effects. If you were to construct future buildings there, they would need some sort of vapor intrusion mitigation system. There will probably be some other restrictions. As far as addressing any potential risk, that would be the primary one, limitation on future construction of buildings in that area.

Council Member Holman: I think what you said at first—there would be a covenant put on the site. Is that what you said?

Mr. Piros: There would be a land use covenant. It's an agreement between the site owner and DTSC. Of course, that's recorded with the County.

Council Member Holman: That's helpful to know. I think that has to do with my questions. My comment would be I'm not sure I agree with the process on this. I think it's unfortunate. We had a project here earlier, the Maybell project. It's a small site. This is a much larger site. I think there were so many missed opportunities here. I was hoping that we would have an opportunity to send this back to get some other things done. We talked even about a path, a pedestrian/bicycle path on the Maybell site. This is 17 acres basically. I'd argued long and hard earlier for a road that continued post-construction here. I won't go on and on about it. I think there's so many things that could have made this a better community. It could have been a better project. It could have reduced car trips and enhanced pedestrian and bicycle passage. I will leave it at that. Wish our neighbors on the west side of the street all Godspeed and good health, and trust that DTSC will follow up with them, report back any findings that you make. We will expect to hear. Thank you.

Mayor Burt: Council Member Schmid.

Council Member Schmid: I just wanted to follow up on that last point. By approving the map tonight, we are not dealing with the issue on the west side of California Avenue. Yet, data has been presented that says there might be preferential pathways connecting, linking from the source across California Avenue. I guess the DTSC has said that they will have a timely

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response to the data that's been presented. I guess we look forward to those results and any linkages that might be made to the source.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: First, I'm just going to say that I wish Palo Alto had clearer rules, maybe some more consistent rules, around how we handle concerns about TCE. There's been some discussion about that in the community. There's a group of enterprising students at Gunn High School that's been focused on this, and some other people in the community that have been focused on this. I think the communication between those community advocates and Staff has already been initiated. I look forward to furthering and being part of that discussion, seeing the community have that discussion for the long term. When cases like this come up, everybody is on the same page about what the rules are and just so we have greater clarity as a community rather than the lengthy discussion. I think this has been very educational for all of us. There was a hint from the maker of the Motion earlier that he would be open to an amendment. I first wanted to turn to the applicant. I understand that it is not the preference of the applicant to include sub-slab ventilation or depressurization. I've also heard from the applicant that financing was not the reason for that preference. I was wondering whether they would be comfortable with that being part of this project. I think it would increase the level of comfort by the community and also by the Council.

Mayor Burt: You're asking what?

Council Member Wolbach: I'm asking whether they're comfortable with sub-slab depressurization or ventilation being an additional mitigation measure.

Mayor Burt: I'll allow that question.

Mr. Wuthmann: I appreciate the concern. We are concerned for the health and welfare of our faculty members as well. That said, we are concerned about instilling within faculty members a sense of security deriving from something that we know from practice they may not maintain, want to maintain. That said, we would like to ask since we still have closure work to do with DTSC, to work with DTSC on this. If they come to the conclusion that it would be materially beneficially to improving the protection against indoor air intrusion, then we would be willing to consider that. Since DTSC will be still working with us on the post-construction requirements and regulations, we would like to work with them on this and leave it up to their professional judgment.



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Council Member Wolbach: Given what I've heard from DTSC thus far, they think you've already gone above and beyond what's necessary for the site. I think it's highly unlikely that in their professional judgment they'll ask you add such sub-slab depressurization or ventilation. I guess I look back to the maker and my colleagues to see if anyone else is interested in pursuing this question further.

Mayor Burt: If you want to offer an amendment, offer an amendment.

Council Member Wolbach: I'll hold off on—I'm trying to figure out the best way to phrase this. I'll just offer it as an amendment, and hopefully it'll be friendly. An additional vapor intrusion protection be added in the form of sub-slab ventilation or depressurization.

Vice Mayor Scharff: I'm not going to accept. I don't feel that strongly one way or the other actually. I was interested in their comments that it actually would be difficult to maintain.

Mayor Burt: I'll support the amendment.

**AMENDMENT:** Council Member Wolbach moved, seconded by Mayor Burt to add to the Motion, "an additional vapor intrusion measure be added including sub-slab ventilation or depressurization." (New Part v)

Mayor Burt: Do you want to speak further to it or can we ...

Council Member Wolbach: Just to speak very briefly again. Cost isn't the issue. I think it's worth including. It'll again increase the level of comfort in the community and on the Council for approving this project.

Mayor Burt: I'll just say briefly that I think this site does have ongoing concerns about the residual contaminants and toxics. Additional measures would be prudent. To put them in at the outset is the lowest cost way to address it. That's my reason for supporting it. Does anyone else wish to speak on the amendment specifically? Let's vote on the Amendment. That passes on a 6-2 with Council Member Schmid and Filseth voting no.

**AMENDMENT PASSED:** 6-2 Filseth, Schmid no, DuBois absent

Mayor Burt: Council Member Filseth, did you want to speak on the main Motion?

Council Member Filseth: I had one more question I want to ask DTSC if possible. You indicated a couple of times that you have this model. The model predicts that there's not going to be a lot TCE on the other side of the streets. The residents have come back and said they've found TCE on the

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other side of the street. You've said a couple of times that you're going to review that information and update your model. How long is that going to take?

Mr. Piros: I think we're talking a relatively short timeframe. I don't know that I can give you an exact timeframe. We've already reviewed their sampling reports. We do have some additional information we need to get from the residents. It would help us to know where they did get some detections, what the locations of those are. Obviously, I think we're going to need to have some discussion with Stanford too. If there is any further action required, we're looking at them to fund it. I think we're talking a relatively short timeframe. I'd say hopefully within the month.

Council Member Filseth: It's not like end of year.

Mr. Piros: I'm not looking at a long, drawn-out process.

Council Member Filseth: The reason I ask is the residents are saying your model must be wrong. We're going to resolve that in the next month is what you're saying. That's good.

Mr. Piros: That's our target, a relatively short timeframe.

Council Member Filseth: Thank you.

Ms. Gitelman: Mr. Mayor?

Mayor Burt: Yes.

Ms. Gitelman: A quick question. I was wondering if the Council would be interested in adding the timing condition that we raised in our supplemental memo to Council. It was a suggestion that we say that we're not going to issue the building permits for those seven homes closest to the hotspots until after there's been a no further action issued.

Vice Mayor Scharff: Yes.

Mayor Burt: The make and the seconder have accepted that. We'll let you work through—Director Gitelman, if you can add that to the language.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "direct Staff to withhold issuing building permits to the seven homes adjacent to the hotspots until the California Department of Toxic Substances Control (DTSC) issues its No Further Action determination." (New Part B)

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Mayor Burt: I have a final question. Council Member Holman had raised issues around a spur road. Mine is more modest, but a concern. My understanding of the map is that there are no pedestrian accesses out of this site other than to California Avenue. Is that correct? We didn't really discuss this. Why is that?

Ms. Gerhardt: There were several discussions about that as part of the original proposal. Originally there was conversations about having a street or pedestrian access out to Page Mill Road. That was determined to be—the applicant was not offering that. It was not required. There was no impacts that needed to be addressed that would require such a connection. That's why it wasn't implemented originally.

Mayor Burt: When you say it's not required, is it within our discretionary approval?

Ms. Gerhardt: There were no CEQA impacts that would have required that connection. From a transportation perspective, there are several connections to California Avenue. We felt with the original proposal that that was sufficient.

Mayor Burt: That didn't really answer my question.

Ms. Gitelman: I believe this was the subject of quite a bit of discussion when the Council first heard the tentative map a year or two ago. We'd have to look back into the record about what the discussion was about and why the final decision was made not to include that. We could certainly do that.

Mayor Burt: My question was whether it's within our discretionary approval.

Ms. Silver: We'd have to look back at the Development Agreement as to what is in your overall approval. I know that tonight the particular subdivision map act section that allows for this change in circumstances on the final map limits the Council's discussion or the discretion to amend the final map to just the changed circumstances. If you want to pursue this, you would have to link it to the changed circumstances that's in front of you tonight on the reconfiguration of the homes.

Mayor Burt: Link it that there has to be a nexus or simply link them?

Ms. Silver: I think both.

Mayor Burt: That's disappointing. I do think that the planning for a development of this size without pedestrian access other than out California

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Avenue is really a lost opportunity. It certainly could have been imposed. I don't recall the full discussion. I certainly recall that there were Council sentiments of interest in having expanded circulation.

Council Member Kniss: I recall the (inaudible). I don't know what happened to it.

Mayor Burt: There are separate issues between a roadway and pedestrian access. I think the pedestrian circulation is important. The notion that folks from the interior of this development should have to go out Amherst to California Avenue to Hanover to Page Mill Road to get to the 100 yards that otherwise would be directly to Page Mill is not progressive design. The same thing really goes on accessing Hanover. To get from the interior of this to Hanover shouldn't be a circuitous loop. That's the very sort of planning that we thought we had gotten away with when we stopped building subdivisions where kids had to go a half mile to get to a park that 200 yards away. I see Jean McCown wants to speak to this. I'll allow it.

Jean McCown, Stanford University: Actually I don't need to speak to that. I wanted to go back to Mr. Wolbach's Motion with respect to the pressurization system. We just wanted to clarify which homes that applies to. Is it the ones that are within the 50 foot locations of the TCE presence? There's 68 single-family homes on the site, many of which are not anywhere near this location. I just would like to get some clarification to the scope of that.

Mayor Burt: I'll allow that.

Ms. McCown: I know it's already been voted on, but it would be helpful to clarify that.

Mayor Burt: We'll get that clarification. While you're there, let me ask you. What's Stanford's rationale for not supporting pedestrian access except through California Avenue on this?

Ms. McCown: What I recall from the discussion back at the time the map was approved, it was not focused on pedestrian access. It was focused on vehicular access through an adjoining parcel that would exit out onto Page Mill Road. That's what I remember. Now, we're all kind of doing this from memory tonight. It was not about pedestrian access; it was about having a vehicular access route through an unrelated parcel. I think it was 1450 Page Mill in fact, out to Page Mill Road. That was the big discussion point at the time.

Mayor Burt: What's Stanford's position on having good pedestrian access?

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Ms. McCown: Honestly, Pat, I don't know that we've looked at whether there's routes through other adjoining parcels. I don't recall that we were even asked to look at that. It was all about can't you have vehicles traveling off the site out to Page Mill rather than onto California Avenue. That's what I recall.

Mayor Burt: Thank you. Council Member Holman.

Council Member Holman: Along those lines, I think the recollection is correct. Columbia Street, I think, was used as the construction road during construction of some of the houses. You can tell me if that's right or wrong. I think it was Columbia, and then Columbia connected all the way through to Page Mille. That was vehicular. I don't know, though, that that meant we only wanted vehicles. It's pretty much assumed that a road is going to have a sidewalk beside it. It's going to also have pedestrian accessibility too.

Ms. McCown: I'm not sure sending pedestrians out to Page Mill Road is what people were thinking about. What I recall was a construction period timeframe for that access off of Page Mill, to not use California Avenue, which Chris talked about earlier. There was also a further request for a permanent exit out through that adjoining parcel, out to Page Mill. I don't think that—as I remember it, that was not about pedestrians. It was totally about vehicles.

Mayor Burt: It was vehicular.

Council Member Holman: It was more vehicular. Still, it's too bad it isn't there.

Mayor Burt: I'll add that there have been discussions about if we don't have a vehicular spine running between California Avenue and Page Mill, then a bike spine is something that's been talked about. Here we're doing this major project, and we are not taking advantage of that opportunity. I think it's a real lost opportunity. I have a way that I will at least try to partially address that. I first want to take on the clarification issue that you requested. Council Member Wolbach, do you want to clarify the intent and we may need to revote.

Council Member Wolbach: Sure. My thinking was that it would apply to all of the homes on the site. If it is acceptable to the Mayor, I'd actually like to ask Mr. Siegel if he had a recommendation about whether sub-slab depressurization or ventilation should be associated with every home at the site or only those closest to hotspots.

Mayor Burt: I don't see him here.

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Council Member Wolbach: He's right behind ...

Ms. McCown: Right behind me.

Mayor Burt: I'll allow that.

Mr. Siegel: I was showing DTSC Building 30 where it clearly is needed. Wearing my other hat, in Mountain View we would be requiring it. We've a policy not just directly above plumes but near plumes. We require at least passive mitigation with the option to go active. The passive mitigation does not require any maintenance by the building occupants. It's passive, but it does require some monitoring after construction to see whether there's a problem. I would recommend it for everything on the parcel.

Council Member Wolbach: I'm fine with that. Again, I think the way it's phrased now leaves the option open, whether it's ventilation which is passive or depressurization which would be active, leaves that flexibility up to the applicant.

Ms. McCown: I believe we are doing passive already. That's what we're doing. Again, I would ...

Mayor Burt: Ms. McCown, I think you're really familiar with our procedures. Applicants and members of the audience do not have the authority to interject unless they've been called upon.

Ms. McCown: I think you did give me the opportunity to speak to this question. I appreciate that. Thank you very much.

Council Member Wolbach: If we need to clarify in the Motion that it would apply all homes at the site, we can add that. If it would please the Mayor ...

Mayor Burt: It's clear that's the intent. Let's go ahead and do it and revote.

Vice Mayor Scharff: I have a question on this before we vote.

Mayor Burt: Go ahead.

Vice Mayor Scharff: Are some of the homes already under construction? Wouldn't that cost a lot for those homes that are already there? I would want to exclude those homes that are actually under construction.

Ms. Gitelman: I think the suggestion is to limit it to the 68 homes on this parcel and not ... We'll have to ask the applicant if any are already ...

Mayor Burt: We'll hear from the applicant.

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Mr. Wuthmann: There are 68 homes total in the project. Council Member Scharff's exactly right. Some are under construction already. Actually 28 foundations are already built. They're furthest away from—they are not on this amended part of the final map. What you're talking about would be the 40 homes that have not yet been built.

Vice Mayor Scharff: Are you willing to limit it to the 40 homes?

Council Member Wolbach: That's fine with me.

Mayor Burt: Yes. Those are the homes that were held up because there were greater issues.

**AMENDMENT:** Council Member Wolbach moved, seconded by Mayor Burt to add to Motion Part v, "for all 40 single family homes not yet under construction."

Mayor Burt: Let's go ahead and revote on "E," which was the amendment just with these clarifications. That now passes on a 7-1 with Council Member Filseth voting no.

**AMENDMENT PASSED:** 7-1 Filseth no, DuBois absent

Mayor Burt: I'd like to offer another amendment. This is going to be non-binding. It's to direct Staff to attempt to negotiate with the project developer to identify any practical locations for pedestrian access either toward the east and Page Mill or toward the—what it is? North, toward Hanover. Either toward Page Mill or Hanover pedestrian access. Does the maker and the seconder ...

Vice Mayor Scharff: It's fine.

Council Member Kniss: Yeah, it's fine.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "direct Staff to work with the project Developer to attempt to locate pedestrian and bicycle access either toward Page Mill Road or Hanover Street." (New Part C)

Mayor Burt: Thank you. Did you have something?

Vice Mayor Scharff: You were seconding it.

Mayor Burt: I don't know what needs to be clarified. We're asking our Staff to attempt to achieve it ...

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Council Member Holman: You're saying toward Page Mill or Hanover. Do you mean connecting to Page Mill or connecting to Hanover? I'm not quite clear.

Mayor Burt: It would be pedestrian. They can't out of this obtain necessarily full access to Page Mill, except they can obtain access out of the rear of the property that would connect to one of the properties on Page Mill. We'd have to have a separate agreement to allow that access subsequently. What we want to do is establish out of this property a pathway if possible. Same thing in the direction toward Hanover. They're adjacent properties; that's why I said toward rather than assure that there would be the connection, which I don't think we could necessarily achieve. I'd love it if Stanford came forward and said they could work through that. They have tenants in some of those. This may be setting it up for a future opportunity.

Council Member Holman: I think one of the properties on Page Mill is actually Stanford-occupied. Do you want it to be pedestrian or pedestrian and bicycle?

Mayor Burt: I'm meaning pedestrian and bicycle. We can clarify that.

Council Member Holman: That should be in there.

Mayor Burt: I want to leave this open enough as just a direction to attempt to achieve this outcome.

**MOTION RESTATED:** Vice Mayor Scharff moved, seconded by Council Member Kniss to adopt a Record of Land Use Action (ROLUA) regarding the Amendment to the Final Map for Tract Number 10281:

A. Including the following additions in the ROLUA:

- i. Incorporated Comprehensive Plan consistency findings; and
- ii. Standard indemnification clause; and
- iii. A reference to the Amending Map of Tract No. 10281; and
- iv. Six Mitigation Measures identified in Environmental Disclosure: University Terrace Project, Palo Alto, California, March 2016, Section 4.1; and
- v. An additional vapor intrusion measure be added including sub-slab ventilation or depressurization for all 40 single family homes not yet under construction; and



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- B. Direct Staff to withhold issuing building permits to the seven homes adjacent to the hotspots until the California Department of Toxic Substances Control (DTSC) issues its No Further Action determination.
- C. Direct Staff to work with the project Developer to attempt to locate pedestrian and bicycle access either toward Page Mill Road or Hanover Street.

Mayor Burt: Are we ready? Please vote on the board. That passes on an 8-0 vote with Council Member DuBois recused. Thank you everyone. That concludes this item.

**MOTION AS AMENDED PASSED:** 8-0 DuBois absent

Mayor Burt: I just want to share the break that I asked to have to confer with Staff was because I had really reconsideration on how we acted on the preceding item on the Maybell project. My interest was not in changing the outcome of the project. I really had discomfort in the findings that we made to be able to do that and wanted to see if there was any potential to rezone the property so that our findings would be more appropriately aligned with the project. Unfortunately, the only way to do that would really be with a Planned Community Zoning (PC). This doesn't—even though they are single lots, they are of configurations that they wouldn't fit in either an R-1 or R-2 zoning. It illustrates the irony that the only way to have this project aligned with zoning would be under a PC Ordinance. I just wanted to share that with my colleagues. I really have that discomfort over what we found ourselves in a predicament and having to make findings that, I think, were very weak. Thanks for allowing me the discretion of explaining that. Any other Council Member questions or comments?

Vice Mayor Scharff: We have another item.

Mayor Burt: We do. Yes, that's right. Sorry. I was out of order. I was hoping we were out the door.

James Keene, City Manager: That's makes 11 or 12 of us.

- 4. Approval of a Contract With West Coast Arborists, Inc., in an Amount Not-to-Exceed \$3,680,960 for Three Years for Tree Pruning and Removal Services on a Ten Year Maintenance Cycle (Continued from June 27, 2016).

Mayor Burt: Our final item is the former—I'll just say it's approval of a contract with West Coast Arborists in an amount not to exceed \$3.680

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million over three years for tree pruning and removal services on a 10-year maintenance cycle.

James Keene, City Manager: Thank you, Mr. Mayor. This was, as you recall, last night pulled by some of the Council Members for discussion. We did put out an addendum to the Staff Report this afternoon. Hopefully the Council has it before you. This addendum does try to identify in sort of high-level terms what the differences would be as to the cycle and the percentage of canopy that would be removed under either the 15, 10 or 7-year cycle. It also identifies the cost difference if the Council was interested in moving from the 10-year cycle, which has been approved in the budget, to a 7-year cycle. Walter and I are here to answer questions. He can speak more specifically to the canopy itself. I can speak to the funding. Thank you.

Mayor Burt: Thank you. We really had Council Member questions on this and reconsideration. I think those who removed it from Consent can address this first. Council Member Holman.

Council Member Holman: As I'm sure you know, I've had questions and concerns about this from when it came to Finance Committee on a 15-year cycle and even reducing it from a 15 to a 10-year cycle because Mr. Passmore, our Urban Forester, had said that the industry standard is 5-10 years. Subsequent to that, I've even gotten more interested and concerned about our process. When you're ready, I have a Motion that I've drafted and provided to David.

Council Member Kniss: Just make it.

Council Member Holman: The letter that we got from the State's Urban Forester got me to thinking is it the right process that we're even using. Is it one contractor fits all? One size fits all tree management. I don't have the answers to some of these things. I do know that we have been a Tree City USA for 29 years. Our City's named after a tree. It seems to me that, looking at the letter that came and some subsequent conversation with Canopy and Catherine Martineau, if our City can't come up with a model means to manage our urban forest, then what City can. We have many areas where we try to excel and be the leaders. It seems to me this is a very appropriate one where we can do, given the numerous advantages of our urban canopy. If you're ready for a Motion, I will put it out there. It looks long, but it's really not. My suggestion is that we move forward—the City Manager had actually indicated when we had the first discussion on this that we can try this for a year and then revisit it. What we got was a three year contract with no opportunity for revisiting it or extension or amendment. What I've suggested here is that we go ahead and approve the

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three year contract that was put before, but that we add annual review and optional extension and amendment clause subject to Council review and approval pending. This next section really is us evaluating the best management practices for urban forest care and quantifying the things that actually are very quantifiable now, the benefits of our urban forest for Palo Alto. Using those as the basis for how we do our contracting. Part of what I started seeing was—reading the State urban forest and in conversation with Canopy, I started seeing is the urban forest really that much different than my own home property and my trees. I don't have the same people prune my very large trees as prune my small trees. They get very different care, different kinds of special treatment. That's kind of what has also led me to this. I'll give you a minute to read this. Some of it is just indicating what the obvious things are in terms of advantages of an urban forest.

Mayor Burt: You had a second. Is that correct?

Council Member Holman: No. I just shut up.

Mayor Burt: You spoke to your Motion before the second. It's been seconded. Why don't we take a moment to read it?

**MOTION:** Council Member Holman moved, seconded by Council Member Kniss to approve and authorize the City Manager or his designee to execute a three-year contract with West Coast Arborists Inc. in an amount not to exceed \$3,680,960 for tree pruning and removal services on a ten-year maintenance cycle with the following amendments:

- A. The contract shall include an annual review and optional extension/amendment clause subject to Council review and approval pending:
  - i. Design of a tree management plan befitting a 29-year Tree City USA designation that addresses the recommendations from the State Urban Forester and relevant others including but not limited to:
    - a. Greenhouse gas reduction benefits of a healthy and well-maintained urban forest including reduced carbon dioxide, lowered energy use, reduced heat island effect; and
    - b. Safety, especially during times of drought and potential resultant limb loss; and
    - c. Storm water interception, habitat retention and creation; and

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- d. Economic and social benefits of a healthy urban forest; and
  - ii. Determination of whether a single source contract is the best method to contract for Palo Alto's tree care; and
  - iii. The cost benefit ratio of maintenance (average \$19.00 per tree cost vs \$5.82 in benefit is returned for every \$1 spent); and
- B. Such a plan should be presented to Council prior to consideration of a contract in the 2018 budget cycle.

Mr. Keene: May I—go ahead and read it, please.

Mayor Burt: City Manager Keene, did you want to ...

Mr. Keene: In addition to the Clerk, it would be nice if we got these ourselves. I'd go ahead and do this, but I see this as a potentially very significant expansion of the work plan. We're not just talking about what the cycle is for our existing work. In addition, we have an Urban Forest Master Plan that would be more appropriate to look at in that context as to what extent these kinds of issues are being considered. Where are we with the Urban Forest Master Plan anyway? Just adopted it?

Mayor Burt: Let us just read this.

Council Member Holman: After people have read it, I'd like to respond to City Manager comments.

Mayor Burt: Council Member Kniss, you want to speak to your second?

Council Member Kniss: Yes. I just went down and spoke to Karen about this. Karen, if I understand you, this is to move the actual amount, not to exceed, for the pruning and removal services. The rest should include—you're saying this is subject to Council review and approval pending this. You see that one—I don't know if this goes to the bottom or not. Is "B" the end of it, I hope?

Council Member Holman: "B" is the end of it, yes.

Mr. Keene: Yeah.

Council Member Kniss: What I just established—Karen, if I'm wrong, tell me—was that anything below approval pending is to be looked at and determined what the actual cost would be.

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Council Member Holman: To determine what a cost would be and what a plan would be. Then, we can evaluate the cost. Just to respond to City Manager. It would ideally be a part of the Urban Forest Master Plan, but we haven't done this before. What's prompting it now is that we have a budget item in front of us.

Mr. Keene: This needs to stay a budget item. I can't even imagine the City Attorney would say that this is properly noticed for a discussion about the direction on a series of policy issues, Number one. Number two, the Urban Forest Master Plan second edition is going to come before the Council in October. We may have some of these sorts of things in there. You could have that policy discussion here. We need to start the contract. I think it's really limited to the kind of conditions that we have in the contract. You could amend the contract itself to deal with the terms and those sorts of things. What I would suggest, if you're really interested in this, is that we proceed with this on a three year basis. Our contracts are always subject to a non-appropriation clause. We could launch this for the first year, make the adjustment of the \$300,000-and some. I'm just saying this because the whole Council's—the Finance Committee and the Council's going to be looking at some big budget issues for 2018. We're talking about adding \$1 million here right at this point. You just may reconsider that both in the context of the subsequent Urban Forest Master Plan discussion and as we get into the budget itself. You could be in a position to launch staying on the 7-year cycle right now for the next year. That gets us some time. Honestly ...

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. On the back of this we have a proposed Motion. First of all, to speak to this Motion I wanted to say I think we should stay on the 7-year cycle. I think that we don't want to damage the canopy while we think about this. What I learned from the process after we voted last time was that the way they prune is they prune more on a 10-year cycle than you would on a 7-year cycle. I don't understand why, Council Member Holman, you would support a 10-year cycle. Why not just support a 7-year cycle? I'll move the Staff—I don't know if it's a Staff recommendation—suggested Motion as a substitute Motion which is direct Staff to accept the original bid of \$4,702,450. That's on the back of that sheet. You should be able to find it. Over the three year term and authorize the City Manager or his designee to execute a new threeyear term contract West Coast Arborists in an amount not to exceed \$4.7 million for tree pruning and removal services on a 7-year maintenance cycle and amend the fiscal year 2017 budget appropriations ordinance for the General Fund by increasing the Public Works Department contract, etc.

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Council Member Wolbach: Second.

**SUBSTITUTE MOTION:** Vice Mayor Scharff moved, seconded by Council Member Wolbach to:

- A. Direct Staff to accept the original bid of \$4,702,450, an additional \$1,021,490 over the three-year term; and
- B. Authorize the City Manager or his designee to execute a new three-year contract with West Coast Arborists, Inc. in an amount not to exceed \$4,702,450 for tree pruning and removal services on a 7-year maintenance cycle; and
- C. Amend the Fiscal Year 2017 Budget Appropriation Ordinance for the General Fund by:
  - i. Increasing the Public Works Department contract services appropriation by \$316,900; and
  - ii. Decreasing the General Fund Budget Stabilization Reserve by \$316,900.

Vice Mayor Scharff: Can I speak to it?

Mayor Burt: Yes.

Vice Mayor Scharff: Just briefly. This is a budget item. I think the question before us is should we do a 10-year cycle or a 7-year cycle. After getting the new information, I've reconsidered it in my mind. I thought we don't want to damage the canopy. Let's go with the 7-year cycle. We're coming forward with the Urban Forest Master Plan stuff. The rest of these things that Council Member Holman raised, I think, are good things. I think they're important things to talk about. I think they belong in a noticed discussion, which the right time is when you come forward then. That's when we should discuss all these things. Frankly, using that no appropriation clause, if we decide at some point to go to a 10-year cycle, we can probably always talk these people into moving to a 10-year cycle based on that. Let's use the precautionary principle that Council Member Wolbach mentioned earlier. Do no harm to our canopy. Let's do seven years, and let's talk about this when it comes back to us.

Mayor Burt: Council Member Wolbach, you want to speak to your second?

Council Member Wolbach: I agree with everything Vice Mayor Scharff just said.

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Mayor Burt: Council Member Holman, speaking to the substitute Motion.

Council Member Holman: It has to do with both actually. The substitute motion, this is also three year contract. You said there's a—what was the phrase you said? An indemnification period?

Molly Stump, City Attorney: Our standard contract includes an ability to terminate the contract on a certain noticed period at the discretion of the City Manager. We have a non-appropriations clause that's required for all public entities in California, but we wouldn't need to utilize it to stop the contract. The City Manager could do that.

Council Member Holman: On any basis whatsoever?

Ms. Stump: Yes.

Council Member Holman: If that is the case and presuming that—trusting that these other issues will come forward as part of the Urban Forest Master Plan—I feel like saying this. I'm sorry. I don't mean to be catty about it. I just wrote the Motion right before we came to the meeting, and we got this at places. We didn't either one give either one of us notice. Just to be fair there. I can support the substitute Motion given the clarification about us being able to ...

Male: Are you going to withdraw your Motion?

Mayor Burt: She doesn't need to.

Council Member Holman: I can just support the substitute. If that's okay with Council Member Kniss?

Council Member Kniss: Yes, that's fine.

Mayor Burt: Council Member Schmid.

Council Member Schmid: Since the City Manager had the proposal in his memo, are you comfortable with the \$300,000 from the Budget Stabilization Reserve?

Mr. Keene: Yes, Council Member Schmid. Just to remind the Council where we are. We have had some increased estimates in the closing for fiscal year 2016 that were above even our estimates a little bit earlier in the budget. Right now what we would have in the Budget Stabilization Reserve is \$2 million above the 20 percent level, which is the top end of the range of your policy between 15. We would be drawing \$316,000 out of that for this year.

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Council Member Berman: In terms of real numbers, what—I think our General Fund is \$170 million. I can't remember exactly where we're at this point. What's is the Budget Stabilization Reserve?

Mr. Keene: About \$40 million.

Council Member Berman: Thank you. Got it. Thanks.

Mayor Burt: I see no more lights. Please vote on the board. That passes unanimously with Council Member DuBois absent.

**SUBSTITUTE MOTION PASSED:** 8-0 DuBois absent

Council Member Questions, Comments and Announcements

None.

Mayor Burt: Now, I think that concludes our meeting.

Adjournment: The meeting was adjourned at 10:23 P.M.