



CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Regular Meeting
January 11, 2016

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 P.M.

Present: Berman, Burt, DuBois, Filseth, Holman, Kniss, Scharff, Schmid, Wolbach arrived at 6:04 P.M.

Absent:

Closed Session

1. EXISTING LITIGATION – 3 MATTERS

Authority: Govt. Code 54956.9(d)(1)

Wells Fargo Bank v. City of Palo Alto, et al., Santa Clara County Superior Court, Case No. 1-13-CV-238764

Monroe Place v. City of Palo Alto, Santa Clara County Superior Court, Case No. 1-14-CV-259305

Petition Requesting State Water Resources Control Board Review of Region 2's Re-Issuance of Municipal Regional Permit Regulating Storm Water Run-off (NPDES No. CAS612008).

Mayor Burt: Our first item is a Closed Session item. I see members of the public here. I just wanted to share with you we are agendized to have a Closed Session for at least one hour on three different topics. I don't want people to be expecting the public part of the meeting to convene at this time. On or about 7:00 P.M., the regular public portion of the meeting will convene. At this time, we'd like to entertain a Motion to go into Closed Session.

Council Member Kniss: (inaudible)

Vice Mayor Scharff: So moved.

MOTION: Council Member Kniss moved, seconded by Vice Mayor Scharff to go into Closed Session.

Mayor Burt: I'm sorry. We have actually three items of existing legislation. One is the Wells Fargo versus City of Palo Alto, et al. The second item is Monroe Place versus City of Palo Alto. The third is a petition requesting

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State Water Resources Control Board review of Region 2's reissuance of municipal regional permit regulating storm water runoff. That was moved by Council Member Kniss, seconded by Vice Mayor Scharff.

Mayor Burt: Any discussion? Please vote on the board. That passes unanimously, 8-0. We will now go into Closed Session. Thank you.

MOTION PASSED: 8-0 Wolbach absent

Council went into Closed Session at 6:04 P.M.

Council returned from Closed Session at 7:07 P.M.

Mayor Burt: At this time, the Council has returned from a Closed Session. We actually have reportable actions that were taken on each of the Three Closed Session items. I will read them into the record. The first is that Council voted to support authorizing the City Attorney to settle the matter of Wells Fargo v. City of Palo Alto for a payment of \$190,000 and a return of a condominium unit at Unit No. A310 at 4260 El Camino Real. This unit will be returned to the City's affordable housing inventory. The second item is the Council voted to authorize the City Attorney to settle the matter of Monroe Place LP versus the City of Palo Alto for recovery to the City in the amount of \$2,801,474, which is 7.5 percent of the final sales—in addition, 7.5 percent of the final sales price of three unsold units to be paid to the City's residential housing in-lieu fund. The third item is the Council authorized ratification by the City of the Water Quality petition filed on behalf of the City by the Santa Clara Valley Urban Runoff Pollution Prevention Program. It was filed on behalf of the City and other parties. That requests the State Water Resources Control Board to review Region 2's reissuance of municipal regional storm water Permit No. CAS612008. That's the reporting of our Closed Session actions.

Special Orders of the Day

2. City of Palo Alto Certified as a Storm Ready Community.

Mayor Burt: Welcome everyone. Our first public item is Item No. 2 on the Agenda. A Special Order of the Day is the certification of the City of Palo Alto as a Storm Ready Community. My understand is that we have Mr. Larry Smith from the National Weather Service. Welcome.

Larry Smith, National Weather Service: My name is Larry Smith. I'm a meteorologist at the National Weather Service in Monterey. We service the San Francisco Bay Area. Recently we had the honor to work with the City of Palo Alto to become storm ready. I wanted to take a little bit of time and

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tell you guys what storm ready is all about and congratulate you guys for becoming recognized as storm ready. Basically storm ready is a preparedness program that the National Weather Service sponsors. We work alongside our partners to make sure that our communities are prepared for the next major weather event. Around the San Francisco Bay Area, it's difficult to be a meteorologist. It's difficult to say meteorologist. It's difficult because typically we have either sunny days and mild weather or cloudy days, more likely, and mild weather. On occasion, we do get some severe weather, some thunderstorms that move through the area that can cause some storm damage including some flooding issues. Of course, in the winter months we can have significant storm systems that come out from the Gulf of Alaska and even Pineapple Expresses from Hawaii. We can have significant rainfall and a tremendous amount of flooding in the area. We really need to be prepared for these types of weather events. Some of the weather events we need to be prepared for may not seem a big deal at all, but they actually are. Such as heat and cold events. We have a lot of homeless in our area, and we need to make sure that during the winter months they have a warm place to go when it's cold out. Of course, we need somewhere cool for them to go when it's warm in the summer months. We like to work with our communities and make sure we can get a heat message out to the emergency planners, so they can make a decision as to whether or not to open these shelters. Some of the weather we deal with is even less exciting, but very highly impacting, for instance, foggy days in the San Francisco Bay Area. We get quite a bit of fog in the summer and winter months, believe it or not. That can impact traffic, and it also impacts the airlines. We need to be prepared for those types of weather events. Of course, we have the big wet thing to our west, which is the ocean. It can put out some very large surf at times. We need to be aware of these situations as well and be prepared to rescue people if they do get swept into the ocean. Of course, I was just talking about this with the fire colleague over there, wildfire season. We have tremendous wildfire potential in our area too. Again, we need to be prepared for these types of weather events. Believe it or not, we actually had a tornado last week near Hollister. It took out a barn and a shed and busted up some fencing too. Whenever you hear we don't get tornadoes in this area, we certainly do. Again, we need to be prepared for that. Locally, we also have the San Francisquito Creek—hopefully I pronounced that correctly. That's an area where we're concerned about flooding. The City Managers have worked alongside our hydrologist at the National Weather Service to have a plan for what to do if there is flooding on the creek and also setting up better ways to warn whether or not there's going to be a flood on the San Francisquito Creek. Definitely some progress being made in that area. What do we do? We try to work with our communities and become storm ready. There's also another program called tsunami ready for areas along the coast, to work with our City Managers and

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City Planners to come up with ways to prepare our communities for weather events. One of the big things we do is go out and participate in public education, especially our children. If we can educate our children about severe weather and even earthquakes and what to do, and they come home at the end of the day and they talk to their parents about it, their parents learn about it as well. We also work alongside our emergency management community and participate in different types of exercises around the area. We do more and more exercises every year. We work with ham radio operators as well. If we do have a big weather event or a big earthquake, we could lose some communications as well. We want to be prepared. Once we have an event going on, the bottom right picture up there shows our Weather Service office. You'll notice there's a lot of different screens and monitors up there. We monitor not only the weather but also local events as well. If there's a lot of rain going on or a lot of rain coming in the City and we know there's a football game, we're going to let someone know so we can take care and make sure everybody's prepared for the event. Simon Williams works with your emergency management community. His team has put together some really great webpages for the community to look at for weather preparedness. I just want to say that I've been doing the storm ready thing for quite a while now and worked with a lot of communities. Simon's group has really done an outstanding job. They have river monitors out there. They track the river to see what's actually going on in real time. They have plenty of situational awareness, terrific plans in place. I'm very impressed with the work they've done. In fact, this next slide is the webpage from the City of Palo Alto. It talks a little bit about the San Francisquito Creek and what level it is and monitoring and everything. They've done a fantastic job putting this together. Some of the partners we work with. The National Weather Service works with the Office of Emergency Services (OES), the City of Palo Alto and, of course, California OES. We also work with the California Geological Survey with regard to tsunamis. Of course, we're more concerned about that along our coastal areas, rather than the City of Palo Alto itself. We have roughly 90 communities and counties represented on this map that are storm ready and tsunami ready. If you look up there, you probably aren't going to see it because it's awful small. The print's awful small. Palo Alto is now on the map. If you ever go to the storm ready page, you can look it up and be like the City of Palo Alto is right there. They're doing good things for their community. If you have more questions about storm ready or want to know more about it, you can check out the stormready.noaa.gov webpage. This was just a short presentation. I wanted to just inform you a bit about it. At this point, I'd like to invite Simon and his group and the Mayor, if he likes, to receive your (crosstalk).

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Mayor Burt: Larry, this does remind me of when people out of state claim that California doesn't have seasons. They're told that we actually have four; it's fire, flood, quake and riot.

Mr. Smith: That sounds about right.

Mayor Burt: Thank you, Larry, and most of all thank you to our great emergency preparedness Staff that has been doing just tremendous work on doing everything possible to prepare us for emergencies including storms.

Agenda Changes, Additions and Deletions

None.

City Manager Comments

Mayor Burt: Our next item is City Manager Comments. Mr. City Manager.

James Keene, City Manager: Thank you, Mr. Mayor, Council Members. A number of items to report. First of all, on behalf of the Staff and before the Council, we did want to present our congratulations to Vice Mayor Scharff for his appointment to the American Public Power Association's Policy Makers Council. This is a national council. He will serve a three year term. Along with his colleagues there, he'll be charged with engaging locally elected officials to promote federal legislation of importance to public power systems. The American Public Power Association Policy Makers Council is comprised of 40 members. There are only four members appointed from each of the ten geographic regions in the United States. His role places himself and our City in a critical position in advancing policy objectives that further enhance the value of public power. Congratulations for that appointment. As part of our continuing efforts to implement the Palo Alto Bicycle and Pedestrian Transportation Plan, our Transportation Division facilitated a public open house on January 6th regarding the Middlefield Road between Channing Street and Oregon Expressway and North California Avenue between Alma and Middlefield Road. Perhaps it was some of the draft recommendations our Staff had advanced that led to over 85 people attending the meeting to hear about the options for these road segments which are being resurfaced shortly. Options that were considered for Middlefield Road included the modification of on-street parking that could add Class 2 bicycle lanes or shared lanes with sharrow markings. A two-way Class 4 separated bikeway was also considered in front of Jordan Middle School to connect the two segments of North California Avenue. On North California Avenue, options considered included the modification of part-time on-street parking to add full-time Class 2 bicycle lanes, installation of suggested bicycle lanes or shared lanes with sharrow markings. Based on

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the feedback received from neighborhood residents, the Parent Teacher Association (PTA) and the Pedestrian and Bicycle Advisory Committee, the Staff is recommending that Middlefield Road between Embarcadero Road and Garland Drive continue to operate as a shared-lane facility with two general purpose travel lanes and two full-time on-street parking lanes. The proposed Webster Street Bicycle Boulevard should serve as the primary north/south bicycle connection in this corridor. Our Staff is also recommending a high quality connection between the two legs of North California Avenue on Middlefield Road, using a short Class 4 separated bikeway and appropriate intersection treatments. Depending upon the feasibility and results of further community discussions, the separated bikeway may be either a two-way on the east side of Middlefield or a one-way on both sides of Middlefield. As the Council is aware, there is a steering committee that was created to help jump start the Transportation Management Association in Downtown. They're close to wrapping up their work. Several Council Members have asked for more detail on the governance structure of the new organization. I've asked Staff to put together copies of the Bylaws, Articles of Incorporation and other issues and expect to share those with the Council later this week. The City continues to assess daily penalties to the Edgewood Plaza property owner for its failure to maintain a grocery store at that location in violation of the Planned Community Ordinance. The first citation was issued on September 30th, 2015. Last year, a total of \$92,000-plus in fees was assessed and collected from the property owner. Of course, we continue to collect those on a daily basis. The Council received some comments from the public attempting to draw some linkages between the Edgewood Plaza project and actually the 1050 Page Mill project that you have tonight. I think the City Attorney can, when you take that item up, speak to the lack of a connection there. Because of some of those concerns, I did reach out and talk to John Sea today on the status of the grocery project at Edgewood. He does tell me that Andronico's is serious and they continue to make progress in the process of hammering out the actual sublease agreement between Fresh Market and Andronico's. We will keep you posted on that. I got the sense and there was some information shared that indicated to me they'd made some important progress since before the holidays in that process. We just talked a little bit about storm readiness. We just want to reiterate that we're doing everything we can as a City to prepare. Of course, with El Nino coinciding with the Super Bowl, the presidential election cycle and other risk factors, we're pretty much on heightened alert as our Staff prepares for these things. Piazza's Grocery, just to shout out to them. Several new environmental protection ordinances are on your Consent Calendar tonight. We did want to acknowledge Piazza Grocery's recent efforts. It's representative of many others in being proactive in addressing some of the new provisions. Piazza's Grocery has just eliminated plastic foam egg

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cartons ahead of tonight's new restrictions on plastic foam. Even more impressive, they've gone beyond our pending new requirements for businesses to subscribe to the compost service. Rather than just compost imperfect food products, they began an impressive food rescue program this summer in partner with the Second Harvest Food Bank, donating the equivalent of 6,300 meals to date. We did want to acknowledge to the Council that. Two other items. In the department of unsung heroes, a difficult holiday week of water, sewer and gas emergency work. I did want to share that on an evening in late December, the City Utilities Department received a call about a potential sanitary sewage blockage behind a residence in the 800 block of Embarcadero. The blockage was in one of our old sewer mains that runs to the back of the house rather than meeting the private lateral sewer connection at the street. Our City water, gas, wastewater crews responded, were unable to clear the blockage using sewer cleaning equipment. The area wasn't accessible using a backhoe. Steve Cadrell, Josh Lawler, Keith Brunell and Jesus Baron had to hand dig the entire job, a six foot deep hole to unblock the main. This is the kind of job that happens every 1-2 years in that sort of situation. It's one of the most physically difficult types we face, requiring 7-8 hours of manual shovel work. It's just one of several difficult emergency jobs that happened over the holidays. A number of other employees, Rick Sims, Robert Justice, Robert Bishop, Danny Williams, Dan Mendoza, Paul Gutierrez, Richard Lizama, Jose Miguel, Steve Mello and Filberto Castro, spent their holidays working late on cold nights on water, gas and sewer emergencies. We did want to just do that shout-out. Lastly, I just neglected it. The Golden Globe Awards last night reminded me that we forgot to present the Emmy Award that the City received for the longest running best live action drama in a governmental setting this past year. We did want to—that was for the April 1st Council meeting. We did want to share that with you. Thank you. All I have to report.

Mayor Burt: Council Member Kniss.

Council Member Kniss: City Manager, just to check something out. As I recall, Fresh Market has a long-term lease on that property and will be required to pay it for a certain period of time. Am I correct?

Mr. Keene: That's correct. Andronico's, the process for which they would come in would be to actually sublease the property from Fresh Market.

Council Member Kniss: To sublease it rather than buy out the lease. That's interesting. Secondly, I think a shout out to Director Dueker and his group that performed so well tonight. We didn't catch you before we went on to the City Manager. That was very impressive and should reassure a number

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of people who are in that storm area that have been concerned in our community. Thank you.

Oral Communications

Mayor Burt: At this time, we'll move onto Oral Communications. We have five speakers. Our speaker is Roland Vogel, to be followed by Lenore Cymes.

Roland Vogel: Thank you. Council Members, my name is Roland Vogel. I live on Bowdoin Street, and I work at Stanford Law School. I'm concerned about the highly toxic and cancer-causing substances that were found on the University Terrace construction site on 1601 and 1501 California Avenue, which is directly adjacent to College Terrace. I'm especially worried for the following reasons. First, Stanford has known about TCE issues in the Research Park and also on these particular properties for a long time. However, the so-called hotspots with highly elevated levels of TCE underneath the old Facebook headquarters were completely unexpected. Stanford consequently self-reported to the regulatory agency, the Department of Toxic Substance Control, DTSC in short. Second, Stanford's proposal to mitigate the TCE contamination is limited to covering the hotspots with extra soil, moving the proposed buildings away from the hotspots, and putting vapor barriers underneath the building, which it's about to build. That does not seem to be a TCE mitigation best practice according to experts. At the LinkedIn construction in Mountain View, for example, the contaminated soil is removed. Removing at least the hotspots seems warranted. Third, when I asked Stanford at a recent meeting with regulators and fellow College Terrace residents about the possibility of the TCE migrating in the ground or in the groundwater into College Terrace, the answers that were given did not really alleviate our concerns. This is a real worry because we don't have vapor barriers underneath our homes like the ones that Stanford will add to the new buildings. It was suggested that because of the clay content in the soil, the hotspots are contained. That's not really reassuring either because Stanford's consultant did testing on the site that shows that the TCE has been traveling around a very large property. That hotspot is really just on the other of California Avenue. Also, the regulators' representative conceded that in the event of an earthquake, all bets are off. As Stanford suggested that we speak directly to the polluters, implying that Stanford doesn't have any responsibility to do anything, even though they're the landowner; that it would not do any testing of the groundwater or soil in College Terrace; that we get our own independent consultant. I ask the Council to do what's necessary to protect the health of College Terrace residents. To that effect, I ask for immediate testing of the storm water retention on Bowdoin Street for toxics and hillside

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water runoff. I also ask for groundwater sampling, indoor and outdoor air sampling along California Avenue in College Terrace. Please note that in spite of all the spills and plumes adjacent to our neighborhood, there has been never a single monitoring device in College Terrace. Other neighborhoods in Palo Alto that are adjacent to the Research Park, like Barron Park, had extensive testing done. Thank you for your attention and consideration.

Mayor Burt: Thank you. Lenore Cymes to be followed by Carla Carvalho.

Lenore Cymes: Hi. Thank you for your attention tonight. First, I want to thank Karen Holman for doing a great job last year as Mayor. We appreciated your effort. Mayor Burt, good luck. I'm here to talk about a level of accountability on the part of Sand Hill to the neighbors in the Edgewood Shopping Center area. I personally don't have a Covenants, Conditions and Restrictions (CC&R) vote. Those people who do have a CC&R vote gave up a considerable amount of space to Sand Hill to build ten \$3 million houses which have been sold. We've lost that parking lot. There was a historic building on the site of the shopping center that was supposed to be maintained. It was an accident, and it was taken down. Somehow the \$90,000 from a company the size of Sand Hill doesn't seem to compensate for that level of, shall we say, inattentiveness. The third thing is in exchange for those two things in a way was the grocery store. We keep coming back to this grocery store; it won't go away. The big thing at this point is what they're being fined per day. This is not about being punitive. This is about the City holding those people who sign a contract, who make an agreement with the City the way anybody would make an agreement with you to construct something on your house or fulfill an agreement to some work that they're going to do, that it gets done. I'm glad to hear that Andronico's is supposedly going to happen. I'm possibly a little pessimistic. It seems to come up every time Sand Hill has to become accountable to something. If it really is true, then there's no reason not to hold them to a much higher fine every day according to what College Terrace is going to get. It would also be valuable for the City Council to think about having one law or process or whatever you want to call it for wherever there's a PC and a grocery store. You don't have one for College Terrace, and you don't have one for Edgewood, and you don't have one for Alma. There's one planned within the entire City. I think Sand Hill has to pay because if they're going to pay, they're going to really push for Andronico's to move. There's no incentive for them to have to hurry this up if the Council and the City Manager is going to take their time. It's almost a year. March will be a year that Fresh Market has been gone. I really hope you reconsider what the fine is going to be. If the fine is there, they have to feel it. At \$5,000 a day, I

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really do believe that they will hurry up and make something happen. Thank you very much.

Mayor Burt: Thank you. Our next speaker is Carla Carvalho, to be followed by William Rosenberg.

Carla Carvalho: Thank you very much, and Happy New Year to all present. I don't want to be redundant. I do want to piggyback on City Manager Keene said and what Lenore just said. In short, we've heard this before. The classic tale of Sand Hill is asking for something. Tonight it's review of their project at Page Mill and communication from John Z. Similarly this happened in September. The day fines were supposed to begin, news of Andronico's came out. We are all hopeful that this will occur. I also wanted to thank City Manager Keene for coming to our Duveneck Town Hall meeting, as many of you did, back in November. At that time, Manager Keene was going to investigate who was paying the fines at Edgewood, whether it was Sand Hill or Fresh Market as that can complicate the negotiation process. We eerily await these findings to hear who's actually paying for this. It may also help provide guidance as to how you as Council Members can mitigate the damage that has yet been done to the neighborhood with this empty space. Finally, we hope that the situation at Edgewood Plaza is instructive to all charged with allowing or disallowing the project at Page Mill to go forward. My fear is that Palo Alto be littered with the waste and tainted by the greed of a large developer if this situation is not brought under control. Thank you.

Mayor Burt: Thank you. Williams Rosenberg to be followed by Stephanie Munoz.

William Rosenberg: Hi. I'm Bill Rosenberg. Nice to see the Council here. I was here last June, and I reminded you then that we have a leaf blower Ordinance that has not been enforced. I haven't seen any evidence of enforcement since then. I'd like to see some. I'd also like you to think seriously about who is responsible for leaf blowers, whether it's the gardener or the property owner. I think the property owner's property stays put. Gardeners come and go. If we really wanted to make a leaf blower ordinance and enforce it effectively, I think you should think seriously about who you're going to make responsible. Either way, whether it's the gardener or the property owner, I'd like to see some enforcement. I brought you a copy of what I hand out every time I see a gardener using a gas-powered leaf blower. It's just taken straight out of the City webpage. Maybe we can distribute something like this and get more attention to it. Thank you.

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Mayor Burt: Thank you. Next speaker is Stephanie Munoz to be followed by Lane Pianta.

Stephanie Munoz: Good evening, Mayor Burt and Council Members. We had some news these past few weeks. Our friend Lois Salo died. I was with her main group which was Women's International League for Peace and Freedom. We were discussing plans for a memorial service for her. I said, "You're missing something though. I don't notice in anything here any acknowledgement of the fact that Lois was a Jew." They said, "But Lois was an atheist." I said, "You can be an atheist and still be a Jew." You can be a Catholic atheist. You can be anything. The understanding that we are put on earth to help each other is not a function of organized religion. It's in the DNA. That's why the human race has survived as long as it has. Beaten off the saber tooth tigers and the dinosaurs, lots of people bigger than we are and more power than we are. It's because we know how to help each other. As you go through this year, there's some talk of residentialists. It's true that in many cases not being good doesn't work. You cannot put the factories here and the workers over there and not expect to have unlivable streets and an enormous difficulty. Generally speaking, you have to be good just because you have to be good. It's part of you, all of you. It doesn't matter whether you have a religion or not. The point of my conversation is we've got to do something about the cold weather shelters. There's a lovely one down—it's really great that Simitian was able to just pull out of a hat a place. While there are people who are not protected and not protected from the cold, we can't rest. We've got to really look at it and say how are we going to get these people under cover this winter, now, every one of them. I'd like you please to make that one of your priorities. You have to. Thank you.

Mayor Burt: Thank you. Lane Pianta to be followed by Rita Vrhel. I should mention—we have another card. Because we set speaker times based on anticipated number of speakers, I'll just be in the future kind of setting a deadline for submitting cards, giving everybody ample time to do so. We want to make sure we have a sense of how many speakers there will be. Welcome.

Lane Pianta: Good evening, Mayor Burt and members of City Council. My name is Lane Pianta. For the past five years it's been my pleasure to serve as Production Manager at the Palo Alto Children's Theatre. During that time I've had the opportunity to work with countless children and their families to provide meaningful arts enrichment activities. By my estimation, I've participated in one form or another with 125 separate theatrical productions, 30 community events in support of the Big Read, numerous third-party rentals and five May Fete Children's Parades. These activities represent

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many of the highlights of my professional career. Tonight however, I would like to highlight one particular activities and draw your attention to it. That was last year's Palo Alto Day of Remembrance held to honor the sacrifice made by hundreds of Palo Alto residents of Japanese-American descent incarcerated during World War II. In partnership with Mike Kaku [phonetic] of the Japanese-American Citizens League, this even came as the culmination of a series of activities to commemorate the 70th anniversary of the closing of those American concentration camps. In the course of preparing those events, I worked with students from various local high schools, including Paly, Gunn, Foothill Middle College Program and more, to educate them about this sad chapter in American history and to encourage inter-generational dialog on the topic of social justice. Hopefully my efforts alongside the dedicated core of teaching artists prompted at least a few of them to think more critically about the world in which we live and about the parameters of responsible government. For your reference, I've included a handout that explains a little bit more about the Big Read Program. Different cities tend to honor a Day of Remembrance at different times in the calendar year. I'd like to draw your attention to two dates which are fast approaching. Saturday, January 30th, the State of California will observe the Fred Korematsu Day of Civil Liberties and the Constitution. On Friday, February 19th, many cities will observe a Day of Remembrance that coincides with the signing of Executive Order 9066 which established the incarceration camps. I respectfully implore you to find a way to acknowledge this painful part of our history, to remember and honor the sacrifice made by those families and to resolve again that we, as citizens of this great democracy, will never resort to such fascistic behavior. As a government of the people it is incumbent on we the people to do the State's remembering. Recently I have decided to make a career change, and so I've concluded by my service as an employee of this fine City. My deep thanks goes out to all the participants at the Children's Theatre with whom I've worked so closely for the past five years, to all of my former colleagues without whose help I would never have been remotely as successful, but most of all to the good people of Palo Alto. It is you who deserve the real credit for continuing to make the arts and arts education a priority in your community. Bravo to you. I look forward to serving this town and surrounding communities in new ways for as long as I may. Thank you very much for your time tonight.

Mayor Burt: Lane, thank you very much for your service. I certainly know my children have valued it. Our next speaker is Rita Vrhel to be followed by Sea Reddy. We will not be accepting more speaker cards after—the last one is Bob Moss.

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Rita Vrhel: I wanted tonight to support the previous speakers on the Edgewood Plaza situation. Sand Hill Properties, as we know, not only tore down what they were supposed to be preserving but also hauled it away. By the end of the day, nothing was left. It has been a long time since there's been a grocery store there. During the meantime, the other businesses are supporting that which the grocery store was supposed to be contributing to. I sometimes wonder when some of the other businesses might be leaving and what is the financial cost to them. They entered an agreement with the City and with its residents, and they were provided adequate if not generous financial incentives to build a new area. Through unfortunate events the Fresh Market left. While that is not their responsibility that this happened, it is their responsibility to find a new grocery store. I agree with the previous speakers that every time something comes up for Sand Hill, suddenly there is communication between Sand Hill and the City Manager or someone else that promises us a grocery store. I think either increasing the fines or saying to Sand Hill, "We can't trust you. If you cannot make good on a grocery store in a timely fashion, then we need not to give you the permit for the Page Mill property which we already know has considerable problems or potential problems regarding parking and traffic flow." I think as a City Council you have a lot of power. I think it would be good to not only use that power to set an example that when a developer promises the City they are going to do something, they are going to do it. Otherwise, I think you will have additional problems with either this developer or other developers. Thank you so much.

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

Sea Reddy: Good evening, Mayor and the Council Members as well as the citizens of Palo Alto. I want to bring up a subject that's very, very sad. You already read about, I think most of you. There was a gentleman that went to Las Vegas from Palo Alto, Mr. Gandler [phonetic]. He drove to a fitness club in the parking lot. He was taking a nap. Somebody pulls over and kills him. It's in the newspaper today. My condolences to the family and friends. These are things that are just astonishing how this can happen to a nice person in the way that it happened. That's all I wanted to bring up. We have to think through how this whole thing about owning guns—we're from wild west and we need to have guns. I'm not asking for anything different, but I think we could have similar to an Amber law, a Gander law, that requires owners of these guns to register and ensure that they are financially accountable. We need to do out of the box thinking. We like our rights. We like our way of living. We need to make people accountable how these people get guns and how indiscriminately they kill people. Thank you.

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Mayor Burt: Thank you. Our final speaker is Bob Moss.

Robert Moss: Thank you, and congratulations Mayor Burt and Vice Mayor Scharff. You had an earlier speaker that talked about groundwater contamination and soil contamination. I want to give you some background. In 1985 HP, Varian and Stanford realized that the tanks they were using to contain solvent in the Research Park were leaking. The contamination had reached the aquifer, so they did a series of investigations including a number of monitoring and investigation wells to find out where the contamination was leaking to. One of the areas that they found had been contaminated was Barron Park. Barron Park was contacted and we set up a special committee. I was on the committee and at various times chaired it. We met regularly with representatives from HP, Varian and Stanford and talked about the contamination and remediation. They put in a series of wells along the bike path to prevent any further flow of contaminant into Barron Park and put in a series of monitoring and extraction wells in Barron Park. In fact, I have a monitoring well in my front yard. After about four or five years of pumping extraction, the area was cleaned. They actually pulled the contamination back well into the Research Park. We have no contamination in Barron Park and none in that portion of the Research Park. However, at about the same time we had contamination that ran into what we call the co-area and towards College Terrace. That has created some problems. One of the problems is the agency which oversees contaminated soil and groundwater in Palo Alto is the Regional Water Quality Control Board. I worked for years on Mountain View with Environmental Protection Agency (EPA). I've talked to the EPA people about the problem we have in Palo Alto for years. They finally went and started working with the Water Board. I asked them how did they feel the Water Board was handling soil and groundwater contamination in Palo Alto. The response was they know an awful lot about water but not much about contamination. As a result, we are well behind Mountain View in cleaning up the contamination and preventing serious vapor intrusion into buildings which are over this contaminated site compared to Mountain View. We're starting to catch up, but we're a long way from being adequate. The reason is because the government agency which oversees us did not do an adequate job. It's not our fault. We tried very hard. I've spoken to the City Council at various times over the years about this. There's been some action and some inaction. We need to be really concerned about it. We don't want to have our people poisoned.

Mayor Burt: Thank you. Before moving on to our next item of Minutes, I just wanted to clarify for some members of the public who spoke on it that the update this evening by the City Manager on the grocery at Edgewood Plaza was at the initiative of the City Manager not Sand Hill. It was in

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response to a number of emails received from members of the public. It wasn't Sand Hill who did that.

Minutes Approval

3. Approval of Action Minutes for the December 7, 9, and 14, 2015 Council Meetings.

Mayor Burt: Our next item is Approval of Minutes. These are the Minutes from December 7th, 9th and 14th of 2015. Can we approve them as a set, City Attorney? We can. I'll entertain a Motion.

Vice Mayor Scharff: So moved.

Council Member Berman: Second.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Berman to approve the Action Minutes for the December 7, 9, and 14, 2015 Council Meetings.

Mayor Burt: Motion to approve those sets of Minutes by Vice Mayor Scharff, seconded by Council Member Berman. Any discussion? Please vote on the board. That passes unanimously.

MOTION PASSED: 9-0

Consent Calendar

Mayor Burt: Our next item is the Consent Calendar, which is actually Items 4-19. We have five speakers on Consent. If anyone else wishes to speak, they need to come forward now. Each speaker will have two minutes to speak. City Attorney, did you or Staff have something clarifying on one of the items in response to issues raised by a member of the public in writing?

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Burt. Hillary Gitelman, the Planning Director. I did speak with the City Attorney's Staff, and we looked at the comments that came in from Herb Borock on Item 15. In fact, I take a moment to respond as usual. Many thanks to Herb for the close reading. We always benefit from his close attention to these things. He really raises three points. The first one, I think, he is absolutely correct. There's language in the ordinance that seems to suggest that site and design approvals require approval by the Architectural Review Board (ARB). It's actually in the existing Code. Here's an opportunity to correct it. I think we're agreeing with Mr. Borock that we could strike the words "and approval" before "by the ARB" on Council Packet Page 383. That's a change we'd like to incorporate into the ordinance this

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evening. Mr. Borock raised two other points. One about California Environmental Quality Act (CEQA) appeals. He's absolutely right. We're reflecting a provision a State law in our ordinance, and it would require that someone file an appeal both of the underlying entitlement and the CEQA document. If the concern is about an appellant having to pay two fees, of course that could be addressed with adjustments to the City's fee schedule. It would not require a change to the Municipal Code. The third point was really about the State Density Bonus Law. Again, we feel that the State law really precludes our making any additional changes to this section. We did, at the Council's direction, modify the proposed ordinance to reflect the fact that you could choose between the density bonus allowed under the Pedestrian Transient Oriented Development (PTOD) and under the State law, whichever is greater. We don't think we can make the same kind of change with regard to the concessions. I hope that answers the questions.

Mayor Burt: Thank you. While we're hearing from the public, you might be able to provide that amended language to the Clerk, and it'll be posted. Then, we're clear on what we're adopting.

Ms. Gitelman: Happy to.

Mayor Burt: Thank you. Next we'll hear from members of the public. Each member will have two minutes to speak on the Consent Calendar items of their wish. Our first speaker is Gina Goodhill Rosen, to be followed by Sarah Qureshi.

Gina Goodhill Rosen, speaking regarding Agenda Item Number 5: Hi. Mayor and members of the City Council, thank you for taking public comments today. My name's Gina Goodhill Rosen, and I am actually speaking to underscore comments that were sent in earlier by the Energy Freedom Coalition of America, EFCA, regarding Item Number 5 on the Calendar, which is the Finance Committee recommendation that the City Council approve design guidelines for the net energy metering successor program. I work for Solar City, which is a rooftop solar company that's active in the area. We are members of EFCA. EFCA is a national advocacy group that seeks to promote both the public awareness of the benefits of solar and alternative energy as well as the use of rooftop solar and other customer-owned and third-party-owned distributed solar electrical generation. City of Palo Alto Utilities (CPAU) has undertaken a really thoughtful effort to create guidelines for a new solar program. I want to thank them for that. We feel that the guidelines are incomplete, and we recommend several modifications. Most importantly, we strongly recommend that before CPAU moves forward with designing a program to replace their very successful net energy metering program, they first consider continuing their current program without

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modification after the cap has been reached. Net energy metering is a simple and effective payment method that has been crucial to the widespread adoption of solar in California. As you all know, rooftop solar is vital to continue growing the clean energy economy. If changes to the Net Energy Metering (NEM) program must be made, CPAU should examine changes that at least phase in gradually over time. If CPAU decides not to extend the current program at all and to instead replace it, we then recommend prioritizing a program that considers environmental benefits, one that's easy to understand, one that doesn't harm current net energy metering customers, and one that thoroughly looks at both the positive and the negative attributes of new payment systems, such as a value of solar tariff. Palo Alto has long been a leader in innovative program design. We hope that this continues and that we can work with you on this effort. Thanks.

Mayor Burt: Thank you. Sarah Qureshi to be followed by Esther Nigenda.

Sarah Qureshi, speaking regarding Agenda Item Number 5: Good evening. I'm Sarah Qureshi, energy and environment associate with the Silicon Valley Leadership Group. Thanks for the opportunity to speak to you tonight about this important issue. The Silicon Valley Leadership Group represents more than 390 of Silicon Valley's most respected employers on issues, programs and campaigns that affect the economic health and quality of life in Silicon Valley. The Leadership Group has a long history of support for continuing net energy metering programs at the State and local level. The Leadership Group's members, who include clean tech companies, large end users, universities, investors and renewable energy companies, have a strong interest in continuing net energy metering programs. Furthermore, many of these companies have indicated that California's strong renewable energy policies were a key driver for locating their companies in this state. Net energy metering is one of those key policies. Palo Alto's net energy metering program has been very successful to date. The Leadership Group strongly urges the Council to continue the program in its current form. The Leadership Group developed eight guiding principles with regard to net energy metering that it hopes the Council will take into consideration if it decides not to continue with its current net energy metering program. Three of which are the following: the successor tariff should be consistent with and balance the legislative requirements and goals identified in Assembly Bill (AB) 327, the enacting legislation for net energy metering. The successor tariff should provide market certainty and predictability considering customer expectations and long-term benefits and cost of distributed generation including societal costs and benefits. The successor tariff should be consistent with achieving statewide greenhouse gas emission reduction targets and other State policies and goals involving distributed energy

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resources including but not limited to energy efficiency, zero net energy, energy storage, demand response, integrated demand site mg, renewable energy credits and electric vehicles. Finally, the Leadership Group urges the Council to continue a net energy metering program that provides rate stability, simplicity and customer choice. Thank you for your time.

Mayor Burt: Thank you. Esther Nigenda to be followed by Herb Borock.

Esther Nigenda, speaking regarding Agenda Item Number 11: Good evening everybody. Thank you for the updated emergency operations plan for Palo Alto which is Item 11 on the Consent Calendar today. In a recent interview, Federal Emergency Management Agency (FEMA) Chief Craig Fugate said of all the risks we face a drought is the hardest one to address because, if you have a big flood, it eventually stops raining. It doesn't always start raining when you have a drought. If you think about the response to droughts, mainly it's about buying time until the rains come back. What happens if the rains never go back to what you thought was normal? In response to the FEMA Chief's questions, I have two requests. The first is to include in the proposed emergency operations plan drought and sea level rise on page iv which mentions specific hazards but does not mention drought or climate change or sea level rise. I realize that the City has taken some steps to address these issues. Nevertheless, drought and sea level rise need to be addressed holistically. As part of this holistic response to the drought, El Nino notwithstanding, my second request is for the City of Palo Alto to use our groundwater sustainably and to protect it as a drought resource. Thank you for your attention.

Mayor Burt: Thank you. Herb Borock to be followed by our final speaker, Jessica Lynam.

Herb Borock, speaking regarding Agenda Item Number 15: Good evening Mayor Burt and Council Members. I encourage you to take Item 15 off of the Consent Calendar. I provided you a letter by email with a brief correction, handwritten, at places this evening. On the first issue of site and design review, as I stated in my letter, Staff justified the change in the threshold for Council approval of site and design review based on need to encourage more units without telling you that two days later before the Planning and Transportation Commission, there were two projects that were not inhibited in any way from coming forward by the current threshold, including one project which would change whether it has Council approval required or not based on the number of units. An eight unit project with the new rules would change the threshold from four units to nine units. On the second issue of the fee for appeal, those of you have been on the Council long enough to know whenever you receive an appeal of a planning issue,

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both the project and the environmental review come to you at the same time for the one fee. I couldn't tell from the Staff comment whether they were saying that there's one fee required now and the Council would have to change it if they wanted to have two fees, or whether they're saying that the language that's in the Ordinance would create two fees and you'd have to change it to one fee. On the final issue of whether any changes are needed, the fact is the decision on the floor area ratio bonus, the height bonus, those exact numbers are decisions of the City Council. They're not decision that are in the Density Bonus Law in the State. As you know from the work of the Regional Housing Mandate Committee and the Council, you deliberated a long time on what those correct numbers were in the Chapter 18.8.15. Therefore, you should do something about them, and you should correct the PTOD Ordinance which is based on a false premise as to what you could do in that law. Thank you.

Mayor Burt: Thank you. Jessica Lynam as our final speaker. Welcome.

Jessica Lynam, speaking regarding Agenda Item Number 18: Thank you, Mayor, members of the City Council. My name is Jessica Lynam, and I'm here on behalf of the Palo Alto members of the California Restaurant Association. I'm here this evening to ask the Council to pull Item Number 18, composting, off of the Agenda and bring it back to the Staff level for further consideration. While we appreciate the City's efforts to address the requirements of AB 1826 as well as achieve the City's goal of zero waste, we have significant concerns about the mandated timeline for compliance of restaurants only as well as the parameters of enforcement. While we understand per 1826 the City could impose stricter implementation dates and guidelines for composting, we ask that the Council take into consideration restaurants and other small businesses and push the date of implementation from the April 1st which is per 1826 to July 1st for any restaurant who generates more than eight cubic yards of composting waste. This couple of extra months will allow the small businesses within the city who do not already take advantage of the optional composting to work out negotiations with landlords and possibly with their neighbors on sharing bins for composting. Also, they need to train Staff and purchase these bins, so these smaller restaurants need some additional time to follow those guidelines. In addition, after speaking to some restaurateurs within the City, they do share bins. The current Ordinance as written does not address those restaurants who do share bins of composting. If a restaurant is composting correctly but their neighbor is not, GreenWaste per the proposed guidelines for commercial customers and their restrictions would have to come out and give a site visit to all the restaurants who share the bins. Further down the line, if they continue to compost incorrectly, then fines can

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be levied. We ask the Council to continue looking at this Ordinance and work out the kinks before it's implemented. Thank you.

Mayor Burt: Thank you. We now return to the Council for a Motion to approve Consent Calendar.

Vice Mayor Scharff: So moved.

Council Member Kniss: Second.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to approve Agenda Item Numbers 4-19, including in Agenda Item Number 15-SECOND READING: Approval of Planning Codes Update ... removing "and approval" before "by the Architectural Review Board" in Municipal Code Section 18.16.060 (b)(9)(1).

Mayor Burt: That's a Motion to approve by Vice Mayor Scharff, seconded by Council Member Kniss.

4. Finance Committee Recommendation to Council to Continue the PV Partners Program Until the State Legislative Requirements set Forth in the California Million Solar Roof Bill Have Been Fulfilled.
5. Finance Committee Recommendation That the City Council Approve Design Guidelines for the Net Energy Metering Successor Program.
6. Approval of a Purchase Order With American Truck & Trailer Body (AT&TB) in an Amount not to Exceed \$687,638 for the Purchase of Three 2016 Peterbilt 337 Extended Cab Chassis Including AT&TB Maintenance, Construction Service Body and Approve Budget Amendments in the Water Fund, Gas Fund, Wastewater Fund, and Vehicle Equipment and Replacement Fund.
7. Approval of a Contract With Siegfried for a Total Amount not to Exceed \$92,004 for Design and Construction Support Services for the Quarry Road Improvements and Transit Center Access Project and Approval of a Transfer From the Stanford University Medical Center Fund to the Capital Improvement Fund and Creation of CIP Project PL-16000 to Provide an Appropriation of \$92,004 to the Quarry Road Improvements and Transit Center Access Project in the Capital Improvement Program.
8. Approval of Contract Amendment Number 1 to Contract Number C15154454 With Integrated Design 360 for Project Management and Analysis Services Associated With an Electrification Feasibility Study,

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and Budget Amendment Ordinance 5370 Entitled, "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Amount of \$145,000."

9. Ordinance 5371 Entitled, "Ordinance of the Council of the City of Palo Alto Re-Titling and Amending Municipal Code Chapter 5.30 (Plastic Foam and Non-Recyclable Food Service Containers and Packaging Items) to Prohibit Sale of Non-Recyclable Plastic Foam at Retail Establishments Such as Grocery Stores, Pharmacies, Mail Service Stores and Hardware Stores (FIRST READING: December 7, 2015 PASSED: 7-0 Scharff not participating, Burt absent)."
10. Ordinance 5372 Entitled, "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 (Zoning Map and District Boundaries) of the Palo Alto Municipal Code to Change the Classification of Certain Properties on Greer Road, Amarillo Avenue, Metro Circle and Moffett Circle, a Portion of That Property Known as Greer Park, Tract Number 796, From R-1 to R-1-S (FIRST READING: November 30, 2015 PASSED: 9-0)."
11. Resolution 9573 Entitled, "Resolution of the Council of the City of Palo Alto the City of Palo Alto Emergency Operations Plan (EOP) and Update of Membership of the Palo Alto/Stanford Citizen Corps Council."
12. Approval of Contract Change Order Number 2 to Contract Number S14151060 in the Amount of \$150,000 With Monterey Mechanical Company for On-Call Emergency Construction Services at the WQCP, Capital Improvement Program Project WQ-80021, for a Total Compensation not to Exceed \$400,000.
13. Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to Include E-Cigarettes, Change Signage Language, and Include Additional Enforcement Options.
14. Approval of a Contract for the Downtown Paid Parking Study and Downtown Parking Management Evaluation With Dixon Resources for \$100,000.
15. Ordinance 5373 Entitled, "Ordinance of the Council of the City of Palo Alto to Amend Land Use Related Portions of Titles 16 and 18 of the Palo Alto Municipal Code. The Affected Chapters of Title 16 Include Title 16 (Building Regulations), Chapters 16.20 (Signs), 16.24 (Fences), and 16.57 (In-Lieu Parking Fees for New Non-Residential

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Development in the Commercial Downtown (CD) Zoning District), and Title 18 (Zoning), Chapters 18.01 (Adoption, Purposes and Enforcement), 18.04 (Definitions), 18.08 (Designation and Establishment of Districts), 18.10 (Low Density Residential RE, R-2 and RMD Districts), 18.12 (R-1, Single Family Residence District), 18.13 (Multiple Family Residential RM-15, RM-30, RM-40 Districts), 18.14 (Below Market Rate Housing Program), 18.15 (Residential Density Bonus), 18.16 (Neighborhood, Community, and Service Commercial CN, CC and CS Districts), 18.18 (Downtown Commercial CD Districts), 18.20 (Office, Research and Manufacturing MOR, ROLM, RP and GM Districts), 18.23 (Performance Criteria for Multiple Family, Commercial, Manufacturing and Planned Community Districts), 18.31 (CEQA Review - a new Chapter), 18.34 (PTOD Combining District Regulations), 18.40 (General Standards and Exceptions), 18.52 (Parking and Loading Requirements), 18.70 (Non-conforming Uses and Non-complying Facilities) and 18.77 (Processing of Permits and Approvals)."

16. Ordinance 5374 Entitled, "Ordinance of the Council of the City of Palo Alto Amending the Table of Organization for Fiscal Year 2016 to Incorporate Classification Title and Salary Changing the Name of the Classification From "Traffic Operations Lead" to "Traffic Engineering Lead (FIRST READING: December 14, 2015 PASSED: 9-0)."
17. Ordinance 5375 Entitled, "Ordinance of the Council of the City of Palo Alto Amending Municipal Code Section 2.07.010 to Update Post Government Employment Regulations to Include all City Department Heads (FIRST READING: December 14, 2015 PASSED: 9-0)."
18. Adoption of an Ordinance Amending Title 5 (Health and Sanitation) and Title 18 (Zoning) of the Palo Alto Municipal Code to Require all Businesses to Subscribe to Recycling and Compost Services and Comply With Refuse Sorting Requirements.
19. Resolution 9571 Entitled, "Resolution of the Council of the City of Palo Alto Approving Terms of Agreement With the Palo Alto Police Managers' Association and Amending the Merit System Rules and Regulations to add Chapter 19 (PMA Agreement)."

Mayor Burt: I see a light from Council Member Schmid.

Council Member Schmid: I'd like to vote no on "14."

Mayor Burt: We also are incorporating recommended Staff language changes that were stated by Director Gitelman. I don't know if they're

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available for us to see. Do we? Is that the extent of the changes? Is that incorporated in the motion?

Vice Mayor Scharff: Yes, it is.

Mayor Burt: Please vote on the board. That passes unanimously with Council Member Schmid having voted no on Item Number 14. Thank you. You're welcome to make a comment on your no vote.

MOTION FOR AGENDA ITEM NUMBERS 4-13, 15-19 PASSED: 9-0

MOTION FOR AGENDA ITEM NUMBER 14 PASSED: 8-1 Schmid no

Council Member Schmid: I support the intent of Item 14 to get a consultant working on paid parking in the Downtown. I would like to put a vote of protest on the Transportation Demand Management which seems to be placed in there with supporting business-only representation on the Board. That seems to me a very important part of our Downtown parking issue, the Residential Preferential Parking Program (RPP), traffic and so on. I think it's essential that a wider group of stakeholders including local residents and City officials be involved in that process.

Mayor Burt: Thank you.

Action Items

20. PUBLIC HEARING: On Objections to Weed Abatement and Resolution 9572 Entitled, "Resolution of the Council of the City of Palo Alto Ordering Weed Nuisance Abated."

Mayor Burt: On that note, we will move on to Item No. 20, which is a public hearing on objections to weed abatement and adoption of a resolution ordering weed nuisance abated. At this time, I'd like to open the Public Hearing. We see no cards from members of the public. Is that correct or we have one coming? No. We will now close the public comment period with that and return to the Council for discussion and a Motion. Vice Mayor Scharff.

Public Hearing opened and closed without public comment at 8:11 P.M.

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

Council Member Kniss: Second.

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MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to adopt a Resolution ordering the abatement of weed nuisances in the City of Palo Alto.

Mayor Burt: Did you wish to speak to that?

Vice Mayor Scharff: No.

Mayor Burt: I'll just state for the record, the Staff recommends that the Council hold a Public Hearing, which we have done, and consider objections of which we have none to the proposed destruction and removal of weeds and adoption of the attached resolution, Attachment A, ordering the abatement of weed nuisances in the City of Palo Alto. This is an annual action that the City is required to take. Correct? Yes. All those in favor. That passes unanimously with Council Members DuBois and Berman out of the room at the moment.

MOTION PASSED: 7-0 Berman, DuBois not participating

21. PUBLIC HEARING: Approval of a Record of Land Use Action for a Variance to Allow for a Reduction in the Required Front Setback (Contextual) From 37 Feet 1-1/4 Inches to 32 Feet for a new Two-Story Single Family Residence Located at 224 Churchill Avenue. Exempt From California Environmental Quality Act (CEQA).

Mayor Burt: We will now move on to Item No. 21, which is a Public Hearing on the approval of a Record of Land Use Action for a variance to allow a reduction in the required front setback, a contextual setback, from 37 feet 1 1/4 inches to 32 feet, for a new two-story, single-family residence located at 224 Churchill Avenue. This item is exempt from CEQA consideration. Mr. Lait.

Jonathan Lait, Planning and Community Environment Assistant Director: Thank you, Mayor Burt. Good evening, City Council Members. As stated, you're considering an appeal of a variance for a new single-family home that is proposed to be constructed at 224 Churchill. The property is approximately 13,000 square feet, 100 x 130. It contains about 4,600 square feet on the first two levels, and a 1,700-square-foot basement. The applicant has received approval for an Individual Review, which was a Code-compliant project, compliant with all the setbacks, and concurrently had requested a variance application to encroach into the contextual setback five feet, to go from roughly 37 to 32 feet. The Director considered the variance request and made a determination of denial. That decision was appealed. A request for a hearing was held before the Planning and Transportation Commission. The Commission found otherwise and made a recommendation

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to overturn the Director's decision. The subject property has three front yard setbacks. One is the standard 20-foot setback that applies. On some properties there is a special setback of 24 feet that also applies. In instances where there the properties on a block have an average setback greater than 30 feet, there is a contextual setback that is also applicable. In this case, it's approximately 37 feet. Here's a diagram from the applicant's presentation materials to the Planning and Transportation Commission. The subject property, I'll show the cursor on the screen, is this one here. The way the contextual setback requirement works. If you have three or fewer qualifying properties in a block, the contextual setback requirements do not apply. If you have four qualifying properties on the block, it does apply, and you average those four properties together. If you have five or more qualifying properties on a block, you get to throw out the two outliers, the shortest setback and the largest setback. You don't get to, you do. As part of calculating the contextual setback, we throw out the two outlier, the high and the low. Three qualifying properties, the contextual doesn't apply. Four qualifying properties, it does apply. Five or more, you throw out the two outliers that the greatest and the least setbacks. In this particular case, there are four qualifying properties, because we throw out the two corner properties, leaving the four parcels that you see there. The property at 236 Churchill has an approximate 70-foot setback. That would be this property here roughly. This is a portion of the applicant's proposed plan showing the five foot encroachment into the contextual setback. The Director as well as the Planning and Transportation Commission in their consideration of the variance request and the City Council on appeal now, there are four findings that need to be evaluated and answered in the affirmative in order to approve the variance. The first one having to do with special circumstances applicable to the property that would deprive the property owner of some privileges enjoyed by other properties in the vicinity. The variance does not constitute a grant of special privileges. It is consistent with the Comprehensive Plan. It will not be detrimental or injurious to the property improvements in the vicinity. The Director was unable to support the first finding but does not find that the variance itself is necessarily detrimental to the property or other properties in the area. This really became a question of process as opposed to the substance. The variance has these findings and a certain standard that needs to be met. Staff believes that a more proper course of action would have been to process a text amendment if, in fact, we wanted to consider why are we treating properties of three or fewer different than four or different than five or more. The Planning Commission considered the request and, as I said, had a different perspective. They thought that the adjacent property with the approximate 70-foot setback was an outlier, and it should have been not considered in the averaging setback and that other aspects of the project were consistent with the Comprehensive Plan. Some had articulated that the increased setback

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deprived the owner of some enjoyment of a larger backyard. They also noted the lack of neighborhood concerns with the application. The matter is before the City Council this evening. Options that are available to you are to support the Record of Land Use Action that's included in your packet. That Record of Land Use Action would uphold the variance request and grant the five foot encroachment into the contextual setback. You may direct Staff to prepare a new Record of Land Use Action to deny the variance request. That concludes Staff's report.

Mayor Burt: Thank you. Before proceeding, I just wanted to give members of the Council an opportunity to disclose any ex parte discussions that they may have had with either the applicant or other members of the public on this item. I see no disclosures. We have two speaker cards at this time. They're actually both from the applicant's team. The applicant and the applicant's attorney will have a combined 10 minutes to speak. This is John Klopf in conjunction with the attorney for the applicant, Doris Yob. Welcome.

Public Hearing opened at 8:21 P.M.

Doris Yob, Attorney for the Applicant: Thank you. Before you start my time, if I could just make sure we have the technology all organized here. It looks like we're all set here. Good evening, Mayor and Council Members. My name is Doris Yob. I'm an attorney with the law firm of Hopkins and Carley. My law firm represents the applicants in this matter, Bogdan and Oana Cocosel, who are here in the Council chambers this evening. Mr. and Mrs. Cocosel have been residents of the Palo Alto community for 10 years and are looking forward to building their first home which, as was pointed out, is compliant with all Codes and approved by Planning with this one issue outstanding. Also with us is John Klopf from Klopf Architecture who will do the majority of the presentation this evening. I'm here to begin the presentation by just setting the legal framework in which this matter comes before you. I want to do that by turning your attention to the relevant language of the Municipal Code, so you can bear in mind the standard you're being asked to apply tonight. The section I want to refer you to is 18.76.030 which sets forth the purpose of a variance. It states in (b)(2) that the purpose is to "provide a way to grant relief where strict application of the zoning regulations would subject development of a site to substantial hardships, constraints or practical difficulties that do not normally arise with sites in the same vicinity. What does that mean? Case law defines hardship as a circumstance that puts the landowner at a disadvantage vis a vis other landowners in the area due to particular (inaudible) of the size, shape, grade of the parcel. Case law also tells us that any variance granted must be in harmony with the intent of the zoning laws. As you will see tonight from the architect's presentation, this variance is appropriate and in harmony with the

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intent of your Code and the Comprehensive Plan. In fact, strict application of the zoning regulations (regs) will result in inconsistency in the neighborhood rather than consistency specifically due to this one outlier home on the block that has a very deep lot and a front setback of approximately 69 feet. This lot, with a significantly more shallow lot depth is required to have a 37-foot setback. This 69-foot lot throws off the average and requires this lot to be further set back than the balance of its neighbors which are set back between 21 and 32 feet. This puts this property at a disadvantage vis a vis the surrounding neighbors. This is what constitutes a substantial hardship under the Code. By definition, the variance provisions are designed to remedy this type of circumstance. The findings you're required to meet were set forth by Staff. All those findings are met. The structure is otherwise compliant with all City Codes and requirements and has been approved by Planning. We're unaware of any opposition to this request, and we ask that you support Staff's recommendation. I will turn it over to the architect.

John Klopff, Applicant (Klopff Architecture): Thank you. Thank you to the City Council for hearing our case. My name is John Klopff from Klopff Architecture. Our variance is a good example of how the nitty-gritty of implementing a law can work contrary to the intent of that law. The law in this case is a context setback, which you've heard about. It's supposed to promote a more uniform front yard setback for a residential block. As applied in our case, it causes just the opposite. If you refer to the handouts or Diagram No. 1, this represents the current situation on the block. The special setback would be 24 feet. As you've heard, due to the contextual setback the house must be 37 feet back. The owners are asking for a 32-foot setback. All the other properties on the lot have a setback roughly between 14 and 32 feet, except for the one. The 69-foot setback of the neighboring property is clearly an outlier. Because of the way contextual setbacks are calculated, it's become the major influencing factor for our lot, causing in our case the required 37-foot setback. Our clients are fond of the oak tree. We all love big oak trees that's on this lot. We have an arborist's report that indicates the oak tree on this lot will be protected with the 32-foot setback. We're not asking to go any further forward than what the arborist has approved. The next slide shows what the contextual setback would be if the outlying properties were excluded. The Staff Report contains our variance application. On Page 2 of our variance application letter, we put an excerpt from the revised for Committee of the Whole 6/18/01 report on zoning regulation. The excerpt indicates that the committee intended to exclude outliers from the contextual setback calculations. Because of the way the law was eventually drafted, this intention to eliminate outliers is not always borne out in practice. As mentioned previously, blocks with three or fewer houses have no contextual setback. Blocks with four houses have a

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contextual setback, but outliers are not excluded. For the blocks with five or six houses, context setback applies, but it's a crapshoot whether the outliers would or would not be excluded. That's our situation. We lost the dice roll because both the corner lots happen to have their front doors facing the side street. Please note that the garages of the corner lots face Churchill. For all intents and purposes, these houses are part of the perceived street on Churchill. Because their front doors face the side streets, they don't count in the calculation. We're left with four houses on the block that count. Therefore, the outliers are not eliminated. If just one of those houses were remodeled so the front door faced Churchill and no other changes were made on the block, we'd officially have five houses that count on this block, and the outliers would be excluded. If there was at least one more house on the block, meaning a total of seven, then the outliers would be excluded. If the outliers were excluded, we would have a contextual setback of just under 32 feet. We're asking for a 32-foot front yard setback. If one front door changed on this block or there were one more house on the block, our requested setback would actually comply with the contextual setback with some room to spare. Our proposal complies with the intent of the Code, which is to remove outliers to promote context. Only the technicalities of how the front doors are facing on the corner lots or how many lots are needed to remove the outliers determines that we need a larger setback in this case. Diagram No. 3 further explores the intent of the committee on contextual setbacks. The Committee excerpt in our variance letter also states that contextual setbacks should not be applied for blocks with special setbacks. Clearly this did not make it into the law since this block actually has a special setback that is also subject to contextual setbacks. Just to explore this briefly, without a contextual setback the special setback of 24 feet would govern. Again, we're asking for 32 feet. This diagram also illustrates that our setback request of 32 feet exceeds the hypothetical contextual setback had the corner houses had their front doors and not just their garages facing Churchill. The intent of the contextual setbacks is to create a more uniform block over time. This would minimizing the effects of outliers. Diagram No. 4 shows that as each property develops over time, on this block, each house will be pulled back farther and farther because the contextual setback is increased each time. The effect over time of outliers pulling back the other houses is to suck the other homes back from the street, creating divots in the street wall and leaving void spaces on the blocks. The next two diagrams, No. 5 and 6, show the larger neighborhood. Diagram No. 5 showing it now, and Diagram No. 6 showing it over time as the outlying properties pull the street wall back and create various front yard divots. Clearly the Committee's intent to eliminate the influence of outliers is flouted on these blocks with five and six total houses on them. In conclusion, the conditions that disadvantage our clients are their block has one huge property on it with a very deep front setback. This house is an

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outlier and pulls all the other houses back as the contextual setback is currently calculated. Without this house being present, the 32-foot front setback we're asking for would fit nicely within the contextual setback no matter how you calculate it. Their block has six houses on it, not seven. The front doors of both corner houses happen to face the side streets. If there were just one more house or if just one of the corner lots had a front door facing Churchill, the outlying properties would be eliminated. Our request complies with the intent of the contextual setback law to eliminate outliers and create a more uniform street wall. If calculated the way we showed on our second diagram, with the outliers excluded, our requested setback of 32 feet would be just in line with the contextual setback for the block. Thank you very much.

Public Hearing closed at 8:31 P.M.

Mayor Burt: Thank you. Those are the only members of the public to speak. It returns to the Council for discussion and a Motion. Council Member Kniss.

Council Member Kniss: Let me just start with some questions, looking at you, Jonathan. This one is a bit of a mind boggler. I spent a fair amount of time in that area today and yesterday. One of the obvious observations you would make right away is that this block of Churchill is one of the busiest blocks in town. You come from the railroad tracks, and you pull over to the side, which I did today. Eleven vehicles passed me within a minute. My question would be other than taking into account exactly what Code says and exactly what the setback should be given the contextual aspect of this, did anything else get included other than I can see what the Planning Commission did? Does anything else get examined when making this kind of decision? If I were that couple—I don't know if they're here or not. In that case, I would value the backyard area in particular because the front is far more noisy than the usual street would be in that area.

Mr. Lait: We certainly would take into consideration any arguments that were made in support of the variance. On the noise or the traffic consideration, one of the considerations that you have to make when evaluating the variance is how is that unique to this property and not the other properties under the same zoning or in the same area. In that regard, that traffic with the noise of traffic on Churchill is consistent for all the properties in the area. That in and of itself is not a unique consideration.

Council Member Kniss: What you're saying is it's subjective.

Mr. Lait: Again, you want to go back to the finding which talks about how there are special circumstances applicable to the subject property that

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deprives this owner privileges that are enjoyed by other properties in the area. I think you ought to look at a variety of issues. In the example you're raising, I would say that the noise from traffic is a condition that exists for all the properties in the area to look at that issue.

Council Member Kniss: I understand. It's still somewhat puzzling. It does come to us tonight with approval from the Planning and Transportation Commission (PTC) of course.

Mr. Lait: A recommendation for approval, yes.

Council Member Kniss: Mayor Burt, after you hear from some other Council Members, I would be delighted to make a Motion.

Mayor Burt: Thank you. Our next speaker is Council Member Holman.

Council Member Holman: Thank you. This is one of those situations where there is no perfect. I've been a part of at least two Individual Review revisions if not more. The line gets dropped somewhere. In this particular case, where it got dropped was if there are four properties. I tend to agree with the Planning Director's first determination because there isn't really anything significantly different about this property. Where I get troubled a bit is where there are all kinds of situations that are proposed, if the corner properties face Churchill or if there was just one more property, if there was this, if there was that. I've seen situations before where there are a lot of ifs but those ifs don't apply to the situation, because it is what it is. I don't necessarily agree. I remember one of the things that I didn't agree with but it's what's in the Code now. I thought the properties across the street should count when considering the contextual setback. That isn't what got passed. My tendency is to agree with the Planning Director's original determination. There is nothing special or unique about this property or its situation. With the special setbacks and the contextual setback, I can suppose—I can't remember about this for sure—that the special setbacks still have contextual setback because the same reason any other neighborhood does. There might be some that encroach further into the special setback because they were there before the special setback or whatever. You still want to be able to pull those back. Those are my comments. Just one question for Staff. The initial comment made by the applicant's attorney, did Staff consider that? I don't remember reading that in the Staff Report.

Mr. Lait: If you can remind me as to what specific comment you're referring to.

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Council Member Holman: Rather than me butchering it, it'd probably be better to have, through the Chair the attorney repeat that statement. It was special circumstance.

Mayor Burt: That'd be fine.

Council Member Holman: If Cara could repeat it.

Cara Silver, Senior Assistant City Attorney: I'm happy to summarize. I think what the attorney referenced is the purpose section of the variance. We did take that into account. We certainly think that this is a situation where a variance request should be processed. We understand that there are some factual situations here that warrant discussion. It's just up to the Council at this point to determine whether the criteria have been met.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Thank you. A couple of thoughts first. Following up on Council Member Kniss' question to you. When we look at the Director's determination, one of the things is you talked about a special circumstance applicable to the subject property. When you look at the map, it seems to me that that special circumstance is very clear, that it's a shallower lot but a lot. It's 130 feet versus 200 foot. That seems a very different circumstance. If you do have the traffic noise and that upfront, the further you are back, the less you're going to have that, the more privacy you're going to have in the back and all of that. That seems to me to be a separate special circumstance. I understand Planning could interpret it either way. I think we're fully within our rights to interpret it that way as a special circumstance and that lot's different. The way this is done seems really goofy to me. I realize that's what was passed by the law. I just wanted to confirm that if we followed this and went with the 37-foot setback, the next house to develop on this block would then have a 39-foot setback. It sort of depends which one it is. If it was the house with the 69-foot setback, then the next house could go further in, further to the street. This is really goofy the way this is done. I totally agree with Staff that to effect this change Staff recommended that we have a zoning text amendment. What I understood that to mean is you should come back to us. Maybe I misunderstood that. It seems to me you should come back to us and say how do we fix this in one of these cleanups. That's what I think we should do. I wanted to get Staff's reaction to that, of cleaning this up.

Mr. Lait: In our internal conversations we have found it a bit odd that if you have three properties or fewer, you're one scenario. If you have four, you're one scenario. If you have five or more, you're another scenario. I don't know what's magical about four, why that's considered differently than the

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other ones. If the Council's in agreement that there's a reason—if there isn't a reason why four properties on a block is unique or special in its own right, then we should come back. We could easily do that as part of our annual Code effort that we've initiated. If we go back to the January Staff Report, our perspective is that this proposed variance again isn't necessarily detrimental to the neighborhood. It really was a question of process. It's been framed for the Council to support the variance and have the project move forward. We could add this to our list that we're going to come back to the Council and talk about as far as prioritizing an amendment.

Vice Mayor Scharff: I do think you raise a really good point. I think this is something we need to think about. I can't see in any way how this is detrimental to the neighborhood. This is my neighborhood, where I live. I can't imagine it being detrimental to the neighborhood in any way. It's hard to imagine at all how having the setbacks vary so widely depending on which houses on the block, which house develops in order, any of that, how this has any sort of sense of what we're really trying to do. I assume it was originally intended to maintain an average setback as opposed to pulling the setback further and further back and then possibly jumping it forward if one house developed differently than the others. I didn't see a single person write us an email saying stop this project. I didn't see a single person opposed to it. I was just going to ask if you've had any opposition at all to this?

Mr. Lait: No. We haven't had any correspondence.

Vice Mayor Scharff: One of the other things I wanted to comment on. I think our job as City Council Members is to be responsive to the public and to make their lives better. I see how this doesn't hurt any single person in Palo Alto, but probably dramatically makes the owners' lives better because they have a bigger backyard, and it's set back from what is really a busy street. Using the front yard on Churchill is probably not that pleasant with all the traffic that goes by. I think we should do two things. I think we should grant the variance, and then we should go ahead and ask Staff to put this on their annual Code cleanup list and come back to us with this process. I know you wanted to make a Motion. Do you care if I ...

Council Member Kniss: (inaudible)

Vice Mayor Scharff: I'll move that we approve the variance for the property at 224 Churchill Avenue as documented in the attached Record of Land Use Action, and that we ask Staff to add this to their Code cleanup items, their annual Code cleanup items.

Council Member Kniss: I'll second that.

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MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to adopt the findings and recommendation of the Planning and Transportation Commission to approve a variance for the property at 224 Churchill Avenue as documented in the Record of Land Use Action and direct Staff to include this topic in the annual Code clean-up.

Mayor Burt: Did you wish to speak further to your Motion?

Vice Mayor Scharff: Just briefly. I think it's really important that we be responsive to what's in the best interest of the citizens of Palo Alto. That sometimes means individual citizens. We weigh this against the general good. Here, there's no opposition. There's no one being injured by this. All this does is benefit our constituents who have come to us to ask us to look at a law that is goofy on its face and ask us to make a decision that supports them. I think we should do that.

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

Council Member Kniss: Just briefly. I would concur with what the Vice Mayor has just said. In addition to coming back for Code revision, I think this is really a common sense decision. If we look at this as we see it in front of us, it's fascinating to see a lot that is that size in this particular neighborhood. The one that's 236 probably is one of the bigger lots in that part of town. We're basing a decision on what—I think that's the real outlier, this enormous lot that looks almost as though it goes through to the next street. It may go through to Coleridge. This is the unusual lot. I would strongly support, which is a compromise at the 32. Having looked at this carefully today, I would strongly support it and agree that we can make those findings, especially talk to the special circumstances. Thank you.

Mayor Burt: Thank you. Council Member DuBois.

Council Member DuBois: I did walk around the neighborhood. There is a wide variety of lot sizes and shapes. The general pattern, if you look at the blocks around this, not just the block, very deep in the middle of the block, shallower lots as you start to get towards the corners. To me, the important question is definition of a variance. I didn't agree that there are grounds to find a variance. Again, as the initial ruling was, I didn't see special circumstances. It seemed pretty clear from the record that the request was a desire, not a need as defined in the Code. Plans were submitted to Individual Review with the proper setback, which indicates to me it was a desire. It wasn't that there was something fundamentally wrong with the lot. My concern is about the process. I just think if we start to call things variances when they don't really qualify, what do we do with the next applicant. Pretty soon, we don't have a process. The PTC minutes had

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some comments about whether the Ordinance was appropriate. Like a lot of us, they emphasized with the applicant. Is there anyone from PTC here? It would have appropriate to come back and suggest that PTC would have requested a revision to the definition of a variance. I would say that—Council Member Holman touched on this—any kind of contextual setback, if it's an average, is going to exhibit this behavior. It's not necessarily goofy. If there were five properties being averaged, they're still going to move back and forth based on what you're averaging. It gets to the idea of a contextual setback. At some point, you're going to have a property that hits the edge case whatever rule we come up with. My understanding is that this rule did come about through a pretty thoughtful process. It seems broken when you have so few properties. I would support revisiting this rule, but it needs to go through the process of really thinking about contextual setbacks and what we're trying to do when you have this kind of variety of depth. I'm concerned that we're just calling it a variance because it's expedient. Thanks.

Mayor Burt: Council Member Berman.

Council Member Berman: I just want to second some of the comments that Council Member Scharff made, especially in regards to the ability to agree with the findings. He's absolutely right that the special circumstances—it jumps out of the page at you. The other three properties that were taken into consideration all traverse the entire block. This is the only one that does not. Not only does that make me very comfortable with the findings, but this is the perfect example of when a variance is warranted. A variance is warranted when strict interpretation of the Code leads to a result that's worse than what's being proposed. In this instance, this is a perfect example where a 32-foot setback, given the context of the neighborhood, of that block, of the block across the street, makes a lot more sense than a 37-foot setback. Not to mention the possible further implications as other homes on the block are redeveloped. I would also suggest, when this does come back to us for cleanup, that there be some sort of exception written in where not only do we have this rule, if we choose to keep it, where the shallowest and the most further are eliminated. Not only have it so that the shallowest setback and the deepest setback are eliminated, but if there's an instance where that ever isn't taken into account—we might write that out of the ordinance. Any time there's a setback that's 2X the average on the block, it's automatically eliminated or something to that effect, or even 50 percent greater. That's the exception, and that throws off the calculus. That's clearly the case here which is leading to this abnormal average that warrants the variance that hopefully we approve tonight.

Mayor Burt: Council Member Filseth.

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Council Member Filseth: Thanks very much. I'm concerned about process here as well. I thought it was very interesting that the initial judgment from the Planning Director was based on whether there was a hardship here. I don't see a serious hardship here, that is grossly mitigated by moving the setback in or out five feet. At the same time, the applicant's argument and also the PTC's argument wasn't about whether there was a huge hardship, but that the Code itself was not right for what's trying to be accomplished in this area in terms of consistency of the front housing. It's a little bit of oddness because the Planning Director's judgment was based on one criteria. The folks we heard from tonight we based on a different criteria. I think Council Member Scharff captured this when he talked about the idea of the variance and also the Code cleanup. My question is procedural. If we agree with the folks we heard tonight, that a better Code would handle—they used the word outliers—huge variances in setback, I'm loathe to grant a variance for something that really belongs as a Code change. If we're going to change the Code, is there a way that we can do these things together? Alternatively, if we decide to grant a variance, how do we know that we're actually going to change the Code a year from now? That's my question, process. If we decide that the Code as written doesn't do what we want to accomplish on this kind of streetscape, can we do it that way instead of granting a variance? The variance seems to be to address a different situation.

Mr. Lait: The only way to do that is to amend Code. To amend the Code would require the Staff work and a Public Hearing before the Planning Commission. We would return to the City Council with that first reading. You'd have to have the second reading, and then it would become effective 30 days after. That would be the process. You're probably looking at four months time to get from here to there.

Council Member Filseth: Did you say four months?

Mr. Lait: Yeah, at best four months time. That's not considering the diversion of resources from the priorities that the Council's asked us to take on.

Council Member Filseth: If we do it as a variance, how do we know that it'll go onto the stack but it might not be until next year or the year after?

Mr. Lait: In response to that question, we're going to come back to the City Council on February 24th, I think is the date, with a continued discussion of the first annual Code cleanup to talk about the ARB findings and a couple of the other items. We will also be presenting at that time the Tier 2 list. We can insert that into the Tier 2 list. After that February discussion, we'll be

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coming back to the City Council again to prioritize that. If the Council is interested in moving that forward we can see that done by the end of this year.

Council Member Filseth: I'll think about that. It seems to me—as other people have pointed out, there's not a lot of neighborhood opposition to this. It seems like a logical thing to do. It's more a question of process as what's the right way to do it.

Mayor Burt: I would like to wade in on both the specific variance before us and then give some context on this Code. I actually have a recollection of how this came about and the discussions that occurred. If we had before us a request for a variance that didn't have this sort of significant, unusual circumstances, I would have a real problem granting a variance even if I didn't like the Code, which I don't. Seeing foremost the three other lots are 200 feet deep and this one is not. You look at it, and that's certainly a big part of the driver here. It excludes the corner lots. I happen to know the next block westward or southwestward has actually shorter setbacks through that block. The mirroring houses across the street don't have as deep of a setback as we would be requiring here. I find acceptable reasons to make the finding. I'd just like to share with folks the process. It was probably close to 15 years ago when we did the zoning ordinance update after the last Comprehensive Plan. I lost out to a majority of the Planning Commission, as I recall, and made the argument at the time that this calculation was not one that would result in maintaining the neighborhood setback, which was the intention. Over time, it would create new setbacks predominantly deeper and deeper. Our intention was to preserve a neighborhood character. This actually over time would work against that. I thought it was goofy at the time. I'm surprised it's taken this long to percolate to this point. There are several issues. One is the fallacy of the average becoming the new minimum, thereby continually creating a new deeper and deeper average. Council Member Holman raised the issue of should there be a broader context, should the houses across the street be there. When you have four houses defining a context, that just leaves it wide open to anomalies. That seems to be the case here. I think that covers the areas that should be reexamined in the Code. Fundamentally, we're seeing a non-contentious request for a variance and an adequate basis to make the findings for the variance. I'll be supporting the motion. Council Member Wolbach. Council Member Holman, you already spoke. If we go again, we're going to open it up to everybody. I'll let it if it's very brief. Council Member Wolbach.

Council Member Wolbach: (inaudible)

Mayor Burt: Okay. Briefly.

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Council Member Holman: It is brief. The comments of other colleagues have persuaded me that there's—I wouldn't say no harm, no foul. There's justification for allowing the variance. I also do want to state that I don't want this to become the norm because the Code is wrong or because there's a problem with the Code, then we'll make exceptions. That procedural thing is really backward thinking. I don't want to set a precedent for doing that. In this case—I don't want to talk against myself—the comments have been made that persuade me. I don't want a precedent to be set either.

Mayor Burt: Thank you. Council Member Wolbach.

Council Member Wolbach: A couple of things. I just wanted to get some clarification and address some of the ideas that have been discussed. It's pretty clear where this is going. I'll also be supporting the Motion. A lot of the debate is around Finding No. 1. If you look at Page 2 of the Staff Report or Packet Page 474, Item 1 towards the bottom is what the Planning Staff, on the next page, said they weren't able to find. This is addressed by a Council Member as well. The evidence that this was not a hardship was that alternative plans were submitted by the applicant. The residents submitted an alternative proposal to cover their rears in case they didn't get what they were asking for, which seems like a smart, prudent thing to do. I wouldn't use that as evidence one way or another about whether they got what they were asking for or not, is a hardship or not. Those are separate questions. If you can afford the time and the money to draw up a separate set of plans as insurance in case you don't get what you're asking for, it seems like a smart thing to do. I am convinced that this does provide a hardship for this family for the reasons already stated. The desire to have some backyard space given the desire to have some private space rather than a front-yard area. As was also pointed out, if you exclude 236 Churchill, this house would be forced to have a further setback than all the other houses on the block. That is unusual. That does set them apart. A very, very strong case can be made for Finding No. 1. I respectfully disagree with the Planning Staff's findings on that. I understand how they were able to make that determination. I don't agree with it. This raises the question of how we make decisions. It was pointed out by Council Member Filseth that Planning Director, Planning Staff was focusing on one set of criteria. Others were focusing on another. This is the challenge we always face when we have multiple competing interests. How do we make our choice? Part of this also is through our comments or our politics, our ideology, we can paint ourselves into a corner. The word variance has taken on such a negative connotation, often for good reason. When this part of the Code is appropriately used, because we have such a negative association with the word variance, because it is so often abused, we're appropriately reluctant to use it. I want to make sure our ideology doesn't push us from reluctance

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and skepticism into dogmatic opposition. In this case, it seems like the right time. To use the variance. Our Code is broken. We've recognized the Code is broken. Council Member Burt, thank you for the history lesson on that. I was curious how we got to this point. Thank you for trying to stand up for warning people about unintended consequences on the Planning Commission. This is a teachable moment about unintended consequences. The Code is broken. We're going to change it this year. In the meantime, it's the right thing to grant the variance to the residents who are going to be negatively impacted by our broken and soon to be fixed Code.

MOTION PASSED: 8-1 Filseth no

Mayor Burt: On that note, please vote on the board. That passes on an 8-1 vote with Council Member Filseth voting no. We have one remaining item on the Agenda. Why don't we take a five minute break.

Council took a break from 9:03 P.M. to 9:10 P.M.

22. PUBLIC HEARING: Approval of the Final Environmental Impact Report (FEIR) and Record of Land Use Action to Allow Demolition of Four Existing Structures Totaling 265,895 Square Feet and for Construction of Four Two-Story Office Buildings Totaling 265,895 Square Feet of Floor Area With Below and At-Grade Parking and Other Site Improvements. Zoning District: Research Park (RP) Located at 1050 Page Mill Road. Environmental Assessment: A Final Environmental Impact Report has Been Prepared.

Mayor Burt: Our next and final item is Item No. 22. A Public Hearing on the approval of the Final Environmental Impact Report and Record of Land Use Action to allow demolition of four existing structures totaling 265,895 square feet and for construction of four two-story office buildings totaling 265,895 square feet of floor area with below- and at-grade parking and other site improvements. Before continuing, Council Member DuBois.

Council Member DuBois: I just wanted to briefly explain. While Sand Hill Properties is the primary applicant in this case and appears to own the buildings, because Stanford is the co-applicant and there are issues of lease lines, and because Stanford is a source of income for me through my wife, I'm going to recuse myself tonight. If there are issues in the future that pertain to the building only, I may be able to participate, but they did not appear to be a separable part of the discussion tonight. I will say goodnight to you all.

Council Member DuBois left the meeting at 9:11 P.M.

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Mayor Burt: This is a quasi-judicial item. I would look for Council Members to disclose any ex parte discussions outside of the meeting. Vice Mayor Scharff.

Vice Mayor Scharff: I met with Doria Summa and Jeff Levinsky. Pretty much everything I learned was summarized in a handout they gave me, which I gave to Council, so it's in the record. That's pretty much what I learned from them. It was a very helpful and informative meeting, and I thank you for having it.

Mayor Burt: Council Member Kniss.

Council Member Kniss: I met with Allison Koo who is here in the audience, and I also heard from several other people in the area who seem supportive. We also have a letter tonight from—help me out. I'll see if I can find it.

Vice Mayor Scharff: The head of College Terrace?

Council Member Kniss: Yes.

Vice Mayor Scharff: Brent Butler.

Council Member Kniss: Thank you, thank you. Those are the contacts that I had.

Mayor Burt: Council Member Holman.

Council Member Holman: I also met with Doria Summa and Jeff Levinsky and various communications that came to us. Had received also the same communication that Council Member Scharff has, and it's now in the public record.

Mayor Burt: Council Member Filseth.

Council Member Filseth: The same as Karen just said. I met with Doria and Jeff. They had a very helpful picture in understanding the issues around this. It's all in the public record.

Mayor Burt: Council Member Berman.

Council Member Berman: I had a phone call with Allison Koo and did not learn anything that's not in the public record.

Mayor Burt: Council Member Wolbach.

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Council Member Wolbach: I also met with Allison Koo. The information I learned in that meeting was nothing that wasn't in the Staff Report as far as I can remember. Good job to Staff.

Mayor Burt: Council Member Schmid.

Council Member Schmid: I had a short telephone call with Doria Summa.

Mayor Burt: Because this is a quasi-judicial item, the City Council protocols, which we review every year at our Retreat—I'll encourage everybody to do so again—strongly discourage ex parte communications on any quasi-judicial item. Consequently, I did not meet with anyone.

Council Member Holman: Mr. Mayor?

Mayor Burt: Yes.

Council Member Holman: Could I offer just one clarification to that. I do believe the protocols say that it's strongly discouraged until after final ARB and PTC recommendation.

Mayor Burt: That may be. Thank you. We're ready for Staff presentation from Director Gitelman.

Hillary Gitelman, Planning and Community Environment Director: thank you, Mayor Burt, Council Members. Happy New Year. I have the pleasure this evening to introduce Jodie Gerhardt and Katherine Waugh. Jodie's on our Staff and will be presenting the item with Katherine, who's our consultant for the Environmental Impact Report (EIR) preparation. We're hoping that you'll hear our presentation, hear from the applicant, hear from the public, and then give us an opportunity to respond to any issues that are raised in the public testimony that we need to respond to on the record.

Jodie Gerhardt, Current Planning Manager: Good evening, Council Members. My name is Jodie Gerhardt, Current Planning Manager with the City of Palo Alto. The project before you is the Final EIR and the ARB application for the project at 1050 Page Mill Road. This is a 13.5-acre leased area located within the Stanford Research Park and fronts on Page Mill Road. The site has a land use designation of research office park and a zoning of research park. It's currently occupied by structures that total just under 266,000 square feet. The existing parking lot also contains 564 spaces, which is well under the current parking requirements. The proposed project would include demolition of these existing buildings as well as construction of four two-story buildings of the same floor area ratio. Along with this would be 10,745 square feet of amenity space, which is approximately four percent of the

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total building area. The amenity space would be used for onsite amenities such as a cafeteria that would facilitate reduction in vehicular use. With cafeterias, with fitness centers, things of that nature, employees are encouraged to stay onsite. The details of this would be reviewed as part of the building application. The proposal for parking includes 887 parking spaces along with 101 bicycle spaces. This would bring the project in conformance with the current Code requirements. One of the issues that early on the neighbors brought to our attention was access. The parcel currently has access from Page Mill Road, and it also has a back driveway that leads out to California Avenue. Staff and the applicant worked with the neighbors to close off this rear access. As part of this project, an armgate would be installed on this rear driveway so that all of the employees and users of 1050 Page Mill would only be able to access the property from Page Mill Road. The armgate is in place for the employees that would be at 1117 California Avenue. They still have an easement and still have the right to gain access to Page Mill Road through this property. It would be one-way. The employees from California would be able to go to Page Mill. This project would not be able to go the other direction. After the Staff Report was put together, we did receive some comments. There was some questions about the Minutes from previous hearings. As Staff, we tried to keep the packet small and save some trees. Unfortunately, that led to some problems. We did make sure to send out the Minutes to everyone earlier today. Stanford has turned in documentation of 700 acres, which we will discuss further in this presentation about Floor Area Ratio (FAR). We do have that with us. We have not been able to review it in-depth. It was written in 1885, and it is in script. It will take a little bit of interpretation. Regarding the floor area ratio, we will be discussing that later in the presentation. We also had some discussion about dewatering, hazardous materials and the EIR alternatives. Katherine, as our environmental consultant, will be answering those in her presentation. As far as the mitigation measures including those as a condition, that was an oversight in the Record of Land Use. That will certainly be included in a revised Record of Land Use. You have all the details in Attachment I, which is the Mitigation Monitoring Program. With that, I'd like to turn it over to Katherine to discuss the Environmental Impact Report.

Katherine Waugh, Dudek: Thank you, Jodie. I'm Katherine Waugh, Senior Project Manager with Dudek. As Director Gitelman mentioned, we are the City's environmental consultant for this project. I will briefly review the key steps in the EIR process and the content of this EIR. This slide outlines some of the key steps. In the process, we started by preparing what's called an Initial Study of the project's potential environmental effects and circulated that for public review along with the Notice of Preparation. That provided public information as to the intended content and scope of this EIR.

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We also held a scoping meeting in front of the Architectural Review Board to solicit public comments on those documents and ensure that we had captured all of the important issues that needed to be evaluated in this EIR. We then prepared the Draft EIR which was provided for a public review period. Presented that to the ARB and Planning and Transportation Commission to receive public comments on the content of the document. All of the written and verbal comments that were received are responded to in the Final EIR. We've presented that Final EIR, as you know, to the PTC for their recommendation and in order to bring it to you tonight. This slide lists the table of contents of the Draft EIR. The five topics in which we found that there was potential for significant environmental impacts. I'll go over those briefly now. We also, of course, included cumulative impacts and project alternatives as required by CEQA. With this project, the project impacts are compared to an environmental baseline. Under CEQA, typically you take the existing conditions at the day that you start the environmental impact analysis. CEQA also recognizes that in certain situations that baseline can fluctuate pretty substantially over time and provides that where that happens, there are provisions to consider the historic context of a property or a project setting to ensure that you're determining the baseline to most adequately represent the conditions that have been existing at that property over time. I will talk about that in a little bit more detail in the next slide. We also look at cumulative impacts which is an area where people frequently have a hard time understanding exactly how that approach is taken. I wanted to go over that quickly. The first thing that we do in the cumulative impact analysis is define what the cumulative condition might look like. That is done by identifying build-out projects in your General Plan as well as any other projects that are reasonably foreseeable. Typically those are ones that are being processed currently or have been approved by not yet constructed. We use all of that information to define what the environment or the community may look like at a certain build-out horizon, and then use that information to determine whether in that context there would be significant environmental effects relative to what's there today. Once we've defined whether there might be significant effects that are different from those that you're experiencing today, then we look to see whether the proposed project would contribute to those in a substantial manner. That process takes you through this step of analysis to determine, first of all, what the future conditions look like and then what percentage or what contribution the project makes to those effects. As I mentioned, the baseline for this project is a little bit different than the typical just taking the conditions that were existing at the time that the environmental analysis began. As you're aware, this project is within the Stanford Research Park which has had a long history of use. The buildings on this site were constructed between the years of the 1960 through—the site says 1980, but I believe it was 1982 that the last building construction was completed.

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During that time, there's been a wide range of occupants and uses of these buildings. Staff went through an exhaustive process of determining how the buildings were used over time in order to identify an appropriate baseline that would reflect the conditions that have been experienced to the greatest extent with the most consistency over that period. That different analysis and research led us to the baseline of assuming that the existing buildings on the site were occupied with 67.4 percent of those buildings occupied as office uses and 16.3 percent for warehouse and 16.3 percent for research and development. Those different types of land uses have different trip generations. Typically that's the main consideration here, the amount of traffic that's associated with each of those different types of land uses. That influenced how the impact analysis proceeded.

Ms. Gerhardt: With that, there has been some questions about the existing FAR and how this was calculated. I did want to let you know that the project does currently abide by the zoning regulations. As noted in the Staff Report, the standard maximum FAR for this RP zoning is 40 percent. However, the existing square footage and the proposed square footage or FAR for this site is approximately 45 percent. I'll walk through how that came to be. Staff is taking the position that these existing buildings are non-complying facilities, and thus are grandfathered under Code Section 18.70.100. However, there is some confusion with the Research Park because this site is not a true legal parcel in the way that we normally think about it. The legal parcel is actually much larger along the lines of 700-some odd acres. This 13 1/2 acres is just a lease area. However, current practice and past practice has been to treat these lease lines as if they were property lines. That's how we come up with this 45 percent floor area ratio. How we got here, we'll just walk you through. Imagine lots of fields with one building, because what you're seeing underneath is actually a current aerial. This is back in 1956. There was one building and not much else out here. In 1961, we have the second building that gets constructed. 1966 is the middle building; 1972 completes this middle building. In 1980, we have the front building that gets constructed along Page Mill Road. Sometime in 1999 we have a second lease line that happens down the middle a little bit here. Commercial lease lines are not subject to the Subdivision Map Act. There was no parcel or tentative map that came through the City because it is exempt from those processes. What happened is in 2000 we can only surmise that Staff was looking at the smaller half of the property, because now there was a lease line. They allowed that 2000 building to happen. If you're just looking at the smaller piece of property, it had a much reduced FAR. It was under the 40 percent for that smaller site. It looked like it had extra capacity. By putting that lease line, the larger half of the property ends up being 45 percent FAR. If you go back to the 1980s, it actually met the FAR. That's why we believe this to be a non-conforming facility under 18.70.100. At

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that time, it was legal. Some of the other things. This common practice, we do want to start to formalize this a little bit more, which is why we have given you the finding. We've had discussions with Stanford University about how to make sure and prevent this in the future. On an annual basis, we will be bringing forward a spreadsheet that looks at the entire Stanford Research Park, looks at the entire 700 acres, all of the FAR. On that 700 acres, they're allowed 11.2 million square feet. They only have approximately 10 million. That's where we come up with there's still this 1 million square footage that can be developed if you're looking at the entire Research Park. With that, I'll let Katherine continue.

Ms. Waugh: Now I will go through the various topics that we evaluated in the EIR. I'm going to keep the comment brief but happy to answer any questions if you need elaboration. The first topic that we looked at was air quality. As we found in the Initial Study, the actual size of the building in terms of project operations was not a concern. It's below the screening thresholds that the Bay Area Air Quality Management District has established. We weren't concerned about long-term air quality emissions from the project as it operates. We did look carefully at construction emissions. That analysis includes emissions that would occur from demolition, all of the soil excavation that would be necessary, and the associated truck trips and then the actual construction process itself. We did find that the emissions would remain below the levels of significance that are established by Bay Area Air Quality Management District but also identified some of the standard mitigations measures that help to make sure they stay as low as possible. Another concern related to air quality is that the buildings are likely to or are known in some cases to contain asbestos and lead-based paints. Again, there are standard mitigation measures that ensure that those materials are adequately controlled so that they are not released to the environment to cause potential health hazards. We did also modify one of the mitigation measures in response to comments that we received to ensure that the neighboring College Terrace Residents Association is notified before any demolition occurs that could release those asbestos and lead-based materials. With respect to biological resources, the project site is predominantly paved and developed, but there is potential for nesting birds to reside at the site in the trees as well as on the ground in the landscaped areas. The buildings themselves could provide habitat for bats to roost. There are standard mitigation measures that meet the requirements of the California Department of Fish and Wildlife and other applicable regulations to ensure that no adverse impacts to those types of species occur as a result of demolition and construction. We also looked carefully at hazardous materials. There are known areas of soil contamination onsite. Some of the soil contamination that previously occurred onsite has already been remediated. There were areas of

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contaminated soil that are too close to the existing buildings to be remediated until demolition occurs. As discussed in the EIR, there are a few other areas of additional soil contamination that haven't been addressed in the soil management plan but would be added to that soil management plan to ensure that everything is remediated at the same time. The site is not directly above the contaminated groundwater plume, the COE plume. The adjacent parcel is the limit of where that plume is known to occur. We also included typical mitigation measures to control for impacts that might be related to the contaminated groundwater. Specifically that requires if groundwater is encountered during construction, then measures dictate how dewatering of the site would occur. Testing would be done of any dewatering that needs to occur to determine the level of contamination in that water. That dictates how that water can be handled, whether it can go into the sewer or needs to be handled in a different manner. Those provisions are detailed in Mitigation Measure HAZ6. There are a series of construction standards that are applied under Mitigation Measure HAZ7 that describe how the building construction and how the garages need to be ventilated to ensure that any vapor that might migrate into the building from soil and groundwater would be adequately ventilated so that it doesn't build up to unhealthy levels within the building. With respect to noise, we evaluated the noise conditions in the project area currently and determined that there are two potential impacts. One would be the noise conditions within the building may be in excess of the City's standards. The mitigation measure identifies the construction standards that need to be applied, particularly for window sound transmission ratings to ensure that condition does not result. There is also a potential that the HVAC unit mounted on top of the roof could increase noise levels beyond the amount that's allowed by the City. Again, we identified performance standards that indicate a maximum allowable noise level to ensure that the project does not violate the City's standards. With respect to transportation and circulation, we found that there was one potential impact that the project could create in the existing project conditions which would be to extend the queue, the number of cars of waiting to make a left turn, into the project site from Hanson. We identified a mitigation measure that requires modifying that turn lane to accommodate additional storage. In order for that to happen, the next intersection down at Hanover would also need to be modified. Those two improvements were identified as a mitigation measure that's required of the proposed project under the existing project conditions. With respect to eh cumulative conditions, we found that there would be a significant impact in the cumulative condition related to the number of cars waiting to make a left turn at the intersection at Hanover. We found that the project itself would not contribute to those left-turn queues. That cumulative impact is something that would occur in the future but not as a result of this project. Therefore, we found that there was no need in the

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cumulative condition for the project to contribute to any mitigation measures. This is just a map to reiterate for folks where those two intersections are. Intersection No. 3 is where Hanson Way provides access to the project site. That's where the existing project effect would occur, and the mitigation would be required. Intersection No. 2 is where the long-term cumulative impact would be expected to occur, but the project would not contribute to that impact. As I mentioned, we looked at project alternatives. CEQA requires that you consider alternatives that would still meet most of the project's basic objectives, but could avoid or reduce any of the project's significant impacts. With this project, we did not find any significant and unavoidable impacts. That means that even if an alternative would somewhat reduce some of the impacts, there is no obligation on the City's part under CEQA to adopt one of the alternatives. You don't have any significant and unavoidable impacts that you are trying to avoid. We did look at the no-project alternative which is required under CEQA which was to leave the buildings in place and assume that they're occupied at the baseline level that we determined. It's inherent in CEQA that you find no impacts under the no-project alternative because it's just a continuation of the existing conditions. We also looked at a reduced project alternative where we limited the square footage of the building. Assuming that the new project would be all office space, we found that the amount of office space that would generate the same amount of traffic as is generated under the baseline condition. This resulted in a somewhat smaller overall footprint of the building which slightly reduces the impacts. Air quality impacts would be slightly reduced; noise impacts would be slightly reduced. Because the proposed project doesn't have any significant and unavoidable impacts, the fact that this alternative slightly reduces those impacts does not require the City to adopt that alternative. If the project had significant and unavoidable impacts, then CEQA requires that you adopt feasible alternatives and mitigation measures to avoid those. Under the reduced project alternative, those impacts would be slightly reduced and the same set of mitigation measures would still apply. Just to wrap up. This slide summarizes the various hearings that the project has gone through. The Planning and Transportation Commission did recommend certification of the EIR. The certification under CEQA indicates that the City has reviewed the EIR, that the EIR meets CEQA's requirements to evaluate the physical and environmental effects of the proposed project. Certification would also indicate that the City agrees that the Final EIR reflects the City's independent judgment and analysis. CEQA requires that if you certify an EIR, you must also adopt findings of fact and a Mitigation Monitoring and Reporting Program. The mitigation program defines the timing and monitoring responsibilities of the City and the project applicant to ensure that all of the mitigation measures are implemented correctly. If the Council

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certifies the EIR, you may then consider whether or not to approve the project.

Ms. Gerhardt: With that, Staff is recommending certification of the Final EIR with adoption of project-specific mitigation measures that are in Attachment I of your Packet. We're recommending adoption of a Record of Land Use. Thank you.

Mayor Burt: Thank you. I do not have any cards—they're over here. We have seven speakers at this time. I'd like to encourage any members of the public who wish to speak to come forward and fill out a card promptly. We'll cut it off in about five minutes. In the meantime, I'm going to encourage any members of the public who wish to speak on the topic come forward within five minutes. The applicant and the applicant's team will have up to 10 minutes to speak. I don't know if they're within the speaker cards. The applicant's team is allotted 10 minutes to make a presentation. Welcome.

Public Hearing opened at 9:40 P.M.

Bob Giannini, Form4 Project Architect: Thank you. Good evening, Mayor, members of the Council. My name is Bob Giannini; I'm the project architect. I want to give a very brief description of the architecture of the project and then turn it over to Allison Koo who will give some specifics. As was mentioned, the project is in Stanford Research Park at Hanson Way. This is the existing project, the existing building. It's apparent mass is kind of huge. It has a fairly relentless surface parking lot. When we first looked at the project, we reacted to that. The existing is a concrete mass that faces on Page Mill, really creates a wall against the street. This is a rendering of the proposed project. One of the biggest moves is to make the project much lighter and much more a part of the community, open, extroverted and become a friendlier neighbor on the street. This is the master plan of the new project. You can see here how the organization works. You'd enter the site, circulate around the perimeter, quite a bit reduced number of cars on the surface. The blue arrows lead you down into garages below the buildings. That allowed a lot of extra land on the site that we landscaped in the center. That's actually the size of two football fields in the middle. That's used as amenity space for the campus. One of the great things this project does is eliminate the through-traffic between Page Mill and California by creating an arm at the end of our site. You can only enter and exit through Page Mill. This is an image of the center of the site and how the landscape would develop and some of the pedestrian spaces. Sustainability was a big part of the project. The project is easily at Leadership in Energy and Environmental Design (LEED) Platinum. We're going through the process right now; we're well over the threshold. Part of the strategy for

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doing that is PVs on the roof and shading the envelope and making the envelope just as efficient as we can through the use of vertical and horizontal fins to shade the building. This allows us to have an all-glass meeting and still meet LEED Platinum. Make it a really pleasant experience for the people inside the building, because there won't be glare because it's shaded. The project also saves all the existing trees on the site. Actually it pivots right around the existing oak trees. Talking briefly about the architectural expression. One of the most obvious features about the building is the aluminum ribbon that wiggles through the building and does a couple of things. It creates the horizontal sunshade and helps link the buildings together. It's also a kind of metaphor for innovation in the Valley with the big idea of the trials and tribulations, success at the end. The ribbon actually has a little more meaning to us than just aesthetics. Another key part of the design is the notion of bringing the outdoors in. That's a tradition that's always been a part of Palo Alto. We've done it here. As you go through the lobby, it's just a continuation of the site landscaping. Inside the building, we pick up some of the features from the exterior of the building. The building is completely sky lit on top. You won't need to use lights during the day. Just a couple of other points. To add interest in the project, we're introducing color in the glass fins that are at the recessed side of the entries. There will be a little bit of light effect at night, just a soft glow from the lobby coming out as indicated in this image. That's a quick overview of the project design. Happy to answer any more questions. I'd like to turn it over to Allison at this point.

Allison Koo, Applicant Sand Hill Property Company: Mayor Burt, Vice Mayor Scharff and fellow Council Members, thank you for your time tonight. Thank you to Staff for all their work on this project. I am Allison Koo with the project. I want to go over a few of the project highlights for you again. The project is LEED Platinum. That's something we worked very hard to achieve. The project eliminates completely vehicular traffic from our site, which was the number one concern when we met with College Terrace. The project, as indicated by the City consultant, does not create any significant or non-mitigated impacts. We are voluntarily proposing a comprehensive Transportation Demand Management (TDM) plan, which I'll get into a little bit later. We are removing contaminated soil that exists on the site, left by the previous tenant. Our project design maximizes green space and creates a great campus environment which is consistent with the Comp Plan and is compatible with the surrounding environment. I just wanted to touch more about the access issue. The image that's up there shows the access points. There's two access points on and off the site. One at the top of the page is through California and Page Mill. The one at the bottom of the page is only off and on California. That was meant for delivery and loading access. When we first started the project, we met with College Terrace residents

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because we wanted to introduce ourselves, introduce the project and hear their concerns. We learned early on that access was very important to them. They had a negative experience during the Facebook era. They were worried that a project of this size would continue that impact. We took that heart and came up with a solution that we believe would work for all parties involved and would eliminate all access from our site onto California Avenue and put all that diversion away from the California Avenue residents. We believe that was a huge solution that addressed the community's concern. We're doing that to show you via a gate. That gate would only allow employees from 117 California with keycard access the ability to go across the site and onto California. As mentioned earlier, our project went through a tremendous amount of analysis. The analysis was based on a more conservative basis. As it is today, the project is standing at over 280,000 square feet of FAR. The proposed project is a decrease from the existing FAR on this site. That's because Staff put us through a huge amount of rigor trying to come up with the FAR that is appropriate given City records and City permits, when ended at the 265,000 square feet. As proposed, the project today is smaller than what is existing onsite FAR wise. We believe in TDM. We believe in the City's goals of reducing single occupancy vehicles and traffic in the area. We've come up with a very comprehensive TDM plan that we're volunteering. We are lucky enough to have a tenant who believes in TDM as well and who offers a lot of high-level TDM programs such as Caltrain passes, off-peak working hours, pre-tax dollars for transportation. On top of that, we have a lot of programmatic TDM measures that is constructed by a TDM specialist who does large campus TDM projects throughout the Bay Area including VMware. Our TDM is site-specific, and we're working hand in hand with Stanford on the Stanford Research Park TDM program. TDM to us is very important. We understand that we need to create a program that really works. We want to put this forward to have a flexible program that can change as people's needs and patterns change. The FAR issue that you've heard about this evening. Staff fully supports that this site is a non-complying facility and clearly indicated that Code 18.70.100 applies to this site. This site is not asking for any variances. We're following the Code to a "T". We're not asking for a single foot of additional FAR on this site. As I mentioned earlier, we're reducing the FAR. Analysis of current FAR is not relevant in this discussion relating to Code Section 18.70.100 since the section grants a replacement building as a matter of right. We want to emphasize that this project has many attributes. We believe that this presents a smaller project than exists today. We have an architecturally stunning design that we're proud of. It eliminates all traffic onto California Avenue, has no significant CEQA impacts and includes a comprehensive and real TDM program. We urge you to support Staff's recommendation of certifying the EIR and following the ARB findings on the Architectural Review of the project. I have my entire team

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here to answer any CEQA-related questions if you have any. I'm here to answer any other questions you may have. Thank you so much.

Mayor Burt: Thank you. Now we have ten speakers from the public. Our first speaker is David Van Atta, to be followed by Stephanie Munoz. Each speaker will have up to three minutes to speak.

David Van Atta: Thank you, Mayor Burt and Council Members. I'm legal counsel for the project 1050 Page Mill. I just want to emphasize a couple of things. First of all, we're reviewing the final EIR and the Architectural Review findings that were made by the ARB that came through. This project is a replacement of existing square footage that complies with the Code sections that you've talked about within the leasehold in the Stanford Research Park. We're replacing existing facilities with existing facilities and not increasing the square footage. The discussion about FAR and the Stanford campus does not have any merit with respect to this circumstance. We're talking about complying with the square footage that's already on the site. The Architectural Review provisions do not allow changing the zoning requirements, if you will, that we're entitled to under Code Section 18.70.100. When we do our Architectural Review, we do it in the context of the Code sections that provide us with the size and nature of the project that we're entitled to. Under 18.70.100, we are entitled to replace existing square footage with existing square footage. That is what our Code states. We don't want to act in contravention of our Code; we want to follow our Code. That's what we're asking the City to do in this instance. This project has been thoroughly vetted for three years through various reviews, ARB, Planning and Transportation Committee. It's an architecturally superior project with vast improvements over what is existing now. We think it is within the range of the scope of the presentations that this EIR is adequate and that the ARB findings should be supported as an environmentally superior project. We welcome your discussion and ready for questions you might have. Thank you.

Mayor Burt: Mr. Van Atta, I allowed you to speak on a discretionary basis. Just for everyone's reference, your comments should be part of the applicant's team.

Mr. Van Atta: Fine. Thank you.

Mayor Burt: Our next speaker is Stephanie Munoz, to be followed by Tiffany Griego.

Stephanie Munoz: Good evening, Mayor Burt and Council Members. It's a beautiful building at least from the pictures and certainly architecturally superior, and it's avant garde and it's probably the wave of the future. Is

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that a future that you want? I've heard people saying time and time in favor of projects this is different from the other buildings on the street, and it's supposed to be compatible, but we don't want a monotonous similarity. We want some individuality here. It surprised me that anybody would want to go to bigger. The word Manhattanization started maybe 50 years. Palo Alto is Palo Alto. It is not Manhattan. Manhattan may be the forerunner of the future and may be better and more beautiful, but it's not Palo Alto. I'm particularly concerned with the fact that this is a new building. It's very costly. It's a waste of a building that's already there. It doesn't have any housing in it. This building is saying here we are, we're larger and better. Better, I'll grant that. We were kind of looking forward from the remarks of one of the Council Members to having some housing in this part of Palo Alto. I thought it was a good idea to put some housing in there. It seems to me what they're saying is all the buildings that follow this, we're going to tear down these ordinary, mediocre buildings and put up Manhattan. I just happened to be reading a book about urban renewal. I'm looking at the pictures where urban renewal has been successful. The buildings are beautiful, but they haven't really contributed to the sense of community. They haven't really done anything except be beautiful. Thanks.

Mayor Burt: Thank you. Our next speaker is Tiffany Griego, to be followed by Bob Moss.

Tiffany Griego: Good evening. My name is Tiffany Griego. I'm Managing Director of the Stanford Research Park, here on behalf of Stanford University. We are the lessor of the property; we are not the applicant; we are not the developer. I wanted to clarify that. We have responded to several questions over the last three years about this project. I wanted to let you know I'm here tonight to answer any Research Park-wide questions you may have. I'm here along with two members of my team. I want to express that this is the exact kind of project we should be approving and encouraging in the Stanford Research Park. In my view it reflects innovation at every turn. It endeavors to modernize an obsolete facility without growing. The design is truly innovative. It won accolades at ARB. They haven't bragged, but it has already won multiple international awards. We just need to build it. The project sets the new standard for development in the Research Park. LEED Platinum, rooftop PVs, no natural gas hookup, voluntary TDM program. This is what I want to see more of in the Research Park. The project complies with all 19 applicable Comp Plan policies including L-42 and L-43 which favor transit, bike and ped improvements. Without this project, the existing facility falls dramatically short from the goals that we share, that are expressed in the Comp Plan. Undertaking projects like this helps us continuously attract the kinds of tenants we want. I am excited to welcome Machine Zone to the Research Park. I feel they

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also reflect our shared ethos. They are a very good neighbor, and they are deeply invested in TDM. The EIR reveals that there are no significant avoidable impacts. Most importantly, I would like to thank the applicant for working closely with College Terrace all this time to address closing off the back door. In all honesty, I wish all lessees were like this in the Research Park. I firmly believe that Council tonight has the opportunity to help me encourage lessees like this to develop leading-edge projects and to continuously make an effort to embrace our shared ethos. Thank you very much.

Mayor Burt: Thank you. Bob Moss to be followed by Victoria Valenzuela.

Robert Moss: Thank you, Mayor Burt and Council Members. This is interesting. The applicant is saying you have to comply with 18.70 because this project has an FAR which exceeds what's allowed. The reason the FAR is about 31,000 square feet too large on one of the lots is because when the lot lines were changed and the FAR became non-compliant, the City blew it. What they're saying is we fooled you once, and now we want to fool you again. There's a saying, fool me once, shame on you; fool me twice, shame on me. I think it's very simple. Make them comply with the maximum FAR and reduce the size of the building by at least 31,000 square feet. Then we comply. The toxic mitigations are totally inadequate. EPA, if they had control over Palo Alto, would never allow the type of sampling and the groundwater ignoring that is being done on this site. They would not allow an underground garage. There have been no underground garages in the contaminated area in Mountain View for more than 25 years. That has led one of the Mountain View City Council Members to say that he's delighted he lives in Mountain View and not in Palo Alto, because he doesn't have to worry about toxic hazards as he would if he lived in Palo Alto. The fundamental requirement of City government is to protect public health and safety. This project as proposed does not adequately protect public health and safety. I've written you a letter which describes a number of the errors and omissions. If you want, we can go into more detail about some of them. The buildings are too large. The groundwater contamination is ignored. They ran samples along California Avenue, and they said they didn't find any contamination. They didn't do any sampling along Page Mill where the contamination is known to exist. What a wonderful way of checking to find out whether they have a problem. We have to stop right now, reject the project as it is, and make them come back with a properly designed, adequate project which meets all requirements.

Mayor Burt: Thank you. Victoria Valenzuela to be followed by Fred Balin. Welcome.

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Victoria Valenzuela: Thank you. Good evening, Mr. Mayor, Vice Mayor, city Council Members. My name is Victoria Valenzuela; I'm the general counsel of Machine Zone. We are the current and future occupants of the 1050 Page Mill campus. I'm thrilled to be here and a part of this process. The project and the quality speaks for itself. I wanted to share just a few things about us as the occupant. First and foremost, Machine Zone was born in 2008 in Palo Alto, and we were raised here. We are a company that is committed to this community. When we outgrew our original Downtown headquarters, the company was focused on finding a home here. When we found the 1050 Page Mill project, we could not have been more excited. We knew it was the future; it matched us as a company, and we were working with a landlord who was committed to the community. That was all consistent with who we are. As you have heard others mention, we are extremely committed to traffic. We are a hardworking company, and we don't want our employees sitting in traffic. We are completely aligned with anything that will alleviate that. Not only do we take advantage of the Go Passes offered by Caltrain, but we've created some of our own. We offer financial assistance to employees who are willing to move within seven miles of headquarters. We do that so that they can use alternative means of transportation. We also have moved our core hours. Our company hours are from 10:00 A.M. to 7:00 P.M., so that people are not sitting in peak hour traffic. We will continue to find other programs that are consistent with these measures. We think of ourselves as a good neighbor. We are a quiet company. We were committed to being a quiet company, and we want to be a quiet neighbor. We'll continue to be that way. We're a head down, hardworking company who wants to do our thing. Whatever it takes to keep our neighbors happy, fine with us because that allows us to do what we do best, innovate and create new technology. I'm happy to answer any questions on behalf of the company.

Mayor Burt: Thank you. Fred Balin to be followed by Bill Ross. Welcome.

Fred Balin: Good evening. Legacy industrial park site, vegetation, then a building, then more. Manufacturing, instruments, components, requiring transformers with PCB, degreasers with TCE, hazardous substances in the shop or from below via compromised down-gradient plumes or meandering channels. Buildings age, technologies change. Gutted structures incubate lights of tomorrow, then redevelopment. Integrated plans are presented. Preliminary site assessment conducted. What is known is detailed. What is not, hypothesized or blank. Mitigations and monitorings defined. What could go awry? One, how you move a transformer out and across the parking lot? Two, what you find between a plating sump, stuffed, sealed and decommissioned for a quarter century. The former chemical storage area that tested reasonably just recently. What you find between, after you

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have taken up the concrete slab. Three, phasing within your project. Half a mile uphill from 1050 Page Mill, that is exactly what has happened at the Mayfield Upper California Avenue site. A 17-acre development building swiftly all last year, rests below an upper half, an open field for months. It will remain that way until remediation meets oversight agency approval and a mid-project reconfiguration returns here to meet yours. No integrated project should receive building go-ahead until all environmental assessments are complete, the public is notified so it can comment prior to agency decision, and any needed changes to the site plan returned to this body. When we turn back to this project at 1050 Page Mill Road, a reprise is already a distinct possibility. As written to and stated at the June 30th ARB hearing, the project is to be demolished and rebuilt in phases so that the current tenant, who is also the proposed future tenant, can continue on the site uninterrupted. Let's stop the potential for a jerry-rigged project after it is under way, especially on a site with hazardous materials known to be present or unaccounted for. Thank you.

Mayor Burt: Thank you. Bill Ross to be followed by Jeff Levinsky. Welcome.

William Ross: Good evening. I'd like to relate to two issues in the FEIR. One is the legality of the lot that is involved for the project site. This issue has been raised for over 16 months, continually before all of the administrative agencies with the response that varies by either the Staff, the applicant or the University. Initially it was indicated that the lots involved were grandfathered. In fact there are two lots. They resulted from actions under the Subdivision Map Act. Ask yourself why would the project be subject to the Subdivision Map Act in 1998 and not be subject to it now. It's not exempt. Under the plain meaning of the exemption section advanced, it would only be applicable if there were one parcel. Correcting Staff even tonight, the 1998 modification was not a lease line; that was a parcel map. When this matter came before the ARB in July 2015, the Deputy City Attorney that approved the Mayfield Development Agreement as to form, Wynne Furth, when others asked what grandfathering meant, Staff responded it's authorized in the Mayfield Development Agreement, indicated that she didn't recall that. There have been three public records requests to address what the specific authority is for the 701 parcel concept and the exemption. Why is that critical to the project description? That bears on the exact calculation of the FAR. Most recently at the Planning and Transportation Commission on November 18th the issue came up. The City Attorney at that time, 2 hours and 38 minutes into the video indicated that it resulted from an uncoded agreement in the meeting at high levels between Stanford and City officials. I would suggest that there is insufficient explanation as to why there is a legal parcel. I also think there are changed

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circumstances. Quite respectfully, I would request the adequacy of both the CEQA findings and the Record Land Use decision. It's like much of the testimony before both the PTC and the ARB is omitted. On a technical issue, several of the things that normally would be in a Staff Packet weren't available online at least at 7:00 P.M. when I checked it. They are things upon which a decision is normally based. They should have been available to the public 72 hours before. I am very curious about this 1885 document that somehow legalizes the parcel. It should have been made available to the public.

Mayor Burt: Thank you. Jeff Levinsky to be followed by Doria Summa. Welcome.

Jeff Levinsky: Good evening, Mayor Burt and Council Members. You've already heard of many problems with this project. There's excess traffic, Sand Hill's track record of not meeting commitments, newly discovered pollutants and an inappropriate claim of grandfathering. I'm going to talk about the Subdivision Map Act issue. The 1998 parcel split that created the grandfathering problem was not approved by the City as you've heard. It actually was illegal. The State Subdivision Map Act requires that each local agency regulate and control subdivisions for which this division requires a tentative and final or parcel map. Stanford is claiming an exemption. This is the exemption they're using. It says that you're exempt when you finance or lease any parcel of land or any portion thereof if it's in conjunction with the construction of commercial or industrial buildings on a single parcel. Stanford hired an attorney who actually went ahead and explained what this meant. In her letter, which is in your Staff Report, she writes that the Subdivision Map Act by its express terms does not add another layer of review to the process. What she's implying is that there is supposed to be one layer of review, but there never was. The Staff has confirmed that it never happened. In the Staff Report for the ARB, it says that in 1999 they came for a preliminary review, the parcel had already been split. The City never had an opportunity to review it. It would have found it to be illegal. Violation of the Map Act is actually a pretty serious matter. It's up to one year in prison. I don't know who Stanford plans to send there. It's up to \$10,000 in fine. It means that the parcel split in 1998 is invalid; it never happened. There is no split; it's one still leasehold or parcel. The EIR and the Staff Report have been using the wrong property description. It can be solved. Stanford should propose how it will bring things back into compliance with the City laws. Stanford has also hinted that this is not the only time this has occurred, and there are others in the Research Park. I think the City Attorney should come back and report on what these other violations are. Finally, we keep hearing from Staff that there is some secret agreement that has been discussed over the years that allows Stanford to

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not have to have these things reviewed. We, the public, have yet to see this agreement. It's been totally behind closed doors. This smacks of 27 University. It's the same problem where things are not being disclosed to the public. We hope that would end. Please discuss that with Staff tonight as well. Thank you.

Mayor Burt: Thank you. Doria Summa to be followed by our final speaker, Margit Arambura.

Doria Summa: Good evening, Mayor, Vice Mayor and Council. I want to thank everyone for all the hard work. I would like to acknowledge, as Allison Koo said, they did work with the neighborhood group. Closing the keycard gate was not the only concern from the very beginning. We had concerns about the excess FAR, namely the 31,000 approximately square feet that you've heard about. Those concerns were expressed to Staff as early as July 2014. We were also waiting for these documents to be provided that showed any kind of uncodified agreement or any kind of written agreement. I'm not sure what kind of relevance any kind of document from 1885 would have, since the City of Palo Alto was not even incorporated until 1894. I would like to thank our neighbor, Machine Zone. They have been good neighbors. That's true. We look forward to them having a nicer home for their company, but not at the expense of an illegal grandfathering act. The purpose of grandfathering in any Code is to prevent an accusation of a taking and to promote a sense of fairness when the City changes a law through ordinance and a building goes out of compliance, which had been legal when it was built. Our definition of noncompliant buildings, the new one which you just approve tonight does not say anything about when an owner of a property illegally changes a lease line that would apply to grandfathering. I'm glad to know that the 31,000 square feet that cannot be replaced would not be a deal-breaker for Machine Zone. It's a shame that this had to go on for so long with so much expense and time for all parties involved, when it could have been the fact that Staff said they would like it to be legal. The idea that anybody can move their lease lines willy-nilly whenever they want just to achieve a greater FAR on one side is a lawless and chaotic idea that we have never proceeded with in the Research Park. I can't see what advantage it would have for anybody to proceed that way in the future. Thank you very much to everyone.

Mayor Burt: Thank you. Our final speaker is Margit Arambura.

Margit Arambura: Thank you very much. Good evening, Council Members. I'm one of the people who have raised some of the questions to City Staff about the proposed project, particularly about the square footage of the parcel. As you know, the lease parcels in the Research Park have always

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been treated like every other parcel. They have a parcel number; those parcel numbers are recorded at the County Recorder's Office; they've been used by Staff to evaluate proposals regarding FAR, setbacks, etc. Regarding the grandfathering clause, I'm concerned that it's being used inappropriately. In March 1980, the City Council approved the construction of the office building at 1050 Page Mill Road to the original leaseholder. Part of the approval required that the original two parcels, which were a different shape than the two that are there now, be merged. The City Council took the steps to approve that change. At that time, the City clarified that the development on the leasehold was maxed out at 0.400 FAR. Eighteen years later in 1998, the ground lease was split and created two lease parcels. One was conforming and actually had extra space on it, which the City allowed a second building to be built on, and one non-conforming. This was done by the tenant. Stanford apparently knew about it, because they are the underlying landowner. In 2013/14 the leasehold changed hands and the current applicant came up with a proposal for the site. They requested the replacement of 285,000 square feet of existing structures with a grandfather clause as a reason for allowing that much square footage. That exceeded the amount that the City approved on the site. That's the 265,000 that they've now reduced the project to. I have two recommendations. The application for replacement square footage under the grandfather clause be denied. New development on the lease parcel created in 1998 conform to current Code standards and requirements including the FAR. Thank you.

Mayor Burt: Thank you. At this time, we return to the Staff and the Council. Does the Staff have any additional—I'm sorry. The applicant has three minutes to do a wrap-up.

Ms. Koo: I just wanted to go over a couple of the topics that were touched on. Relating to groundwater again. This site is not part of the COE study site. Even though we do excavate on the site to 14 feet—even in the COE areas, you don't find the plume until 30-35 feet underground. We're way above that with one level of underground parking. We have a vapor barrier installed. With vapor barriers, if you find any vapors, the ventilation in the underground garage creates another layer of security for the inhabitants of the building. You've got a vapor barrier plus an underground garage that serves as extra ventilation for any theoretical vapors that arise. That level is too low to his any vapors. In regards to phasing, it's misleading to call it phasing. It's going to be one sequential process. It's not going to be a start and stop. We have a tenant in the building; we have to keep them in play. There will be no stoppage between the project; it will be a continuous sequence of events. The 117 California, I think it was said that there was no City review on that. That project also went through a full City review process. At that time, all of that analysis. The important thing to note is

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that both projects, after all the analysis, show that there are no levels of significant impact that prevented the projects from occurring. We're talking about projects that fit in the context of the site.

Mr. Giannini: Just one point in dealing with the maps and the parcels and the Subdivision Map Act, when you look at the Subdivision Map Act, it's very clear that when you're ground leasing commercial property for the purposes of construction and development, the Subdivision Map Act does not apply, and the property is exempt. The people from Stanford are here that can give you much more elaboration. You have to understand the difference between separate leaseholds and subdivision parcels. The Stanford property is exempt.

Public Hearing closed at 10:24 P.M.

Mayor Burt: Thank you. Does Staff have any follow-up comments?

Ms. Gitelman: Thank you, Mayor Burt. On the hazardous materials issues that have been raised, you have in your packet a January 8th letter for Stanford. There are also mitigation measures in the EIR that Katherine can speak to further if necessary. One of the speakers suggested that there was some kind of secret agreement. What we have been talking about as Staff is clearly articulated in the Staff Report, which is a current and past practice to treat this lease lines like parcel lines when reviewing for zoning conformance. We have what we believe is a grandfathered facility. That section of the Code is clearly operable; although, it's caused by this lease line and subsequent development of the property facing on California Avenue, not by a rezoning. The buildings we're talking about replacing on this site were conforming when constructed. That gets to the whole suggestion that this is Manhattanization or somehow completely out of context. We really have to step back and think. We're talking about replacing existing square footage in a fully developed area that was intended for the purpose that it's being proposed for right now. If you had any further questions about the mitigation measures that we've recommend as conditions of approval or about the Map Act applicability, I'm sure others can respond to those.

Mayor Burt: Thank you. Why don't we return to the Council for a quick round of questions, not comments. We'll come back and have comments and motions. First up is Council Member Schmid.

Council Member Schmid: (inaudible).

Mayor Burt: We'll get you later on that. Council Member Kniss.

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Council Member Kniss: I will make this quick. We've heard a great deal about looking at this as a parcel, the 700 square feet we've been talking about that are in the Research Park. As we look at the other companies that are there, have they used this same method of calculation that we have talked about tonight, where it's part of a greater parcel rather than an individual parcel?

Ms. Gitelman: If your question is whether other leaseholds in the park are organized around lease lines rather than parcel lines, the answer is yes.

Council Member Kniss: Thank you. This would not be setting any precedent, correct? Thanks.

Mayor Burt: Council Member Filseth.

Council Member Filseth: Thanks. I have three questions on zoning and a couple on the traffic study. I'll start with the easiest one. There was some discussion in the Committee about whether 100 percent office use is actually authorized under the zoning in the Research Park. Is that legal?

Ms. Gitelman: Yes, office use is a permitted use in the park. There's no restriction on the percentage.

Council Member Filseth: Is it currently legal to move a lease line in the Research Park such that an existing structure becomes non-complying?

Ms. Gitelman: If that were to happen again, we would catch it. We have reached an agreement with Stanford to ensure that we get on an annual basis a report that would make doubly sure we would catch it. In this case, back in 1999 or whenever, we should have caught it when the lease line was put in, which was around the same time the building fronting on California was in our planning office for review. It should have been caught.

Council Member Filseth: There a lot of good things to like about this project. The whole thing shifts on the grandfathering. If it's a legal, non-complying, then it should be grandfathered.

Mayor Burt: Are we getting into comments?

Council Member Filseth: I'm trying to get to question. In this case it seems like it's not legal. Either moving the lease line such that an existing building become non-complying or building the 31,000-square-foot building on the other side, one or the other of those must have been wrong. How can they both have been okay?

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Ms. Gitelman: I'll hand this off to Cara in a second. I want to make it clear that the buildings that we're talking about replacing were legal when they were constructed. Those are legal and non-complying structures because of subsequent actions to make the lease line and to build on the opposite side of that lease line.

Cara Silver, Senior Assistant City Attorney: Thank you. Cara Silver, Senior Assistant City Attorney. I think we have three different levels of applicable regulations. We have the Zoning Code. The Zoning Code treats the parcel technically as a whole, the 700-acre parcel as a whole. We have a series of development agreement conditions. The Mayfield Development Agreement does treat pieces of the Research Park as lease lines, but only if the applicant is adding bonus square footage under the Mayfield Agreement.

Council Member Filseth: That was after this anyway.

Ms. Silver: That's true. We have a third set of guidelines. That is the informal practice of the parties. From what we have reviewed, the informal practice has been to treat the site boundaries as lease lines. That's not necessarily an enforceable practice, but it is something that both parties have adhered to.

Council Member Filseth: Is it the position of Staff that in 1998 and 1999 both the movement of the lease line and the construction of the 31,000-square-foot building were legal?

Ms. Silver: I think it complied with the Zoning Code. It did not comply with this protocol that the parties had followed. If the parties were aware of it, both sides say now that they would not have participated in that way.

Council Member Filseth: You believe that it did comply with our zoning at that time?

Ms. Silver: Yes.

Council Member Filseth: I have a couple of questions about the EIR. The traffic study says there will be 663 new car trips a day but no significant impact. There are two intersections at which the impact will be 3.9 seconds of new delay while the threshold for impact is 4.0 seconds. Is that right?

Ms. Gerhardt: Yes.

Council Member Filseth: There are also two intersections where it says the volume to capacity increase, if it's over 0.01, then there's an impact. There

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are two where it is over 0.01. In fact one of them is over 0.01 by ten times. Why is there no impact?

Ms. Gitelman: While Katherine is looking that up, that significance threshold has an "and" between it. It has to be both more than 4 seconds and exceed the volume to capacity threshold articulated by the VTA.

Ms. Waugh: That's exactly what I wanted to look up, to make sure it has that "and."

Council Member Filseth: For an impact, it requires both. How do we evaluate the next time somebody puts a building next door? If we put up a hotdog cart, it's probably going to add another 0.1 second. The next building that goes along the lines, isn't it going to be over the 4 seconds or does the clock start over?

Ms. Waugh: That goes back to the discussion I started with, in terms of how we look at project impacts versus cumulative impacts. This threshold applies to the individual project, one by one. You look at one project, whether it meets this threshold. When you want to look at how the next building and the next building or the hot dog cart affect it, that's when you look at the entire cumulative scenario. When you look at the cumulative scenario, you've added in all of those buildings and hotdog carts. We're only looking, under CEQA, to see whether the project you're considering tips those scales one by one.

Council Member Filseth: The next project that comes along, if it came in at 3.9 seconds delay, that would also be okay?

Ms. Waugh: Correct. Under these thresholds, that would not be a significant impact. We do look at the cumulative scenarios so that you can understand where those long-term impacts would occur.

Council Member Filseth: Where do we look at the cumulative scenario?

Ms. Waugh: It's in the cumulative analysis. That's how we identified that there would be a significant impact under the cumulative scenario at the second intersection. This project before you tonight does not contribute substantially to that impact. The City's other mechanisms for collecting traffic impact fees would apply, but there's no individual impact that would require mitigation under CEQA.

Mayor Burt: Vice Mayor Scharff.

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Vice Mayor Scharff: I noticed that there's a discussion on packet page 550, a short thing. It says bicycle paths. The project provides extensive bicycle paths on its site and to other sites to encourage use of bicycles rather than single occupant vehicles. Where do those bicycle paths go?

Ms. Waugh: The bicycle paths are to provide circulation within the site, to make it feasible for folks to bike to work and get to the building they work in. They're not offsite bicycle paths, just connecting.

Vice Mayor Scharff: They're onsite bicycle paths. Do they exist as actual bicycle paths that are separate from a pedestrian walkway?

Ms. Gerhardt: They're extended sidewalks for pedestrians and bicycles.

Vice Mayor Scharff: They're on the sidewalk.

Ms. Gerhardt: Interior to the site, yes.

Vice Mayor Scharff: In the Staff Report, there's a discussion of this spine road. It talks a little bit about that Staff preserved the opportunity—packet page 537—for a bike and pedestrian path that would preserve the potential for east-west pedestrian and bicycle circulation throughout the site. That's a separate area than the bike paths that are talked about?

Ms. Gerhardt: You'll see in the rear building, Building 3, the front side of that, there is a pathway that goes in front of Building 3. That is the bike/pedestrian connection that we're talking about, that could be used for pedestrians to go through the site and potential go onto other sites.

Vice Mayor Scharff: Is there any potential right now to go onto other sites?

Ms. Gerhardt: There are not legal easements that would be required to do that, but you could physically do it.

Vice Mayor Scharff: When the next site is redeveloped, which would be the site adjacent to this, where you'd want those easements. Are we going to have any ability to have that occur? I don't see anything in here that says the leaseholder shall grant an easement or anything like that.

Ms. Gerhardt: I think that's a further discussion with the property owner. At this time, we don't have significant impacts that would require such an easement. We don't have policies that would require such an easement.

Vice Mayor Scharff: Could I ask Ms. Koo a question? Ms. Koo, I heard from Machine Zone saying how happy they were to have the TDM programs. I heard you talking about how important the TDM and you were voluntarily

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doing this. Right now if we had that bicycle path, it would go to nowhere. That's the way it seems to me. If there did become an opportunity in which it would go somewhere, because the property adjacent would be developed, I don't see anything in here that would allow us to put an obligation from you or Sand Hill Properties to say that would make sense. I would ask you whether or not you'd be willing to add that as a voluntary condition. Should that become available, we can put a bicycle path through there.

Ms. Koo: I would like to answer your question in two parts. I want to clarify my understanding of the spine of the road. The spine road and its incarnation related to creating a pathway that took truck access off California Avenue or Page Mill and created that. It wasn't related to bike access, from my understanding.

Vice Mayor Scharff: The Staff Report talks about preserving it for pedestrian and bike access.

Ms. Koo: As it relates to bike and pedestrian access, we've designed it so that there's great access for bikes and pedestrians on the site. I am a ground lessee. I don't actually own the property. I actually can't grant easements.

Vice Mayor Scharff: You could grant them for the length of your lease.

Ms. Koo: I can't. All land-related rights and things like that ...

Vice Mayor Scharff: You could grant a use permit, a permit to go through the property.

Ms. Koo: I think it's a security issue that we would have to discuss with the tenant in terms of having non-employees on the site. Our site is designed to create ease of flow by pedestrians and bikes. If there were a situation occurred consistent with the overall are, we would be open to participating in that. I can't grant that sort of easement. It also has to not pose security and other concerns for the tenants on the site.

Vice Mayor Scharff: While I have you up there, there were several discussions about providing Go Passes. I gather it was the intention that part of the TDM plan would have Go Passes.

Ms. Koo: Absolutely.

Vice Mayor Scharff: I didn't see that. I just saw it at the discretion of the ...

Ms. Koo: Our TDM is very comprehensive. It's professionally done by one of the top TDM consultants in the area. It's not just thrown together. It's

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very thorough, thought through, puts together the most effective measures for different sites. We will work as changes demand, uses change, we love to keep that flexible. That's why Stanford is engaging in the Research Park-wide TDM program that we're participating in, so that we can work together to make sure all measures work together.

Vice Mayor Scharff: I wanted to ask our consultant. When you did the trip generation, did the EIR take into consider the voluntary TDM program or not?

Ms. Waugh: We did not. We took it at the base level of what it would generate without a TDM.

Vice Mayor Scharff: Hopefully we would have 20 percent, 30 percent less trips. When we talked about 600 and some trips, hopefully we would get rid of 200 of those. 150, I don't know. What's our experience on that?

Ms. Gitelman: Usually 20 percent in an area that doesn't have extensive transit service. Maybe, hopefully a little more.

Vice Mayor Scharff: It's be 120 trips roughly, 130. Thank you.

Mayor Burt: Council Member Wolbach.

Council Member Wolbach: A lot of my questions have been answered. We're still on the questions, correct?

Mayor Burt: That's right.

Council Member Wolbach: A question for Staff about what's allowed on the site according to our zoning. Would an entirely residential or mixed-use including residential option be allowable under our zoning?

Ms. Gitelman: I think residential uses in the Research Park as a rule are allowed with a use permit. Jodie's checking the ordinance.

Council Member Wolbach: I think my other questions have been significantly addressed.

Mayor Burt: Council Member Holman.

Council Member Holman: I think the architecture is really beautiful. It's a really handsome project. I'm not clear on this. I don't understand if there is a document that existed that created a 700-acre single parcel. Why hasn't that been provided to anybody? Why has it never come up in the past and why is it not considered in our Zoning Code, which describes lots and sites

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as specific square feet? I'm baffled as to where this has come from and how it's never come up before and there hasn't been any documentation provided that supports it. Can Staff respond to those please?

Ms. Gitelman: Council Member Holman, all of us have been struggling to get our arms around this issue and understand it. I can't answer why it hasn't come up before. In theory it should have come up in 1999 and 2000 when this lease line that Council Member Filseth referred to was drawn and the adjacent building on California was constructed. We do know that the Research Park as a whole is about 700 acres. Jodie referred to this historical document of documenting Stanford lands back in the 19th century. I don't know that that's relevant to any discussions we're having today. We understand the Research Park to be generally one parcel divided by these commercial lease lines. It's become an issue with this project because of the anomaly that we've discussed. The lease line that was drawn in 1999 created a non-conforming situation on the parcel that is proposed for redevelopment tonight. More than that, I'm not sure I can add.

Council Member Holman: It's important of course because of the legal, non-conforming. There seems to be conflicting information. It looks like from some information provided to us that the parcel line adjustment was done in 1998. That created a non-conformancy. In 1999 an additional building was constructed, and that made the larger parcel have .45 on it and still non-conforming. How could it be legal, non-conforming—I'm still not clear why this is legal, non-conforming when no Zoning Code changed. That constitutes legal non-conforming, when zoning is applied or changes. I don't seem to have an answer to that.

Ms. Gerhardt: I think we have two ways of looking at this property. We have either the 700 acres, which is the legal parcel. Under that scenario, the 700 acres is allowed 11.2 million square feet. As best we know, there's only 10.2 million square feet existing. They have an additional 1 million that they can construct in the Research Park on that 700 acres. If you look at it that way, they are in conformance with the Code. If you look at it as we have in past practice, just looking at the lease line itself, you're looking at the 13.5 acres. They are legal non-conforming by the Code Section 18.70.100. Those buildings were legally constructed prior to 1989; therefore, they can be replaced.

Council Member Holman: Isn't it akin to saying I have a house on my property that is 0.50 FAR. Let's do it this way. Let's say it's 0.45 FAR which is 4,000 square feet. I'll make up numbers here. It's legal, but then I subdivide and sell part of my property to somebody else. I've created my own encumbrance, so it doesn't become legal and non-conforming. I've

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created the non-conformancy by dividing my property. How is that legal? We're talking about a parcel line adjustment as opposed to a lot subdivision, but it seems the same thing to me. How is it different?

Ms. Silver: You've reached the nub of the issue. We have struggled with issue ourselves. We see both sides of it. The Council can disagree with us. Based on all of the circumstances here, the fact that—Stanford was the one who entered into the lease and created the lease parcel. The City had knowledge of that at the time. The City approved the buildings. We believe that that is an action that is akin to zoning type of action. The Code also references an annexation, which references some type of City involvement. That's really the nub of the issue. It is a close call.

Council Member Holman: Following that line of thinking—sorry for the questions, but it is the crux of this matter before us. If the City knows that that is happening but doesn't catch that something illegal is happening. If I also build on my property, I'm allowed a 3,000-square-foot house, but I add 1,000 square feet to it. If the City subsequently finds out that they've made an error in allowing that extra 1,000 square feet, they can make me take it down. I'm having a hard time following how the City knowing about it makes it okay.

Mayor Burt: Is that a statement or a question?

Council Member Holman: A question. I'm trying to understand why this is different than the scenario I just put forward.

Ms. Silver: The way we analyze it, as Jodie mentioned, under the Zoning Code, which is the operative document here, it is technically a single, 700-acre parcel.

Council Member Holman: The spine road, there's no real description of it in the Staff Report. I can't tell if there was anything that other entities used to consider how that might be an improved circulation. Was that provided to other entities? It hasn't been provided to us. It doesn't indicate what the spine road would be in the site plans that we've seen or anything in the Staff Report. Was that provided to other entities for consideration? A lot of people won't know what a spine road is.

Ms. Gitelman: I'm sorry, Council Member Holman. Maybe I don't understand. We raised the spine road as an issue in the Staff Report because it was raised to us. We concluded that it is not necessary to have a road through the site to respond to any circulation impacts. We did talk in the Staff Report about the desire to create pedestrian and bicycle access

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through the site. That's the extent to which it's been considered and addressed in the site plan and analysis we've done.

Council Member Holman: The EIR determines that there's a potential for significant noise impacts. As best I can tell, the HVAC units are on the roof. Was there any consideration of putting those HVAC units inside as opposed to on the roof? It talks about significant impact. It talks about raising the ambient level. Could these HVAC units not be put inside as many times they can?

Ms. Gerhardt: HVAC units could certainly be put inside, but it is standard construction that they are put on the roof and that a screen is put around them. During the building stage, we will certainly require either spec sheets for that mechanical equipment or a noise report. We will ensure that this project meets the City's noise standards at the building stage.

Council Member Holman: It says amenity space could be a reduction. I could not find anything that indicated what the amenity space was or what was allocated to what amenity spaces. Is that available somewhere and I just didn't find it?

Ms. Gerhardt: There is in the conditions of approval a minimum of 10,745 square feet of amenity. That's put in there as a minimum because it is not counted towards FAR and it is not counted towards parking. That 10,000 square feet does not have parking associated with it, which is why there is a minimum number. It doesn't prevent the applicant from doing more amenity space. The details of that will be looked at during the building review.

Council Member Holman: My question was the 10,400 square feet or whatever it is of amenity space, because it's discretionary approval by the Director, is it 4,000 square feet for cafeteria, 2,000 square feet for dry cleaning, 5,000 square feet for a workout facility. The Council may not think that all of those things apply or should be approved. That's my question.

Ms. Gerhardt: The applicant had original proposed closet to 20,000 square feet. Given the size of the existing structures, the Director did not feel that we could justify that amount of amenity space. Out of that 20,000, there was approximately 15,000 for food service, about 2,500 for fitness.

Council Member Holman: Is that somewhere that we can find it?

Ms. Gerhardt: No. This is in my file, but these are going to change—they could change over time. We don't have a finalization of what that amenity space is going to be used for.

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Council Member Holman: That doesn't help the Council determine what things should or shouldn't be allowed. In the EIR, having to do with transportation, there are five projects listed when looking at cumulative impacts. There are all kinds of projects that aren't included. Stanford Hospital being the predominant one that isn't included, that's been approved but not built. El Camino and Page Mill was one of the intersections that was studied as part of that. Stanford Hospital, 3045 Park Boulevard, 2180 El Camino, 1450 Page Mill, these are just ones I know of it, 441 Page Mill Road, the Mike's Bikes site, the Footlocker site. None of those are addressed in the FEIR in terms of cumulative impacts.

Ms. Waugh: The cumulative impact analysis takes the City's traffic model, which already incorporates a lot of the projects that have been approved. The additional ones that we named had to be added manually to the model to account for those additional approvals.

Ms. Gitelman: Let me amplify on that a little bit. CEQA allows cumulative impacts to be done in two different ways. You can do it based on a list of projects you know about or you can do it based on projections. We used a blend of those. We have a model that includes projected growth in traffic volumes over time. We used that model and added any projects that were not already inherent in those growth projections. We have fully considered the cumulative impacts of all projects that you mentioned in one of those two ways, either by their incorporation in the travel forecast model or by manually adding them.

Mayor Burt: Council Member Berman.

Council Member Berman: Thank you. On packet page 536, report page 7, it talks about how Staff does not believe it authorizes a collective building area in the Research Park to exceed the floor area ratio for the entire 700-acre site. Has Stanford agreed to that position? This would all count under their 11 million.

Ms. Gitelman: Yes. We received a letter from Stanford that, I believe, was forward to you today, clearly stating their agreement to this process of annually monitoring and providing the City with data on the FAR of all the leaseholds so that we can ensure the anomaly of '98 or '99 will not occur again.

Council Member Berman: I might have just missed that email. I'll check after the meeting. I'm asking Staff if I'm interpreting this correctly. There seem to be two ways to determine whether or not this legal conforming or legal non-conforming. One is the Zoning Code, which says it's a 700-acre parcel. My interpretation is this is just legal conforming. Is that correct? All

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Staff is nodding their heads, so yes. There's this informal agreement we have with Stanford. It could be considered legal non-conforming or some might interpret it as illegal non-conforming. Under the Zoning Code, it is legal. Is that Staff's interpretation? Thank you.

Mayor Burt: First I have questions on the hazardous materials issues. There were questions raised about whether there is adequate sampling and then monitoring. First, whether sampling would be done along the Page Mill face of the project and whether that needs to be done, also whether sampling for PCBs will be adequately addressed. Can you provide any information on that?

Ms. Waugh: In the EIR, we refer to a Phase 1 environmental site assessment and a limited Phase 2 investigation. Both of those involved sampling. There are maps in both of those reports that show where the sampling occurred. There was sampling on the end of the property closer to Page Mill including in the location of the former transformers that could have left PCBs.

Mayor Burt: The sampling covers both TCE and PCB?

Ms. Waugh: Correct. There's soil and vapor sampling and groundwater sampling.

Mayor Burt: The applicant said because they're lessees they can't grant an easement for a perspective bikeway spine at the rear of the property. What would be the process by which that could be built into this approval if possible?

Ms. Griego: Good evening, Tiffany Griego from Stanford. May I first get clear on what your vision is for where this would lay out? Did you say east-west?

Mayor Burt: I should be looking at the larger map. I hadn't looked at how this has been discussed in relation to the parcels that run the balance of the way toward El Camino and how you'd split those parcels.

Ms. Griego: I think you're talking about what we have historically heard College Terrace refer to as the spine road.

Mayor Burt: Right. More recently, there's been consideration of it being a bicycle spine if not a vehicle spine.

Ms. Griego: We have not looked at that on a comprehensive level. I think the City has not studied a bike/ped spine there. There is not a notion yet in

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play. Right now, lease lines just back up to each other. There's nothing to connect to today if they were to issue a license to the public to cross that direction on the site. As we think about the future, maybe we could think about something more comprehensive.

Mayor Burt: As of today, most of those parking lots are open to one another.

Ms. Griego: I think there's some fencing as well that would need to be taken down in order to create that series of connectivity. I think the notion is to improve access in and around the site so that bicyclists can come down California Avenue, presumably from the Caltrain station, cross over by virtue of an existing access agreement at 1117 Cal, and then again access to this site as an employee. That's been the main driver.

Mayor Burt: Vice Mayor Scharff has a follow-up question.

Vice Mayor Scharff: Stanford may decide this makes sense. My only real concern is that you come to us and say, "This would make sense. Be happy to do it." We now have a lease that goes to whenever. We can't now impose this upon Sand Hill Properties because of that. I wanted to build in, if possible, some flexibility that, if Stanford at that time thought it was a good idea to have that spine road in there, the lease doesn't stand in the way. The way that occurs is there's some condition of approval that, if you guys want to do that, then it goes forward. That's really my concern. I don't know how long the lease is with Sand Hill. After they build this property, if the lease is 20 or 30 years or 40 years, this doesn't happen for 30 or 40 years. We foreclose that opportunity. I would like to see a condition of approval that gives some flexibility to Stanford to allow this to occur as we move forward towards a more pedestrian and bike friendly approach.

Ms. Griego: It sounds like an if/then statement to some extent. It definitely needs to be tied in with an overall strategy as to how we approach those other lessees who have equally long terms. In order to implement something like this, it involves a broad vision and a sense of partnership among all the lessees. This may be something we could consider.

Mayor Burt: The concern is we need to have a reserve in this project to keep open that possibility, whether it's a landscape buffer that we have an agreement with Stanford and the lessee that should there be a future agreement on such a spine, this space at the rear would be available for it. We're not conceiving of making a decision at this time that it necessarily would, but we don't want to preclude it. We're asking how could we accomplish that.

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Ms. Griego: I felt like I heard Allison say if there were a linkage to other network opportunities, they would be open to it. You're getting agreement that they would be open to it.

Mayor Burt: I think I'm hearing that we might be able to put in a reserve area that would be a landscape buffer until such time as there may be a bike spine agreed to. I'll leave it at that. We probably have that ability to put that as a condition of approval ourselves.

Ms. Griego: I definitely understand what you're bringing up as a concept. I haven't seen the idea laid out physically on the map, but it makes sense as a concept. Definitely support the idea of improving bike/ped access.

Mayor Burt: The other thing on the trip impacts—actually I may need Allison for that one too. We have a voluntary TDM program that sounds pretty extensive, but is not part of the EIR because it's voluntary. Is that right?

Ms. Gerhardt: It's not part of the EIR, but it is a condition of approval.

Mayor Burt: If it is a condition of approval, why wasn't it included in the EIR impacts?

Ms. Waugh: When we started to work on the analysis, I don't think the TDM was a commitment on the project's behalf at that time. We evaluated the project with no TDM and found that there aren't impacts. Under CEQA, we can't require it as a mitigation measure. Through your conditions of approval, you can require it that way. CEQA doesn't ...

Mayor Burt: Even if you couldn't require it, it would be part of the impact analysis. Do you know with the TDM measures how many of these other non-significant impacts of traffic are reduced or eliminated as a result of the TDM program? These very things that we had colleagues concerned about are impacts absent the TDM. If the TDM is now a condition of approval, then that changes that.

Ms. Waugh: We did not do analysis to determine specifically—if we have a 3.9 second delay under the existing-plus project, how much better would it be, how much shorter of a delay would that be.

Mayor Burt: How about this at a high level? Absent the TDM program, there were 663 car trips per day resulting from the project. Do we know how many of those would be taken away as a result of the TDM program or does the applicant know that? We appreciate that a TDM program is what would happen by design. That's not quite the same thing as having this absolute calculation.

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Ms. Gitelman: We could certainly ask the applicant's TDM designer to answer that question. When Vice Mayor Scharff had his back-of-the-envelope out, we calculated about 20 percent reduction from the 600-plus trips. That wouldn't be an unsurprising result ...

Mayor Burt: Are the 600 trips the total trips or the net increase?

Ms. Gitelman: That's peak.

Mayor Burt: Net increase or total?

Ms. Gitelman: It's total. I should amplify what ...

Mayor Burt: Hillary, I think it's total, not net increase.

Ms. Gitelman: They're going to get the answer to you.

Mayor Burt: 20 percent of the total is around the 600.

Ms. Gerhardt: The 663 is the net project trips over the entire day; 81 trips would be the P.M. peak increase.

Mayor Burt: When you say net, that's the net increase?

Ms. Gerhardt: Correct.

Mayor Burt: Here's what I'm trying to focus on. You have 3,000-and-change total trips from the project. Correct? 20 percent reduction from the TDM is not 20 percent of 600. It's 20 percent of 3,000. Correct? How does that track to the net increase of trips? It sounds like it's real close. That's what matters on this. We're looking at a project, and it's about impacts.

Ms. Gerhardt: The total proposed trips would be 3,144; 20 percent of that is 629, which is very close to the 663 new trips.

Mayor Burt: Thanks. That matters a bunch. I want to ask about the landscaping. There's talk about it being sustainable. I was looking through the plant list, and it didn't appear that these are predominantly native landscape. I saw some of the pictures. It looks like there's turf there. Do you know what this landscaping really—other than being in general apparently a low-water landscape, is it actually natural habitat that we're going to create, which is not yet in our Code but very much a direction that we've been talking? Council Member Holman and I have expressed this, and it's going to be part of our Comp Plan discussion, but it's not yet adopted. Does the applicant have that information? If so, please go ahead.

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Mr. Giannini: We don't have our landscape architect here, but I can talk about the subject. The project does use sustainable landscape. We've worked closely with Dave Dockter, who's the urban forestry consultant here at the City. He used this project and an adjacent project we did at 1400 Page Mill as examples, where he's shown other people in the City to come through. I don't have the specific, but I know that from the City's point of view, they consider the selection of plant material and low-water use of the plant material exemplary.

Mayor Burt: That's the distinction. There's low-water landscaping that is not at all indigenous vegetation and doesn't really contribute substantially to habitat. That's the distinction. We can have zero scape landscaping that is not beneficial as habitat or we could have zero scape landscaping or sustainable landscaping that is. It doesn't sound like anyone here has the answer to those questions. Let me ask this. If we had as a condition of approval that it not only be sustainable in the sense of low water use, but that it have a predominant element of being sustainable in terms of natural habitat using indigenous, low-water-use plants predominantly, would that be a problem to add that as a condition? It's not the specific plant list we have. Is that something that would be within our discretion tonight?

Ms. Gitelman: It certainly sounds fine to us. I suggest we ask the applicant whether they'd agree to that condition, and we can find a place to put it in these conditions.

Mayor Burt: Thanks. Council Member Kniss. No?

Council Member Kniss: (inaudible) me already.

Mayor Burt: These have been helpful questions. We are now at 11:15. We need to move on to comments and motions. If we have a whole bunch of comments and no motions, we might be here a very long time. I want to encourage everybody to focus on an outcome. Council Member Schmid.

Council Member Schmid: I had a general problem with this. There's volumes of data, many of which came in late. I had trouble trying to reach the point of saying I can make an informed decision. I think that's where I am. Let me outline my thought process in going through and where I ran into troubles finding information. I ended up looking at just one issue, the issue of traffic. The reason I started with traffic is because our Citizen Survey has clearly identified that as one of the troubling issues for the citizens of Palo Alto. It is essential to Palo Alto's role in Silicon Valley, a role that is based upon mobility of jobs and people. It benefits both Palo Alto and Stanford equally. Further, the issue was brought up a number of times that there's a million square feet to be developed in the Research Park. The

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process we go through on traffic for this project in the EIR is probably going to be what we go through elsewhere. I was trying to understand the data, the information, that is available and needed to make an intelligent decision. I want to bring up four issues, and they're interrelated. They're not questions along the way, but there's a set of four. I started with Dudek. We had two Dudek reports, one for 1050 and one for 2555 done nine months ago. The two reports in their cumulative analysis identified six intersections relevant to this project that would be at an F rating, basically from I-280 and Page Mill through Oregon and Middlefield with El Camino and Grant fit in. The first question I had is does that mean we don't do any more development if we have "F" ratings in the center of our town. What signal does that tell us about this project and other projects. As a footnote, I noted that El Camino and Page Mill in the earlier project was "F" by Dudek, but in this project it's an "E." A surprising change, given the fact we have approved several projects over the time of that. Each one of the projects we go through, whether it's these two or, I think, there have been four others we discussed in that general area, we come to the conclusion there's no significant impact. It seems as though we go through the next 1 million square feet, we will have no significant impact. I wanted to ask what's going on. I took the Dudek report that was available to us, under the references transportation and traffic. There they mention the VTA Long Range Transportation Plan, the MTC Plan Bay Area, the ITE Trip Generation Manual. I went to those sources to help me see if they could explain why there's no significant impact. You start with the traffic analysis impact model. Palo Alto model based on the VTA information that come to us. The background data used in those modeling process is the Plan Bay Area. Plan Bay Area, that says there's going to be 640,000 new residents in Santa Clara County over the next 25, 30 years, 30,000 new jobs, increase of between 1 and 1.4 percent per year over that time. This is the background information that comes and says these intersections will be at F level, but it's not because of any single project in Palo Alto. As a matter of fact, this background information is so significant any single project in Palo Alto is small. We can point our finger; it's happening elsewhere. Someone else is doing this to us. If you look at the data, Palo Alto has the highest jobs to employed residents of any neighboring community, 3:1. As a matter of fact, it's in the top four or five of the country of cities. The other names in there are like Washington, DC and Manhattan. We can't point our finger somewhere else. It's us who's at the center of this. I'm trying to understand if we're at the center and we have all these "F" intersection, how can we keep saying there's no significant impact. I took a step further and said what does the ITE Manual tell us. I guess first there's the traffic baseline that Dudek used. There were periods of time over the last 2-3 years where there's a lot of vacancies in the property. Dudek said let's not use the vacancies to measure the baseline; let's assume that they were filled during that time

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period. They used that as the baseline, assuming a full project, and then asked how many jobs or people would be added and came to about 30 percent. That was the difference between R&D use, manufacturing use and office use. You got a 30 percent increase. If you look at parking places, there were 536 parking places at the old site. There will be 887 at the new. That's an increase of about 65 percent. It's not 30 percent; it's 65 percent, twice as high. Why? You go back and look at why are they doing this project. Part of the reason they're doing the project, it was underparked and, therefore, wasn't returning the economic rate it could. Remember the Facebook. When Facebook came in, they used the parking lots, and then they filled up College Terrace. Part of the issue here is let's cut off College Terrace. Let's park this fully. Parking it fully means that the Page Mill side gets twice the estimate that you have been making. There's a decided underestimate of the traffic created. Next stage was to go to the ITE. How do you measure trip generation? You use the ITE. I tried to go to the manual. They said, "You can get the manual. You but it \$900, \$1,000." I said, "No thanks. I'll look at the ITE Journal." They say, "You can get an article out of there for \$5 each." I guess looked at one of them and that was enough. What does the ITE Manual—how do they get their rates of usage? Everything is based on the ITE Manual. I looked through the internet. Spent an afternoon, a day, looked at the internet. Who uses the ITE? How effective is it? It's funny. The usage ends up showing the type of urban environment that it's most useful and tends to give good results. Bend, Oregon, Dover, New Hampshire, Mount Pleasant, South Carolina, South Daytona Beach, Cary, North Carolina, Sioux City, Sugarland. Are these places like Palo Alto? Are they good measures of what's going on? I finally found someone who says here's the data that comes out of it, here's how they do their estimates. About 5,000 examples collected over the last 40 years, primarily suburban areas. There are some examples of mixed-use areas. Wilshire Boulevard in Los Angeles, Sutter Street in San Francisco. They were looking specifically at mixed-use areas, and the data fits in well there. What is the spectrum of data that comes out of the ITE Manual? They get 11 trips per 1,000 square feet for office space. The range on their experience is from 3.6 to 28.8, standard deviation of 6. Where does our Research Park fit in compared to those types of communities that are using it effectively? As one academic concluded, careful with these numbers, they are only estimates. If you have any questions or doubt, do your own and check on them. Where do I end up? I'm saying I find it hard to make an informed judgment on the traffic model used here. I would find it hard to use the same model on the million square feet that will be coming to us in the future. Traffic is an issue. Dudek has told us there are at least six major intersections in the middle of our town that cumulative impacts will be at "F" in a few years. I don't think I have enough information to reach a conclusion on the traffic analysis on this and moving ahead. I would like

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Staff to come back to us and tell us how the traffic model works, the Palo Alto traffic model, the VTA, why we use ITE, how effective is it for the types of neighborhoods we'd have. Remember, Palo Alto has one of the highest jobs to employment ratios in the country at 3:1. If you take the Research Park by itself, the ratio is about 32:1. How can we use the ITE model in that environment? I don't think we can. That's where I ended up.

Mayor Burt: I want to encourage everyone to keep broader policy issues and discussions that we may very well want to address in the context of the Comprehensive Plan or other things but are simply outside the scope of what we can address either properly for this project, nor that we by any means have the time or the ability to do tonight.. Vice Mayor Scharff, you're next.

Vice Mayor Scharff: Thank you. I think the architecture is great. You guys did a really good job on that. It's what we want. I was really impressed with the LEED Platinum. I was really impressed with the fact that we're moving towards electrification, that you're not having any gas. I think all of those things count for things. I really appreciate that. I also noted other things. I noted that you worked well with the College Terrace neighborhood. I actually got some letters from people in College Terrace mentioning how hard you worked with the neighbor. I think that's evidenced by there was no angry mob here tonight complaining about the project. The concerns seem to be technically based. I think it's actually a misunderstanding of the law and the disconnect. I was listening to Council Member Holman talk about her house and why that doesn't work in her sense of things. The answer to that is what Staff said. This is one parcel of 700 acres with the ability to do an extra million square feet roughly. The fact that it ended up being an extra 30,000 square feet makes it zoning compliant. The disconnect is there's a protocol in which we deal with lease adjustments. By dealing with those lease adjustments, it was the protocol that was violated, not the law. That is such a huge distinction in that by violating the protocol, it's not a legally binding agreement between either of the parties. For us to then say we know the protocol is violated, we allowed it to be violated, it's been violated for 16, 17 years. I can't do the math this late. Now, we're going to come back and say we're going to deny the project or cut it back based on the fact that the protocol, which is an informal agreement, was violated just doesn't really make sense or hold muster because the project is compliant with the zoning. I think that's the answer to Council Member Holman's question, that you were asking Staff so hard about. I think it's completely zoning compliant. It's replacing an existing building. I guess I understood that it's actually going to be slightly smaller than the existing building by a certain number of square feet. I don't remember. We're actually building a smaller project. The other thing we look at is does it meet the objectives of the Comprehensive Plan. There's a number of

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policies here, L-44, L-48, Goal B-1, Policy L-42 and Policy L-43, which all meet the comprehensive objectives. I didn't hear a single person come to Council tonight and say it is not compliant with the Comprehensive Plan. I think we've dealt with the issues of is it compliant with the Comprehensive Plan and is it complying with the existing zoning. The other thing I think is really important here is the parking and traffic issue. If I could do it again, I would like us to have looked at the TDM plan and said, with the TDM plan, what would have been the extra seconds, what would have been the additional trip impacts and all of that. I think the back of the envelope calculation is probably not my preferred, but it's good enough for me for tonight, which is basically with the TDM project we should be able to take off 600 trips. There's an increase under the model of 600 trips. The model currently may overestimate it a little bit. From what I heard you say—you can correct me if I'm wrong—is you looked at the historical uses of the building over time. It was a little unclear to me whether or not all of that space could be used for office. If it could all be used for office with the existing building, then as the markets moved towards office, it all would be used for office. The existing trip generation should all be based on office at that point, not based on historical uses necessarily. If we denied the project and had an office building, that's what the community would have. It wouldn't have manufacturing. It would have an office use throughout, given that that's a much higher and better use. It seems to me at the very least with the TDM program, it's a net wash in terms of new trips. I think we've solved—not solved. I think the impacts of traffic are not—there's going to be no increase in traffic or there shouldn't be an increase in traffic with a robust TDM project. At least that's what I'm getting out of that. Parking is really interesting as well. Here we didn't use the TDM project and give them credit for TDM. We're actually having them increase the parking because that's what's required because the project was under-parked. Hopefully that parking is not needed and will not be used. I think we're a little schizophrenic on parking right now. We want to make sure that we don't add to problems with parking and people don't go park in the neighborhoods and that kind of stuff because they can't park onsite. We want to be overly cautious and give people parking. On the other hand, when we create all this new parking, people say we're creating new car trips because there's parking for those cars. I think that reflects more our schizophrenia as a Council because we're trying to figure our way through this. We didn't include the TDM. Since we didn't give them credit for the TDM, we required them to do parking. I don't view that as a proxy for more cars because we're requiring both. I think we've dealt with what I would consider to be the major impacts on this. Given that, I would move that we—let's see what the Staff recommendation was. We move to certify the Final Environmental Impact Report and adopt a project-specific Mitigation Monitoring and Report Program, which is Attachment G, and we adopt a Record of Land Use Action,

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Attachment A, approving the Architectural Review application for four new office buildings at 1050 Page Mill Road. I would then also, since I heard the applicant—at least I saw the applicant nod. If the applicant has a problem with it, if Stanford has a problem, speak up—that the landscaping be predominantly indigenous plants providing natural habitat. I'm open to language changes on this from either Stanford or the applicant. The concept was to provide a landscape reserve at the rear edge of the property sufficient to provide for a future bikeway spine should such a spine project be adopted in the future by Stanford and the City, and that agreement to this condition would be required from the lessee and Stanford.

Ms. Gitelman: Vice Mayor Scharff, by referencing the rear end of the property, our thought was that it would be to the south of that building that's at the rear end of the property.

Vice Mayor Scharff: I'm happy to do any language changes you want on that. Maybe we just say provide a landscape reserve at the south end of the property. Edge closest to Cal. Ave.

Ms. Gitelman: Or inboard of Building 3. It would be south of Building 3.

Vice Mayor Scharff: South of Building 3, that's fine. Hillary, maybe you could work with the Clerk to just fix the language. If the applicant and Stanford want to take a quick look and suggest some language (inaudible).

Mayor Burt: Does that complete the Motion?

Vice Mayor Scharff: It does.

Mayor Burt: We need a second.

Council Member Kniss: Second.

Mayor Burt: Seconded by Council Member Kniss.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to:

- A. Certify the Final Environmental Impact Report and adopt a project specific Mitigation Monitoring and Reporting Program; and
- B. Adopt a Record of Land Use Action approving the Architectural Review application for four new office buildings at 1050 Page Mill Road; and
- C. Require landscaping that is predominately indigenous plants providing natural habitat; and

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- D. Provide a landscape reserve South of Building Number 3 sufficient to provide for a future bikeway spine, should a spine project be adopted in the future by Stanford University and the City. Agreement to this condition would be required from the Lessee and Stanford University.

Mayor Burt: Do you have additional comments on your Motion?

Vice Mayor Scharff: I'm just going to briefly say that I think this is predominantly the kind of project we should want as a City. We've taken care of the impacts. It's replacing the existing square footage. It's environmentally sensitive and sustainable. It's LEED Platinum. It's got no natural gas being used. It meets all of those requirements that we as a City talk about when we talk about sustainability. That's really important. I think it's a good project.

Mayor Burt: Council Member Kniss.

Council Member Kniss: I'll be brief. I think the project highlights that the Vice Mayor has just called out, which were these. They're in blue. I think they indicate strongly. The persuasive part of this for me has been the 700 acres. I did hear there was a letter from Stanford indicating that would continue to be balanced out. Is that correct, Cara? Would you just nod your head? Yes. We can be certain, we can be comfortable knowing that overall when that extra million is added at some point, 30,000 of that will come right off the top. As you said earlier, you're either dealing with this as an entire parcel or you're dealing with it as an individual project. I am choosing to deal with it as a 700-acre discussion rather than breaking it down into the individual parts we talked about earlier. I would call out the Platinum design. As Mayor Holman mentioned earlier, this is a handsome project. Was that the word? Something like that. It is. The building that is there, in my opinion, is not going to win architecture awards. It was done a long time ago. It was done piecemeal. This will be done as an entire campus, which has great importance. The TDM which was done absolutely voluntarily, as I understand, because it's not a requirement. I did actually see a copy of the TDM, was impressive. We've talked about the soil. We've talked about the green space. I appreciate the Mayor adding that these should be indigenous plantings, which will make a difference. It looks to me as though in the end, this will be a very attractive campus. I hope something can be worked out with the so-called spine such that there could be biking in that area. Again, I realize that we probably wouldn't be asking Google or LinkedIn if we could bike through their campus. I think this is the same kind of issue. With that, my second stands.

Mayor Burt: Council Member Wolbach.

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Council Member Wolbach: It's very likely that we have been or will be discussing with a number of property owners about various ways we can work together to make more bike and pedestrian pathways available throughout the City. I'll just ask the Vice Mayor who proposed it. The bike connectivity you're trying to create here would connect what street to what street ultimately? Maybe that would be something we could add to provide some clarification that might be more useful. Like the goal is to connect—is it to connect Page Mill to Cal. Ave. by bike?

Vice Mayor Scharff: It's sort of undetermined, but Hanover to Cal. Ave.

Council Member Wolbach: Hanover to Cal. Ave.?

Vice Mayor Scharff: Hanover to El Camino.

Council Member Wolbach: Hanover to El Camino. The other question—correct me if I'm wrong—would be if there are any additional opportunities for connecting Page Mill to Cal. Ave. along the north edge of the property. I'll leave that for others to consider. I'll let others speak to that. Regarding the project, I think everybody knows my bias is towards housing. As Council Member Schmid pointed out, our jobs/housing imbalance is quite terrible in the region and in Palo Alto. Our population growth is expected to be pretty significant over the next few years. This location isn't quite next to our Caltrain station at Cal. Ave. The Research Park hasn't traditionally been focused on housing as a primary thing. There has been some housing out in the Research Park. I'm not going to say we need to send this back and have it come back with housing. I will use this as an opportunity to jump on my soapbox and say I look forward to this City and Stanford working together to explore potential opportunities for more housing in the long term on the Research Park in a way that would be beneficial for both the City and Stanford and the lessees of Research Park. I'll just put that out there for everybody to mull over and consider how we can have that conversation in a robust way moving forward. A few things stood out about this project that are worth commending, even though it isn't the type of project that I prefer. As was mentioned before, it's LEED Platinum; it doesn't use gas; it's not asking for variances; it follows the Code. There have been a number of meetings with the community. The TDM plan—I haven't had a chance to really look at it. The fact that they're volunteering to do substantial TDM is big. They're working with Stanford, working with the tenant. This is what we've been trying to push as a Council for the last couple of years. I think this sets a very good precedent and a very good example. Frankly, we should reward good behavior. When developers in town do sustainable projects, work closely with the community, and volunteer to do TDM, I think that should be acknowledged, and we should reward that, even if it's just

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with a thank you. After all the debate about the parcel lines, etc., if we are acknowledging this as grandfathered in, then it is actually a smaller building than what's there right now. That's actually impressive. I also appreciate preserving the trees. For me, that's big. I think that's awesome. I just want to say thank you for that. The biggest thing for me, out of everything, that makes me willing to support this project, even though it's not a housing or a mixed-use project, is the collaboration and outreach to the community, to the neighbors. Hearing that from Stanford, from the property owner and even from the tenant, saying that will do whatever it takes to make their neighbors happy with them. That will allow them to work (inaudible) recognizing that there's a self-interest in working collaboratively with the community. That's, again, something to reward. I hope that, as we talk about possible bike routes—I understand you want to talk to the tenant about security. My first security gig when I worked private security was at an adjacent building. I'm familiar with that. I understand the need to do that. I hope there will be open communication about bike and pedestrian access. This, again, might set an example for other areas as well. I'll support this.

Mayor Burt: Council Member Filseth.

Council Member Filseth: I'm sorry the motion is structured the way it is. I don't have a specific suggestion. I think I can support the project, but I'm going to have difficulty certifying the DEIR. The issue is traffic. Traffic is high on the priority list of residents in Palo Alto. The FAR thing swings on the interpretation of 700 acres and legal. If the maker is willing to split the Motion ...

Vice Mayor Scharff: (inaudible)

Council Member Kniss: I'd support it.

Council Member Filseth: Thanks very much. I'm kind of sorry that the Motion is structured the way it is; although, I don't have a specific suggestion. I think I can support the project, but I'm going to have a lot of difficulty supporting actually certifying the DEIR. I agree with—the issue is traffic. All the studies we do that come back and say no significant impact. Traffic is kind of way up high on the priority list of residents in Palo Alto. We heard this over and over and over again. I think there's a lot of skepticism with these kinds of reports. Council Member Schmid pointed out a number of the problems with it. The shortcomings of our studies have come up before. There's been general agreement that we have difficulty assessing the cumulative impacts. I'm looking here on the Staff Report. I did find the cumulative section. Basically it says that the delays at these intersections in

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2025 won't be any worse than it is today. I realize we're using different models for the long range. This pace in particular is really close. We're within a tenth of a second, and we're actually over on the VC ratios. I read the report. Do I feel that we followed our methodology? Yes. Do I feel confident certifying there's not going to be any significant traffic impact? Absolutely not. I could actually support the project. The FAR thing swings a lot on the interpretation of the 700 acres and legal. If the maker's willing to split the Motion ...

Male: (inaudible)

Council Member Kniss: (inaudible) I'd support it.

Council Member Filseth: In that case—would you support it? I want to propose friendly amendment that we split the Motion and separate the approval of the DEIR versus the project.

Vice Mayor Scharff: As Vice Mayor, I'll jump in for the Mayor. That's actually the Mayor's prerogative.

Council Member Filseth: Up to the Mayor.

Mayor Burt: I will go ahead and support Item A of the Motion being split from the balance of the Motion.

Council Member Holman: Mr. Mayor, procedural question.

Mayor Burt: Yes.

Council Member Holman: I don't believe someone cannot approve the FEIR and then approve the project.

Ms. Silver: The Council as a whole in order to approve the project must certify the EIR. If the Council as a whole does not certify the EIR, then legally you cannot approve the project. If you want to split the Motion so that individual Council Members can vote on individual items just to express their opinions on the particular issues, that can be done. As a whole the Council must certify the EIR in order to approve the project.

MOTION SPLIT FOR THE PURPOSE OF VOTING

MOTION1: Vice Mayor Scharff moved, seconded by Council Member Kniss to:

- A. Certify the Final Environmental Impact Report and adopt a project specific Mitigation Monitoring and Reporting Program.

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MOTION2: Vice Mayor Scharff moved, seconded by Council Member Kniss to:

- B. Adopt a Record of Land Use Action approving the Architectural Review application for four new office buildings at 1050 Page Mill Road; and
- C. Landscaping that is predominately indigenous plants providing natural habitat; and
- D. Provide a landscape reserve South of Building Number 3 sufficient to provide for a future bikeway spine, should a spine project be adopted in the future by Stanford University and the City. Agreement to this condition would be required from the Lessee and Stanford University.

Mayor Burt: Thank you. Does that cover it? Council Member Holman.

Council Member Holman: Thank you. I haven't seen something in front of the Council or even going back to Commission days that's this much of a conundrum in many years. I have procedural issues. I have EIR issues. I have explanation issues, if you will. Now that I've said that, you know where I stand on that. I do have one clarifying question for the maker of the motion. The landscape reserve south of Building No. 3—it's also a question for Staff—is that concurrent with the spine road? Is the intention to be concurrent with the spine road?

Ms. Gitelman: Thank you, Council Member Holman. There really is no spine road. If I understand what Item D is saying, it's saying that we want to reserve a landscape area that could be used for bicycle and pedestrian access. I don't understand the last sentence of "D." I wonder whether the maker of the motion would be okay with deleting that last sentence. "Agreement to this condition would be ..."

Vice Mayor Scharff: I'm fine with deleting it. Do you think it shouldn't be in there?

Ms. Gitelman: I presume ...

Vice Mayor Scharff: Take it out.

INCORPORATED INTO MOTION2 WITH THE CONSENT OF THE MAKER AND SECONDER to remove from the Motion Part D, "agreement to this condition would be required from the Lessee and Stanford University."

Council Member Holman: I understand there is no spine road, but there is a theory. It was actually in information provided by Jeff Levinsky and Doria Summa, whichever one provided this. It actually talks about—this talks

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about the spine road. It says this was presented to the Planning Commission in 2004. It's unlikely the information will be incorporated into the ZOU; however, it is more appropriate to be addressed in the EIR for the Research Park or in subsequent site planning. I guess what I'm looking is, is the intention for your "D" to be the consideration of the spine road? This only says bike; it doesn't pedestrian and bike. Did you want to add pedestrian and bike?

Vice Mayor Scharff: Yes.

Council Member Holman: You do want to add pedestrian and bike. Is your intention that this would be—I'm still trying to get clarity—consistent with what's long considered the spine road?

INCORPORATED INTO MOTION2 WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion Part D, "pedestrian and" after "for a future."

Vice Mayor Scharff: It's not automatically. If a future opportunity comes in, I don't want the leaseholder to stand in the way of what Stanford and the City might want to do for future connectivity. That's really all it is. It's to provide some insurance that 10 years from now, if the parcel next door redevelops, if Stanford wants to do it, hand are not tied because we didn't at this moment make something for the future, allowance for the future. It's really that simple.

Council Member Holman: You've heard, so you kind of know where I'm coming from here. Having to do with the noise and rooftop ambient level noise, having talked with ARB members over the last long period of time, much of the HVAC equipment could go in basements or in interior places in buildings. I'm really concerned about the potential impact of this as it was identified in the EIR. I'm wondering if the maker of the motion would consider an amendment to have Staff go back and review and put as much of this HVAC equipment inside the building as is absolutely feasible.

Mayor Burt: I think we have a Staff comment on that.

Ms. Gerhardt: I just wanted to note that to the degree that we put this equipment inside of a building, it could be considered FAR. We need to be mindful of that fact.

Council Member Holman: Let's call it amenity space then. I'm really concerned about the noise impact. The industrial park has significant impact on the College Terrace residency anyway. Vice Mayor Scharff?

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Vice Mayor Scharff: If they don't, I'll respond.

Council Member Holman: Years ago we couldn't consider this. Now we can.

Ms. Gitelman: I'm sorry. I was working with Council on another ...

Vice Mayor Scharff: Council Member Holman has raised the issue of should we direct Staff to review placing as much HVAC equipment inside the building as possible. The question for Staff is, is this an issue we should be concerned about in terms of noise. The EIR consultant says no. I haven't heard from the applicant yet. I'm tempted to say no, but I'm asking Staff—I'm watching the EIR consultant say this is not an issue. If this is an issue and this would annoy people, then yes I think it would be a good idea. I just don't know the answer to that.

Ms. Gitelman: We have identified ways that noise impacts would be addressed. We don't think this condition is necessary. It's completely within the Council's purview to add it if you'd like.

Vice Mayor Scharff: I guess I'll say no.

AMENDMENT TO MOTION2: Council Member Holman moved, seconded by Council Member XX to add to the Motion, "direct Staff to review placing as much HVAC equipment inside the building as possible."

Council Member Holman: The amenity space, Jodie, I never did clarification on what the amenity is.

Ms. Gerhardt: There is not an exact use at this time. It would be determined at the building stage. There is a minimum square footage.

Mayor Burt: Council Member Holman, can I offer another possible way to address this?

Council Member Holman: Yeah. How can we say yes or no if we don't know what it is.

Mayor Burt: We have parking that was mandated based upon no TDM program. Is that correct? No reduction in parking as a result of TDM. We're looking at ballpark of 20 percent fewer parking spaces than were mandated—fewer parking spaces required than we're mandating. Is there any possibility that, if the Council were willing to allow for some of that parking area to be used for HVAC system—I don't know from an engineering and design standpoint. You normally have HVAC in the building that you're using it on. From a ducting standpoint, I don't know whether it's practical that you would connect a couple of those buildings or not. Maybe even the

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applicant has an answer as to whether it's feasible. The Council might consider reducing the parking requirement by X number of spaces to allow some below-grade HVAC. Now that I think about it, if we allowed a reduction in the parking, that might allow for simply the applicant to enclose the HVAC elsewhere. Just a thought. Can we allow the applicant to speak?

AMENDMENT TO MOTION2 FAILED DUE TO THE LACK OF A SECOND

Council Member Holman: Are you proposing that? Sure.

Mayor Burt: I might. Let's hear what the applicant's architect has to say.

Council Member Kniss: Mayor, is that underground you're speaking about?

Mayor Burt: I don't know.

Mr. Giannini: First off, most all of the buildings out there all have rooftop air conditioning units. They're old. I can't imagine anyone has ever heard them. As you walk around, you don't really hear the air conditioning units. The City does have rules about making sure that's the case. On one hand, the rooftop units are very typical. I would agree ...

Mayor Burt: I think we know that. We actually do hear them, and neighbors hear them. We have some concern is we're bringing it up.

Mr. Giannini: The thought of either doing a central plant on the site is problematic because the buildings are lease buildings and could be split up to different tenants. You do sometimes see a central plant on a big campus. It wouldn't be appropriate in a situation like this. To put the units inside the building is possible, but it's also very unusual and difficult to do. They need louvers and vents and air and vibration and everything else which can be handled much easier on the roof. What you're saying is possible, but it would be very difficult and doesn't seem to actually be a concern—it isn't typically a concern in my projects. We do have ways of isolating the units, doing vibration control on the roof and what have you, that allows us to much more easily deal with the units on the roof than if we try and bury them in the building or put them underground.

Mayor Burt: Absent burying them or completely putting them within the building, are there certain best practices that are better than what you're saying nobody cares about, but we really actually do have concern over it. Are there certain best practices that we might be able to include in this project to reduce the noise from the HVAC below what is our maximum permissible amount?

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Mr. Giannini: I'm actually not comfortable answering that. I believe there probably are ways to add noise abatement to equipment, but I'd want to talk with our mechanical engineer to really get a solid answer on that. We would certainly be willing to do everything we can to insulate better and pick units that are quieter and study that. We would be very interested in studying that process.

Mayor Burt: Thank you.

Council Member Holman: An Amendment might be for the applicant to work with Staff to explore ways to further minimize noise impact. My last potential amendment is—I actually asked this question, didn't get answer to it. I didn't find, when I read through the Record of Land Use Action, reference to the mitigations that are in the DEIR and FEIR. They're included as Attachment I, as draft. Attachment H is statement of findings. I don't see anything that holds the applicant to the mitigations that are identified.

INCORPORATED INTO MOTION2 WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "direct applicant to work with Staff to further consider ways to reduce noise impact." (new Part E)

Ms. Gerhardt: That was an oversight by Staff. As we stated in our presentation, the Record of Land Use will be updated to include such a measure so that the Mitigation Monitoring Report is a condition of approval.

Council Member Holman: Mitigations and Mitigation Monitor?

Ms. Gerhardt: Absolutely.

Council Member Holman: Do you want to add that to the motion, Vice Mayor Scharff?

Vice Mayor Scharff: Staff's going to do this anyway. No reason not to add it in. Just go ahead and add it in.

INCORPORATED INTO MOTION2 WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "add the Environmental Impact Report (EIR) mitigations and mitigation monitoring requirements to the Record of Land Use Action." (new Part F)

Mayor Burt: Council Member Holman, you want to work with the Clerk to make sure that reflects ...

Council Member Holman: Yeah. My last comment ...

Mayor Burt: I see they got it.

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Council Member Holman: ... is I mentioned earlier that this one's perplexing and troubling to me. As I indicated prior to the amendments, I'm troubled by the EIR and the EIR process. I'm troubled by other things procedurally. I'm troubled by—I never did feel, for me, confident or comfortable that there really is this single parcel. There's nothing that was presented for me to digest, that I felt like there really was this single parcel. The Planning Commission Minutes weren't provided until today. The ARB, we just got summary Minutes, and those we got today at 4:00. I noted that the scoping for the EIR was done at the ARB, which is not a body that even works with scoping and all the various land uses and transportation issues that are part of an EIR. I'm still not confident about the grandfathered issue. The amenity space is still a vagary from my perspective. I'm glad the TDM, according to them—maybe the maker or seconder would want to add to this. The TDM program is not identified and in the Record of Land Use Action. I believe it's just referred to as it will come forward. It's not identified or described whatsoever in the ...

Mayor Burt: Can we ask Staff how that can be addressed adequately?

Council Member Holman: Okay.

Ms. Gerhardt: There is a Condition, 16, about the TDM plan. It does say that we would review and approve this prior to the issuance of building permits, and there would be annual updates of how the TDM program is working.

Council Member Holman: What I'm saying is there's no description of the TDM program at all. It just says the plan will be submitted to the Project Planner for review and approval prior to issuance of the building permits. That's all there is to it. There's no description of the TDM program. I think the applicant has—you indicated that you have, I trust, a very competent TDM program, but there's no reference to that in the Record of Land Use Action.

Vice Mayor Scharff: What it does say is the plan shall be submitted to the Project Planner for review and approval. You're right. Staff could screw up and approve the wrong TDM program. If you trust Staff to approve it, that's the ...

Ms. Gitelman: That's right. I think you can trust Staff to hold the applicant to what they've said tonight in open session that they're willing to produce.

Vice Mayor Scharff: Right. That's why I kept asking if we have a Go Pass. I guess they said there's a big plan. I assumed Staff had seen their plan for a TDM project.

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Ms. Gerhardt: Staff has seen a draft of the document, yes. We will review and approve prior to building permits.

Council Member Holman: This is going to sound argumentative, but that's not what the intention is. I guess it's that, since we haven't seen it—it's not a lack of trust of Staff. It's that I think the responsibility does lie with us to look at a TDM plan and see is it adequate, is that what we want, does it include Go Passes, does it include this or that, does it include staggered work programs. I think it's important for us to see what those things are. It's not a lack of trust of Staff. It's a lack of our oversight. For all of those reasons, I'm not going to be able to support either the—Council Member Schmid was brilliant in his description of the lacking of the traffic impacts. I'm not going to be able to support the EIR or the project. I'm sad about that. I think it's a beautiful project. There's just too much here that's just—it's so amorphous that I just can't support it.

Mayor Burt: Council Member Schmid, you'll be speaking to the motion?

Council Member Schmid: Yeah. I note that 30 years ago, Council passed a strategic document called Land Use and Transportation. They said the key to success in traffic and parking was a TDM program. Tonight we've talked about the importance of a TDM program. A lot of confident words. How about adding make the program instead of voluntary mandatory and state that 80 percent of trips to the site will be limited to single occupancy vehicles?

Vice Mayor Scharff: (inaudible)

Council Member Schmid: Make the TDM program mandatory rather voluntary and set it at 20 percent.

Vice Mayor Scharff: It is mandatory.

Mayor Burt: They've volunteered it, but it's now mandatory. It's already in there.

Council Member Schmid: How about adding the words there? A "G" which says 20 percent of trips will be non-single occupancy vehicles.

Mayor Burt: You're referring to adding a metric on an outcome of the TDM program as opposed to the TDM program. Does Staff have any concerns that the TDM program is designed to achieve that outcome?

Ms. Gitelman: Mayor Burt, just because of the lateness of the hour, I think it would take us some time to evaluate what that metric should be and

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consult with the creators of the TDM plan and ensure that they could meet that plan. We could do that now on the fly, but I'm just a little nervous about that. We have, back of the envelope, said achieve 20 percent. I would want to consult with the authors of the plan and the applicant before we put that as a condition of approval.

Vice Mayor Scharff: Council Member Schmid, if we put that in there, would you support the project?

Council Member Schmid: Yes.

Vice Mayor Scharff: I'm willing to put a metric in there. If we have a TDM plan that can't make a 20 percent reduction, obviously we have the wrong TDM plan. Do you agree with that? It's not a crazy ...

Mayor Burt: It's by design. Staff is going to determine it by design. (inaudible)

Vice Mayor Scharff: It's a "by design" metric. Do you want to put a "G," the TDM program will be designed to reduce single occupancy trips by at least 20 percent?

Council Member Schmid: What do you mean "design"? Will or will not?

Mayor Burt: May I wade in on that?

Vice Mayor Scharff: Absolutely.

Vice Mayor Scharff: I don't understand how you would implement a metric otherwise. You can't have a metric that says—I don't think you can reasonably have something that says if in a future year they don't do it, we throw them out. I just don't see how you can do that. We're saying what Staff would approve in a TDM program, they in their professional judgment as our Transportation Staff, would say yes, we agree that this plan will achieve a 20 percent reduction.

Council Member Schmid: As I say, 30 years ago, they had something like that, and it didn't. It's (crosstalk).

Mayor Burt: That's a concrete plan. That's not a concept level, but it's a concrete plan. I don't see what else you can do.

Ms. Gitelman: Mayor Burt, the experts have discussed that it would be possible to put in a metric that assures a 20 percent reduction in motor vehicle trips during the peak hour.

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Vice Mayor Scharff: Okay. You can add that peak hour; that's perfectly fine.

Mayor Burt: That's acceptable to the seconder?

Council Member Kniss: Yes.

INCORPORATED INTO MOTION2 WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "the Traffic Demand Management (TDM) program will be designed to reduce single occupancy vehicle trips by 20 percent during the peak hour." (new Part G)

Mayor Burt: Anything else?

Vice Mayor Schmid: Is that singular or plural? Is it one hour or is it the morning commute?

Ms. Gitelman: One peak hour.

Mayor Burt: What we really mean is both of the peak periods of the day. I would agree that it should be the A.M. and P.M. peak hours. Is that ...

Vice Mayor Scharff: That's how I understood it. I think the Planning Director was making a joke actually.

MOTION2 PART G RESTATED: The Traffic Demand Management (TDM) program will reduce motor vehicle trips by 20 percent during A.M. and P.M. peak hours.

Council Member Schmid: The way the Planning Director stated it, she left out the design, said "will reduce."

Mayor Burt: Sorry? What'd you say?

Council Member Schmid: The Planning Director left out the words "be designed to." Said "will reduce single occupancy vehicle trips."

Ms. Gitelman: That's right. I didn't say "single occupancy vehicle." I said "motor vehicle trips."

Mayor Burt: By including or not including the words "be designed to," if they're not there, what does it mean to you?

Ms. Gitelman: Not including "be designed to." This is the performance standard we're going to hold them to, however they get there.

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Mayor Burt: That's better.

Vice Mayor Scharff: It's better.

Mayor Burt: Stronger. Eric, are you still ... No. That leaves it to me. Are you done? I think so. For me, the principle issues around a project like this are about the impacts. There are a number of different impacts. One actually that is very high on the list is the trip impacts on College Terrace. I think that was glossed over, but that's why we are not seeing a whole bunch of the College Terrace neighborhood folks here concerned about that impact. There are the broader traffic impacts. We basically have an EIR that looked at the impacts absent the TDM program that is now with a performance metric in the conditions of approval. We have parking. It appears that we have a project that is going to be significantly over-parked. I've been racking my brain over what you can do with an extra 20 percent parking spaces if that is what comes about. I suspect that's what we're going to have. That's something we'll need to struggle with in the future. The sustainable aspects of water and energy, this is a very exemplary project. The concerns over soil toxins are an important consideration. I think they have been addressed adequately by the Staff responses. Finally, the aesthetics. We may hate to lose this fine example of Stalinist revival architecture, but I'm willing to let it go. On that basis, I support the project. On the EIR, we have to be cautious between any broader considerations of how we might think that CEQA should be changed versus whether an environmental review has been done properly and according to current best practices as they're acknowledged. I think we have to be really wary of interjecting our own determination of what is a proper methodology. We can still argue specifically on whether we think an impact is significant or not significant, a number of things. It's not a black-and-white issue. What I heard tonight is really a disagreement most of all—I wouldn't say exclusively—saying we just don't think the professional best practices are acceptable. That's not what is before us tonight when we review it. I think it's reasonable for us to have deeper discussions around that, but that's not a proper consideration in looking at an individual project. As we look at following the law and the importance of trying to do that as best we can, we have to be wary of saying the law ought to be such and such, and I'm not going to approve a project because I disagree with a law. I think this follows CEQA law. When we really look at traffic impacts, this has been significantly overstated. For me, the biggest one, certainly not the only one, is what's the traffic impact of the project. Our EIR excluded the whole TDM program. At first, I wasn't sure whether it was mandatory. Staff clarified. We put even more meat on it in the motion. I think it's proper. I'll be supporting both the EIR and the project. I think everybody's had a bite at the apple or

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several bites. Cory, don't open the can of worms here and let everybody go around again.

Council Member Wolbach: I want to understand. Since we split the motion since I spoke to it, what does that mean? If I vote against the EIR but in favor of the project, what does that mean?

Mayor Burt: As Cara explained, the project goes forward if a majority of the Council supports the EIR and a majority of the Council supports the project.

Council Member Wolbach: So it's clear for the record that anyone who's voting in favor of the project but against the EIR, they understand that they're not really opposing the project. It's really just a protest vote.

Mayor Burt: No. If a majority of the Council opposes the EIR, it's not a protest.

MOTION1 RESTATED: Vice Mayor Scharff moved, seconded by Council Member Kniss to:

- A. Certify the Final Environmental Impact Report and adopt a project specific Mitigation Monitoring and Reporting Program.

MOTION2 RESTATED: Vice Mayor Scharff moved, seconded by Council Member Kniss to:

- B. Adopt a Record of Land Use Action approving the Architectural Review application for four new office buildings at 1050 Page Mill Road; and
- C. Landscaping that is predominately indigenous plants providing natural habitat; and
- D. Provide a landscape reserve sufficient to provide for a future pedestrian and bikeway spine to connect Hanover Street and El Camino Real, should a spine project be adopted in the future by Stanford University and the City. In such event the Applicant shall work with the City and Stanford University to convert the landscape reserve to a pedestrian and bikeway spine; and
- E. Applicant to work with Staff to further consider ways to reduce noise impact; and
- F. Add the Environmental Impact Report (EIR) mitigations and mitigation monitoring requirements to the Record of Land Use Action; and

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G. The Traffic Demand Management (TDM) program will reduce motor vehicle trips by 20 percent during A.M. and P.M. peak hours.

Mayor Burt: Let's first vote on what's listed here as "A," which is certification of the Final EIR. That is approved on a 5-3 vote with Council Members Schmid, Filseth and Holman voting no and DuBois recused. Now let's vote on the balance of the motion, Sections B-G, on the board. That passes on a 7-1 vote with Council Member Holman opposing and Council Member DuBois recused. I think that concludes the item.

MOTION1 PASSED: 5-3 Filseth, Holman, Schmid no, DuBois absent

MOTION2 AS AMENDED PASSED: 7-1 Holman no, DuBois absent

Inter-Governmental Legislative Affairs

None.

Council Member Questions, Comments and Announcements

Mayor Burt: We'll move to our last element which is Council Member Comments. Any Council Member Comments?

Vice Mayor Scharff: Unfortunately I do have comments.

Mayor Burt: Vice Mayor Scharff.

Vice Mayor Scharff: Just briefly, I wanted to let people know that I've been appointed to the ABAG Personnel and Finance Committee and the ABAG committee that is talking with MTC about the possible merger. That's the important committee. I'll try and give you guys regular updates as we have those committee meetings.

Mayor Burt: Give them our best. Any other Council Member Comments? Apparently not. Thank you all. Meeting's adjourned.

Adjournment: The meeting was adjourned at 12:24 A.M.