



CITY COUNCIL DRAFT SUMMARY MINUTES

Special Meeting
January 23, 2023

The City Council of the City of Palo Alto met on this date in the Council Chambers and by virtual teleconference at 5:00 P.M.

Present In Person: Burt, Kou, Lauing, Lythcott-Haims, Stone, Tanaka, Veenker

Present Remotely: None

Absent: None

Mayor Kou requested City Clerk Leslie Milton call the meeting to order.

City Clerk Milton called the roll and noted seven were present.

Special Orders of the Day

AA1. Proclamation for Lunar New Year

Mayor Kou read a statement regarding the tragedy in Southern California that took place on the eve of the Lunar New Year. In addition, she read a proclamation to celebrate and commemorate Lunar New Year 2023. She and the entire City Council recognized and celebrated Lunar New Year 2023. She encouraged California schools to educate students about the traditions of Lunar New Year and the past and present contributions of the API community in the State.

Closed Session

1. CONFERENCE WITH CITY ATTORNEY
Subject: Written Liability Claim Against the City of Palo Alto by James Goodrich (Claim No. C22-0013)
Authority: Government Code Section 54956.9(e)(3)
2. CONFERENCE WITH LABOR NEGOTIATORS
City Designated Representatives: City Manager and his Designees Pursuant to Merit System Rules and Regulations (Ed Shikada, Kiely Nose, Sandra Blanch, Nicholas Raisch, Molly Stump, and Caio Arelleano)
Employee Organization: Service Employees International Union, (SEIU) Local 521, Utilities Management and Professional Association of Palo Alto (UMPAPA) Palo Alto Peace Officer's Association (PAPOA), Palo Alto Police Management Association (PMA), International Association of Fire Fighters (IAFF) local 1319, Palo Alto Fire Chiefs

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Association (FCA),; Authority: Government Code Section 54957.6 (a)

Public Comment

There were no requests to speak.

MOTION: Council Member Veenker moved, seconded by Council Member Burt to go into Closed Session.

MOTION PASSED: 7-0

Council went into Closed Session at 5:05 P.M.

Council returned from Closed Session at 7:21 P.M.

Mayor Kou indicated there was no reportable action.

Study Session

3. Presentation of the Annual Community Survey Results

City Manager Ed Shikada introduced Assistant to the City Manager Lupita Almos.

Assistant to the City Manager Lupita Almos stated the study session would focus on the Palo Alto Community Survey. She went over a few highlights, including when the survey was conducted. It had been conducted annually since 2003. The survey provided insights into residents' perspectives on quality of life, local amenities and services, public trust, etc. She indicated what the survey information was used for. She commented there had been a low survey response rate, which was attributed to the holiday time frame in which the survey was conducted. It would be conducted earlier in the year next year, and more public outreach would be done.

Polco Consultant Kim Daane provided a background of the National Research Center (NRC). How the results of the survey could be used were outlined. The methodology of the survey was presented. A non-probability, open-participation survey was also conducted, the result of which were separate from the probability-based sample survey but was available in the report. An overview of the Annual Community Survey results and comparisons to 2020 were furnished. Key findings were pointed out, but additional data was in the full report.

Mayor Kou asked the City Manager how this information would be related to the Retreat.

City Manager Ed Shikada stated the information was foundational and background information for the Retreat.

Public Comment

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John Kelley (In Person) did not agree with the summary analysis presented and commented on the methodology of the report. He thought the percentage of renters versus homeowners responding to the report was noteworthy. Regarding housing affordability, he believed the qualitative responses from residents in the report needed to be regarded, not only the quantitative information. He asked that housing in Palo Alto be taken seriously.

Shani Kleinhaus (In Person), an environment advocate for Santa Clara Valley Audubon Society, resident, and a Parks Commissioner, not speaking for the Parks & Recreation Committee, stated if the data was summarized differently, the quality of the natural environment would be in third place, not fourth, in importance to the residents. She requested implementation of some of the policies and programs that had not been addressed related to improving the natural environment.

Aram James wanted to know the cost of the survey and to know why an outside agency was giving feedback on issues he believed the City already had answers to.

Mora Oommen, Executive Director of Youth Community Service, suggested including youth training in data collection to help address the low survey participation rate.

Goolrukh Vakil, a downtown business owner, requested the City address utility costs for small businesses.

Council Member Lauing asked for a definition of the variety of housing not scoring well and if it was rated distinct from costs [for affordability versus types of housing 3:02:53]; for an understanding of the psychology of oversampling of multi-housing units done to improve response from hard-to-reach respondents; and if every question was a percentage of residents and not necessarily registered voters, which would not align with [inaudible 3:05:54].

Polco Consultant Daane answered they tried to survey the different types of housing available. It was rated independent of any costs, rents, or price. She explained why every survey conducted always oversampled multifamily dwelling units. Every question was a percentage of residents and not necessarily registered voters.

Vice Mayor Stone inquired why the response rate was lower this year; if response rates in other communities had dipped if done at more ideal times in the year; how residents might be engaged more and if it was a topic for the Retreat; and if there was an indication why only 26% rated affordable, quality mental health care as positive. He thought the community was asking for and needed investment in mental health.

Polco Consultant Daane commented that one factor of the response rate being lower was timing of the survey being around the holidays, but response rates had declined in Palo Alto and other communities over the past several years in general. She explained why the overall number of responses was good. As far as declining positive responses regarding mental health care, more people may have sought mental health care through the pandemic that may not

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have been available, along with other services that may have declined. It was a trend they had seen nationwide.

City Manager Shikada declared survey participation was not a specific topic for the Retreat but it was an issue of ongoing concern and an opportunity to pursue. A number of efforts were underway, and they expected to come back to the Council in 60 days or so to talk specifically on the topic of community engagement.

Council Member Lythcott-Haims asked the cost of the survey. She felt renters were unrepresented in the survey results and asked staff and the consultants to consider a design to ensure responses of renters be received on the frontend. She noted English was the only language offered and wondered if that impacted the response rate. She read the verbatim responses, which made clear residents' concerns of the lack of affordable housing. She asked if any of the verbatims had been edited, as none were offensive. She was concerned and hoped there would be curiosity related the downward trends of Palo Altans' attitudes regarding ease of travel by public transport, affordable housing, etc. It seemed the areas of the Building & Planning application process and Land Use Planning & Zoning were issues, as she saw no excellent ratings. She wanted the ratings of Area 5 to be contemplated. She hoped there would be interest in non-white residents responding differently than white residents when it came to the quality of Palo Alto services.

City Manager Shikada replied the survey cost was just under \$30,000, and it was anticipated to be \$32,600 by 2025.

Polco Consultant Daane clarified that the verbatim responses were edited for foul language, but no responses had been removed as a whole.

Council Member Burt questioned if there was an ability to increase mental health services for the increased demand, and discussion at the Retreat regarding a decline in providers being related to affordable space may have been needed. He wanted to make a distinction of the Area 5 results as far as describing the results of those who lived there and those who responded to the survey, as the data could have been skewed by self-selection of respondents. He addressed there being a drastic decline in the perception of public transportation and City services through the website and social media and questioned if the perceptions were lower because expectations were higher, which may have skewed results. A deeper dive was needed to determine if the perceptions of the respondents reflected the attitudes of the residents. Concerning getting an adequate number of renter responses, he was interested in the different responses of multifamily residents versus low-density residents whether renters or not. The information broken down by renters and homeowners would be very valuable. If renter participation increased, it may shift the results. It needed to be interpreted correctly as an increase in renter participation may skew year-to-year comparisons going forward.

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Council Member Veenker mentioned the summary noted a decrease in civic participation, and she expressed that participation in public forums put on by private clubs needed to be considered as civic participation as well as participation in governmental assemblies.

Mayor Kou questioned when would be the best time to do the survey and thought the best time might be before or the beginning the fourth quarter. Regarding perceptions of Palo Alto government, she wondered if some of the questions in the survey could be extracted in order to have a face-to-face with the community at the Town Hall meetings. City Council may want to have a roundtable with small businesses. She discussed affordable housing and the cost of living and there needing to be intentional focus on community needs.

Polco Consultant Daane recommended avoiding doing the survey in the summer and the holiday season and recommended early fall or January through March.

Council Member Tanaka questioned the value of the survey with the cost involved. He explained survey fatigue related to a long survey. He suggested doing a survey at the time service was rendered, for example getting a survey at the Development Center or when utilities were hooked up. He indicated a net promoter score would allow benchmarking against other cities and organizations. He questioned if the survey data was available as a CSV file.

Polco Consultant Daane could provide a CSV file, which he would email to Council Member Tanaka.

Agenda Changes, Additions and Deletions

No changes

Public Comment

Leland Francois was concerned with weather and the unhoused. He spoke of amateur radio communications, and he was trying to coordinate regional response volunteers to assist with [the survey 3:41:36]. With KI6AWN, he was trying to consolidate communications and asked Mayor Kou to help convince the City's OES offices and the voluntary CERT people to complement the effort. He could be contacted at [KI6AWN@aol.com 3:42:41].

John Kelley stated Item 3 on the Consent Calendar for January 30, 2023, was a matter taken up by the prior Council on December 12, 2022, which he did not believe the community had an adequate opportunity to express its views. He noted the ADU legislation included a bill that enabled certain sizes of two-story ADUs as a matter of right in certain parts of Palo Alto. He discussed parking to homes within one-half mile of transit. He urged the matter be taken off the Consent Calendar and allowing the public to speak to the new Council.

Aram James would support Council Member Tanaka as Mayor in 2024 and would promote Council Member Lythcott-Haims as Mayor in coming years. He was against the Sheriff's Department buying 1,400 tasers.

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Greg Schmid voiced his frustration with respect to the Housing Element mandating there could be no review of the jobs growth numbers for eight years. There was a 30-day period of public comment, but the Revised Housing Element did not contain the public's questions. He indicated the Council had a legal duty to oversee a public discussion within the next 60 days. He asked who would benefit from the concentrated jobs growth, who would pay the cost, who would get the tax revenues, the impacts of emerging [inaudible 3:53:00], and where would families live.

Phoebe Mota-Judges represented the Palo Alto Student Climate Coalition (PASCC) and opined that while Palo Alto had a comprehensive S/CAP, a stand-alone plan was needed regarding electrifying buildings.

Shani Kleinhaus (in Person), an environment advocate for Santa Clara Valley Audubon Society, resident, and a Parks & Recreation Commissioner, not speaking on behalf of the Commission, outlined why light at night and light pollution was dangerous and presented problems with LED lighting.

Ines Boullosa Dirksen was a representative of PASCC. She asked the Council to reaffirm prioritization on climate change in the coming year, that it be set as the number-one priority in 2023, and that the Council help raise awareness on the importance of electrician. PASCC was happy to serve as a resource in supporting the endeavors.

Mora Oommen, resident and Executive Director of Youth Community Service, expressed her gratitude to the community for celebrating the life and legacy of Dr. Martin Luther King Jr. A mental health art show had been hosted at the Mitchell Park Community Center, which they would host again in the near future. She invited the community to the next community-wide Service Day on September 11, 2023.

Connie Cunningham, with the Housing Commission in Cupertino, urged City Council to adopt bird-safe and dark-skies regulations meeting or exceeding those adopted by Cupertino City Council in 2021. She recommended the Council create a bird-safe, dark-skies ordinance.

Rose Grymes wished to speak on Item 13, but she was on Eastern time, so she would have to withdraw from commenting.

Mayor Kou proposed she submit written comments.

Consent Calendar

4. Approval of a General Services Agreement Contract Number C23185605 with Linko Technology, Inc. for the Amount of \$219,447 Over a Seven-Year Term for Pretreatment Program Software

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5. Review and Acceptance of Annual Status Report on Development Impact Fees for Fiscal Year 2022 and Adoption of a Resolution Making Statutory Findings under Govt. Code section 66001
6. Approval of Contract Number C23186552 With Downtown Streets Team, Inc. for a Total Not-to-Exceed Amount of \$160,477 for Fiscal Year 2023 for Workforce Development Services
7. Parks and Recreation Commission Recommendation to Adopt an Ordinance Amending PAMC Section 22.04.220 to Regulate Electric Bicycles and Electric Coasting Devices in Parks and Open Spaces
8. Acceptance of the Macias Gini & O'Connell Audit of the City of Palo Alto's Financial Statements as of June 30, 2022 and the Management Letter; Approval of the FY 2022 Annual Comprehensive Financial Report (ACFR); and Amendments to the FY 2022 Budget in Various Funds, as Recommended by the Finance Committee
9. Adoption of a Resolution to Extend the Appointment of Adriane D. McCoy of Baker Tilly US, LLP as Interim City Auditor Through April 30, 2023
10. Approval of Contract with CivicPlus, LLC (C23186719) for CivicRec Recreation Management Software for a Period of Six Years in an Amount Not to Exceed \$735,065 (Including a 5% Contingency for Additional Services Amount of \$29,229)
11. Adopt a Resolution Establishing the Council Annual Calendar of Meetings, Breaks and Council Events for Calendar Year 2023
12. Approval of Recommendations on Process for 2023 Council Priority Setting Retreat

Public Comment

John Kelly acknowledged the deaths in Half Moon Bay and Monterey Park and wanted to take a moment to mourn the people who died and remember the loved ones they left behind. He opined Item 7 went too far in terms of limiting access to people needing the assistance of electric mobility devices and the lower-powered electric bikes and urged the regulation not be passed but talked about openly by the Council. He urged Item 5 be taken off the Consent Calendar and not be acted on tonight because of the \$57,420 Parks & Recreation impact fee.

Arthur Liberman, a Member of PABAC, spoke as an individual and requested Item 7 be removed from the Consent Calendar. He submitted a letter earlier listing five reasons for removing it. He mentioned a sixth, which was PABAC did not approve the proposed regulation when presented in November. He requested PABAC have time to discuss the E-bike regulations, including those for the unpaved trails in the Baylands.

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Lynn Chiapella commented on Item 7. As a pedestrian, she found people who used E-bikes frequently used city sidewalks and would like to see an established speed limit with an enforceable regulation.

Council Members Burt, Stone, Tanaka requested to pull Item 7.

Council Member Tanaka registered a no vote on Agenda Item Number 4, 5, 10.

MOTION: Council Member Burt moved, seconded by Vice Mayor Stone to approve Agenda Item Numbers 4-6, 8-12.

City Manager Ed Shikada stated Item 7 would be scheduled for a future Council meeting. They were considering February 27 or March 6, 2023. A date would be confirmed and posted on the agenda.

MOTION SPLIT FOR PURPOSES OF VOTING:

AGENDA ITEMS 6, 8-12 PASSED: 7-0

AGENDA ITEMS 4, 5, 10 PASSED: 6-1, Tanaka No

Council Member Tanaka stated Item 4 was a \$200,000 piece of software, which Palo Alto was paying about 20% more because less of the plant was being used than originally. He would continue to vote no on every water-quality project until that had been resolved. Regarding Item 5, the impact fees had been massively increased and prevented housing being built. As for Item 10, there was a 15% increase from the prior year, and generally there would be no human cost for software licenses.

City Manager Comments

City Manager Ed Shikada acknowledged the terrible news of Monterey Park and Half Moon Bay. He remarked on a hate crime issue in Palo Alto's sibling city of Bloomington, Indiana. Mayor Kou had been in touch with Bloomington Mayor John Hamilton. He voiced Palo Alto's recommitment to Bloomington. He spoke of high utility bills and outlined tools available to community members. He followed up on tracking weather-related information, which continued information would be provided to the community, and additional information was on the website. There were new library hours and days at Rinconada and Mitchell Park, which was dependent on hiring staff, and additional information would be provided as available. An update was provided regarding upcoming Lunar New Year events and events of Friday Night at the Art Center. Upcoming items on the City Council's agenda included January 28, City Council Retreat; January 30, City Council Procedures and Protocols, which was an action item; February 6, Study Session on the upcoming shuttle service, Gas Powered Leaf Blowers Enforcement, and Firearms in sensitive places; and February 13, Study Sessions on Economic Development and Buena Vista Mobile Home Park Plan with the County Housing Authority and Mid-Year Budget Review. The February 20 City Council meeting was cancelled due to Presidents' Day. There

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would be a meeting on February 27, and items may include (although subject to change) the Parklets Update and Automated License Plate Reader Technology Next Steps.

Action Items

13. PUBLIC HEARING / QUASI-JUDICIAL. 575 Los Trancos [21PLN-00196]: **Adoption of a Record of Land Use Action** Approving a Major Site and Design Application for the Construction of a new 7,245 Square Foot Single-Family Residence With a new 895 Square Foot Accessory Dwelling Unit and Associated Site Improvements, on a 5.38-Acre Site. Zoning District: Open Space (OS). Environmental Review: Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

Council Member Lauing recused himself from the item and indicated why.

City Attorney Molly Stump noted Mayor Kou was about to call for disclosures from Council members. She oriented the Council to the process and reminded the community what was being done. Council was required to make a decision based on material in the formal record. Community members had interest and were able to petition and contact elected officials with items [inaudible 4:34:07]. She outlined why Council members were asked to disclose publicly and to the parties if there had been discussions, a site visit, or documents had been seen that were not part of the formal record.

Mayor Kou asked Council members if they had anything to disclose.

Council Member Tanaka remarked he had talked to no one.

Council Member Veenker declared she had had no discussions. She did receive an email separate to the ones to all of Council, which had no additional information and was redundant with the public record.

City Attorney Stump requested the email be forwarded to the clerk to be reviewed offline, [and which could be placed in the public record 4:35:40].

Mayor Kou had not received anything nor spoken to anybody.

Vice Mayor Stone indicated that to the best of his knowledge he had not received any information that needed disclosure. He received an email similar to Council Member Veenker's, which he would forward to the clerk.

Council Member Lythcott-Haims commented she had received no information pertinent to the item nor had she had any conversations about it.

Council Member Burt had spoken with Keith Reckdahl and Shani Kleinhaus. He did not receive information that was not in the record. He had an email communication, which he would forward to the clerk. He visited the site last week, and no one else was present at the time. He

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saw a significant piece of information that was not in the record, which was the story poles showed the proposed project intruded below the dripline of at least one tree.

City Attorney Stump noted that was a great example of a thorough disclosure. The parties could respond if they wished to.

Planner Emily Foley furnished an overview of the project. Being considered tonight was an application for major site and design review. The process was for approval of development in an environmentally or ecologically sensitive area. The Planning and Transportation Commission (PTC) recommended approval on August 31, 2022. She detailed the site, process of the design, and the objectives. The Comprehensive Plan land-use designation was outlined. Additional criteria specific to open space was presented, which was in the draft findings in the Staff Report. Attention was called to the required 20-foot setback from the creek. A diagram was supplied in relation to the creek and the proposed house. She supplied pictures of the creek, which she had taken in August and after the rains in January, which indicated the water was not beyond the bed of the creek that was visible in August. The project was subject to the California Environmental Quality Act (CEQA), and an initial study and Mitigated Negative Declaration (MND) had been prepared and circulated. She outlined environmental factors that were considered and the proposed mitigations. Public comments had been received and responded to. She covered the changes that had been made in response to concerns raised at the PTC meeting. Public comments received in the last day or two had been reviewed, and they were prepared to respond to any questions. Staff recommended approval, and draft findings had been prepared. Alternative actions included remanding the project back to PTC or providing direction to return the project back to City Council.

Applicant Consultant [REDACTED] 4:48:15] provided a brief introduction. Slides of the site were furnished. He outlined that the new home aimed to preserve the natural context it was set within and to minimize environmental impact. They had not had protest letters, etc., from surrounding neighbors. The closest neighbor had provided a letter of support. He addressed letters they had received from the regional environmental groups and noted that the applicant was working hard to comply with all the regulations of the City, which he outlined.

Council Member Burt questioned how the project was consistent with the Comp Plan in relation to broadening the riparian corridor; in reference to no construction occurring within the 20 foot creek setback, how was construction going to occur with the building being 20 feet from the creek at certain locations; and if the driveway design was the project meeting the environmental requirements or if it was stipulated by the Fire Department.

Planning and Development Director Jon Lait specified the Council would decide whether the project was compliant with the Comprehensive Plan. The setback was a continuation from the previous Comprehensive Plan, but the 20-foot setback had not yet been implemented into the Zoning Code. In reference to no construction occurring within the 20-foot setback, the condition of approval as well as the Mitigation Monitoring Program would require the building

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to be set back more than 20 feet at the corners in question if excavation was required in that 20 feet.

Planner Foley remarked regarding no construction occurring within the 20-foot setback that the project would go through the building permit process, and if it was found construction would require going into the 20-foot setback, the plans would need to be changed. As for the driveway, Packet Page 442, Item 2a referenced the grading.

Palo Alto Fire Department Hazardous Materials Inspector Scott Woodfin explained the Fire Department's requirements for access regarding the driveway. The Fire Department did not design the driveway. The plans were submitted. He had not visited the site.

Vice Mayor Stone was concerned that the lighting design revisions may not mitigate the concerns of light pollution. He asked if the City could enforce that lighting mitigations continue once the house was constructed; if conditions of approval could include moving the house farther from the creek; if neighboring homes were closer than 50 feet from the creek and if there was a precedent for homes being within 50 feet of the creek; and if the impact of placing a large occupied home at the edge of a riparian area would impede animal movement.

Planner Foley remarked the lighting design was a part of the conditions of approval and not considered part of the mitigation measures because the lighting did not meet criteria of being an impact for CEQA. Doing it as a condition of approval had been done on prior projects in the Baylands area. It was something the Council could consider if it was similar. There was a house one parcel north of the site that was approximately 50 or 55 feet from the creek.

Director Lait stated Slide 4 summarized the findings that needed to be made for site and design review application. If the Council was concerned about the lighting or the setback, he would ask the Council to draw the connection to the findings on Slide 4. There was not analysis for the properties other than the house one parcel north of the site.

CEQA Consultant [REDACTED 5:14:00] stated the biologist who worked on the MND was trying to dial on in reference to the impact of placing a large occupied home at the edge of a riparian area impeding animal movement

There was a technical issue with the biologist joining the meeting, which they would return to her for comment regarding animal movement after the public comment.

Council Member Veenker spoke of Packet Page 442, Item 2b referencing a construction fence and Packet Page 629, Item 2 referencing over-excavation. She inquired if the solution to over-excavation could be pushing the structure back. She asked when it would be discovered how much over-excavation would be needed. Being that the requirement was a minimum of 25 feet at the corners in question, it would seem to require adjustment of the plan.

Director Lait voiced the intent of the condition of approval was that the building would be set back a distance in addition to the 20-foot setback to accommodate any extra excavation

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needed. They could find out prior to building permit issuance how much over-excavation would be needed, but they did not have the construction drawings fully reviewed. The information would be ascertained before issuing a building permit. A provision of the condition would give administrative authority to approve minor adjustments to the site planning to accommodate the changes.

Council Member Lythcott-Haims specified when property was purchased in Palo Alto, the property owner, etc., should rely on the accuracy of existing code. She understood there was a wish of extending the creek setback [inaudible 5:20:32] defer to hopes and dreams rather than the language of the existing code when determining whether to approve or deny a project.

Director Lait remarked the nature of discretionary applications had a combination of factors, which included objective standards clearly established and written, but the discretionary application included findings that needed to be made, which offered opportunity for the Council to weigh in the Comp Plan goals and policies to ensure the project was meeting the findings. Staff reviewed the project, and there was a recommendation from the PTC, which was information to inform, not dictate the Council's decision-making process. Ultimately, the Council would determine if the project was in conformance with the requirements.

Mayor Kou requested information regarding the underlying land use, which was the Streamside Open Space, which was in the Parcel Report. She questioned what was meant by the corridor generally varying in width up to 200 feet on either side of the center line of the creek.

Planner Foley stated the underlying land use of Streamside Open Space was the Comprehensive Plan designation, and she referred to Slide 5, which explained the purpose of the designation. She outlined what the Streamside Open Space designation was based on. Since the property was greater than 200 feet at certain points, she was not sure how it affected the designation.

Mayor Kou stated it remained to be answered if there could potentially be a 200-foot corridor on either side of the creek because of the SOS designation.

Planner Foley stated the other side of the creek was the Town of Portola Valley.

Public Comment #13

Bill Ross (In Person) voiced consistency should be determined based on an established standard, which should be determined on furthering without hindering General Plan policies. He referenced and explained Government Code Section 65103(b) with regard to stream setbacks. He would like to reserve the right for written comment because of the reduction in speaking time.

Lucinda Lenicheck (In Person) reminded the Council that the Audubon Society, the Sierra Club, and the Midpeninsula Open Space District asked for better design and a wider buffer. The Palo Alto Comprehensive Plan suggested open space area buffers were going to be 150 feet. She requested City Council redirect the project.

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Shani Kleinhaus (In Person), not speaking for Parks and Recreation, stated the Audubon and Sierra Club submitted comments on the MND and sent an additional letter yesterday. They believed the project was inconsistent with the General Plan and did not preserve or enhance Los Trancos Creek or the riparian corridor. They had concerns that the MND did not satisfy CEQA requirements. She requested providing a much wider setback.

Lynn Chiapella concurred with the previous speakers. She referenced code enforcement being weak and problematic. She mentioned the erosion problem in Los Altos.

Rani Fischer from the Santa Clara Valley Audubon Society stated they were concerned about the project due to its proximity to the creek and the results on wildlife. She listed hazards they would like eliminated.

Dave Poeschel asked that the project and its environmental report be denied. He requested setbacks of 100 to 150 feet, which he believed would resolve conflicts among the proposed mitigations for the project.

Connie Cunningham, with the Housing Commission in Cupertino, stated there were dangers to birds from glass and all riparian wildlife from light pollution in regard to this agenda item. She encouraged Palo Alto to adopt bird-safe and dark skies regulations that had been adopted by Cupertino City Council in 2021. The regulations she spoke of earlier in public comments applied here. She asked that approval of the project be declined and asked that the homeowner be required to implement recommendations that were submitted by Midpen.

Alice Kaufman was Policy and Advocacy Director with Green Foothills. The Council received 43 emails from 43 Palo Alto residents asking for modifications to [inaudible 5:43:53] movement and to avoid increasing flood risk downstream. She was concerned the homeowner may cut down some of the riparian trees and vegetation in the future. She requested the setback be increased to a minimum of 55 feet.

Mark Mollineaux echoed previous statements of Dave Poeschel. He voiced the project would have an affordable housing percent of zero and recommended doing more to stop what he considered frivolous developments.

Michael Ferreira, with the Sierra Club, echoed many of the environmental concerns. He remarked on odd contrasts between plan and ordinance and did not think the most permissive should be the default. He was in favor of moving the building first versus later to accommodate potential [inaudible 5:48:46]. He was concerned about the defensible space and the driveway.

Aram James wanted to know how close the area was to trails and the impact on them. A 50-foot setback seemed to be the absolute minimum, which should be in the plan. He was concerned it could become an Airbnb.

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Julie Beer was uncomfortable with the 20-foot setback and her assumption that the Fire Department had not visited the site. She hoped the plan would not be approved as it was and that there would be a 50 to 75-foot setback.

Public Hearing opened at [REDACTED] P.M.

Public Hearing closed at 10:45 P.M.

Applicant Consultant [REDACTED 5:54:18] responded to some of the comments and questions from the Council. He addressed excavation and blind-sided and one-sided foundations, which different techniques could be explored. They were not proposing or assuming any excavation would extend past the 20-foot setback and would make sure the engineering team would develop proper construction systems and solutions. He thought there was miscommunication of the fire truck access. Two years ago, they met members of the Palo Alto Fire Department on the site before planning. He wanted to clarify being 20 feet from the creek versus 20 feet from the bank. If they were 20 feet from the top of bank, they were about 40 feet from the creek. Based on drawings they had seen for the neighbor at 805, he suspected the 50-foot approximation was to the creek and the setback from the top of bank was probably 20 to 30 feet, which they saw when they walked the site.

Rincon Consultants Environmental Consultant Abe Leider answered Vice Mayor Stone's question regarding wildlife movement. He explained why the creek was the key wildlife movement corridor, not open space. The project was outside the riparian corridor.

Council Member Veenker remained concerned that over-excavation may be deemed necessary and being five feet beyond the perimeter of the proposed residence. In reference to Director Lait's comments that the project could have a different footprint, she specified it would then be a different project. The setback issue raised concern about creek side properties and what the Council should do. The code said 20 feet but she was not satisfied the application and the findings were keeping it within that 20 feet, and she was uncomfortable encroaching into the minimal 20-foot setback. She wanted to have a discussion at an appropriate time regarding how to move more quickly regarding the Comp Plan and setbacks.

Council Member Burt noted there were issues with zoning code objective standards, which was currently a minimum of a 20-foot setback, but there were other guidelines and policies related to open space areas. He wanted to focus on Site Design Finding C, which was at the full discretion of the Council as to whether a project met the finding. There were a series of requirements within the open space development standards, which the view scape guideline was at the forefront, and he gave an example of a project that skewed that standard. The most critical environmental protection was the riparian corridor. Standards needed to be built into the design and not be left to an unenforced discretion, and the report indicated there would be no active monitoring of mitigations. If there was redesign around the driveway, there would be space to build without intruding in the riparian corridor. There was also an issue of defensible space for fire, which was critical, and that same defensible space would put the structures in

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the ballpark of the setbacks from the riparian corridor that had been adopted as County guidelines. A 50-foot setback, 20 feet from the bank top and a 30-foot defensible space, would address fire safety and environmental issues. At the appropriate time, he would make a motion to refer this back to PTC to pursue a design that would address those requirements and at the same time refer to staff to move forward with implementation of the Comp Plan Policy and Programs related to streamside setbacks. He had several concerns with the MND, which included the setback, lighting, noise, etc. Considering modification of a project at the permitting point was backwards. It seemed the California Department of Fish and Wildlife had guidelines that would disapprove the design. The standards of other agencies should be identified to allow filtering of what should occur. He was concerned with bank failure, high waterflows, and erosion potential. He saw no recognition in the report that the creek and corridor could possibly become a greater opportunity for steelhead habitat. He did not believe the project met the [Site Design Finding C 6:17:04].

Mayor Kou wanted to ensure as much as possible that trees would not be removed. Finding D was not in accordance with the Comprehensive Plan. She did not believe the MND was sufficient and thought there should be an EIR. The glass should require bird-safe glazing treatment. Eliminating the fencing would impede wildlife movement along the creek. She was concerned about nighttime lighting. If there were to be skylights, that was another concern. She spoke of her concerns regarding the pool. She did not believe CEQA allowed development of best practices being deferred to the future. It should go back to PTC.

Council Member Tanaka asked the applicant what the application process was like and how they ended up in front of the Council; what direction or information from the Council would be most helpful in their design passing; and the width of the property.

Applicant Consultant [redacted 6:22:58] indicated they started the project in January 2021. They spoke with the Fire Department and the Planning Department. They did research in the open space. They went through a preapplication meeting and submitted multiple rounds of planning for review. They heard back from the Building Department and Public Works. They designed the project based on the zoning regulations and information given to them by the City. There was frustration from the design team because they felt they were chasing a moving target. With all the comments, there was a lot to consider from the design team side. They tried to follow all the prescriptive rules. The riparian edge and fire access standpoints were fairly ambiguous. Maybe complying with excavation within the five feet might suffice, but there was talk about increasing the riparian edge from a policy standpoint to 50 feet, which would essentially wipe out the entire western half of the clearing, and it could render the project infeasible depending on the owner's requirements, and 150 feet would [inaudible 6:27:35]. The width of the property varied, but the setback at 50 would be halfway through the clearing, and anything more would take over the entire clearing, which would make development impossible. It was not clear what they should design toward or what the owner's expectations should be with the Council's comments of different setback thresholds of 20 to 200 feet. Fire access was a big driver and complex because it had a lot of implications on site planning. He discussed what the Fire Department needed as far as site access. It was hard to quantify what was enough in terms

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of light control. There were building code issues with not having windows along the riparian edge.

Council Member Tanaka summed up the issues being top of mind for the applicant as threshold from the creek, Fire access, and lighting. He asked staff what would be the legal implications of the Council enforcing a 150-foot distance in regard to the riparian edge, which would render it impossible for the developer to build. He questioned what distance from the creek would make the project infeasible. He queried if it could be stipulated the size of the house be reduced or would it be considered taking of property rights and what would be the recourse of the property owner. If this went back to PTC, the Council needed to address the things the applicant asked about, so there was not a lack of clarity.

Applicant Consultant [REDACTED 6:30:45] included bird-safe glass being an issue. The extent of what would be good enough was a topic.

Attorney Molly Stump commented the Housing Accountability Act required the project not be made infeasible.

Director Lait expressed he heard 50 feet with a remand back to PTC as a possible motion. A study would need to be done to determine what distance from the creek would make the project infeasible. Based on the Housing Accountability Act, the Council could not impose conditions that would make the project infeasible.

Attorney Albert Yang expressed the provision of the Housing Accountability Act was that the City cannot deny or reduce the density of the project and explained what reducing the density meant. There was not a clear line if reducing the size of a home was a reduction of density. If it was specified the size of the home was to be reduced, there would likely be litigation seeking a declaration that the City had reduced the density of the project in violation of State law. At that point, it was unclear if it would be sent back to the City for reconsideration or if a Court would take it upon itself to order a specific project.

Mayor Kou declared that Council had discretionary powers to review this.

Council Member Lythcott-Haims stated for the record that probably all of the Council sympathized with the applicant. She reiterated that the applicant consultant had stated they tried to do everything right, that they met with Fire and Planning early on, and that they had been chasing a moving target. She thought the City had an obligation to not offer people moving targets. It had been approved by PTC and came to the Council with staff recommending approval with draft findings that the project met site and design objectives, and Council was trying to get it to meet a standard not yet articulated.

Mayor Kou declared public comments would be taken in reference to Item 14 after the conclusion of Item 13, and there would be a discussion at a later date.

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Fire Chief Geo Blackshire commented for clarification that Fire Station 2 had been staffed 24 hours a day, 365 days a year since the summer of 2021. Inspector Woodfin said he had not been to the site but not that Fire personnel representatives had not been to the site.

MOTION: Council Member Burt moved, seconded by Mayor Kou to:

- 1) The Council refer this item back to the PTC for consideration of the following as the current proposal does not allow us to make the findings of section C. Request that the PTC evaluate project design modifications to meet the following objectives:
 - a) Evaluate a project design that provides for approximately 50-foot setback from the top of bank.
 - b) Effective bird-safe glazing treatment of all glass surfaces achieving the American Bird Conservancy Threat Factor rating of 15.
 - c) Eliminate fencing that could impede wildlife movement along the creek.
 - d) Minimize nighttime lighting along the riparian corridor and allow only minimal lighting in all other locations. Lighting should not interfere with wildlife movement through the landscape, and all outdoor lighting should be limited to Correlated Color Temperature of 2700 Kelvin or less, and extinguished at 11 P.M.
 - e) Pool should be covered and fenced in a way that ensures that small animals, such as amphibians and reptiles cannot enter the swimming pool.
- 2) Request that staff return to Council with a plan and timeline amend the Zoning code Comprehensive Plan Policy N.3.3. and Program N3.3.1

Council Member Burt stated the project's design was as close as possible to the creek, which was attractive for a homeowner, but the Council's standards and the standards of multiple different agencies respected that there had to be greater protections to this critical part of the natural habitat. The pleasure of the property owner needed to be balanced against the overriding considerations.

Mayor Kou expressed that the granting of a permit to build on the land came with responsibility to preserve the nature of the parcel. She believed there needed to be more examination. She asked Council Member Burt if he would consider a design providing a 50- to 80-foot setback from the top of bank and if he would be asking that the MND or EIR be redone.

Council Member Burt voiced his concern that having a greater setback would necessitate the removal of trees.

Director Lait commented they would review the [MND/EIR 6:45:09] and update it as needed based on the redesign.

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Discussion ensued related to adding to the motion bird-safe glazing treatment to all glass surfaces, eliminating fencing impeding wildlife movement along the creek, eliminating nighttime lighting along the riparian corridor, and that the pool be covered and fenced. It was decided the items be added to the motion.

Mayor Kou requested the preparation or exploration of a long-term monitoring program for the creek and riparian corridor be added to the motion to ensure no runoff of chemicals into the stream compromising the steelhead, etc.

Council Member Burt commented he hoped the passive design elements would address it, therefore not needing long-term monitoring.

Council Member Veenker agreed with all the Council members. The issue and question was how to be responsible and kind to residents and the environment. Residents deserved a predictable permitting process, and the Council needed to be good stewards of open space and especially streamside open space. She supported the motion and hoped it addressed the four things Council Member Tanaka outlined because there should be certainty and predictability to the process as the PTC evaluated the issues. She requested an estimation from staff as to how long the process of Item 2 in the motion would take.

Director Lait indicated they were developing a work plan for 2023 and they should be able to report to the Council soon. The process itself was not complicated but was a matter of balancing it with the other work being done. He thought the work would take six months. He was not sure of the start date.

City Manager Shikada added staff was working on a work plan for 2023, and part of it would be City Council discussion occurring on January 28, 2023. He did not know if there would be an opportunity to reconcile this specific referral with existing ones, but the Council would see follow-up from staff in that context.

Council Member Tanaka asked how 50 feet was determined as a setback and opined a large part of the project would be cancelled due to the 50-foot setback. He asked if the dwelling could be built multistory to reduce the footprint. He felt it was unfair that targets were moving. He queried of the applicant if anything in the motion would be difficult to comply with. He could not support the motion because there was not a predictable permitting process, which was unfair.

Council Member Burt explained how he arrived at an approximately 50-foot setback.

[Staff 6:58:22] confirmed the footprint could be reduced if the dwelling was multistory.

Planner Foley thought there were items in the motion that would take additional study from the architect. There was concern about increasing the second-floor area and potential views from the ridgelines, which could not be evaluated until they had a planner concept. If the setback were changed to 50 feet, it would reduce what the applicant was proposing as the

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clearing space to build the house from about 80 feet to about 50 feet, but they were not in a position to make an evaluation judgement on it.

MOTION PASSED: 4-2, Tanaka, Lythcott-Haims No, Lauing Recused

14. City Council discussion and direction regarding wage requirements for the contract for next Janitorial services

- A. Review and Provide Direction on Wage and Benefits Requirements for Inclusion in a New Janitorial Services Request for Proposal (RFP)
- B. Responsible Contracting Standards Colleague's Memo (Stone & Burt)

Mayor Kou asked if public comments could be closed due the late hour and then continue comments at a later date and if there should be a presentation.

City Attorney Molly Stump declared it was acceptable to take additional public comments at a later date.

City Manager Ed Shikada remarked it was at Mayor Kou's discretion whether there would be a presentation. Assuming the item would be carried over to another meeting, the presentation could be deferred until the second session.

ACTION: Public comments accepted, but item continued to the January 30, 2023

[The Council took a three-minute break]

Public Comment

Aram James wished to defer his comments until he had heard the entire conversation.

Cassie Peabody, the Legal Director at the Maintenance Corporation Trust Fund (MCTF), stated they believed it was imperative the City of Palo Alto adopt a responsible contractor policy for the janitorial contractor and that taxpayer dollars should be used to support such workforce. She listed failures of SWA.

Ruth Silver Taube was Coordinator of the Santa Clara County Wage Theft Coalition and supervised the workers' right practice at the Katharine and George Alexander Law Center at Santa Clara University Law School and the Office of Labor Standards Enforcement of the County's Legal Advice Line. In March 2022, janitorial workers in the City of Palo Alto expressed concerns about SWA, which she outlined. She spoke of an article she had written in the *San José Spotlight* regarding the wage theft issue. The Wage Theft Coalition supported the responsible contracting proposals put forth in a Colleagues' Memo by Vice Mayor Stone and Council Member Burt. The Wage Theft Coalition had put out a wage theft report describing the challenges of wage theft.

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Lucila Ortiz, the Political Director with Working Partnerships USA, stated the biggest issue they saw as wage theft. They supported the responsible contracting proposals and Colleagues' Memo by Vice Mayor Stone and Council Member Burt. They believed the first step in the City leading with values of equity and labor harmony was approving the Memo.

Jose Pavon, a political organizer with SEIU-USWW, urged support of the responsible contractor policy and the Colleagues' Memo being proposed by Vice Mayor Stone and former mayor Burt.

Yardenna Aaron, Executive Director of MCTF, declared one of the major mandates of their watchdog work was investigating wage theft and labor violations to create a level playing field for contractors who were following the law and doing the right thing. They were grateful for the issue of responsible contracting being raised and supported it in every way and hoped it continued to be an example of Palo Alto stepping forward for the entire Bay area.

Araceli stated the proposal outlined by Vice Mayor Stone and Council Member Burt's Colleagues' Memo would help ensure Palo Alto's contracting practices would be in line with its values on equity and labor harmony and urged support of the Colleagues' Memo.

Mila Zelkha, the District Director for Assemblymember Marc Berman, declared on his behalf that he was supportive of the Colleagues' Memo and was appreciative of the meaningful attention toward addressing the claims of wage theft experienced by the City of Palo Alto's contracted janitorial staff. She noted that Assemblymember Berman commended Vice Mayor Stone and Council Member Burt for working on the issue and encouraged everyone on the Council to support the Memo.

City Manager Shikada recommended the item be postponed to the January 30, 2023 City Council Meeting and recommended the item be addressed before the item on the Council's Procedures and Protocols Handbook.

Mayor Kou confirmed it would be the first item addressed on January 30, 2023.

Council Member Questions, Comments and Announcements

Mayor Kou announced that Council Member Burt had been elected by colleagues to Chair the VTA Board of Directors and was unanimously appointed by the VTA Board to Caltrain's Board of Directors.

Council Member Veenker thanked Mayor Kou for sending a message of support and solidarity to Mayor Hamilton in Bloomington. She stated it was important to stand with all who strove to stop Asian hate and race-based prejudice. She thanked City Staff for preparing the statement and putting it on the website. She was thrilled the Rinconada library was open on Sundays.

Adjournment: The meeting was adjourned at 12:19 AM in honor of the victims of the tragedies in Monterey Park and Half Moon Bay, California, on January 21, 2023.