Revised

Special Meeting
Council Chambers
February 14, 2011
6:00 PM

Agenda posted according to PAMC Section 2.04.070. A binder containing supporting materials is available in the Council Chambers on the Friday preceding the meeting.

Call to Order

Closed Session

Public Comments: Members of the public may speak to the Closed Session item(s); three minutes per speaker.

1. City Attorney Recruitment

   Public Employment
   Title: City Attorney
   Authority: Government Code Section 54957 (b)

Special Orders of the Day

2. Staff Report from the Community Services Community Partners Non Profit Presentation-Recreation Foundation

3. Staff Report from the Library Resolution Expressing Appreciation to Valerie Stinger for Outstanding Public Service as a Member of the Library Advisory Commission

4. Staff Report from the Library Resolution Expressing Appreciation to Vibhu Mittal for Outstanding Public Service as a Member of the Library Advisory Commission

5. Staff Report from the Community Services Resolution of the Council of the City of Palo Alto Expressing Appreciation to Shauna Mora for Outstanding Public Service as a Member of the Human Relations Commission

6. CAO Report from the City Clerk Selection of Candidates to be Interviewed for the Human Relations Comission

City Manager Comments

Oral Communications

Members of the public may speak to any item not on the agenda; three minutes per speaker. Council reserves the

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE AT PALO ALTO CITY HALL, 250 HAMILTON AVE. DURING NORMAL BUSINESS HOURS.

right to limit the duration of Oral Communications period to 30 minutes.

Consent Calendar

Items will be voted on in one motion unless removed from the calendar by two Council Members.

7. CAO Report from the City Attorney Adoption of an Ordinance Amending Section 2.04.270 of the Palo Alto Municipal Code to Remove Provisions Related to Reading of Ordinance and Resolution Titles

8. Staff Report from the Planning and Community Environment Approval of Amendment No. Four to the Alma Street Affordable Multifamily Rental Housing Project Acquisition and Development Agreement to Provide a Permanent Loan of $2.8 Million, to Commit Additional Funding of up to $3.0 Million of future City In-Lieu Fees and to Modify the Terms of the Agreement to Satisfy Outside Lenders.

9. Staff Report from the Planning and Community Environment Approval of a Contract with BMS Design Group in a Total Amount Not to Exceed $200,000 for Preparation of a Palo Alto Rail Corridor Study.

9A. Staff Report from the Human Resources 9a. -Adoption of a Resolution Fixing the Employer's Contribution Under the Public Employees Medical and Hospital Care Act (PEMHCA) with Respect to Members of Local 521, Service Employees International Union (SEIU) and Management and Professional Employees Group

Agenda Changes, Additions and Deletions

HEARINGS REQUIRED BY LAW: Applications and/or appellants may have up to ten minutes at the outset of the public discussion to make their remarks and put up to three minutes for concluding remarks after other members of the public have spoken.

Action Items

Include: Reports of Committees/Commissions, Ordinances and Resolutions, Public Hearings, Reports of Officials, Unfinished Business and Council Matters.

10. Staff Report from the Planning and Community Environment Approval of Negative Declaration and Establishment of a Capital Improvements Program (CIP) to Fund the California Avenue Project Improvements in the Net Amount of $550,000 Out of the Infrastructure Reserve Fund

Council Member Questions, Comments and Announcements

Members of the public may not speak to the item(s)

Adjournment

Persons with disabilities who require auxiliary aids or services in using City facilities, services or programs or who

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would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact (650) 329-2550 (Voice) 24 hours in advance.

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Additional Information

Standing Committee Meetings

Standing Committee Packets from the Administrative Services

Standing Committee Packets from the City Manager

Standing Committee Packets from the City Manager

Schedule of Meetings

Schedule of Meetings from the City Clerk

Tentative Agenda

Tentative Agenda from the City Clerk

Informational Report

Informational Report from the Public Works Palo Alto Comments on the Environmental Protection Agency's Proposed Rule for Sewage Sludge Incinerator Units

CAO Report from the City Auditor Sales Tax Digest Summary - Third Quarter Sales (July – September 2010)

Public Letters to Council

Public Letters to Council from the City Clerk

Supplemental Information

11. Department Report from the City Clerk

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City of Palo Alto
City Council Staff Report

(ID # 1382)

Report Type: Special Orders of the Day **Meeting Date: 2/14/2011**

Summary Title: Presentation by Recreation Foundation

Title: Community Partners Non Profit Presentation-Recreation Foundation

From: City Manager

Lead Department: Community Services

Prepared By: Erin Perez, Administrative Assistant

Department Head: Greg Betts, Director, Community Services

City Manager Approval: James Keene, City Manager

City of Palo Alto
City Council Staff Report

(ID # 1408)

Report Type: Special Orders of the Day **Meeting Date: 2/14/2011**

Summary Title: Resolution for Valerie Stinger

Title: Resolution Expressing Appreciation to Valerie Stinger for Outstanding Public Service as a Member of the Library Advisory Commission

From: City Manager

Lead Department: Library

ATTACHMENTS:

- Valerie Stinger Resolution(DOC)

Prepared By: Evelyn Cheng, Administrative Assistant

Department Head: Ned Himmel,

City Manager Approval: James Keene, City Manager

**RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO
EXPRESSING APPRECIATION TO VALERIE STINGER
FOR OUTSTANDING PUBLIC SERVICE
AS A MEMBER OF THE LIBRARY ADVISORY COMMISSION**

WHEREAS, Valerie Stinger has served the City of Palo Alto as a member of the Library Advisory Commission for six years, from February 2005 thru January 2011; whereupon she served as Chair in 2008, and served as Vice-Chair from October 2009 to January 2011; and

WHEREAS, Valerie Stinger served with dedication and distinction as a Commissioner, provided excellent leadership, and demonstrated a ready willingness to take on projects and numerous outreach efforts on behalf of the group; and

WHEREAS, Valerie Stinger served as an LAC liaison to the Palo Alto Library Foundation, the Friends of the Palo Alto Library, and the Library Bond Stakeholders Committee, and in so doing earned the respect of a wide community of library supporters; and

WHEREAS, Valerie Stinger consistently advocated the vision within the Commission's *Library Service Model Analysis and Recommendations Report* for the Palo Alto City Library and played a vital role to guide the planning for library facility improvements and services into the future; and

WHEREAS, Valerie Stinger gave tirelessly of her time and talent to bring forward and keep library issues before elected officials by means of conversations and written communications; and

WHEREAS, the City of Palo Alto wishes to acknowledge and thank Valerie Stinger for her personal commitment and pride in the community, for her significant personal efforts and vision, and for her sincere dedication as a member of the Library Advisory Commission;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Palo Alto hereby gratefully records and extends its sincere appreciation, and the appreciation of the community, to Valerie Stinger for her faithful and excellent service rendered to the City.

INTRODUCED AND PASSED:

ATTEST: APPROVED:

_____ _____
City Clerk Mayor

APPROVED AS TO FORM:

_____ _____
City Attorney City Manager

Attachment: Valerie Stinger Resolution (1408 : Resolution for Valerie Stinger)

City of Palo Alto
City Council Staff Report

(ID # 1409)

Report Type: Special Orders of the Day **Meeting Date: 2/14/2011**

Summary Title: Resolution for Vibhu Mittal

Title: Resolution Expressing Appreciation to Vibhu Mittal for Outstanding Public Service as a Member of the Library Advisory Commission

From: City Manager

Lead Department: Library

ATTACHMENTS:

- Vibhu Mittal Resolution (PDF)

Prepared By: Evelyn Cheng, Administrative Assistant

Department Head: Ned Himmel,

City Manager Approval: James Keene, City Manager

RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO EXPRESSING APPRECIATION TO VIBHU MITTAL FOR OUTSTANDING PUBLIC SERVICE AS A MEMBER OF THE LIBRARY ADVISORY COMMISSION

WHEREAS, Vibhu Mittal served the City of Palo Alto as a member of the Library Advisory Commission (LAC) from July 2009 through January 2011; and

WHEREAS, Vibhu Mittal served as the LAC liaison to the Friends of the Palo Alto Library in 2010; and

WHEREAS, Vibhu Mittal served on various sub-committees in the Commission to plan for improved library facilities and services that will better serve the community into the future; and

WHEREAS, Vibhu Mittal contributed to the creation of a *Community Forum on Technology and Community Libraries* with a panel of visionary leaders from the library and technology worlds in September 2010; and

WHEREAS, Vibhu Mittal willingly gave of his time and talents in support of the City of Palo Alto Library Advisory Commission.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Palo Alto hereby gratefully records and extends its sincere appreciation, and the appreciation of the community, to Vibhu Mittal for his faithful service in support of the libraries of Palo Alto.

INTRODUCED AND PASSED:

ATTEST: APPROVED:

_____ _____

City Clerk Mayor

APPROVED AS TO FORM:

_____ _____

City Attorney City Manager

Attachment: Vibhu Mittal Resolution (1409 : Resolution for Vibhu Mittal)

City of Palo Alto
City Council Staff Report

(ID # 1413)

Report Type: Special Orders of the Day **Meeting Date: 2/14/2011**

Summary Title: Resolution for Shauna Mora

Title: Resolution of the Council of the City of Palo Alto Expressing Appreciation to Shauna Mora for Outstanding Public Service as a Member of the Human Relations Commission

From: City Manager

Lead Department: Community Services

ATTACHMENTS:

- Resolution - Shauna Mora, Human Relations Commissioner (DOC)

Prepared By: Erin Perez, Administrative Assistant

Department Head: Greg Betts, Director, Community Services

City Manager Approval: James Keene, City Manager

RESOLUTION NO.

RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO
EXPRESSING APPRECIATION TO SHAUNA MORA FOR OUTSTANDING PUBLIC SERVICE AS A MEMBER OF THE HUMAN RELATIONS COMMISSION

WHEREAS, Shauna Mora, served the City of Palo Alto as a member of the Human Relations Commission from May 2003 through March 2010; and

WHEREAS, Shauna Mora provided excellent leadership in her role as Chairperson for two terms September 2005 through September 2007; and

WHEREAS, Shauna Mora gave tirelessly of her time by serving as liaison to the Palo Alto Mediation Program, and as a member of the Housing Subcommittee, and as a member of Public Relations Task Force

WHEREAS, Shauna Mora acted with conscience to exercise her position as a member of the Human Relations Commission, to influence and improve the larger world we live in, by supporting many Resolutions and Ordinances.

WHEREAS, the City of Palo Alto wishes to acknowledge and thank Shauna Mora for her personal commitment and pride in the community, for her significant personal efforts and vision, and for her substantial dedication as a member of the Human Relations Commission;

NOW, THEREFORE, LET IT BE RESOLVED that the Council of the City of Palo Alto hereby gratefully records and extends its sincere appreciation and the appreciation of the community to Shauna Mora for her faithful and excellent service rendered to the City.

INTRODUCED AND PASSED:

AYES:

ABSTENTIONS:

ABSENT:

ATTEST: APPROVED:

City Clerk Mayor

APPROVED AS TO FORM:

City Manager City Attorney

Attachment: Resolution - Shauna Mora, Human Relations Commissioner (1413 : Resolution for Shauna Mora)

CITY OF PALO ALTO OFFICE OF THE CITY CLERK

February 14, 2011

The Honorable City Council
Palo Alto, California

Selection of Candidates to be Interviewed for the Human Relations Comission

Enclosed are two incumbent applications submitted for two terms on the Human Relations Commission expiring on March 31, 2014.

At the Council Meeting on Monday, February 14, 2011, the City Council may

- select the candidates from the existing pool to be interviewed for the Human Relations Commission, with the interview date to be determined, or
- direct Staff to include on the next City Council Agenda an item to appoint the two incumbents, or
- select to reopen the recruiting process in an effort to increase the applicant pool.

The applicants are as follows:

	Name	Address	Phone
1.	Claude Ezran	2125 Louis Road Palo Alto, CA 94303	650-852-9486
2.	Daryl Savage	3507 Ross Road Palo Alto, CA 94303	

Respectfully submitted,

Ronna Jojola Gonsalves
Deputy City Clerk

Enclosures
cc: All applicants (without enclosure)
Donna Grider, City Clerk
Minka Van Der Zwaag, Staff Liaison

CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

February 14, 2011

The Honorable City Council
Palo Alto, California

Adoption of an Ordinance Amending Section 2.04.270 of the Palo Alto Municipal Code to Remove Provisions Related to Reading of Ordinance and Resolution Titles

Introduction:

At the City Council retreat on January 22, the Council discussed ways to increase the efficiency of City Council meetings. One question that was asked was whether it was necessary to read the title of ordinances into the record prior to approval of the Consent Calendar. The reading of ordinance titles is a requirement of the Palo Alto Municipal Code. However, this requirement does not appear to serve any useful purpose. The City Attorney's Office has prepared an amendment to the code (attached) that would remove the provision requiring the reading of ordinance titles.

Recommendation:

The City Attorney recommends that the Council adopt the attached Ordinance amending section 2.04.270 to delete subsection (d), which requires the reading of ordinance and resolution titles.

Discussion:

Palo Alto Municipal Code section 2.04.270(d) provides that "Ordinances and resolutions may be introduced and passed by reading the title only, and shall be read in full only when requested by a majority of the council members." This provision has historically been interpreted to mean that the titles of ordinances are required to be read into the record. While this requirement may have served a purpose at some point, current technology allows agendas, staff reports and proposed ordinances to be widely distributed well in advance of Council action. As such, the requirement that titles be read into the record is no longer necessary or beneficial. We are recommending that Council revise the Municipal Code to remove the requirement that ordinance titles be read into the record prior to adoption by the City Council. The proposed ordinance (Attachment A) removes subsection (d), but does not make any other changes to the Council's procedure for the adoption of ordinances and resolutions.

In addition to the reading of ordinance titles, we have received questions about the necessity of reading the full title of all closed session matters prior to adjourning to closed session. Although not uncommon, the practice of reading the full title of closed session matters is not required by law. Under the Brown Act, agencies are required to make a public announcement prior to going into closed session. However, in most cases the announcement may legally be made by reference to the agenda item (e.g. an announcement that states, "The Council will be going into closed session as described in agenda item 1"). While there are exceptions to this rule for certain litigation matters, those exceptions could be identified by the City Attorney prior to the closed session and additional announcements would be made only as necessary.

We have advised City staff that the reading of full titles for closed sessions is not required, and have already implemented that change. No further Council action is necessary.

ATTACHMENTS:

- Attachment A: Ordinance To Remove Provisions Related to Reading of Ordinances and Resolution Titles (DOC)

NOT YET APPROVED

Ordinance No. _____
Ordinance of the Council of the City of Palo Alto Amending Section 2.04.270 (Introducing ordinances and resolutions for passage and approval) of Title 2 (Administrative Code) of the Palo Alto Municipal Code to Remove Provisions Related to Reading of Ordinance and Resolution Titles

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. The City Council hereby amends Section 2.04.270 to read as follows:

2.04.270 Introducing ordinances and resolutions for passage and approval.

(a) Council Member to Sponsor. Ordinances, resolutions, and other matters or subjects requiring action by the council must be introduced and sponsored by a council member, except that the city manager or city attorney may present ordinances, resolutions or other matters or subjects to the council for consideration.

(b) Second Reading of Ordinance. With the sole exception of ordinances which take effect upon adoption, no ordinance shall be passed by the council on the day of its introduction nor within ten days thereafter, nor at any other time than at a regular or special meeting. Ordinances presented to the council for second reading shall be agendized as consent items and may be removed for debate and discussion only upon a majority vote of the council members present and voting. This section shall not prevent council members from making short comments on consent items.

(c) Amendments. A proposed ordinance may be amended between the time of its introduction and the time of its final passage, providing its general scope and original intention are retained. The correction of typographical or clerical errors shall not constitute an amendment within the meaning of this section.

(d) Emergency Ordinances Preserving Public Peace, Health or Safety. Any ordinance declared by the council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of the reasons for its urgency, may be

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Attachment: Attachment A: Ordinance To Remove Provisions Related to Reading of Ordinances and Resolution Titles (1349 : Ordinance

introduced and adopted at one and the same meeting if passed by a vote of four-fifths of the council members present.

SECTION 2. This ordinance shall be effective upon the thirty-first (31st) day after its passage and adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

_____
City Clerk

APPROVED:

_____
Mayor

APPROVED AS TO FORM:

_____
Interim City Attorney

_____
City Manager

City of Palo Alto
City Council Staff Report

(ID # 1352)

Report Type: Consent Calendar **Meeting Date: 2/14/2011**

Summary Title: 801 Alma Project Funding

Title: Approval of Amendment No. Four to the Alma Street Affordable Multifamily Rental Housing Project Acquisition and Development Agreement to Provide a Permanent Loan of $2.8 Million, to Commit Additional Funding of up to $3.0 Million of future City In-Lieu Fees and to Modify the Terms of the Agreement to Satisfy Outside Lenders.

From: City Manager

Lead Department: Planning and Community Environment

Recommendation
Staff recommends that the City Council:

1. Approve the attached Amendment No. Four to the Alma Street Affordable Multifamily Rental Housing Project Acquisition and Development Agreement to loan $2.8 million of Housing Funds to the project for predevelopment, construction and permanent project costs and to commit up to an additional $3.0 million of Housing Funds for construction and permanent loan funding for the project. Attached to the loan agreement are two Promissory Notes and a Deed of Trust for both loans.

2. Authorize the City Manager or his designee to execute the Loan Agreement referenced above and all documents necessary to implement the Agreement, and direct the City Manager or his designee to administer the provisions of the Agreement.

3. Authorize the City Manager or his designee to execute an amendment to the existing $3.5 million loan documents to conform the terms of that loan to the terms of the new $2.8 million and $3.0 million commitment.

Executive Summary
The recommended action will provide funding of up to $5.8 million for the development of the previously approved 50-unit 100% affordable rental housing project for extremely-low and very-low income households at 801-841 Alma Street. This funding will allow the project applicant, 801 Alma Family Housing L.P., to submit a competitive application for the State's Multifamily Housing Program (MHP) Fund and/or 9% Low Income Housing Tax Credits (TCAC). Funding is from the City's Housing Fund from commercial and housing development and is restricted to be spent only on affordable housing. No General Fund monies would be spent.

Background

On August 6, 2007, the City Council approved and the City executed an Acquisition and Development Agreement (ADA) between the City and Palo Alto Family, L.P. for the development of affordable rental family housing at 801 and 841 Alma Street. The project site includes the former Palo Alto Utility Substation property (841 Alma) and the former Ole's Auto Repair Shop (801 Alma). The ADA included a $3.5 million loan from the City to the developers for property acquisition of the Ole's site. On November 9, 2009, the City Council certified the Final Environmental Impact Report and approved all necessary entitlements for development of a 50-unit 100% affordable, family housing rental development for extremely-low income (at or below 30 % of Area Median Income) and very-low income households (at or below 50 % of Area Median Income) on the site. The 801 Alma and 841 Alma parcels have been merged, and the site will be owned by Palo Alto Family, L.P.

Discussion

The City Council is being asked to approve a planned and budgeted $2.8 million predevelopment to permanent loan for the project. The $2.8 million predevelopment to permanent loan will be funded with $1 million from the City's Commercial Housing Fund (State Housing Trust Fund Grant) and $1.8 million from the City's Residential Housing Fund. The City was awarded $1.0 million from the State Housing Trust Fund in 2003 for the construction of very low and low-income housing. The $1.8 million in the Residential Housing Fund is from remaining in-lieu fees from the Summerhill Homes Redwood Gates project. In December, 2009, the City Council allowed the payment of fees in-lieu of providing seven Below-Market-Rate dwelling units for the Redwood Gates project generating approximately $4.5 million. The City already provided $2.5 million of those fees to the Tree House Apartments project at 488 Charleston Road in 2010.

The Council is also being asked to approve a loan of up to $3 million from the Residential Housing Fund from the in-lieu fees to be paid by the Classic Communities Sterling Park development. These requested additional City commitments for $2.8 million and $3.0 million would fill the project's funding gap and allow the project to move forward. The additional $3 million may be reimbursed in part or in full by the County of Santa Clara Office of Affordable Housing, Stanford General Use Permit Funds, depending on a modification of County guidelines for use of these funds. The County has already committed $2.5 million to the project for 20 extremely low-income units.

<u>State Housing Fund and Tax Credits</u>

City Council approval of the recommended action will allow Palo Alto Family, L.P. to submit competitive applications for the State's Multifamily Housing Program (MHP) Fund and/or 9% Low Income Housing Tax Credits (TCAC). Funding from either of these programs is the last major step in securing total project funding for the development. All construction funding for a project must be committed at the time of application (MHP in March and TCAC in July) in order for the project to be competitive for either an MHP or TCAC funding award. Funding awards from either of these two programs would lead to a construction start for this project in the

spring of 2012. The requested additional funding commitments are a critical component of the project's financial feasibility and competitive advantage in the MHP and TCAC applications. The additional and committed funds result in a total City contribution to the project of up to $9.3 million from its affordable housing funds.

Terms of the Loans

Terms of the loans are specified as follows:

1. Terms for the $2.8 Million Loan include:
   a. Borrower: The borrower will be Palo Alto Family, L.P., a California limited partnership whose co-general partners will be Eden Investments, Inc., a wholly-controlled affiliate of Eden Housing, Inc. and 801 Alma, LLC whose sole member/manager is Community Working Group.
   b. Maturity Date: The loan maturity date will be 55 years from the date of the project's final certificate of occupancy issued by the City.
   c. Interest; Nonrecourse; Security: The outstanding principal balance of the nonrecourse loan will accrue simple interest at the rate of not more than 3% per annum, subject to the following sentence. The City agrees to reduce or eliminate the interest rate at the borrower's request prior to the admission of the investor limited partner if, and to the extent that, a reduction or elimination of the interest rate on the loan is necessary to prevent the borrower's investor limited partner's capital account from being a negative number during the Low-Income Housing Tax Credit period. The loan will be nonrecourse and will be secured by an assignment of agreements prior to the partnership's ownership of the property, and secured by a Deed of Trust from and after the partnership's acquisition of the property.
   d. Repayment from Residual Receipts: Annual installments to repay the loan will be limited to Residual Receipts (the Project's gross revenue less operating expenses) generated by the project. Residual Receipts will be divided 50% as the borrower's share and 50% as the lenders' share. The lender's share will be used to repay the loan, an MHP loan, and any other subordinate loans on a prorata basis.
   e. Use Restriction: The Regulatory Agreement which will be recorded against the property requires that the property will be used for affordable housing at affordability levels specified in the agreement for 55 years from the final certificate of occupancy.
   f. Subordination: The loan documents and Regulatory Agreement will be subordinated to construction and permanent deeds of trust and senior loan regulatory agreements, pursuant to subordination agreements that provide the City with reasonable notice and cure rights.
   g. Cost Savings: The loan documents shall provide for a one-time special prepayment of the Loan in the amount equal to any project Excess Proceeds. "Excess Proceeds" shall mean the sum of all sources of permanent financing for the project (including equity and mortgage debt) less the sum of actual uses as shown on the final cost certificate for the project.
   h. Other Terms: The City Manager or his authorized designee shall have the authority

to add to and/or modify any of the above loan terms without additional approval from the City Council; provided, however, that the City Manager or his authorized designee shall not have the authority to increase the loan amount.

2. The terms of the Additional Loan up to $3.0 million shall have the same terms as specified in 1.a through 1.h above, except that the final amount of this additional loan will be determined prior to the permanent loan conversion, and will be set based upon the amount of funding required by the project and the extent of any funding contributed by Santa Clara County (up to $3.0 million). Staff notes that, whereas most housing loans are forgiven if the units remain affordable for the specified number of years, the $3.0 million loan is not allowed to be forgiven and must over time be repaid to the City. That funding also is not due to the borrower until permanent financing is required, which is likely not until at least 2013.

3. The terms of the existing $3.5 million loan shall be amended to have the same terms as specified in 1.a through 1.h above; the amount of the existing loan shall remain at $3.5 million.

Resource Impact

The $2.8 million predevelopment to permanent loan will be funded with $1 million from the City's Commercial Housing Fund (State Housing Trust Fund Grant) and $1.8 million from the City's Residential Housing Fund. The additional loan of up to $3 million will be funded from the Residential Housing Fund from the in-lieu fees to be paid by Classic Communities Sterling Park development. The Classic Communities project has deposited approximately $400,000 in in-lieu funds with the City to date, and the total funds expected from the project will amount to about $4.6 million. The project owner, however, initiated litigation regarding the City's housing fee requirements, requesting that such fees not be required. Courts have twice rejected the claims, but the litigation is not yet final. The City Attorney anticipates that the necessary in-lieu funds from the Classic Communities project will be available within the next two to three months. The 801 Alma owners will not need the funding in hand until permanent financing is in place, likely in early 2013. Given the City's previous contribution of $3.5 million, this results in a total City contribution to the project of up to $9.3 million from the City's affordable housing funds. No monies from the General Fund will be committed.

Policy Implications

The actions recommended in this report implement the City's adopted Housing Element policies and programs supporting the development of very low and extremely low income housing. The 50 units from the Alma Street Affordable Multifamily Rental Housing Project will be listed on the City's Housing Inventory for the 2007 to 2014 Housing Element period and counted towards the City's housing production goals when the project is developed. This project will also provide 20 of the 50 units required to serve households at or below 30% of the Area Median Income (AMI), considered Extremely Low Income, which will help the City address State requirements for meeting the housing needs of this population.

Environmental Review

This funding is not a project under the California Environmental Quality Act. An Environmental Impact Report was previously certified with the project entitlements on November 9, 2009.

Courtesy Copies

Eden Housing
Community Working Group

ATTACHMENTS:

- Attachment A: 4th Amendment to ADA (PDF)
- Attachment B: Loan Agreement (PDF)

Prepared By: Julie Caporgno, Chief Planning and Transportation Official

Department Head: Curtis Williams, Director

City Manager Approval: James Keene, City Manager

FOURTH AMENDMENT TO ALMA STREET AFFORDABLE MULTI-FAMILY RENTAL HOUSING PROJECT ACQUISITION AND DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO ACQUISITION AND DEVELOPMENT AGREEMENT ("Fourth Amendment"), dated as of _____, 2011 ("Effective Date") is entered into by and among the CITY OF PALO ALTO, a municipal corporation (the "City") and PALO ALTO FAMILY, L.P., a California limited partnership ("Developer").

RECITALS

This Fourth Amendment is entered into with reference to the following facts:

A. The City and Developer's general partners (or their predecessors in interest), COMMUNITY HOUSING ALLIANCE, INC., a California non-profit public benefit corporation, and EDEN HOUSING, INC., a California non-profit public benefit corporation, entered into that certain Acquisition and Development Agreement as of August 6, 2007, a First Amendment dated as of September 15, 2008, a Second Amendment dated April 1, 2009, and a Third Amendment dated August 30, 2010 (collectively, the "ADA") for the Alma Street Affordable Multi-Family Rental Housing Project, located on certain real property located in the City of Palo Alto identified more particularly in the ADA (the "Property"). All capitalized terms used herein without definition at first use shall have the meanings ascribed to them in the ADA.

B. City and Developer now desire to amend the Agreement again to reflect some of the requirements of other financing sources for the Project, including the State of California Multifamily Housing Program ("MHP") and the Low Income Housing Tax Credits Program ("TCAC"), all as more particularly provided below.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants contained herein, the parties agree as follows:

1. Section 6.2.4 of the ADA is hereby deleted in its entirety and replaced by the following:

> The restrictions imposed by this section and by the Regulatory Agreement shall continue for an initial period ending fifty-five (55) years from the date on which the final certificate of occupancy for the Development is issued by the City, unless it is extended pursuant to this Section (the "Restriction Termination Date"). For the purposes of the commercial condominium created for the ground floor commercial/retail space, the Restriction Termination Date shall be the date upon which the subdivision of the ground floor condominiums is completed and recorded in accordance with state law. It is the intent of the parties to maintain affordability of the Affordable Units for the longest time feasible. Accordingly, the parties agree

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

to negotiate one or more extensions of the Restriction Termination Date to the extent permitted by TCAC and other applicable public financing requirements, and to execute and record one or more appropriate amendments to the Regulatory Agreement to effect such extension(s).

2. Section 7.2.3 of the ADA is hereby deleted in its entirety and replaced by the following:

Payments of principal and interest on the City Loan shall be made on a residual receipts basis as described in, and in accordance with, the City Note.

3. Section 7.2.5 of the ADA is hereby deleted in its entirety.

4. The first paragraph of Section 8.5.4 is hereby deleted in its entirety and replaced by the following:

Upon such termination, in addition to the other rights of City under this Section 8.5, City shall also have the option, subject to the rights of Holders set forth in Section 5.13, to purchase the Site (the "Option"); provided that, City must exercise the Option by written notice to Developer prior to the date, if any, on which the default is cured. The rights of City to repurchase pursuant to this Section 8.5.4 shall be set forth in the Regulatory Agreement and in the Memorandum of Option in the form attached hereto as Attachment No. 11, which shall encumber the entire Site; provided, however that the commercial condominiums for the ground floor commercial/retail space shall be released from the encumbrance of the Option when those condominiums are created in accordance with the Subdivision Map Act.

5. Attachment No. 4, Form of Grant Deed, shall be deleted in its entirety and replaced with the Revised Attachment No. 4, Form of Grant Deed, attached hereto and incorporated herein.

6. Attachment No. 7, Form of City Note, shall be deleted in its entirety and replaced with the Revised Attachment No. 7, Form of City Note, attached hereto and incorporated herein.

7. Attachment No. 8, Form of City Deed of Trust, shall be deleted in its entirety and replaced with the Revised Attachment No. 8, Form of City Deed of Trust, attached hereto and incorporated herein.

8. Attachment No. 9, Form of Regulatory Agreement, shall be deleted in its entirety and replaced with the Revised Attachment No. 9, Form of Regulatory Agreement, attached hereto and incorporated herein.

9. Attachment No. 11, Form of Memorandum of Option, is hereby deleted in its entirety and replaced by Revised Attachment No. 11, Form of Memorandum of Option.

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

10. Execution in Counterparts. This Fourth Amendment may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

11. Effect of Fourth Amendment. Except as modified by this Fourth Amendment, the ADA and each term contained therein remains in full force and effect. In the event of a conflict between the ADA and the terms of this Fourth Amendment, this Fourth Amendment shall control.

[Signatures appear on next page.]

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED:

Assistant City Manager

Director of Administrative Services

Director of Planning and Community Environment

Insurance Review

CITY OF PALO ALTO, a chartered city

Mayor

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA LLC, a California limited liability company, its Co-General Partner

By:

COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By:
Name: Jim Burfm
Title: President

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By:
Name: TERESE McNAMEE
Title: Chief Financial Officer

94-2995223
Borrower FEIR#

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

REVISED ATTACHMENT NO. 4
FORM OF GRANT DEED

WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO:

City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303
Attn: City Manager

WITH A COPY TO:

Palo Alto Family, L.P.

_____

_____

Attention: _____

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged,

The CITY OF PALO ALTO, a chartered city of the State of California (hereinafter referred to as "Grantor"), acting to carry out the public purposes of that certain Acquisition and Development Agreement (as amended from time to time, the "ADA") dated as of August 6, 2007 and entered into by and between Grantor and PALO ALTO FAMILY, L.P., a California limited partnership (hereafter, "Grantee"), hereby grants to Grantee the real property (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and incorporated herein by this reference. Further, title to the Property is conveyed pursuant hereto subject to all recorded liens, encumbrances, covenants, encroachments, assessments, easements, leases and taxes.

[Signatures appear on the following page]

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _____ day of _____, 201__.

"GRANTOR"
CITY OF PALO ALTO,
a chartered city

By:_____
Name:_____

Title:_____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

EXHIBIT "A"

LEGAL DESCRIPTION

PROPERTY

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

REVISED ATTACHMENT NO. 7

Form of Promissory Note

PROMISSORY NOTE
(City Loan)

$3,500,000

_____, 20__
PALO ALTO, CALIFORNIA

FOR VALUE RECEIVED, PALO ALTO FAMILY, L.P., a California limited partnership (the "Maker") promises to pay to the CITY OF PALO ALTO (the "City"), or order, the principal sum of THREE MILLION FIVE HUNDRED DOLLARS ($3,500,000), or such portion thereof that may have been disbursed to Maker (the "Loan"). This Note amends, replaces, and supersedes in its entirety that certain "City Note" dated August 1, 2008, made by Maker. The Loan shall bear simple interest of three percent (3%) per annum, simple interest, on the amount disbursed from the date of disbursement. The City agrees to reduce or eliminate the interest rate at Maker's request prior to the admission of the investor limited partner if, and to the extent that, a reduction or elimination of the interest rate on the Loan is necessary to prevent Maker's investor limited partner's capital account from being a negative number during the Low-Income Housing Tax Credit period.

1. The Loan is made pursuant to that certain Acquisition and Development Agreement between Maker and City dated as of August 6, 2007 (as amended from time to time, the "ADA"). All capitalized terms used herein and not defined when first used shall have the meaning ascribed to them in the ADA. The Loan will be used by Maker for the predevelopment expenses related to the development of certain real property as described in the ADA (the "Project") and pursuant to the terms and conditions contained therein and to those contained in that certain Regulatory Agreement recorded on the Property on _____, 2011 as Document No. _____ (the "Covenant").

2. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing from Maker to City of even date herewith and recorded against the Project on _____, 2011, as Document No. _____ (the "Deed of Trust").

3. This Note shall be due and payable as follows:

Beginning with Maker's fiscal year following the first year of operations of the Project after completion of rehabilitation of the Project, Maker shall make annual payments of interest and principal to the City only from "Residual Receipts," defined below, from Maker's preceding fiscal year. Residual Receipts will be divided: 50% as the "Maker's Share" and 50% as the "Lenders' Share." The 50% Lenders' Share will be used to repay any of the City loans to the Project, the Maker's MHP loan from the California Department of Housing and Community Development, if received, and other subordinate loans on a *pro rata* basis based on the respective loan amounts. Payment shall be made within one hundred eighty (180) days of the end of each

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

fiscal year of Maker. Payments shall be applied first to interest on the Loan and then to reduce principal. To the extent the Residual Receipts from any fiscal year are not sufficient to pay the entire amount of interest due for such year any unpaid interest for any fiscal year on the Loan shall accrue and shall be payable from the Residual Receipts from succeeding fiscal years, with the entire remaining amount of principal and interest due on the fifty-fifth (55th) anniversary of the date on which the final certificate of occupancy for the Project is issued by the City, unless that time is extended by agreement of the parties in accordance with Section 6.2.4 of the ADA (herein, the "Maturity Date," and otherwise referred to in the ADA as the "Restriction Termination Date"). All outstanding principal and all accrued interest under this Note shall be paid by the Maker on the Maturity Date, or in the case of a default under the ADA, on the date the ADA is terminated in accordance with Section 12 thereof.

For the purposes herein, "Residual Receipts" means the difference, if positive, between all income received by Maker with respect to the Project (including, without limitation, rents, grants, reimbursements, contributions, gifts, or payments for services delivered at the Project) and all operating expenses of the Project (including, without limitation, maintenance, repairs, payment of staff salaries and Project management fees and reimbursements in accordance with the limitations in the ADA, taxes, debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on Approved Senior Loans and such other loans approved by the City and which are secured by deeds of trust senior in priority to the Additional Deed of Trust (collectively, "**Approved Senior Loans**"), premiums for property damage, liability and other insurance related to the Project; utility service costs not paid for directly or indirectly by tenants; fees for licenses and permits related to the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Maker incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than $600 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or Maker's investor limited partner or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Maker's expense; an annual partnership management fee payable to the general partner of Maker in the maximum aggregate sum of $25,000 per year (plus any portion of such annual fee deferred from prior years), increasing by three percent (3%) per year and payable only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); an annual asset management fee not to exceed $10,000 per year (plus any portion of such annual fee deferred from prior years) increasing by three percent (3%) per year, payable to the investor limited partner of Maker only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); any previously unpaid portion of the developer fee (without interest) due in accordance with the Financing Plan (provided that the cumulative amount of such fee does not exceed the maximum allowable by the California Tax Credit Allocation Committee (the "**Approved Developer Fee**"); cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Senior Loan or Maker's investor limited partner; other reserve account deposits required pursuant to Approved Senior Financing or Maker's investor limited

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

partner; other ordinary and reasonable operating expenses; and other extraordinary operating expenses specifically approved by the City.

Beginning with the first year of operations of the Project after completion of the rehabilitation, Maker shall deliver to City each year an annual audited financial statement to determine the amount of Residual Receipts. City shall have the right upon reasonable notice to Maker to inspect and audit Maker's books and records concerning the calculation of Residual Receipts.

4. Payment shall be made in lawful money of the United States to the City of Palo Alto, P.O. Box 10250, Palo Alto, CA 94303, Attn: _____. The place of payment may be changed from time to time as the City may from time to time designate in writing.

5. Within ten (10) business days after maker's receipt of its limited partner(s)' capital contribution following the issuance of the IRS Form 8609 for the Project, Maker shall make a one-time payment to the City to reduce the amount of the Loan by the amount equal to any project Excess Proceeds. For the purposes of this Note, "Excess Proceeds" shall mean the sum of all sources of permanent financing for the Project (including equity and mortgage debt) less the sum of actual uses as shown on the final cost certificate for the Project prepared in accordance with applicable tax credit and other governmental requirements. For purposes of calculating Excess Proceeds: (i) Maker shall be entitled to pay any deferred Developer Fee; (ii) the Project replacement reserve shall be funded in an amount equal to the amount(s) shown on the Project pro forma approved pursuant to the ADA, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner, and (iii) the operating reserve shall be funded in an amount shown on the Project *pro forma* approved pursuant to the ADA, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner.

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within ten (10) days of its due date; (ii) any default by Maker under the ADA after any applicable cure period; or (iii) any sale, exchange, transfer, assignment or other conveyance of the Project without City's prior written approval.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the City hereof, the entire unpaid principal owing on this Note shall become immediately due and payable. In such event, interest shall accrue on the entire unpaid amount then owing commencing from the date such amount was due and continuing until the date such amounts are paid in full. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. City shall not exercise any right or remedy provided for herein because of any default of Maker unless, in the event of a monetary default, Maker shall have failed to pay the

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

outstanding sums within a period of thirty (30) calendar days after notice that payment was due; or in the event of a nonmonetary default, City shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) days after the giving of such notice of such default; provided that if the nonmonetary default cannot be cured within thirty (30) days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than one hundred twenty (120) days after the giving of such notice, City shall not exercise any right or remedy provided for herein until such one hundred twenty (120) shall expire; provided, however, City shall not be required to give any such notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days.

8. Maker and any endorsers hereof, if any, and all others who may become liable for all or any part of this obligation, if any, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder, City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor, if any, or any other party liable therefor, if any, or to the protection of its rights under ADA, this Note, the Deed of Trust or the Covenant, or (iii) if City seeks to have the Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental City, affecting the Project or the title thereto or the interest of the City under the Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Maker immediately upon demand for all costs, charges, and attorneys' fees incurred by City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Project.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the addresses set forth in the ADA or at such address as either party may designate by written notice.

12. This Note shall be binding upon Maker, its successors and assigns. This Note may not be assigned by Maker without the prior written approval of City.

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

13. This Note is nonrecourse and neither Maker nor any member, officer, agent, director, affiliate, parent, partner or employee of Maker shall have any personal liability for repayment of the sums evidenced hereby, and the City must resort only to the Project for repayment should the Maker fail to repay the sums evidenced hereby. Regardless of the foregoing limitation of liability, Maker will be fully liable for the following:

a. Failure to pay property taxes, assessments and any other charges that could result in liens against any portion of the Project or any other collateral pledged, encumbered or otherwise covered by the Deed of Trust;

b. Failure to pay and discharge any mechanics' liens, materialmens' liens or other liens against any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Deed of Trust;

c. Fraud or intentional misrepresentation with respect to any representation, warranty or certification made in the Loan Documents, or otherwise made by Maker in connection with the Loan;

d. Retention by Maker of any rental income or other income arising with respect to any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Deed of Trust subsequent to the date of any notice of default to Maker;

e. Retention by Maker of any insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Project or any other collateral pledged, encumbered, or otherwise covered by the Deed of Trust that, by its terms, should have been paid to City or used in a manner contrary to the use made by Maker;

f. Waste of the Project, or any failure to maintain, repair, or restore any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Deed of Trust in accordance with its terms.

14. This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

16. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Covenant shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

[Signatures appear on next page.]

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

MAKER:

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA, LLC, a California limited liability company,
its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name:_____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation,
its Co-General Partner.

By: _____
Name:_____
Title: _____

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

REVISED ATTACHMENT NO. 8

Form of City Deed of Trust

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Palo Alto
P.O. Box 10250
Palo Alto, California 94303
Attn: City Manager

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

DEED OF TRUST AND ASSIGNMENT OF RENTS

A.P.N._____

THIS DEED OF TRUST (this "Deed of Trust") is made as of _____, 2011, between PALO ALTO FAMILY, L.P., a California limited partnership ("Trustor"), FIRST AMERICAN TITLE INSURANCE COMPANY as "Trustee," and the CITY OF PALO ALTO, a chartered city ("Beneficiary"). Trustor is the fee owner of the Property described below.

This Deed of Trust witnesseth:

That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in Santa Clara County, California, described as:

See Exhibit A, attached hereto and incorporated herein by this reference.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; and

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

Together with all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same, are or shall be attached to the building or buildings in any manner. All of the foregoing, together with the real property, is herein referred to as the "Property."

To have and to hold the Property, together with appurtenances to the Trustee or its successors and assigns, forever.

For the Purpose of Securing:

(a) Performance of each agreement of Trustor herein contained.

(b) Payment of the indebtedness evidenced by that certain promissory note of even date herewith, and any extension or renewal thereof, in the stated principal sum of $3,500,000.00 (the "Note"), executed by Trustor in favor of Beneficiary or order.

(c) Payment of such further sums as the then record owner of the Property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

(d) Performance by Trustor of all of Trustor's obligations arising under that certain Regulatory Agreement dated _____ and recorded on the Property on _____ ___, 2011 as Document No. _____ (the "Covenant").

(e) Performance of each obligation of Trustor set forth in that certain Acquisition and Development Agreement dated as of August 6, 2007 and amended from time to time (the "ADA"), entered into by and between Trustor's predecessors-in-interest and Beneficiary.

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) That it shall faithfully perform each and every covenant contained in the Note, the Covenant, and the ADA.

(2) That it will not permit or suffer the use of any of the Property for any purpose other than the use described in the Covenant and the ADA as they may be amended from time to time.

(3) To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property, or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(4) To provide, maintain and deliver to Beneficiary fire and extended coverage insurance with endorsements for vandalism, malicious mischief, and special extended perils, in the full replacement value of the improvements (excluding footings and foundations with no co-insurance penalty provision), and with endorsements for increases in costs due to changes in code and inflation, and any other insurance requested by Beneficiary, and with loss payable to Beneficiary, and any other insurance required by the ADA. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall have the right to pay any insurance premiums when due should Trustor fail to make them, and all such payments made by the Beneficiary shall be added to the principal sum secured hereby. Beneficiary shall release all insurance or condemnation proceeds to Trustor to be used to reconstruct the Project on the Property provided that such Beneficiary determines that such restoration, repair or rebuilding is economically feasible. Notwithstanding the foregoing, unless Beneficiary and Trustor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damages, provided Beneficiary determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Beneficiary determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

(5) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(6) To pay: at least ten (10) calendar days before delinquency all taxes and assessments affecting the Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

(7) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes with written notice to Trustor; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees.

(8) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time the statement is made.

(9) The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property, or will cause the release of or will provide a bond against any such liens within ten (10) days of Trustor's receipt of notice of the lien or liens.

(10) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys it receives in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance. Notwithstanding the foregoing, the proceeds of any award or claim for damages, direct or consequential, in connection with a total condemnation or taking of the Property, shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor, unless Trustor and Beneficiary otherwise agree in writing. In the event of a partial condemnation or taking, the proceeds shall be applied to the restoration or repair of the Property, provided Beneficiary determines that such restoration or repair is economically feasible and there is no default continuing after the expiration of all applicable cure periods. If Beneficiary determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the condemnation proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

(11) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(12) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

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(13) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven by Beneficiary, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In addition, upon Beneficiary's satisfaction that the subdivision process for the creation of commercial condominiums for the ground level commercial/retail spaces on the Property in accordance with state law has been completed, Beneficiary shall make written request to Trustee for the partial reconveyance of the portion of the Property consisting of those condominiums, and the encumbrance of this Deed of Trust shall be reconveyed without warranty as to that portion of the Property only.

(14) That Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents, income and profits of the property encumbered hereby, and hereby give to and confer upon Beneficiary the right, power and authority to collect such rent, income, and profits, and Trustor irrevocably appoints Beneficiary Trustor's true and lawful attorney at the option of Beneficiary, at any time, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all income, and apply the same to the indebtedness secured hereby; provided, however, so long as no default by Trustor in the payment of any indebtedness secured hereby shall exist and be continuing, Trustor shall have the right to collect all rent, income and profits from the Property and to retain, use and enjoy the same. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(15) That upon default by Trustor in payment of any indebtedness secured hereby, or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed

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conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at the sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(16) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title estate, rights, powers and duties. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(17) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(18) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(19) If Trustor shall die or sell, convey, hypothecate, transfer, encumber or alienate the Property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, or if Trustor shall fail to make any payments due under the Note, or fail to perform any other obligation under this Deed of Trust, the Note, the Covenant or the ADA, or any other deed of trust encumbering the Property or the promissory note or other agreement secured thereby, then Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

(20) That Trustor shall promptly pay when due the payments of interest, principal, and all other charges accruing under any superior or prior trust deed, mortgage, or other instrument encumbering the Property. Upon any breach of the ADA, Beneficiary shall have the right to declare all sums secured hereby immediately due and payable. Beneficiary shall have the right,

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but not the obligation, to cure any defaults on any superior or prior deed of trust or promissory note secured thereby and upon curing such default Trustor shall immediately reimburse Beneficiary for all costs and expenses incurred thereby, together with interest thereon at the maximum legal rate permitted to be charged by non-exempt lenders under the State of California, and Trustor's failure to pay such amount on demand shall be a breach hereof. Trustor's breach or default of any covenant or condition of any superior or prior trust deed, mortgage or other instrument encumbering the Property shall be a default under this Deed of Trust.

(21) That the improvements now existing or to be constructed upon the Property, and all plans and specifications, comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the following addresses:

Eden Investments, Inc.
22645 Grand St.
Hayward, CA 94541
Attn: Executive Director
Tel: (510) 582-1460
Fax: (510) 582-6523

And

801 Alma, LLC
c/o Community Working Group, Inc.
948 Ramona Street
Palo Alto, CA 94301
Attn: Donald A. Barr
Tel: (650) 906-6943
Fax: (650) 725 5451

With a copy to:

Jorgenson, Siegel,
McClure & Flegel, LLP
1100 Alma St., Ste. 210
Menlo Park, CA 94025-3392
Attn: Sandy Sloan
Tel: (650) 324-9300
Fax: (650) 324-0227

NOTE: The Trustor (sometimes referred to herein as the "Partnership"), through its limited partner, is providing equity for the development of the Property. The agreement of limited partnership governing the Trustor, as it may be amended and/or amended and restated from time to time, is referred to herein as the "Partnership Agreement."

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(22) INVESTOR PROVISIONS:

a. If a non-monetary event of default occurs under the terms of this Deed of Trust, the Note, the Covenant or the ADA (the "Loan Documents), prior to exercising any remedies thereunder, Beneficiary shall give Trustor and each of its general and limited partners simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Trustor and its limited partner shall have such period to effect a cure prior to exercise of remedies by Trustor under the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and if the Beneficiary (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary.

b. Beneficiary hereby agrees that any cure of any default made or tendered by one or more of the Partnership's limited partners shall be deemed to be a cure by the Partnership and shall be accepted or rejected on the same basis as if made or tendered by the Partnership. Copies of all notices which are sent to the Partnership under the terms of the Loan Documents shall also be sent to:

[Address to be provided]

The Partnership's limited partners may change their address for receipt of copies of notices by giving notice in writing stating its new address to the Beneficiary. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be effective for purposes of all such copies of notices required to be sent by the Beneficiary to the limited partners.

c. Notwithstanding any of the provisions hereof, none of the following shall constitute a violation of the Loan Documents:

(i) The withdrawal, removal, replacement, and/or addition of a general partner of the Partnership pursuant to the terms of the Partnership Agreement, provided that any new general partner: (a) is an entity that is exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (or any successor statute), and (b) receives prior written approval from the City; and

(ii) The transfer of any of the limited partners' interests in the Partnership.

d. The execution and delivery of a right of first refusal and purchase option to either Co-General Partner or an affiliate thereof pursuant to the Partnership Agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan.

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e. Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee ("CTCAC") intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code (IRC), as amended. As of the date hereof, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the regulatory agreement required by CTCAC is recorded against the Property, Beneficiary agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

[Signatures appear on next page.]

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Signature of Trustor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED:

_____
Assistant City Manager

_____
Director of Administrative Services

_____
Director of Planning and Community Environment

_____
Insurance Review

CITY OF PALO ALTO, a chartered city

_____
Mayor

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA, LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: _____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: _____
Title: _____

_____
Borrower FEIR#

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ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

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EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

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REVISED ATTACHMENT NO. 9

Form of Regulatory Agreement

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Palo Alto
P.O. Box 10250
Palo Alto, California 94303
Attn: City Manager

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this "Agreement") is made and entered into as of _____, 20__ by and between the CITY OF PALO ALTO, a chartered city (hereinafter referred to as "City") and PALO ALTO FAMILY, L.P., a California limited partnership ("Owner"), with reference to the following:

RECITALS

A. Owner is the owner of real property located in the City of Palo Alto, California (hereinafter referred to as the "Property") and legally described on Exhibit "A," attached hereto and incorporated herein by this reference.

B. Owner's predecessors-in-interest and City entered into that certain Acquisition and Development Agreement dated as of August 6, 2007, as amended from time to time (hereinafter referred to as the "ADA"), which is incorporated herein by this reference. All capitalized terms not defined when first used in this Agreement shall have the meanings ascribed to them in the ADA. Under the ADA, the City is providing financial assistance to Owner for the purpose of acquiring and making improvements to the Property for use as residential development including affordable multi-family rental housing (the "Development").

C. As a condition of providing such financial assistance, the Owner desires to record this Agreement to impose certain income and rent restrictions on the Development described below to satisfy the requirements under Section 6.2 of the ADA.

NOW, THEREFORE, City and Owner agree as follows:

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AGREEMENT

1. Except for the covenants contained in Section 4 and Section 7 below, the covenants contained in this Agreement shall remain in full force and effect for fifty-five (55) years after the date on which the final certificate of occupancy for the Project is issued (the "Restriction Termination Date"), unless sooner terminated by written agreement of the Owner and the City. The covenants contained in Section 4 below shall remain in effect in perpetuity. The provisions in Section 7 shall terminate upon the issuance of the final certificate of occupancy for the Project.

2. Owner hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Owner, and such successors and such assigns, shall:

a. Develop and use the Property only for the Development permitted and specified in the ADA;

b. Keep the Property free from any accumulation of debris or waste materials, and keep the landscaping in a healthy condition;

c. Maintain the Property and all improvements on the Property, including landscaping, in good condition, and to the reasonable satisfaction of the City. Maintenance shall be in conformance and in compliance with City's normal maintenance standards, as defined by City's codes relating to property maintenance and in accordance with the following:

i. Owner and its successors and assigns shall maintain the Property and the improvements thereon in the same aesthetic and sound condition (or better) as to the condition of the Property at the time City issues a Certificate of Completion pursuant to the ADA, reasonable wear and tear excepted. In the event Owner, its successors or assigns fail to maintain the Improvements in accordance with the standard for the quality of maintenance, City or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to the then record owner of the Property, correct any violation, and hold Owner, or its successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property. The Owner and each successor and assign shall be liable for maintenance of the Property pursuant to this paragraph only for the respective period of time during which such entity holds an ownership interest in the Property.

ii. Except for Permitted Alterations (as hereinafter defined), Owner shall not make or suffer to be made any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed. Any request for consent shall be accompanied by plans and specifications for the proposed work in reasonable detail (including component materials and finish items) to enable City to consider whether or not to grant approval. City may condition its approval in any way reasonably deemed necessary by City to protect its interest in the Property. The term "Permitted Alterations" shall mean (and Owner shall not be required

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to obtain the consent of City for) either of the following, to the extent they comply with all applicable City procedures and requirements: (aa) any alterations, additions, improvements, exterior painting or landscaping (which alterations, additions, improvements, exterior painting or landscaping undertaken during a twelve (12) month period, which cost less than 20% of the value of the Property after issuance of the Certificate of Completion); or (bb) any tenant improvements within tenant or subtenant spaces or signs for any tenants or subtenants. All alterations, additions, or improvements by Owner shall be made without cost or expense to City, by responsible and licensed contractors. All improvements and equipment shall be designed, built, and installed in accordance with all applicable building codes and regulations, and Owner shall obtain all necessary building permits. Notwithstanding any provision of this paragraph "c," prior to the recordation of the Certificate of Completion for the Property, construction or rehabilitation of the initial Improvements shall be governed by the applicable provisions of the ADA.

3. Owner hereby further covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Owner, and such successors and such assigns, that:

a. Owner shall operate a residential project consisting of thirty-five (35) to fifty-five (55) residential units (the "Project").

b. All of the residential units in the Project (the "Affordable Units") shall be both rent-restricted and occupied, or if vacant, available for occupancy, by Very Low Income Households whose incomes do not exceed fifty percent (50%) of the Area Median Income for Santa Clara County, as adjusted by household size, or such other qualifying limits for Very Low Income Households as may be established in accordance with California Tax Credit Allocation Committee (TCAC) guidelines, as they subsequently may be amended. In addition, at least thirty percent (30%) of the Affordable Units shall be occupied (or available for occupancy) by Extremely Low Income households whose incomes do not exceed thirty percent (30%) of the Area Median Income. The Affordable Units shall contain the number of bedrooms that may be required by the financing approved by the City.

c. Rents shall be restricted on Affordable Units to thirty percent (30%) of the income limitation above, or as otherwise may be set forth in the TCAC guidelines ("Affordable Rents").

d. In determining the household size appropriate for the Affordable Unit, it shall be assumed one person occupies a studio unit, one and one-half persons occupy a one-bedroom unit, three persons occupy a two-bedroom unit, four and one-half persons occupy a three-bedroom unit, and six persons occupy a four-bedroom unit or as otherwise may be required by TCAC.

e. The income and household size of all households occupying Affordable Units shall be certified by the Owner prior to occupancy and re-certified annually thereafter. Each annual re-certification shall also include the initial occupancy date of the household occupying the Unit, the monthly Affordable Rent paid for the Affordable Unit during the prior year, the utility allowance attributable to the Affordable Unit, and the percentage of household income

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used to pay rent. The Owner shall maintain all certifications and make them available to the City upon request.

4. Owner herein covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.

Owner further covenants that all deeds, leases or contracts entered into with respect to the Property shall contain or be subject to substantially the following nondiscrimination/nonsegregation clauses:

IN DEEDS: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

"Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph."

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IN LEASES: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use or occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

"Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph."

IN CONTRACTS: "The contracting party or parties hereby covenant by and for himself or herself and their respective successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contracting party or parties, any subcontracting party or parties, or their respective assigns or transferees, establish or permit any such practice or practices of discrimination or segregation.

"Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph."

5. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall burden the Property and run for the benefit of City.

6. All covenants in this Agreement, without regard to technical classification or designation, legal or otherwise, shall, in any event, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by City, its successors and assigns, against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of the Property and such

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covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

7. Prior to the issuance of the final certificate of occupancy for the Project (the "Restriction Termination Date"), in the event Owner ceases to operate the Property in accordance with this Agreement or ceases to operate the Project, and fails to cure such breach upon sixty (60) days' written notice from City, in addition to the other rights of City under this Agreement, City shall also have the option to purchase the Property (the "Option") in accordance with the following:

a. The Option shall be exercised, if at all, by City's delivery of written notice of its election to exercise the Option to Owner within one year after expiration of the last of the cure periods granted to Owner, and the Owner shall execute, acknowledge and deliver a grant deed for the Property to the City within fifteen (15) business days after the City's election, subject only to the title exceptions described in clause (c) below. In the event Owner fails to do so, City shall have, in addition to any and all of its other rights and remedies at law, in equity and under this Agreement, the right to an order for specific performance.

b. The purchase price for the Property under the Option (the "Option Purchase Price") shall be the balance then due to the City under the City Loan described more particularly in the ADA.

c. City shall credit the Option Purchase Price to Owner through escrow. Owner shall convey title subject only to exceptions that (i) existed at the time of Owner's acquisition of the Property, or (ii) were created with the written consent of City or approved in writing by City or expressly contemplated or permitted by this Agreement, including but not limited to the deed of trust or other lien securing construction or permanent financing.

d. Upon the City's election to exercise the Option, the City and the Owner shall promptly open an escrow with Escrow Agent and shall execute and deliver all documents necessary or appropriate to complete the purchase and sale transaction in accordance with this Section 7 (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593). Owner shall pay all escrow costs and the costs of an ALTA owner's title insurance policy in favor of City, which is consistent with clause (c) above.

e. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of the Option and this Section, including, but not limited to specific performance. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that City should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the City with respect to any specific

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

default by the Owner, its successors and assigns, be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Owner, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

8. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. Within thirty (30) days after the Restriction Termination Date, the City and Owner shall record a notice of the termination of this Agreement and the Option.

10. Only the City, its successor, and assigns, and Owner and the successor and assigns of Owner in and to the fee title to the Property shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or other restrictions contained in this Agreement or to subject the Property to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, mortgage, trustee, beneficiary under a deed of trust or any other person or entity having an interest less than a fee in the Property. The covenants contained in this Agreement without regard to technical classification or designation shall not benefit, burden, or be enforceable by any person, or firm, or corporation, public or private, except City, Owner, and their respective successors and assigns. To the extent of any inconsistency between the ADA and this Agreement, this Agreement shall govern.

11. Notwithstanding any other provision of this Agreement, the upon the creation of commercial condominiums for the ground level commercial/retail spaces on the Property in accordance with state law, the portion of the Property consisting of those condominiums shall be released from the encumbrance of this Agreement. City and Owner shall record an addendum to this Agreement documenting the release of the commercial condominium portion of the Property when the subdivision process is completed.

[Signatures appear on next page.]

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED:

_____
Assistant City Manager

_____
Director of Administrative Services

_____
Director of Planning and Community Environment

_____
Insurance Review

CITY OF PALO ALTO, a chartered city

_____
Mayor

"DEVELOPER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA LLC, a California limited liability company, its Co-General Partner

By:

COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: _____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: _____
Title: _____

_____
Borrower FEIR#

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me,_____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me,_____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me,_____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me,_____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

REVISED ATTACHMENT NO. 10

Form of Memorandum of Option

REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303
Attn: City Manager

WITH A COPY TO AND MAIL TAX STATEMENTS TO:

_____

_____

_____

Attention: _____

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF OPTION TO PURCHASE REAL PROPERTY

In connection with the recordation of this instrument, the CITY OF PALO ALTO, a chartered city of the State of California (hereinafter referred to as "Grantor" or "City"), has granted to PALO ALTO FAMILY, L.P., a California limited partnership ("Grantee") the real property (hereinafter referred to as the "City Parcel"), described in Exhibit "A-1", attached hereto and incorporated herein by this reference. Grantee also acquired certain real property adjacent to the City Parcel (hereinafter referred to as the "Ole's Parcel"), described in Exhibit "A-2", attached here to and incorporated herein by this reference. The City Parcel and the Ole's Parcel together shall be referred to herein as the "Property". Grantee acquired the Property pursuant to that certain Acquisition and Development Agreement dated as of August 6, 2007 by and between Grantor and Grantee (the "ADA"), which is a public record on file in the office of the City Clerk. Terms used in this instrument and not defined herein shall have the meanings given in the ADA.

In consideration of the grant of the City Parcel by Grantor to Grantee and the provision of certain financing by Grantor to Grantee for the purpose of acquiring the Ole's Parcel, Grantee shall have the option to purchase the Property (herein, "Option") as follows:

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

(a) If Grantee defaults on the ADA at any time prior to issuance of a Certificate of Completion for the Property pursuant to Section 8.5 of the ADA, and such default is not cured within the time periods set forth in Section 8.1 of the ADA, and subject to the rights of Holders set forth in Section 5.13 of the ADA, Grantor may purchase the Property and all improvements thereon, or any portion thereof for which a partial Certificate of Completion has not been issued, at any time.

(b) The Option shall be exercised, if at all, by Grantor's delivery of written notice of its election to exercise the option to Grantee within one year after expiration of the last of the cure periods granted to Grantee.

(c) The purchase price (the "Option Purchase Price") shall be all amounts then owned by Grantee to Grantor pursuant to the City Loan, as that term is defined in the ADA.

(d) The purchase and sale shall occur within fifteen (15) business days after Grantor's exercise of the Option through an escrow company selected by Grantor. Grantor and Grantee shall promptly execute, acknowledge and deliver any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593) and the Grantee (*i.e.*, Seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of Grantor that is consistent with clause (f) below.

(e) Grantor shall credit the Option Purchase Price to Grantee concurrently with delivery of title to Grantor. Grantee shall convey title subject only to exceptions that (i) existed at the time of Grantee's acquisition of the Property, or (ii) were created with the written consent of Grantor or approved in writing by Grantor.

(f) Grantor shall be entitled to specific enforcement of the terms of this instrument.

[Signatures appear on next page.]

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _____ day of _____, 2011.

GRANTOR:

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: _____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: _____
Title: _____

_____
Borrower FEIR#

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth in this Memorandum.

GRANTEE
CITY OF PALO ALTO, a chartered city

By: _____
Name: _____
Its: _____

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Attachment: Attachment A: 4th Amendment to ADA (1352 : 801 Alma Project Funding)

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of _____, 2011 by and between is entered into by and between the CITY OF PALO ALTO, a chartered city ("City"), and PALO ALTO FAMILY, L.P., a California limited partnership ("Borrower"). City and Borrower agree as follows:

RECITALS

A. City and Borrower's predecessors in interest, COMMUNITY HOUSING ALLIANCE, INC., a California non-profit public benefit corporation, and EDEN HOUSING, INC., a California non-profit public benefit corporation, entered into that certain Acquisition and Development Agreement as of August 6, 2007 (as amended from time to time, the "ADA") for the Alma Street Affordable Multi-Family Rental Housing Project, located on certain real property located in the City of Palo Alto identified more particularly in the ADA (the "Property"). Pursuant to the ADA, that certain Regulatory Agreement dated as of _____, 20__ as recorded on the Property on _____, 2011 as Document No. _____ (the "Covenant"). All capitalized terms used herein without definition at first use shall have the meanings ascribed to them in the ADA.

B. Under the ADA, the City previously lent Borrower $3,500,000 (the "City Loan") for the purposes of certain predevelopment expenses and acquiring certain real property for the Project.

C. Borrower has requested financing from the City in addition to that already provided by the City Loan in the form of loan of (i) $2,800,000 for predevelopment, construction and permanent expenses (the "Predevelopment Component") and (ii) up to $3,000,000 for permanent financing (the "Permanent Component") (together, the Predevelopment Component and the Permanent Component shall be referred to as the "Additional Loan").

D. The City has agreed to provide the Additional Loan to Borrower, on the terms and conditions specified more particularly below.

NOW, THEREFORE, in consideration of the foregoing, and of the covenants, conditions and agreements as hereinafter set forth, the parties agree as follows:

1. City to Provide Additional Loan.

1.1 Documentation. The City agrees to lend to Borrower the sum of up to Five Million Eight Hundred Thousand and No/one-hundredths Dollars ($5,800,000.00) (collectively, the "Additional Loan"). The Additional Loan shall be evidenced by two promissory notes substantially in the form of Exhibits "A-1" and "A-2" hereto (together, the "Additional Note") and secured by a deed of trust (the "Additional Deed of Trust") encumbering the Property in substantially the form of Exhibit "B" hereto.

1.2 Interest and Terms. The Additional Loan shall bear simple interest at the rate of three percent (3%) per annum (subject to reduction under certain conditions as described more particularly in the Note) on the amount disbursed from the date of disbursement. Principal and

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

interest on the Additional Loan shall be due and payable during the term of this Agreement on a "residual receipts" basis as described more particularly in the Additional Note. Except in the case of a Default (as defined in Section 12 below), all remaining principal and interest accruing on the Additional Loan shall be payable on the Restriction Termination Date as defined in the Additional Note (the "Maturity Date").

1.3 Use of Additional Loan Funds. The Additional Loan Funds shall be used exclusively as follows: (a) the Predevelopment Component ($2,800,000) shall be used for predevelopment, construction and permanent financing costs for the Development in accordance with the Sources and Uses Budget, or as otherwise approved in writing by the City; and (b) the Permanent Component (up to $3,000,000), with the precise amount to be set based on the amount of financing needed by the Project (taking into account other public financing commitments), shall be used to take out construction and/or predevelopment financing provided by lenders other than the City, at the Project's permanent loan conversion in accordance with the Sources and Uses Budget, or as otherwise approved in writing by the City.

2. Borrower to Comply with ADA Obligations. Borrower shall construct and operate the Project in accordance with the ADA and all related documents, including but not limited to the Covenant, as such documents may be amended from time to time at all times.

3. Conditions to Disbursement of the Additional Loan Funds. The City shall not have any obligation to advance the Additional Loan Funds nor to take any other action under this Agreement, the Additional Note nor the Additional Deed of Trust unless all of the conditions precedent set forth below are satisfied at the time of such action. The City Manager or his or her designee shall have the authority to waive any condition of disbursement set forth herein, however any waiver must be expressly made in writing. The decision to waive any condition of disbursement shall be in the sole discretion of the City Manager or designee, and the decision to waive any requirement may be conditioned upon its satisfaction at a later date and/or upon the substitution of another condition. The disbursement of the Additional Loan Funds prior to fulfillment of one or more of the foregoing conditions shall not be construed as a waiver of such conditions, and the City reserves the right to require their fulfillment prior to making any subsequent disbursements.

The conditions precedent to the disbursement of the Predevelopment Component are as follows:

3.1.1 Borrower shall have executed and delivered to the City the Additional Note for this Predevelopment Component (Exhibit "A-1") and the Additional Deed of Trust.

3.1.2 The Additional Deed of Trust shall have been recorded in the Official Records of Santa Clara County.

3.1.3 If required by City, Borrower shall have delivered to the City an ALTA Lender's Extended Coverage Policy of Title Insurance, and satisfactory to the City, in the City's reasonable discretion, or a commitment for same, with coverage equal to the principal amount of the Predevelopment Component, insuring the City that the Property is vested in Borrower, and that the Additional Deed of Trust is a lien or charge against the Property which shall be subject

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only to those liens, encumbrances, covenants, conditions, restrictions and other exceptions of record approved by the City. The title policy shall be issued by North American Title Company (the "Title Company"). Moreover, prior to delivery of the Additional Loan Funds, all real property taxes (with the exception of those not yet due and payable) shall be current and there shall not be any existing delinquency in payment of real property taxes.

3.1.4 Borrower shall have provided to the City certificates of insurance (or copies of the insurance policies) as set forth in Section 11 hereof.

3.1.5 Borrower shall not otherwise have committed a Default (as defined in Section 12) hereunder and there shall exist no event, omission or failure of condition which, but for the giving of notice and/or the lapse of time, would constitute a Default.

3.1.6 The City shall have received financial statements, supporting schedules and such other unaudited and audited financial data as the City may reasonably require with respect to the Project, the Property and the financial condition of Borrower, in form and content reasonably satisfactory to the City.

3.1.7 The City shall have received an affidavit of Borrower stating that there is no litigation pending or, to the best of Borrower's actual knowledge, threatened against Borrower which would materially interfere with or adversely affect the financial condition of Borrower.

3.1.8 Borrower shall have delivered to the City such other documents and instruments as the City shall reasonably require.

Additional conditions precedent to the disbursement of the Permanent Component are as follows:

3.1.9 Borrower shall have executed and delivered to the City the Additional Note for the Permanent Component (Exhibit "A-2").

3.1.10 If required by City, Borrower shall cause the amount of the title insurance referenced in Section 3.1.3 to increase to the total amount of the Additional Loan.

3.1.11 City shall have received an updated affidavit from Borrower addressing the same issues identified in Section 3.1.7.

3.2 All the conditions set forth in this Section 3 shall have been satisfied on or before one (1) year from the date of the Agreement, or this Agreement shall automatically terminate and neither the City nor the Borrower shall have any further obligations hereunder.

3.3 This Agreement, together with the Additional Note, the Additional Deed of Trust and any other documents executed pursuant to this Agreement, are collectively referred to herein as the "Additional Loan Documents."

4. Disbursement of Predevelopment Component. Provided that the conditions in Section 3.1.1 through 3.1.8 above have been satisfied or waived, the Additional Loan Funds shall

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

be disbursed as needed for predevelopment expenses in accordance with the Sources and Uses Budget upon presentation of invoices from contractors and vendors and such other documentation as may be reasonably required by the City. Borrower may request that payments be made directly to contactors or vendors, or to Borrower on a reimbursement basis. Invoices shall be submitted to the City Attorney of the City, and the City shall pay invoices within thirty (30) days of receipt of all required documentation.

5. Disbursement of Permanent Component. Provided that the conditions in Sections 3.1.1 through 3.1.11 above have been satisfied or waived, the Permanent Component shall be disbursed directly to the closing of permanent financing for the Project in accordance with the Sources and Uses Budget, or as otherwise may be approved in writing by the City.

6. Relationship of City and Borrower as Creditor and Debtor Only. The City and the Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and the Borrower. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Borrower with respect to the Property or otherwise.

7. Restriction on Transfer and Assignment. Borrower acknowledges that its identity is of particular importance to the City, and that the Additional Loan is being made in consideration of Borrower's particular credentials, creditworthiness, experience and expertise. Accordingly, for a period commencing with the date hereof and ending with the repayment or forgiveness of the Additional Loan, Borrower shall not assign its rights or obligations hereunder, nor sell, convey or otherwise transfer the Property except in accordance with Section 2.6 of the ADA. Any attempted transfer in violation hereof shall be ineffective and void and shall constitute a default and breach of this Agreement by Borrower, and shall terminate any further obligations of the City hereunder.

7.1.1 Borrower anticipates syndicating the low income housing tax credits that will be generated by the Project, which syndication will require a subsequent transfer of the limited partner interest in the Borrower to the initial investor limited partner(s). The City hereby approves the initial transfer of the limited partner interest in the Borrower, provided that (i) the amended and restated partnership agreement is submitted to the City; and (ii) the partnership documents do not conflict with the Additional Loan Documents.

7.1.2 The City hereby approves future transfers of the investor limited partner(s) interest(s) in the Borrower provided that such transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement of Borrower.

7.1.3 The City hereby approves a transfer of the Property from the Borrower to one or both of the Co-General Partners or one or both of their wholly-controlled affiliates, and an assumption of the Additional Loan by such transferee at or before the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code, pursuant to an option agreement as described or to be described in the partnership agreement (the "Option

Agreement"), provided that the transferee expressly assumes the obligations of the Borrower under the Additional Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the City.

7.1.4 In the event the general partner of the Borrower is removed by the investor limited partner of the Borrower for cause following default under the partnership agreement, the City hereby approves the transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the City, which approval shall not be withheld unreasonably.

8. Compliance With Law. Borrower shall comply with all local, State and Federal laws relating to the use of, or condition of, the Project and Property. Borrower shall cause the Project to be rehabilitated in full compliance with all applicable provisions of State, Federal and local laws, including, prevailing wage laws and public bidding requirements, and all rules and regulations promulgated pursuant thereto.

9. Modification. This Agreement may be modified only by subsequent mutual written amendment executed by Borrower and the City.

10. Indemnification. Borrower shall indemnify, defend and hold the City and its officers, agents, employees and attorneys harmless from all claims, damages or liability, including all reasonable attorneys' fees and other costs incurred in defending any claims, arising out of or in connection with the activities performed under this Agreement and any activities occurring in, on or about the Property including, but not limited to, the construction and operation of the Project. Such indemnity shall extend, but not be limited, to claims, damages and liability arising from personal injuries, death or real or personal property damages, provided that the obligation to indemnify shall not extend to claims, damages or liability arising solely from the willful misconduct of the City or any of its officers or employees.

11. Insurance.

Borrower shall comply at all times with the insurance requirements in Section 5.11, Bodily Injury, Property Damage and Worker's Compensation Insurance, of the ADA.

12. Defaults, Remedies and Waiver. The occurrence of any of the following shall constitute default hereunder ("Default"):

12.1.1 Borrower's failure to perform or any delay in performing any of Borrower's obligations under the ADA, the City Note, the City D/T, the Covenant or the Additional Loan Documents (including but not limited to any obligation to make monetary payments) following notice and after an opportunity to cure as provided therein, or, if no cure period is specified, then within thirty (30) days after City gives Borrower notice of the failure. If such cure by its nature cannot be effectuated within such thirty (30) day period, Borrower shall diligently and continuously prosecute such cure, correction or remedy until completion thereof, but in no event for a period longer than one hundred twenty (120) days; or

12.1.2 Any actual default or breach by Borrower under any superior or inferior instrument or loan document encumbering the Property following notice and after an opportunity

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

to cure as provided therein, including any other obligation of Borrower to the City, or under any other lender whose loan is secured by a lien encumbering the Property; or

12.1.3 Any representation or warranty in any Additional Loan Document proves to have been incorrect in any material respect when made and which has a material adverse affect on the City's security; or

12.1.4 Borrower is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower applies or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Borrower and the appointment continues undischarged or unstayed for sixty (60) days; or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, dissolution, custodianship, conservatorship, liquidation, or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Borrower and continues undismissed or unstayed for sixty (60) days.

12.2 Upon Default by Borrower, the City may terminate this Agreement and exercise any rights or remedies it may have at law or in equity, including without limitation declaring the Additional Loan plus interest thereon immediately due and payable and foreclosing the Additional Deed of Trust, either judicially or non-judicially.

12.3 The waiver by the City of the performance of any covenant, condition or promise shall not invalidate this Agreement nor shall it be considered a waiver by the City of any other covenant, condition or promise hereunder. The exercise of any remedy shall not preclude the exercise of other remedies the City may have in law or equity. The failure of the City to give notice of an event that after notice and passage of time would constitute a Default shall not be deemed to be a waiver of the performance of any covenant, condition or promise.

13. Representations and Warranties.

13.1 Borrower makes the following representations and warranties as of the date of this Agreement and agrees that such representations and warranties shall survive the execution and delivery of this Agreement:

13.1.1 To the best of Borrower's knowledge: (i) Borrower has complied with all laws and regulations concerning its organization, existence and transaction of business; (ii) Borrower has the right and power to own and operate the Project; (iii) Borrower has, or at all appropriate times shall have, properly obtained all permits, licenses and approvals necessary for the construction of the Improvements on the Property and the operation of the Project and in so doing has, or shall have (as appropriate), complied with all applicable statutes, laws, regulations and ordinances.

13.1.2 Borrower has full right, power and authority to execute and deliver the Additional Loan Documents and to perform the undertakings of Borrower contained in the

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

Additional Loan Documents. The Additional Loan Documents constitute valid and binding obligations of Borrower that are legally enforceable in accordance with their terms.

13.1.3 To the best of Borrower's knowledge, none of the undertakings of Borrower contained in the Additional Loan Documents violates any applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity, or conflicts with, or constitutes a breach or default under, any agreement by which Borrower, the Property, or the Project, is bound or regulated.

13.1.4 To the best of Borrower's knowledge: (i) all financial information delivered to the City, including, without limit, information relating to Borrower, the Property, or the Project, fairly and accurately represents such financial condition and has been prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted in such information; and (ii) no material adverse change in such financial condition has occurred.

13.1.5 To the best of Borrower's knowledge: (i) Borrower is not in violation of any statute, law, regulation or ordinance, or of any order of any court or governmental entity; and (ii) Borrower has no knowledge of any claims, actions, litigation or proceedings pending or threatened against Borrower or materially affecting the Property or the Project.

13.1.6 To the best of Borrower's knowledge, all documents, reports, instruments, papers, data, information and forms of evidence delivered to the City with respect to the Additional Loan are accurate and correct, are complete insofar as completeness may be necessary to give the City true and accurate knowledge of the subject matter thereof, and do not contain any misrepresentation or omission. The City may rely on such reports, documents, instruments, papers, data, information and forms of evidence without any investigation or inquiry.

13.1.7 Borrower has filed all federal and state tax returns required to have been filed by Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes. Notwithstanding the foregoing, nothing contained herein shall be construed as a waiver by Borrower of any right to appeal property tax assessments.

14. General Provisions.

14.1 Notices, Demands and Communications Among the Parties. Written notices, demands and communications among the City and the Borrower shall be sufficiently given by personal service or dispatched by first class mail, postage prepaid, return receipt requested, to the addresses below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 18.1. Notwithstanding anything to the contrary contained herein, notice personally served shall be presumed to have been received as of the date of such service, and notices sent via mail as provided herein shall be presumed to have been received on the second business day after deposit of same in the mail.

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For City:	City of Palo Alto P.O. Box 10250 Palo Alto, California 94303 Attention: City Manager Tel: (650) 329-2533 Fax: (650) 325-5025
with a copy to:	Office of City Attorney City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303 Attn: Donald Larkin Tel: (650) 329-2171 Fax: (650) 329-2646
with a copy to:	Department of Planning and Development City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303 Attn: Director of Planning and Development Tel: (650) 329-2354 Fax: (650) 329-2154
For Borrower:	Eden Housing, Inc. 22645 Grand St. Hayward, CA 94541 Attn: Executive Director Tel: (510) 582-1460 Fax: (510) 582-6523 801 Alma, LLC c/o Community Working Group, Inc. 948 Ramona Street Palo Alto, CA 94301 Attn: Donald A. Barr Tel: (650) 906-6943 Fax: (650) 725 5451
With a copy to:	Jorgenson, Siegel, McClure & Flegel, LLP 1100 Alma St., Ste. 210 Menlo Park, CA 94025-3392 Attn: Sandy Sloan Tel: (650) 324-9300 Fax: (650) 324-0227

14.1.1 Conflicts of Interest. The Borrower warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement.

14.1.2 Interpretation. The provisions of this document shall be liberally construed to effectuate its purpose.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

14.1.3 Severability. Invalidation of any of the covenants, conditions, restrictions, or other provisions contained herein by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, and the same shall remain in full force and effect.

14.1.4 Headings. The headings to the various Articles and Sections of this Agreement have been inserted for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Agreement.

14.1.5 Non-Liability of Officials and Employees of the City or of Borrower. No member, official, agent, attorney, or employee of the City shall personally be liable to the Borrower or any successor in interest of the Borrower pursuant to the provisions of this Agreement, nor for any default or breach by the City. No director, officer, agent, attorney, or employee of the Borrower shall personally be liable to the City pursuant to the provisions of this Agreement, nor for any default or breach by the Borrower.

14.1.6 Attorneys' Fees. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

14.1.7 Time of Essence. Time is of the essence in the performance hereof.

14.1.8 Waivers. All waivers hereunder shall be in writing and signed by the party entitled to the benefit of the performance of the covenant or satisfaction of the condition being waived. No failure of any party to exercise any right hereunder shall constitute a waiver of such right.

14.1.9 Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original.

14.1.10 Integration. This Agreement together with all exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

14.1.11 Amendments. All amendments hereto must be in writing executed by the appropriate authorities of the City and the Borrower.

14.1.12 Successors and Assigns. The provisions of this Agreement are expressly binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest and assigns.

14.1.13 Subordination. The Additional Loan Documents shall be subordinate to the liens of construction and permanent financing and governmental regulatory agreements that are required for the Project. The City agrees to enter into subordination agreements in favor of any financial institution that is providing construction or permanent financing to Borrower for

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

the Project in accordance with the Sources and Uses Budget and on such commercially reasonable terms as may be approved by the City Attorney of the City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED:

_____
Assistant City Manager

_____
Director of Administrative Services

_____
Director of Planning and Community Environment

_____
Insurance Review

CITY OF PALO ALTO, a chartered city

_____
Mayor

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA, LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: John Barton
Title: President

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: TERESE McNAMEE
Title: Chief Financial Officer

94-2995223
Borrower FEIR#

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

EXHIBIT "A-1"

FORM OF PROMISSORY NOTE
(Predevelopment Component)

$2,800,000

_____, 20__
PALO ALTO, CALIFORNIA

FOR VALUE RECEIVED, PALO ALTO FAMILY, L.P., a California limited partnership (the "Maker") promises to pay to the CITY OF PALO ALTO (the "City"), or order, the principal sum of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS ($2,800,000) (the "Loan"). The Loan shall bear simple interest of three percent (3%) per annum, simple interest, on the amount disbursed from the date of disbursement. The City agrees to reduce or eliminate the interest rate at Maker's request prior to the admission of the investor limited partner if, and to the extent that, a reduction or elimination of the interest rate on the Loan is necessary to prevent Maker's investor limited partner's capital account from being a negative number during the Low-Income Housing Tax Credit period.

1. The Loan is made pursuant to that certain Loan Agreement between Maker and City of even date herewith. All capitalized terms used herein and not defined when first used shall have the meaning ascribed to them in the Loan Agreement. The Loan will be used by Maker for the predevelopment expenses related to the development of certain real property as described in the Loan Agreement (the "Project") and pursuant to the terms and conditions contained therein and to those contained in that certain Regulatory Agreement recorded on the Property on _____, 2011 as Document No. _____ (the "Covenant").

2. Payment of this Note will be secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Additional Deed of Trust") from Maker to City to be recorded against the Project.

3. This Note shall be due and payable as follows:

Beginning with Maker's fiscal year following the first year of operations of the Project after completion of rehabilitation of the Project, Maker shall make annual payments of interest and principal to the City only from "Residual Receipts," defined below, from Maker's preceding fiscal year. Residual Receipts will be divided: 50% as the "Maker's Share" and 50% as the "Lenders' Share." The 50% Lenders' Share will be used to repay any of the City loans to the Project, the Maker's MHP loan from the California Department of Housing and Community Development, if received, and other subordinate loans on a prorate basis based on the respective loan amounts. Payment shall be made within one hundred eighty (180) days of the end of each fiscal year of Maker. Payments shall be applied first to interest on the Loan and then to reduce principal. To the extent the Residual Receipts from any fiscal year are not sufficient to pay the entire amount of interest due for such year any unpaid interest for any fiscal year on the Loan shall accrue and shall be payable from the

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Residual Receipts from succeeding fiscal years, with the entire remaining amount of principal and interest due on the fifty-fifth (55th) anniversary of the date on which the final certificate of occupancy for the Project is issued by the City, unless that time is extended by agreement of the parties in accordance with Section 6.2.4 of the ADA (herein, the "Maturity Date," and otherwise referred to in the ADA as the "Restriction Termination Date"). All outstanding principal and all accrued interest under this Note shall be paid by the Maker on the Maturity Date, or in the case of a default under the Loan Agreement, on the date the Loan Agreement is terminated in accordance with Section 12 thereof.

For the purposes herein, "Residual Receipts" means the difference, if positive, between all income received by Maker with respect to the Project (including, without limitation, rents, grants, reimbursements, contributions, gifts, or payments for services delivered at the Project) and all operating expenses of the Project (including, without limitation, maintenance, repairs, payment of staff salaries and Project management fees and reimbursements in accordance with the limitations in the ADA, taxes, debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on Approved Senior Loans and such other loans approved by the City and which are secured by deeds of trust senior in priority to the Additional Deed of Trust (collectively, "**Approved Senior Loans**"), premiums for property damage, liability and other insurance related to the Project; utility service costs not paid for directly or indirectly by tenants; fees for licenses and permits related to the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Maker incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than $600 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or Maker's investor limited partner or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Maker's expense; an annual partnership management fee payable to the general partner of Maker in the maximum aggregate sum of $25,000 per year (plus any portion of such annual fee deferred from prior years), increasing by three percent (3%) per year and payable only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); an annual asset management fee not to exceed $10,000 per year (plus any portion of such annual fee deferred from prior years) increasing by three percent (3%) per year, payable to the investor limited partner of Maker only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); any previously unpaid portion of the developer fee (without interest) due in accordance with the Financing Plan (provided that the cumulative amount of such fee does not exceed the maximum allowable by the California Tax Credit Allocation Committee (the "**Approved Developer Fee**"); cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Senior Loan or Maker's investor limited partner; other reserve account deposits required pursuant to Approved Senior Financing or Maker's investor limited partner; other ordinary and reasonable operating expenses; and other extraordinary operating expenses specifically approved by the City.

Beginning with the first year of operations of the Project after completion of the rehabilitation, Maker shall deliver to City each year an annual audited financial statement to determine the amount of Residual Receipts. City shall have the right upon reasonable notice to Maker to inspect and audit Maker's books and records concerning the calculation of Residual Receipts.

4. Payment shall be made in lawful money of the United States to the City of Palo Alto, P.O. Box 10250, Palo Alto, CA 94303, Attn: _____. The place of payment may be changed from time to time as the City may from time to time designate in writing.

5. Within ten (10) business days after Maker's receipt of its limited partner(s)' capital contribution following the issuance of the IRS Form 8609 for the Project, Maker shall make a one-time payment to the City to reduce the amount of the Loan by the amount equal to any project Excess Proceeds. For the purposes of this Note, "Excess Proceeds" shall mean the sum of all sources of permanent financing for the Project (including equity and mortgage debt) less the sum of actual uses as shown on the final cost certificate for the Project prepared in accordance with applicable tax credit and other governmental requirements. For purposes of calculating Excess Proceeds: (i) Maker shall be entitled to pay any deferred Developer Fee; (ii) the Project replacement reserve shall be funded in an amount equal to the amount(s) shown on the Project pro forma approved pursuant to the Loan Agreement, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner, and (iii) the operating reserve shall be funded in an amount shown on the Project *pro forma* approved pursuant to the Loan Agreement, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner.

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within ten (10) days of its due date; (ii) any default by Maker under the Loan Agreement after any applicable cure period; or (iii) any sale, exchange, transfer, assignment or other conveyance of the Project without City's prior written approval.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the City hereof, the entire unpaid principal owing on this Note shall become immediately due and payable. In such event, interest shall accrue on the entire unpaid amount then owing commencing from the date such amount was due and continuing until the date such amounts are paid in full. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. City shall not exercise any right or remedy provided for herein because of any default of Maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after notice that payment was due; or in the event of a nonmonetary default, City shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a

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period of thirty (30) days after the giving of such notice of such default; provided that if the nonmonetary default cannot be cured within thirty (30) days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than one hundred twenty (120) days after the giving of such notice, City shall not exercise any right or remedy provided for herein until such one hundred twenty (120) shall expire; provided, however, City shall not be required to give any such notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days.

8. Maker and any endorsers hereof, if any, and all others who may become liable for all or any part of this obligation, if any, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder, City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor, if any, or any other party liable therefor, if any, or to the protection of its rights under ADA, the City Note, the City D/T, or the Covenant or the Additional Loan Documents, or (iii) if City seeks to have the Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Additional Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental City, affecting the Project or the title thereto or the interest of the City under the Additional Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Maker immediately upon demand for all costs, charges, and attorneys' fees incurred by City in any such case, and the same shall be secured by the Additional Deed of Trust as a further charge and lien upon the Project.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the addresses set forth in the Loan Agreement or at such address as either party may designate by written notice.

12. This Note shall be binding upon Maker, its successors and assigns. This Note may not be assigned by Maker without the prior written approval of City.

13. This Note is nonrecourse and neither Maker nor any member, officer, agent, director, affiliate, parent, partner or employee of Maker shall have any personal liability for repayment of the sums evidenced hereby, and the City must resort only to the Project for

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

repayment should the Maker fail to repay the sums evidenced hereby. Regardless of the foregoing limitation of liability, Maker will be fully liable for the following:

a. Failure to pay property taxes, assessments and any other charges that could result in liens against any portion of the Project or any other collateral pledged, encumbered or otherwise covered by the Additional Deed of Trust;

b. Failure to pay and discharge any mechanics' liens, materialmens' liens or other liens against any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust;

c. Fraud or intentional misrepresentation with respect to any representation, warranty or certification made in the Additional Loan Documents, or otherwise made by Maker in connection with the Additional Loan;

d. Retention by Maker of any rental income or other income arising with respect to any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust subsequent to the date of any notice of default to Maker;

e. Retention by Maker of any insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust that, by its terms, should have been paid to City or used in a manner contrary to the use made by Maker;

f. Waste of the Project, or any failure to maintain, repair, or restore any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust in accordance with its terms.

14. This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

16. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Covenant shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

[Signatures appear on next page.]

MAKER:

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA, LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: _____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: _____
Title: _____

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EXHIBIT "A-2"

FORM OF PROMISSORY NOTE
(Permanent Component)

$3,000,000 _____, 20__
PALO ALTO, CALIFORNIA

FOR VALUE RECEIVED, PALO ALTO FAMILY, L.P., a California limited partnership (the "Maker") promises to pay to the CITY OF PALO ALTO (the "City"), or order, the principal sum of THREE MILLION DOLLARS ($3,000,000), or such portion thereof that may have been disbursed to Maker (the "Loan"). The Loan shall bear simple interest of three percent (3%) per annum, simple interest, on the amount disbursed from the date of disbursement. The City agrees to reduce or eliminate the interest rate at Maker's request prior to the admission of the investor limited partner if, and to the extent that, a reduction or elimination of the interest rate on the Loan is necessary to prevent Maker's investor limited partner's capital account from being a negative number during the Low-Income Housing Tax Credit period.

1. The Loan is made pursuant to that certain Loan Agreement between Maker and City of even date herewith. All capitalized terms used herein and not defined when first used shall have the meaning ascribed to them in the Loan Agreement. The Loan will be used by Maker for the predevelopment expenses related to the development of certain real property as described in the Loan Agreement (the "Project") and pursuant to the terms and conditions contained therein and to those contained in that certain Regulatory Agreement recorded on the Property on _____, 2011 as Document No. _____ (the "Covenant").

2. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing from Maker to City which was recorded against the Project on _____, 2011, as Document No. _____ (the "Additional Deed of Trust").

3. This Note shall be due and payable as follows:

Beginning with Maker's fiscal year following the first year of operations of the Project after completion of rehabilitation of the Project, Maker shall make annual payments of interest and principal to the City only from "Residual Receipts," defined below, from Maker's preceding fiscal year. Residual Receipts will be divided: 50% as the "Maker's Share" and 50% as the "Lenders' Share." The 50% Lenders' Share will be used to repay any of the City loans to the Project, the Maker's MHP loan from the California Department of Housing and Community Development, if received, and other subordinate loans on a *pro rata* basis based on the respective loan amounts. Payment shall be made within one hundred eighty (180) days of the end of each fiscal year of Maker. Payments shall be applied first to interest on the Loan and then to reduce principal. To the extent the Residual Receipts from any fiscal year are not sufficient to pay the entire amount of interest due for such year any

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

unpaid interest for any fiscal year on the Loan shall accrue and shall be payable from the Residual Receipts from succeeding fiscal years, with the entire remaining amount of principal and interest due on the fifty-fifth (55th) anniversary of the date on which the final certificate of occupancy for the Project is issued by the City, unless that time is extended by agreement of the parties in accordance with Section 6.2.4 of the ADA (herein, the "Maturity Date," and otherwise referred to in the Loan Agreement as the "Restriction Termination Date"). All outstanding principal and all accrued interest under this Note shall be paid by the Maker on the Maturity Date, or in the case of a default under the Loan Agreement, on the date the Loan Agreement is terminated in accordance with Section 12 thereof.

For the purposes herein, "Residual Receipts" means the difference, if positive, between all income received by Maker with respect to the Project (including, without limitation, rents, grants, reimbursements, contributions, gifts, or payments for services delivered at the Project) and all operating expenses of the Project (including, without limitation, maintenance, repairs, payment of staff salaries and Project management fees and reimbursements in accordance with the limitations in the ADA, taxes, debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on Approved Senior Loans and such other loans approved by the City and which are secured by deeds of trust senior in priority to the Additional Deed of Trust (collectively, "**Approved Senior Loans**"), premiums for property damage, liability and other insurance related to the Project; utility service costs not paid for directly or indirectly by tenants; fees for licenses and permits related to the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Maker incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no more than $600 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or Maker's investor limited partner or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Maker's expense; an annual partnership management fee payable to the general partner of Maker in the maximum aggregate sum of $25,000 per year (plus any portion of such annual fee deferred from prior years), increasing by three percent (3%) per year and payable only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); an annual asset management fee not to exceed $10,000 per year (plus any portion of such annual fee deferred from prior years) increasing by three percent (3%) per year, payable to the investor limited partner of Maker only during the first fifteen (15) years following issuance of a final certificate of occupancy for the Project (unless City in its sole discretion consents to a request by Maker to extend such period); any previously unpaid portion of the developer fee (without interest) due in accordance with the Financing Plan (provided that the cumulative amount of such fee does not exceed the maximum allowable by the California Tax Credit Allocation Committee (the "**Approved Developer Fee**"); cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Senior Loan or Maker's investor limited partner; other reserve account deposits required pursuant to Approved Senior

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Financing or Maker's investor limited partner; other ordinary and reasonable operating expenses; and other extraordinary operating expenses specifically approved by the City.

Beginning with the first year of operations of the Project after completion of the rehabilitation, Maker shall deliver to City each year an annual audited financial statement to determine the amount of Residual Receipts. City shall have the right upon reasonable notice to Maker to inspect and audit Maker's books and records concerning the calculation of Residual Receipts.

4. Payment shall be made in lawful money of the United States to the City of Palo Alto, P.O. Box 10250, Palo Alto, CA 94303, Attn: _____. The place of payment may be changed from time to time as the City may from time to time designate in writing.

5. Within ten (10) business days after maker's receipt of its limited partner(s)' capital contribution following the issuance of the IRS Form 8609 for the Project, Maker shall make a one-time payment to the City to reduce the amount of the Loan by the amount equal to any project Excess Proceeds. For the purposes of this Note, "Excess Proceeds" shall mean the sum of all sources of permanent financing for the Project (including equity and mortgage debt) less the sum of actual uses as shown on the final cost certificate for the Project prepared in accordance with applicable tax credit and other governmental requirements. For purposes of calculating Excess Proceeds: (i) Maker shall be entitled to pay any deferred Developer Fee; (ii) the Project replacement reserve shall be funded in an amount equal to the amount(s) shown on the Project pro forma approved pursuant to the Loan Agreement, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner, and (iii) the operating reserve shall be funded in an amount shown on the Project *pro forma* approved pursuant to the Loan Agreement, or such amount as required by the holder of an Approved Senior Loan or approved investor limited partner.

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within ten (10) days of its due date; (ii) any default by Maker under the Loan Agreement after any applicable cure period; or (iii) any sale, exchange, transfer, assignment or other conveyance of the Project without City's prior written approval.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the City hereof, the entire unpaid principal owing on this Note shall become immediately due and payable. In such event, interest shall accrue on the entire unpaid amount then owing commencing from the date such amount was due and continuing until the date such amounts are paid in full. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. City shall not exercise any right or remedy provided for herein because of any default of Maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after notice that payment

was due; or in the event of a nonmonetary default, City shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) days after the giving of such notice of such default; provided that if the nonmonetary default cannot be cured within thirty (30) days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than one hundred twenty (120) days after the giving of such notice, City shall not exercise any right or remedy provided for herein until such one hundred twenty (120) shall expire; provided, however, City shall not be required to give any such notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days.

8. Maker and any endorsers hereof, if any, and all others who may become liable for all or any part of this obligation, if any, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of City including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder, City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor, if any, or any other party liable therefor, if any, or to the protection of its rights under ADA, the City Note, the City D/T, the Covenant or the Additional Loan Documents, or (iii) if City seeks to have the Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Additional Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If City shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental City, affecting the Project or the title thereto or the interest of the City under the Additional Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Maker immediately upon demand for all costs, charges, and attorneys' fees incurred by City in any such case, and the same shall be secured by the Additional Deed of Trust as a further charge and lien upon the Project.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the addresses set forth in the Loan Agreement or at such address as either party may designate by written notice.

12. This Note shall be binding upon Maker, its successors and assigns. This Note may not be assigned by Maker without the prior written approval of City.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

13. This Note is nonrecourse and neither Maker nor any member, officer, agent, director, affiliate, parent, partner or employee of Maker shall have any personal liability for repayment of the sums evidenced hereby, and the City must resort only to the Project for repayment should the Maker fail to repay the sums evidenced hereby. Regardless of the foregoing limitation of liability, Maker will be fully liable for the following:

a. Failure to pay property taxes, assessments and any other charges that could result in liens against any portion of the Project or any other collateral pledged, encumbered or otherwise covered by the Additional Deed of Trust;

b. Failure to pay and discharge any mechanics' liens, materialmens' liens or other liens against any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust;

c. Fraud or intentional misrepresentation with respect to any representation, warranty or certification made in the Additional Loan Documents, or otherwise made by Maker in connection with the Additional Loan;

d. Retention by Maker of any rental income or other income arising with respect to any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust subsequent to the date of any notice of default to Maker;

e. Retention by Maker of any insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust that, by its terms, should have been paid to City or used in a manner contrary to the use made by Maker;

f. Waste of the Project, or any failure to maintain, repair, or restore any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Additional Deed of Trust in accordance with its terms.

14. This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

16. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Covenant shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

[Signatures appear on next page.]

MAKER:

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

BY:

801 ALMA, LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

By: _____
Name: _____
Title: _____

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

By: _____
Name: _____
Title: _____

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

EXHIBIT "B"

FORM OF ADDITIONAL DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Palo Alto
P.O. Box 10250
Palo Alto, California 94303
Attn: City Manager

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103.

DEED OF TRUST AND ASSIGNMENT OF RENTS

A.P.N._____

THIS DEED OF TRUST (this "Deed of Trust") is made as of _____, 2011, between PALO ALTO FAMILY, L.P., a California limited partnership ("Trustor"), FIRST AMERICAN TITLE INSURANCE COMPANY as "Trustee," and the CITY OF PALO ALTO, a chartered city ("Beneficiary"). Trustor is the fee owner of the Property described below.

This Deed of Trust witnesseth:

That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in Santa Clara County, California, described as:

See Exhibit A, attached hereto and incorporated herein by this reference.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

Together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; and

Together with all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same, are or shall be attached to the building or buildings in any manner. All of the foregoing, together with the real property, is herein referred to as the "Property."

To have and to hold the Property, together with appurtenances to the Trustee or its successors and assigns, forever.

For the Purpose of Securing:

(a) Performance of each agreement of Trustor herein contained.

(b) Payment of the indebtedness evidenced by (i) that certain promissory note of even date herewith, and any extension or renewal thereof, in the stated principal sum of $2,800,000.00, (ii) a second promissory note to be executed at a future date, and any extension or renewal thereof, in the stated principal amount of up to $3,000,000 (collectively, the "Note"), executed by Trustor in favor of Beneficiary or order.

(c) Performance by Trustor of all of Trustor's obligations arising under that certain Loan Agreement of even date herewith between Trustor and Beneficiary (the "Loan Agreement").

(d) Payment of such further sums as the then record owner of the Property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

(e) Performance by Trustor of all of Trustor's obligations arising under that certain Regulatory Agreement dated _____ and recorded on the Property on _____ ___, 2011 as Document No. _____ (the "Covenant").

(f) Performance of each obligation of Trustor set forth in that certain Acquisition and Development Agreement (the "ADA") dated as of August 6, 2007, as amended, entered into by and between Trustor's predecessors-in-interest and Beneficiary.

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) That it shall faithfully perform each and every covenant contained in the Note, the Loan Agreement, the Covenant, and the ADA.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(2) That it will not permit or suffer the use of any of the Property for any purpose other than the use described in the Loan Agreement, the Covenant and the ADA as they may be amended from time to time.

(3) To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property, or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(4) To provide, maintain and deliver to Beneficiary fire and extended coverage insurance with endorsements for vandalism, malicious mischief, and special extended perils, in the full replacement value of the improvements (excluding footings and foundations with no co-insurance penalty provision), and with endorsements for increases in costs due to changes in code and inflation, and any other insurance requested by Beneficiary, and with loss payable to Beneficiary, and any other insurance required by the Loan Agreement. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall have the right to pay any insurance premiums when due should Trustor fail to make them, and all such payments made by the Beneficiary shall be added to the principal sum secured hereby. Beneficiary shall release all insurance or condemnation proceeds to Trustor to be used to reconstruct the Project on the Property provided that such Beneficiary determines that such restoration, repair or rebuilding is economically feasible. Notwithstanding the foregoing, unless Beneficiary and Trustor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damages, provided Beneficiary determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Beneficiary determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

(5) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(6) To pay: at least ten (10) calendar days before delinquency all taxes and assessments affecting the Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

(7) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes with written notice to Trustor; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees.

(8) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time the statement is made.

(9) The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property, or will cause the release of or will provide a bond against any such liens within ten (10) days of Trustor's receipt of notice of the lien or liens.

(10) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys it receives in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance. Notwithstanding the foregoing, the proceeds of any award or claim for damages, direct or consequential, in connection with a total condemnation or taking of the Property, shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor, unless Trustor and Beneficiary otherwise agree in writing. In the event of a partial condemnation or taking, the proceeds shall be applied to the restoration or repair of the Property, provided Beneficiary determines that such restoration or repair is economically feasible and there is no default continuing after the expiration of all applicable cure periods. If Beneficiary determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the condemnation proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(11) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(12) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(13) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven by Beneficiary, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In addition, upon Beneficiary's satisfaction that the subdivision process for the creation of commercial condominiums for the ground level commercial/retail spaces on the Property in accordance with state law has been completed, Beneficiary shall make written request to Trustee for the partial reconveyance of the portion of the Property consisting of those condominiums, and the encumbrance of this Deed of Trust shall be reconveyed without warranty as to that portion of the Property only.

(14) That Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents, income and profits of the property encumbered hereby, and hereby give to and confer upon Beneficiary the right, power and authority to collect such rent, income, and profits, and Trustor irrevocably appoints Beneficiary Trustor's true and lawful attorney at the option of Beneficiary, at any time, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all income, and apply the same to the indebtedness secured hereby; provided, however, so long as no default by Trustor in the payment of any indebtedness secured hereby shall exist and be continuing, Trustor shall have the right to collect all rent, income and profits from the Property and to retain, use and enjoy the same. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(15) That upon default by Trustor in payment of any indebtedness secured hereby, or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at the sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(16) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title estate, rights, powers and duties. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(17) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(18) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(19) If Trustor shall die or sell, convey, hypothecate, transfer, encumber or alienate the Property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, or if Trustor shall fail to make any payments due under the Note, or fail to perform any other obligation under this Deed of Trust, the Note, the Covenant, the Loan Agreement or the ADA, or any other deed of trust encumbering the Property or the promissory note or other agreement secured thereby, then Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

(20) That Trustor shall promptly pay when due the payments of interest, principal, and all other charges accruing under any superior or prior trust deed, mortgage, or other instrument encumbering the Property. Upon any breach of the Loan Agreement, Beneficiary shall have the right to declare all sums secured hereby immediately due and payable. Beneficiary shall have the right, but not the obligation, to cure any defaults on any superior or prior deed of trust or promissory note secured thereby and upon curing such default Trustor shall immediately reimburse Beneficiary for all costs and expenses incurred thereby, together with interest thereon at the maximum legal rate permitted to be charged by non-exempt lenders under the State of California, and Trustor's failure to pay such amount on demand shall be a breach hereof. Trustor's breach or default of any covenant or condition of any superior or prior trust deed, mortgage or other instrument encumbering the Property shall be a default under this Deed of Trust.

(21) That the improvements now existing or to be constructed upon the Property, and all plans and specifications, comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the following addresses:

Eden Investments, Inc.
22645 Grand St.
Hayward, CA 94541
Attn: Executive Director
Tel: (510) 582-1460
Fax: (510) 582-6523

And

801 Alma, LLC
c/o Community Working Group, Inc.
948 Ramona Street
Palo Alto, CA 94301
Attn: Donald A. Barr
Tel: (650) 906-6943
Fax: (650) 725 5451

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

With a copy to: Jorgenson, Siegel,
McClure & Flegel, LLP
1100 Alma St., Ste. 210
Menlo Park, CA 94025-3392
Attn: Sandy Sloan
Tel: (650) 324-9300
Fax: (650) 324-0227

NOTE: The Trustor (sometimes referred to herein as the "Partnership"), through its limited partner, is providing equity for the development of the Property. The agreement of limited partnership governing the Trustor, as it may be amended and/or amended and restated from time to time, is referred to herein as the "Partnership Agreement."

(22) INVESTOR PROVISIONS:

a. If a non-monetary event of default occurs under the terms of this Deed of Trust, the Note, the Covenant, the Loan Agreement or the ADA (the "Loan Documents), prior to exercising any remedies thereunder, Beneficiary shall give Trustor and each of its general and limited partners simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Trustor and its limited partner shall have such period to effect a cure prior to exercise of remedies by Trustor under the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and if the Beneficiary (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary.

b. Beneficiary hereby agrees that any cure of any default made or tendered by one or more of the Partnership's limited partners shall be deemed to be a cure by the Partnership and shall be accepted or rejected on the same basis as if made or tendered by the Partnership. Copies of all notices which are sent to the Partnership under the terms of the Loan Documents shall also be sent to:

[Address to be provided]

The Partnership's limited partners may change their address for receipt of copies of notices by giving notice in writing stating its new address to the Beneficiary. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be effective for purposes of all such copies of notices required to be sent by the Beneficiary to the limited partners.

c. Notwithstanding any of the provisions hereof, none of the following shall constitute a violation of the Loan Documents:

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

(i) The withdrawal, removal, replacement, and/or addition of a general partner of the Partnership pursuant to the terms of the Partnership Agreement, provided that any new general partner: (a) is an entity that is exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (or any successor statute), and (b) receives prior written approval from the City; and

(ii) The transfer of any of the limited partners' interests in the Partnership.

d. The execution and delivery of a right of first refusal and purchase option to either Co-General Partner or an affiliate thereof pursuant to the Partnership Agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan.

e. Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee ("CTCAC") intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code (IRC), as amended. As of the date hereof, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the regulatory agreement required by CTCAC is recorded against the Property, Beneficiary agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

[Signatures appear on next page.]

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

Signature of Trustor

ATTEST:

CITY OF PALO ALTO, a chartered city

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

"BORROWER"

PALO ALTO FAMILY, L.P., a California limited partnership

_____
Assistant City Attorney

BY:

801 ALMA, LLC, a California limited liability company, its Co-General Partner

By: COMMUNITY WORKING GROUP, INC., a California non-profit public benefit corporation, its sole member/manager

APPROVED:

_____
Assistant City Manager

By: _____
Name: _____
Title: _____

_____
Director of Administrative Services

BY:

EDEN INVESTMENTS, Inc., a California non-profit public benefit corporation, its Co-General Partner.

_____
Director of Planning and Community Environment

By: _____
Name: _____
Title: _____

_____
Insurance Review

_____
Borrower FEIR#

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On_____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Attachment: Attachment B: Loan Agreement (1352 : 801 Alma Project Funding)

City of Palo Alto
City Council Staff Report

(ID # 1319)

Report Type: Consent Calendar **Meeting Date: 2/14/2011**

Summary Title: Contract for Rail Corridor Study Consultant

Title: Approval of a Contract with BMS Design Group in a Total Amount Not to Exceed $200,000 for Preparation of a Palo Alto Rail Corridor Study.

From: City Manager

Lead Department: Planning and Community Environment

Recommendation
Staff recommends that Council approve and authorize the City Manager or his designee to execute the attached contract with BMS Design Group (Attachment A) in an amount not to exceed $200,000 to prepare the Palo Alto Rail Corridor Study.

Executive Summary
The City Council approved a draft scope of work for the Palo Alto Rail Corridor Study in the summer of 2010 and directed staff to issue a Request for Proposal (RFP) for a planning and urban design consultant to prepare the study. The RFP was issued on August 18, 2010 requesting proposals by September 15, 2010. Five proposals were received and carefully evaluated. Of the five proposals, staff has determined that the BMS Design Group submittal was the proposal that best met the requirements of the RFP and that the firm will provide the vision, design expertise and experience and communication tools to create a successful plan, in concert with the Task Force and staff.

Background
The City Council initiated the Palo Alto Rail Corridor Study to evaluate land use, transportation and urban design elements of the corridor. The intent is to generate a community vision for land use, transportation, and urban design opportunities along the Caltrain corridor, particularly in response to proposed improvements to fixed rail services along tracks in Palo Alto. Although the High Speed Rail project provides important context for the study, it was not intended to be the study focus. In addition, the Council authorized the formation of a Task Force for the Rail Corridor Study to provide input into the study and to solicit information from the broader community.

Discussion
The scope of the contract is for the preparation of a Rail Corridor Study. The study is proposed in three phases and is expected to be completed in 12 months.

Phase I is the information gathering component of the study. This phase would outline the preliminary "Context and Vision" for the corridor, including updated goals and policies, along with the definition of key land use and transportation parameters that would require further analysis and review.

Phase II would include the "Analysis" of land use, transportation, and urban design components of potential rail and development scenarios. Two to three alternatives and urban design considerations would be developed from the analysis of information gathered from Phase I.

The final Phase III would include the identification of a preferred approach from Phase II. The approach would be integrated into a "Plan and Implementation" as part of the Comprehensive Plan. This would include new or modified goals, policies, programs, implementation measures, mitigation and financing measures.

The phases are not intended to be entirely linear. It is expected that some items would overlap during the three phases. The consultant is also expected to help coordinate the Task Force efforts in each of the three phases, enhancing the quality of public outreach.

Project Coordination

The Department of Planning and Community Environment has coordinated the bid process with the Purchasing Division of Administrative Services and the City Manager's Office. Input from other departments (City Manager, Public Works, Community Services, etc.) will be solicited as necessary.

Proposal Process

A notice inviting formal proposals for this project was posted at City Hall, on the City website, and sent to six design firms on August 18, 2010. The proposal period was 27 days. Proposals were received from five consultants on September 15, 2010. The costs of the proposals ranged from a low of $199,847 to a high of $229,926.

A summary of the proposal process is outlined in the table below:

Summary of the Proposal Process

Proposal Name	Palo Alto Rail Corridor Study
Proposed Length of Project	12 months
Number of RFP Packages Mailed to Consultants	6
Total Days to Respond to RFP	26
Pre-Proposal Conference	No
Number of Company Attendees at Pre-Proposal Conference	N/A
Number of Proposals Received	5

Number of Interview Rounds Following Receipt of Proposals	2
Proposal Price Range	Low $199,847 to a high of $229,926
Company Name	Location
Carrasco and Associates	Palo Alto, CA
BMS Design Group	San Francisco, CA
Dyett and Bhatia	San Francisco, CA
DC&E	San Francisco, CA
Van Meter, Williams, Pollock	San Francisco, CA

The proposals were evaluated by Planning, Transportation and City Manager's Office staff. Staff carefully reviewed each proposal in response to criteria identified in the request for proposals (RFP). Specific focus was placed on each firm's understanding of rail related issues, experience with similar projects, and understanding of Palo Alto concerns. Two rounds of oral interviews were held.

BMS Design Group

Staff identified BMS Design Group as the preferred consultant following the review of the written proposals and the oral interviews. BMS Design Group is a Bay Area planning consulting group that provides professional services in urban design, land use planning, landscape architecture and community outreach. The firm is headed by two partners, Barbara Maloney and Michael Smiley, who each have over 30 years of urban design and planning experience for both public and private sectors clients. BMS Design Group has extensive experience on a variety of rail and transit oriented development. Their list of relevant projects include the Diridon/Arena Strategic Development Plan in San Jose, the Downtown Transit-Oriented Development Strategy and the San Leandro BART Station Pedestrian Interface Plan, the Embarcadero Waterfront Transit and Streetscape Improvements, and Third Street Light Rail Urban Design Improvements Project, both in San Francisco, and the Hayward Park Station Area Improvements in San Mateo. The firm was also recently hired in November 2010 by the City of Sunnyvale to prepare the Lawrence Area Station Plan.

BMS Design Group initially provided an initial bid of $229,926, but staff and the firm have revised the scope of work to a maximum cost of $200,000. Staff anticipates project completion by the end of February 2012. Staff has contacted references provided by the consultant for previous work performed and received positive feedback.

Task Force Meetings

The 17-member Task Force has met on November 9th, December 3rd and January 17th. The focus of the three meetings has been to provide the Task Force with background information, including the status of rail projects, and to discuss organization and logistics. Staff has presented information on the Brown Act and the City's High Speed Rail efforts at those meetings. Sara Armstrong of Californians Advocating for Responsible Rail Development (CARRD) has also made a presentation on the group's

efforts at the December 3rd meeting. Task force meetings have been scheduled for the first and third Thursdays of the month at the Lucie Stern Community Center. Staff has also invited representatives of other stakeholder groups to attend the meetings. Mountain View and Menlo Park, the neighboring communities along the rail corridor, and Caltrain were invited to appoint liaisons to attend the meeting.

RESOURCE IMPACT

Funding for the project was allocated by the City Council when the Study was initiated. $100,000 was budgeted during the 2010-2011 fiscal year. An additional $100,000 was identified for the project in the 2011-2012 fiscal year.

POLICY IMPLICATIONS

The study will rely on the City's Comprehensive Plan and other land use transportation policies to guide the effort for the corridor.

ENVIRONMENTAL REVIEW

Approving a contract for the study is not considered a project requiring environmental review per the California Environmental Quality Act. It is anticipated that future environmental review for the Rail Corridor Plan would be completed as part of the Comprehensive Plan Environmental Impact Report.

ATTACHMENTS:

- Attachment A: Contract C11138343 - BMS Design Group Contract (PDF)

Prepared By: Elena Lee, Senior Planner

Department Head: Curtis Williams, Director

City Manager Approval: James Keene, City Manager

CITY OF PALO ALTO CONTRACT NO. C11138343

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND BMS DESIGN GROUP FOR PROFESSIONAL SERVICES PROVISION OF RAIL CORRIDOR STUDY

This Agreement is entered into on this 15th day of February, 2011, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and BMS DESIGN GROUP, a Partnership, located at 414 Jackson Street, Suite 404, San Francisco, CA 94111, (PH) (415) 249-0130 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to develop a Rail Corridor Plan and implementation measures to be incorporated into the City's Comprehensive Plan ("Project") and desires to engage a consultant to provide a Palo Alto Rail Corridor Study to evaluate land use, transportation, and urban design elements of the rail corridor area ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through March 31, 2012, or completion of Study, whichever occurs first, unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed Two Hundred Thousand Dollars ($200,000.00). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Two Hundred Thousand Dollars ($200,000.00). The applicable rates and schedule of payment are set out in Exhibit "C-1", entitled "SCHEDULE OF RATES," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C-1"). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY's stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are:

Kimley-Horn & Associates
Economic and Planning Systems

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Barbara Maloney, Partner, as Partner in Charge and Project Director, to have supervisory responsibility for the performance, progress, and execution of the Services and to represent CONSULTANT during the day-to-day work on the Project. James M. Daisa, PE, shall be designated as Project Manager. If circumstances cause the substitution of the project director, project manager, or any other key personnel for any reason, the appointment of a substitute project manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's Project Manager is Elena Lee, Planning and Community Environment Department, 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: (650) 617-3196. The Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately

discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of Barbara Maloney, Partner,
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement,

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the City, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. NON-APPROPRIATION

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.

25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

_____

City Manager (Required on contracts over $85,000)
Purchasing Manager (Required on contracts over $25,000)
Contracts Administrator (Required on contracts under $25,000)

APPROVED AS TO FORM:

_____

Senior Asst. City Attorney
(Required on Contracts over $25,000)

BMS DESIGN GROUP

By: _____

Name: Barbara Maloney

Title: Partner

Attachments:

EXHIBIT "A":	SCOPE OF SERVICES
EXHIBIT "B":	SCHEDULE OF PERFORMANCE
EXHIBIT "C":	COMPENSATION
EXHIBIT "C-1":	SCHEDULE OF RATES
EXHIBIT "D":	INSURANCE REQUIREMENTS

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

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EXHIBIT "A"
SCOPE OF SERVICES

1. SCOPE OF SERVICES

PHASE 1: CONTEXT AND VISION (4 months)

Task 1.1 Project Initiation

The BMS Design Group team will meet with staff to finalize the work program, schedule and project budget. The work program will be used throughout the process to monitor progress; work products will be clearly defined. At this time the team will submit requests for data of varying types.

At this time schedules and procedures for project communications will be identified. A preliminary schedule of High Speed Rail Committee, Planning and Transportation Commission and City Council meetings will be set.

Task 1.2 Review Background Materials

City Staff will provide GIS and Autocad data and mapping, reports, analyses and other data for relevant studies, city documents, and other materials including in progress plans.

The BMS team will utilize the city's data to prepare base maps suitable for analysis and plan preparation. The team will undertake a thorough review of site conditions, relevant documents and plans including documents relevant to corridor transportation and, in particular, documents produced by the HSR Authority related to alignment options and station information. Utilizing materials provided by the city, including policy and regulatory plans and ordinances, planned or proposed project information, site and aerial photos, and work by other consultants, the BMS team will assemble and review materials in preparation for subsequent tasks. The team will create a preliminary list of issues to be discussed with the Task Force and community.

The BMS team and city staff will conduct a site tour of the project area.

Task 1.3 Task Force Meeting 1

The preliminary Task Force meeting will serve to introduce the project work program and schedule. BMS Design Group will facilitate a discussion of goals for the project and issues that the Task Force considers essential to the outcome of the project.

Task 1.4 Stakeholder Interviews

The BMS team will conduct a limited number of individual or small group stakeholder interviews. These will provide key stakeholders with an opportunity to discuss issues of particular concern directly with the team. These meetings, if needed, will be conducted on the same days as other standing meetings such as Task Force.

Task 1.5 Community Meeting 1 | Issues Charrette

The BMS team will conduct the first project community meeting. The agenda for the meeting will include a review of the work program and schedule, as well as an update by city staff on any related HSR or city planning

information. The BMS team will facilitate a discussion and prioritization of issues of concern to the community. These will become elements in the ultimate evaluation of project concepts and alternatives.

Task 1.6 Urban Design and Land Use Analysis – Issues and Opportunities

Prepare Urban Design and Land Use Analysis

The BMS team will collect a range of information regarding the existing nature of the study area and its short and long term opportunities. Information to be compiled and considered will include:

- Existing land use patterns
- Existing facilities, including public and community uses such as schools, parks, community facilities, etc.
- Neighborhood/district context – neighboring uses and districts, areas of influence
- Community scale and character
- Architectural and landscape character
- Distinguishing features such as landmarks, entries and edges
- Relationship of facilities and uses to major and minor rights of way and circulation framework
- Opportunity sites
- Parcel configurations
- Parcel ownership
- Proximity to transit facilities

Provide Market-Based Inputs to Issues and Concepts

Making use of existing data and studies as much as possible, EPS will conduct a high-level market review to assess potential development opportunities in the study area. Utilizing area demographic and employment trends, development patterns, competitive supply, and project performance, EPS will characterize the market support for various types of development along the Corridor. The results of EPS's market review will be incorporated as the land use alternatives are developed. EPS will work with the rest of the consultant team to shape the land use alternatives by attending the task force meeting described in Task 1.7 to provide perspective on the implications of each alternative in terms of its capitalization on market opportunities, its projected buildout timeframe, and the comparative value being created for property owners.

Preliminary Identification of Implementation Constraints

The BMS Team will work with City staff, rail agency representatives, and other important stakeholders to understand the potential parameters of each party's participation in the implementation of the Corridor plan. Issues to discuss will include the entities' legal and administrative obligations and constraints, the amount of and competition for financial resources, etc. For example, do changes to existing regulations or programs require popular elections? What funding sources are available and how much have been pledged to other projects or programs? Do the by-laws of various entities' formation prevent or require certain actions? This review will help to ensure that the parties involved and the community-at-large understand the "ground rules" for evaluating the viability of alternative planning concepts.

Task 1.7 Task Force Meeting 2

The second Task Force meeting will focus on reviewing and discussing the urban design and land use analysis. The meeting will be facilitated by BMS to ensure that the Task Force can review and comment on all the various element of analysis that are presented. The focus will be on confirming the team's analysis and identifying key issues and opportunities.

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Task 1.8 Transportation and Circulation Framework Analysis – Issues and Opportunities

Kimley Horn will summarize and describe key transportation parameters associated with the HSR alignment options and station location including potential impacts, obstructions to connectivity, multi-modal access, infrastructure requirements, and costs. KHA will also summarize transportation-related issues as identified in the analysis, and as discussed by staff, city leaders, the Task Force and community. Working with the BMS team, KHA will discuss land use, urban design and transportation opportunities associated with the study area and future infrastructure improvements.

KHA will provide a comparative assessment of existing and future constraints to the integration of HSR into the Rail Corridor and the constraints created by implementation of the HSR. KHA will also summarize the transportation-related opportunities for expediting the integration of HSR as well as the potential for transit-oriented development.

Task 1.9 Task Force Meeting 3

The third Task Force meeting will focus on reviewing and discussing the transportation and circulation analysis. The meeting will be facilitated by BMS to ensure that the Task Force can review and comment on all the various element of analysis that are presented. The focus will be on confirming the team's analysis and identifying key issues and opportunities.

Task 1.10 Community Meeting 2 | Vision Charrette

The second community meeting will be a longer meeting to allow a full discussion of the issues and opportunities associated with urban design, land use, transportation and circulation elements. As part of the meeting, the BMS team will facilitate a small group brainstorming of initial visions for the project area, incorporating the opportunities identified by the analysis as well as others that community members will bring to the discussion.

Task 1.11 Task Force Meeting 4

This Task Force meeting will review the work to date, including the results of the community meeting. Discussion will focus on confirming issues, opportunities and visions for the area.

Task 1.12 Summary of Context and Preliminary Vision for Corridor

The BMS team will prepare a brief summary of the work to date compiling materials prepared for and developed at the various meetings. The materials in this summary will be presented so as to lead directly into and form the basis for the analysis and tasks of Phase 2, especially the definition of alternatives.

Meetings (maximum):

Task Force: 4

- *Goals and Issues*
- *Urban Design and Land Use*
- *Transportation and Circulation Analysis*
- *Summary of Context and Vision*

High Speed Rail Committee - 1

Planning and Transportation Commission Progress Reports and Hearings – 2

City Council Progress Reports and Hearings – 1

Community: 2

- *Issues Charrette*
- *Vision Charrette*

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Deliverables:
Summary of Context and Vision

- *Goals, Policies and Vision Statements*
- *Issues and Opportunities*

PHASE TWO: ALTERNATIVES AND ANALYSIS (5 months)

Task 2.1 Urban Design, Land Use, and Transportation Concepts

The BMS team will prepare urban design, land use and transportation concepts for the study corridor. These concepts will be integrated and coordinated with the transportation concepts, building upon one or several alternative urban design framework of streets and pathways, and parcels. The concepts will identify the creation of neighborhoods or districts within the corridor as well as the manner in which areas of the corridor may be better integrated into and connected with adjoining neighborhoods and districts. The concepts will explore the most relevant and feasible land uses and densities and opportunities for transit-oriented development. The concepts will be configured to illustrate a range of options that will lead to configuring alternatives combining urban design, land use and circulation elements.

Task 2.2 Task Force Meetings 5 and 6

This Task Force meeting will be organized to allow a thorough review of the urban design, land use and transportation and circulation concepts. From the range of concepts presented, the Task Force and consultant team will identify preferred concepts that will be integrated into the plan alternatives.

Task 2.3 Community Meeting 3 | Concept Review Workshop

The community meeting will be conducted as small group work sessions, with facilitated discussion of the urban design, land use, circulation and transportation concepts. The discussions will be summarized with priorities among the range of concepts identified by the community. Voting for preferences and priorities may be one technique used to discern public preferences.

Task 2.4 Preliminary Urban Design, Land Use and Transportation Alternatives

Based on the feedback from the Task Force meeting and the community meeting, the team will prepare up to three plan alternatives. These will be configured to reflect three realistic alternatives that resolve issues and match community priorities and concerns. A variety of graphic materials and media will be used to depict the alternatives including plans, sketches, sections, photosimulations, and 3D models.

Task 2.5 Task Force Meeting 7

The Task Force meeting will be the opportunity for members to review and propose modifications to the preliminary alternatives. Issues, further analysis, and additional concepts will also be discussed.

Task 2.6 Refine Alternatives and Preliminary Evaluation

Based on the Task Force meeting, the BMS team will refine the alternatives. At this time, working with city staff and select stakeholders, the BMS team will identify potential environmental impacts associated with the alternatives. These will focus on impacts to historic resources, visual and noise impacts. An overview of possible traffic impacts will be discussed but detailed analysis will not be conducted at this time.

Task 2.7 Task Force Meeting 8

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

At this Task Force meeting, the BMS team will present the refined alternatives and provide information relevant to evaluating the alternatives, such as cost, phasing, feasibility of development options, and regulatory or policy hurdles. The team will facilitate a discussion with the Task Force to gain their insights into further evaluation of the plans.

Task 2.8 Community Meeting 4 | Alternatives Review Workshop

The final community meeting of this phase will include a review of the alternatives, as modified by input from the Task Force as well as by the High Speed Rail Committee, Planning and Transportation Commission, and City Council. The facilitated discussions will focus on evaluation of the alternatives and any proposed modifications.

Task 2.9 Summary of Alternatives and Evaluation

A brief summary of the work of Phase 2, focusing on the alternatives, will be prepared. It will include discussion of the alternatives as well as their evaluation, including comments and input from the Task Force, community, and city policy-makers.

Meetings (maximum):

Task Force: 4

- *Review Concepts*
- *Review Preliminary Alternatives*
- *Review Alternatives and Evaluations*

High Speed Rail Committee - 1

Planning and Transportation Commission Progress Reports and Hearings – 2

City Council Progress Reports and Hearings – 1

Community: 2

- *Concept Review Workshop*
- *Alternatives Review Workshop*

Deliverables:

Summary of Concepts, Alternatives and Evaluations

PHASE THREE: PLAN PREPARATION (3 months)

Task 3.1 Task Force Meeting 9 - Charrette: Identify Preliminary Preferred Plan(s)

Based on input from Phase 2, the BMS team will conduct a charrette with city staff and the Task Force. The purpose of the charrette will be to work intensively through the various alternatives identified and to determine those elements that most align with the issues and concerns of the community and that will provide the most beneficial framework for the future of this area of Palo Alto. If needed, options may remain on some components to provide flexibility or to illustrate certain policy decisions that will need to be made.

Task 3.2 Refine Preferred Plan(s)

The BMS team will refine the plans identified in the Task Force charrette, clarifying and outstanding issues and providing a range of illustrations such as 3D modeling, photosimulations and other hand- and computer-generated drawings that will illustrate the plan concepts.

Task 3.3 Community Meeting 5 | Preferred Plan(s) Workshop

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

The BMS team will facilitate a community meeting with the intent of reviewing, clarifying if needed, and confirming the preferred plans for the corridor as well as any remaining options for elements or particular issues. The meeting will be conducted with a combination of presentation, small group discussions and attendee input via voting, comments or other means.

Task 3.4 Identify Preliminary Implementation Issues and Strategies

The BMS Team will identify the variety of regulatory changes, physical improvements, and programmatic approaches required to implement the preferred plan. Where investments in new public infrastructure are required, the BMS Team will work with city staff to estimate the costs of those improvements. Then, EPS will help to frame a financing strategy for those improvements by exploring the availability of existing funding sources as well as the potential capacity for new development to contribute to infrastructure costs through various means. In addition to state, federal, and rail agency funding, EPS will consider locally implemented funding sources such as Community Facilities Districts, development impact fees, tax increment, the City's CIP, public private partnerships, transferable development rights, etc. While not resulting in specific cost burdens and financing mechanisms assigned to specific properties, this analysis will indicate whether the study area appears capable of carrying the burden for the new infrastructure, or if alternative funding sources are likely to be required. Also, it will be important to create a conceptual implementation schedule that aligns the phasing of improvements with the availability of funding from various sources. The implementation strategy will also account for the responsibilities allocated to various parties and stakeholders, including the City of Palo Alto and local property owners and developers in addition to the rail agencies and other levels of government.

The team will also identify potential environmental issues associated with plan implementation.

Task 3.5 Task Force Meeting 10

The Task Force will meet to review implementation issues and strategies identified by the BMS Design Group team.

Task 3.6 Draft Rail Corridor Plan

Based on input from all preceding tasks and from the summaries prepared at the conclusions of phases 1 and 2, the BMS team will prepare a draft corridor plan. It is expected that this plan will be a compilation of materials already prepared with additional commentary and illustrations as needed. The plan will be configured to correlate with other city policy documents to allow ready inclusion by staff. The draft plan will be provided to city staff for a preliminary review. Following receipt of any major comments, the team will provide a revised plan for distribution to the Task Force.

Task 3.7 Task Force Meeting 11

The team will meet with the Task Force to receive comments on the draft plan. Following review by the Task Force and staff, the team will finalize the plan for presentation and distribution to city decision-makers.

Task 3.8 Community Meeting 6 | Open House

A community meeting will be held to review the Rail Corridor Plan. This community meeting will be held in an open house format, allowing the community to review and comment all elements of the plan.

Task 3.9 Final Rail Corridor Plan

Following presentations to the High Speed Rail Committee, the Planning and Transportation Commission, and City Council, the BMS Design Group team will finalize the Rail Corridor Plan.

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Meetings (maximum):

Task Force: 3

- *Preferred Plan Charrette*
- *Implementation Issues and Strategies*
- *Draft Plan Review*

High Speed Rail Committee - 1

Planning and Transportation Commission Progress Reports and Hearings – 2

City Council Progress Reports and Hearings – 1

Community: 2

- *Preferred Plan Workshop*
- *Draft Plan Open House*

Deliverables:

Draft and Final Rail Corridor Plan

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

EXHIBIT B
SCHEDULE OF PERFORMANCE

The CONSULTANT shall complete all project tasks and services within the timeframes and schedule agreed upon between CITY and CONSULTANT. The BMS Design Group team will meet with staff to finalize the work program, schedule and project budget. The work program will be used throughout the process to monitor progress; work products will be clearly defined. At this time the team will submit requests for data of varying types.

At this time schedules and procedures for project communications will be identified. A preliminary schedule of High Speed Rail Committee, Planning and Transportation Commission and City Council meetings will be set.

Estimated Time Periods:

Phase 1 - 4 months
Phase II- 5 months
Phase III- 3 months

EXHIBIT "C"
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and completed to the reasonable satisfaction of the CITY, as described in Exhibit A, Scope of Services, a *not-to-exceed* price for professional services of Two Hundred Thousand Dollars ($200,000.00). Compensation will be paid for services provided as outlined below and as detailed in Exhibit C-2, Project Budget and Schedule Summary, based on the Hourly Rates provided in Exhibit C-1, Schedule of Rates.

PHASE ONE - CONTEXT AND VISION

Task	Description	Cost
1.1	[redacted]	$ 800
1.2		$ 7,598
1.3		$ 1,300
1.4		$ 0.00
1.5		$ 3,200
1.6		$ 18,420
1.7		$ 1.300
1.8		$ 7,444
1.9		$ 2,300
1.10		$ 3,200
1.11		$ 2,300
1.12		$ 2,600
TOTAL		**$53,110**

PHASE TWO - ALTERNATIVES AND ANALYSIS

Task	Description	Cost
2.1	[redacted]	
2.2		
2.3		
2.4		
2.5		
2.6		
2.7		

2.8	[redacted]	[redacted]
2.9	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]
PHASE THREE – PLAN PREARATION		
3.1	[redacted]	$ 3,200
3.2	[redacted]	$ 12,000
3.3	[redacted]	$ 3,200
3.4	[redacted]	$ 18,060
3.5	[redacted]	$ 3,450
3.6	[redacted]	$ 15,856
3.7	[redacted]	$ 2,300
3.8	[redacted]	$ 5,168
3.9	[redacted]	$ 3,820
TOTAL		**$69,106**
Contingency		**$2,020.00**
TOTAL PROJECT NOT TO EXCEED		**$200,000.00.**

CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

Reimbursables shall include, but are not limited to, the cost of copying plans, outreach materials, postage, signage or other items not included herein. Travel, computer and phone charges shall be considered as included in the CONSULTANT overhead costs. Any needed office spaces or related supplies shall be provided by CONSULTANT and shall be considered to be included in the Scope of Services above.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

EXHIBIT "C-1"
SCHEDULE OF RATES

FIRM	POSITION TITLE	HOURLY RATE
BMS	Partner	$200.00
BMS	Sr. Planner	$125.00
BMS	Staff	$90.00
KIMLEY-HORN	Principal	$250.00
KIMLEY-HORN	Engineer	$166.00
KIMLEY-HORN	Analyst	$114.00
KIMLEY-HORN	Support Staff	$94.00
EPS	Principal	$245.00
EPS	Sr. Associate	$165.00
EPS	Associate	$110.00

Exhibit C-2
Project Budget and Schedule Summary

(Excel Spreadsheet Inserted Here)

	$2,020
s by Firm:	$134,980
[redacted]	

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

EXHIBIT "D"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY PROPERTY DAMAGE BODILY INJURY & PROPERTY DAMAGE COMBINED.	$1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON - EACH OCCURRENCE PROPERTY DAMAGE BODILY INJURY AND PROPERTY DAMAGE, COMBINED	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000 $1,000,000 $1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	$1,000,000	
YES	**THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED**: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, **NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.**			

I. INSURANCE COVERAGE MUST INCLUDE:

A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.

C. DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303

Attachment: Attachment A: Contract C11138343 - BMS Design Group Contract (1319 : Contract for Rail Corridor Study Consultant)

City of Palo Alto
City Council Staff Report

(ID # 1412)

Report Type: Consent Calendar **Meeting Date: 2/14/2011**

Summary Title: Employer's Contribution under PEMHCA

Title: 9a. -Adoption of a Resolution Fixing the Employer's Contribution Under the Public Employees Medical and Hospital Care Act (PEMHCA) with Respect to Members of Local 521, Service Employees International Union (SEIU) and Management and Professional Employees Group

From: City Manager

Lead Department: Human Resources

Recommendation
Staff recommends that Council approve the attached resolution fixing the City of Palo Alto's healthcare premium costs under the Public Employees' Medical and Hospital Care Act (PEMHCA) for Local 521, Service Employees International Union (SEIU) and Management and Professional personnel. The purpose of this recommendation is to complete the CalPERS contract amendment process required to implement the Memorandum of Agreement (MOA) and Compensation Plan health care premium provisions for these employee groups.

Background
In an effort to continue to contain escalating healthcare costs, the City has negotiated several measures in recent years to cap healthcare premiums with all employee groups. Over the last ten years, the City reached agreement to reduce its maximum payment for medical premiums from the highest health plan (PERSCare) to the second highest plan for all active employees as well as future retirees and also, the City implemented 20-year vesting for new hires. In 2010, following imposed terms with Local 521, Service Employees International Union, the City reached agreement with the Union (CMR:339:10) which included a cap on City contributions towards medical premiums for current employees and future retirees. The same provision was extended to Management and Professional current, active employees and future retirees. At present, public safety units are not subject to this provision. The City is in negotiations with Fire and the Police Management Association and will begin negotiations with PAPOA this spring.

Discussion
On August 2, 2010, City Council authorized the implementation of the 90/10 cost share plan for SEIU employees. The City currently pays the full premium cost of an employee-selected health care plan, up to the cost of the second most expensive PEMHCA plan offered for the Bay Area. The attached table titled, "Monthly Employee Contribution Rates for 2011," describes the new

contribution model. Under the new plan, the City and employees will split the cost of the annual increase in medical premium costs, with a cap for the employee share of 5% premium increase per year. Once the employee contribution reaches 10% of total premium cost, the employee contribution will continue for future years at 10% of total premium cost with the City picking up the remaining 90% of total premium cost.

Prior to the adoption of the 2009-2010 Management and Professional Compensation Plan, those employees proposed that that the City consider proposals to develop an alternate health care contribution plan. In the event that the proposed alternative contribution plan was not adopted by City Council, then the City's 90/10 cost share plan implemented for SEIU employees would also apply to the Management/Professional employees, CAOs and Council Members.

The City formed a healthcare committee involving all employee groups to discuss alternatives over the last five months. Implementation of the 90/10 cost share plan was delayed to allow the group more time to explore various options in-depth. While these discussions were fruitful and some options had significant cost savings, they did not yield alternatives that met Council goals of generational equity and shared risk between the City and employees. It is important to the City that costs are shared among all users of the benefits and that future hires not have a greater share of the burden while employees closer to retirement have little or no responsibility for healthcare costs. Additionally, employees (active and retired) have more of stake in containing health care costs when they share in those costs.

While the City acknowledges that the challenge of rising healthcare costs will require other changes in the future and remains open to exploring alternative cost sharing options with all employee groups that meet Council goals, the alternatives identified to-date do not meet the goals. The City expects that future negotiations will provide additional time to review and develop additional alternatives and solutions.

Contributions by active SEIU and Management and Professional employees will begin effective April 1, 2011. In order to implement provisions for the aforementioned employee groups, the CalPERS contract amendment process requires Council to approve the attached resolutions. Staff has reviewed the resolutions with CalPERS and due to the inability of CalPERS to directly administer the 90/10 contribution model, the resolutions reflect that the health plan rates will be fixed at a lowered specified amount for SEIU and Management and Professional employees. The City will work with CalPERS to implement an internal process for appropriate contributions under the 90/10 cost share plan.

Resource Impact

The implementation of the 90/10 cost share plan for miscellaneous employees (excludes sworn safety employees in police and fire departments) results in 3 months of medical premium savings this fiscal year, which is estimated to be $95,730. The employee contributions toward medical premiums are expected to save the City $370,000 on an annual basis according to the 2011 healthcare rates.

The implementation of employee and future retiree medical premium contributions by miscellaneous employees (excludes sworn safety employees in police and fire departments) results in 3 months of medical premium savings this fiscal year, which is estimated to be $95,730. This amount is a reduction for FY 2011 due to the delay of the 90/10 implementation to allow the employee healthcare committee to develop alternatives. The employee contributions toward medical premiums are expected to save the City $370,000 on an annual basis according to the 2011 healthcare rates.

The City will contribute to its retiree insurance trust an amount not less than the amount of premiums paid by active employees in the miscellaneous employee groups.

Policy Implications

This resolution implements provisions previously approved in the 2010-11 SEIU MOA and the 2009-10 Compensation Plan for Management and Professional Personnel. It also supports the Finance Committee's recommendation for staff to bring alternatives forward on how to slow the increase of employee benefits and lessen the impact on infrastructure and other City priorities. Staff also plans to continue pursuing health care benefit changes in negotiations with other employee units.

Environmental Review

This is not a project under the California Environmental Quality Act (CEQA).

ATTACHMENTS:

- Monthly Employee Contribution Rates 2011 (PDF)
- 8261529 RESO PEMAHCA (2) (DOC)

Prepared By: Elizabeth Egli, Administrative Assistant

Department Head: Sandra Blanch,

City Manager Approval: James Keene, City Manager

Monthly Employee Contribution Rates for 2011

Bay Area Regional Plans (Basic)							
Plan		2011 Monthly Premium	2010 Monthly Premium	% Increase	% EE Responsibility	$ EE Monthly Responsibility	$ Per Pay Period
Blue Shield	Employee Only	$675.51	$577.33	17.01%	5.00%	$28.87	$13.32
Blue Shield	Employee +1	$1,351.02	$1,154.66	17.01%	5.00%	$57.73	$26.65
Blue Shield	Employee + 2	$1,756.33	$1,501.06	17.01%	5.00%	$75.05	$34.64
Blue Shield NetValue	Employee Only	$581.24	$500.35	16.17%	5.00%	$25.02	$11.55
Blue Shield NetValue	Employee +1	$1,162.48	$1,000.70	16.17%	5.00%	$50.04	$23.09
Blue Shield NetValue	Employee + 2	$1,511.22	$1,300.91	16.17%	5.00%	$65.05	$30.02
Kaiser	Employee Only	$568.99	$532.56	6.84%	3.42%	$18.22	$8.41
Kaiser	Employee +1	$1,137.98	$1,065.12	6.84%	3.42%	$36.43	$16.81
Kaiser	Employee + 2	$1,479.37	$1,384.66	6.84%	3.42%	$47.35	$21.86
PERS Choice	Employee Only	$563.40	$508.74	10.74%	5.00%	$25.44	$11.74
PERS Choice	Employee +1	$1,126.80	$1,017.48	10.74%	5.00%	$50.87	$23.48
PERS Choice	Employee + 2	$1,464.84	$1,322.72	10.74%	5.00%	$66.14	$30.52
PERS Select	Employee Only	$492.68	$474.93	3.74%	1.87%	$8.88	$4.10
PERS Select	Employee +1	$985.36	$949.86	3.74%	1.87%	$17.75	$8.19
PERS Select	Employee + 2	$1,280.97	$1,234.82	3.74%	1.87%	$23.08	$10.65
PERSCare	Employee Only	$893.95	$868.17	2.97%	1.48%	$231.33	$106.77
PERSCare	Employee +1	$1,787.90	$1,736.34	2.97%	1.48%	$462.66	$213.54
PERSCare	Employee + 2	$2,324.27	$2,257.24	2.97%	1.48%	$601.46	$277.59
PORAC	Employee Only	$527.00	$484.00	8.88%	4.44%	$21.50	$9.92
PORAC	Employee +1	$987.00	$906.00	8.94%	4.47%	$40.50	$18.69
PORAC	Employee + 2	$1,254.00	$1,151.00	8.95%	4.47%	$51.50	$23.77

% Increase = (2011 Monthly Premium - 2010 Monthly Premium)/2010 Monthly Premium

% EE Responsibility = 1/2 % Increase not to exceed 5%

$ EE Responsibility = 2010 Monthly Premium x % EE Responsibility

PERSCare Contribution = (PERSCare premium - Blue Shield premium) + [(2011 Monthly Premium - 2010 Monthly Premium)/2010 Monthly Premium]

Revised 08/30/10

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act for Local 521, Service Employees International Union (SEIU) and Management and Professional Personnel

WHEREAS, Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act; and

WHEREAS, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts, provided that the monthly contribution for annuitants is annually increased to equal an amount not less than the number of years the contracting agency has been subject to this subdivision multiplied by 5 percent of the current monthly contribution for employees, until such time as the amounts are equal; and

WHEREAS, City of Palo Alto, hereinafter referred to as Public Agency is local agency contracting under the Act for participation by members of the City of Palo Alto.

NOW, THEREFORE, the Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. That effective April 1, 2011 the employer's contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the minimum employer contributions per month as prescribed in Section 22892(b)(1) of the Government Code ($108.00) per month.

SECTION 2. That effective April 1, 2011 the employer's contribution for each annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of 90% of the minimum employer contributions per month as prescribed in Section 22892(b)(1) of the Government Code per month.

SECTION 3. That the employer's contribution for each annuitant shall be increased annually by 5 percent of the monthly contribution for employees, until such time as the contributions are equal, plus administrative fees and Contingency Reserve Fund Assessments.

SECTION 4. That the City of Palo Alto has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

Attachment: 8261529 RESO PEMAHCA (2) (1412 : Employer's Contribution under PEMHCA)

* NOT YET APPROVED *

SECTION 5. The County of Santa Clara as lead agency has determined that this project is exempt from the provisions of the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15308 as an action by regulatory agencies authorized by state or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

_____
Sr. Deputy City Attorney

APPROVED:

_____
City Manager

_____
Director of Human Resources

_____
Director of Administrative Services

Attachment: 8261529 RESO PEMAHCA (2) (1412 : Employer's Contribution under PEMHCA)

City of Palo Alto
City Council Staff Report

(ID # 1320)

Report Type: Action ItemsMeeting Date: 2/14/2011

Summary Title: California Avenue Neg Dec and CIP

Title: Approval of Negative Declaration and Establishment of a Capital Improvements Program (CIP) to Fund the California Avenue Project Improvements in the Net Amount of $550,000 Out of the Infrastructure Reserve Fund

From: City Manager

Lead Department: Planning and Community Environment

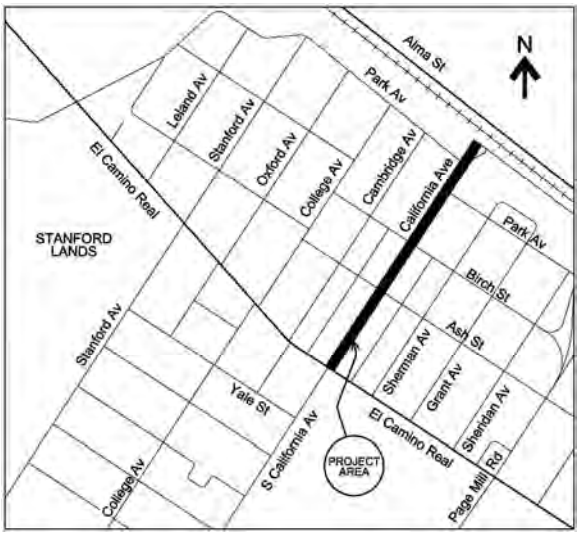
Recommendation
Staff and the Planning and Transportation Commission recommend that the City Council:

1. Approve the proposed Negative Declaration for the Project (Attachment A), and
2. Establish a Capital Improvements Program (CIP) to fund the project improvements in the amount of $1.725M out of the Infrastructure Reserve Fund of which $1.175M will be grant-reimbursed, with a net impact of $550,000 to the City.

Executive Summary
The proposed California Avenue – Transit Hub Corridor Improvements Project provides for streetscape improvements, including a reduction from four lanes to two lanes of travel, along California Avenue between El Camino Real and the California Avenue Caltrain Station. The intent of the project is to provide for place-making design, traffic calming and safety enhancements, and retail vitality and other economic benefits. A traffic study has been prepared and demonstrates that there will be negligible impacts due to the lane reduction, while providing for increased street parking. Enhanced pedestrian and bicycle facilities and safety measures are also included in the project.

The City Council is being asked to consider the adequacy of the Negative Declaration prepared for the project and to approve a Capital Improvement Program to fund the project. A City Council decision regarding the lane reduction is also required at this time because the grant funding is predicated on the two lane concept. The Planning and Transportation Commission unanimously supported the project at its meeting on January 12, 2011. Detailed design of project components (benches, signage, artwork, bike racks, pavement treatment, etc.) will be addressed in an extensive community review throughout 2011.

Project Description and Background



In October 2010, the City submitted an application to the Valley Transportation Authority (VTA) for Community Design for Transportation (CDT) Program funding for the California Avenue Transit Hub Project. The City Council authorized the filing of the grant request on December 6, 2010. The VTA approved the grant application for project funding in the amount of $1,175,200 on December 9, 2010.

Purpose

The proposed project provides for streetscape improvements along California Avenue between El Camino Real and the California Avenue Caltrain Station to provide for place-making design, traffic calming and safety enhancements, and retail vitality and other economic benefits. In keeping with the vision of the Comprehensive Plan, the purpose of the California Avenue Streetscape Project is to develop a "complete" roadway that best utilizes the available right-of-way of the street to:

- Provide safe space for pedestrians and bicyclists along and crossing the street;
- Maintain efficient vehicle movements while slowing cars and trucks to enhance safety;
- Enhance the overall appearance of the street and adjacent non-vehicular spaces with trees and landscaping, public art, tables and chairs for outside dining, benches, kiosks, signage, and bicycle racks;
- Accommodate parking needs; and
- Facilitate the use of the plaza near the train station for amenities such as a fountain, landscaping, pedestrian access, seating areas, and bicycle racks.

California Avenue has historically been a four-lane street. It originally provided access to Alma Street but is now disconnected from that street by the Caltrain tracks and is not likely to ever be reconnected. As a result, California Avenue accommodates a very low level of vehicular traffic (see analysis below). The plan proposes a lane reduction to improve the pedestrian/bicyclist experience along the street and the connection between the existing land uses and the enhanced streetscape elements. Two-lane streets frequently serve as central business district streets and provide more effective use of the public right-of-way while enhancing the pedestrian and business environment. The lane reduction also allows existing on-street parking to be brought to current parking design standards while expanding the availability of parking on the street.

Discussion

The proposed streetscape project will enhance the pedestrian, bicycle and vehicular environment along California Avenue, including the plaza area adjacent to the Caltrain station. This kind of approach, including lane reduction, has been successful in many other downtown areas, such as Menlo Park, Mountain View, and Los Gatos locally and many others regionally, statewide and nationally. The traffic impact of the changes, as summarized below, is negligible as California Avenue generates only a fraction of the traffic volume seen on downtown streets in those cities. The approved grant would allow the City to leverage its funds to repave and restripe the street to provide much more extensive benefits and an economy of scale for the streetscape.

The City Council is being asked to consider the adequacy of the Negative Declaration prepared for the project and to establish a Capital Improvement Program to fund the project. A City Council decision regarding the lane reduction is also required at this time because the grant funding is predicated on the two lane concept. Detailed design of project components (benches, signage, artwork, bike racks, pavement treatment, etc.) will be addressed in an extensive community review throughout 2011.

Key issues raised relative to the project include traffic, parking, and economic/business impacts.

<u>Traffic</u>

In order to evaluate whether the 4-lane to 2-lane reduction would have any significant impacts on existing traffic conditions, a Traffic Impact Analysis (TIA) was prepared (Attachment B) as part of the Initial Study for the project and focused on three elements:

- Intersection Level of Service (LOS)
- Roadway segment LOS by block segment, and
- Independent roadway operations analysis of the City-prepared plan line concept for California Avenue.

These three components of the traffic report are discussed in depth in the attached staff report prepared for the PTC meeting dated January 12, 2011 (Attachment C). The Initial Study concluded that there are no significant impacts associated with the project, including the reduction of four lanes of traffic to two lanes. The PTC report also notes that the traffic volumes on California Avenue are considerably less than other “downtown” two-lane streets, such as University Avenue, Santa Cruz Ave. (Menlo Park), Castro Street (Mountain View), and Santa Cruz Avenue (Los Gatos).

The intersection LOS findings show that the 4-lane to 2-lane redesign on California Avenue between El Camino Real and the Park Blvd. Plaza does not result in any significant Level of Service impacts to the study intersections. No anticipated shifting of traffic from California Avenue to adjacent parallel streets such as Cambridge Avenue or Sherman Avenue is expected if the street is restriped to two lanes.

The roadway segment LOS findings show that the 4-lane to 2-lane reduction on California Avenue between El Camino Real and the Park Blvd. Plaza would result in a Less Than Significant impact to the street: each of the roadway segments would operate at LOS B or better. This is expected because even under project conditions (2-lanes), the directional capacity of the roadway is still twice as great as the vehicle demand of the street.

The operations analysis recommended that the project:

1) Maintain 2 lanes westbound on California Avenue approaching El Camino Real;
2) Reduce the parking angle from 60-degree to 45-degree stalls at select block segments;
3) Eliminate lane-merge locations along the corridor; and
4) Provide ADA-compliant handicap ramps at Park Blvd.

It is not anticipated that future traffic conditions (cumulative impacts) along the street would warrant four travel lanes. Although the existing Comprehensive Plan encourages intensification of mixed use in the California Avenue area, it is highly unlikely that enough development would occur to result in significant traffic impacts along California Avenue under a two-lane scenario because there is so much capacity in the system for additional trips. The possible land use intensification currently being considered as part of the California Avenue Concept Plan is unlikely to generate traffic volumes that would result in degradation to LOS E or worse, which is what City policies mandate before mitigation is required. Traffic volumes at specific intersections would need to increase from 2x to 10x existing levels to begin to approach these levels.

Parking

The proposed project is intended to facilitate increased bicycling and walking by providing safer facilities (crosswalks, shorter crossings, wider travel lanes, signage, etc.), a more pleasant walking and bicycling environment, and increased bicycle parking. However, the project would also increase the number of parking spaces by a total of 17 spaces for the length of the street, primarily by altering the angle of the parking. This preliminary figure could be adjusted slightly during the more detailed design phase, but in any event helps to address a current significant shortage of parking in the business district. In addition, approximately 75-100 new bicycle parking racks are expected to be added, many of which may provide incentive for visitors from the businesses in the Stanford Research Park and other nearby residents and employees to bicycle in lieu of driving cars and parking, saving the need for those spaces. Some of the Research Park businesses (AOL, Facebook, etc.) have already established bike share programs for employees for such purposes.

To address concerns of area businesses and residents, staff is also embarking on a significant parking study of both the Downtown and California Avenue business district areas. The parking study, to be developed over the next 6-12 months, will evaluate shortages in the California Avenue area, techniques to better utilize existing parking (technology, signage, restriping, etc.), and residential permit parking options. In addition, the California Avenue/Fry's Area Concept Plan under review will identify potential for new parking structures in the area.

Economic/Business Impacts

The California Avenue – Transit Hub Corridor Improvements Project is expected to generate economic benefits to the City and area businesses. The streetscape improvements are only a small part of the overall economic picture, however, which will also be affected by the land use and transportation effects of the California Avenue/Fry's Area Concept Plan and other current studies. Economic benefits may accrue due to:

- The provision of increased vehicle (17) and bicycle (75-100) parking spaces to supplement existing parking. If even 10% of the bicycle spaces displace vehicle spaces, the result will be a net increase equivalent of about 25 new parking spaces. Construction of a new parking space today costs up to $50,000 per space, so the project should represent a significant cost savings to the City while providing more vehicle and bike parking for businesses.
- The enhanced pedestrian and overall aesthetic environment of California Avenue. Upgraded benches and tables, trash receptacles, paving treatments, plantings, artwork and other features should create an improved sense of place and quality for employees, residents, and visitors. The City's Economic Development Manager has contacted economic managers and businesses from other cities (Mountain View, Menlo Park, Los Gatos, and Los Altos) and found that, in those cities, initial concerns by merchants about reducing travel lanes and/or other changes on those downtown streets have turned to strong business support as traffic has slowed and pedestrian activity has increased over the years following the streetscape changes (Attachment F).
- Increased economic activity and sales associated with lane reductions and streetscape improvements, of benefit to both the City and merchants. Below are links to three brief articles and a survey about the economic benefits due to such enhancements on Valencia Street in San Francisco, Mill Avenue in Tempe, AZ, and select streets in Long Beach, CA. The Valencia Street article and study are particularly illustrative, in that they including surveys of merchants before and after the project, which included lane reductions and streetscape improvements. The merchants' opinions were highly positive following implementation. The articles are also enclosed as Attachment E.

  http://ealscoalition.org/2009/07/25/traffic-calming-has-positive-economic-effects-on-small-businesses-and-property-values/

  http://www.emilydrennen.org/TrafficCalming_full.pdf

  http://www.planning.org/greatplaces/streets/2008/millavenue.htm.

  http://www.planetizen.com/node/44645

Staff understands that there may justifiably be concerns by businesses about disruption of their operations and access during the approximately one year of construction on the street. Staff suggests that, during the design period, detailed construction phasing be developed with

extensive merchant input to help minimize disruptions from construction. Also, the need for additional loading zones will be evaluated during the design phase.

Capital Improvements Program Project

A new Capital Improvements Program (CIP) project account to fund the California Avenue – Transit Hub Corridor Improvement Project needs to be established to front the costs of the project for eventual reimbursement by the grant during construction and to provide the City's match funding of $550,000. To align the completion of the design phase with the release of the grant for construction of the project, this new CIP project is being pursued outside of the normal CIP review process to enable the design phase to begin immediately. A separate but concurrent roadway resurfacing project on California Avenue funded in the current CIP will be implemented during the construction of the California Avenue – Transit Hub Corridor Improvements project. The CIP project will also be formally included in the City's mid-year budget amendments.

Detailed Design

Subsequent to City Council action on the Negative Declaration for the project and the approval of the CIP to provide funding for the project, staff would engage the public in a series of community meetings over the remainder of 2011 to develop the final design concept for the streetscape project. The design plan would be reviewed by the ARB and PTC before final action by the City Council in early 2012.

Planning and Transportation Commission Review and Recommendation

On January 12, the Planning & Transportation Commission discussed the findings of the Draft Negative Declaration and the CIP allocation of $550,000 of City funds for the project. The Commission supported staff's recommendation and voted unanimously (7-0) to recommend approval of the proposed Negative Declaration for the California Avenue streetscape project and to recommend a Capital Improvement Program to fund the project improvements. Nine public speakers provided testimony on the project. Their comments are summarized below, and the minutes from the meeting are also attached (Attachment D).

- Five (5) College Terrace, Evergreen Park, and Palo Alto Central residents supported the project due to the aesthetic and safety improvements, and to help revitalize the area.
- The President of the Palo Alto Central Homeowner's Association opposed the two lane configuration, but supported project elements such as the new signage and street improvements.
- A business owner on California Avenue opposed the project because the two lane configuration will create more congestion in the area during lunch and would result in parking impacts; and felt the project is not a priority for use of public funds.
- The Chair of the Palo Alto Bicycle Advisory Committee and a resident who bicycles to California Avenue supported the project because it adds parking and pedestrian safety improvements and the lane reductions would result in a safer environment for bicyclists.

Approximately a dozen e-mails in support of the project were directed to the PTC in advance of the meeting.

The Commission discussed the possible intensification of uses on the street from future development and the ability of two lanes to accommodate the increased traffic. Staff indicated that considerable traffic capacity is available with the two lane configuration. The Commission also had several questions regarding elements of the project that address the functionality of the street, e.g., loading zones and raised mid-block crosswalks. Staff explained the general concepts for the design of the streetscape, and noted that those components would be further discussed with the public during a series of community meetings over the next year and a final design would be reviewed by the ARB and PTC before Council action early next year. The Commission also had questions regarding the economic effects the improvements to the street would have on businesses in the area. Staff responded that two elements of the plan are critical from an economic development perspective—added parking and creating sense of place.

Timeline

The proposed project timeline for the California Avenue – Transit Hub Improvements project is:

No.	Task	Target Date
1	Release RFP for Design Consultant Selection	Feb 2011
2	Begin Design Phase	Apr 2011
3	Outreach to public for final design	March – November 2011
4	Caltrans NEPA Clearance	Sept 2011
5	Review and Approval of Final Design	January – February 2012
6	100% Design	Mar 2012
7	Bid Construction	April 2012
8	Begin Construction	June 2012

Resource Impact

The engineer's estimate for the cost of the California Avenue – Transit Hub Corridor Improvements Project is $1,725,200. The City received a grant from the VTA CDT Program in the amount of $1,175,200, which becomes available to the City for use in February 2012. A $550,000 local match from the Infrastructure Reserve Account will be required as part of the grant requirements.

Staff impacts will be incurred in the amount of time spent to manage and coordinate the hiring of a design consultant and management of the consultant's work during 2011, attendance at public hearings and preparation of staff reports, and management of bid procurement and project construction in 2012. The Planning and Community Environment Department will lead the design effort, with assistance from Public Works, which would then provide construction oversight in 2012. Purchasing staff in Administrative Services would also be involved at various stages to assist with soliciting and administering contracts for design and construction. Cumulatively, staff estimates a staff effort equivalent to 0.25 FTE of a professional position would be devoted to the project over a 2-year period.

Policy Implications

The City's Comprehensive Plan recommends that the City enhance the California Avenue streetscape by upgrading the visual quality of the street to attract additional business and visitors to the area. Consistent with those Comprehensive Plan goals, the proposed streetscape and place-making improvements along California Avenue should ensure continued growth and enhancement of the California Avenue Business District. The Comprehensive Plan also encourages a mix of residential and non-residential uses at a scale of development that is comfortable for pedestrian use. The Plan encourages improving the appearance of the street while preserving its "home town" character. Also, Program L-18 specifically calls out for street improvements that could make a substantial contribution to the character of commercial Centers, including narrowing travel lanes.

Environmental Review

The Initial Study and draft Negative Declaration are attached (Attachment A), and conclude that no significant environmental impacts would result from the project. Approval of the Negative Declaration for the California Avenue Transit Hub Corridor Improvement project is necessary prior to initiating detailed design.

ATTACHMENTS:

- Attachment A: Negative Declaration - CEQA Check List (PDF)
- Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (PDF)
- Attachment C: January 12, 2011 P&TC Staff Report (w/o attachments) (PDF)
- Attachment D: P&TC Excerpt Minutes of January 12, 2011 (PDF)
- Attachment E: Traffic Calming Economics (PDF)
- Attachment F: Cal Ave Streetscape Interviews (PDF)

Prepared By: Jaime Rodriguez, Chief Transportation Official

Department Head: Curtis Williams, Director

City Manager Approval: James Keene, City Manager

City of Palo Alto

Department of Planning and Community Environment
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441 FAX (650) 329-2154
www.cityofpaloalto.org

Notice of Intent to Adopt a Negative Declaration

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et sec.) that the following project will not have a significant effect on the environment.

File Number	TAZ	APN(s)	Date
N/A	N/A		December 20, 2010

Project Name	Project Type (Use)
California Avenue Streetscape Improvements - Phase II	Improvements to Right-of-Way

Owner	Applicant
City of Palo Alto	City of Palo Alto, Transportation Division

Project Location

The project area is limited to the 100 through 400 blocks of California Avenue, which is bounded by the Caltrain station to the east and El Camino Real to the west.

Project Description

The California Avenue Streetscape Improvements (Phase II) project includes the implementation of streetscape treatments along California Avenue between El Camino Real and the Caltrain – Park Blvd Plaza. Project elements include: community identity markers; traffic calming treatments such as speed tables at existing mid-block crosswalk locations, bulb-outs at intersections to reduce crosswalk lengths, and a 4-lane to 2-lane reduction; streetscape elements such as decorative pavement bands to divide parking lanes from parking lanes, outdoor seating areas, enhanced bicycle parking elements, information kiosks, and newspaper ~~racks; landscape improvements; enhanced and additional on-street vehicle parking; and community-focused~~ improvements at the Caltrain – Park Blvd Plaza.

Purpose of Notice

The purpose of this notice is to inform you that the City of Palo Alto Planning Staff has recommended that a Negative Declaration be approved for this project. City Planning Staff has reviewed the Initial Study for the project, and based upon substantial evidence in the record, finds that no significant environmental effects will occur. It should be noted that the approval of a Negative Declaration does not constitute approval of the project under consideration. The decision to approve or deny the project will be made separately.

Public Review Period:	Begins: December 27, 2010	Ends: January 18, 2011

Public Comments regarding the correctness, completeness, or adequacy of this negative declaration are invited and must be received on or before the end of the public review period. Such comments should be based on specific environmental concerns. Written comments should be addressed to the **City of Palo Alto, Planning Department, 250 Hamilton Avenue, Palo Alto, CA 94301**. For additional information regarding this Negative Declaration, please contact **Clare Campbell** at **650-617-3191**.

The Negative Declaration and Initial Study may be viewed at the following locations:
(1) Planning Department, 250 Hamilton Avenue, Palo Alto, CA 94301 (2) Development Center, 285 Hamilton Avenue, Palo Alto, CA 94301

Responsible Agencies sent a copy of this document:
NA
Mitigation Measures included in the project to reduce potentially significant impacts to a less than significant level:
NA

A reporting or monitoring program must be adopted for measures to mitigate significant impacts at the time the Negative Declaration is approved, in accord with the requirements of section 21081.6 of the Public Resources Code.		
Prepared by: Clare Campbell, Planner	**Signature**	12/20/10 **Date**

DRAFT ADOPTED ON: _____

City of Palo Alto
Department of Planning and Community Environment
California Environmental Quality Act
DRAFT NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT

Date: December 20, 2010

Project Name: California Avenue Streetscape Improvements - Phase II

Project Location: The project area is limited to the 100 through 400 blocks of California Avenue, which is bounded by the Caltrain station to the east and El Camino Real to the west.

Applicant: City of Palo Alto, Transportation Division
Jaime Rodriquez, Chief Transportation Official

Owner: City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Project Description:

The California Avenue Streetscape Improvements (Phase II) project includes the implementation of streetscape treatments along California Avenue between El Camino Real and the Caltrain – Park Blvd Plaza. Project elements include: community identity markers; traffic calming treatments such as speed tables at existing mid-block crosswalk locations, bulb-outs at intersections to reduce crosswalk lengths, and a 4-lane to 2-lane reduction; streetscape elements such as decorative pavement bands to divide parking lanes from parking lanes, outdoor seating areas, enhanced bicycle parking elements, information kiosks, and newspaper racks; landscape improvements; enhanced and additional on-street vehicle parking; and community-focused improvements at the Caltrain – Park Blvd Plaza.

II. DETERMINATION

In accordance with the City of Palo Alto's procedures for compliance with the California Environmental Quality Act (CEQA), the City has conducted an Initial Study to determine whether the proposed project could have a significant effect on the environment. On the basis of that study, the City makes the following determination:

__X__ The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION is hereby adopted.

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

_____ **Although the project, as proposed, could have a significant effect on the environment, there will not be a significant effect on the environment in this case because mitigation measures for traffic impacts have been added to the project and, therefore, a MITIGATED NEGATIVE DECLARATION is hereby adopted.**

The attached initial study incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

Project Planner — **Date** 12-20-10

Adopted by Director of Planning and Community Environment — **Date**

Signed after the Negative Declaration has been approved

California Avenue

Streetscape Improvements

Phase II

Initial Study

Prepared by
City of Palo Alto

December 20, 2010

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

ENVIRONMENTAL CHECKLIST
City of Palo Alto
Department of Planning and Community Environment

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

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PROJECT DESCRIPTION

1. PROJECT TITLE

California Avenue Streetscape Improvements - Phase II

2. LEAD AGENCY NAME AND ADDRESS

City of Palo Alto
Department of Planning and Community Environment
250 Hamilton Ave.
Palo Alto, CA 94303

3. CONTACT PERSON AND PHONE NUMBER

Clare Campbell, Planner
City of Palo Alto
650-617-3191

4. PROJECT SPONSOR'S NAME AND ADDRESS

City of Palo Alto, Transportation Division
Jaime Rodriquez, Chief Transportation Official

5. APPLICATION NUMBER - NA

6. PROJECT LOCATION

The project site is centrally located in the city of Palo Alto, in the northern part of Santa Clara County, west of U.S. Highway 101 and east of State Route 82 (El Camino Real), as shown on Figure 1, *Regional Map*. The project area is limited to the 100 through 400 blocks of California Avenue, which is bounded by the Caltrain station to the east and El Camino Real to the west, as shown on Figure 2, *Vicinity Map.*

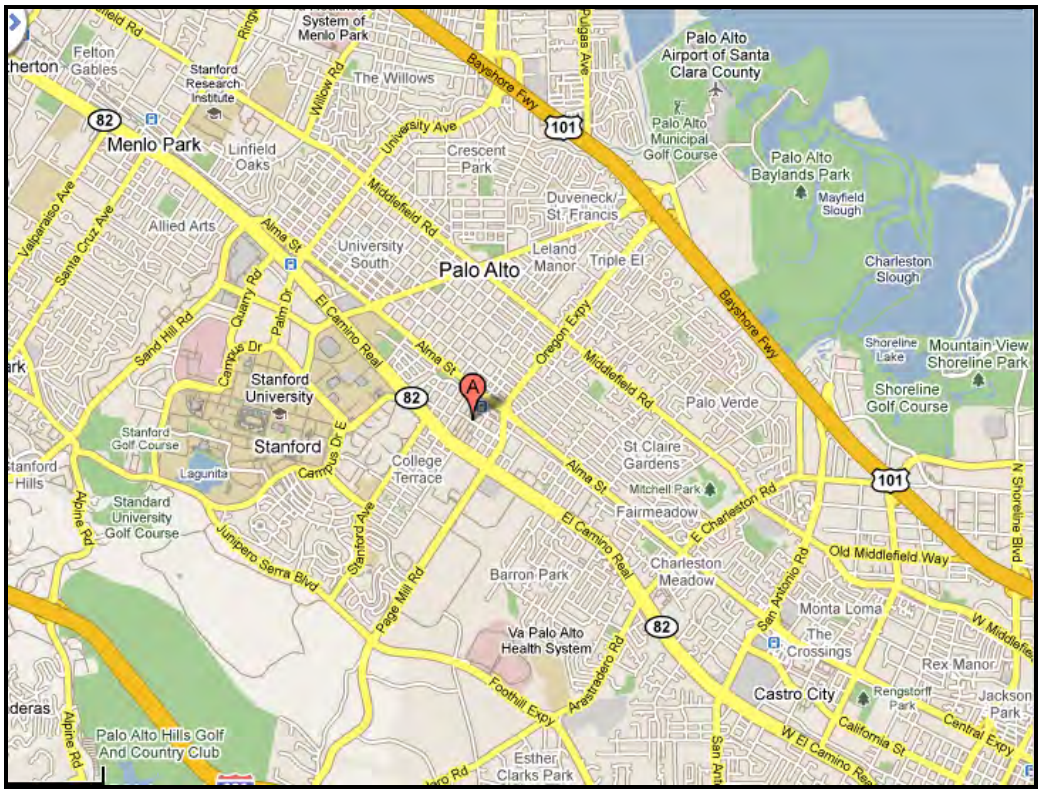

Figure 1: Regional Map

Figure 2: Vicinity Map

7. GENERAL PLAN DESIGNATION

The project area is designated as Regional/Community Commercial in the Palo Alto 1998 – 2010 Comprehensive Plan. This land use designation includes larger shopping centers and districts that have wider variety goods and services than the neighborhood shopping areas. They rely on larger trade areas and include such uses as department stores, bookstores, furniture stores, toy stores, apparel shops, restaurants, theaters, and non-retail services such as offices and banks. California Avenue is designated as a "collector" street in Palo Alto's roadway hierarchy. This type of roadway collects and distributes local traffic to and from arterial streets and provides access to adjacent properties.

8. ZONING

The project area is zoned CC(2)(R)(P), Community Commercial (2) with a Retail and Pedestrian shopping combining district overlay. The project area also falls within the boundaries of the Pedestrian and Transit Oriented Development (PTOD) overlay district. The project will not result in a change of use and does not conflict with the existing zoning.

The CC Community Commercial district is intended to create and maintain major commercial centers accommodating a broad range of office, retail sales, and other commercial activities of community-wide or regional significance. The CC community commercial district is intended to be applied to regional/community commercial centers identified by the Palo Alto Comprehensive Plan. The community commercial (2) (CC(2)) subdistrict is intended to modify the site development regulations of the CC community commercial district, where applied in combination with such district, to allow site specific variations to the community commercial uses and development requirements in the CC district.

The (R) Retail shopping combining district is intended to modify the uses allowed in a commercial district, where applied in combination with such district, to allow only retail, eating and service oriented commercial development on the ground floors.

The (P) Pedestrian shopping combining district is intended to modify the regulations of the CC community commercial district in locations where it is deemed essential to foster the continuity of retail stores and display windows and to avoid a monotonous pedestrian environment in order to establish and maintain an economically healthy retail district.

The California Avenue Pedestrian and Transit Oriented Development (PTOD) Combining District is intended to allow higher density residential dwellings on commercial, industrial and multi-family parcels within a walkable distance of the California Avenue Caltrain station, while protecting low density residential parcels and parcels with historical resources that may also be located in or adjacent to this area. The combining district is intended to foster densities and facilities that: (1) Support use of public transportation; (2) Encourage a variety of housing types, commercial retail and limited office uses; (3) Encourage project design that achieves an overall context-based development for the PTOD overlay area; (4) Require streetscape design elements that are attractive pedestrians and bicyclists; (5) Increase connectivity to surrounding existing and planned pedestrian and bicycle facilities; and (6) Implement the city's Housing

Element and Comprehensive Plan. A PTOD combining district may be applied to a parcel through rezoning of the site that is within the specified boundaries of the district.

9. PROJECT DESCRIPTION

The California Avenue Streetscape Improvements (Phase II) project includes the implementation of streetscape treatments along California Avenue between El Camino Real and the Caltrain – Park Blvd Plaza. Project elements include: community identity markers; traffic calming treatments such as speed tables at existing mid-block crosswalk locations, bulb-outs at intersections to reduce crosswalk lengths, and a 4-lane to 2-lane reduction; streetscape elements such as decorative pavement bands to divide parking lanes from parking lanes, outdoor seating areas, enhanced bicycle parking elements, information kiosks, and newspaper racks; landscape improvements; enhanced and additional on-street vehicle parking; and community-focused improvements at the Caltrain – Park Blvd Plaza.

Palo Alto Review Requirements
The proposed project requires Architectural Review by the City of Palo Alto. The project is required to conform to the designated zoning and related Comprehensive Plan polices.

10. SURROUNDING LAND USES AND SETTING

The project area is a commercial zone with a variety of restaurants, retail and grocery stores and is surrounded primarily with similar non-residential uses within a two block radius. Further to the north and south, residential uses become the dominant land use.

11. OTHER PUBLIC AGENCY APPROVALS REQUIRED

Not applicable.

ENVIRONMENTAL CHECKLIST AND DISCUSSION OF IMPACTS

EVALUATION OF ENVIRONMENTAL IMPACTS

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. **[A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e. g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e. g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).]**

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "(Mitigated) Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 17, "Earlier Analysis," may be cross-referenced).

5) Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (C)(3) (D). In this case, a brief discussion should identify the following:
   a) Earlier Analysis Used. Identify and state where they are available for review.
   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) The explanation of each issue should identify:
   a) the significance criteria or threshold, if any, used to evaluate each question; and
   b) the mitigation measure identified, if any, to reduce the impact to less than significance.

DISCUSSION OF IMPACTS

The following Environmental Checklist was used to identify environmental impacts, which could occur if the proposed project is implemented. The left-hand column in the checklist lists the source(s) for the answer to each question. The sources cited are identified at the end of the checklist. Discussions of the basis for each answer and a discussion of mitigation measures that are proposed to reduce potential significant impacts are included.

A. AESTHETICS

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Substantially degrade the existing visual character or quality of the site and its	1,2,5			X	

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
surroundings?					
b) Have a substantial adverse effect on a public view or view corridor?	1, 2-Map L4, 5			X	
c) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	1, 2-Map L4, 5				X
d) Violate existing Comprehensive Plan policies regarding visual resources?	1,2,5				X
e) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	1,5,6				X
f) Substantially shadow public open space (other than public streets and adjacent sidewalks) between 9:00 a.m. and 3:00 p.m. from September 21 to March 21?	1,5,6				X

DISCUSSION:

The proposed project is required by the City of Palo Alto to undergo Architectural Review. The intent of this review is to (1) Promote orderly and harmonious development in the city; (2) Enhance the desirability of residence or investment in the city; (3) Encourage the attainment of the most desirable use of land and improvements; (4) Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and (5) Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other. The proposed improvements are anticipated to have a less than significant aesthetic impact due to the required conformance with the Architectural Review requirements.

Mitigation Measures: None Required

B. AGRICULTURAL AND FOREST RESOURCES

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	1				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	1, 2-MapL9				X

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)[1]) or timberland (as defined in Public Resources Code section 4526[2])?	1				X
d) Result in the loss of forest land or conversion of forest land to non-forest use?	1				X
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	1				X

DISCUSSION:

The project area is not located in a "Prime Farmland", "Unique Farmland", or "Farmland of Statewide Importance" area, as shown on the maps prepared for the Farmland Mapping and Monitoring Program of the California Resources Agency. The site is not zoned for agricultural use, and is not regulated by the Williamson Act. The project area is within a fully developed urban area and has no impacts on forest or timberland.

Mitigation Measures: None Required

C. AIR QUALITY

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with or obstruct with implementation of the applicable air quality plan (1982 Bay Area Air Quality Plan & 2000 Clean Air Plan)?	1,5,9				X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation indicated by the following:					
i. Direct and/or indirect operational emissions that exceed the Bay Area Air	1,5,9			X	

[1] PRC 12220(g): "Forest land" is land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources**,** including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.

[2] PRC 4526: "Timberland" means land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis after consultation with the district committees and others.

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Quality Management District (BAAQMD) criteria air pollutants of 80 pounds per day and/or 15 tons per year for nitrogen oxides (NO), reactive organic gases (ROG), and fine particulate matter of less than 10 microns in diameter (PM_{10});					
ii. Contribute to carbon monoxide (CO) concentrations exceeding the State Ambient Air Quality Standard of nine parts per million (ppm) averaged over eight hours or 20 ppm for one hour(as demonstrated by CALINE4 modeling, which would be performed when a) project CO emissions exceed 550 pounds per day or 100 tons per year; or b) project traffic would impact intersections or roadway links operating at Level of Service (LOS) D, E or F or would cause LOS to decline to D, E or F; or c) project would increase traffic volumes on nearby roadways by 10% or more)?	1,5,9				X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	1,5,9			X	
d) Expose sensitive receptors to substantial levels of toxic air contaminants?	1,5,9				X
i. Probability of contracting cancer for the Maximally Exposed Individual (MEI) exceeds 10 in one million	1,9				X
ii. Ground-level concentrations of non-carcinogenic TACs would result in a hazard index greater than one (1) for the MEI	1,9				X
e) Create objectionable odors affecting a substantial number of people?	1,9				X
f) Not implement all applicable construction emission control measures recommended in the *Bay Area Air Quality Management District CEQA Guidelines?*	1,9				X

DISCUSSION:

Based on the Bay Area Air Quality Management District's (BAAQMD) thresholds, it is not anticipated that the project would affect any regional air quality plan or standards, or result in a cumulatively considerable net increase of any criteria pollutant. The extent of the effects on air quality will be temporary only, during the period of site preparation and construction. The City of Palo Alto uses the BAAQMD's Basic Control Measures

to reduce particulate emissions during project construction to a less than significant level. The project and related construction activities are anticipated to have a less than significant impact on air quality.

Mitigation Measures: None Required

D. BIOLOGICAL RESOURCES

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	1, 2-MapN1, 5				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, including federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	1,2-MapN1, 5				X
c) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	1,8-MapN1, 5				X
d) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or as defined by the City of Palo Alto's Tree Preservation Ordinance (Municipal Code Section 8.10)?	1,2,3,4,5				X
e) Conflict with any applicable Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	1,5				X

DISCUSSION:

The project area is located within a fully developed urban setting. There are no sensitive plant or animal species identified in this area.

Mitigation Measures: None Required

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

E. CULTURAL RESOURCES

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Directly or indirectly destroy a local cultural resource that is recognized by City Council resolution?	1,10				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to 15064.5?	1,2-MapL8				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	1,2-MapL8				X
d) Disturb any human remains, including those interred outside of formal cemeteries?	1,2-MapL8				X
e) Adversely affect a historic resource listed or eligible for listing on the National and/or California Register, or listed on the City's Historic Inventory?	1,2-MapL7, 10				X
f) Eliminate important examples of major periods of California history or prehistory?	1				X

DISCUSSION:

The proposed project involves minor construction activities within the public right-of-way that is located within a fully developed and previously disturbed area. The proposed project will not create any cultural impacts to the affected area. For all projects, if during grading and construction activities, any archaeological or human remains are encountered, construction shall cease and a qualified archaeologist shall visit the site to address the find. The Santa Clara County Medical Examiner's office shall be notified to provide proper direction on how to proceed. If any Native American resources are encountered during construction, construction shall cease immediately until a Native American descendant, appointed by the Native American Heritage Commission of the State of California, is able to evaluate the site and make further recommendations and be involved in mitigation planning.

Mitigation Measures: None Required

F. GEOLOGY, SOILS AND SEISMICITY

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State	11				X

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.					
ii) Strong seismic ground shaking?	2-MapN10				X
iii) Seismic-related ground failure, including liquefaction?	2-MapN5				X
iv) Landslides?	2-MapN5				X
b) Result in substantial soil erosion or the loss of topsoil?	1				X
c) Result in substantial siltation?	1				X
d) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	2-MapN5				X
e) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	2-MapN5			X	
f) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	1				X
g) Expose people or property to major geologic hazards that cannot be mitigated through the use of standard engineering design and seismic safety techniques?	1,5				X

DISCUSSION:

The proposed project includes improvements within the public right of way (sidewalk and road) of a fully developed commercial area. Although the project is located in an area with expansive soils and has a high potential for surface rupture along fault traces and potential for earthquake-induced landslides where sloped, the project scope is limited to improvements at or near the existing grade and is anticipated to not be significantly impacted by the existing geologic conditions. The proposed project would not create any new geology, soils and seismicity impacts.

Generally, the City of Palo Alto would experience a range from weak to very violent shaking in the event of a major earthquake along the San Andreas or Hayward fault. Although hazards exist, development would not expose people or property to major geologic hazards that cannot be addressed through the use of standard engineering design and seismic safety techniques, as required by building codes. With proper engineering new development is not expected to result in any significant adverse short or long-term impacts related to geology, soils or seismicity.

Mitigation Measures: None Required

G. GREENHOUSE GAS EMISSIONS

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	1,5,9			X	
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	1,5,9			X	

DISCUSSION:

The San Francisco Bay Area Air Basin (SFBAAB) is currently designated as a nonattainment area for state and national ozone standards and national particulate matter ambient air quality standards. SFBAAB's nonattainment status is attributed to the region's development history. Past, present and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant.

The Bay Area Air Quality Management District's (BAAQMD) approach to developing a Threshold of Significance for Green House Gas (GHG) emissions is to identify the emissions level for which a project would not be expected to substantially conflict with existing California legislation adopted to reduce statewide GHG emissions needed to move us towards climate stabilization. If a project would generate GHG emissions above the threshold level, it would be considered to contribute substantially to a cumulative impact, and would be considered significant.

The Thresholds of Significance for operational-related GHG emissions are:

• For land use development projects, the threshold is compliance with a qualified GHG reduction Strategy; or annual emissions less than 1,100 metric tons per year (MT/yr) of CO2e; or 4.6 MT CO2e/SP/yr (residents + employees). Land use development projects include residential, commercial, industrial, and public land uses and facilities.

• For stationary-source projects, the threshold is 10,000 metric tons per year (MT/yr) of CO2e. Stationary-source projects include land uses that would accommodate processes and equipment that emit GHG emissions and would require an Air District permit to operate. If annual emissions of operational-related GHGs exceed these levels, the proposed project would result in a cumulatively considerable contribution of GHG emissions and a cumulatively significant impact to global climate change.

The BAAQMD has established project level screening criteria to assist in the evaluation of impacts. If a project meets the screening criteria and is consistent with the methodology used to develop the screening criteria, then the project's air quality impacts may be considered less than significant. Below

are some screening level examples taken from the BAAQMD CEQA Air Quality Guidelines, 06/2010 (Table 3-1, Operational-Related Criteria Air Pollutant and Precursor Screening Level Sizes).

Land Use Type	Operational GHG Screening Size **
Single-family	56 du
Apartment, low-rise	78 du
Apartment, mid-rise	87 du
Condo/townhouse, general	78 du
City park	600 acres
Day-care center	11,000 sf
General office building	53,000 sf
Medical office building	22,000 sf
Office park	50,000 sf
Quality restaurant	9,000 sf

**If project size is => screening size, then it is considered significant.

Based on the types of projects that would be considered to have a significant GHG impact, the proposed project, due to its limited scope, has been determined to not exceed the significance thresholds established by the BAAQMD, and therefore does not have significant impact for creating GHG emissions.

Mitigation Measures: None Required

H. HAZARDS AND HAZARDOUS MATERIALS

Note: Some of the thresholds can also be dealt with under a topic heading of ***Public Health and Safety*** *if the primary issues are related to a subject other than hazardous material use.*

Issues and Supporting Information Resources **Would the project:**	**Sources**	**Potentially Significant Issues**	**Potentially Significant Unless Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Create a significant hazard to the public or the environment through the routing transport, use, or disposal of hazardous materials?	1,5				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	1,5				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	1,5				X
d) Construct a school on a property that is subject to hazards from hazardous materials contamination, emissions or accidental release?	1,5				X
e) Be located on a site which is included on a list of hazardous materials sites compiled pursuant	1,2-MapN9				X

to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?					
f) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	1				X
g) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working the project area?	1				X
h) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	1,2-MapN7				X
i) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	1,2-MapN7				X
j) Create a significant hazard to the public or the environment from existing hazardous materials contamination by exposing future occupants or users of the site to contamination in excess of soil and ground water cleanup goals developed for the site?	1,5				X

DISCUSSION:

The proposed project is minor in scope and does not involve the use, creation or transportation of hazardous materials. California Avenue is not designated as an evacuation route nor located within or near the wildland fire danger area. The proposed project would have no impacts with regard to public safety, hazards and hazardous materials.

Mitigation Measures: None Required

I. HYDROLOGY AND WATER QUALITY

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	1,2,5				X
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have	2-MapN2				X

been granted)?					
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	1,5				X
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	1,5				X
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	1,5				X
f) Otherwise substantially degrade water quality?	1,5				X
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	2-MapN6				X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	2-MapN6				X
i) Expose people or structures to a significant risk of loss, injury or death involve flooding, including flooding as a result of the failure of a levee or dam or being located within a 100-year flood hazard area?	2-MapN8				X
j) Inundation by seiche, tsunami, or mudflow?	2-MapN6				X
k) Result in stream bank instability?	1,5				X

DISCUSSION:

The proposed project includes improvements within the public right of way (sidewalk and road) of a fully developed commercial area and is not anticipated to create any new hydrology and water quality impacts.

All development is required to comply with building codes that address flood safety issues. Development projects are required to implement Best Management Practices (BMPs) for construction activities as specified by the California Storm Water Best Management Practices Handbook (CASQA, 2003) and/or the Manual of Standards for Erosion and Sediment Control Measures (ABAG, 1995). The BMPs include measures guiding the management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and managing all aspects of the construction process to ensure control of potential water pollution sources. All development projects must comply with all City, State and Federal standards pertaining to storm water run-off and water quality.

Mitigation Measures: None Required

J. LAND USE AND PLANNING

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community?	1,5				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	1,2,3,4,5				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	1,2				X
d) Substantially adversely change the type or intensity of existing or planned land use in the area?	1,5				X
e) Be incompatible with adjacent land uses or with the general character of the surrounding area, including density and building height?	1,5				X
f) Conflict with established residential, recreational, educational, religious, or scientific uses of an area?	1,5				X
g) Convert prime farmland, unique farmland, or farmland of statewide importance (farmland) to non-agricultural use?	1,2,3				X

DISCUSSION:

The proposed project involves minor work in the public right-of-way (sidewalk) and does not impact the existing land uses along California Avenue. The improvements are intended to compliment and enhance the existing commercial district and are not anticipated to create any land use impacts.

Mitigation Measures: None Required

K. MINERAL RESOURCES

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	1,2				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	1,2				X

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

DISCUSSION:
The City of Palo Alto has been classified by the California Department of Conservation (DOC), Division of Mines and Geology (DMG) as a Mineral Resource Zone 1 (MRZ-1). This designation signifies that there are no aggregate resources in the area. The DMG has not classified the City for other resources. There is no indication in the 2010 Comprehensive Plan that there are locally or regionally valuable mineral resources within the City of Palo Alto.

Mitigation Measures: None Required.

L. NOISE

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	1,2,12			X	
b) Exposure of persons to or generation of excessive ground borne vibrations or ground borne noise levels?	1,2,12			X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	1,2,12				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	1,2,12			X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, would the project expose people residing or working in the project area to excessive noise levels?	1				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	1				X
g) Cause the average 24 hour noise level (Ldn) to increase by 5.0 decibels (dB) or more in an existing residential area, even if the Ldn would remain below 60 dB?	1				X
h) Cause the Ldn to increase by 3.0 dB or more in an existing residential area, thereby causing the Ldn in the area to exceed 60 dB?	1				X
i) Cause an increase of 3.0 dB or more in an existing residential area where the Ldn currently exceeds 60 dB?	1				X
j) Result in indoor noise levels for residential development to exceed an Ldn of 45 dB?	1				X
k) Result in instantaneous noise levels of greater than 50 dB in bedrooms or 55 dB in other rooms in areas with an exterior Ldn of 60 dB or greater?	1				X

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
l) Generate construction noise exceeding the daytime background Leq at sensitive receptors by 10 dBA or more?	1,12				X

DISCUSSION:

All development, including construction activities, must comply with the City's Noise Ordinance (PAMC Chapter 9.10), which restricts the timing and overall noise levels associated with construction activity. Short-term temporary construction noise that complies with the Noise Ordinance would result in impacts that are expected to be less than significant. The project is located in busy commercial district with an active train station in the immediate vicinity; the existing noise conditions are not quiet and the temporary construction activities will not create any new significant noise impacts.

Mitigation Measures: None Required

M. POPULATION AND HOUSING

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	1				X
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	1				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	1				X
d) Create a substantial imbalance between employed residents and jobs?	1				X
e) Cumulatively exceed regional or local population projections?	1				X

DISCUSSION:

The proposed project includes improvements within the public right of way (sidewalk and road) of a fully developed commercial area and does not encourage development and therefore will not create any new population and housing impacts.

Mitigation Measures: None Required

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

N. PUBLIC SERVICES

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
a) Fire protection?	1				X
b) Police protection?	1				X
c) Schools?	1				X
d) Parks?	1				X
e) Other public facilities?	1				X

DISCUSSION:
The proposed project includes improvements within the public right of way (sidewalk and road) of a fully developed commercial area and does not encourage growth and development and is not anticipated to generate new users as to create impacts to the existing public services for the City.

Mitigation Measures: None Required

O. RECREATION

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	1				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	1				X

DISCUSSION:
The proposed project includes improvements within the public right of way (sidewalk and road) of a fully developed commercial area and does not encourage growth and development in the City and is not anticipated to generate new users as to create impacts to the existing City recreational facilities.

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

Mitigation Measures: None Required

P. TRANSPORTATION AND TRAFFIC

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	1,5,6,8			X	
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	1,5,6,8			X	
c) Result in change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	1,5,6,8			X	
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	1,5,6,8			X	
e) Result in inadequate emergency access?	1,5,6,8			X	
f) Result in inadequate parking capacity?	1,5,6,8				X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., pedestrian, transit & bicycle facilities)?	1,2,5,6,8				X
h) Cause a local (City of Palo Alto) intersection to deteriorate below Level of Service (LOS) D and cause an increase in the average stopped delay for the critical movements by four seconds or more and the critical volume/capacity ratio (V/C) value to increase by 0.01 or more?	1,5,6,8			X	
i) Cause a local intersection already operating at LOS E or F to deteriorate in the average stopped delay for the critical movements by four seconds or more?	1,5,6,8			X	
j) Cause a regional intersection to deteriorate from an LOS E or better to LOS F or cause critical movement delay at such an	1,5,6,8			X	

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

intersection already operating at LOS F to increase by four seconds or more and the critical V/C value to increase by 0.01 or more?					
k) Cause a freeway segment to operate at LOS F or contribute traffic in excess of 1% of segment capacity to a freeway segment already operating at LOS F?	1,5,6,8				X
l) Cause any change in traffic that would increase the Traffic Infusion on Residential Environment (TIRE) index by 0.1 or more?	1,5,6,8			X	
m) Cause queuing impacts based on a comparative analysis between the design queue length and the available queue storage capacity? Queuing impacts include, but are not limited to, spillback queues at project access locations; queues at turn lanes at intersections that block through traffic; queues at lane drops; queues at one intersection that extend back to impact other intersections, and spillback queues on ramps.	1,5,6,8			X	
n) Impede the development or function of planned pedestrian or bicycle facilities?	1,5,6,8			x	
o) Impede the operation of a transit system as a result of congestion?	1,5,6,8			X	
p) Create an operational safety hazard?	1,5,6,8			x	

DISCUSSION:

The proposed project would reduce the number of travel lanes on California Avenue between El Camino Real and Park Boulevard from four travel lanes to two. In addition to a traffic analysis, an operations and queue analysis of key intersections along California Avenue was completed as part of the traffic analysis for the project and is attached to this Initial Study.

The additional pavement space provided from the lane reduction would be used for streetscape improvements including decorative pavement bands, intersection bulb-outs, and to provide additional on-street parking supply. Most of the parking spaces would be 60-degree angled parking spaces, although some parallel parking will also be provided. At higher volume intersections such as El Camino Real & California Avenue and Birch Street & California Avenue, additional approach lanes are proposed to provide additional intersection capacity for traffic. All existing crosswalks for pedestrians would be maintained with three additional crosswalks provided at the intersections of Park Boulevard & California Avenue. Where bulb-out improvements are proposed, existing crosswalk lengths would be reduced to improve pedestrian operations. The project would also enhance the existing California Avenue Bike Route with the addition of Sharrows stenciled onto the pavement.

The proposed lane reduction was reviewed in accordance with City of Palo Alto and Valley Transportation Authority (VTA) – Congestion Management Program (CMP) guidelines. According to the City of Palo Alto, there are no pending projects or planned projects in the foreseeable future. Therefore, traffic volumes on California Avenue between El Camino Real and Park Boulevard will remain unchanged with the current land uses. An analysis of intersection Level of Service (LOS),

street segment LOS, and intersection queuing was conducted to determine whether the project would result in any significant adverse impacts under project conditions with the lane reduction.

The intersection LOS analyses show no significant impact from the proposed lane reduction along California Avenue. The roadway segment LOS analyses also show no significant impact from the proposed lane reduction along California Avenue. The queue length and overall operations analysis though did yield several optional improvements to the City's proposed conceptual plan line to help improve operations under the proposed two-lane condition including:

- At California Avenue the existing two-lane to three-lane westbound approach to the El Camino Real intersection may be maintained to help provide adequate storage capacity for at least 200 feet from the intersection. This would result in the loss of the 5 new on-street parking spaces along the north side of California Avenue but still allows for the maintenance of the existing 12 on-street parking spaces in the segment providing for no overall parking loss.

- The proposed crosswalk additions at the intersections of California Avenue & Park Boulevard should be reviewed to ensure that wheelchair ramps can be installed in accordance with American Disabilities Act requirements.

- The City's proposed California Avenue plan line concept proposes to maintain the existing two-lane westbound approach at Birch Street. Two lanes are also proposed for maintenance immediately west of Birch Street approaching the midblock crosswalk west of the Birch Street intersection. To eliminate the need for lane merging along California Avenue, the westbound curb lane may be converted to a dedicated right turn only lane to northbound Birch Street.

- The City's proposed California Avenue plan line concept also proposed to maintain the existing two receiving lanes for eastbound California Avenue at El Camino Real. Only one receiving lane is required because at any given time only one lane from either the west side of El Camino Real, the southbound left turn approach of El Camino Real, or the northbound right turn approach of El Camino Real feed traffic onto California Avenue. The existing curb lane approaching the first midblock crosswalk of the project area may be removed to eliminate the need for lane merging. The curb lane can be converted to a bus duckout for the existing Stanford Marguerite shuttle stop at the intersection. This design would eliminate a stopped bus from blocking through traffic and help to avoid operations impacts to the El Camino Real & California Avenue intersection.

- Three proposed on-street parking segments on California Avenue do not meet the City's existing parking standards. Their adjacent lane widths are too narrow for vehicles to back out of angled parking spaces. To comply with the City's parking standards, these segments could be reconfigured to 45-degree parking stalls. The three parking segments are as follows:

    - The proposed four angled parking spaces in the same location of the proposed Optional Outside Seating/Community Stage area on the south side of California Avenue between Ash Street and the mid-block crosswalk immediately west of Ash Street. Changing these parking spaces from 60-degrees to 45-degrees does not result in a loss of proposed on-street parking spaces within this street segment.

- The proposed six angled parking spaces along the north side of California Avenue between Park Boulevard and the driveway entrance to the Molly Stone market. Changing these parking spaces from 60-degrees to 45-degrees results in the loss of one new parking space providing five spaces instead. This is still one space more than the existing four parking spaces under existing conditions.

- The proposed eight angled parking spaces along the south side of California Avenue between Park Boulevard (East) and Park Boulevard (West). Changing these parking spaces from 60-degrees to 45-degrees results in the loss of two new parking spaces providing six spaces instead. This is still one space more than the existing five parking spaces under existing conditions.

Mitigation: None Required

Q. UTILITIES AND SERVICE SYSTEMS

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	1,5				X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	1,5				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	1,5				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	1,5				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	1,5				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	1,5				X
g) Comply with federal, state, and local statutes and regulations related to solid waste?	1,5				X
h) Result in a substantial physical deterioration of a public facility due to increased use as a result of the project?	1,5				X

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

DISCUSSION:
The proposed project does not encourage growth and development and therefore no increase in the demand on existing utilities and service systems or impacts to these services are expected.

Mitigation Measures: None Required

R. MANDATORY FINDINGS OF SIGNIFICANCE

Issues and Supporting Information Resources Would the project:	Sources	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	1,2,3,4,7,10			**X**	
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	1			**X**	
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	1,5			**x**	

DISCUSSION:
The proposed improvements are anticipated to transform California Avenue between El Camino Real and California Avenue Caltrain station into a community corridor with transit, bicycle and pedestrian focused transportation treatments; renovate the California Avenue Caltrain Plaza into a vibrant hub for bicycle commuters and visitors; and provide best practice pedestrian-scaled improvements throughout the corridor to spur on going economic development activity and growth. As discussed in the Biological Resources section, this project does not impact sensitive wildlife or plant habitats. The goal of the project is intended to enhance the visitor's experience and create an inviting and welcoming commercial district.

The project's cumulative impacts are limited to the GHG emissions. A project of this minor scope is not anticipated to create cumulatively considerable impacts of any other nature. See the Greenhouse Gas Emissions section for further discussion.

Attachment: Attachment A: Negative Declaration - CEQA Check List (1320 : California Avenue Neg Dec and CIP)

SOURCE REFERENCES

1. Project Planner's knowledge of the site and the proposed project
2. Palo Alto Comprehensive Plan, 1998-2010
3. Palo Alto Municipal Code, Title 18 – Zoning Ordinance
4. Palo Alto Tree Technical Manual, Municipal Code Chapter 8.10.030, June 2001
5. Project Plans
6. Project Transportation Engineer's knowledge of the site and the proposed project
7. Not used
8. Traffic Impact Analysis, prepared by Hexagon Transportation Consultants, 12/14/2010
9. California Environmental Quality Act Air Quality Guidelines, June 2010 (BAAQMD)
10. Palo Alto Historic Resources Inventory
11. Alquist-Priolo Earthquake Fault Zoning Map
12. Palo Alto Municipal Code, Section 9.10-Noise Ordinance

ATTACHMENTS

(available on the City of Palo Alto web page: www.cityofpaloalto.org/calave)

A. Project Plans
B. Traffic Impact Analysis, 12/14/2010
C. MTC Capital Grant Application, 10/04/2010

DETERMINATION

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	X
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	
I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect: 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

Project Planner **Date**

HEXAGON TRANSPORTATION CONSULTANTS, INC.

California Avenue Lane Reduction

Transportation Impact Analysis

Prepared for:

City of Palo Alto

December 14, 2010

Hexagon Office: 111 W. St. John Street, Suite 850
San Jose, CA 95113
Hexagon Job Number: 10BW15
Phone: 408.971.6100
Document Name: California Av.doc

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Transportation Planning Neighborhood Traffic Calming Traffic Operations Traffic Impact Analysis Traffic Signal Design Travel Demand Forecasting

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

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Executive Summary

This report presents the results of the transportation impact analysis conducted for the proposed California Avenue lane reduction in Palo Alto, California. The proposed project would reduce the number of travel lanes on California Avenue between El Camino Real and Park Boulevard from four travel lanes to two. An operations and queue analysis of key intersections along California Avenue is also provided.

The additional pavement space provided from the lane reduction would be used for streetscape improvements including decorative pavement bands, intersection bulb-outs, and to provide additional on-street parking supply. Most of the parking spaces would be 60-degree angled parking spaces, although some parallel parking will also be provided. At higher volume intersections such as El Camino Real & California Avenue and Birch Street & California Avenue, additional approach lanes are proposed to provide additional intersection capacity for traffic. All existing crosswalks for pedestrians would be maintained with three additional crosswalks provided at the intersections of Park Boulevard & California Avenue. Where bulb-out improvements are proposed, existing crosswalk lengths would be reduced to improve pedestrian operations. The project would also enhance the existing California Avenue Bike Route with the addition of Sharrows stenciled onto the pavement.

The proposed lane reduction was reviewed in accordance with City of Palo Alto and Valley Transportation Authority (VTA) – Congestion Management Program (CMP) guidelines. According to the City of Palo Alto, there are no pending projects or planned projects in the foreseeable future. Therefore, traffic volumes on California Avenue between El Camino Real and Park Boulevard will remain unchanged with the current land uses. An analysis of intersection Level of Service (LOS), street segment LOS, and intersection queuing was conducted to determine whether the project would result in any significant adverse impacts under project conditions with the lane reduction.

The intersection LOS analyses show no significant impact from the proposed lane reduction along California Avenue. The roadway segment LOS analyses also show no significant impact from the proposed lane reduction along California Avenue. The queue length and overall operations analysis though did yield several optional improvements to the City's proposed conceptual plan line to help improve operations under the proposed two-lane condition including:

- At California Avenue the existing two-lane to three-lane westbound approach to the El Camino Real intersection may be maintained to help provide adequate storage

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capacity for at least 200 feet from the intersection. This would result in the loss of the 5 new on-street parking spaces along the north side of California Avenue but still allows for the maintenance of the existing 12 on-street parking spaces in the segment providing for no overall parking loss.

- The proposed crosswalk additions at the intersections of California Avenue & Park Boulevard should be reviewed to ensure that wheelchair ramps can be installed in accordance with American Disabilities Act requirements.

- The City's proposed California Avenue plan line concept proposes to maintain the existing two-lane westbound approach at Birch Street. Two lanes are also proposed for maintenance immediately west of Birch Street approaching the mid-block crosswalk west of the Birch Street intersection. To eliminate the need for lane merging along California Avenue, the westbound curb lane may be converted to a dedicated right turn only lane to northbound Birch Street.

- The City's proposed California Avenue plan line concept also proposed to maintain the existing two receiving lanes for eastbound California Avenue at El Camino Real. Only one receiving lane is required because at any given time only one lane from either the west side of El Camino Real, the southbound left turn approach of El Camino Real, or the northbound right turn approach of El Camino Real feed traffic onto California Avenue. The existing curb lane approaching the first mid-block crosswalk of the project area may be removed to eliminate the need for lane merging. The curb lane can be converted to a bus duckout for the existing Stanford Marguerite shuttle stop at the intersection. This design would eliminate a stopped bus from blocking through traffic and help to avoid operations impacts to the El Camino Real & California Avenue intersection.

- Three proposed on-street parking segments on California Avenue do not meet the City's existing parking standards providing adjacent lane widths that are too narrow for vehicles to back out of angled parking spaces. To comply with the City's parking standards these segments could be reconfigured to 45-degree parking stalls. The three parking segments are as follows:

    - The proposed four angled parking spaces in the same location of the proposed Optional Outside Seating/Community Stage area on the south side of California Avenue between Ash Street and the mid-block crosswalk immediately west of Ash Street. Changing these parking spaces from 60-degrees to 45-degrees does not result in a loss of proposed on-street parking spaces within this street segment.

    - The proposed six angled parking spaces along the north side of California Avenue between Park Boulevard and the driveway entrance to the Molly Stone market. Changing these parking spaces from 60-degrees to 45-

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

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- The proposed eight angled parking spaces along the south side of California Avenue between Park Boulevard (East) and Park Boulevard (West). Changing these parking spaces from 60-degrees to 45-degrees results in the loss of two new parking spaces providing six spaces instead. This is still one space more than the existing five parking spaces under existing conditions.

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1. Introduction

This report presents the results of the transportation impact analysis conducted for the proposed California Avenue lane reduction in Palo Alto, California. The proposed project would reduce the number of travel lanes on California Avenue between El Camino Real and Park Boulevard from four travel lanes to two. An operations and queue analysis of key intersections along California Avenue is also provided.

The additional pavement space provided from the lane reduction would be used for streetscape improvements including decorative pavement bands, intersection bulb-outs, and to provide additional on-street parking supply. Most of the parking spaces would be 60-degree angled parking spaces, although some parallel parking will also be provided. At higher volume intersections such as El Camino Real & California Avenue and Birch Street & California Avenue, additional approach lanes are proposed to provide additional intersection capacity for traffic. All existing crosswalks for pedestrians would be maintained with three additional crosswalks provided at the intersections of Park Boulevard & California Avenue. Where bulb-out improvements are proposed, existing crosswalk lengths would be reduced to improve pedestrian operations. The project would also enhance the existing California Avenue Bike Route with the addition of Sharrows stenciled onto the pavement. The project study area and study intersections are shown on Figures 1 & 2.

Scope of Study

The proposed lane reduction was reviewed in accordance with City of Palo Alto and Valley Transportation Authority (VTA) – Congestion Management Program (CMP) guidelines. The study included an analysis of traffic conditions for one signalized intersection, six unsignalized intersections, and the California Avenue corridor from El Camino Real to the Caltrain Station past Park Boulevard. The study intersections are identified below.

Study Intersections

1. El Camino Real and California Avenue (signal)
2. Ash Street and California Avenue (3-way STOP)
3. Birch Street and California Avenue (4-way STOP)
4. Park Boulevard (W) and California Avenue (3-way STOP)

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5. Park Boulevard (E) and California Avenue (3-way STOP)
6. Birch Street and Cambridge Avenue (4-way STOP)
7. Birch Street and Sherman Avenue (4-way STOP)

The segment lane capacity was reviewed for the following roadway segments within the project area:

- California Avenue between El Camino Real and Ash Street
- California Avenue between Ash Street and Birch Street
- California Avenue between Birch Street and Park Boulevard (W)
- California Avenue between Park Boulevard (W) and Park Boulevard (E)

Traffic conditions were analyzed for three weekday time periods: AM peak-hour (one hour between 7 AM – 9 AM), Mid-day peak-hour (one hour between 11:30 AM – 1:30 PM), and PM peak hour (one hour between 4 PM – 6 PM). Traffic conditions were evaluated for the following scenarios:

Scenario 1: *Existing Conditions.* Existing traffic volumes were obtained from tube count and manual turning movement count data obtained in November 2010.

Scenario 2: *Project Conditions.* The intersections and street segments were evaluated with the proposed lane reductions. Project conditions were evaluated relative to existing conditions in order to determine potential project impacts.

Methodology

This section presents the methods used to determine the traffic conditions for each scenario described above. It includes descriptions of the data requirements, the analysis methodologies, and the applicable level of service standards.

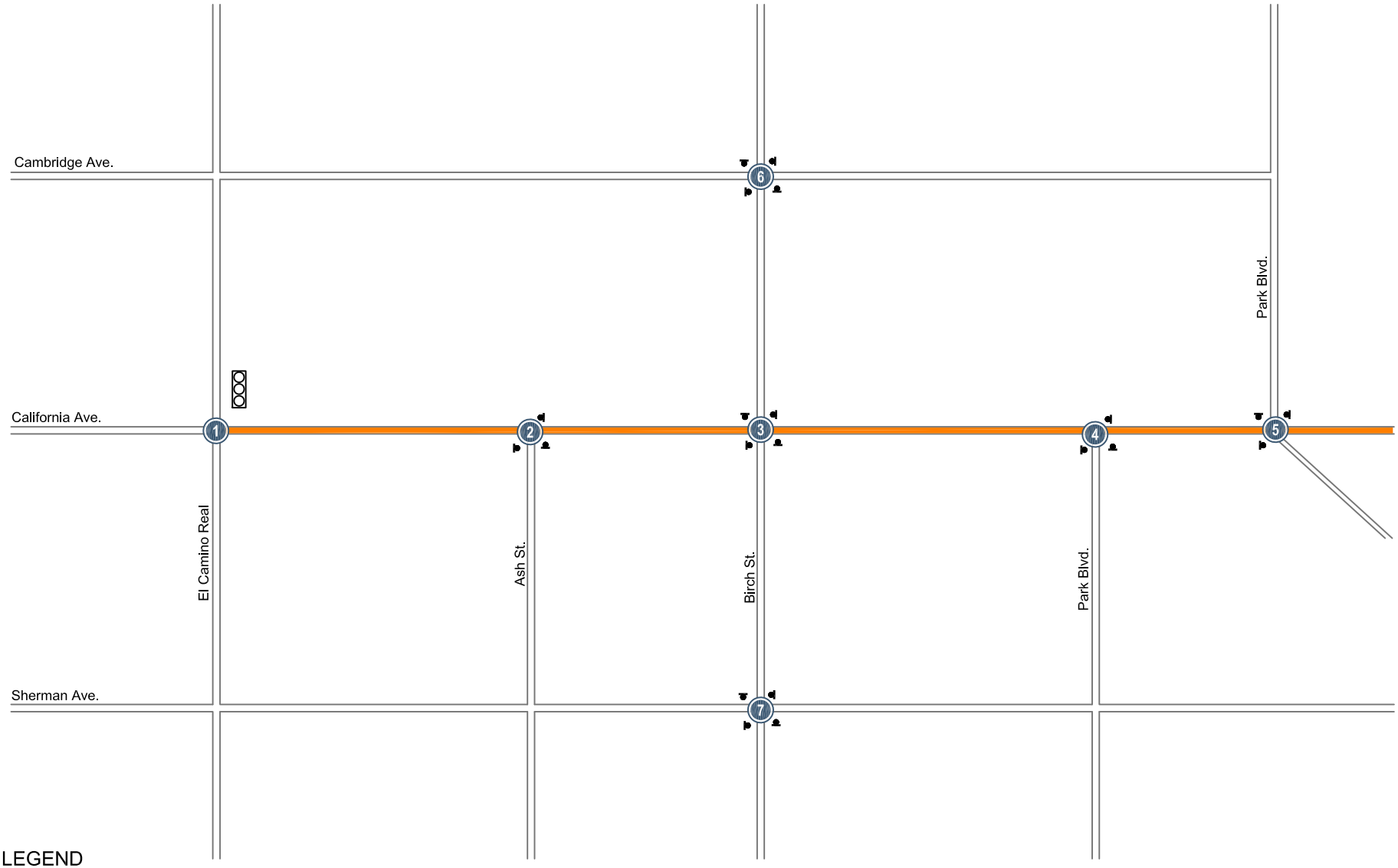
Data Requirements

The data required for the analysis were obtained from the City of Palo Alto and field observations. The following data were collected from these sources:

- existing traffic volumes
- lane configurations
- signal timing and phasing (for signalized intersections)
- existing and future bicycle facilities
- existing transit service
- travel time runs

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

= Study Intersection

Figure 1

Project Location and Study Intersections

HEXAGON TRANSPORTATION CONSULTANTS, INC.

NORTH
Not to Scale

Figure 2
Project Location Aerial

Level of Service Standards and Analysis Methodologies

Traffic conditions at the study intersections were evaluated using level of service (LOS). *Level of Service* is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. The various analysis methods are described below. The City of Palo Alto level of service standard for intersections is LOS D or better.

Signalized Intersections

Level of service at signalized intersections in the City of Palo Alto is based on the *2000 Highway Capacity Manual* (2000 HCM) method. The software called TRAFFIX is used to apply this 2000 HCM operations method for evaluation of conditions at signalized intersections. The 2000 HCM method evaluates signalized intersection operations on the basis of average control delay time for all vehicles at the intersection. *Control delay* is the amount of delay that is attributed to the particular traffic control device at the intersection, and includes initial deceleration delay, queue move-up time, stopped delay, and final acceleration delay. The correlation between average delay and level of service is shown in Table 1.

Table 1
Signalized Intersection LOS based on Delay

Level of Service	Description	Average Control Delay Per Vehicle (sec.)
A	Signal progression is extremely favorable. Most vehicles arrive during the green phase and do not stop at all. Short cycle lengths may also contribute to the very low vehicle delay.	10.0 or less
B	Operations characterized by good signal progression and/or short cycle lengths. More vehicles stop than with LOS A, causing higher levels of average vehicle delay.	10.1 to 20.0
C	Higher delays may result from fair signal progression and/or longer cycle lengths. Individual cycle failures may begin to appear at this level. The number of vehicles stopping is significant, though may still pass through the intersection without stopping.	20.1 to 35.0
D	The influence of congestion becomes more noticeable. Longer delays may result from some combination of unfavorable signal progression, long cycle lenghts, or high volume-to-capacity (V/C) ratios. Many vehicles stop and individual cycle failures are noticeable.	35.1 to 55.0
E	This is considered to be the limit of acceptable delay. These high delay values generally indicate poor signal progression, long cycle lengths, and high volume-to-capacity (V/C) ratios. Individual cycle failures occur frequently.	55.1 to 80.0
F	This level of delay is considered unacceptable by most drivers. This condition often occurs with oversaturation, that is, when arrival flow rates exceed the capacity of the intersection. Poor progression and long cycle lengths may also be major contributing causes of such delay levels.	greater than 80.0

Source: Transportation Research Board, *2000 Highway Capacity Manual* (Washington, D.C., 2000) p10-16.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Unsignalized Intersections

Level of service at unsignalized intersections also is based on the *2000 Highway Capacity Manual* (2000 HCM) method. The TRAFFIX software is used to apply the 2000 HCM operations method for evaluation of conditions at unsignalized intersections. The delay and corresponding level of service at unsignalized, stop-controlled intersections is presented in Table 2. The reported LOS represents the average delay of all intersection movements.

Table 2
Unsignalized Intersection LOS Based on Delay

Level of Service	Description	Average Delay Per Vehicle (Sec.)
A	Little or no traffic delay	10.0 or less
B	Short traffic delays	10.1 to 15.0
C	Average traffic delays	15.1 to 25.0
D	Long traffic delays	25.1 to 35.0
E	Very long traffic delays	35.1 to 50.0
F	Extreme traffic delays	greater than 50.0

Source: Transportation Research Board, *2000 Highway Capacity Manual* (Washington, D.C., 2000) p17-2.

Link Level of Service

Roadway links were analyzed using volume to capacity (V/C) ratios. The volume was measured in the field using recent traffic counts. The volumes used for the analysis were based on the day of the week with the highest daily traffic volume, which for all study segments was Friday, November 5th 2010. Using the highest day's traffic data, the counts were further disaggregated into AM, Midday, and PM peak hour volumes. The capacity of each study segment was derived from the *Highway Capacity Manual, 2000* published by the Transportation Research Board. According to the *Highway Capacity Manual*, an urban minor arterial (Class 4) has an approximate capacity of 800 vehicles per hour (Table 10-7). However, because of the presence of on-street parking, an additional reduction in capacity was applied per the publication, *Parking*, by Weant and Levinson (Table 11-1). Thus, for this analysis, each two lane directional segment was assumed to have a capacity of approximately 1,360 vehicles per hour and each one lane directional segment was assumed to have a capacity of 560 vehicles per hour. For each link, the peak hourly volume was divided by the capacity to calculate a V/C ratio. This was then correlated to a level of service per Table 3.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Intersection Queuing

A queuing analysis was conducted for high-demand movements at intersections. Vehicle queues were estimated using a Poisson probability distribution, which estimates the probability of "n" vehicles for a vehicle movement using the following formula:

$$\text{Probability } (X=n) = \frac{\lambda^n e^{-(\lambda)}}{n!}$$

Where:

Probability (X=n) = probability of "n" vehicles in queue per lane

n = number of vehicles in the queue per lane

λ = Average number of vehicles in queue per lane (vehicles per hour per lane/signal cycles per hour)

Table 3
Roadway Segment LOS based on Volume-to-Capacity Ratio

Level of Service	Description	Volume-to-Capacity (V/C) Ratio
A	Average operating speeds at the free-flow speed generally prevail. Vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.	less than 0.269
B	Speeds at the free-flow speed are generally maintained. The ability to maneuver within the traffic stream is only slightly restricted, and the general level of physical and psychological comfort provided to drivers is still high.	0.270 - 0.439
C	Speeds at or near the free-flow speed of the roadway prevail. Freedom to maneuver within the traffic stream is noticeably restricted, and lane changes require more vigilance on the part of the driver.	0.440 - 0.639
D	Speeds begin to decline slightly with increased flows at this level. Freedom to maneuver within the traffic stream is more noticeably limited, and the driver experiences reduced physical and psychological comfort levels.	0.640 - 0.849
E	At this level, the roadway operates at or near capacity. Operations in this level are volatile, because there are virtually no usable gaps in the traffic stream, leaving little room to maneuver within the traffic stream.	0.850 - 0.999
F	Vehicular flow breakdowns occurs. Large queues form behind breakdown points.	1.000 and greater

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

The basis of the analysis is as follows: (1) the Poisson probability distribution is used to estimate the 95th percentile maximum number of queued vehicles per signal cycle for a particular movement; (2) the estimated maximum number of vehicles in the queue is translated into a queue length, assuming 25 feet per vehicle; and (3) the estimated maximum queue length is compared to the existing or planned available storage capacity for the movement.

Report Organization

The remainder of this report is divided into four chapters. Chapter 2 describes the existing transportation system including the roadway network, transit service, and existing bicycle and pedestrian facilities. Chapter 3 describes the impact of the proposed project on the transportation system. Chapter 4 presents the conclusions and recommendations of the transportation analysis.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

2. Existing Conditions

This chapter describes the existing conditions for all of the major transportation facilities in the vicinity of the site, including the roadway network, transit service, and bicycle and pedestrian facilities.

Existing Roadway Network

California Avenue runs at a diagonal to the ordinal directions, but will be considered to run east-west in this study. The segment of California Avenue included in this study extends four blocks from El Camino Real to the California Avenue train station. The cross-streets along this segment are Ash Street, Birch Street, and Park Boulevard. There are STOP signs for all movements at each of the cross-streets. California Avenue has four 9-foot travel lanes, two in each direction, along this segment. There is on-street parking on both sides – some diagonal and some parallel. California Avenue has sidewalks on both sides of the street and serves mostly retail businesses. Parking for the businesses is provided either on-street or in parking lots and garages behind the buildings.

El Camino Real will be considered to run north-south in this study. El Camino Real is a six-lane arterial and designated State Highway 82. The intersection of El Camino Real with California Avenue is controlled by an 8-phase signal, with left turn pockets on all approaches. There are cross-walks with pedestrian heads on all legs of the intersection.

Ash Street will be considered to run north-south in this study. It has one travel lane in each direction and on-street parking.

Birch Street will be considered to run north-south in this study. North of California Avenue it has one travel lane in each direction and on-street parking. South of California Avenue it has two travel lanes in each direction and no on-street parking.

Park Boulevard will be considered to run north-south in this study. It has one travel lane in each direction, on-street parking, and bike lanes. The two pieces of Park Boulevard north and south of California Avenue are off-set by about 200 feet, forming two separate intersections.

Cambridge Avenue runs parallel to California Avenue on the north side. It has one travel lane in each direction and on-street parking. Its intersection with El Camino Real is not

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

signalized but allows all movements. Cambridge Avenue provides access to three parking lots and two garages serving the surrounding commercial development.

Sherman Avenue runs parallel to California Avenue on the south side. It has one travel lane in each direction and on-street parking. The intersection of Sherman Avenue and El Camino Real is unsignalized and allows right turns only. Sherman Avenue provides access to three parking lots serving the surrounding commercial development.

Existing Intersection Lane Configurations

The existing lane configurations at the study intersections were determined by observations in the field and confirmed by City staff. The existing intersection lane configurations are shown on Figure 3. For the most part, the intersections have two lanes in each direction on California Avenue. The exceptions are the eastern Park Boulevard intersection, which has only one westbound lane, and the El Camino Real intersection, which has one left-turn lane, one through lane, and one right turn lane in the westbound direction. Although present, the right turn lane is only 50 feet long.

Existing Traffic Volumes

Daily and peak hour traffic counts were collected in November 2010 at all the study intersections and street segments (see Figures 4 and 5). Daily volume on California Avenue ranges from 2,800 to 5,300 vehicles, with the higher volume nearer El Camino Real. The parallel streets of Cambridge Avenue (2,100 – 3,000 vehicles per day) and Sherman Avenue (1,800 – 2,600 vehicles per day) carry lower volume. These volumes are typical of two to four-lane commercial streets.

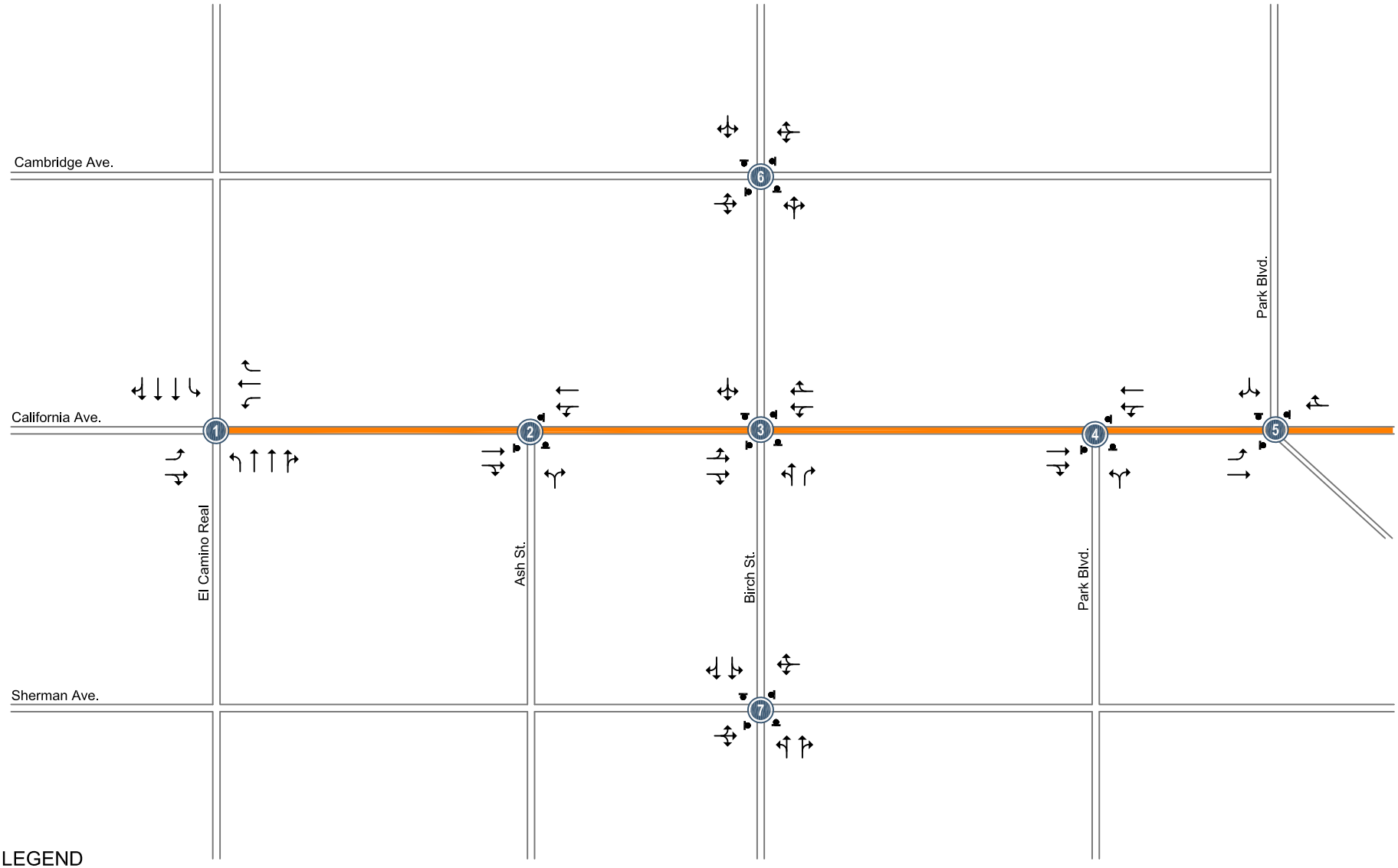
Existing Bicycle and Pedestrian Facilities

Within the study area, California Avenue is a designated bike route. Just west of the study area, on the other side of El Camino Real, California Avenue has striped bike lanes. Also within the study area Park Boulevard has striped bike lanes. The project would enhance the California Avenue bike route, with Sharrows painted on the pavement, to provide a continuous bicycle connection to the Caltrain Station and to the Park Boulevard bike lanes. The existing peak-hour bicycle volumes at the study intersections are shown on Figure 6.

Pedestrian facilities in the project area consist of sidewalks along all streets in the study area and crosswalks at the intersections. The intersections at El Camino Real, Ash Street, and Birch Street have crosswalks on all legs. The intersections at Park Boulevard have some legs without crosswalks. In addition, there are four mid-block crosswalks across California Avenue between the cross-streets. Thus, there are opportunities to cross California Avenue every 275 feet or less. Based on field observations, there are many pedestrians using the sidewalks and crosswalks during peak hours. The existing peak-hour pedestrian volumes at the study intersection crosswalks are shown on Figure 7.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

= Study Intersection

Figure 3

Existing Intersection Lane Configurations

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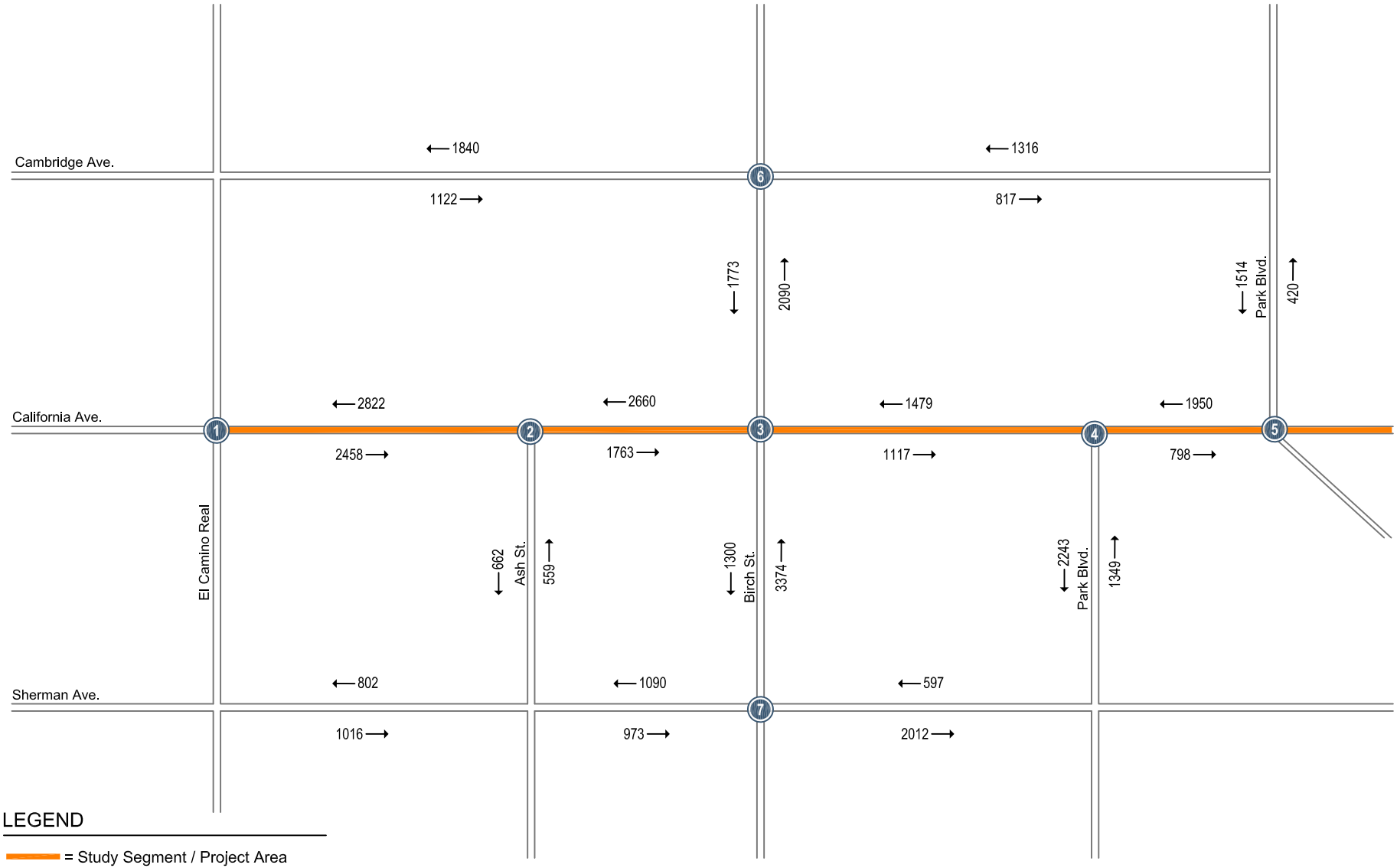
California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

X = Study Intersection

XX = Weekday Average Daily Traffic Volumes

Figure 4

Existing Roadway Segment ADT

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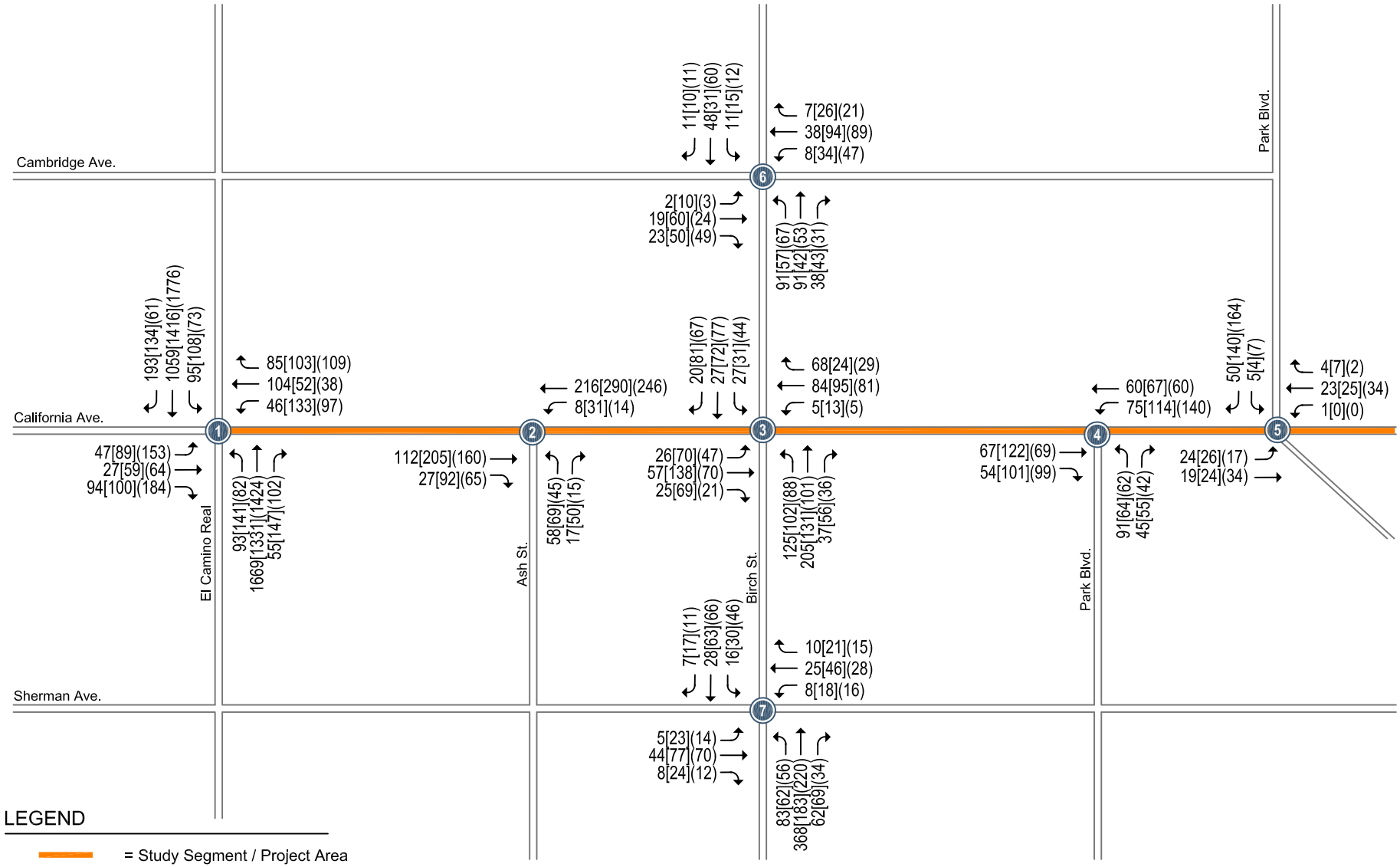
California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

= Study Intersection

XX[XX](XX) = AM[Midday](PM) Peak-Hour Traffic Volumes

Figure 5

Existing Peak-Hour Traffic Volumes

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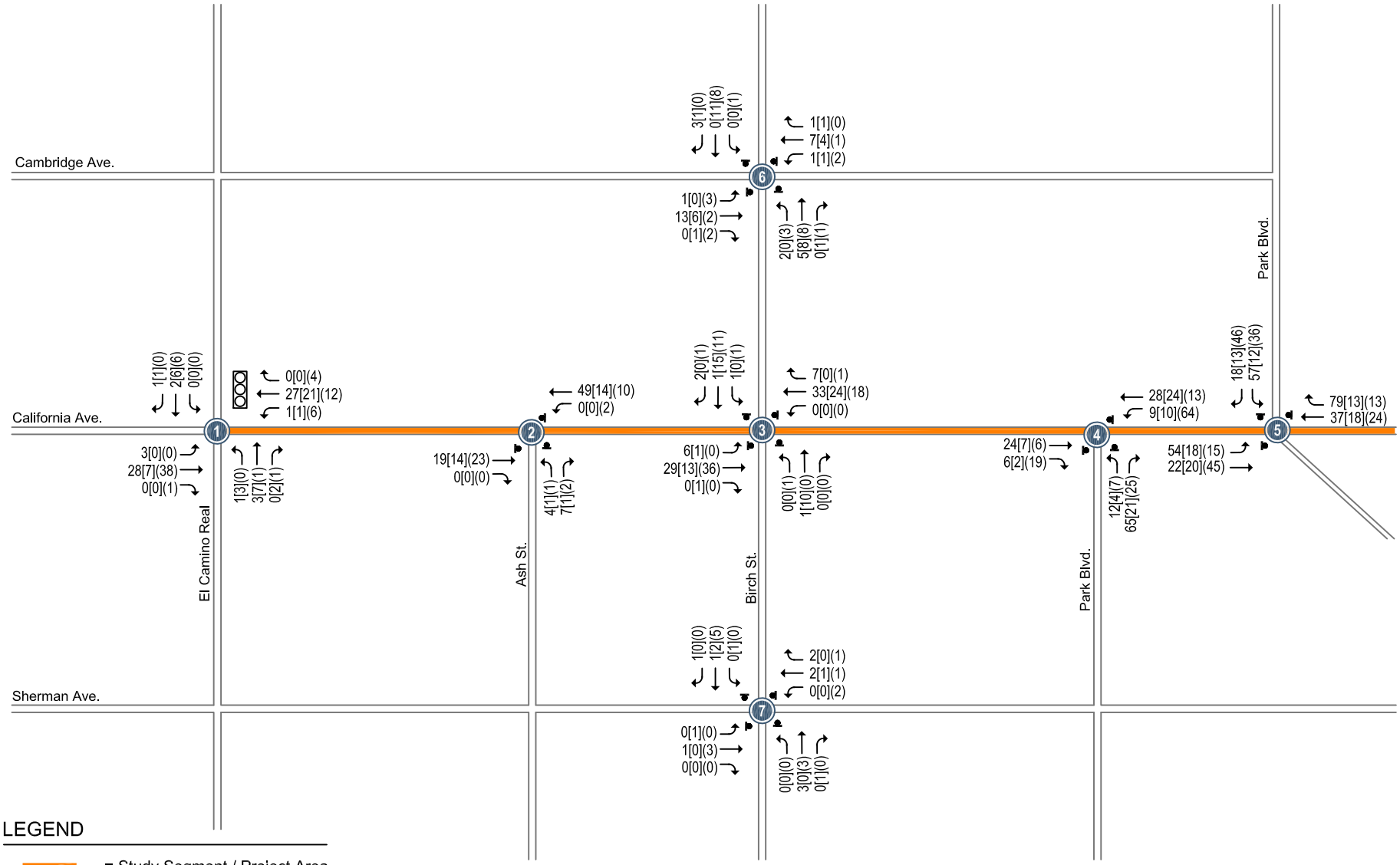
Not to Scale

California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

X = Study Intersection

XX[XX](XX) = AM[Midday](PM) Peak-Hour Bicycle Volumes

Figure 6

Existing Peak-Hour Bicycle Volumes

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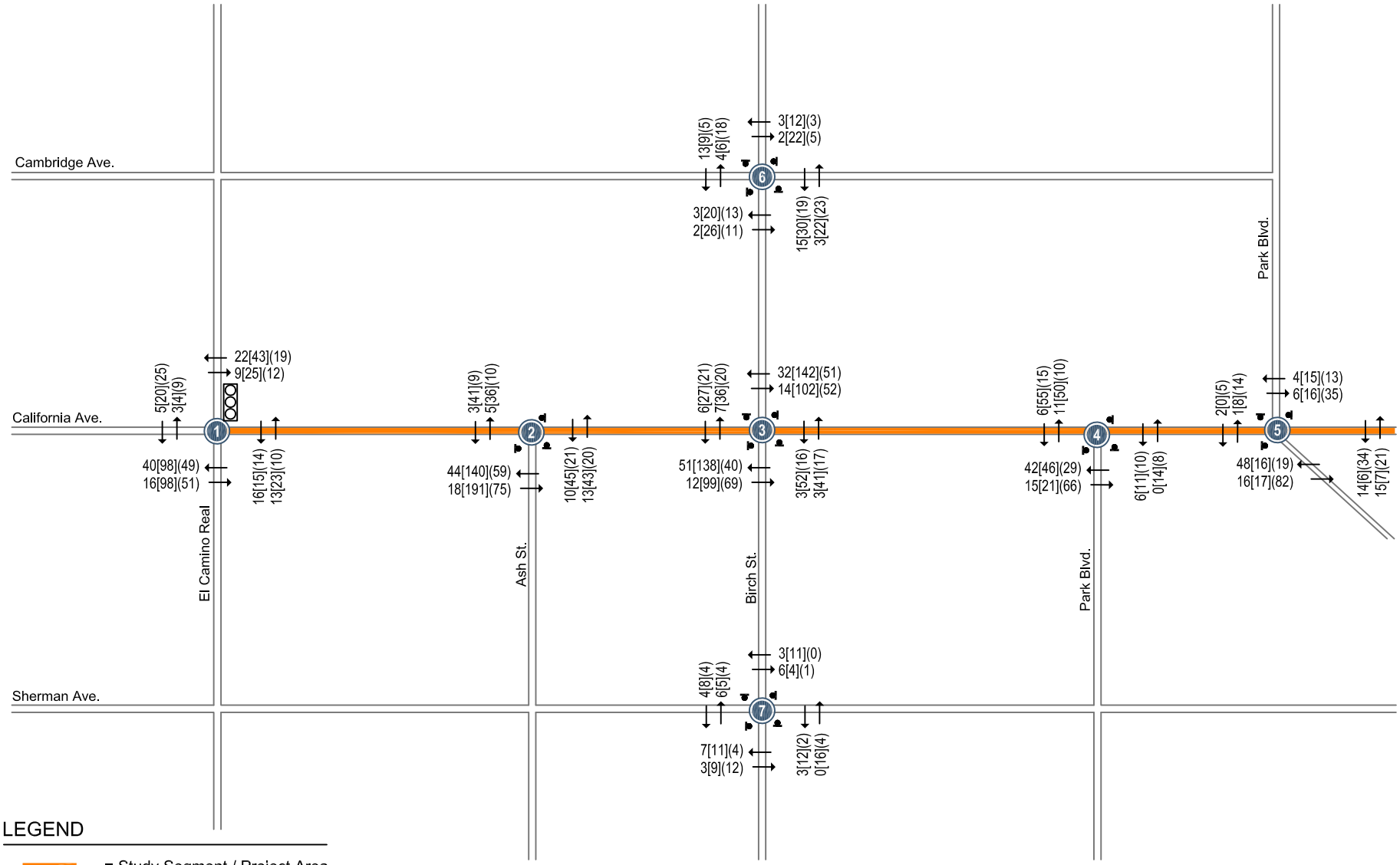
California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

= Study Intersection

XX[XX](XX) = AM[Midday](PM) Peak-Hour Pedestrian Volumes

Figure 7

Existing Peak-Hour Pedestrian Volumes

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Not to Scale

Existing Transit Service

Existing transit service in the study area is provided by Caltrain, the Santa Clara Valley Transportation Agency (VTA), and the Stanford Marguerite shuttle. The California Avenue Caltrain station is located at the terminus of California Avenue, which provides access to the park-and-ride lot. There are two bus lines that operate on California Avenue: VTA Route 89, which provides access from the Caltrain station to the Stanford industrial park, and Marguerite Shuttle Route C, which provides access from Caltrain to the Stanford University campus. In addition, there are seven VTA bus lines that operate on El Camino Real and stop near California Avenue.

Existing Intersection Levels of Service

Intersection level of service calculations show that the study intersections all operate at LOS C or better during peak hours (see Table 4). These levels of service are indicative of acceptable operations with little congestion. The STOP controlled intersections all operate at LOS A or B. The signalized intersection of California Avenue and El Camino Real operates at LOS C.

Table 4
Existing Intersection Levels of Service

Study Number	Intersection	Peak Hour	Count Date	Ave. Delay	LOS
1	El Camino Real and California Avenue	AM	11/10/10	24.7	C
		Midday	11/10/10	28.8	C
		PM	11/10/10	30.5	C
2	Ash Street and California Avenue	AM	11/09/10	8.2	A
		Midday	11/09/10	9.1	A
		PM	11/09/10	8.4	A
3	Birch Street and California Avenue	AM	11/10/10	11.1	B
		Midday	11/10/10	10.9	B
		PM	11/10/10	9.8	A
4	Park Boulevard (W) and California Avenue	AM	11/10/10	8.2	A
		Midday	11/10/10	8.4	A
		PM	11/10/10	8.4	A
5	Park Boulevard (E) and California Avenue	AM	11/04/10	7.2	A
		Midday	11/04/10	7.3	A
		PM	11/04/10	7.4	A
6	Birch Street and Cambridge Avenue	AM	11/03/10	8.2	A
		Midday	11/03/10	8.3	A
		PM	11/03/10	8.3	A
7	Birch Street and Sherman Avenue	AM	11/04/10	9.6	A
		Midday	11/04/10	8.9	A
		PM	11/04/10	8.8	A

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Existing Link Level of Service

Roadway links were analyzed using volume to capacity (V/C) ratios. The traffic volumes were measured in the field using recent traffic counts. The results of this analysis are summarized on Table 5. Under existing conditions, all of the study segments on California Avenue operate at Level of Service A during the weekday AM, midday, and PM peak hours.

Table 5
Existing Roadway Segment Level of Service

Roadway	Segment	Direction	Highest Weekday Count Day	Count Date	Weekday Peak Hour	Volume	# of Lanes	Capacity	V/C Ratio	LOS
California Av	El Camino Real to Ash Street	EB	Friday	11/5/2010	AM	140	2	1,360	0.10	A
					Midday	242	2	1,360	0.18	A
					PM	190	2	1,360	0.14	A
		WB	Friday	11/5/2010	AM	200	2	1,360	0.15	A
					Midday	230	2	1,360	0.17	A
					PM	233	2	1,360	0.17	A
California Av	Ash Street to Birch Street	EB	Friday	11/5/2010	AM	84	2	1,360	0.06	A
					Midday	181	2	1,360	0.13	A
					PM	141	2	1,360	0.10	A
		WB	Friday	11/5/2010	AM	176	2	1,360	0.13	A
					Midday	244	2	1,360	0.18	A
					PM	221	2	1,360	0.16	A
California Av	Birch Street to Park Avenue (W)	EB	Friday	11/5/2010	AM	65	2	1,360	0.05	A
					Midday	127	2	1,360	0.09	A
					PM	117	2	1,360	0.09	A
		WB	Friday	11/5/2010	AM	113	2	1,360	0.08	A
					Midday	152	2	1,360	0.11	A
					PM	136	2	1,360	0.10	A
California Av	Park Avenue (W) to Park Avenue (E)	EB	Friday	11/5/2010	AM	51	2	1,360	0.04	A
					Midday	82	2	1,360	0.06	A
					PM	69	2	1,360	0.05	A
		WB	Friday	11/5/2010	AM	97	2	1,360	0.07	A
					Midday	170	2	1,360	0.13	A
					PM	196	2	1,360	0.14	A

Existing Queuing

Queue lengths were calculated for each of the study intersections to check whether any excessive queues are occurring under existing conditions (see Table 6). At all of the STOP controlled intersections the 95th percentile queue lengths are shown to be four cars at the most (two cars per lane, 50 feet per lane). Queues are longest at the El Camino Real intersection. The 95th percentile queues on westbound California Avenue are shown to be up to 8 cars. The longest queues are for the through lane in the AM peak hour, the left turn lane for the mid-day peak hour, and the right turn for the PM peak hour. The right turn lane is of insufficient length to accommodate 8 cars. Therefore, some right turn cars queue in the through lane.

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Table 6
Existing Queues on California Avenue

Measurement	El Camino / California WBL	El Camino / California WBT	El Camino / California WBR	Ash / California EBT[3]	Ash / California WBT[3]	Birch / California EBT[3]	Birch / California WBT[3]	Park (W) / California EBT[3]	Park (W) / California WBT[3]	Park (E) / California EBL	Park (E) / California EBT	Park (E) / California WBT[3]
AM Peak Hour												
Cycle/Delay[1] (sec)	150	150	150	7.9	8.3	9.4	9.4	8.0	8.8	8.0	7.4	7.2
Volume (vphpl)	46	104	85	70	112	54	79	61	68	24	19	28
Avg. Queue (veh/ln.)	1.9	4.3	3.5	0.2	0.3	0.1	0.2	0.1	0.2	0.1	0.0	0.1
Avg. Queue[2] (ft./ln)	48	108	89	4	6	4	5	3	4	1	1	1
95th %. Queue (veh/ln.)	4	8	7	1	1	1	1	1	1	1	0	1
95th %. Queue (ft./ln)	100	200	175	25	25	25	25	25	25	25	0	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y
Midday Peak Hour												
Cycle/Delay[1] (sec)	120	120	120	9.0	9.4	10.9	9.8	8.5	9.3	8.2	7.6	7.3
Volume (vphpl)	133	52	103	149	161	139	66	112	91	26	24	32
Avg. Queue (veh/ln.)	4.4	1.7	3.4	0.4	0.4	0.4	0.2	0.3	0.2	0.1	0.1	0.1
Avg. Queue[2] (ft./ln)	111	43	86	9	11	11	4	7	6	1	1	2
95th %. Queue (veh/ln.)	8	4	7	2	2	2	1	1	1	1	0	1
95th %. Queue (ft./ln)	200	100	175	50	50	50	25	25	25	25	0	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y
PM Peak Hour												
Cycle/Delay[1] (sec)	135	135	135	8.3	8.6	9.5	9.1	8.1	9.5	8.2	7.8	7.5
Volume (vphpl)	97	38	109	113	130	69	58	84	100	17	34	36
Avg. Queue (veh/ln.)	3.6	1.4	4.1	0.3	0.3	0.2	0.1	0.2	0.3	0.0	0.1	0.1
Avg. Queue[2] (ft./ln)	91	36	102	7	8	5	4	5	7	1	2	2
95th %. Queue (veh/ln.)	7	4	8	1	1	1	1	1	1	0	1	1
95th %. Queue (ft./ln)	175	100	200	25	25	25	25	25	25	0	25	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y

[1] Vehicle queue calculations based on cycle length for signalized intersections and movement delay for unsignalized intersections.
[2] Assumes 25 Feet Per Vehicle Queued.
[3] Volumes include through movement plus right and/or left turns, if lane is shared.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Observed Existing Traffic Conditions

Traffic conditions in the field were observed in order to identify existing operational deficiencies and to confirm the accuracy of calculated levels of service. The purpose of this effort was (1) to identify any existing traffic problems that may not be directly related to intersection level of service, and (2) to identify any locations where the level of service calculation does not accurately reflect level of service in the field. Overall, the study intersections operate well during the weekday AM, midday, and PM peak hours. Vehicles were able to clear the signal on each cycle. Speeds on California Avenue are slow because of cars hunting for parking spaces and because of numerous pedestrians crossing the street, both in the crosswalks and between crosswalks. Also, there are many bicycles using California Avenue to access the Caltrain station.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

3. Project Conditions

This chapter describes project traffic conditions, level of service results, and project recommendations. Included are descriptions of the proposed project, identification of the impacts, and descriptions of the mitigation measures.

Proposed Project Description

The proposed project would reduce the number of travel lanes on California Avenue between El Camino Real and Park Boulevard from four travel lanes to two. The additional pavement space provided from the lane reduction would be used for streetscape improvements including decorative pavement bands, intersection bulb-outs, and to provide additional on-street parking supply. Most of the parking spaces would be 60-degree angled parking spaces, although some parallel parking will also be provided. At higher volume intersections such as El Camino Real & California Avenue and Birch Street & California Avenue, additional approach lanes are proposed to provide additional intersection capacity for traffic. All existing crosswalks for pedestrians would be maintained with three additional crosswalks provided at the intersections of Park Boulevard & California Avenue. Where bulb-out improvements are proposed, existing crosswalk lengths would be reduced to improve pedestrian operations. The project would also enhance the existing California Avenue Bike Route with the addition of Sharrows stenciled onto the pavement. The proposed project plan is shown on Figures 8 & 9.

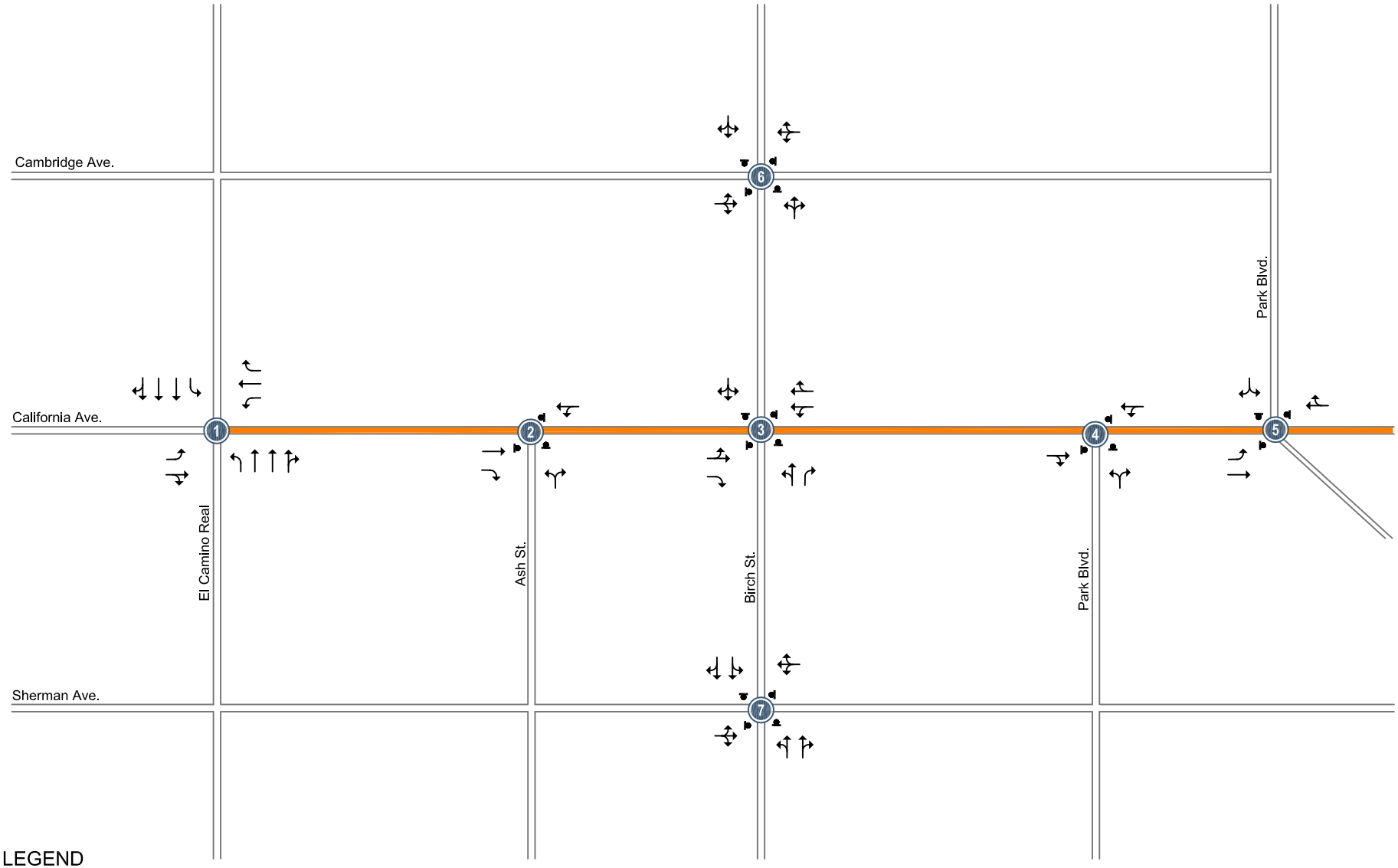
Traffic Volumes

For this analysis, the traffic volumes were assumed to be unchanged from those of existing conditions. According to the City of Palo Alto, there are no pending projects or planned projects in the foreseeable future. Therefore, traffic volumes on California Avenue between El Camino Real and Park Boulevard will remain unchanged with the current land uses. The reduction in capacity on California Avenue that would occur when narrowing from four lanes to two lanes is not expected to displace any vehicles to parallel streets. As described below, even with the narrowing, traffic delays and queues would be well within acceptable standards.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Figure 8
Proposed California Avenue Improvements

California Avenue Lane Reduction



LEGEND

= Study Segment / Project Area

= Study Intersection

Figure 9

Project Intersection Lane Configurations

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Intersection Level of Service

The results of the intersection level of service analysis under project conditions are summarized in Table 7. The results indicate that, with the proposed reduction in travel lanes, all of the study intersections would continue to operate at acceptable levels of service with LOS C or better. The stop sign intersections would operate at LOS A or B. While some intersection delays would increase slightly, each of the study intersections would continue to operate well within capacity. Thus, the proposed project would not result in any adverse LOS impacts to intersections on California Avenue. The level of service calculation sheets are included in Appendix B.

Table 7
Project Intersection Level of Service

			Existing		Project			
Study Number	Intersection	Peak Hour	Ave. Delay	LOS	Ave. Delay	LOS	Incr. In Crit. Delay	Incr. In Crit. V/C
1	El Camino Real and California Avenue	AM	24.7	C	24.7	C	0.0	0.000
		Midday	28.8	C	28.8	C	0.0	0.000
		PM	30.5	C	30.5	C	0.0	0.000
2	Ash Street and California Avenue	AM	8.2	A	8.5	A	0.4	0.121
		Midday	9.1	A	9.9	A	0.8	0.187
		PM	8.4	A	8.9	A	0.5	0.142
3	Birch Street and California Avenue	AM	11.1	B	11.2	B	0.0	0.000
		Midday	10.9	B	11.3	B	0.3	0.002
		PM	9.8	A	9.9	A	0.1	0.001
4	Park Boulevard (W) and California Avenue	AM	8.2	A	8.2	A	0.0	0.000
		Midday	8.4	A	8.6	A	0.1	0.084
		PM	8.4	A	8.4	A	0.0	0.040
5	Park Boulevard (E) and California Avenue	AM	7.2	A	7.2	A	0.0	0.000
		Midday	7.3	A	7.3	A	0.0	0.000
		PM	7.4	A	7.4	A	0.0	0.000
6	Birch Street and Cambridge Avenue	AM	8.2	A	8.2	A	0.0	0.000
		Midday	8.3	A	8.3	A	0.0	0.000
		PM	8.3	A	8.3	A	0.0	0.000
7	Birch Street and Sherman Avenue	AM	9.6	A	9.6	A	0.0	0.000
		Midday	8.9	A	8.9	A	0.0	0.000
		PM	8.8	A	8.8	A	0.0	0.000

Roadway Segment Level of Service

Roadway links were analyzed using volume to capacity (V/C) ratios. With the proposed lane reduction, the volume of traffic on California Avenue would remain unchanged, but the capacity of each direction would be reduced from 1,360 vehicles per hour to 560 vehicles per hour. According to the publication *Parking* by Weant and Levinson, lane groups with 2 lanes experience a 15% reduction in capacity when on-street parking is provided and parking turnover is heavy (approximately 40 parking maneuvers per hour). For one lane streets, on-street parking, and heavy parking turnover, a 30% decrease in capacity is expected. The additional reduction in capacity occurs for one lane roadways because vehicles backing out of spaces block the entire traveled way. With the two lane configuration, through traffic can maneuver around vehicles backing out of spaces.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

The results of the volume to capacity analysis are summarized in Table 8. After conversion from four lanes to two lanes, all of the study segments on California Avenue would operate at Level of Service A or B during the weekday AM, midday, and PM peak hours, despite the reduction in capacity. Thus, according to the City of Palo Alto level of service standards, the proposed lane reduction would not result in any adverse LOS impacts to California Avenue.

Table 8
Roadway Segment LOS with California Avenue Lane Reduction

Segment	Direction	Highest Weekday Count Day	Count Date	Weekday Peak Hour	Volume	Existing # of Lanes	Existing Capacity	Existing V/C Ratio	Existing LOS	Project # of Lanes	Project Capacity	Project V/C Ratio	Project LOS
El Camino Real to Ash Street	EB	Friday	11/5/2010	AM	140	2	1,360	0.10	A	1	560	0.25	A
				Midday	242	2	1,360	0.18	A	1	560	0.43	B
				PM	190	2	1,360	0.14	A	1	560	0.34	B
	WB	Friday	11/5/2010	AM	200	2	1,360	0.15	A	1	560	0.36	B
				Midday	230	2	1,360	0.17	A	1	560	0.41	B
				PM	233	2	1,360	0.17	A	1	560	0.42	B
Ash Street to Birch Street	EB	Friday	11/5/2010	AM	84	2	1,360	0.06	A	1	560	0.15	A
				Midday	181	2	1,360	0.13	A	1	560	0.32	B
				PM	141	2	1,360	0.10	A	1	560	0.25	A
	WB	Friday	11/5/2010	AM	176	2	1,360	0.13	A	1	560	0.31	B
				Midday	244	2	1,360	0.18	A	1	560	0.44	B
				PM	221	2	1,360	0.16	A	1	560	0.39	B
Birch Street to Park Avenue (W)	EB	Friday	11/5/2010	AM	65	2	1,360	0.05	A	1	560	0.12	A
				Midday	127	2	1,360	0.09	A	1	560	0.23	A
				PM	117	2	1,360	0.09	A	1	560	0.21	A
	WB	Friday	11/5/2010	AM	113	2	1,360	0.08	A	1	560	0.20	A
				Midday	152	2	1,360	0.11	A	1	560	0.27	B
				PM	136	2	1,360	0.10	A	1	560	0.24	A
Park Avenue (W) to Park Avenue (E)	EB	Friday	11/5/2010	AM	51	2	1,360	0.04	A	1	560	0.09	A
				Midday	82	2	1,360	0.06	A	1	560	0.15	A
				PM	69	2	1,360	0.05	A	1	560	0.12	A
	WB	Friday	11/5/2010	AM	97	2	1,360	0.07	A	1	560	0.17	A
				Midday	170	2	1,360	0.13	A	1	560	0.30	B
				PM	196	2	1,360	0.14	A	1	560	0.35	B

Traffic Diversion

With any change to the roadway network there is the potential for traffic diversion. Traffic diversion normally occurs when a proposed roadway network change would significantly alter the vehicle delays in a corridor. As previously described, all of the intersections and roadway segments on California Avenue, east of El Camino Road, would operate at LOS A or B with or without the proposed lane reduction. Thus, there would remain plenty of capacity for vehicular traffic on California Avenue even with the lane reduction. For this reason, no measurable traffic diversion to other streets is anticipated.

It should be noted that the existing volumes on the adjacent streets parallel to California Avenue, Cambridge Avenue and Sherman Avenue, are lower than California Avenue. Since these volumes are low, even with the proposed lane reduction, the intersections of Birch Street & Cambridge Avenue and Birch Street & Sherman Avenue would operate at LOS A for all peak periods.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Intersection Queuing

A vehicle queuing analysis was conducted for the movements affected by the lane reduction on California Avenue. Vehicle queues were estimated using a Poisson probability distribution. The basis of the analysis is as follows: (1) the Poisson probability distribution is used to estimate the 95th percentile maximum number of queued vehicles for a particular movement; (2) the estimated maximum number of vehicles in the queue is translated into a queue length, assuming 25 feet per vehicle; and (3) the estimated maximum queue length is compared to the existing or planned available storage capacity for the movement. This analysis thus provides a basis for estimating future storage requirements at intersections.

The vehicle queuing estimates and a tabulated summary of the findings are provided in Tables 9, 10, and 11. The analysis indicates that, at all of the unsignalized study intersections with the proposed lane reduction, the estimated 95th percentile vehicle queues for the eastbound and westbound movements on California Avenue would be 2 or 3 vehicles or less. These queues easily could be accommodated in the queuing space provided and would not significantly interfere with parking maneuvers on California Avenue.

The proposed lane reduction would transition from one westbound lane to three lanes (one left, one through, and one right) approximately 100 feet before intersection of El Camino Real and California Avenue. Under existing conditions, this area transitions from two westbound lanes to three lanes. According to the queuing analysis, with the proposed lane reduction, the westbound 95th percentile queues would extend 200 feet from the subject intersection for the following movements:

- westbound through movement – AM peak hour
- westbound left turn movement – Midday peak hour
- westbound right turn movement – PM peak hour

During these periods, the 95th percentile queues for the other movements at the subject approach would be 100 feet or more. Thus, under the proposed configuration, queues up to 200 feet could occur potentially blocking access to adjacent parking stalls and result in less efficient use of green time at the El Camino Real/California Avenue intersection.

The project consultant explored the use of split phase at the intersection to reduce the vehicles queues and determine whether better signal efficiency could be achieved using shared lanes. Due to the heavy pedestrian crossing volume at the intersection, the level of service calculations showed worse efficiency with split phase operation during all peak hours. For this reason, it is recommended that the existing signal phasing and lane geometry be maintained.

Recommendation: At California Avenue the existing two-lane to three-lane westbound approach to the El Camino Real intersection may be maintained to help provide adequate storage capacity for at least 200 feet from the intersection. This would result in the loss of the 5 new on-street parking spaces along the north side of California Avenue but still allows for the maintenance of the existing 12 on-street parking spaces in the segment providing for no overall parking loss. See Figure 10 for a diagram of the extended queues and modified parking spaces.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Table 9
Queuing Analysis – AM Peak Hour

Measurement	El Camino / California WBL	El Camino / California WBT	El Camino / California WBR	Ash / California EBT[3]	Ash / California WBT[3]	Birch / California EBT[3]	Birch / California WBT[3]	Park (W) / California EBT[3]	Park (W) / California WBT[3]	Park (E) / California EBL	Park (E) / California EBT	Park (E) / California WBT[3]
Existing												
Cycle/Delay[1] (sec)	150	150	150	7.9	8.3	9.4	9.4	8.0	8.8	8.0	7.4	7.2
Volume (vphpl)	46	104	85	70	112	54	79	61	68	24	19	28
Avg. Queue (veh/ln.)	1.9	4.3	3.5	0.2	0.3	0.1	0.2	0.1	0.2	0.1	0.0	0.1
Avg. Queue[2] (ft./ln)	48	108	89	4	6	4	5	3	4	1	1	1
95th %. Queue (veh/ln.)	4	8	7	1	1	1	1	1	1	1	0	1
95th %. Queue (ft./ln)	100	200	175	25	25	25	25	25	25	25	0	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y
Project												
Cycle/Delay[1] (sec)	150	150	150	8.4	8.9	9.7	9.4	7.7	8.3	8.0	7.4	7.2
Volume (vphpl)	46	104	85	112	224	83	79	121	135	24	19	28
Avg. Queue (veh/ln.)	1.9	4.3	3.5	0.3	0.6	0.2	0.2	0.3	0.3	0.1	0.0	0.1
Avg. Queue[2] (ft./ln)	48	108	89	7	14	6	5	6	8	1	1	1
95th %. Queue (veh/ln.)	4	8	7	1	2	1	1	1	1	1	0	1
95th %. Queue (ft./ln)	100	200	175	25	50	25	25	25	25	25	0	25
Storage (ft./ ln.)	100	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y

[1] Vehicle queue calculations based on cycle length for signalized intersections and movement delay for unsignalized intersections.
[2] Assumes 25 Feet Per Vehicle Queued.
[3] Volumes include through movement plus right and/or left turns if lane is shared.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Table 10
Queuing Analysis – Midday Peak Hour

Measurement	El Camino / California WBL	El Camino / California WBT	El Camino / California WBR	Ash / California EBT[3]	Ash / California WBT[3]	Birch / California EBT[3]	Birch / California WBT[3]	Park (W) / California EBT[3]	Park (W) / California WBT[3]	Park (E) / California EBL	Park (E) / California EBT	Park (E) / California WBT[3]
Existing												
Cycle/Delay[1] (sec)	120	120	120	9.0	9.4	10.9	9.8	8.5	9.3	8.2	7.6	7.3
Volume (vphpl)	133	52	103	149	161	139	66	112	91	26	24	32
Avg. Queue (veh/ln.)	4.4	1.7	3.4	0.4	0.4	0.4	0.2	0.3	0.2	0.1	0.1	0.1
Avg. Queue[2] (ft./ln)	111	43	86	9	11	11	4	7	6	1	1	2
95th %. Queue (veh/ln.)	8	4	7	2	2	2	1	1	1	1	0	1
95th %. Queue (ft./ln)	200	100	175	50	50	50	25	25	25	25	0	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y
Project												
Cycle/Delay[1] (sec)	120	120	120	9.8	9.4	12.2	9.8	8.5	8.8	8.2	7.6	7.3
Volume (vphpl)	133	52	103	205	321	208	66	223	181	26	24	32
Avg. Queue (veh/ln.)	4.4	1.7	3.4	0.6	0.8	0.7	0.2	0.5	0.4	0.1	0.1	0.1
Avg. Queue[2] (ft./ln)	111	43	86	14	21	18	4	13	11	1	1	2
95th %. Queue (veh/ln.)	8	4	7	2	3	2	1	2	2	1	0	1
95th %. Queue (ft./ln)	200	100	175	50	75	50	25	50	50	25	0	25
Storage (ft./ ln.)	100	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	**N**	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y

[1] Vehicle queue calculations based on cycle length for signalized intersections and movement delay for unsignalized intersections.
[2] Assumes 25 Feet Per Vehicle Queued.
[3] Volumes include through movement plus right and/or left turns if lane is shared.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

Table 11
Queuing Analysis – PM Peak Hour

Measurement	El Camino / California WBL	El Camino / California WBT	El Camino / California WBR	Ash / California EBT[3]	Ash / California WBT[3]	Birch / California EBT[3]	Birch / California WBT[3]	Park (W) / California EBT[3]	Park (W) / California WBT[3]	Park (E) / California EBL	Park (E) / California EBT	Park (E) / California WBT[3]
Existing												
Cycle/Delay[1] (sec)	135	135	135	8.3	8.6	9.5	9.1	8.1	9.5	8.2	7.8	7.5
Volume (vphpl)	97	38	109	113	130	69	58	84	100	17	34	36
Avg. Queue (veh/ln.)	3.6	1.4	4.1	0.3	0.3	0.2	0.1	0.2	0.3	0.0	0.1	0.1
Avg. Queue[2] (ft./ln)	91	36	102	7	8	5	4	5	7	1	2	2
95th %. Queue (veh/ln.)	7	4	8	1	1	1	1	1	1	0	1	1
95th %. Queue (ft./ln)	175	100	200	25	25	25	25	25	25	0	25	25
Storage (ft./ ln.)	550	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	Y	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y
Project												
Cycle/Delay[1] (sec)	135	135	135	8.8	9.4	10.0	9.1	7.9	8.9	8.2	7.8	7.5
Volume (vphpl)	97	38	109	160	260	117	58	168	200	17	34	36
Avg. Queue (veh/ln.)	3.6	1.4	4.1	0.4	0.7	0.3	0.1	0.4	0.5	0.0	0.1	0.1
Avg. Queue[2] (ft./ln)	91	36	102	10	17	8	4	9	12	1	2	2
95th %. Queue (veh/ln.)	7	4	8	2	2	1	1	2	2	0	1	1
95th %. Queue (ft./ln)	175	100	200	50	50	25	25	50	50	0	25	25
Storage (ft./ ln.)	100	550	75	550	300	285	350	350	150	150	150	250
Adequate (Y/N)	**N**	Y	**N**	Y	Y	Y	Y	Y	Y	Y	Y	Y

[1] Vehicle queue calculations based on cycle length for signalized intersections and movement delay for unsignalized intersections.
[2] Assumes 25 Feet Per Vehicle Queued.
[3] Volumes include through movement plus right and/or left turns if lane is shared.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

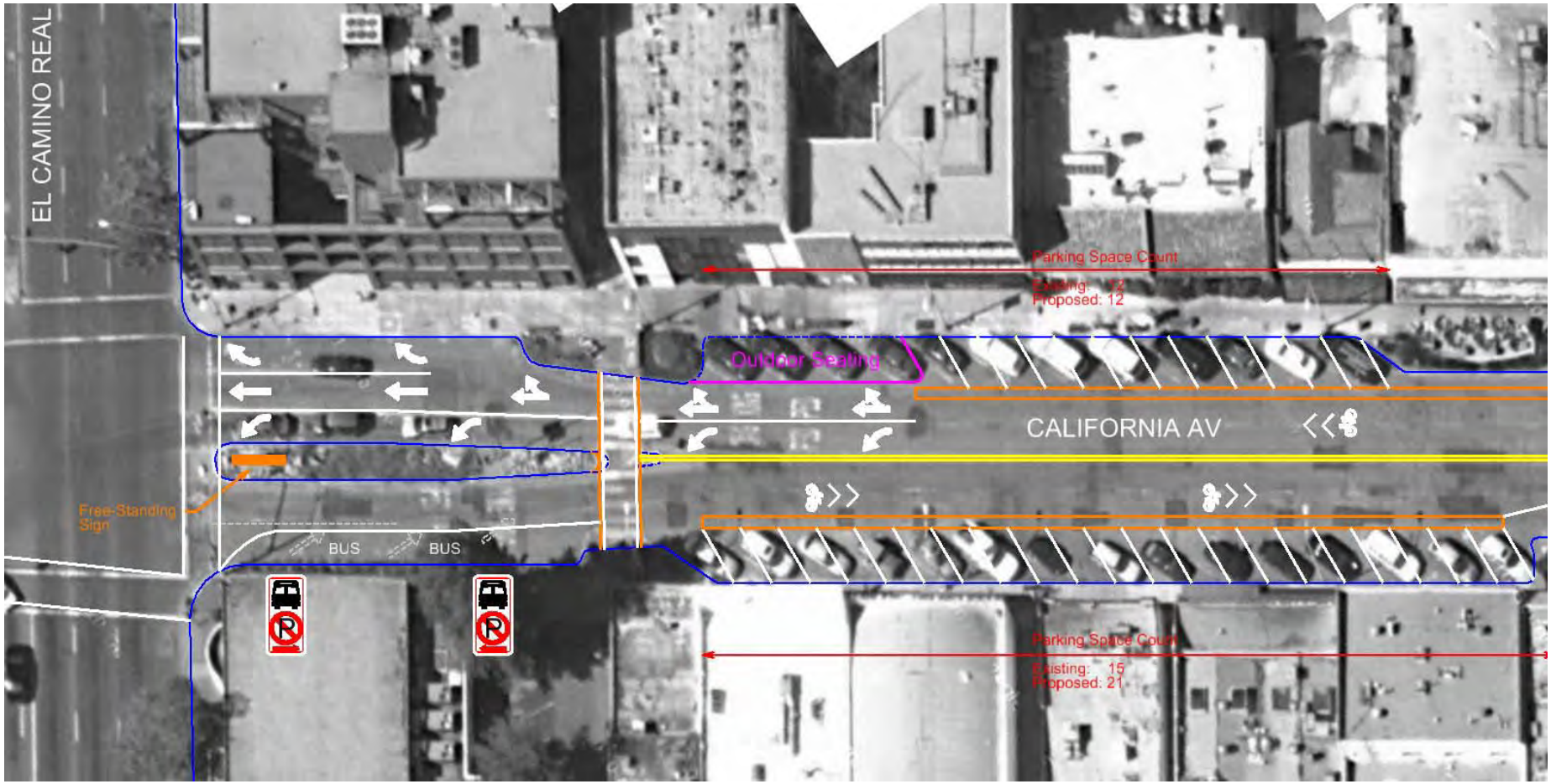

Figure 10
Alternate Extended Queue Storage Design at El Camino Real

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Two Lane to One Lane Transitions

There are two locations where the proposed lane reduction would transition two lanes to one lane. The *2010 California Manual on Uniform Traffic Control Devices* states that the transition length for roads with a design speed of less than 45 mph is computed by the following formula: $L=WS^2/60$, where L is the transition length, S is the speed limit in MPH, and W is the offset distance. Thus, to transition 12 feet with a speed limit of 25 mph would require a taper of 125 feet.

The first transition location is located westbound on California Avenue just west of Birch Street. This transition would move two lanes into one lane over approximately 125 feet. To eliminate the need for lane merging along California Avenue, the westbound curb lane may be converted to a dedicated right turn only lane to northbound Birch Street. This configuration would add less than 1 second of average delay to the intersection during the worst peak hour, and the intersection still would operate at LOS B. See Figure 11 for a diagram of the alternate westbound geometry and transition to one lane.

The second merge location is on eastbound California Avenue just east of the El Camino Real/California Avenue intersection. This segment transitions two lanes to one lane over approximately 100 feet. Only one receiving lane is required because at any given time only one lane from either the west side of El Camino Real, the southbound left turn approach of El Camino Real, or the northbound right turn approach of El Camino Real feed traffic onto California Avenue. The existing curb lane approaching the first mid-block crosswalk of the project area may be removed to eliminate the need for lane merging. The curb lane can be converted to a bus duckout for the existing Stanford Marguerite shuttle stop at the intersection. This design would eliminate a stopped bus from blocking through traffic and help to avoid operations impacts to the El Camino Real & California Avenue intersection. See Figure 10 for an alternate design for the eastbound receiving lanes.

Impacts to Pedestrians, Bikes, & Transit

The project would maintain all existing crosswalks and sidewalks. In addition, three new crosswalks would be provided at the intersections of Park Boulevard and California Avenue (east and west). Overall, pedestrian mobility would be maintained or improved. Prior to final design, the new crosswalk locations should be reviewed to ensure that wheelchair ramps could be installed in accordance with Americans with Disabilities Act requirements.

The project would make California Avenue east of El Camino Real into an enhanced bike route, with Sharrows, to provide a continuous bicycle connection to the Caltrain Station and to the Park Boulevard bike lanes. Generally, motor vehicle speeds would remain as is or could be reduced slightly because fewer travel lanes would eliminate the ability of faster drivers to pass slower drivers. Thus, conditions for bikes would be improved under the proposed plan.

The project does not propose any changes to existing Caltrain or bus facilities. All existing bus stops would be maintained. The proposed lane reduction would result in small increases in travel time in the corridor due to the increased parking supply on California Avenue and fewer travel lanes. However, the increased delays would be on the order of two or three seconds and would not significantly adversely impact bus operations.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

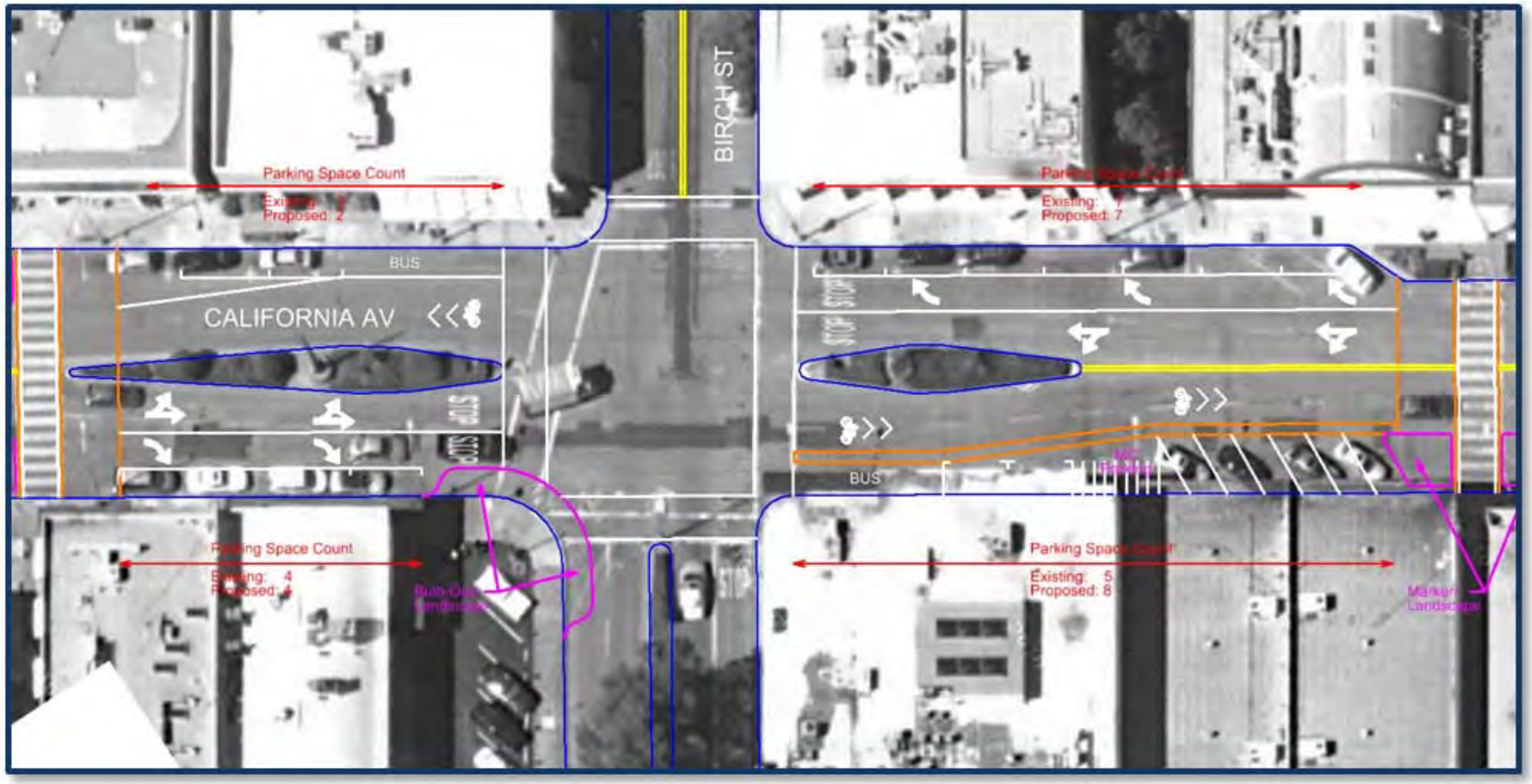

Figure 11
Alternate Westbound Lane Configuration at Birch Street

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Geometric Considerations

As previously described, the project would add 60 degree angled parking along the study segments of California Avenue. City of Palo Alto standards for angled parking require 16-foot drive aisle widths adjacent to 9 foot wide parking stalls to allow vehicles to back out of spaces without encroaching on the opposite direction travel lane. For most of the study segment, the project would provide 18 to 19 foot street widths adjacent to 60 degree angled parking, which would comply with City standards. However, three locations would provide less back up space than recommended by City standards. On the south side of California Avenue, just west of Ash Street, the back up distance shown on the current plan would be 14.5 feet. On the north and south sides of California Avenue, between the Park Boulevard intersections, the back up distance would be 13.5 feet.

While the City standard would not be met in these areas, the publication *The Dimensions of Parking, Fourth Edition* by the Urban Land Institute (Table 8-4) shows that a minimum street width of 14.5 feet is acceptable adjacent to 60 degree angled parking. The City may wish to review the proposed plan to determine whether the existing street width in these areas could be increased by slightly relocating double yellow lines or changing the parking angle to 45-degrees. Potential alternate designs are discussed below:

- For the proposed four angled parking spaces in the same location of the proposed Optional Outside Seating/Community Stage area on the south side of California Avenue between Ash Street and the mid-block crosswalk immediately west of Ash Street, changing these parking spaces from 60-degrees to 45-degrees does not result in a loss of proposed on-street parking spaces within this street segment.

- For the proposed six angled parking spaces along the north side of California Avenue between Park Boulevard and the driveway entrance to the Molly Stone market, changing these parking spaces from 60-degrees to 45-degrees results in the loss of one new parking space providing five spaces instead. This is still one space more than the existing four parking spaces under existing conditions.

- For the proposed eight angled parking spaces along the south side of California Avenue between Park Boulevard (East) and Park Boulevard (West), changing these parking spaces from 60-degrees to 45-degrees results in the loss of two new parking spaces providing six spaces instead. This is still one space more than the existing five parking spaces under existing conditions.

See Figure 12 for a diagram of potential changes to the proposed parking between the Park Boulevard intersections. Note that with the recommended angle changes to the parking, the total number of proposed parking spaces on the study segment would be 124 spaces with 13 net new spaces.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

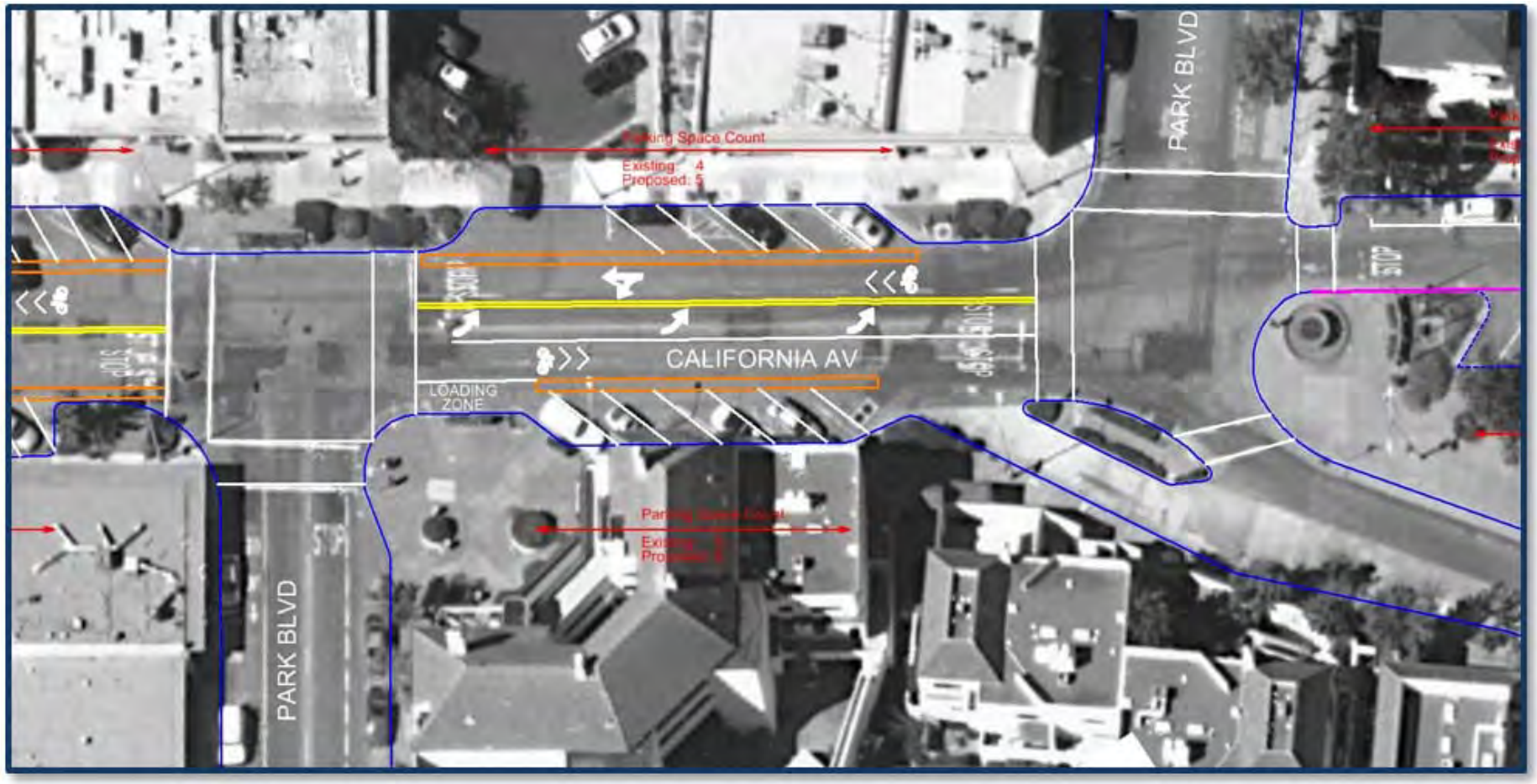


Figure 12
Alternate 45-Degree Parking Design between the Park Boulevard Intersections

4. Conclusion

The proposed lane reduction was reviewed in accordance with City of Palo Alto and Valley Transportation Authority (VTA) – Congestion Management Program (CMP) guidelines. According to the City of Palo Alto, there are no pending projects or planned projects in the foreseeable future. Therefore, traffic volumes on California Avenue between El Camino Real and Park Boulevard will remain unchanged with the current land uses. An analysis of intersection Level of Service (LOS), street segment LOS, and intersection queuing was conducted to determine whether the project would result in any significant adverse impacts under project conditions with the lane reduction. Based on this analysis, the proposed lane reduction would not result in any adverse significant LOS impacts to intersections or roadway segments, both of which would continue to operate well within capacity (LOS A or B). Because sufficient capacity would be maintained on California Avenue, no traffic diversion is expected to occur with the proposed lane reduction. The project would enhance pedestrian circulation with added crosswalks and enhance bicycle safety with Sharrows painted on the pavement. The project would not change existing bus stops, so there would not be any impact to transit service.

The study recommends the following enhancements to the design:

- At California Avenue the existing two-lane to three-lane westbound approach to the El Camino Real intersection may be maintained to help provide adequate storage capacity for at least 200 feet from the intersection. This would result in the loss of the 5 new on-street parking spaces along the north side of California Avenue but still allows for the maintenance of the existing 12 on-street parking spaces in the segment providing for no overall parking loss.
- The proposed crosswalk additions at the intersections of California Avenue & Park Boulevard should be reviewed to ensure that wheelchair ramps can be installed in accordance with American Disabilities Act requirements.
- The City's proposed California Avenue plan line concept proposes to maintain the existing two-lane westbound approach at Birch Street. Two lanes are also proposed for maintenance immediately west of Birch Street approaching the mid-block crosswalk west of the Birch Street intersection. To eliminate the need for lane merging along California Avenue, the

westbound curb lane may be converted to a dedicated right turn only lane to northbound Birch Street.

- The City's proposed California Avenue plan line concept also proposed to maintain the existing two receiving lanes for eastbound California Avenue at El Camino Real. Only one receiving lane is required because at any given time only one lane from either the west side of El Camino Real, the southbound left turn approach of El Camino Real, or the northbound right turn approach of El Camino Real feed traffic onto California Avenue. The existing curb lane approaching the first mid-block crosswalk of the project area may be removed to eliminate the need for lane merging. The curb lane can be converted to a bus duckout for the existing Stanford Marguerite shuttle stop at the intersection. This design would eliminate a stopped bus from blocking through traffic and help to avoid operations impacts to the El Camino Real & California Avenue intersection.
- Three proposed on-street parking segments on California Avenue do not meet the City's existing parking standards providing adjacent lane widths that are too narrow for vehicles to back out of angled parking spaces. To comply with the City's parking standards these segments could be reconfigured to 45-degree parking stalls. The three parking segments are as follows:
    - The proposed four angled parking spaces in the same location of the proposed Optional Outside Seating/Community Stage area on the south side of California Avenue between Ash Street and the mid-block crosswalk immediately west of Ash Street. Changing these parking spaces from 60-degrees to 45-degrees does not result in a loss of proposed on-street parking spaces within this street segment.
    - The proposed six angled parking spaces along the north side of California Avenue between Park Boulevard and the driveway entrance to the Molly Stone market. Changing these parking spaces from 60-degrees to 45-degrees results in the loss of one new parking space providing five spaces instead. This is still one space more than the existing four parking spaces under existing conditions.
    - The proposed eight angled parking spaces along the south side of California Avenue between Park Boulevard (East) and Park Boulevard (West). Changing these parking spaces from 60-degrees to 45-degrees results in the loss of two new parking spaces providing six spaces instead. This is still one space more than the existing five parking spaces under existing conditions.

Attachment: Attachment B: Hexagon - Cal Av TIA Report (No Appendices) (1320 : California Avenue Neg Dec and CIP)

PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO: PLANNING & TRANSPORTATION COMMISSION

FROM: Jaime O. Rodriguez
Chief Transportation Official

DEPARTMENT: Planning & Community Environment

DATE: January 12, 2011

SUBJECT: Recommendations to the City Council regarding 1) a Negative Declaration for the California Avenue Streetscape Project, including a proposed 4-lane to 2-lane reduction between El Camino Real and the California Avenue Caltrain Station, and 2) a Capital Improvements Program for the project.

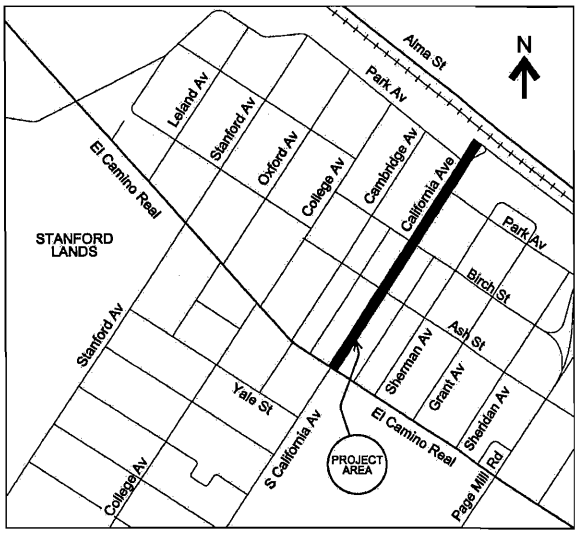
RECOMMENDATION

Staff recommends that the Planning and Transportation Commission (PTC) recommend to the City Council:

1) Approval of the proposed Negative Declaration for the California Avenue Streetscape Project, and
2) A Capital Improvements Program (CIP) to fund the project improvements.

BACKGROUND

In October 2010, the City submitted an application to the Valley Transportation Authority (VTA) for Community Design for Transportation (CDT) Program funding for the California Avenue Transit Hub Project. The proposed project provides for streetscape improvements along California Avenue between El Camino Real and the California Avenue Caltrain Station, including place making, traffic calming and other streetscape improvements. The City Council authorized the filing of the grant request on December 6, 2010. The VTA approved the grant application for project funding in the amount of $1,175,200 on December 9, 2010.



Attachment: Attachment C: January 12, 2011 P&TC Staff Report (w/o attachments) (1320 : California Avenue Neg Dec and CIP)

Over the months of August and September before the submittal of the grant application, City staff solicited community input through an extensive community outreach process conducting five community meetings with California Avenue merchants, the general public and the Palo Alto Central Board. During the community outreach process, the community's main concern was the proposed 4-lane to 2-lane reduction. In December, after completion of a traffic analysis for the project, a sixth meeting was held with the community to discuss the results of the analysis.

DISCUSSION

The California Avenue Transit Hub Corridor Project streetscape improvements include: community identity markers; traffic calming treatment including intersection and mid-block pedestrian crossing bulb-outs and a 4-lane to 2-lane roadway reduction; roadway chicanes that provide for additional tree planting or public art elements; streetscape elements including street furniture such as park benches, newspaper racks, and enhanced bicycle parking; and improvements to the Park Blvd Plaza. These improvements enhance the connection between existing residential and commercial land uses to the transit facilities at each of California Avenue, with Caltrain on the eastern end and VTA transit facilities on the western end.

Project Purpose

In keeping with the vision of the Comprehensive Plan, the purpose of the California Avenue Streetscape Project is to develop a "complete" roadway that best utilizes the available right-of-way of the street to:

- Provide safe space for pedestrians and bicyclists along and crossing the street;
- Maintain adequate vehicle movements while slowing cars and trucks to enhance safety;
- Enhance the overall appearance of the street and adjacent non-vehicular spaces with trees and landscaping, artwork, tables and chairs for outside dining, benches, kiosks, signage, and bicycle racks;
- Accommodate parking needs; and
- Facilitate the use of the plaza near the train station for amenities such as the fountain, landscaping, pedestrian access, seating areas, and bicycle racks.

California Avenue has historically been a four-lane street. It originally provided access to Alma Street but is now disconnected from Alma Street by the Caltrain tracks and is not likely to ever be reconnected. As a result, it accommodates a very low level of vehicular traffic (see analysis below). The lane reduction improves the pedestrian/bicyclist experience along the street and the connection between the existing land uses and the enhanced streetscape elements; two-lane streets frequently serve as central business district streets and provide more effective use of the public right-of-way while enhancing the pedestrian and business environment. The lane reduction also allows existing on-street parking to be brought to current parking design standards while expanding the availability of parking on the street.

In order to evaluate whether the 4-lane to 2-lane reduction would have any significant impacts on existing traffic conditions, the City hired a traffic consultant to collect traffic data in November on and along California Avenue and prepare a Traffic Impact Analysis (TIA) to serve as the basis for the evaluation of Transportation and Traffic impacts for the Initial Study prepared for

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the California Environmental Quality Act (CEQA) evaluation of the project. The TIA focused on three elements:

- Intersection Level of Service (LOS)
- Roadway Segment LOS by Block Segment, and an
- Independent Roadway Operations Analysis of the city-prepared plan line concept for California Avenue.

Intersection Level of Service Analysis

Intersection LOS is a measurement of "delay" to progress through an intersection based on the intersection control type. For example, intersections with signalized controls such as California Avenue & El Camino Real are measured differently in terms of the amount of acceptable delay compared to intersections with All-Way STOP-controls such as California Avenue & Ash St. Intersection LOS is measured by letter grades on a scale of LOS-A to LOS-F, with LOS-A representing little to no delay by motorists and LOS-F representing unacceptable delays.

The TIA analyzed seven "study intersections" at varying times of day to determine how the proposed 4-lane to 2-lane study would impact intersection operations along California Avenue and adjacent streets. In general, a significant impact occurs when a project causes an intersection or roadway segment to deteriorate below LOS-D. Any significant changes in LOS between existing (4-lane) and project (2-lane) conditions may also serve as an indicator of potential "shifting of traffic" from California Avenue to adjacent streets such as Cambridge Avenue or Sherman Avenue. The Intersection LOS study intersections and their control-type are noted below:

Table 1
Traffic Impact Analysis
Study Intersections

No.	Intersection Name	Control Type
1	California Avenue & El Camino Real	Traffic Signal
2	California Avenue & Ash Street	All-Way Stop
3	California Avenue & Birch Street	All-Way Stop
4	California Avenue & Park Blvd (West)	All-Way Stop
5	California Avenue & Park Blvd (East)	All-Way Stop
6	Cambridge Avenue & Birch Street	All-Way Stop
7	Sherman Avenue & Birch Street	All-Way Stop

The intersection LOS findings, provided in Table 2, show that the 4-lane to 2-lane reduction on California Avenue between El Camino Real and the Park Blvd Plaza do not result in any significant Level of Service impacts to the study intersections. As a result, no anticipated shifting of traffic from California Avenue to adjacent parallel streets such as Cambridge Avenue or Sherman Avenue is expected if the street is restriped to two lanes.

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Table 2
California Avenue TIA – Intersection LOS Findings

Intersection Name	Existing Conditions (4-Lanes)						Project Conditions (2-Lanes)					
	LOS			Existing Delay (Sec)			LOS			Delay Increase (Sec)		
	AM	MID	PM	AM	MID	PM	AM	MID	PM	AM	MID	PM
California Ave & El Camino Real	C	C	C	24.7	28.8	30.5	C	C	C	0	0	0
California Ave & Ash St	A	A	A	8.2	9.1	8.4	A	A	A	0.4	0.8	0.5
California Ave & Birch St	B	B	A	11.1	10.9	9.8	B	B	A	0	0.3	0.1
California Ave & Park Blvd (West)	A	A	A	8.2	8.4	8.4	A	A	A	0	.04	.08
California Ave & Park Blvd (East)	A	A	A	7.2	7.3	7.4	A	A	A	0	0.1	0
Cambridge Ave & Birch St	A	A	A	8.2	8.3	8.3	A	A	A	0	0	0
Sherman Ave & Birch St	A	A	A	9.6	8.9	8.8	A	A	A	0	0	0

Roadway Segment LOS Analysis

Like the Intersection LOS analysis, the Roadway Segment LOS analysis uses a similar letter grade scale but instead of focusing on delay time it measures volume demand against roadway capacity. A Roadway Segment LOS analysis was conducted for every block segment and in every travel direction along California Avenue to accurately measure the effects of the proposed 4-lane to 2-lane reduction on California Avenue.

The average daily traffic volumes on California Avenue vary between 5,280 vehicles per day near El Camino Real and 2,748 vehicles per day near Park Blvd. For reference purposes, Table 3 below provides a comparison of traffic volumes of California Avenue against that of traffic in downtowns in neighboring cities.

Table 3
Neighboring Agencies - Downtown Traffic Volume Comparison

No.	City	Street	Avg. Daily Traffic Volume
1	Palo Alto	California Avenue	5,280
2	Palo Alto	University Avenue	18,700
3	Menlo Park	Santa Cruz Avenue	15,445
4	Mountain View	Castro Street	14,297
5	Los Gatos	Santa Cruz Avenue	16,000

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The roadway capacity of California Avenue under the current 4-lane condition is approximately 1,360 vehicles per hour per direction or 680 vehicles per lane. The TIA measured the existing Roadway Segment LOS of California Avenue under current (4-lane) and project (2-lane) conditions but assumed a conservative 560 vehicles per lane capacity under project conditions to account for vehicles backing into and out of parking stalls. The reduction in capacity helps to account for "side traffic friction" and is an industry practice in the measurement of Roadway Segment LOS.

The Roadway Segment LOS findings are provided in Table 4 and show that the 4-lane to 2-lane reduction on California Avenue between El Camino Real and the Park Blvd Plaza would result in a Less Than Significant impact to the street; each of the roadway segments would operate at LOS B or better. This is expected because even under project conditions (2-lanes), the directional capacity of the roadway is still twice as great as the vehicle demand of the street.

Table 4
California Avenue TIA – Roadway Block Segment LOS Findings

California Avenue Roadway Block Segment	Travel Direction	Ex. Volumes			Roadway Segment LOS (4-lanes)			Roadway Segment LOS (2-lanes)		
		AM	MID	PM	AM	MID	PM	AM	MID	PM
El Camino Real to Ash St	EB	140	242	190	A	A	A	A	B	B
	WB	200	230	233	A	A	A	B	B	B
Ash St to Birch St	EB	84	181	141	A	A	A	A	B	A
	WB	176	244	221	A	A	A	B	B	B
Birch St to Park Blvd (West)	EB	65	127	117	A	A	A	A	A	A
	WB	113	152	136	A	A	A	A	B	A
Park Blvd (West) to Park Blvd (East)	EB	51	82	69	A	A	A	A	A	A
	WB	97	170	196	A	A	A	B	B	A

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Operations Analysis

The operations analysis of the TIA was intended to provide an independent review of the concept plan line developed by the City through the various community outreach meetings held before the submittal of the California Avenue – Transit Hub Corridor Improvement Project grant proposal. The operations analysis also included a queuing study of the California Avenue & El Camino Real intersection to determine whether the 4-lane to 2-lane reduction would result in any queue impacts from the signalized intersection at El Camino Real on California Avenue.

The traffic consultant recommends several optional improvements to the City conceptual plan line for California Avenue. All of the recommendations have been included in the proposed plan by the City and if approved by the City Council will be used by a future design consultant for the project specifications.

The operations recommendations are listed below:

1) Maintain 2-Lanes Westbound on California Avenue Approaching El Camino Real

   The original city concept plan line maintained the 3-lane westbound approach on California Avenue between El Camino Real and the first mid-block crosswalk located adjacent to Izzy's Brooklyn Bagels shop. During the commute periods, however, the existing queue beyond the crosswalk would double in length under a one lane condition so maintaining the two lane westbound approach for 200-ft beyond the limit line from El Camino Real will help to maintain the existing roadway operations. This results in the loss of five proposed new parking spaces along the north side of California Avenue between El Camino Real and Ash St but retains the existing 12 parking stall count.

2) Reduce Parking Angle from 60-degree to 45-degree Stalls at Select Block Segments

   The original city concept plan line recommended 60-degree parking stalls throughout the project corridor to help provide consistency in parking operations and increase the on-street parking count from 111 stalls to 135 stalls, an increase of 24 on-street parking spaces.

   The traffic consultant recommends that the parking stalls be reduced to 45-degrees at the following three block segments because the adjacent vehicle travel lane is narrower in these locations to accommodate either widened sidewalks or additional turn lanes in the street:

   - North Side of California Av between Park Bl (West) and Park Bl (East)
   - South Side of California Av between Park Bl (West) and Park Bl (East)
   - South Side of California Av between Ash St and the Mid-Block Crosswalk located in front of Bank of the West

   The reconfiguration of parking stalls to 45-degrees at these locations results in the loss of two proposed new parking spaces. The total on-street parking count with these changes increases from 111 stalls to 128 stalls, an increase of 17 on-street parking spaces.

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3) Eliminate 2-lane to 1-lane Weaving Locations

During the initial round of community meetings in August and September, the proposed concept plan line was revised several times to try and accommodate community input regarding operations on California Avenue including the protection of intersection configurations, or 2-Through Lane capacity, at locations such as Birch St. This results in the need to merge back to 1-lane beyond the intersection. The Intersection LOS study shows that the reduction from 2-lanes per approach to 1-lane per approach does not impact Intersection LOS so one continuous through lane can be implemented without any impact to the street.

The second merge location occurs immediately east of El Camino Real entering California Avenue. No more than one lane ever feeds into California Avenue from the El Camino Real intersection though so the existing 2-lane configuration can be reduced to 1-lane without any impacts as noted in the Roadway Segment LOS analysis. The Stanford Marguerite shuttle stop will be relocated easterly from its current location adjacent to the Izzy's Brooklyn Bagel Shop to just past the El Camino Real intersection; this will also help to eliminate choke points on the roadway when the shuttle is boarded.

4) Provide ADA-Compliant Handicap Ramps at Park Blvd

The City concept plan line provides three new crosswalks, one at Park Blvd (West) and two at Park Blvd (East). These were also crosswalk locations requested by the community. Hexagon Transportation Consultants recommends that ADA-compliant handicap ramps be provided at all existing and new crosswalk locations. This will be implemented during the design phase of the project.

Cumulative Traffic Analysis

For CEQA, evaluations of existing and project conditions are required to identify any impacts from the project and were completed as part of the TIA. No future or planned trips are currently estimated along California Avenue nor are there any estimated traffic increases on California Avenue in the City's traffic model under the existing land uses.

Mixed use development (residential development above ground floor retail) is currently allowed under the existing zoning along California Avenue and the existing Comprehensive Plan encourages mixed use development in the California Avenue area but it is unlikely that enough development would occur such that the development would result in impacts to traffic operations along California Avenue under a two-lane scenario. For example, at California Avenue & Birch Street during the midday peak approximately 882 vehicles travel through the intersection resulting in an intersection LOS-B condition under two-lanes. Traffic volumes would need to 76% to 1,554 vehicles before a LOS-D condition was met. At California Avenue & Ash Street, approximately 737 vehicles travel through the intersection during the midday providing an intersection LOS-A condition under two-lanes. Traffic volumes at California Avenue & Ash Street would need to more than double to 1,452 before a LOS-D condition was met. No long-term cumulative traffic impacts are there anticipated under a two-lane project condition.

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Other Environmental Factors Evaluated

Other environmental factors evaluated during the CEQA Project Check List along with their findings are summarized in Table 6.

Table 6
CEQA Project Check List and Findings Summary

Category	Finding
Aesthetics	Less Than Significant Impact to No Impact
Agricultural & Forest Resources	No Impact
Air Quality	Less Than Significant Impact to No Impact
Biological Resources	No Impact
Cultural Resources	No Impact
Geology, Soils, & Seismicity	No Impact
Greenhouse Gas Emissions	No Impact
Hazards and Hazardous Materials	No Impact
Hydrology and Water Quality	No Impact
Land Use and Planning	No Impact
Mineral Resources	No Impact
Noise	Less Than Significant Impact to No Impact
Population and Housing	No Impact
Public Services	No Impact
Recreation	No Impact
Transportation & Traffic (TIA)	Less Than Significant Impact to No Impact
Utilities and Service Systems	No Impact
Mandatory Findings of Significance	**Less Than Significant Impact**

The conclusion of the Initial Study is that there are no significant impacts associated with the project, including the reduction of four lanes of traffic to two lanes. The PTC's recommendation will be considered by the City Council on February 10, 2010, at which time the Council will also establish a Capital Improvements Program (CIP) for the project. Since the PTC is responsible for conducting an annual review of CIPs affecting the physical develioment of the city for consistency with the Comp. Plan and potential improvements in economy efficiency, Staff is recommending that the PTC review those factors now, as the CIP is being established.

Design Phase

If the environmental analysis is approved and the funding is provided, the project will proceed into a more detailed design phase in the spring of this year. The design phase will involve multiple community meetings as well as hearings with the ARB, PTC and ultimately the City Council. During the design phase, which is estimated to take approximately 12 months, specifics will be considered for the types and locations of the various amenities (benches, markers, signs, tables, artwork, bicycle racks, newsracks, trash receptacles, etc.) to be placed along the street, as well as the final configuration of the roadway including parking design, bulb-outs, and crosswalk enhancements. Details for the design of the plaza near the train station will also be reviewed. Construction of the project is expected to begin in the spring of 2012.

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Conclusion

In keeping with the vision of the Comprehensive Plan, the California Avenue Streetscape Project is expected to result in the following benefits:

a) provide improvements for pedestrian, bicyclist and automobile safety;
b) enhance the overall appearance of the street and encourage pedestrian activity;
c) accommodate an increased number of parking spaces;
d) revitalize the plaza area for public use; and
e) maintain high levels of service for vehicle use.

These improvements serve to support retail vitality along the street, create a sense of identity, and encourage new pedestrian/ transit oriented residential development that will patronize the local businesses and support the use of public transportation, especially Caltrain.

RESOURCE IMPACT

The engineer's estimate for the California Avenue – Transit Hub Corridor Improvements Projects is $1,725,200. The City received a grant from the VTA CDT Program in the amount of $1,175,200, and it becomes available to the City for use in February 2012. A $550,000 local match from the Infrastructure Reserve Account will be required as part of the grant requirements.

The Council will be asked to set up a new Capital Improvements Program project account to fund the California Avenue – Transit Hub Corridor Improvement project on February 14, 2011, and staff recommends that the PTC recommend the new CIP to the City Council. To align the completion of the design phase with the release of the grant for construction of the project, a new CIP project is being pursued outside of the normal CIP review process to enable the design phase to begin immediately. A separate but concurrent roadway resurfacing project on California Avenue will be implemented during the construction of the California Avenue – Transit Hub Corridor Improvements project. The roadway resurfacing project is currently funded in the current CIP.

POLICY IMPLICATIONS

The City's Comprehensive Plan recommends that the City enhance the California Avenue streetscape by upgrading the visual quality of the street to attract additional business and visitors to the area. Consistent with those Comprehensive Plan goals, the proposed streetscape and place-making improvements along California Avenue should ensure continued growth of the California Avenue Business District. The Comprehensive Plan also encourages a mix of residential and non-residential uses at a scale of development that is comfortable for pedestrian use. The Plan encourages improving the appearance of the street while preserving its "home town" character. Also Program L-18 specifically calls out for street improvements that could make a substantial contribution to the character of commercial Centers, including narrowing travel lanes.

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ENVIRONMENTAL REVIEW

The Initial Study and draft Negative Declaration are attached. Staff recommends that the Planning & Transportation Commission recommend approval of the Negative Declaration for the California Avenue Transit Hub Corridor Improvement project.

ATTACHMENTS

A: CEQA Initial Study/Draft Negative Declaration
B: TIA Study (w/o Appendices)

PREPARED BY: Jaime O. Rodriguez, Chief Transportation Official

DEPARTMENT/DIVISION HEAD APPROVAL: _____
for **Curtis Williams, Director**

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Planning and Transportation Commission
Verbatim Minutes
January 12, 2010

DRAFT EXCERPT

Chair Tuma: The first item is the California Avenue – Transit Hub Corridor Improvement Project. We will start with a presentation from Staff and then go to the public. Staff, I believe has a presentation for us, but before we get started with that I would like to say congratulations to Jaime on his new child who was just born yesterday. So amazing dedication for you to be here tonight and we appreciate that. Obviously shows how seriously you take this, and thank you very much.

NEW BUSINESS.
Public Hearing:

1. California Avenue – Transit Hub Corridor Improvements Project: Recommendation of approval of the Negative Declaration for the California Avenue streetscape project that includes a proposed 4-lane to 2-lane reduction between El Camino Real and the California Avenue – Park Plaza.

Mr. Curtis Williams, Director of Planning and Community Environment: Thank you Chair Tuma and Commissioners. We are here tonight to discuss with you the proposed environmental review and CIP project for the California Avenue streetscape project. We are focused on those couple of items and want to clarify that the design specifics of a number of the features of the streetscape will still be under review for some time after approval of the environmental documents as we move closer to construction in early 2012.

The game plan for our presentation tonight is I am going to give a little bit of the context of this project and then turn it over to Jaime Rodriguez, our Chief Transportation Official, who will provide you with a little background on the grant project and the traffic impact analysis and the environmental review that we prepared, and then come back to me for the summary and next steps in the process.

The California Avenue vision that we believe the Comprehensive Plan and other City policies and documents points to is for a street that promotes pedestrian and bicycle safety, that compliments the adjacent land uses, businesses, residences, office, and retail commercial, and provides for pedestrian and bicycle amenities along the sidewalk near those businesses. And, a street that overall balances all modes of travel including transit and vehicular uses.

The Comprehensive Plan has policy language related to providing pedestrian connections in many places in the city, but particularly in these Downtown and California Avenue commercial areas, and encourages specifically walkability for the California Avenue area. It defines the area as a land use designation that is called Transit Oriented Residential. That is defined as being

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appropriate for generating higher residential density and to support transit use, especially in this case Caltrain and some of the other ancillary transit systems.

We have a Pedestrian Transit Oriented Development overlay on this general area around California Avenue. Some of the goals of that district are to promote connectivity to the surrounding, existing, and planned community through bicycle and pedestrian facilities, to encourage streetscape design elements that are attractive to pedestrians and bicyclists, and to support the use of public transportation.

One of the concepts that we are working towards on California Avenue and that is I think a theme of the Comprehensive Plan more generally is what is called "complete streets," and making California Avenue a more complete street than it is today. Generally that means to use the public right-of-way in the most efficient way possible and for as many different kinds of users as possible. Whereas the street is currently predominantly geared to accommodate vehicular traffic and it was originally in fact designed to be a through-street, but has not and is likely never to get to that point given the railroad tracks and Alma, this proposed project tries to achieve a multiple use and balance a variety of different types of modes as well as users along the street. So we can first of all continue to maintain efficient vehicle movements, which is what the traffic study is kind of all about. That we also though provide adequate room for pedestrians and cyclists to use the street more safely. To add pedestrian improvements that can take you across California Avenue more safely. Provide increased amenities along the streetscape for a variety of purposes. Increase the landscaping and enhance the aesthetic characteristic of the street so that we achieve those multiple goals within the right-of-way that we have available on California Avenue.

So with that I am going to turn it over to Jaime and let him discuss the background of the project specifically then get into the traffic study for you. I just want to also note that at the end of his presentation Cara Silver, our Attorney's representative will discuss some of the environmental review implications that were outlined to you in a letter from Mr. Ross today.

Mr. Jaime Rodriguez, Chief Transportation Official: Thank you Curtis. Before I start I want to real quickly introduce Bret Walinsky with Hexagon Transportation Consultants. Bret was lead for the traffic impact analysis that I am going to go over for you and summarize tonight. If you have any specific questions regarding that analysis Bret will be happy to answer those questions for you.

So jumping right into things, we have been working on California Avenue actually for several years at Staff level, but specifically over the last about six months we have had a lot of activity. We actually started back at the end of July in anticipation of a new call for projects coming up from the VTA for the Community Design and Transportation or CDT program that the City had pursued in the past. So we put together a preliminary City concept plan line for what California Avenue could be and shared that with the community over several community meetings through September and August. We submitted a proposal to the VTA in October with all that feedback that we received from the community. The meetings were very well attended with both good comments and negative comments. We tried to implement and address as many as we possibly

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could. I think we came up with a really good plan at that point that had a lot of consensus from the community regarding the input that was provided.

We were successful in receiving a $1.2 million grant. We originally requested a $1.1 million but after the funding distribution we received an additional $100,000 for our project. So the VTA recommended during that scoring process, to award us $1.2 million, which requires an approximately $550,000 local match. That is just rounded up to $1.8 million in the figure that is shown above you. We did go to the City Council for adoption of a Resolution back in December that basically just said if the VTA Board of Directors approves our project and forwards a recommendation to MTC that we would accept the funds pending an environmental review and approval of a project at the local level. The VTA Board approved the project just a few days later at the VTA Board of Directors Meeting in December as well. MTC has also approved our project but is waiting for our approval at local level.

So what our project includes is several what I consider exciting items for the street. Some of them include brand new community identity markers that I can show a little while later, but builds upon an architecture for the street. Down at the bottom is a potential replacement sign for the existing California Avenue sign that is at the entry of California Avenue and El Camino. That public art piece would get relocated to a different portion of the street, and this sign is an option for what could go there in its place. Then that same architecture and color gets distributed through along the rest of the street through markers, the development of a decorative pavement that divides the roadway from the parking elements themselves. It includes we call roadway chicanes, they double as planters for the rest of the corridor, and help to kind of choke down the roadway a little bit. Those double as locations for additional community markers that can house historical or community specific historical information about the area. They also can double as areas for larger shade trees. There is a proposal in the project for the deployment of additional b benches and other streetscape elements like additional bike parking throughout the corridor, consolidated news racks, and things like that.

Then some of the traffic calming improvements include bulb-outs at selected intersections as well as all of the mid-block crosswalk locations supplemented with pedestrian activated flashing beacons for additional safety. All those mid-block crosswalks would become raised crosswalk tables for enhanced safety for the pedestrians as well.

Of course, the major item in there is a proposed four-lane to two-lane reduction, which is really how we sold the project to the VTA to help tie in the pedestrian connectivity of the street to the exiting land, the adjacent land uses, and the transit uses at the Caltrain station as well as the VTA and other public transit services along El Camino Real. What we are going to show you tonight is the traffic impact analysis that was done to show that a four-lane to two-lane reduction would not have a significant impact to the corridor. That is the data that we will be showing you now.

What we did was back in early November was we actually hired two different consultants. One was a traffic data collection company, Mark Thomas. They collected traffic data, turning moving count data at every intersection of cars turning left, cars turning right, and cars going through, pedestrian activity, and that kind of stuff. We also collected volume data at all the mid-block locations along Sherman, Cambridge, California, and the side streets like Ash, Birch, and

Park Boulevard. Then we contracted with Hexagon to actually analyze that data and try to determine what type of an impact, if any, a lane reduction might have along California Avenue for four lanes to two lanes. We asked Hexagon to look at three specific elements within their analysis. One is intersection Level of Service analysis, which really looks at delay to move through an intersection, and I will go over all the study intersections shortly. We also asked them to look at link level analysis, which is looking at the mid-block portions between intersections to see if there would be a queuing or other types of impacts along the corridor from the reduction. We also then asked them to look at the conceptual plan line that was put together with all the community input over September and October and say hey, you have never been involved with this project, take a look at it and give us from a fresh set of eyes things that we could do to this potential concept plan to improve it, to make it safer, or to make it a better traveled roadway for the community. We had received several very good recommendations from Hexagon I think, and we have implemented all of them. We shared that information with the community and received positive responses to those suggestions as well.

So real quickly here are the study intersections. There are seven all together: El Camino Real, California Avenue, and basically all the intersections along California Avenue, Ash, Birch, the two Parks. We call this Park West and then Park East closest to the Caltrain station. Then we wanted to pick one intersection at each of the adjacent streets, at Cambridge and Sherman, to analyze any type of a rerouting of traffic that might happen as a result of the lane reduction. So we looked at Cambridge and Birch as well as Sherman and Birch.

This is a real quick snapshot of the ADT, or the Average Daily Traffic Volume. This is all the vehicles that are traveling east and west on either street, or north – south. So you can see here as expected just before El Camino Real on California Avenue that is where the largest volume happens throughout the day, and that is because that is really the entry as well as the main exit out of the California Avenue district. You can also see that as vehicles progress down through Park that volume starts to significantly reduce. We also show you the volumes on Sherman as well as Cambridge by block segment, as well as the individual intersections. So just a quick note here is Birch, which becomes two-lane after California Avenue has more volume than California Avenue does to the east of Birch as a reference.

One of the other things that we wanted to do for you was kind of try and frame what these volumes look like in comparison to other similar downtown core type areas in other cities along Santa Clara County and within the peninsula. So if you look down at the bottom California Avenue again the highest volume portion near El Camino has about 5,300 vehicles per day total traveling through that block segment. University Avenue in Palo Alto has about just under 19,000. To give you kind of a mental image about what the volumes are like on that street compared to another one within our city. We also pulled out some volumes that are called out by the cities. Menlo Park just to the north of us on Santa Cruz has just over 15,000 vehicles per day, a little bit more similar to what you see along University Avenue in Palo Alto. Then Mountain View the same, about 14,000, on Castro Street. Those of you that are familiar with a little bit more of the south, Los Gatos that is about 16,000 vehicles on Santa Cruz Avenue as well. The main difference here is that all of these streets connect to something. University Avenue specifically connects 101 down towards El Camino Real, down towards the Stanford University area. The same thing with Mountain View it connects Central Expressway with the

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El Camino Real off to the west. Then Los Gatos really serves to connect Highway 17 at the southern tip down to Lark Avenue to the north of it on the other side. So one of the reasons why you have such a lower volume on California Avenue is specifically for the reason that Curtis mentioned earlier, California Avenue doesn't really connect to anything, it kind of ends at California Avenue at the Caltrain station because of the tracks. It was at one point envisioned to be a connecting street to Oregon Expressway but that never happened. It is very likely not to occur into the future.

So really quick again I am going to talk about the first element we asked Hexagon to look at which was the intersection Level of Service. Those of you on the Commission are probably very familiar with that concept. Intersection Level of Service is a measuring of delay to move through that intersection. The main thing to point out here is that delay is measured differently at an all-way stop than it is at a signalized intersection. At a signalized intersection people would expect to wait a little longer because you build up a queue at a red indicator and then when it gets green traffic flushes through versus an all-way stop where you are expected to kind of get there, kind of move relatively quickly once the traffic ahead of you has moved forward.

So what we are showing here is for the seven study intersections that we did what the existing Level of Service is by different periods of the day. So in the morning, in the afternoon during the lunch hour peak, and then the PM this is the approximate delay and the approximate Level of Service that you get traveling on California Avenue. Probably what you would expect. The biggest delays are down at El Camino Real, which is a signalized intersection, but it is about the same delay throughout the day. That is really the main thing to take away from there for El Camino Real. The rest of the corridor works very well today as the four-lane corridor as you would expect because there is so much roadway capacity with four lanes on the street. So one of the first things that Hexagon did for us was said let's take those same volumes and look at a two-lane analysis at those intersections and figure out if there is any kind of significant impact. What we found is that whether you are at four lanes or two lanes really there is no large increase. The largest increases are really in the afternoon and that is less than one second delay during the lunch hour peak to move through the intersection at Ash Street. So what that actually shows us is that there really is no impact with the lane reduction at an intersection Level of Service. That was something that we were expecting during the earlier community meetings. We were telling the community that we didn't expect to see but this is the confirmation of those comments that we made earlier to the community. It was also something that a lot of the people at the previous community meeting we had back in December also comment on that that is what they would have expected as well. So this was a very important finding for us as part of this study to see that actually be the case.

The second thing we asked Hexagon to look at was that link level analysis. Look at each of the individual mid-block segments along California Avenue and try and figure out if there was any traffic that was diverted to another street and if it would result in an increase or mid-blocks if the two-lane to one-lane reduction in each direction of California Avenue would have an impact. Today under four lanes, we look at both eastbound and westbound on California Avenue, and basically it is a Level of Service A corridor today. You have basically the capacity of about just under 1,400 vehicles per hour that can travel through the corridor but you never even really get close to that volume. Unlike Level of Service at an intersection when we look at the mid-block

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segments we look at actually what is called a ratio of volume to capacity. It is obviously the higher your volume plus the capacity the worse your Level of Service gets. We used a conservative, just under 1,400, vehicle capacity today. On a freeway you would expect to see closer to 1,800 vehicles per hour or 2,000. So 1,360 is rather conservative. When we look at the comparison of four-lane to two-lane we didn't obviously assume a reduction in the capacity, but rather than just cut that in half we assumed an even lower capacity to account for vehicles that are backing in and out of their parking stalls because that would actually reduce the capacity that can move through if traffic were moving freely. So we used a very conservative 560 vehicle per lane per hour capacity for the street.

What we did find is that there is some impact. We have Level of Service A today that is what the existing four-lane shows. When we move to two lanes in some corridors during certain times of day we go from A to B. Level of Service B is still a very high level of service for a corridor. The City considers an impact to a corridor or intersection when we get to a Level of Service E or worse. We are nowhere near that with this particular finding here today. So again just to point out that we assumed a very conservative lower capacity of the roadway under two lanes versus four, and what we see with that is that there is really less than a significant impact with the lane reduction on California Avenue.

As a result of both that finding for the link level as well as the finding for the intersection we can safely say that there really should be no traffic diversion to Sherman or to Cambridge, which was one of the comments that the community was providing to us during the earlier community outreach process.

So the last thing we asked Hexagon to look at was again that second set of fresh eyes looking at our plan to say how can we approve this, how can we make this a better design. This was actually very important for us because this design will take a year if the City Council approves the environmental findings as well as the project for us. That will happen in the early February timeframe. This concept plan line will serve as the basis for the design. So we anticipate the design to move forward relatively quickly because we will focus the design more on the texture or the elements that are placed along the corridor where it will focus on architecture for benches, or focus on architecture for bike racks, bike rack locations, those types of things. The general structure and location of the chicanes, the locations of the mid-block crossings those will become a fixed point at this level, at the concept plan line. So it was very important for us to ask Hexagon to look at that and say how can we improve it now so that when we move forward we know that we started off at a good point at the design level.

So the very first thing that Hexagon recommended to us was really two things at the El Camino Real intersection. One is westbound approaching El Camino Real, coming from Ash towards El Camino basically exiting the California Avenue Business District that we actually maintain the two-lane westbound approach a little longer than we were originally recommending. This is actually a really good recommendation by Hexagon, and I will show that you in just a minute. The main reason for doing that is because when traffic is exiting California Avenue as you approach that very first crosswalk in front of the bagel shop on California Avenue any traffic or stacking over two lanes today has to then stack over one lane, which becomes a longer queue. So maintaining the two-lane capacity for those vehicles that are there today is a good

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recommendation because it lets traffic exit the California Avenue Business District a little easier as they are trying to exit the district.

The other thing that Hexagon recommended was that we eliminate the lane merge that happens as you enter California Avenue off of El Camino. This will make a little bit more sense once you see this. If you were making a southbound left off of El Camino into California Avenue it is only one left turn. If you are making a right turn into California Avenue coming from Chipotle or coming from Page Mill there is just one lane that makes a left. If you are coming from the College Terrace neighborhood there is only one lane that feeds into California Avenue. So you really have two lanes today. You don't really need two lanes because you never have more than one lane feeding into the community to begin with. One of the comments that we received, several of the comments that we received through the community meeting process was that when the Stanford Marguerite Shuttle stops at its very first stop, which happens to be located at this location, it causes a jam for people that are trying to get into California Avenue because the bus blocks access to the lanes that traverse over that mid-block crosswalk. So we actually outreached to Stanford to say do you really need this stop? Is it a critical stop for you as far as your pick ups or drop offs? What they told us was yes it is. So we came up with a really good compromise with Stanford to move that into this additional area. At one point we thought about expanding that sidewalk, maybe adding more tree planting areas, but it is kind of nice to keep the pavement as it is and just make it a good bus stop for the Stanford Marguerite so it is not in the way of traffic that traveling on California Avenue. It eliminates that immediate concern that the community was providing to us about this location here.

A quick note is that Stanford is planning on eliminating the Marguerite Shuttle that is in this location on their own. Independent of our analysis they were already looking at that because it is a low ridership. So I understand that they are moving forward to eliminate that stop this coming spring or summer.

This again shows the extended two-lane approach to El Camino Real just before that crosswalk in front of the bagel shop, in front of La Boudegita. To make sure that there isn't any conflicts with cars that want to back out of there we are actually suggesting that five brand new parking spaces that we were originally picking up in this area would go away. So we have 12 parking stalls in this block segment today. We actually maintain 12 through this concept. There is not net loss, but there is no net gain either in that particular block segment along the north side. This also introduces a new area for either providing outdoor seating, more planting, or just a wider sidewalk in general. What is actually there would actually be decided during the design process that would start in the spring if this project were approved.

The second set of recommendations that Hexagon made focused down at the California Avenue and Birch Street intersection. Specifically they like at El Camino were saying get rid of any weaving that you are doing, and also to provide a dedicated westbound right turn lane at the intersection. What that looks like is this. This was actually was the very first – this westbound approach was the first concept that we showed to the community back in early September. We tried to respond to the community's concerns about lane capacity by reintroducing a left through and a through right lane concept. That was what was actually submitted in the concept to the VTA as part of our grant proposal. What Hexagon is basically saying is make that a right turn,

which eliminates the need for any weaving in this other area between Birch and the very first mid-block crosswalk. If I am right going off memory, I believe that is where the Printer's Café is. That was a good recommendation. Again, now that we have kind of shown from both a link level and an intersection Level of Service standpoint that the roadway works under two lanes we have that flexibility to try and go back to something that operates more efficiently for the street, and that is what this shows.

A highlight for you, this is the bulb-out area that we were referring to earlier. One of the nice things that happens here is that the skewed crosswalk that is existing gets straightened out with this particular project.

A last set of recommendations made by Hexagon included recommendations to reconfigure some our proposed 60 degree angle parking back to 45 in areas where the adjacent lane widths were narrower. That happens really only at two locations. Here at Park Boulevard West and Park Boulevard East in front of the Caltrain station we originally had these as 60 degree parking within our original plan line concept. They are 45 today. We just put them back to 45 degrees. That works better because as you are backing out of the stall you can do so without impacting or traversing into the through lane in the opposite direction. So that was a good recommendation from Hexagon and we have implemented it in this plan. It was a recommendation that the community seemed to be very receptive to that we made back in December as well.

A final recommendation by Hexagon was that any location where we were recommending brand new crosswalk that we make sure that we provide ADA access through ADA compliant handicap ramps. So at Park Boulevard West this is a brand new crosswalk that is not there today so this would require the installation of a ADA accessible ramp at this location. As well, this is a brand new ramp here and this is a brand new crosswalk here as well. So those would be of course ADA compliant ramps.

So with that there really are again no significant impacts from the operations, recommendations that are made by Hexagon, and as a result no negative finding within the Declaration for the Transportation Element of the study. So with that I am going to hand it back over to Curtis to go over some of the other elements that are studied as part of the CEQA Checklist for the project.

Mr. Williams: Thank you Jaime. So the primary issue here was the traffic. We didn't see any significant impacts. There were some that required some discussion but there were not any significant impacts in any other areas. There weren't any significant impacts in the traffic either but obviously going from four lanes to two lanes required a thorough analysis of that. So the conclusion is that there is no impacts in any of those categories so it was not required to have any mitigation measures that might otherwise be required.

So just to sort of sum up what we see as the project benefits again are the multimodal use of the street, increased safety for pedestrians and bicyclists, enhanced amenities such as benches, tables, landscaping, signage, bike racks, news racks, etc. We see this as being as all helping to encourage and increased opportunity for public interaction through again some wider sidewalk areas, bulb-outs, outdoor seating areas, some public art elements that would be areas that would

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be available for that. In the context of all of that then still continuing to provide a high level of service for automobiles and transit that do use the corridor.

The next steps in this process, we are basically at the bottom of this slide now on the January 12 date with the Commission. We are scheduled to go to the City Council on February 7 to present the environmental review to them and also to have them establish the CIP project. That is another item on your tasks as far as the actions that you are taking tonight, to recommend as the Commission does as part of your purview recommend CIP projects to the Council, and particularly the finding that it is consistent with the Comprehensive Plan, which I think we have outlined we believe this project is.

So then later this year, after the environmental clearance is made and the CIP project is established, we will be beginning the detailed design component. We are having a consultant brought on board to help us with that detailed design. We will have a number of community meetings at that time and we will talk about some of the specifics of what has been discussed here. There is quite a bit of room for flexibility in terms of signage and whether a bulb-out is used for additional landscaping or used for some restaurant seating, etc., etc. So all of those reviews will take place over about a 12-month period. We will be back to no only the community at large but also to the ARB and to the Planning and Transportation Commission for your input on those design features. Then hopefully we will begin construction in early to mid 2012 with the project.

So our recommendations are first to recommend approval of the Negative Declaration for the project and secondly to recommend to the Council to establish a Capital Improvement Project account to fund this project. That concludes our presentation. Cara would you like to respond to the letter?

Ms. Cara Silver, Senior Assistant City Attorney: Thank you Curtis. We just received a letter from William Ross, an attorney representing some of the merchants, residents, and taxpayers in the City of Palo Alto that I wanted to respond to. He raised three procedural points with respect to the Negative Declaration.

The first was he said that the Negative Declaration was not distributed to the County Clerk and other responsible agencies such as the VTA and the MTC. Staff did some research on this quickly this afternoon. It appears that the Notice of Intent to Adopt the Negative Declaration was filed with the County Clerk. We could not verify whether it was served on the VTA and the MTC. We will relook at that issue tomorrow, and if it has not been distributed to those two agencies we will of course do that first thing tomorrow morning. Then we will extend the comment period appropriately so that those agencies can comment on the Negative Declaration. VTA and MTC of course are aware of this project and have been kept apprised of the general parameters of the project. So we don't expect that that will delay the process significantly.

The second point was that the Planning and Transportation Commission should not review the Negative Declaration until the formal 20-day comment period has expired. As you know, it has been the Planning and Transportation Commission's practice and role to review the Negative Declaration towards the end of the comment period so that the Planning Commission can provide

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substantive comments to the City Council, who is ultimately adopting or certifying the environmental document. So by reviewing it during the comment period this allows for some substantive input by the Planning and Transportation Commission. There is no legal requirement that the Commission wait until the end of the comment period to make those comments and recommendations to the full Council.

Finally, Mr. Ross raised the issue of whether the document should evaluate the economic impacts associated with the project, and typically environmental documents do not evaluate economic impacts unless those economic impacts have tangible, physical environmental impacts associated with them. In this case, we do not believe there are any such physical impacts that could be triggered by an economic impact. In fact, this project in essence will be an economic stimulant to the area by providing more pedestrian amenities and that type of thing.

So I think that addressed the major procedural points that Mr. Ross raised in his letter. I would be happy to answer any further questions.

Mr. Williams: I would like to suggest that also Jaime briefly touch on number one the net increase in parking spaces for the street in this plan, and secondly the accommodations for bicycle parking that are being provided with the plan. We do believe that the plan in effect not only provides some additional vehicular parking but that the enhanced bicycle parking as well will encourage more people to bike there and minimize, at least to some extent, the need for additional vehicular parking.

Mr. Rodriguez: Thanks Curtis. If it is okay, what I want to do is kind of walk you down the corridor. I didn't do that in my first presentation. That might be something of value to you as well as the people in the audience through the discussion of the project.

This is California Avenue. Down towards the left end of the screen is El Camino Real. You have already seen portions of this during the presentation. This is showing the bus stop that gets relocated a little bit to the west just in front of the bagel shop. It shows the extended two-lane westbound approach approaching the El Camino Real signal.

One of the things we did with this project that was a major change was if you look here you see this really acute, probably like a 30 degree parking angle along the south sides and north sides of California Avenue. One of the things we did with this project is we are proposing a 45 degree angle change. The existing…

Chair Tuma: If I may, I just want to interject a comment here for both Commissioners and the public to be aware of. As we are going down and looking at this design this is sort of the state of the state right now. But we are not as a Commission tonight giving the thumbs up or thumbs down on the specific design but rather, the other issues, the environmental issues and the CIP. So while it is great to have this information this is not necessarily what we are recommending up or down or sideways tonight in terms of the specific design. So just to sort of set the stage and so the public is aware of that as well.

Mr. Rodriguez: That is a good comment, Commissioner. That is true. Again, one of the things we did was we went from the very acute angle to a more standard 45 degrees because even with the acute angle today we don't meet our existing parking guideline standards as far as the depth required for a parking space, and depth of an aisle behind a parking space for you to back into and out of a stall. This actually brings us into compliance with our 45 degree parking standards. So what this shows is a 16-foot parking depth that is divided from the adjacent traffic lane by a three foot concrete band. It is not a bike lane it is just a decorative aesthetic band down the corridor that visually breaks up the street, from the black asphalt, from the proposed concrete parking bays. So even though the concrete parking bays were an aesthetic impact, as well as a long-term maintenance effect because the concrete will last a lot longer than asphalt will. So overall resurfacing for the street is now reduced because before we would be resurfacing the entire roadway, curb-to-curb, which is a little over 60-feet, and now actually our roadway resurfacing is actually narrowed down to just over 30-feet, which is half. Half of that cost for the concrete parking is actually picked up by the grant versus what would normally be paid out by the City as part of a Capital project. What those bands look like we will work with the community through the design process as well as the Architectural Review Board. Just a quick note, we do plan to go to the Architectural Review Board if this project is approved by the Council very early on, probably as early as late March or early April just to kind of begin to let them see this. They have not been involved as part of this process but we do plan to bring them in.

So again, as we approach the first mid-block locations we actually raise the street to make sure that the mid-block crosswalks serve as a traffic table that you would see along a more residential collector street. That serves to slow down traffic throughout the corridor to make sure we never have an increase in vehicle speeds down the corridor. We also maintain all of the existing parking locations. It is kind of hard to see my mouse there, but I am kind of waving it over the bus. One of the things that we showed as an option in the plan is that just approaching Ash Street these current four proposed parking stalls, which Hexagon also recommended to make at a 45 degree angle to allow back into and out of without going into the opposing lane, we actually envisioned that also to be a potential location for an outdoor seating plaza. So during farmer's market events, or other types of events where there is some type of a closure between Ash and El Camino Real there is an area for people to begin congregating and dwell together, in addition to just the street. That is not something that we are prosing at this time it was just thrown in as an option. We want to reintroduce that concept during the actual design process. s right now there is no suggested parking loss but if the plaza were pursued during the design we would end up with just two spaces in that block segment between the crosswalk and Ash versus the six we would have today if there were no plaza.

Moving down along the corridor. Again we have maintained that 45 degree angle concept. We begin to introduce these planter or chicane locations mostly all located in front of the mid-block crosswalks so we can have the pedestrian activity flashing beacons be housed in these locations. Those locations can also serve as locations for the larger shade trees for the corridor. They can serve as the locations for community identity markers for the street, or they could be additional public art future locations, whatever it is that the community wants. It is really a community driven decision.

Moving down the street down towards Birch, you saw this during the presentation with what the intersection improvements looked like. Again, at some locations we tried to maintain more than a one lane approach to make sure that the roadway maintains an efficient operation. So we split off here the right turns from the throughs and the lefts. That is what we are trying to show in this particular slide, or this portion of the diagram.

As we move down again at the mid-block crossing locations we introduce these additional chicane areas, which again are either planting areas or tree areas or marker areas to be decided later.

Approaching the rest of the corridor now at Park Boulevard West, this is the brand new crosswalk. One of the things you notice is all the crosswalks are now 90 degrees, smaller crossing distances for pedestrians who are crossing through the corridor.

As we move down towards Park Boulevard East one of the comments we received early on from the community as well as the owner of the Mollie Stone's Market is they wanted to make sure they had good access into the store. That is what this did. We provided this very long left turn pocket to Park Boulevard West, and this also serves as a left turn pocket for the shopping center. That was something we thought was well received by the community when we showed that to them. As we began implementation of a bike boulevard project along Park Boulevard it is an important design element for us to have that separate left turn lane for bicyclists that are traveling south to north through the corridor.

At the Park Plaza one of the proposals we had was actually to eliminate the stalls that are there to be able to provide an opportunity to introduce a larger clean canvass for that park itself. So I know we are going to start working fairly shortly, we have already started having discussions with the public art staff here locally to talk about the replacement fountain and where it goes. One of the things you will notice here is it is very hard to put in a pedestrian ramp at this location because the fountain gets in the way. So when we begin the design the new fountain will have to move slightly southwest, probably about 15 feet, to accommodate that pedestrian access. One of the things we will also be looking at is for the tunnel access coming out that goes underneath the park. We want to make sure we tie that back to the street for the future bike boulevard project. So the initial question, which was how many parking spaces do we end up with? Today there are 111 and with the changes that we have implemented from Hexagon the 45 degree angle recommendations at some locations, the maintenance of those two-lane approaches approaching El Camino Real where we lost five that were new spaces but will remain net neutral with 12 existing, we end up with 128 future spaces. The number of future bike rack parking will significantly increase as the design moves forward. For those of you that are very familiar with the area there is a large cluster of bicycle cages along the plaza. We have already outreached to Caltrain about relocating those onto their property. They don't have as busy of a parking lot now as they did in the past because of the Baby Bullet implementation previously. So we want to take the lockers move them onto the site and we will instead provide more rack style parking, as well as rack style parking along the entire corridor. So although the exact number hasn't been determined we are envisioning somewhere closer probably between 75 to 100 brand new bicycle parking spaces through the corridor. If we are successful in getting our wishes we are actually beginning implementation of a bike share program with the VTA. I want to make sure we house

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a bike share station facility near the entrance of the station itself, potentially on that plaza or somewhere near there.

Vice-Chair Lippert: A quick question. That 128 proposed parking spaces, does that include handicapped on street?

Mr. Rodriguez: With this design we didn't introduce any brand new – we didn't propose any disabled parking spaces. I think as we move forward with design if the community so wants that we can reintroduce that. The only disabled parking spaces today are the one that is in front of Mollie Stone's. This actually proposes to remove that disabled space.

Vice-Chair Lippert: Actually, I think you have a couple of disabled parking spaces on California Avenue. You might want to take a look at that.

Mr. Rodriguez: Any other questions?

Chair Tuma: Procedurally, go ahead and wrap up. We are going to go to the public and then we will come back for questions. Okay, great.

Okay, a couple of things. Just for the record, Commissioner Fineberg joined us right after the roll call but before this item started. So she was here for the whole item.

We are going to go to the public now. At this point I have only four cards from members of the public. So if there is anybody else who would like to speak please bring the cards up to the table here. Anybody else? Okay. So with that we will go through members of the public. I think we are going to have six, seven, eight, or something like that. So members of the public will have four minutes apiece to address the Commission. We will start with it looks like Gil McMillan to be followed by Robyn Duby. Welcome.

Mr. Gil McMillan, Palo Alto: Okay, I guess I will just bullet it. Number one, who asked for this? It has never been made clear. I have attended any number of or at least three or four meetings of business folk and the residential meetings. There was never a strong sentiment expressed for it. There were serious negative sentiments expressed against it in each meeting, which the gentleman neglected to mention.

As to cyclists on the sidewalk, right now they are a hazard. The sidewalks are narrow. There are restaurant tables and chairs. And as I understand it the chairs will merely increase the number of people riding the bikes on the sidewalk because with one lane and cars backing out it is going to be more hazardous for cyclists than less. I am there every day I see it. The second lane is available for backing out so that the traffic continues to flow, a fact which I think the traffic survey did not consider.

The other thing is you might test this concept with paint. For $5,000 to $10,000 you could paint these in and see whether this is going to work or not before committing this much money to a project of questionable value.

The other fact, and the hard fact that no one seems to want to accept is that people come there by car. The overwhelming majority of people are there in automobiles. You might like them to walk. You might like them to cycle. But that is not what they are doing.

There has been no consensus at the business meetings, the merchants on California Avenue. As a matter of fact there was a meeting on this past Friday at which there was significant opposition expressed.

Mollie Stone's anticipates a serious negative effect if the lane reduction occurs because people come to Mollie Stone's to shop, you go home with three bags of groceries, you are not doing it on a bicycle, you are doing it in a car.

The question is who – he spoke of many amenities – who maintains these amenities, the tables and chairs? Right now the farmer's market is a disaster for the businesses that are open on Sundays. Scarcely a merchant is in favor of it. It might do better moved to the VTA parking lot and then it might bring business to the area. Right now it is an inhibition to business.

Remember that University, Castro, and Santa Cruz are all congested streets. Many people don't go there any more for that very reason. It is sort of the Yogi Berra problem.

The essential problem of California Avenue is parking. If you are going to help the merchants, if you are going to increase economic activity, if you are going to increase your sales tax revenues get adequate parking. Right now from eleven o'clock in the morning until two-thirty or three there aren't any spots, and from five-thirty or six to nine or ten the same is true. So if you wish to help the folks on California Avenue provide parking and figure out a way to get the bikes rerouted around in their own lanes. Thank you.

Chair Tuma: Thank you. I think one of the Commissioners has a question for you if you wouldn't mind coming back to the podium. Thank you.

Commissioner Keller: Thank you sir. I am wondering if you are one of the merchants on California Avenue?

Mr. McMillan: Yes, Accent Arts. The art supply store.

Commissioner Keller: Thank you very much.

Chair Tuma: Okay, Robyn Duby followed by Todd Burke.

Ms. Robyn Duby, Palo Alto: I am a 20-year resident of the College Terrace neighborhood and I am here this evening to support the Staff's recommendations to the Commission to approve the Negative Declaration.

What I would also like to do is commend the Staff for their process of inclusiveness and responsiveness to the community. Unlike the California Avenue street debacle they have really kicked in and done due diligence in collecting the community's input. The due diligence has

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included doing this independent traffic analysis, which shows that there is no or very little significant impact. So on that basis alone the data showed that we should recommend going forth in recommending to the Council a Negative Declaration.

I think that it will be a great revitalization of downtown area. I have driven and bicycled down in the area in equal parts. I rarely encounter, rarely, rarely in 20 years two people going in the same direction using the two lanes. So I see that the functionality of the 1950s where it was a throughway for Alma to El Camino is no longer something that is needed. What is needed is a revitalized down California shopping area. Thank you very much.

Chair Tuma: Thank you. Todd Burke followed by Ellen Fletcher.

Mr. Todd Burke, Palo Alto: I actually live on California Avenue. The windows of my condominium at Palo Alto Central overlook the park, the beautiful bike storage lockers provided by VTA. I am here on behalf of myself although I have spent a lot of time speaking with my neighbors and friends and various people who use the street. I am on the street every day since I live there. I am a frequent patron of many of the businesses. Although I am not an artist I appreciate the Accent Arts business.

I personally am in favor of the plan. I think that there are some things that ultimately need to be addressed between now and the time that construction commences. I think there are some details to review, and I think the team has put together some openness for that. I also share a little bit of the concern that the businesses do about an impact on them. I am hoping that the City has some way of working with and negotiating certain aspects of the plan with the various businesses.

Although I am in disagreement of a number of things mentioned that might otherwise be opposition. There was a comment made about who asked for it? I wholeheartedly raise my hand and say I am asking for it. I live on the street. I look at the 25 to 30 year old garbage cans, and bent bike lockers, and bad sign stands, and everything that could be improved about the street. So I for one am an individual here standing before you mentioning that I am asking for it. I may not have asked for it by the time the plan was put in place, but I am.

I also find that there are a lot of neighbors who may not be here tonight, folks who live and use the street who are also in favor of seeing some level of beautification. So I am in favor of you accepting the Negative Declaration and moving forward with the plan. Thanks.

Chair Tuma: Thank you. Ellen Fletcher followed by Terry Holzermer.

Ms. Ellen Fletcher, Palo Alto: I rode my bike to Mollie Stone's last week and then was approached by a lady who was gathering signatures against the project. She tried to pursued me that reducing the lanes from two in each direction to one would endanger bicyclists because they would have to share the lane. Well, I can assure everybody that is not going to happen. It is not more – in fact the Palo Alto Bicycle Advisory Committee strongly recommends this project. There wasn't anyone on the Committee who had any doubts about the safety of the current plan.

I might point out that we share lanes all over town including on University Avenue where the lanes are much more narrow and traffic volume is much heavier. So California Avenue is a very mild street for bicyclists ride their bikes on.

So I am really in favor of the project giving more space on the sidewalk for activities on the sidewalk. It is really nice when you go to Castro Street and see what they have done regarding the pedestrian amenities. It is really very pleasant. So I do hope that you will agree with the Staff's recommendation on this issue. Thank you very much.

Chair Tuma: Thank you. Terry Holzemer followed by Cedric De La Beaujardiere.

Mr. Terry Holzemer, Palo Alto: Good evening Commissioners. I am the President of Palo Alto Central, which is the large condominium complex located at I guess you could say the foot of California Avenue.

First of all, I would like to thank the Staff for all the hard work. I know they have put a lot of hours into this plan and this design. However, I am here representing an opposite viewpoint. From the project's inception we have voiced our grave concerns to the City Staff about this project, but unfortunately many of those concerns have fallen on deaf ears. However, I am in agreement on one central theme. California Avenue needs improvement. The businesses are in agreement with that. The residents are in agreement with that. Where the devil is, of course, is in the details.

If you walk California Avenue like I do almost every day and talk to individual merchants and residents who live and work there one thing is perfectly clear. Please repave the street. We have understood for many years that the money has been there but there has been a long delay given the various decisions to delay the project for a number of reasons. It is also clear from everyone that I have talked to that they don't want it narrowed to two lanes. At numerous public meetings, all of which I have attended, all of them, Staff has repeated that in order for the City to get the $1.2 million from the VTA they had to change the lanes. That was part of the requirement of getting the grant, but they haven't really taken the citizens or the residents in the area who live there every day into consideration. Why, I ask is the City going to spend an additional half a million dollars of the citizens' hard money for a project that a large segment of the California Avenue community neither wants nor has requested. Specifically we believe narrowing the two lanes will produce more traffic congestion, less convenience for customers who want to shop and spend money in Palo Alto, and even create a greater bicycle hazard since both cars and bikes will have to share the same exact lane.

We are also concerned about parked vehicles on the street who now will be forced to back up right into the only traffic lane that they have on the street creating an increased danger for cars and bikes going down the street. As a result, we feel that this is an ill-conceived project, ignoring the wishes of a large segment of the California Avenue community, and it should be rejected or severely modified by the Planning Commission. We hope you will take a good listen to the community, especially those that live on the street. Thank you.

Chair Tuma: Thank you. Excuse me I think Terry one of the Commissioners has a question for you.

Commissioner Keller: So was you statement an official position of the Palo Alto Central Homeowners Association or …? When you said 'we' I was just wonder exactly what the scope of 'we' was.

Mr. Holzemer: Yes, I am here representing the majority of our Board. Yes.

Commissioner Keller: Okay, thank you.

Chair Tuma: I think there is one more question for you, if you don't mind. Commissioner Garber.

Commissioner Garber: There is. I had another question for you. You had mentioned that the only thing – the only thing that I heard you say that your Board wanted was the repavement of the street. Is there anything else?

Mr. Holzemer: Well, we talked about in the early City meetings that we liked some of the concept ideas. I think Jaime mentioned I am sure in his presentation about the signs out on front of El Camino Real, and drawing attention to California Avenue. I think he talked about some of the other street improvements. I think those would be great ideas, and I think they would be very welcome by the business community. I think the primary sticking point is the four lanes to two lanes.

Commissioner Garber: Thank you.

Chair Tuma: Thank you. Our next speaker is Cedric De La Beaujardiere followed by Fred Balin. I apologize for butchering your name. We have heard that over and over. With a name like mine I am used to that from my end.

Mr. Cedric De La Beaujardiere, Palo Alto: Thanks, no problem. I am here to support the Staff recommendation. I support this plan. I am the current Chair of the Bicycle Advisory Committee. We have reviewed the plan and it has incorporated the recommendations that we made to Jaime and his team. We think that the configuration is safe for bicycles. You have 16 feet here, a typical bike lane is five feet. A very wide lane in a street would be 11 feet. So at 16 feet you have plenty of room. The charros tell the bikes and the cars where to be so it is really not a problem for bikes, and the Bicycle Committee does support this plan.

As an individual I wanted to point out, and as part of PABAC too, the lane reductions are safer for pedestrians. The number one cause of vehicle/pedestrian conflicts is when a pedestrian crosses a road with more than one lane in each direction. So at the mid-block crossings, which are not controlled by any stop sign having a reduction in lanes is a great improvement for safety for pedestrians, as well as having them be raised crosswalks. It will slow down the cars.

As an individual I would like to point out then that this plan adds between ten to 19 parking spots on street depending on what the options are. So you have a net increase in parking that is good for businesses, that is going to draw people in. You have the pedestrian safety improvements that will help draw people in. The street is going to get repaved anyway. This is an opportunity to change the striping. The four lane configuration is an anachronism from 70 years ago from before Oregon Expressway was built. Now California Avenue doesn't go through the tracks any more, it is totally superfluous, it is wasted space. So now we have an opportunity to update our design to what the current conditions on the ground are.

The traffic volumes are extremely low on California Avenue. They are about a quarter of what you get at Arastradero. So you hear a lot of people saying oh, the lane reductions on Arastradero, what a pain it has been during the commute period, but you have a quarter of the volume. Even at the peak hour you could double the traffic volumes in a peak hour and you would still be underneath the capacity of the one lane configuration.

I wanted to add as well that one way to address one of the concerns that people have is the back in parking and backing out of a steeper angle. One idea that I have been in support of is trying out back in diagonal parking. You basically drive past your spot, put on your blinker and then you back in. Then when you are ready to drive away it is easy to see if there is any oncoming traffic. Other cities have done it to success. Just because it was mentioned, the farmer's market, I have talked to people at Country Sun and they have seen a net increase in their business over a week period. I have driven by enormous sales on Sunday. So, thank you very much. I support this plan.

Chair Tuma: Thank you. I believe we have a question for you.

Commissioner Fineberg: Forgive me if this puts you on the spot, but do you happen to know which other cities have done trials or have implemented the back in parking? If you don't maybe Staff does.

Mr. De La Beaujardiere: Yes. Some of them are San Francisco, Fremont I believe has tried one, and several others but I can't remember off the bat.

Mr. Rodriguez: If I can follow up to the response from Cedric. San Francisco has done that. Fremont is actually in the process of a design to do their very first concept. The other back in designs that I am familiar with are actually more down south, specific cities in Southern California I don't remember, but more down south. It is a different concept. We are actually very interested in looking at it from a Staff level to see how the experiment in Fremont goes. It is a little bit more applicable to what we could do in Palo Alto versus what San Francisco has done just because of the nature of the city.

Chair Tuma: Thank you. Fred Balin followed by Roger Carpenter.

Mr. Fred Balin, Palo Alto: Good evening. First of all I want to congratulate the Planning Department for achieving this grant. It is a superior concept integration and presentation to the

grant application of last spring as well as the one in 2006 from the Public Works Department and the area association.

Moving on though to some of the substance. It was mentioned tonight that your purview here is on the environmental review and the CIP. However, you have not really had a chance to look at the elements of the project. I think that is something we should think about if this comes around again. There are two concepts that were kind of dictated a large portion of what happened here. Number one is, as was mentioned earlier, the grant was dependent upon the lane reduction from four to two. It took awhile to get that out there but Staff states that is the case. You would not have gotten the grant or been considered without that.

The second thing, which is on the other side of that is when you move to two lanes the decision was made we are going to have a three foot paver, a kind of a no mans land, between the cars and the wider, 16 foot bike lane. Certainly safer for bicyclists if they share the now wider lane with the cars, but that takes away the possibility of widening the sidewalk in a uniform way, which was discussed at the Planning Commission here when we were talking about the trees last year. In the rush to get the trees in that was kind of put aside. I think that that discussion should have occurred here as well as with the public before this went through but in the rush it didn't occur. There is a concern that this street is narrow. It needs to be thought about as we go forward. I am also concerned about filling it up with a lot of bike racks as well, and we need to make good use of the bulb-outs and other options in the project to not make that street too difficult and to make it more inviting for people to stroll on.

In terms of the environmental study we have a number of elements that we kind of haven't heard from before. In addition to the standard signalized intersection Level of Service we now have like a mid-block intersection LOS. We have queuing analysis, link level stuff. Interesting parameters. More than we have had before. I am thinking ahead and although there is no major impacts here as represented there will be a decrease in road capacity. It will be less than half the road capacity. There is an increase in delay time. There is the whole issue of queuing where if things queue up too far it affects parking spaces, and therefore you had to make an adjustment for that. As you go forward into the Comprehensive Plan I don't know what kind of threshold levels we have set in terms of transportation. There was a long period of time where we didn't have any set. Something may have been set in certain areas, and I think we might even be able to look at that as almost like a backstop and say if these are the levels that we want not the worst case scenario or something that is as bad as we can tolerate, but something that we might want to have we might want to think about that as we go forward in the Comprehensive Plan for this area.

Finally, there is a section here on the CIP tonight. You are supposed to approve some kind of exception to the process. I would kind of ask for you to understand exactly what is involved in that exception because one of the chances that we missed in terms of stopping what happened on California Avenue with the trees was that there was the CIP, the mid-year adjustment was not made public so we couldn't really find out that the trees were going to go down through that process. so I would just alert your attention to what the exception is tonight. Thank you.

Chair Tuma: Mr. Balin, if I may just to clarify something for you and for the public, and I think it was my comment you were referring to earlier about the purview. The plan is that if this does goes forward that there will be a year-long design process in which the Planning Commission will be intimately involved. So it will go through public discussions, it will go to the ARB, it will go to the Planning Commission, and go back to City Council. So by no means is tonight our only swing at bat. I didn't want anybody, including the Commissioners, to interpret my comments as that we are not allowed to talk about those items tonight, but we are not here to approve a design tonight. That was just to clarify my comment.

Mr. Balin: Just a follow up. My comment is that the constraints of the design as have been presented in the proposal, the City Council had to sign a Resolution that said that the project will be implemented as is, and therefore where there is latitude within design I believe you still can do things. But where it is firmly stated I think there is less possibility.

Chair Tuma: Great, thanks. Roger Carpenter followed by our last speaker, Jed Black.

Mr. Roger Carpenter, Palo Alto: Hi. I am member of the Evergreen Park Neighborhood Association. I would like to say that I approve all of the plans that I have seen in the previous meetings as well as tonight.

I believe California Avenue improvements in aesthetics and the additional community space that will come out of this plan will only be beneficial to the community. I completely agree with one lane of traffic in each direction. It is not a through street and there is very little traffic, and the analysis shows that there won't be any impact. So I am looking forward to ironing out any details with the community, if this is approved, over the next year. I believe the plan in place looks good and all that is left are very small details.

All correspondence that I have seen at Evergreen Park Neighborhood Association has been positive towards these improvements. I have seen no negative comments from any of the correspondence. That's it.

Chair Tuma: Thank you. Our last speaker, Jed Black.

Mr. Jed Black, Palo Alto: I am a resident of the Evergreen Park Neighborhood, about California Avenue North. I have been there for 20 years. I am very in favor of the Staff's recommendation to approve the Negative Declaration. I think a key aspect from my perspective is the reduction from two lanes to one in with the analysis that has been conducted that suggested that it should have minimal impact on congestion.

We see other areas that have been revitalized that have been mentioned like Castro Street, Santa Cruz Avenue, and University Avenue. Great places and highly trafficked and great for business. The nice aspect about this project in reduction to one lane is there shouldn't be the congestion it sounds like that the other places are encountering. But nonetheless they are still great places, and I don't think that what has been done for those areas has had a negative impact on business at all. It makes that a great positive impact on business and I could see the same thing potentially happening to California Avenue. So just voicing my support as well. Thank you.

Chair Tuma: Great. Thank you. If there aren't any other members of the public who want to address this item? Okay, we will come back to the Commission then. Commissioners, we will do questions and comments together in a round and see if we can get through it there. Then at any point in the process if someone is prepared for a motion I would be happy to entertain that. I had lights from Commissioners Garber, Keller, and then Fineberg. We will do five minutes each on the first go around and see if we can get through it.

Commissioner Garber: Jaime, you had mentioned in your presentation that one of the factors that would have a big impact on the volume of traffic on California Avenue is if it were open at the other end, meaning that it was connecting to secondary streets such that there would be greater flow. Correct? Are there other or perhaps I could ask you to just spend a moment to tell me what other key things might happen on that street or on any street that would have a big impact. I am thinking 2X sorts of impacts on the volumes of the street other than just simply opening the easterly end back up to Alma or something of that sort.

Mr. Rodriguez: It is actually a really good question. What we were mentioning during the presentation was if you were to connect California Avenue to the other side of Alma that additional vehicle traffic would of course be a much different study than we have done today. But, there are other things that can lead to increases in traffic. That is of course changes in land use, which this Commission has purview to, and if there were – and I will just use the most extreme example I can think of off the top of my head, say a re-conversion of Mollie Stone's to some other type of a development, maybe more residential. That would be more traffic. Every project that would be proposed would involve some type of environmental analysis like we've got. So when those projects would be designed or be planned they would do an additional analysis to figure out what type of traffic it would add to the street, and what those Level of Service impacts specifically at the intersection level what it would result in.

Commissioner Garber: I am going to interrupt you just briefly because I have limited time. So changes in land use that increase density.

Mr. Rodriguez: That is correct.

Commissioner Garber: Let me paint two wild scenarios for you.

Mr. Rodriguez: Sure.

Commissioner Garber: What would happen say if there was a hotel at the corner of Park and California? Let's just assume that nothing else changes it is added somehow magically on top of all that. The hotel, just for arguments sake, is 150 rooms. That is probably a lot. Or alternatively for instance like on Castro, which has a Performing Arts Center with a significant amount of parking underneath it, let's say that you plopped a Performing Arts Center at the end of California Avenue. How would that change, and I recognize I am putting you on the spot because you have not done this analysis which would take nine months or whatever, but would that have a significant impact on the CEQA recommendations that you are presenting to us this evening?

Mr. Rodriguez: Yes, if we were looking at those types of land use changes it would be a much different study than we have done today. We would have much more volume along the street. A typical example, and I will ask Bret to correct me any time I say anything wrong, but a typical residential unit is about ten trips average per day. That is a couple in the morning, people going to work, there are maybe a couple of mid-afternoon trips, then another couple of trips coming home in the evening. So when we do that analysis, you mentioned a 150 room hotel, we would look anywhere between say – I am just going to throw a number out, 125 trips during a peak hour. So if you look at the volumes that we were showing on our slide and you added 150 during those peaks you might see the Level of Service drop from B to probably a C, but you probably still won't get anywhere near a D or an E, anything that would be by CEQA considered a significant impact.

Commissioner Garber: Thank you.

Mr. Rodriguez: I want to clarify also for the Performing Arts Center if that type of analysis were to be conducted we would actually look at the periods when the events would likely be occurring, and conduct more data during those planned times. So a Performing Arts Center may not see an impact during say the lunch hour but you would definitely have an increase during the PM peak period or later say to the seven o'clock time when activities are occurring. So I would say a Performing Arts Center would have less of an impact than say a hotel that would have traffic all day long.

Commissioner Garber: Thank you. What I am hearing here is just in this little mind experiment that we have done is that even though there would be significant impacts they would likely be less than significant relative to the conclusions that the current CEQA study has presented to us.

Mr. Rodriguez: That is correct.

Commissioner Garber: Thank you.

Chair Tuma: I want to ask a follow up to that before we go onto the next Commissioner. A little slightly more concrete and less abstract, we are concurrently reviewing California Avenue Area Plan that has sort of three different levels of intensity if you will, status quo, more, and then more than that. Has Staff done any thinking about or analysis with respect to whether, along the same lines of what Commissioner Garber was asking, whether at the most intense of those developments whether that would create again the same question, something greater than a significant impact for CEQA purposes? Again, I know it is a bit of an unfair question but it is something that we are all studying and looking at now. So I think we want to address it at this stage.

Mr. Williams: Actually, I don't think it is an unfair question. I think it is a very fair question and it is something that we talked about pretty extensively. There is a paragraph at the bottom of page 7 of the Staff Report that talks about it and gives two examples, California Avenue and Birch Street, and California Avenue and Ash. Sort of what would it take to actually reach a Level of Service D, which is theoretically acceptable. We would prefer not to go there at those

intersections. It shows that a tremendous number of vehicles that would have to be there in that peak hour, nearly double the existing number. So if you take all the traffic that is coming there now you would have to have that much more traffic, and we just don't think that the intensification of the California Avenue Concept Plan area would result in that. Once you take that and when we do get to that point of having a plan to analyze we will be looking at where those cars go, and a lot of them are not even going to use California Avenue in some of the areas if they are not proximate to it. A lot of folks today don't use California Avenue itself they will use Sherman or Cambridge rather than stopping along California Avenue. So there are a lot of different routing things to look at as well as the different uses have different peak periods that they generate traffic. So we did talk through that. We talked about trying to maybe do some analysis for every one of those intersections and how much more. It was clear that some of them would take ten times as much traffic as currently exits, but it was at like a minimum 76 percent or 80 percent increase over the existing volumes at that peak hour to even get us down to the Level of Service D let along E, which is unacceptable.

Chair Tuma: Great, thanks very much. Commissioner Keller followed by Commissioner Fineberg.

Commissioner Keller: Thank you. first I appreciate my fellow Commissioner Garber talking about the potential for the Performing Arts garage with it and hotel, to save me the trouble of asking those questions.

So my first question is did we get this grant in part because California Avenue was designated a priority development area? Did that get us points? If it had not been designated a priority development area would that mean that we would be less likely or perhaps wouldn't get the grant?

Mr. Rodriguez: Yes. In order to actually be considered for the grant you actually need to be within one of those zones or immediately adjacent to some type of a transit station, which California Avenue falls under. So it was one of the primary reasons why this project was well received.

Commissioner Keller: Thank you. So another quick comment just in passing is when you do the urban design of how this works I hope you study the issue of newspaper racks and media racks and such, and the proliferation of those on California Avenue and figure out how to do a better design for that.

Did the traffic analysis study the impact of the 45 degree angled parking, which I think is a steeper parking. It is steeper with respect to the flow of traffic, of that on the traffic flow. Did the traffic flow study the nature of the parking and the effects of that parking on the traffic flow?

Mr. Rodriguez: I will try and answer the question and then I will let Bret follow us if he has any additional comments. When we asked Hexagon to look at the concept plan we specifically said for most of the corridor we came up with 60 degrees because that is what helps us maximize the parking availability on the street. Really, one of the reasons why that was done is because we are

trying to comply with our own City standards regarding parking dimensions and parking depths and widths.

One of the changes that I should note that we did make in this plan very early on as a result of some of the community input was we originally had an eight foot wide parking _____ to maximize it even more. Much of the community said that is too narrow, go at least eight and half. That is how we got to where we did. So when Hexagon didn't specifically look at is 45 better than 60 throughout the corridor because we complied with our City standards. They looked at 45 from the standpoint of where don't you comply with City standards if you do 60, and that is how the recommendations came up to make those changes down near Park Boulevard East and Park Boulevard West, as long as the one area for the optional plaza near Ash Street.

Commissioner Keller: Is there currently a speeding problem on this segment of California Avenue? What would be the effect of the traffic speeds of changing to this configuration?

Mr. Rodriguez: That is a really good question and I am going to go off memory here. No, there is not speeding problem. Most of the data that we collected shows speeds anywhere between 20 to 25 miles per hour. So speeding was not so much an issue. One of the reasons why this project recommended the raised mid-block crosswalks that are shown in the plan is because narrowing down to one lane, which is a little bit more wider, more comfortable for traveling and sharing between a vehicle and a bicyclist we didn't want it to result in a speed increase either. So those mid-block speed table will help to make sure that that issue is addressed. We wanted to make sure we planned versus react with this project. That is how the recommendation was made.

Commissioner Keller: Thank you. Was there conversations with the farmer's market and festivals that are there like the To Life Festival and the impact of what is being proposed on these?

Mr. Rodriguez: We never specifically outreached to say the farmer's market association other than we wanted to plan for trying to enhance that facility by introducing the concept of that plaza near Ash Street.

One of the things we threw out to the community, but it wasn't well received, was we thought maybe we could look at doing a weekend long closure, Friday night to Sunday morning. But it was not well received so it was not studied as part of the traffic analysis.

Commissioner Keller: Thank you. I have seen loading the median in California Avenue by Birch. I have seen in the evening a truck adjacent to that in the eastbound direction leaving the right lane free in order to use that as a loading zone if you will. This is like nine or ten o'clock at night. I am wondering what they are loading to but I notice the truck there occasionally. Do you know what the effect would be on that of this proposal, and are you aware that that's occasionally used as an impromptu loading zone?

Mr. Rodriguez: That is a really good question. It is actually something that we discussed with both the business community as well as the regular community during all the meeting processes we had in September and August. We actually introduced two loading zones within this project

Attachment: Attachment D: P&TC Excerpt Minutes of January 12, 2011 (1320 : California Avenue Neg Dec and CIP)

one near Park Boulevard West and another one near Birch if I am correct without looking at the plan again. When we had the discussion the merchants were originally asking for more, which is why the first two were introduced. Then later on other merchants said well, we have our loading zones on the little alleys behind our buildings so we don't really need more. We didn't pull out what we proposed either, so we left those in. So I don't know what people are doing at nine o'clock at nighttime to unload to, but the design would definitely not allow for loading within the mid street because there would be one lane. So could you move around? You probably could. It is really the equivalent of almost a 19-foot lane if you consider that band. So if there were a vehicle stopped someone could move around. It shouldn't result in a bottleneck congestion but would not be a preferred action by a motorist.

Commissioner Keller: Thank you. If I can just ask one more question if I may?

Chair Tuma: Okay, and are you going to want to go again in another round?

Commissioner Keller: This is basically it. This is to ask, I guess we have our City Economic Development Manager. So I figured I would take the opportunity to ask if you have any impressions. I realize you probably have not done a formal study but if you have any impressions on what the effect of this change would be on the business community. I notice we are always afraid of change. So I wonder if you have knowledge or experience in what the nature of this change is that happened elsewhere, and whether it would be a positive for the business around the area.

Chair Tuma: Could you state your name for the record.

Mr. Thomas Fehrenbach, Economic Development Manager: My name is Tom A. Fehrenbach. I am the Economic Development Manager for the City. There are two elements of this plan that are really exciting from an economic development perspective. They are adding parking and adding a sense of place making. I think both of those things tend to attract more business, and people tend to stay longer, and hopefully spend money in more than just one shop. So as the Economic Development Manager and as a former merchant along University Avenue I can tell you that those two items are very impressive in terms of economic development.

Commissioner Keller: I am wondering if you were here when Castro Street in Mountain View kind of made its change.

Mr. Fehrenbach: I was not although my predecessor did do some outreach to Los Gatos as well as Mountain View and Menlo Park. Basically, although there was in fact some community resistance to going from four lanes to two, overwhelmingly afterwards the consensus was that it was a great change and that it was good for business. I believe there is a report in the packet somewhere that has that data. I am not sure if it made it into this.

Mr. Rodriguez: I am sorry, the study that Tom is referring to is online on the California Avenue website. I don't think it was actually in your packet. If you want it we can make sure that Zariah forwards it to all of you tomorrow morning.

Commissioner Keller: Great, thank you. thank you very much.

Mr. Fehrenbach: Welcome.

Chair Tuma: Thank you.

Mr. Williams: Chair? I just wanted to add to that. I certainly agree with what Mr. Fehrenbach said. I think we do have to be and will take a lot of time during the design process, be cognizant of the construction period impacts on businesses. This is a major project and clearly there is a potential for having disruption there that will affect the businesses. So I think it will behoove us to spend much time in terms of trying to find ways to minimize those impacts whether it is the way we phase things or being sure that entrances are kept clear, and that kind of thing. We will pay attention to that.

Chair Tuma: Thank you. Commissioner Fineberg followed by Martinez.

Commissioner Fineberg: One quick housekeeping matter. This photo was given to us at our places. Who gave it to us? Why do we have it? What does it mean to us?

Chair Tuma: I will take that. It is a prop. It is a photo that I took and I will explain it later.

Commissioner Fineberg: Okay, never mind. Let me start with my higher level issues. Following up on Commissioner Garber and Chair Tuma's question of our analysis of a Negative Declaration while there is also an area plan and a Comprehensive Plan Update going on, I would like to ask that question by saying is this a segmented review? If not, why not?

Mr. Williams: We don't think it is. This is something that the City has been working on for some time now in terms of looking at California Avenue and the streetscape and that before we were doing the concept plan. We believe that also it does essentially stand on its own. It would be very speculative to wait until the other plans are done. Again, we have looked at the issue of is this perhaps constraining the concept plan in particular in terms of future development intensity on the road. We think that it is a project that will help stimulate the area whether it is part of that longer effort, or if that doesn't come to fruition in the short term, immediate term, as well. So it does stand on its own very well. It has been underway for sometime now, and we don't think that it has to necessarily be tied to the other projects.

Commissioner Fineberg: Okay. I appreciate your answer but I remain unsure how to evaluate the Negative Declaration in view of our next item tonight, without going into detail, is talking about two months from now – not even two months – in February of 2011 we are going to have a Vision Statement of what happens in our priority development areas. It has these charts with potential areas, California Avenue being one of them, with densities literally hundreds of units an acre. So if we are concurrently visioning an area a block away with what I consider incredible densities, and our instructions in that exercise are to suspend reality and just plan as a vision, and then three months later you introduce reality and constraints. I don't understand how we can do that and create environmental documents on both. So I remain troubled by that.

Chair Tuma: Commissioner Fineberg, I think one of your fellow Commissioners has some thoughts on that. Commissioner Garber.

Commissioner Garber: Thank you. On the heels of your concern there I wanted to ask Staff, if memory serves the CEQA process, what the City has before it right at the moment is a proposed project, which is the California Avenue Transit Hub project. The visioning exercise is not a project per se it is a planning exercise. Then relative to the area plan, that is again a plan as opposed to a specific project, is that one of the distinctions between how the CEQA process is utilized?

Mr. Williams: Yes, I think it is. It is again, what you are referring to and hundreds of units per acre is not our proposal. It is not in the PDA. It is not the way PDA has been characterized from us to ABAG. If they come out with something down the road that is that kind of intensity, it is a little hard for me to believe that the City is going to support that. But we can't operate on this project and wait and see, which is in my estimation going to be years as to what those numbers are that are sort of theoretical and thrown out on a regional basis. It is not going to be I don't think that specific to here that we can take any of what is out there right now and assume that that is going to happen. So I think cities if they looked at it from that perspective everybody would stop everything they are doing right now and wait around for a few years and see what comes out of this process, and I don't think that is realistic. We do have a set specific project in front of us. We have something in the way of a concept plan that provides some parameters to start thinking about what intensification, what direction it might go, and some of the levels. So we have thought about that in this analysis. Going beyond that if there were to be some much, much higher intensity that was proposed at some point in this long-range planning process is we think just too speculative to address. I think Julie wants to add.

Ms. Julie Caporgno, Chief Planning Official: I just want to add that I think with the concept plan for both the higher density scenarios we had been assuming the two-lane street. Admittedly we haven't done the traffic analysis yet. It is going to be done in a model run, but given the information that Jaime has prepared and his traffic consultant has prepared at this level, which is probably much more of a intense analysis for that street. We don't anticipate that any sort of development that would be proposed to date which has been under consideration for the concept plan would have any significant impacts on the two-lane versus four-lane street pattern.

I think the other thing that you would have realize is that if there is something in the future that somebody proposes some enormously high-density project the City would have the ability to reject that based on there is insufficient capacity in the street system. I don't think that two-lane versus four-lane on that one little area is probably going to make that big of a difference. It is probably going to be generally overall in the area.

Then the final thing, which we mention in the Staff Report, is that any residential development that goes in there the whole concept for that would hopefully be that it is transit oriented, and that there would be less trips generated from that development. So given all those factors we just don't see that changing from four lanes to two lanes will be significant as far as providing capacity for future residential development.

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Commissioner Fineberg: Okay, thank you. So I agree with Commissioner Garber's comment that the visioning exercise is not a project and will not have standalone CEQA review. Again, I am trying not to muddy this item with the next item on our agenda, but assuming that some theoretical pieces of that visioning exercise feed into the concept plan and the Comprehensive Plan that will incorporate the California Avenue Concept Plan then the Comprehensive Plan is a project and does have environmental review. We don't know what direction it is going. I understand both Mr. Williams and Ms. Caporgno have used the phrase 'we don't anticipate' and 'we don't think,' but if you have two concurrent projects going on does best guess count for CEQA review? You are the experts. I have said enough on that one.

The next question I have, should I go this round or do I need to come back? Okay.

Chair Tuma: We are trying to get through this in one round because it is almost nine o'clock.

Commissioner Fineberg: Okay. This is another big one and then my others are super quick. I have some questions about why we are being asked to establish a new CIP account. This has been going around for awhile. I understand there was the old CIP account that included the fiasco with the trees. Why are we being asked midstream to establish a new CIP for this project?

Mr. Rodriguez: I will do my best to answer that question. The current CIP, the City does have an active CIP for California Avenue. It was a CIP set up by the Engineering Department. That project funded more some initial plan developments that were done for some of the previous grant _____ that were put into the City. It funded some of the design work for the fountain that is currently kind of going through the Public Art Commission process. But it never had funding for the level of construction or design that is being proposed at this level. So the new CIP that is being recommended is actually a CIP out of the Planning Department and was put together with the exact recommendations or engineers estimates for the project before you.

Mr. Williams: I would also point out that if the design that Public Works had done before had resulted in a grant they would have had to established a new CIP project for the construction of the project. So that was just as mentioned kind of a design preliminary analysis type of a CIP analysis. It was not the hard concrete and construction component.

Commissioner Fineberg: Is it typical though when there is a grant that a new CIP account is established midstream, or had and I will lay the blame on my shoulders too, had I thought on our last cycle that hey, do we need a new CIP account? We have known there has been knowledge that this has been around for quite awhile. I am just wondering should something have triggered creating the new CIP account in our normal last round?

Mr. Williams: I don't think so. You already had a design CIP there, and so we were working off of that and have been. You would have to have either assumed that there was going to be a grant approved or assumed that the City was ready to commit $1.8 million to a project to put the CIP in. Just to give you a little parallel the last CIP you will recall, I think it was the last one and not the one before, had the funding in it of about $100,000 for the ped/bike bridge over 101. That was a design feasibility study. So if we ultimately turn that into a real project, which would take

a grant definitely, we would end up with another CIP that was for the construction of that project.

Commissioner Fineberg: Okay, let me rattle through my quick questions.

Chair Tuma: We need to give everybody a fair opportunity to have their time. We are again, based on some of the things that we talked about this weekend at our Retreat, we are trying to keep things on track.

Commissioner Fineberg: Okay, pass.

Chair Tuma: Thanks. Commissioner Martinez followed by Tanaka.

Commissioner Martinez: As one of the advocates of trying to be quick I think I am going to take more time than I am allocated. I want to talk about the urban design aspects of the project because I think it is kind of manifold and I share some of Commissioner Fineberg's concern about other things that we are not talking about tonight. Also use it to sort of give my little primer on urban design.

Urban design was sort of born post-war as everybody knows, with the flight of residents to the suburbs, and our downtowns sort of collapsed. We tried beautification projects to bring businesses back with great mall projects like Fresno and Santa Monica and Sacramento. We all know those and they all failed. Beautification doesn't really work to bring businesses back. We have smaller examples right on California Avenue, the beautification project of the 1980s. It didn't really do much for California Avenue either. So I think we need to move beyond thinking that, as an architect beautification is great, but I don't think we should be arguing that this going to stimulate business or bring people there.

The second aspect, and I think the project is really right on on this, urban design is really the connectivity, making streets safer, making traffic flow better, and I think the project does a good job of that. That is a real important part of what this project is about. I think we didn't emphasize the safety aspect of that enough. I think there is a lot of it in terms of slowing traffic, because I think two lanes of wide open space is going to let traffic go a little faster. Having one lane with bicycles right there and diagonal parking on the side, I think we are really going to make the street safer for both cars and pedestrians and bicycles. So it is a great urban design aspect of the project.

The third and the most important, and I think the one Commissioner Fineberg was alluding to was land use. We can say that Castro Street really has done this remarkable revitalization but it was land use. Because before the street changes to two lanes it was all Chinese restaurants if you can remember, and business were really a lot worse off than California Avenue. With the change it wasn't just making the street narrower and the sidewalks wider it was bringing in the Performance Art Center and the other things that Commissioner Garber mentioned. So land use has to be an important component of this when it comes around in our discussion. The street infrastructure is an important one.

The last one, and I think I am going to get it in my five minutes, is relatively new, and that is sustainability. I don't think we could overemphasize how important not just walkability, but the climate protection goals we have, urban forest, the use of permeable materials. I think Commissioner Garber mentioned maintenance, making sure we are not replacing things all the time. This is really an important newer urban design goal. I think it should be considered as we go forward with the design aspect, then beautification, and the connectivity, and the street improvements, and land use, and sustainability. They are all working together as really the urban design of California Avenue. Thank you.

Chair Tuma: Thank you. Commissioner Tanaka followed by Lippert.

Commissioner Tanaka: First I would like to thank Staff for the work and for winning the grant. I think that is great. Thank you for all the comments from the public. I appreciate you coming out this late evening.

I have a few questions for Tommy. Can Tommy go to the mike? Basically, one of the comments that I heard is that a lot of the businesses were against this. I understand that you actually talked to a lot of the businesses. I was wondering if you could share your experience.

Mr. Fehrenbach: With special thanks to Feta Bishop who unfortunately is not here tonight. She is the President of the California Avenue Area Development Association. We were able to get some businesses to attend many of the meetings, especially the last meeting that we had, as well as to put the actual plans and the project in a few places along California Avenue for people to come on their own time and view the plans. Basically, we received many comments via email from those folks.

I talked to folks both for and against the project. I think there was nothing substantive that you didn't hear tonight in terms of the arguments for and against. I can say that I believe that Feta did a great job of helping to get the merchants involved and get the information to them.

Commissioner Tanaka: Okay, great. Thank you. I don't know if this is a question for you or for Jaime, but I have read somewhere and this is probably appropriate for areas where there is limited real estate like San Francisco perhaps or maybe areas where real estate is very expensive like Palo Alto, that each parking space costs something like $100,000. Do you have any idea of how much does a parking spot right on the street in front of a business, how much is that worth generally?

Mr. Rodriguez: I would probably say that your best reference is the parking space within a parking structure is a garage. So within a price range of about $40,000 to $50,000 per space that is what we would probably use. I would say conservatively it is probably closer to about $40,000 on the low end if you want to just go with a low number.

Commissioner Tanaka: What about if it is on the street?

Mr. Rodriguez: That is what I would assign a value to because that is what it would take to build it somewhere else.

Commissioner Tanaka: Okay. I see.

Mr. Rodriguez: You can't take away a building to add more space on the street so you have to look at the price on private property in this case, and that would be parking garage.

Commissioner Tanaka: So if you have 17 more spots. Let's say 17 times $50,000 that is…?

Mr. Rodriguez: That is about $850,000.

Commissioner Tanaka: So by getting 17 more spots we are basically adding about $800,000 to $900,000 to this project.

Mr. Rodriguez: That is right. Actually, one of the things I did want to mention, I am sorry to cut you off, Commissioner Tanaka, is that we are undergoing a separate, completely parallel parking analysis of both the California Avenue business districts as well as the Downtown University Avenue Parking Districts. We are going to look at exactly what we did on California Avenue for every street within those districts. We are going to look at first how can we reconfigure every parking street, every loading zone, every red curb zone to try and maximize parking within those districts. So we can maximize available on street parking before we look at trying to build more parking structures off street at a more costly rate. So that is something that we are going to be kicking off probably in February right when I come back from paternity leave. Curtis is actively helping hire a Parking Manager in my absence.

Commissioner Tanaka: Okay, so basically if I do the math in my head for $500,000 the City gets $1.8 million of improvements, plus $800,000 worth of parking spaces. So $1.8 plus $800,000 is $2.6 million. So for half a million dollars we get $2.6 million injected into California Avenue.

Tommy, just to ask you real quick, does that seem like that would help? I understand the land use issues, but does that seem to help in your opinion as an informed business owner on University and experienced Economic Development Manager? How would that impact the area for the businesses?

Mr. Fehrenbach: Certainly adding parking is a big help. Sense of place making tends to attract folks, or attract folks that are already coming to the area to stay longer and hopefully spend more money. So certainly.

Commissioner Tanaka: That is all for the questions for you, Tommy. Actually I have a few other questions but I am running out of time. Can I ask the Chair to indulge me to run through the rest of these?

Mr. Rodriguez: Commissioner Tanaka, I just want to add on to some of Tommy's comments. Tommy and I have had a lot of discussions about what can we do to make sure that economic development occurs within California Avenue with this project. We have bounced around ideas in between the two of us. One of the things we thought about is as we are beginning construction of this project and we are nearing this end we want to make sure people know that we made

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these improvements. We thought what can we do. We had some very simple ideas as far as working with the search engines such as Yahoo, such as Google, to set up banners so that if you were to do a search within our community much like you would do today you would have a pop up specific to Palo Alto to say come visit California Avenue. Something that promotes in simple ways people to visit our community and promote some of the improvements that we built into the street. So that is just some of the things that we talked about that we definitely want to pursue and develop further as this project moves forward.

Commissioner Tanaka: Okay. Jaime, in your opinion is there a possibility to do a trial?

Mr. Rodriguez: I think it would not be a well-developed trial. I am just being honest. I will use the example of Arastradero for better or worse. That trial was done in the right way. The slurry seal that happened with that particular street covered up any of the old markings that were there, provided a fresh clean look to the street. That is something that can't be done today because California Avenue needs to be resurfaced. That is something that the merchants have said, the residents have said. That actually is a true statement. Much of California Avenue has completely failed as far as the pavement goes. We are very fortunate that this grant will actually cover a majority of that resurfacing cost for us by converting those existing asphalt parking bays to concrete decorative bays that will have much more longevity life than we would get out of asphalt. So if it is implemented today not having had those other improvements in place it may not be a good comparison as to what it would look like in the future with the improvements that are proposed.

I am going to ask Bret if he is familiar with any type of an improvement like this done as a trial anywhere else. I can't think of a one.

Commissioner Tanaka: Okay, I understand. So you mentioned we have the amount to repave. How would it have cost to repave the whole street?

Mr. Rodriguez: I didn't pull the specific up, I am just going off experience. Just looking at California Avenue today if it was going to get resurfaced at about 60-plus feet wide curb-to-curb, from El Camino down to the Caltrain station I would estimate about $1.2 to $1.4 million. What it will cost us now with just a 30-foot section down the street I would probably guess more around $500,000 to $600,000. A significant difference.

Commissioner Tanaka: Okay, so with the reduced asphalt then every ten years or whatever, 20 years, we are going to save an additional half a million dollars.

Mr. Rodriguez: That is right.

Commissioner Tanaka: Okay.

Chair Tuma: Commissioner Tanaka, we are going to get to a motion. People will have an opportunity to speak to the motion. We do again need to try to respect everybody's time. So I am going to ask that unless there is something of critical urgency that we move on.

Commissioner Tanaka: Okay, I will pass then. Thank you.

Chair Tuma: Thanks. Commissioner Lippert.

Vice-Chair Lippert: First I would like to begin by complimenting Staff. I think you did a really great job with your consultant in terms of the report. I think it is very clear. I find it very easy to support the Staff recommendation here as well as the Negative Declaration.

I just want to make a couple of comments. First of all, I concur with Commissioner Keller in terms of there are trucks that are parking in the median at night to do off-loading. I have witnessed it eating at the Counter. They do park there while they have their trucks, their hand trucks, or whatever.

With regard to Level of Service I am quite impressed with the study that was done in terms of the Level of Service and the A Level of Service. I want to point out for the general public that those are not letter grades as in you got in elementary school, A, B, C, D, E in terms of failing. What they really are is it talks about capacity, road capacity, and how intersections are handling traffic. A C level does not mean that you are satisfactory in terms of passing a class. What I find very disconcerting I guess about the numbers is when you look at the road segment link numbers an A or B level of service, well if you are merchant you want slower traffic. You want cars to slow down and observe what is going on in the way of commercial stores there. Otherwise, what happens is people wiz by your store and then they have to double around the block again in order to find it, which is a problem. Having the parking there I think actually assists because what happens is that the cars will back up into the street and begin to slow traffic down so that it gives people that are going there an opportunity to find where stores are, where certain merchants are. It is a way finding measure. So if there was some way of actually creating more of a C Level of Service, and maybe that will happen with density.

I am very encouraged by the increase in parking. I think that is a general improvement. I go to California Avenue on my bicycle. I go to California Avenue driving. Generally what I wind up doing is if we are going to the Counter or some other restaurant there I let my wife off and I have good karma in finding a parking space after I drop her off. I usually find a parking space immediately afterwards, but 90 percent of the time I end up going around the block to the back and having to park in the surface lots there. What I think is important here though is in terms of where your crosswalks are aligning those crosswalks with the connectivity to the rear surface parking lots at mid-block in particular.

I think that what we are going to begin to see is with a graying or an aging population there are a couple of things. Number one, the necessity, or the need for handicap parking. I see that with my mother. We are always looking for disabled parking spaces. To have the right on California Avenue actually makes it much easier for older folks and disabled individuals from having to come from the parking lots in the rear. Then to also locate those near pedestrian crosswalks also helps those people tremendously.

MOTION

So with that I would like to make a motion. My motion is to recommend approval of the proposed Negative Declaration for California Avenue's streetscape project, and to recommend a Capital Improvement Program to fund the project improvements.

SECOND

Commissioner Keller: Second.

Chair Tuma: Okay, so that is a motion by Vice-Chair Lippert, seconded by Commissioner Keller. Mr. Lippert, would you like to speak to your motion?

Vice-Chair Lippert: Yes. First of all I would like to address Commissioner Fineberg's concern with regard to there not being a CIP element yet for this project. The CIP is forward looking and this project isn't going to be built until 2012. So really the upcoming CIP can incorporate and can contain this project. Even though we are looking at in piecemeal and we are beginning this process now those numbers will be incorporated in the upcoming CIP for 2011-2012 and 2012-2013, correct?

Mr. Rodriguez: What we will actually recommend to the Council is a mid-year budget adjustment to create a brand new project out of the infrastructure reserve so that we can fund the project. It is actually a very important thing to do, because if we had to wait until the five-year _____ process was complete or the mid-year process was completed we would actually not be able to start design in the March timeframe as we would like to do today. We opted to take the grant funding in February of 2012 versus this year because we wanted to not be constrained by Caltrans guidelines for the acceptance of the funds through the design stage. So we purposely fund the design now through the local match and asked for the construction funding later so that we wouldn't have to go through the local or disabled business enterprise process that construction requires through the Caltrans document process. Although we do something like that already on our own we didn't want to be constrained by Caltrans. Does that make sense?

Vice-Chair Lippert: It does. So I think that moving forward with this is particularly important especially since we have started putting in the trees, and those are going to begin to mature. This is really the second phase of that.

The second comment I would like to make is with regard to a comment that my colleague, Commissioner Martinez, made. There are adequate examples out there, I think probably Santa Cruz Avenue in Menlo Park, you look at Castro Street in Mountain View, you look at University Avenue in terms of the improvements that were done there. Those have greatly improved each of those shopping districts tremendously. The most impressive I think right now is probably Menlo Park which managed to get a whole bunch of merchants from Stanford Shopping Center to move to Menlo Park. They are eating our lunch because they did their street improvements. Well, we need to do something about that here in Palo Alto. One of the things that we can do is to put in a series of street improvements along California Avenue.

Then the last point that I would like to make is with regard to California Avenue and the whole issue of narrowing the road there. This is not an arterial. This is not like Middlefield Road.

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This is not like Alma Street. You are not going down these streets to get through Palo Alto to another destination. These are not arterial roads. This is really a shopping district road. If anything California Avenue is another shopping center. So as such it needs to be a destination. If you look at it, it is a piece of punctuation, it is an exclamation point if anything. It is a way to get from the transit hub to El Camino Real and do it in a pedestrian way. Thank you.

Chair Tuma: As the seconder of the motion, Commissioner Keller, do you have some additional comments?

Commissioner Keller: Yes. So let me make a couple of observations. Firstly, in terms of the CIP I assume that part of this is a credit accounting mechanism so that the money the City spends on the project now can be counted towards the match as matching funds. By creating a separate accounting mechanism you can sort of more easily do that. So you have to create a fund account and the CIP is the way of doing that.

So firstly let me make the observation that if you look at Figures 5, 6, and 7 of this Hexagon report I did the math. I did the math for cars traveling along California Avenue and for pedestrians and bicyclists traveling along California Avenue at the Birch Street intersection. It turns out that other than in the morning, in the AM where probably not very many pedestrians hang out there during AM rush hours. It turns out that there are more pedestrians crossing Birch Street at California Avenue than there are cars crossing Birch Street at California Avenue. In fact, there are almost double the number. In fact in the direction from the train tracks to El Camino there is more than double, almost triple, the number of pedestrians walking in that direction as cars in that direction. So what this tells me is that this is a street that is pedestrian driven as opposed to car driven. So what this means to me is that what we need to do is increase the ability of people to walk here because that is where the major mode of transportation is walking in this area.

As somebody who comes to this neighborhood reasonably often I am forever fearful of going on the mid-block crosswalks across California Avenue with four lanes of traffic. Now, when I moved to Palo Alto originally in 1977 pedestrians could step off the foot of the curb and traffic would magically screech to a halt. Unfortunately too many New Yorkers like me have come here and that no longer happens. I think that in order to make that happen again narrowing California Avenue into one lane in each direction will allow pedestrians to go from store to store, crossing the street, and make it a much more pedestrian friendly streetscape. I believe that that will increase the shoppability of California Avenue because it is really daunting now to think of it as this big thoroughfare that is keeping people from crossing.

Also, if you look at Figure 5 the Existing Peak Hour Traffic Volumes, it turns out at the core intersection of Birch and California Avenue more cars are heading off of Oregon Expressway, taking Birch Street to the intersection of California Avenue than are driving on California Avenue in either direction. So that is an interesting combination. So that Birch Street traffic is really where people are coming and hopefully we want more of them to stay awhile on California Avenue and shop there, and go there.

I think that what you will probably wind up with is that fewer people will try to use that as a cut-through to avoid the intersection of El Camino and Oregon Expressway/Page Mill Road. So we will see that as being a more friendly area because of that – people will avoid using the cut-through on California Avenue.

So I think this will actually make it into a safer – it will certainly make it safer. It will certainly make it more pedestrian friendly. I think that has the potential to be more business friendly. I would like to see us do things like were done on Castro Street and think about the potential for a hotel and Performing Arts Center, and also think about the potential for having more parking spaces associated with that. I think that coupled with what we are doing on California Avenue will really revitalize the California Avenue, just as was done with the combination in Mountain View. Thank you.

Chair Tuma: I have a couple of quick comments and observations. So California Avenue is a place where I go almost every day and I see the traffic. I walk the area. I walk over to Starbucks. I am around there quite a bit. It doesn't surprise me at all the results of the traffic study. There is not a lot of car traffic on California Avenue on a day-to-day basis, in and out. There are some good congestion points and sort of thing.

So one of the objections I heard tonight was this is going to create traffic congestion. I think that is a fear, sort of a – but I don't see any data that supports that. In fact, all the data that we see through these studies is not only is there more than enough if you cut it in half, but even if you cut it down to two lanes there is still double the capacity that we need. So the notion that this is going to cause traffic congestion for automobiles just doesn't resonate for me.

The notion that this is going to somehow be hazardous to bicycles I simply don't see that. I think what we heard tonight from what I would consider bicycle experts, people who have dedicated a lot of time and effort and focus to making bicycling safer, and those people are telling me that these are great improvements for that front.

There is a real issue I think around peak hours, in particular the lunch hours for people having the opportunity to be able to go to California Avenue at lunch hour. There are not enough parking spaces, and there are a bunch of good places to go. So what do you do? Well, you can spend $50,000 a parking space and building more parking spaces. That is awfully expensive. We are going to get 17 more parking spaces. But the other thing you can do is encourage more bicyclists to go there for lunchtime. It just so happened today I was over at AOL. AOL has a wonderful bike program that you see a picture of here in their lobby, in several places throughout their lobby. They have a free loaner program. So you can come as an employee of AOL, you come downstairs, you give them your badge, you sign out the bike, and off you go. I spoke with the woman behind the desk who does this, the security person. She says she signs out 20 to 25 bikes a day. I asked if she had any idea where people were going. She said well, it is mostly going down to California Avenue to have lunch. Isn't that interesting? So for almost no additional dollars we get 20 to 25 people from one single employer going down to California Avenue to drive additional business to the district. I happen to run into two people who were coming back from lunch. There was one gentleman and there was another woman who was with him. I asked what do you think? They said, would you please give us more places to put the

bikes. There are not enough bike racks down there. So it is kind of unfortunate we have to put these bikes or hook them up to things, so give us more racks. I asked about going back and forth. They said there are some things that you could do, and this goes outside of California Avenue and down to Park Boulevard where we could make that more friendly. When I think about what we are talking about in terms of the Fry's area and trying to connect that up to California Avenue, the connectivity, so making this area more bicycle friendly makes a lot of sense to me.

So this is a project that would give us more parking spaces, up to what I heard to be 100 bike spaces. So if we could create 75 to 100 trips a day from neighboring businesses. I think also I have heard that Facebook and there are other progressive, responsible business who are providing bikes to their employees to go out to lunch. Well, we are not going to get more parking spaces down there in these quantities for this amount of money. So I think it is terrific.

The whole sense of place that Mr. Fehrenbach spoke about makes a huge difference in terms of people wanting to be there. So I think to further what he had said about economic development I see this as a huge boon to economic development for California Avenue.

I do think we have to address this issue about cars backing out into one lane instead of two. I think that can be taken care of in terms of design. So I have yet to hear sort of a real showstopper of an issue backed up by concrete data that says we shouldn't do this. I see all these reasons to say that we should. I think we need to do more things to encourage progressive companies like AOL and others to have these types of programs. But wow, what a great way to drive business down to this business district at almost no cost. The employers are willing to do it so we need to facilitate that. So those are my thoughts. Obviously I am going to be supportive of the motion. Commissioner Fineberg.

Commissioner Fineberg: I am going to be supportive of this motion also and would echo pretty much everything Chair Tuma just said. This project is in its early state accomplishes a lot of good things that are consistent with our existing Comprehensive Plan. It will create a more human scale. It will be more pedestrian friendly and safer. So those are two big things all by themselves.

It also kind of rights a wrong that right now the street – this was referenced by I believe a member of the public earlier. The street now is laid out as a legacy from the 1950s, two lanes in each direction and big old cars barreling down fast through a retail district. It isn't that environment anymore. So we have a great opportunity to turn it into a little village. Little villages have little streets. It slows things down. It makes it safer. It makes things more accessible. So all good things.

Tonight there were mentioned a number of significant design issues that your plate is going to be full of finding solutions for. One that was mentioned before was the problem of the cars backing up. Another, excuse me for referencing another Commissioner's comment is people that are going to want to park and let out loved ones. Another will be I think I heard it being called people trolling for parking spaces. They stop at the end of an entry area and wait for someone to leave, or see someone leaving and then effectively park blocking traffic for three minutes while

the car loads up. You have enforcement mechanisms and other tools that you can use to deal with those and resolve those.

So there aren't any significant considerations that give me heartburn except for the growth that will happen in the surrounding area, and we just don't know what it is. We are contemporaneously doing the area plan and we don't know what those densities are. We don't know what the traffic generated will be. We don't know what the increased population will be. We don't know what the square footage of office space will be. We just don't know what we are building one block away. I still have heartburn about that. Other than that I think you need to work out all the bugs and we are definitely going the right direction.

As far as the CIP my questions earlier were not that I object to it. So I am perfectly supportive of creating a new CIP account. I asked my questions so if there were any learnings for us to be able to anticipate for the future so that we don't have to do midcourse budget adjustments. I think that would be better. That I don't think is any reason not to proceed. Thank you.

Chair Tuma: Commissioner Tanaka.

Commissioner Tanaka: Thank you. So overall it seems like spending half a million dollars to get $2.6 million of immediate benefit plus another half million dollars of annuity of savings seems pretty compelling. So I want to thank Staff for bringing this project forward.

I note that there are concerns about we have the concept plan running in parallel to this program. I wanted to ask the Planning Director in regards to what stage will this concept plan be done by the time we actually start construction on this streetscape concept.

Mr. Williams: Well, hopefully the concept plan would have been approved by the Commission and Council in a sort of tentative stage that would be then undergoing the environmental analysis along with the rest of the Comprehensive Plan and the EIR that will be done for that. So the concept plan itself by sometime later this year should be drafted or sort of accepted for the environmental review details, and then it may be adjusted after that or may stay the same.

Commissioner Tanaka: Okay, so largely the concept plan will be done before the shovel hits the ground on this project.

Mr. Williams: Right.

Commissioner Tanaka: Okay. I realize a lot of what we are contemplating for the concept plan is increased density, but just based on your gut feel here because I know there is no analysis that could be done at this point, would the parking for that increased density go on California Avenue or potentially would you encourage it to go on the side streets?

Mr. Rodriguez: I will take a stab at that question first. Once the concept plan for California Avenue is completed and the land uses are identified, the changes if any, a separate traffic analysis will be completed in much more different detail than what we have done. It will look at where the development occurs and where the likely trip generation will be. We will work with

that transportation consultant when they are on board through that process to say take 15 percent of the planned trips and put them on this street because that is more likely, put 30 percent here, and put 20 percent there. That is analysis that has yet to occur because the concept really isn't ready yet.

Commissioner Tanaka: Okay. Some of the design issues that members of public brought up like for instance wider sidewalks, perhaps back in parking, perhaps even routing shuttles on Oregon instead of California Avenue, those would be taken care of during the design phase.

Mr. Rodriguez: That is right. Actually we will take care of a lot of the questions. Actually, one that came up during the community meeting process that we didn't talk about tonight is lighting. What we are going to do during the design process is we are going to ask our design consultants to look at adding pedestrian scale lighting to California Avenue. It isn't something that is funded as part of the grant. I have to make that really clear. We are very fortunate that we are still in a very good construction environment where bid pricing is still very low. I actually expect the same to occur through the design process. So we want to have probably as an alternate item during the design for construction additions of additional lighting on the street. We probably won't change out the existing but just add lighting to be more cost conservative or cost savings wise.

Commissioner Tanaka: Great, thank you.

Chair Tuma: Okay, with that Commissioners are we ready to vote? All right. All those in favor of the motion signify by saying aye. (ayes) All those opposed? That passes unanimously seven to zero. Thank you.

« Board of Selectmen Approve Mass Ave Plan 4-1 Mass Ave Traffic Data »

Traffic Calming has Positive Economic Effects on Small Businesses and Property Values

The proposed redesign of Massachusetts Avenue incorporates many "traffic calming" elements such as: pedestrian bump-outs, cross-walks, landscaping, addition of bike lanes and the reconfiguration of vehicle lanes. The goal of traffic calming is to encourage multiple types of transportation (car, bike, walk and bus) and improve the **safety** and "livability" of a neighborhood for all users. What sometimes gets overlooked is that safer, pedestrian-friendly neighborhoods are also the types of places where people want to shop, dine-out and own a home. In short, **traffic calming improves the economic bottom line for local businesses**. Many communities across the country have engaged or are planning to engage in similar traffic-calming projects as a way of revitalizing local businesses and residential property values.

One example is Valencia Street in San Fransisco. They used to have a **road similar** [see p. 5] in design to Massachusetts Avenue in East Arlington with two vehicle lanes going in either direction. Around the year 2000, the street was redesigned to include bike lanes and reconfigure the vehicle lanes to one vehicle lane in either direction with a shared turning lane in the middle. Prior to the project, many small business owners were skeptical of the redesign. As part of this **study**, conducted four years after the traffic calming project was completed, these same business owners were polled to assess how they felt about the redesign of Valencia Street. The results were striking:

66% of the merchants believe that the bike lanes have had a generally positive impact on their business and/or sales;

37% of merchants reported that the bike lanes have **increased** their **sales**;

73% of merchants thought that the bike lanes have made the **street more attractive**;

not one merchant reported that the bike lanes had made conditions "worse";

and 46% reported that **reduced auto speed was a good condition for business**.

This **report**, funded by the State of California and the U.S. Government, surveyed the results of traffic calming projects in communities across the country. A few highlights from the report:

A 1999 study by the **Urban Land Institute of four new pedestrian-friendly communities determined that home-buyers were willing to pay a $20,000 premium** for homes in them compared to similar houses in surrounding areas;

Another study showed that a 5 to 10 mph reduction in traffic speeds **increased adjacent residential property values by roughly 20%**;

Walk-ability and bike-ability attract customers: Vermont is known for its pedestrian-friendly communities. **In 1992, an estimated 32,500 visiting cyclists spent $13.1 million in Vermont** – about twice the amount of money generated by Vermont's maple syrup producers in a good year;

Following its traffic-calming redesign, the city of Lodi, CA credits the pedestrian improvements, as well as economic development incentives,with the 60 new businesses, the **drop in the vacancy rate from 18% to 6%**, and the **30% increase in downtown sales tax revenue** since work was completed in 1997.

Nationwide, many communities are now undertaking traffic calming projects similar to the type proposed for Mass. Ave. **The PBS News Hour** recently did a story [bottom of page] on how St. Louis plans to use traffic calming measures to revitalize its downtown, currently "dominated by speeding cars and the occasional endangered pedestrian."

Posted by cmckenzie | July 25th, 2009 | Category: Uncategorized | Leave a comment

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Mill Avenue Tempe, Arizona

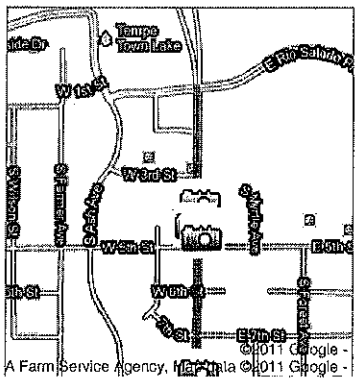
Urban Oasis Fuels Revitalization and Commerce

During the past 130 years, Tempe, Arizona's Mill Avenue has evolved into an eclectic, urban oasis. There's no mistaking the street's authentic sense of place that embraces both the past and future: remnants of adobe and timber enclosures of early Mexican-Americans stand next to brick and milled-wood buildings of the territorial pioneers and the contemporary architecture of today's development.

Named one of the American Planning Association's 2008 Great Streets in America, Mill Avenue demonstrates how public- and private-sector commitment, a willingness to take risks, and a dedication to community design and historic preservation create a place of lasting value.

Today the seven blocks of Mill Avenue designated as an APA Great Street, between the Rio Salado River on the north to University Drive on the south, are the heart and soul of downtown Tempe. The street supports a workforce of more than 9,000 and hosts 2 million visitors annually. Due in large part to the avenue's pedestrian scale, the city has developed a national reputation for excellence in hosting major sporting and cultural events — including the Insight/Fiesta Bowl Block Party, considered one of the nation's top 10 New Year's Eve parties.

The historic Mill Avenue Bridge, constructed in 1931, provides a dramatic sense of arrival into the city for the 19,000 vehicles and 13,000 pedestrians that daily traverse the roadway. Light rail will bring thousands more each day to Mill Avenue starting in December.



View larger Tempe, Arizona map

Other changes to Mill Avenue have come from two streetscape programs. One in 1987 widened brick sidewalks and added street trees and thematic lighting to encourage pedestrian activity and social interaction. In 2004 the street's four lanes were reduced to two in order to calm traffic and accommodate bike paths and on-street parking.

More than 3 million square feet of new retail, restaurant, office, and residential space has been built along the street during the past quarter century. Annual sales in the city have skyrocketed from $12 million to $160 million, providing Tempe with more than a 50-to-1 return on its investment.

The Mill Avenue experience today is far different from that of the 1970s and before. Suburbanization and the resulting urban disinvestment of the 1950s and 1960s hit Mill Avenue hard. Many community leaders favored the wholesale demolition of the district while others backed a hands-off approach. Eventually the city commissioned a group of local planners and architects, the Par 3 Group, to study Mill Avenue and its environs. The resulting plan, adopted by the city council, sought not only to revitalize the street but to preserve historic buildings and enhance the pedestrian experience.

The 1968 decision to locate the strikingly modern Municipal Building near Mill Avenue signaled local officials' commitment to the area. Five years later it was bolstered with the establishment of a redevelopment effort that directed planning resources and earmarked funding for the area.

The commitment of Don Hull, city community development director, to the street's redevelopment and appointment of planner Dave Fackler to lead implementation were critical to the street's rebirth.

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Despite its transformation during the last three decades, Mill Avenue is poised for potentially even greater changes because it links Tempe's compact downtown with two rapidly growing areas — the Rio Salado Project and Tempe Town Lake to the north and Arizona State University to the south. Within a square mile of Mill Avenue, more than $2 billion in new development is planned. To ensure that new development complements Mill Avenue's sense of place, Tempe recently finalized *The Urban Open Space Development Plan* and has adopted community design principles for the downtown and Mill Avenue District that were recommended in the city's *General Plan 2030.*

"More than a street, Mill Avenue is a city room" where some events are planned and others happen spontaneously, says Mark C. Vinson, AICP, Tempe's city architect and community design director. "What continues to draw people to Mill Avenue is the sense of the unexpected, that creative spirit that wafts through the community."

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PLANETIZEN

Road Diets: Making Streets Slim Down Is Good For Pedestrians, Businesses And Even Traffic

14 June 2010 - 10:58am
Author: Michael Bohn

Cities are greatly in need of slimming down their roads, says architect Michael Bohn. A recent project in Long Beach, California shows how curb extensions and street furniture can have a huge impact on the economics of downtowns.

Humans are not the only ones needing a diet these days. More and more cities are putting their streets on a diet – reducing vehicle lanes to add pedestrian space and calm traffic. New York City's recent success in closing an entire section of Times Square to traffic is the most famous example. But the real news is how quickly and effectively it can happen even on a fairly small scale in any city or town.

The other news is that, besides the benefits road diets give to pedestrians and business that thrive on foot traffic, in some cases even traffic congestion is – surprise – improved as well.

Long Beach, California is implementing a series of road diets that prove just how well they can work. Among these is a project unveiled in late 2009 at First Street and Linden Avenue in the East Village Arts District. Studio One Eleven, my firm, worked with the city to design curb extensions at this intersection. These "bulb-out" extensions of the sidewalk reduce the curb-to-curb distance – originally over 50 feet – between 40 and 60 percent, significantly lowering the exposure pedestrians face with vehicles, bringing them out past the obstructions of parked cars, street trees and street furniture. The narrower right of way on First Street has also calmed traffic, adding to pedestrian and bicycle safety and giving businesses better visibility.

Today, these bulb-outs are fully integrated into the street infrastructure, but a prototype plan was able to test the idea temporarily, turning the experiment into a community event. The city placed large, potted plants in the street to define the pedestrian zone. An adjacent restaurant expanded its outdoor seating into this new area of the "sidewalk" (at this point it was actually still part of the street). And an information kiosk was installed to explain the concept of the curb extensions.

It is taken for granted among some planners that enhancing pedestrian mobility can also enhance business activity, but the results in this case were dramatic: The restaurant achieved the highest receipt sales in its 10-year history.

The new, permanent curb extensions at First Street and Linden Avenue expand the pedestrian realm over 3,000 square feet, the size of two average coffee shops or a medium-sized restaurant. Besides outdoor dining, there is

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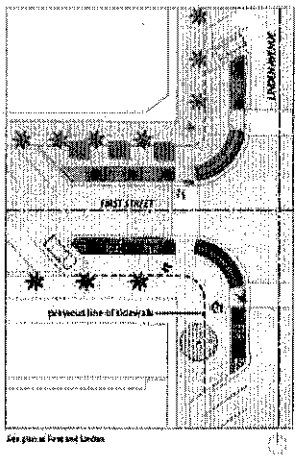
now room for landscaping (using drought-tolerant plants), street furniture such as benches, sidewalk paving patterns, and trash receptacles. Businesses use the expanded sidewalk for additional bike racks and outdoor sales displays. The extra space has cleared existing sidewalk area for thorough movement while expanding and making prominent the outdoor activity at these businesses.



This human-scaled design is perhaps the most important advantage of a well-planned road diet: The First and Linden curb extensions have contributed to the increased vitality of Long Beach's East Village Arts District, with business owners, customers and local residents enjoying a sense of place that harmonizes with the energetic vibe of retail and community destinations. More than ever, the neighborhood is a civilized place where pedestrians and bicyclists are easy to spot, coffee drinkers can people watch, and shoppers are inclined to linger.

But what about the ability of curb extensions to actually facilitate traffic flow? It seems counter-intuitive, as bulb-outs purposefully slow down cars and often eliminate right-turn lanes. Those who advocate traffic diets believe it is more important for pedestrians to cross safely than for cars to get through an intersection. However, the shorter distance that results from curb extensions on each side of a street means the average pedestrian spends at least four seconds less time when crossing the street (based on the Manual on Uniform Traffic Control Devices average walking speed of 4 feet per second). The irony is that the reduced time necessary for walkers to cross the street can provide more time for cars to pass, partially compensating for the loss of a right-turn lane. In other words, everybody wins: Cars get maintained traffic flow and pedestrians get safer crossings.

Other road diet plans also carry this double benefit. For example, car lanes can be reduced without necessarily reducing the number of cars they move. To maximize traffic capacity, engineers typically fit as many automobile lanes as possible, leaving a relatively narrow border on each side for sidewalks and (in some cases) on-street parking. This sometimes results in an even number of lanes, eliminating a dedicated left-turn lane. This means there must be restrictions placed on left-turn movement, as the left-most lane must do double duty as a left-turn lane and a throughway lane. Because the shared lane is obstructed whenever a left-turning car is waiting for an opening to cross traffic, left turns are often limited to non-peak hours.

When a road diet is applied to a road with at least four lanes overall, it often removes one lane in each direction. The space made available by eliminating these two lanes can be used for creating a dedicated left-turn lane, as well as sidewalks, parkways, bike lanes, or a dedicated right-turn lane. Surprisingly, eliminating one through-lane in each direction does not result in a proportional loss of car-carrying capacity, and the addition of a dedicated left-turn lane (and sometimes a dedicated right-turn lane as well) helps reduce congestion. Adding turn lanes in this manner can also decrease accidents, because it results in fewer lane changes and better visibility for on-coming traffic. All of these benefits are useful in explaining road diets to skeptical traffic engineers, or reluctant business or community members.

My firm is working with Long Beach to add curb extensions and other road diets throughout the city. These include narrowing streets adding curbside parking and bike lanes, and creating protected bike roadways between car parking and the sidewalk.

The addition of curbside parking is important particularly in parking-impacted areas. At a cost of $8-12k per stall when a new surface parking lot is built, curbside parking is almost a freebie. For example, another Long Beach road-diet project (on Livingston Drive) will add 32 parking stalls in a mid-density residential neighborhood, with the only cost for these stalls being paint to restripe the street. From a retail perspective having curbside parking in front of a shop can increase retail sales by thousands of dollars while at the same time serve as a buffer to pedestrians using the sidewalk from moving vehicles.

Many of these changes are the result of Long Beach's Livable Community agenda, which enjoys broad support from Long Beach's City Council and is a top priority for its city manager. In 2009 the city hired Mobility

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Coordinator Charlie Gandy – a nationally prominent bicycling proponent – to implement many of these plans.

According to **Streetsblog Los Angeles,** which closely follows pedestrian, public transit, bicycle and related issues, the city is concerned about the health of its residents, and for the environment. "But this is also an economic-development strategy," says writer Joe Linton. "If Long Beach is to attract and retain companies and workers, then it needs to be able to compete. The city has decided that livability will make it competitive."

In the instance of the First Street and Linden Avenue curb-extensions and the other road diets underway, that strategy is successful.

Michael Bohn, AIA, *is Principal with* ***Studio One Eleven*** *an integrated practice of architecture, landscape and urban design, based in Long Beach, California.*

Comments

Keith - What town are you describing?

Keith,

That's a terrific success story. Is this documented anywhere? If so, I'd appreciate knowing what town it is and where I can get the write-up.

Andy Hamilton
ahamilton@americawalks.org

Success story

Andy,

In my post, I mentioned two case studies, so I don't know in which you have most interest. The first one I described is Allen Road in downtown Allen Park, MI, where the recommended reconfiguration was successfully modeled and tested, but eventually abandoned by the city. The speed/volume test is documented.

The second case is Michigan Avenue (US-12) in downtown east Dearborn, MI, where the lane reduction was implemented and later incorporated into a DOT project.

I can provide documentation for both cases. You can reach me at **krtianen@charter.net** .
-Keith Tianen

Road Diet = Crash Reduction

FHWA recently published an updated evaluation of road diet crash reductions:
http://www.hsisinfo.org//pdf/10-053.pdf

One interesting comment in the report: "for road diets with AADTs above approximately 20,000 vehicles, there is an increased likelihood that traffic congestion will increase to the point of diverting traffic to alternative routes." Traffic engineers are often the first to rule out road diets on such roads for exactly that reason. They are programmed to think traffic diversion is bad because it increases the volume at surrounding intersections as opposed to maximizing capacity on one primary facility.

So for those of you who live in areas that reject economic development arguments for the sake of traffic engineering, use the arguments from some of the recent FHWA sponsored and co-sponsored reports.

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Road Diets, aka Lane Reduction, have economic benefits

Great post and project. I concur and offer more benefits and evidence. Lane reduction, although all but overlooked in most cases, can be the single-most cost-effective measure a business district or downtown can take to improve both business and circulation for all users, including motorists. When testing lane reduction, from 5 travel lanes and 2 parallel parking lanes to a new design for 3 lanes and 2 angled parking lanes, the new 3-lane design accommodated more vehicular traffic than the 5-lane street configuration and with no significant difference in vehicular delay. Of course, the merchants experienced a significant uptick in business. In another downtown district, the street was reduced from 7 travel lanes to 5 lanes with 2 parallel parking lanes. Although the DOT predicted dire consequences, including a 30% increase in vehicular crashes (including fatalities) and gridlock, the 6-month test revealed the opposite, as reported by the police department: a 30% decrease in all accident categories, no fatalities and no gridlock.

The reason? In both cases, average vehicular speed was significantly reduced, thereby "bunching" vehicles closer together, resulting in greater capacity per lane per hour. This dynamic improved circulation movements for all users, not just pedestrians, but vehicles as well, which experienced reduced delay for vehicular left-turns, for example.

Why is lane reduction not more common? In my opinion, because local stakeholders do not want, nor know how, to argue with the highway department, even though both admittedly have different objectives.

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> *It's a supple system; standards can be adjusted to the local rural-to-urban transect by observing and measuring local types, thus identifying the community's best DNA to code for the future.*

Read the full article, written by Sandy Sorlien.

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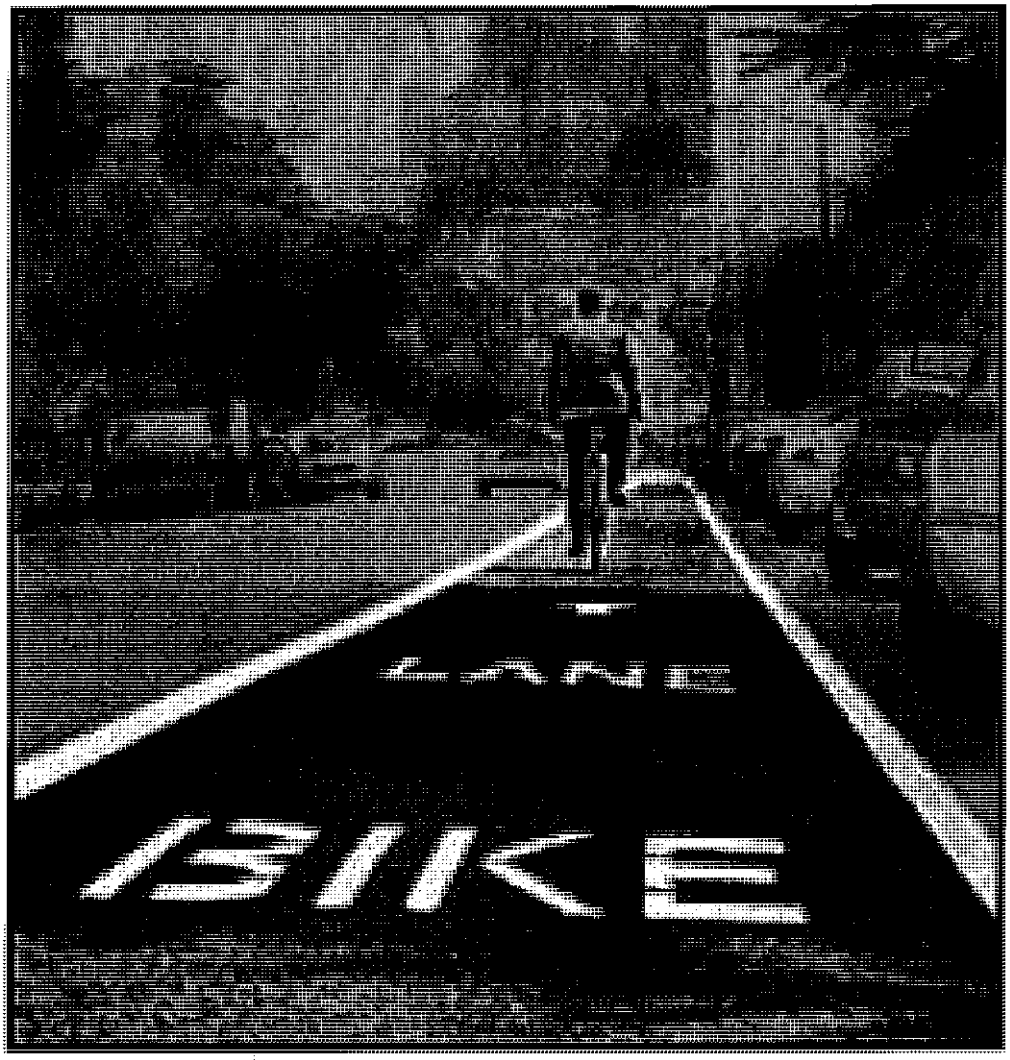

Economic Effects of Traffic Calming on Urban Small Businesses

Emily Drennen

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Abstract

This study investigates how changes to the streets and sidewalks in urban areas to make them safer, more attractive, and more livable ("traffic calming") affect retailers in highly urbanized areas. For this study, twenty-seven merchants located in the Mission District of San Francisco were interviewed about how the Valencia Street bicycle lanes have impacted their businesses. Four and a half years after the bike lanes were built, the vast majority of the interviewees expressed support for the bike lanes. Sixty-six percent of the merchants believe that the bike lanes have had a generally positive impact on their business and/or sales, and the same percentage would support more traffic calming on Valencia Street. Thirty-seven percent of merchants reported that the bike lanes have increased their sales. Seventy-three percent thought that the bike lanes have made the street more attractive. Surprising percentages of merchants reported that increased congestion (41%) and reduced auto speed (46%) were good conditions for business. On eleven of the nineteen variables, not one merchant reported that the bike lanes had made conditions "worse", while only 6% of the overall responses were negative. Even though very few merchants thought that the bike lanes had any negative effect on their business, it should be noted that nearly all of them mentioned the importance of customer parking, and 39% felt that delivery access had worsened.

Traffic calming projects could be approved with fewer impediments, lower costs, and with more community support if transportation engineers, city planners, and advocates were able to provide more effective outreach campaigns and tools for small businesses (including empirical data showing how traffic calming measures have improved small business conditions). The results from this study will be used to develop outreach materials about traffic calming targeted to urban small businesses.

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Introduction

This study investigates how changes to the streets and sidewalks in urban areas to make them safer, more attractive, and more livable ("traffic calming") affect retailers in highly urbanized areas. Traffic calming aims to reclaim public space through engineering tools that reduce auto speed and create safer streets for pedestrians, bicyclists, transit riders, and other road users. Traffic calming began in Europe in the 1960's and 1970's as a fledging concept and was introduced to a few US cities in the late 1970's to 1980's (Ewing, 1999). Traffic calming is part of a new movement in transportation engineering that is more multi-modal in focus (buses, bikes, pedestrians, etc.) and less auto-centric than previous engineering trends. Common traffic calming techniques and tools include speed bumps, crosswalk widening, better signals or signs, new street trees or landscaping, bike lanes, and reconfiguring or narrowing streets.

Since traffic calming is a new concept, members of the public are often wary of change. Typically, because usually 50-70% of residents must initially approve before any traffic devices are laid in the pavement (Ewing, 1999, p. 164), voiced opposition can effectively stop a traffic calming project in its tracks. Small business owners are often the most vocal opponents of traffic calming projects because of fear of lost revenue from changes to the streetscape. Small business support can be a significant factor in whether a traffic calming project is abandoned or approved.

Some research suggests that traffic calming projects can actually *improve* business conditions and raise revenues for small businesses (Lockwood, 1998). In fact, business owners in areas that have previously received traffic calming measures can become some of the most vocal champions of this work. However, business owners in areas being studied for traffic calming are often not aware of how well these measures have worked for their counterparts across town and in other jurisdictions. If transportation engineers, city planners, and advocates were able to provide more effective outreach campaigns and tools for small businesses (including empirical data showing how traffic calming measures have improved small business conditions), traffic calming projects might be approved with fewer impediments, lower costs, and with more community support.

The following arguments are in favor of traffic calming from the perspective of a small business owner in an urban area:

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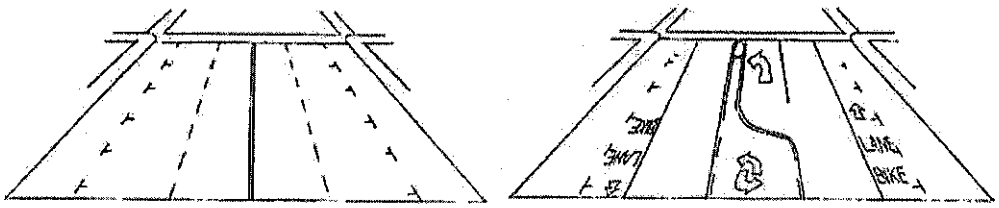
1. *Economic Revitalization and Property Values* –Traffic calming can increase residential and commercial property values, which attracts wealthier residents to the area (gentrification) and can increase retail sales and bring economic revitalization to a commercial corridor.
2. *Livability and Safety* – Traffic calming creates more attractive environments, reduces auto speed, and increases safety for pedestrians, bicyclists, drivers, and other users of the street, which is good for business.
3. *Sales and Attracting Customers* – Traffic calming encourages local residents to buy in their own neighborhoods, and also attracts customers from a wider area due to reduced travel time, hassle, and cost. Traffic calming can also help people live less car-dependent lifestyles, which will increase the amount of discretionary income they can spend on things other than transportation.
4. *Parking* – Most businesses are concerned about the quality and quantity of customer parking and access for delivery trucks. Finding the right amount and kind of parking supply is key.
5. *Impact on Employees* – Poor bicycle, pedestrian, and transit conditions can harm businesses by losing worker time and productivity to gridlock, and by impairing employee recruitment. Conversely, improved transportation facilities can provide more convenience for employees.
6. *Construction and Costs* – Traffic calming projects often require only minimal "down time" for construction, and most do not require any investment from business owners.

Methodology of the Valencia Street Bike Lane Merchant Survey

Valencia Street is located in a dynamic part of San Francisco's Mission District, a primarily low-income, working-class, and immigrant neighborhood. The street teems with pedestrian, bus, bike, and auto activity along its length, and the vast majority of developments are mixed-use, with residential units over street-level retail. Prior to the installation of the bike lanes in March 1999, Valencia Street had two auto traffic lanes in each direction. The street was then converted into one traffic lane and bike lane in each direction, with a turning lane down the middle of the road. Curbside parking was not impacted. (See Figure 1.)

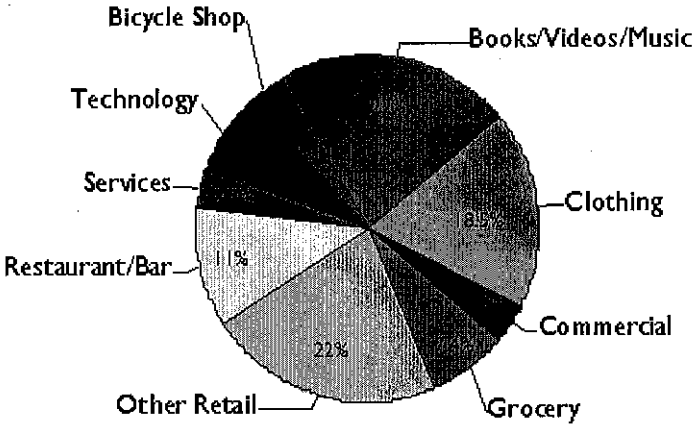
Figure 1 – Drawings of Valencia Street Before and After the Bike Lanes



Source: Sallaberry, 2000, p. 20

This case study involved administering an in-person survey instrument to gather information from selected small businesses in the service, food, or retail sectors located within the study area (Valencia Street between 15th and 25th Streets). Residential, office, industrial, and other commercial establishments were excluded from this study. Book/video/music stores, clothing stores, and stores in the "other retail" category account for nearly two-thirds of the businesses interviewed (Figure 2). The survey instrument is shown in Figure 3.

Figure 2 – Types of Businesses Interviewed



The merchants were selected through a modified random process[1] based on planning blocks assigned by the San Francisco Planning Department. An on-street census of the project area found a total of 122 eligible businesses, of which 27 were interviewed (22%) as part of this study. One owner, manager, or employee per business was interviewed; nearly 90% of the interviewees were either owners or managers, which is helpful in establishing the validity of their answers. The businesses interviewed for this study have been located on Valencia Street from a low of less than a week to a high of more than 49 years, with an average of 11.7 years. The

[1] Random selection was ensured through selecting planning blocks through use of a random number generator. In certain cases when the planning block selected did not include a business eligible for this study, nearby businesses were substituted.

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interviewees have been with their businesses for between three months and 23 years, with an average of 7.6 years. The long tenures represented by these results lend validity to the responses in this survey.

Figure 3 – Valencia Street Bike Lane Merchant Survey

Date of Interview:_____
Business Name: _____
Business Address: _____Cross Street:_____
Business Type:_____
Name of Interviewee: _____
Title: *Owner* *Manager* *Other Employee* *Other*
Number of years with business:_____
Year business opened on Valencia St:_____

1. Do you remember what your reaction was when bike lanes along Valencia Street were first proposed?
2. How did the majority of the other merchants along Valencia Street felt about the bike lanes before they were built?
3. What do you think the majority of the other merchants along Valencia Street think about the bike lanes now that they have been in place for 4 years?
4. What were your hopes and/or concerns about the bike lanes?
5. Have your views about the bike lanes changed at all since then? If so, when?
6. Which of these groups, if any, affected your views of the bike lanes? *Choose all that apply:*

The Department of Parking and Traffic	The San Francisco Bicycle Coalition
Merchant Groups/Civic Organizations	Other Valencia Street Merchants
Customers/Neighbors	The Media
Other:	None

7. How did these groups affect your views?
8. Which of the following benefits have you seen as a result of the bike lanes? *Choose all that apply:*

Increased/Reduced economic revitalization for area	Middle lane is good for (illegal) double parking?
Increased commercial/residential property values?	More/less convenient for employees
Increased/Reduced sales	Better/Worse access for delivery trucks
Increase in shoppers who are bikers?	Reduced auto speed has increased sales?
More/Fewer walkers on sidewalks and window shopping	Increased/Decreased availability of parking for customers
New customers from outside of the neighborhood?	Construction of bike lanes was disruptive?
More/fewer area residents shopping locally	Made street safer for walkers?
Increased traffic congestion along Valencia Street-bad/good?	Made street nicer and prettier or less appealing?
Increased traffic congestion on streets nearby-bad/good?	Other:

9. Apart from what the economy has done in the past few years, do you think that the bike lanes have had a generally positive or negative impact on your business' sales?
10. Would you be supportive of more traffic calming (such as tree planting, sidewalk widening, and improvements for buses) on Valencia Street?
11. What would you tell merchants in other areas of the city who were just learning about traffic calming efforts for their area?
12. Anything else to add?

Results of the Valencia Street Bike Lane Merchant Survey

The results of the Valencia Street Bike Lane Merchant Survey are displayed in Table 1. For ease of data analysis, the Valencia Street Bike Lane Merchant Survey responses were re-coded into standardized categories (where "Better" represents a situation where a variable was beneficial, "Worse" where it had a negative impact, "Balanced" where it had both positive and negative effects, "No Effect" where it had no impact, and "Don't Know").

Four and a half years after the bike lanes were built, the vast majority of the interviewees expressed support for the bike lanes. Sixty-five percent of the merchants believed that the bike lanes have had a generally positive impact on their business (Figure 4), and the same percentage would support more traffic calming on Valencia Street (Figure 5). Only one merchant said that the bike lanes had had a negative effect "but only very faintly so." None were opposed to the idea of more traffic calming.

Thirty-seven percent of merchants reported that the bike lanes have increased their sales. Seventy-three percent thought that the bike lanes have made the street more attractive. Surprising percentages of merchants reported that increased congestion (41%) and reduced auto speed (46%) were good conditions for business. On eleven of the nineteen variables, not one merchant reported that the bike lanes had made conditions "worse", while only 6% of the overall responses were negative. Even though very few merchants thought that the bike lanes had any negative effect on their business, it should be noted that nearly all of them mentioned the importance of customer parking to their businesses, and 39% felt that delivery access had worsened.

Figure 4 – General impact the bike lanes have had on interviewees' businesses

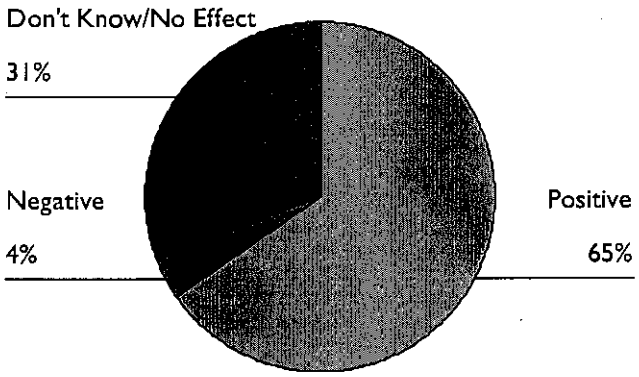
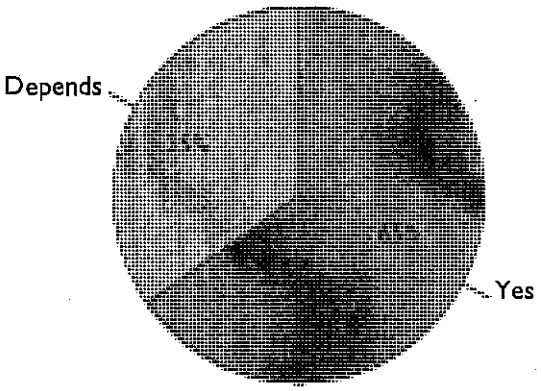


Figure 5 – Interviewees' support for more traffic calming on Valencia Street



Attachment: Attachment E: Traffic Calming Economics (1320 : California Avenue Neg Dec and CIP)

Table 1 – Valencia Street Bike Lane Merchant Survey: Summary of Results

Impacts of Traffic Calming	Better	Worse	Balanced	No Effect	Don't Know
Economic Revitalization and Property Values					
Economic revitalization for area	44%		4%	30%	22%
Commercial/residential property values	15%			52%	33%
Livability and Safety					
Attractiveness of street [2]	73%			23%	4%
Effect of reduced auto speed on sales [2]	46%	8%	4%	39%	4%
Effect of traffic congestion on Valencia Street	41%	7%	26%	22%	4%
Effect of traffic congestion on nearby streets	22%	11%		52%	15%
Pedestrian safety [2]	62%			35%	4%
Sales and Attracting Customers					
Sales	37%		4%	30%	30%
Pedestrian activity	22%			63%	15%
Number of customers who ride bicycles	63%			30%	7%
Area residents shopping locally	56%		4%	33%	7%
New customers from outside the neighborhood	44%			44%	11%
Parking					
Customer parking [2]	15%	12%	4%	65%	4%
Access for delivery trucks [2]	35%	39%	12%	12%	4%
Use of middle traffic lane for double parking	70%	15%	7%	7%	
Impact on Employees					
Convenience for employees	67%			30%	4%
Construction and Costs					
Effect of bike lane construction on business [2]		12%	12%	46%	31%
Summary Questions					
General impact on business and sales [2]	65%	4%	0%	31% *No Effect/Don't Know*	
Supportive of more traffic calming on Valencia St. [2]	65% *Yes*	0% *No*	35% *Depends on the Project*		

Numbers may not add to 100% due to rounding.

[2] For these questions, the sample size was n=26 because one merchant was unable to finish the interview due to lack of time. However, the other answers he gave were very supportive of the bike lanes.

Conclusions and Next Steps

This project focused on how traffic calming practices affect retail businesses in urban areas. The Valencia Street Bike Lanes Merchant Study found support for most of the findings in the literature for why traffic calming benefits small businesses. Specifically, a majority of the Valencia Street merchants reported that the bike lanes increased the attractiveness of the street, increased pedestrian safety, increased the numbers of customers who ride bikes, increased the number of residents who shop locally, and increased employee convenience. Merchants also strongly supported other positive impacts the bike lanes have had on businesses, although not by a majority. Some of these included increased revitalization for the area, increased sales from reduced speed, benefits from increased traffic congestion along Valencia Street, and increased numbers of customers from outside the neighborhood. Overall, two-thirds of merchants felt that the bike lanes had a generally positive effect on their sales, and also would support more traffic calming projects on Valencia Street. It is also important to note that very few merchants (no more than two merchants on any of the variables) reported that the bike lanes had any sort of overall negative impact on their business. These results definitively show strong merchant support for the bike lanes.

More extensive research into retailers' attitudes about traffic calming efforts, both before and after project implementation, would be helpful in understanding more clearly what is important to small businesses and how best to meet their unique needs. Econometric studies (especially based on annual tax receipts, assessed property values, and rents for multiple jurisdictions) could perhaps more definitively determine what benefits traffic calming brings to urban small businesses. This approach could be especially helpful for the variables that the merchants in this study were reluctant to credit the bike lanes for improving (such as property values and sales).

Outreach brochures and public presentations should be developed for an audience of urban small businesses, which should provide general information about traffic calming, information about how traffic calming has affected other merchants, and how the proposed project would specifically impact their businesses. Business owners could then use this information to make informed decisions about whether to support the project. Hopefully, information of this kind would reduce initial opposition and increase community support for traffic calming projects. This could, in turn, reduce the time and costs required for project implementation, which could then increase the number and scope of traffic calming projects a jurisdiction is able to complete. Community involvement in transportation planning could also be positively impacted.

Attachment: Attachment E: Traffic Calming Economics (1320 : California Avenue Neg Dec and CIP)

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	Has the reduction from 4 to 2 lanes had a positive impact on the business community? (for individual businesses: on your business and/or on foot traffic)	When this change occurred, what street amenities were helpful? What street amenities would be helpful now?	Did the change increase foot traffic?	Have there been complaints or have issues arisen about the bicycle/pedestrian/vehicle interface on the street?	How has the two lane street in your district affected deliveries/circulation/buses and/or transit?	Any observations that you might like to add?
David Johnson **Economic Development Manager** **Menlo Park**	Santa Cruz Avenue used to be four lanes and is now two. The change to the current configuration transformed this "thoroughfare" designed to move traffic into one of the nicest "village character" downtowns on the peninsula. Mark Flegel (Flegel's Fine Furnishings) was one of the civic leaders behind the project. I can provide contact information and setup a meeting. El Camino Real was six lanes between Oak Grove and Roble Avenue. It was reduced to four to the delight of many, as it helped "calm" downtown and helped alleviate the disconnect between the east and west sides of El Camino downtown.	Then, diagonal parking was added, wider sidewalks, curbside and median street trees, street furniture, new light poles, phone booths and new enthusiasm for what a downtown can be. Now, all of the amenities are dated, but it is difficult to get those that worked on the project 30 years ago to get on board. Adopting a timeless design is key here.	Yes. More importantly it created a destination.	No. However, bike lanes were not thought of at that time and they are imperative now.	Yes. All deliveries are in the back where they compete with parking plaza parkers. Scheduling is key; early morning deliveries are best. No buses on Santa Cruz Avenue.	A walking tour of downtown, lunch and a meeting with Mark Flegel seems like a good way to go. There are many parallels between Cal Ave and the old downtown MP. Findings and direction from our experience could be very helpful. As a matter of fact we are looking at the PA parking structure on Cambridge Ave in the Cal Ave district as a model of what would be an appropriate example of how to increase parking without sacrificing the charm of the village.
John Celedon **Pharmacist** **Menlo Park**	It had been 4 lanes for a very long time. Two lanes works well. Parking is an issue and they are exploring a parking structure or smart meters with a consultant that the City has hired.	These aesthetics are critical to the success of downtown merchants. An attractive district encourages people to get out of their cars and walk. Walk up traffic is required for stores to be successful.	Yes	There is always some of that. People get used to alternative ways to do things. Merchants want to invite bicycle traffic because it invites them into businesses.	Deliveries are not a problem. There is access from back parking lots and they often double park there to unload. Customers seem to understand and there don't seem to be significant issues.	He thinks that Cal Ave is in a good position because the parking structure is in place. I explained that there is still a parking issue at some times of the day. He felt that the key is to have the area be more aesthetically pleasing to attract walkers and bicyclists. The two lane solution works for Menlo Park. He thought it could work for Cal Ave also.
Ellis Berns **Economic Development Manager** **Mountain View**	Castro St. has always been a success story in terms of narrowing the street; it was done back in the 1980' and has proven to be successful. It is much more pedestrian oriented, has gotten people out of cars; we created on street parking and some of the parking in front of the restaurants has been converted to out door café space "flex space." From a restaurant and to some degree retail perspective it has been incredibly successful!	We redid the entire street including all sidewalks curb gutters, created hardscape including landscape medians, benches etc. lighting etc. We also added kiosks as a way to provide people with a place to post hand bills instead of using the street light poles. This has been very effective and our parks staff removes the bills once every month.	Yes! I don't have any hard statistics but you look at Castro St. today and you can see the pedestrians especially at lunch and in the evening hours.	Originally the street was redesign not to encourage bicycles on it. There has been some change to this attitude although, as a bicyclist I still don't consider Castro Street bicycle friendly.	Yes, the two lanes have affected deliveries and circulation etc. Fortunately, many deliveries are done in the rear of the buildings along two public alleys. We do have other deliveries that occur on Castro St. but limited in the AM. Circulation was affected and we did think it out. Currently, we encourage people to access Castro St. by driving down Shoreline to California Street and then we try and direct them to our parking structures/lots.	Be glad to talk further with you about the narrowing of the street and impacts and even walk Castro St. so you can see the changes etc. Also, one of the underlying philosophies for Castro St., that at the same time we redeveloped City Hall, added a performing arts center, developed the transit center and strongly encouraged higher density residential around the downtown. Parking is also critical and we have been able to address parking demand by creating City-owned parking lots and parking structures as well as a Parking maintenance Assessment District and created a permit parking program.
Bill Maston **Maston Architects** **Mountain View**	Believes that it has. Grew up in MV as soon as Shoreline was built as a bypass to the downtown, it contributed to business district downfall. Quaint and two lanes because Shoreline took the traffic. Businesses on Castro Street can lease parking spaces for parking or outdoor seating. Details on curbs are different on planters, etc. Benefit for restaurant can have outdoor seating without increasing parking.	Trees placed in parking areas not on sidewalks. Planter boxes, containers at intersections were extended out to the edge of the parallel parking offering protection to pedestrians.	Initially not in 1987—based on economics of downtown (bad shape). Office and residential downtown really made the difference. Lunch office workers, evening and office workers.	No. Have a bicycle committee. May want to direct question to them.	Hasn't affected adversely. Designed parking areas to accommodate buses. Services provided to alleyways.	Change of zoning to increase residential housing to increase night time business and traffic has been critical. 25 year observation: 1000 new housing built within blocks of DT since 1987 and office space—Fenwick and West (420 Employees) provided the synergy needed. Extremely long educational process (need for 4-6 story buildings to create more foot traffic) Key: Zoning changes to facilitate business. Updating parking signage—too integrated to see.

	Has the reduction from 4 to 2 lanes had a positive impact on the business community? (for individual businesses: on your business and/or on foot traffic)	When this change occurred, what street amenities were helpful? What street amenities would be helpful now?	Did the change increase foot traffic?	Have there been complaints or have issues arisen about the bicycle/pedestrian/vehicle interface on the street?	How has the two lane street in your district affected deliveries/circulation/buses and/or transit?	Any observations that you might like to add?
Rick Meyer **Meyer Appliance** **Mountain View**	Don't know what caused increased foot traffic, possibly the improvements. He receives lots of compliments on street—wider sidewalk, easier parking. Used to have squealing brakes, one person got hit. Eliminated speeding and skidding. Maybe has distracted cars from using this as a thoroughfare. Not a dead end link like Cal Ave. Has improved since ALL changes. Not just narrowing of the street. New businesses (boutiques) are new and doing quite well. His business is a destination shop (appliance store). Not much walk in traffic.	Much better trees, other trees broke sidewalk and dropped leaves. " Disneyland" trees now, drop leaves one week in the fall. Much neater. Also, the grid pattern sidewalk is a nice amenity. Pattern hides any dirt, cleaner look. Stamped sidewalk is nice.Signage was much improved—parking needs to be better signed. Working on this.	Definitely, more of an ambulatory downtown. Mainly at lunchtime. Not very convenient to get across railroad tracks. Had a competitor Mackle's Appliance went out of business when street closed on Cal Ave at the railroad tracks.	Problem-lip between parking and roadway. Ground lip down to help bikes. No problem now because it is wide enough. Back alleys, for deliveries	Didn't change the bus stops, improved train depot and circulation works well.	Signage for parking needs to be made better. Thinks that it will make walking more inviting at Cal Ave to go to two lanes, if wide enough.
Anne Stedler **Economic Development Manager** **Los Altos**	The situation I am aware of that is most like your questions is where we changed the parking from parallel to diagonal in Japantown (Jackson St) a few years ago.	There were already lots of street amenities, and this additional parking added more sense of activity (parking density!) to the scene.	I think adding parking does make it easier for customers to select these neighborhood districts downtowns. In the case of going from 4 to 2 lanes, I think it also helps. I am envisioning Lincoln Ave where it goes from two lanes each direction to one lane in each direction through the heart of Willow Glen. Doesn't that contribute to that pedestrian, walkable feel there?	I am not aware of such complaints. However, we are narrowing a street here in Los Altos by removing parking lanes and adding extra sidewalk – the bikes are going to share with cars (sharrows) and the bike group active here was not happy with that. Personally, I tend to agree with them, and I don't want the motorist in a shopping district to be worried about bicyclist and vise versa. I'd like to take care of bikes, too.	Busses are not on Jackson, and we kept loading zones. Circulation is slowed, and it is very nice. And the street feels more active to the motorist, too.	More information can be found at http://www.pps.org/ NYC's Project for Public Spaces.
Nancy Dunaway **Downtown Assoc.** **Los Altos**	Entire downtown only has one lane going each way. Slows traffic down which give driver a chance to see stores and see what's available.It has been this way for a long time, but it is very pedestrian friendly. The business community has been thriving with great businesses and some new additions. The changes occurred in the '90s.	They are anticipating some additional bulb outs in Spring 2011 and are looking forward to these. The Downtown Association and committee members work closely with the Chamber of Commerce, Kiwanis and the City for downtown enhancements. They also work with the City on issues that affect merchants like interpretation of code enforcement rules. Bulbouts get tricky. Great for pedestrian safety—extends sidewalk for restaurant seating. Problematic for events—20' fire lanes for events. Booths for farmer's market could be impacted.	Foot traffic is good and the downtown has a good mix of office and retail uses that support each other	No. There are no bike paths. Bikes and pedestrians share the sidewalks, but issues sometimes arise. So far, there are no major unresolved issues.Design has "sharrows" not bike lanes. Going ahead with project, but there was outcry from the biking community.	No major issues have emerged. There is sometimes some double parking, but deliveries are mostly done on off-peak times and haven't presented any major problems. No busses in DT triangle. They traverse San Antonio Road. Truck traffic is restricted. Use San Antonio. Larger stores are located on periphery where this is not a problem. Doing first street scaping.	Looking forward to additional improvements in the spring of 2011 which will include some additional bulb outs and seating for customers. Downtown Mountain View created new energy by narrowing. City doing street improvements in spring—extra bulb outs (size) and extra seating. Kiosks and way finding signage is helpful. These should be incorporated into project.

	Has the reduction from 4 to 2 lanes had a positive impact on the business community? (for individual businesses: on your business and/or on foot traffic)	When this change occurred, what street amenities were helpful? What street amenities would be helpful now?	Did the change increase foot traffic?	Have there been complaints or have issues arisen about the bicycle/pedestrian/vehicle interface on the street?	How has the two lane street in your district affected deliveries/circulation/buses and/or transit?	Any observations that you might like to add?
Carole Rast **Roy's Station** **Japantown**	One section was two way, then went to one way. Traffic calming made it all two way. Neighbors wanted people to slow down. Water mains were woven brick, wanted to limit weight of trucks. It has had a positive effect on neighborhoods, which has been good. Before, more transitional housing now younger families. Helps the businesses with good customers that are there all day. Take walks. Very busy walking on weekends with dogs and strollers	Bulbouts in Japantown have been a problem. People have lots of accidents. Going from wide to skinny street, people misjudge width of street, nick corners and have blowouts. It is hard for pedestrians to see before crossing. People sometimes are standing in the middle of the street waiting to cross. Planters could warn that pedestrians that are near by.	Yes. It seems to have. Senior center is nearby	They have a lot of bicyclists. Phil Wood makes custom hubs and sells bikes. Lots of people work for him and bicycle. Now there are bike parties, pick a place and go on 30 mile ride. Now thousands of people come. People who bike and walk see things differently—people in cars don't see as much. Bikers come back and shop.	Yes, older area. Parking is a premium. City just doubled parking meter rates for customers. Trucks making deliveries double park—this is a problem. Garbage pickup is an issue in older neighborhoods. Carts have to be wheeled out.	On 5th Street, there is a sidewalk and wider parking strip. A smaller parking strip is scary. Want a more wide parking strip so people feel safe to cross.
Nancy Hormann **Executive Director** **Tempe, Arizona Downtown Association**	Yes, very much so. The biggest thing was traffic calming. It stopped being a pass-through, and that has been helpful. We also widened the sidewalks. This helped the ambiance and atmosphere, and helped make it more pedestrian oriented than car orientation.	Widened sidewalks was the best thing. We also changed the ordinance against rails for outdoor cafes. We have more sidewalk cafes than we used to because it's an easier. We already had huge trees and benches, the shade trees are key element, especially since we're in Arizona.	Hard to say. We are a different animal. We have 68,000 students and we are one of the only walkable urban environments in AZ. What it did do is create a sense of place instead of a thoroughfare.	Not at all. We are a very bikeable town, and all the merchants were adamant that we create a bike lane. It did take away some car traffic, but it was generally supported.	Bus and transit- no. Deliveries—we are going through a re-signing of loading zones/ creating better loading zones. It was an issue that we didn't deal with up front, that now we're dealing with. We just designated "loading zones" with no caveats, so we have people who say "I'm loading myself in and out", which has been a huge problem. In hindsight, I wish he had looked at this issue as part of the planning.	The best part of everything is creating that sense of place. It really solidified it as a walking environment, not a driving environment. People aren't as adamant about finding street parking, since they know it's very walkable.
Julie Rose **Los Altos Chamber of Commerce**	Just did bulb outs. No narrowing on Main or State. Has always been a two lane street	Intersections have gathering places and improvements planned for spring 2011 which will be nice additions	Did increase number of businesses. Starbucks came after bulb outs. Changes made it a better place for businesses and pedestrians. Done in early '90s.	Didn't have the issue. Didn't make change. No bike lanes	None noted	In favor of new improvements at intersections planned for Spring 2011. These will improve car and pedestrian safety. Bulb outs. New seating is also planned

Finance Committee

7:00 PM
Regular Meeting
Tuesday, February 15, 2011
Council Conference Room
Palo Alto City Hall
250 Hamilton Avenue
Palo Alto, CA

This meeting has been cancelled.

Attachment: 2-15-11 (1411 : Finance Committee Agenda February 15, 2011)

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE AT PALO ALTO CITY HALL, 250 HAMILTON AVE. DURING NORMAL BUSINESS HOURS.

School/City Liaison Committee Special Meeting
Agenda

City/School Liaison Committee Meeting
Wednesday, February 16, 2011
8:15 AM to 9:30 AM
Palo Alto Unified School District
Conference Room A
25 Churchill Ave

Palo Alto Unified School District
Dana Tom, Board Member, Committee Chair
Barbara Klausner, Board Member
Bob Golton, District Co-Chief Business Officer/Bond Program Manager
Cathy Mak, District Co-Chief Business Officer
Betty Munoz, Administrative Assistant

City of Palo Alto
Nancy Shepherd, Council Member
Yiaway Yeh, Council Member
Steve Emslie, Deputy City Manager

1. Oral Communications
2. Approval of Minutes – January 26, 2011
3. PAUSD Demographic Trends and Enrollment Forecasts
4. Teen Mental Health
5. Update on Stanford Hospital Project
6. Agenda Items and Dates for 2011 Meetings

Attachment: School City Agenda_02 16 11 (1418 : City School Liaison Committe Agenda 2/16/11)

City of Palo Alto

Date: January 26, 2011

MINUTES FOR MEETING OF January 26, 2011

Opening

The School/City Committee held a special meeting in the District Conference Room A at 25 Churchill Ave, Palo Alto. The meeting was called to order at 8:20 a.m.

* All handouts can be viewed in the Business Services Office 25 Churchill Ave.

Palo Alto Unified School District Representatives Present:
Dana Tom, Board Member, Committee Chair
Cathy Mak, CBO
Bob Golton, CBO and Bond Program Manager
Amy Drolette, Student Services Coordinator

City of Palo Alto Representatives Present:
Nancy Shepherd, Council Member
Yiaway Yeh, Council Member
Steve Emslie, Deputy City Manager
Rob De Geus, Community Services Division Manager of Recreation
Curtis Williams, Director of Planning & Community Environment
Mike Edman, Acting City Auditor
Ian Hagerman, Senior Performance Auditor

Oral Communications

John Elman said he wanted to bring the Arastradero, Maybell Ave., George Ave., Georgia, and Donald area (during 7:20 a.m. – 8:20 a.m.) to the Committee's attention. He said there are cars dodging the students, students on bikes dodging the cars, skateboarders, it is bumper to bumper from Foothill to El Camino and from El Camino to Foothill. Elman said the Terman kids are going the opposite direction, kind of a cross current. He said the solution must reside in this Liaison Committee because it involves the City and the District. He said eight or ten people, primarily one person got behind this nonsense to change Arastradero and in the process all the side streets are impacted. He said it is nonsense that is being created by this experiment and it has got to be changed.

Student Mental Health:
Maria Elena Menueza said hearing from parents and students some of students do not have a first period so not all the students received the information. She is a track watcher and on that day her kids told her that there was a death at the tracks so she tried to get some clarification. There was confusion about there being two deaths at the tracks (one student from Gunn and one from Paly). She went to Paly and walked in during the ceremony for the student and it was like walking into a funeral. She feels that they were sensationalizing and it seemed like too much. She would also like to know if it is a weekend, how fast can Dr. Skelly get the information; does he have access, and if he is not available who can receive the information because those minutes are very important. She said they need to improve the fencing by the tracks and the bushes need to be cut down.

Approval of Minutes – December 8, 2010

MOTION: Tom moved to approve the minutes from the December 8, 2010, meeting. Shepherd seconded. Minutes were approved 4-0.

Review of Recent City Council/PAUSD Board Meetings

City: Shepherd said the City had their retreat. They are maintaining their five priorities for 2011 and they have a list of action items that staff is starting to organize, one being Project Safety Net. Yeh said the upcoming Council meeting will focus on the Stanford development.

PAUSD: Klausner said the Board policy on open enrollment was approved at the last meeting and it has to do with the new state laws about schools that are failing, students at those schools can

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transfer across district lines for a higher performing school but there are a set of complicated regulations at the state level so they were making sure they were adapting them and had them in their goals. Our State Senator, Joe Simitian helped to clarify that if any incoming students have an impact on the school district, including if your facilities are being fully utilized, then the district may reject any application for intradistrict transfer. She is hoping there is complete clarity on that and it will not become an issue for PAUSD. Tom said it is parent choice to apply to any school in the State if all the requirements are met.

City of Palo Alto Zoning

Emslie said this has come up at this Committee regarding the zoning and the potential sale of the property at 525 San Antonio; it has been a long standing private preschool/kindergarten school. The owner placed the property on the market and the property is in contract by a housing developer. Emslie said the question came up on the zoning and he relied on his memory and said it was a zone PF (public facilities) which all private and public schools, churches, and parks are. That was incorrect, it is zone R1. He said the question came up how zoning might affect value? The property's potential use is factored into the market value of the property, but it is not the only determining factor. Owners will often assume that they can build something different than the zoning will allow and the potential to change the zoning is also factored into the use. Emslie said this is something the City struggles with in their land use plan, especially in the Palo Alto community where it is changing from one use to another; commercial to residential is a common dynamic the City has seen. The City has taken steps to prevent or at least limit conversions from happening because they are concerned about reduction in their income producing zoning and moving that to residential since it is a burden on the City and the District. Shepherd said she has been hearing questions from the community, do we have enough public facility zones, what are the community's needs, what can they stop or block now as opposed to allowing the randomness of the individuals request process and allow the City and District to manage their own interest. She said this might be a good year for the Committee to understand zoning, understand where there are remaining PF zones that are not fully utilized. Tom asked if Shepherd was suggesting an overview of what PF zoning exist today across the City? Shepherd said that would be helpful. Klausner said they have a Property Committee Study Session scheduled for March 8th in the morning to look at an overview of their enrollment picture, their enrollment demographic projections, and their current facilities capacity and to take that time to look into zoning and what it looks like and what can they attempt to work with in terms of assumptions. Williams said he could provide the Committee with a map of all the PF properties and an overview of what that zoning district allows and doesn't allow. Tom said he suggest putting this back on a future agenda to review PF zoning and discuss instances where PF zoning has been converted to something else or what it takes for another zone type to convert to PF. Klausner said she would like some history to better understand this issue of up zoning; how often does the City do that and when does it happen? She said just a general history because to some extent it is relevant to the District since they are always trying to predict their enrollment growth. She said also the overall planning and comprehensive plan process so at what point in time are critical decisions made on zoning or planning decisions, key dates that they should be aware of. Emslie said they would be happy to address that.

Update on Teen Mental Health and Trackwatch

De Gues said January was a very difficult month; they had two teen suicides so they had a crisis response and a Project Safety Net (PSN) meeting last week. Drolette said the night of the death by suicide of the Paly student, January 13, PAUSD immediately activated their crisis response. On January 14 the I.D. of the individual had not been released by the authorities due to confidentiality laws. Dr. Skelly verified the information with the PA police late Thursday; they immediately convened their district and site teams; Skelly and Davis notified administrators by e-mail; throughout the day Secondary Administrator, Debra Lindo check in with site administrators. She said the student was a student at Paly and Gunn. Phil Winston and Katya Villalobos sent out a message to staff by e-mail and an emergency staff meeting that was convened on the morning of January 14; students were notified first period by teachers. Prior to Friday, Drolette and Holly Wade, Special Education Director ensured that there were support services at both high schools; school psychologists were dispersed to the two sites, KARA counseling, and ACS. They wanted to make sure they had enough support services for students and staff. She said Skelly prepared a letter to parents by e-mail. He also

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reached out to the local media. Drolette said throughout the day they processed referrals at each site for students identified as at risk, friends of, or those who may have a difficult time with the grieving process; there was 55 students at Gunn and 70 at Paly. There were some students that were not on campus so support staff made it a priority to contact the parents of those students. They are also keeping a close watch on those staff members that are close to the students. Drolette said at the conclusion of the day both staffs did a last minute check in given the three day weekend. They are looking at their priorities for this year and looking at community peer counseling, how do they empower students to support one another. PAUSD has an MOU with PSN to do gatekeeper training for staff, but the next question is how do they do gatekeeper training site prevention for students so they have that as a resource on how to support a friend. Secondary staff will be trained by the end of February. Drolette said the other thing they struggle with is the social network. How do they provide information to students so there isn't non-confirmed information that causes a higher level of anxiety? She said some districts and universities have a social site such as Facebook where information is posted so that is another thing they are looking at possibly doing. She said support services were split; they had some in the counseling area and they also designated a few counselors, school psychologists, and KARA to that area. De Geus said it is really difficult and what they learned this last year is students need to express themselves and grieve and so they surrounded them with the support. Shepherd said some parents knew only because their kids would tell them. Is there a way they can make that a part of the PSN protocol so they can get that message out to parents? Drolette said absolutely, she has had that conversation with Skelly and Cabinet will have a reassessment of the protocol. Yeh asked if there is a base of students that are in a good position and what are the thoughts about moving forward? Drolette said there is an organization called "Sources of Strength" and they have been in communication with Gunn especially the Rock group, they would be the ideal group to begin the student to student peer counseling, but for the actual student gatekeeper training, the youth forum would also be an ideal group to pilot the training. They have identified that this is a priority and they would like to roll it out this next academic year. Yeh asked what the goals would be on moving forward on some kind of initiative of understanding the social network? Drolette said the objective would not just be for crisis response, it would be multipurpose. There is a lot of detail that has to be addressed before this becomes a reliable resource for the students to go to. De Geus said they are working with their PA Teen Council and the Teen Advisory Board on this because it is really challenging. Shepherd said they struggled with this last year and they do have a protocol so the District may want to take a look at the protocol because there was a lot of research done and they do get news out that way. Klausner asked if the summer camp counselors that had training were adults or students? De Geus said they were adults. Klausner said the Rock group had some peer counseling so how does that relate to the additional training they might get? Drolette said the Rock group is a small group of students and QPR training is intended to reach all students. Shepherd was does QPR stand for? Drolette said it is Question, Persuade, Refer. She said the idea is to reach all students.

Report on Parade

Degeus said the parade was one of the best events he has been of part of; there was great collaboration with staff, the City, and the District. He would like to thank Cash, Records Supervisor with the City who took the lead on this and worked over the winter break, but there were many others. It was a memorable experience for kids and just celebrating and demonstrated that youth is important. Tom said it was a wonderful event and last night at the Board they had a lovely letter and DVD of the event. De Geus said it is really an outstanding community. Klausner asked is there a way that they can keep it ongoing between the City and the District and think of other opportunities to do some work/celebrations? Emslie said he believes that was the charm of the event that it was scheduled quickly and there was a sense of urgency in getting it done; it creates some kind of a momentum. Shepherd heard positive feedback from kids at both high schools. She said it's not that they don't have their eye on trying to continue those celebrations it is just finding those moments.

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MINUTES FOR MEETING OF January 26, 2011

City of Palo Alto Service Efforts and Accomplishments (SEA) Report	Mike Edman, Acting City of Palo Alto Auditor and Ian Hagerman, Senior Performance Auditor presented the City of Palo Alto Service Efforts and Accomplishments (SEA) Report. Hagerman said the purpose of the SEA report is to provide information about City governments. They have been doing this for nine years. Their report provides information on all City departments: spending levels, staffing levels, workload output, five year historical comparisons, comparison to surrounding jurisdictions, residents' survey, policy questions, and they benchmark those to about 500 jurisdictions to see where they stand. Hagerman said the SEA report has an executive summary, a management discussion, and analysis that will be required by all jurisdictions next year. They asked the City Manager to provide information on what happened last year, what were some of the successes of the City and some of the challenges looking forward. There is brief background section that provides demographic information on the City; the first chapters contain staffing, key resident perceptions, five Council priorities for the last year and this year; chapters 2-9 are department chapters; the last chapter is administrative and strategic support services. The first appendix is the national citizens' survey results from the national research center and they also have a benchmark report that includes all the benchmarks discussed. They issue two reports in conjunction with the SEA report, one is a geographic and comparisons report where they break down City results by four zip codes and included 2009-10 data. This is the eighth year they do a National Citizens' Survey; it contains a lot historical data and is sent out late August, early September. This year they sent out 1800 surveys; they have about a 36% response rate which is pretty good. He said of the 90 benchmarks, Palo Alto is much above in 55 of those. Edman walked the Committee through a few slides of the quality of life survey results which included: how Palo Alto compares to other jurisdictions, composite scores for 2009 and 2010, results by zip code: 94301, 94503, 94506, community characteristics, quality of new development, resident behaviors, use of Palo Alto Library, community services, city parks, recreation programs or classes, recreation centers or facilities, services to seniors, and services to youth. Edman said the scores have increased from the previous year in Palo Alto is a place to live, Palo Alto is a place to raise children; scores are much above the benchmark. The residents overall feel good about the government services and also feel strongly about the value of the taxes they pay to Palo Alto. One last area they looked into was the community's interest if the City were to pursue revenue sources for specific projects and the support was 85% said they would somewhat support or strongly support. Hagerman said the general fund expenses have increased 15% over 5 years. The per capita cost for residents is about $1,645 dollars per resident, which is an increase of 3% from last year. Staffing levels have been pretty much unchanged. The report also includes the citizens' perception on the five Council priorities and the citizens' centric report which includes the City's organization, progress for the fiscal year, expenditure information, and the City's economic outlook. The complete SEA report is available on the City's website. Shepherd said if the District would like to include a question in this report they may contact the City Auditor.
Future Meetings and Agendas	The Committee agreed to change the meetings to the fourth Thursday of the month; upcoming meeting dates: February 24, March 24, April 28, May 26, and June 23. They will come up with a schedule for the fall at the June meeting. Agenda items for the February 24 meeting are: Teen Mental Health, Update on Stanford Hospital Project, PAUSD Demographic Report, and Agenda Items for 2011. The March agenda will include traffic.
Adjournment	The meeting was adjourned at 9:49 a.m.

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Policy and Services Committee

7:00 PM
Special Meeting
Tuesday, February 15, 2011
Council Conference Room
Palo Alto City Hall
250 Hamilton Avenue
Palo Alto, CA

Roll Call

7:00 PM Meeting called to order on February 15, 2011 at Council Conference Room, Palo Alto City Hall, Palo Alto, CA.

Oral Communications

Agenda Items

1. Agenda Automation Presentation

2. Discussion of Future Topics

3. CAO Report from the City Clerk Procedures and Protocols

4. Staffing Flexibility Changes for Changing Environment

Future Meetings and Agendas

March 8, 2011 -Stanford Project

Adjournment

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE AT PALO ALTO CITY HALL, 250 HAMILTON AVE. DURING NORMAL BUSINESS HOURS.

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CITY OF PALO ALTO OFFICE OF THE CITY CLERK

February 15, 2011

The Honorable City Council
Palo Alto, California

Procedures and Protocols

The City Council Procedures Handbook and Council Protocols are attached. The documents have been updated to reflect changes approved by the full Council on November 22, 2010. Several items were not approved by the Council on November 22, 2010 and were referred back to Policy and Services.

On December 14, 2010 the Policy and Services Committee approved unanimously revisions to the Procedures regarding Late Submittal of Planning Application Materials and the Policy on Restrictions on Council Communications Outside of Quasi-Judicial Hearings. These items are included in the attached Procedures and Protocols Handbooks with indications that they were approved by Policy & Services Committee on December 14, 2010 and are to be brought back for final approval to the full Council in late March along with the changes approved this evening.

The outstanding items to be heard by Policy and Services Committee for further discussion are outlined below, and indicated on the handbooks:

PROCEDURES DOCUMENT

Page II-1 and II-2

Council Member Holman: Discussion of the structure of study sessions

Page IV-I

IV. Quasi-Judicial Hearings, A-1

Purpose. These rules are intended to assure that City Council decision making on quasi-judicial matters is based upon facts and evidence known to all parties <u>and to support the autonomy of Boards and Commissions in making recommendations to Council</u>.

PROTOCOLS DOCUMENT

Page 4

- <u>If attending a Board or Commission meeting, identify your comments as personal views or opinions.</u>

Council Members may attend any Board or Commission meeting, which are always open to any member of the public. Any public comments by a Council Member at a Board or Commission meeting, when that Council Member is not the liaison to the Board or Commission, ~~should be clearly made as~~ <u>should make a point to clearly state it is an</u> individual opinion and not a representation of the feelings of the entire City Council.

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Refrain from Lobbying ~~Limit contact with~~ Board and Commission members ~~to questions of clarification~~.

Page 5

- Concerns about an individual Board or Commission member should be pursued with tact.

If a Council Member has ~~a~~ concerns with the ~~effectiveness of~~ a particular Board or Commission member fulfilling their roles and responsibilities and is comfortable in talking with that individual privately, the Council Member should do so. ~~Alternatively, or if the problem is not resolved, the Council Member should consult with the Mayor, who can bring the issue to the Council as appropriate~~.

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Submittal of Materials Directly to Council

If Council receives materials related to agenda item matters they will notify the City Clerk and the City Manager as soon as possible.

Comment by Council Member Schmid: "Council' should be 'Councilmember'. This section seems to refer not just to 'planning applications' but to any item on the Council agenda. I'm not sure if 'materials' refers just to some specific type of formal submittal (e.g. planning applications), or to more general forms of inputs that come from the public: references to other projects or policy decisions, environmental reports, or even to any information or communications from the public (letter, email, phone, direct comment)? You need to be very clear on what you are referring to here."

Comment by Council Member Scharff: While I understand the intent of this it seems too broad and unnecessary. If a citizen wishes their comments to be included in the public record they can submit them to the City as is currently done. If a council member gets a private email regarding an agenda item, that council member should have no responsibility to submit it to the city clerk. The same is true of any of the myriad attachments that may be included in an email or hand delivered to us. I think there are privacy concerns that we should think through before adopting this policy.

Page 6-7

Other Procedural Issues (delete paragraph as late submittals are addressed in the Procedures Handbook).

~~Late Submittal of Planning Application Materials.~~
~~In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff or to Council members either before or during the meeting. If items are not submitted by this date or if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes, staff will analyze whether the need exists to continue the item.~~

Page 7

Policy & Services Committee - Role, Purpose, & Work Planning (add fourth paragraph in section).

Purpose Statement: The purpose of the Policy & Services Committee is to regularly review and identify important community issues and City policies and practices with a focus on ensuring good public policy and best practices. A particular focus of the Committee is to ensure that the City organization is responsive, effective and aligned with community values and City Council priorities.

> Comment by Council Member Schmid: "At the end the purpose statement the document talks about aligning with "community values" and "Council priorities". Are there specific 'values' that take precedence? Council sets general 'priorities' at their retreat in January but they usually just refer to an area of particular concern. Council then votes specific directives on individual items in the course of the year. Which are the Council 'priorities'?"

ATTACHMENTS:

- Procedures Handbook (PDF)
- Protocols Handbook (PDF)
- Excerpted Minutes from 11-22 and 12-14 (DOC)
- Article-Ethical Hazards (PDF)

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Introduction & Contents

This handbook describes the way the Palo Alto City Council does its business. It is intended to accomplish two goals. First, the handbook is an ***information guide*** for anyone doing business or appearing before the City Council. Second, the handbook is a compilation of ***procedural rules*** that have been formally adopted by Council Resolution.

The handbook is organized in five sections.

Public Participation in Council Meetings

This section explains the basic rules for speaking to the City Council. It covers things like when to speak, time limits, and how groups of speakers are handled.

Council Meeting & Agenda Guidelines

This section explains the different kinds of meetings the City Council holds, what they are for, and how the meeting agenda is prepared.

Motions, Debate & Voting

This section explains the simplified rules of parliamentary procedure the Council follows (like Roberts' Rules of Order, but simpler!).

Quasi-Judicial Hearings

This section explains the special way the City Council handles hearings that raise constitutional due process concerns. These are usually hearings that seriously impact someone's life, liberty or property.

Standing Committees

This section explains how the City Council's two standing committees – Finance and Policy & Services – operate during their own separate meetings.

If you have any questions about this handbook, please feel free to contact the City Clerk by phone at (650) 329-2571 and e-mail at city.clerk@cityofpaloalto.org or the City Attorney by phone at (650) 329-2171 and e-mail at city.attorney@cityofpaloalto.org.

Attachment: 2.15.11 (1422 : Policy and Services Agenda 2/15/2011)

I. Public Participation in Council Meetings

A. Policy. It is the policy of the City Council to assure that members of the public have the opportunity to speak to any regular or special meeting agenda item before final action. These rules establish the rights and obligations of persons who wish to speak during City Council meetings.

(1) Purpose. These rules are intended to enhance public participation and Council debate so that the best possible decisions can be made for Palo Alto. Palo Alto has a long and proud tradition of open government and civil, intelligent public discourse. *Open* government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the City Council takes these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Council meeting and/or arrest and prosecution.

(2) Summary of Rules. Every regular City Council agenda has two different kinds of opportunities for the public to speak. The first is during ***Oral Communications.*** This part of the meeting is provided so that the public can speak to anything that is in the City's jurisdiction, even if there is no action listed on the agenda. The Council allows three minutes per speaker, but limits the total time to 30 minutes per meeting. State law does not permit the Council to respond to oral communications, but City staff may be asked to follow up on any concerns that are raised.

The second opportunity to speak is during the public comment or public hearing portion of ***Each Agenda Item***. Public comments or testimony must be related to the matter under consideration. The Council allows three minutes per speaker for most matters. During *"quasi-judicial"* hearings (where the City Council is legally required to take evidence and make impartial decisions based upon that evidence), the applicant or appellant may have up to ten minutes at the outset and three minutes for rebuttal at the end. These hearings are specially marked on the Council agenda.

A person who wants to speak to the Council must fill out a speaker card and hand it in to the City Clerk. The Clerk will give the cards to the Mayor or Vice Mayor so that the speakers can be identified and organized in an orderly way.

B. General Requirements.

1. Accessibility. Palo Alto makes every reasonable effort to accommodate the needs of the disabled. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance

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should contact: Larry Perlin, ADA Director, City of Palo Alto, 650/329-2496 (voice) or 650/328-1199 (TDD).

2. Presiding Officer's Permission Required. The presiding officer at Council meetings (usually the Mayor or Vice-Mayor) is legally required to "preserve strict order and decorum."[i] This is important in order to assure a fair opportunity for everyone to participate in an open and civil setting.

a) Any person desiring to address the Council must first get the permission of the presiding officer by completing a speaker card and handing the card to the City Clerk.

b) The presiding officer shall recognize any person who has given a completed card to the City Clerk.

c) No person, other than a Council Member and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

d) No person shall enter the staff area of the Council dais without the permission of the Presiding Officer or appropriate Council Appointed Officer.

3. Recording and Identification. Persons wishing to address the Council shall comply with the following:

a) Use the microphone provided for the public and speak in a recordable tone, either personally or with assistance, if necessary.

b) State their name and address if presenting evidence in a hearing required by law.

c) Other speakers should state their name and address, but cannot be compelled to register their name or other information as a condition to attendance at the meeting.

4. Specific Requirements and Time Limits.

a) Oral Communications. Oral communications shall be limited to three minutes per speaker and will be limited to a total of thirty minutes for all speakers combined.

1) Oral communications may be used only to address items that are within the Council's subject matter jurisdiction, but not listed on the agenda.

2) Oral communications may not be used to address matters where the receipt of new information would threaten the due process rights of any person.

3) All remarks shall be addressed to the Council as a body and not to any *individual* member.

4) Council members shall not enter into debate or discussion with speakers during oral communications.

5) The presiding officer may direct that the City Manager will respond to the person speaking and/or the Council at a later date.

b) Other Agenda Items. Public comments or testimony on agenda items other than Oral Communications shall be limited to a maximum of three minutes per speaker unless additional time is granted by the presiding officer. The presiding officer may reduce the allowed time to less than two minutes if necessary to accommodate a larger number of speakers.

1) Spokesperson for a Group. When any group of people wishes to address the Council on the same subject matter, the presiding officer will request that a spokesperson be chosen by the group to address the Council. Spokespersons who are representing a group of five or more people who are present in the Council chambers will be allowed ten minutes and will to the extent practical be called upon ahead of individual speakers.

2) Quasi-Judicial Hearings. In the case of a quasi-judicial hearing, single applicants and appellants shall be given ten minutes for their opening presentation and three minutes for rebuttal before the hearing is closed. In the case of a quasi-judicial hearing for which there are two or more appellants, the time allowed for presentation and rebuttal shall be divided among all appellants, and the total time allowed for all appellants shall be a total of twenty minutes for the opening presentation and six minutes for rebuttal before the

hearing is closed; however, under no circumstances shall an individual appellant be given less than five minutes for presentation and three minutes for rebuttal. In the event a request is made and the need for additional time is clearly established, the presiding officer shall independently, or may upon advice of the city attorney, grant sufficient additional time to allow an adequate presentation by the applicant or appellant in a hearing required by law.

3) Addressing the Council after a Motion. Following the time for public input and once the matter is returned to the Council no person shall address the Council without first securing the permission of the Council so to do, subject to approval of the City Attorney with respect to any hearing required by law.

c) Decorum. The Palo Alto Municipal Code makes it unlawful for any person to:

1) Disrupt the conduct of a meeting;

2) Make threats against any person or against public order and security while in the Council chamber.

3) Use the Council Chambers during meetings for any purpose other than participation in or observation of City Council Meetings.

Any Council Member may appeal the presiding officer's decision on a decorum violation to the full Council. Decorum violations are punishable as a misdemeanor and may lead to a person being removed from the Council meeting.[ii]

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II. Council Meeting & Agenda Guidelines

A. Policy. It is the policy of the Council to establish and follow a regular format for meeting agendas.

1. Purpose. The purpose of these guidelines is to facilitate the orderly and efficient conduct of Council business. This purpose recognizes the value of establishing a community understanding of meeting procedures so that broad public participation is encouraged. This purpose also recognizes that Council Members must have a common approach to the discussion and debate of City business so that meetings are both streamlined and thorough.

2. Summary of Guidelines. The City Council generally conducts four different kinds of meetings. These are ***Regular Meetings, Special Meetings, Study Sessions, and Closed Sessions.***

Regular meetings are conducted at City Hall on the first three Monday nights of each month, except during the Council's annual vacation. The meetings will begin at 7:00 p.m. Regular meeting agendas must be posted in the City Plaza by the elevators no later than 7:00 p.m. on the preceding Friday as required by the Brown Act. It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding Wednesday. For major complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

Once the agenda is posted, it shall also be uploaded to the City Council web page for use by the public. It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding Wednesday. For major, complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

Special meetings are "special" because the mayor or Council can call them on a minimum of 24 hours notice. Special meetings need not be held at City Hall, as long as the alternate location is within the City. The Council makes every effort to provide notice well in advance of 24 hours, especially when the special meeting is for the purpose of conducting a ***Study Session.***

Study Sessions are meetings during which the Council receives information about City business in an informal setting. The informal study session setting is intended to encourage in-depth presentations by City staff, and detailed questioning and brainstorming by Council. The Council may discuss the material freely without following formal rules of parliamentary procedure. Staff may be directed to bring

matters back for Council consideration at future meetings, but no action can be taken. During regular study sessions, public comments are typically received together with oral communications at the end of the session or at another appropriate time at the discretion of the chair. During special study sessions, public comments will be heard at the end of any Council discussion, but oral communications will be consolidated with the oral communications section of the regular meeting, if one follows the study session. The Decorum rules still apply to the behavior of the Council and public.

Comment [G1]: Council Membe Holman Commented that a discussic regarding study sessions should take place.

Closed Sessions can be part of regular or special meetings. Closed sessions are the only kind of Council meeting that the public cannot attend. State law allows closed sessions to discuss pending litigation, employment issues, real estate negotiations and certain other matters. Members of the public are permitted to make public comments on closed session matters. The Council must make a public report after the session when certain kinds of actions are taken.

These are guidelines, not rules. The Council intends that City staff and Council Members will follow these guidelines. However, these guidelines should not be used in a way that leads to inefficiency, unfairness, or the promotion of form over substance. State law establishes a variety of *mandatory* meeting rules the City must follow in order to assure open and public government, regardless of unusual situations and consequences.

B. General Requirements.

1. Regular meetings.

a) Attendance Required. Council Members, the City Clerk, City Attorney, and City Manager, along with any other city officers and department heads that have been requested to be present, shall take their regular stations in the Council chamber at 7:00 p.m. on the first, second and third Mondays of each month, except during the established Council vacation.[iii] The Council expects its members to attend regularly and notify the City Clerk of any planned absences. The Council may levy fines of up to $250.00 against Council members who willfully or negligently fail to attend meetings.[iv]

(1) **Telephonic Attendance Of Council Members At Council Meetings: The City Council Procedures provisions concerning Telephonic Attendance shall apply to all Boards and Commissions as well as the City Council.** Requests by Council Members to attend a Council meeting via telephonic appearance are actively

discouraged. Telephonic attendance shall only be permitted in the event of extraordinary events such as a medical, family or similar emergency requiring a Council Member's absence. In addition, at least a quorum of the Council must participate from a location within the City (Government Code Section 54953(b)(3)).

If these two threshold requirements are met, the Council Member who will be appearing telephonically must ensure that:

a. The meeting agenda identifies the teleconference location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to the meeting.
b. The teleconference location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
c. The teleconference technology used is open and fully accessible to all members of the public, including those with disabilities.
d. Members of the public who attend the meeting at the teleconference location have the same opportunity to address the Council from the remote location that they would if they were present in Council Chambers.
e. The teleconference location must not require an admission fee or any payment for attendance.

If the Council Member determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting via teleconference.

(2) **Approved Teleconference Guidelines for Council Members:**

a. One week advance written notice must be given by the Council Member to the City Clerk's office; the notice must

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include the address at which the teleconferenced meeting will occur, the address the Council packet should be mailed to, who is to initiate the phone call to establish the teleconference connection, and the phone number of the teleconference location. Cellular telephones shall not be used to participate in teleconferenced meetings.

b. The Council Member is responsible for posting the Council agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The City Clerk will assist, if necessary, by faxing or mailing the agenda to whatever address or fax number the Council Member requests; however, it is the Council Member's responsibility to ensure that the agenda arrives and is posted. If the Council Member will need the assistance of the City Clerk in delivery of the agenda, the fax number or address must be included in the one-week advance written notice above.

c. The Council Member must ensure that the location will be publicly accessible while the meeting is in progress.

d. The Council Member must state at the beginning of the Council meeting that the 72-hour posting requirement was met at the location and that the location is publicly accessible, and must describe the location.

e. Furthermore, the City Clerk will provide Council with a quarterly report detailing the telephone charges associated with teleconferenced meetings.

b) Items considered after 10:30 p.m. The City Council makes every effort to end its meetings before 11:00 p.m. The Council also generally does not take up new matters after 10:30 p.m. Before 10:00 p.m. the Council will decide and announce whether it will begin consideration of any agenda items after 10:30 and, if so, which specific items will be taken up.

c) Late Submittal of Correspondence or Other Information Related to Planning Applications. In order to allow for adequate Staff review and analysis, and to ensure public access to information, all plans, correspondence, and other documents supporting or commenting on planning applications being heard by the City Council must be submitted not later than noon five working days prior to the release of the Council Agenda Packet. If any correspondence or other information is submitted after this deadline and Staff determines additional review is needed Staff will reschedule the item for a future Council meeting. At the meeting the City Council may determine whether to continue or refer the item to the appropriate Board and/or Commission if significant changes to a project or significant new information become known. Nothing in this statement is intended to restrict the rights of applicants or other interested parties to respond to information contained in or attached to a Staff Report.

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d) Agenda Order. City Council agendas will be prepared by the City Clerk and presented to the City Council in the order described below. It is the Council's policy to hear the major items of business first at each meeting, to the extent possible. The City Manager, with prior approval of the Mayor, is authorized to designate upon the agenda of the Council, and the City Clerk shall publish in the agenda digest, items that shall be taken up first or at a specific time during the course of the meeting.[v] The City Council may take matters up out of order upon approval by a majority vote of those present:

1) Roll call;

2) Special orders of the day;

2a) City Manager Comments;

3) Oral communications, including oral communications related to any study session that began immediately before the regular meeting;

4) Approval of minutes;

5) Consent calendar. Items may be placed upon the consent calendar by any council-appointed officer whenever, in such officer's judgment, such items are expected to be routinely

approved without discussion or debate. The consent calendar shall be voted upon as one item.

(a) Council Comment. No discussion or debate shall be permitted upon items upon the consent calendar; however, any Council Member may request that his or her vote be recorded as a "no" or "not participating" due to a specified conflict of interest on any individual item. Council Members may also explain their "no" votes at the end of the Consent Calendar, with a 3 minute time limit for each Council Member**.** Council Members may also submit statements in writing to the City Clerk before action is taken. The City Clerk shall preserve and make available such written statements in a manner consistent with the Brown Act and shall assure that the minutes of the meeting make reference to the existence and location of such written statements.

(b) Public Comment. If members of the public wish to speak to items on the Consent Calendar, the Mayor will have the option of allowing the testimony prior to adoption of the Consent Calendar, or removing the item from the consent calendar and hearing the public comment at a later time, prior to the vote on the item.

(c) Council Requests to Remove Item. Any Council Member may request that an item be removed from the consent calendar; if the request is seconded, the item will be removed from the consent calendar. The City Manager's office should be advised, in writing, of a request for removal no later than noon the day of the meeting.

(d) Hearing of Removed Items. Removed items will be heard either later in the meeting or agendized for a discussion at a subsequent meeting, depending upon the number of speakers and the anticipated length of the items that have been officially scheduled for discussion on a particular evening. The Mayor will decide when during the meeting any removed items will be heard.

(e) Consent calendar categories. The consent calendar shall be presented in 5 categories in the following order:

(1) Ordinances and resolutions. The Mayor shall read the titles of each ordinance before Council action. The Council may by majority vote request that the ordinance be read in full. The following ordinances and resolutions may appear on a consent calendar:

(i) Second Reading (passage and adoption) of Ordinances.

(ii) a resolution which are ceremonial in nature.

(iii) Ordinances or resolutions that implement a prior Council policy direction in the manner contemplated by the Council's previous actions, in the Adopted Budget (including the Capital Improvement Program and especially in the department key plans); and the Council Top Priority Workplan, among other sources.

(iv) Budget amendment ordinances that accept funding such as grants or gifts, provided Council has previously approved the activity or program.

(v) Resolutions approving funding applications, such as grants or loans, provided that the program or activity has been previously approved by Council.

(2) Administrative matters including contracts, appointments, approval of applications, and any other matter. The titles of administrative matters need not be read. An administrative matter may be placed on the consent calendar if it is:

(a) An action that is merely the administrative execution of previous Council direction. The Council direction and vote will be quoted in the staff report accompanying the item.

(b) A contracts for which the subject or scope of work has been previously reviewed by the City Council.

(c) A contract for goods, general services, professional services, public works projects, dark fiber licensing contracts or wholesale commodities, purchases, as outlined in the Purchasing Ordinance, provided such contracts represent the customary and usual business of the department as included in the Adopted Budget.

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Examples include: routine maintenance contracts, annual audit agreement; software and hardware support agreements, janitorial services, copier agreements or postage machine agreements.

(d) Rejection of bids.

(e) Designation of heritage trees.

(f) Designation of historic building at the request of the property owner if there are no unusual policy ramifications.

(g) Approval of funding applications, such as grants or loans, provided that Council has previously approved the general program or activity.

(h) Formal initiation, for consideration at a later date, of a zoning code amendment or review process, such as preliminary review.

(i) Status report required by law for fee administration.

(j) Cancellation of meetings or scheduling of special meeting.

(3) Request to refer items to any Council Standing Committee, committee, board, commission or Council Appointed Officer. The consent calendar includes matters for which staff is merely seeking Council approval of a referral to a Council standing committee or other City official, advisory board or commission. This does not preclude staff from making referrals to the standing committees. Staff uses such referrals in order to expedite the business of the full Council, since its agenda is so full. Discussion of a complex issue by another body, provides an opportunity for public input and extended discussion by the members of the body. The full Council is then able to benefit from the minutes of that discussion when the item comes back to the Council for final approval. This practice also allows the City/School Liaison Committee to consider items of interest to both agencies without having to go through the formality of a Council agenda referral.

(4) Items recommended for approval if the Committee unanimously recommends placement on the consent

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calendar, unless otherwise recommended by the Committee, Mayor, or Staff.

(5) Items recommended for approval, and for placement on the consent calendar, by any council-appointed boards and commissions, provided that other public hearing requirements are not in effect.

6) Agenda changes, additions, and deletions;

7) Action Items:

(a) Unfinished Business.

(b) Public Hearings.

(c) Reports of committees/commissions.

(d) Ordinances and Resolutions.

(e) Reports of officials.

(f) Council matters. Any two Council Members may bring forward a colleague memo on any topic to be considered by the entire Council. Two Council Members are required to place such a memo on the agenda, reflective of the Council procedure requiring a motion and a second for consideration of a motion by the Council. Up to four Council Members may sign a colleague memo. The City Attorney recommends that the colleague memo be limited to three Council Members in order to avoid the potential of a Brown Act issue. Prior to preparing a colleague memo, Council Members will consult with the City Manager to determine whether he/she is or is willing and able to address the issues as part of his/her operational authority and within current budgeted resources. Colleague's memos should have a section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager. Council Members shall provide a copy of the proposed memo with the City Manager or appropriate senior staff prior to finalization. Completed Council colleagues memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

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The City Council will not take action on the night that a colleague memo is introduced if it has any implications for staff resources or current work priorities which are not addressed in the memo. The Council will discuss the colleague memo and then direct the City Manager to agendize the matter for Council action within two meetings, allowing City staff time to prepare a summary of staffing and resource impacts. Action may be taken immediately by the Council on colleague memos where there are no resource or staffing implications or where these are fully outlined in the colleagues memo. The Brown Act requires that the public be fully informed of the potential action by the Council via the Agenda 72 hours before a scheduled Council meeting. In order to satisfy the Brown Act requirements, the Council should consult with the City Attorney to ensure that the proposed title to the colleague memo contains all actions that the Council Members want completed on the night of the Council review.

9) Council member Questions, Comments and Announcements. The purpose of this agenda item is to allow Council to question staff briefly on matters upon which Council has taken action or given direction, make general comments as a reference to staff on factual matters of community concern, or make brief announcements in a manner consistent with Government Code section 54952.2. New assignments will not be given nor will major policy issues be discussed or considered. To the extent possible, Council will confer with staff before raising matters under this agenda item. This agenda item will generally be limited to 15 minutes in length and the public may not speak to matters discussed;

10) Closed Sessions;

11) Special closed sessions will be scheduled before or after regular or special Council meetings to the extent possible and appropriate. Closed sessions may be scheduled during a regular or special Council meeting, but this is discouraged by Council;

12) Adjournment.

d) Unfinished and Continued Business. When the Council is unable to complete its agenda the remaining business will generally be

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rescheduled as follows. Nothing in this section shall be deemed to supersede or conflict with state law.

(1) Meeting adjourned *sine die*. When a regular meeting is adjourned *sine die* (without a day), all unfinished items will be listed under unfinished business on the next regular Council meeting agenda; except, that where deemed necessary, the City Clerk, with the City Manager's concurrence, may place those business items in a different order on the agenda.

(2) Meeting adjourned to date certain. When a regular meeting is adjourned to another regular meeting night, all unfinished items will be listed in their original order after roll call on the agenda of such designated regular meeting.

(3) Continued items. When an item on the agenda is continued to a subsequent meeting, such item will be listed under unfinished business on such agenda unless the Council by majority vote chooses to place such item in a different location on such agenda or unless the City Clerk, with the City Manager's concurrence, deems it necessary to place such item at a different location on such agenda.

e) Adding New Items to the Agenda. No matters other than those on the agenda shall be finally acted upon by the Council. However, emergency actions (as defined in Government Code section 54956.5) and matters upon which there is a lawful need to take immediate action (as defined in Government Code section 54954.2) may, with the consent of two-thirds, or all members present if less than two-thirds are present, be considered and acted upon by the Council.

2. Special Meetings. Special meetings may be called by the Mayor or City Council by providing a minimum of 24-hours posted notice in the manner required by state law. To the greatest extent possible, special meetings called for other than regular meeting days should be scheduled by a majority of the Council present and voting at a regular meeting.[vi] Unlike regular meetings, there are no circumstances that permit the City Council to add new items to a special meeting agenda or notice.

3. Study Sessions. Study sessions are meetings during which the Council receives information about City business in an informal setting.

a) Time. Special study sessions will be held as needed.

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b) Oral Communications and Public Comments. Oral communications and public comments will be listed together on the agenda and heard at the end of the study session. If a meeting follows the study session, public comments will be heard at the end of any Council discussion, but oral communications will be consolidated with the oral communications section of the following meeting.

c) No Formal Rules. Study sessions are intended to be conducive to in-depth factual presentations by City staff and detailed questioning and brainstorming by Council. The Council may discuss the material freely without following formal rules of parliamentary procedure. However, the general rules of decorum apply.

d) No Final Action. Staff may be directed to bring matters back for Council consideration at future meetings, but no final action can be taken.

4. Closed Sessions. Closed sessions are the only kind of Council meeting that the public cannot observe. State law allows closed sessions to discuss pending litigation, employment issues, real estate negotiations and certain other matters. To the greatest extent possible, the City Attorney and City Clerk shall use standardized agenda descriptions that are consistent with Government Code section 54954.5.

a) Announcements before Closed Sessions. The mayor shall announce the item or items to be considered in closed session by reference to the appropriate agenda number or letter, or in an alternate form that shall be provided by the City Attorney.

b) Public Comments. Members of the public are permitted to make public comments on closed session matters. The City Clerk shall be present in the open session to record Council attendance and any statements made during oral communications or by the Council.

c) Attendance. The City Manager and City Attorney, or their designees, shall attend closed sessions unless it is necessary to excuse them. Only such additional staff shall attend as are necessary and then only if the legal privileges of confidentiality obtained in an executive session are not waived.

d) Public Reports. State Law and a Palo Alto initiative require the Council to make a public report after a closed session when certain kinds of actions are taken.[vii] Reports from closed sessions shall be made by the Mayor, the Vice Mayor in the Mayor's absence, or such

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other City representative as designated by the Council or its committees. Such designated person is the only individual authorized to make public statements concerning the closed session.

It is the policy of the City Council to inform the public of action taken in closed session to the greatest extent possible. It is recognized, however, that the need for confidentiality is inherent in closed sessions and that certain matters if revealed may be a detriment to the results desired. The Council shall publicly report: (a) any decision to appoint, employ, or dismiss a public employee and the roll call vote thereon at its next public meeting, (b) actions related to litigation and the roll call vote on such actions, unless the report would, in the written opinion of the City Attorney for specifically stated reasons, clearly jeopardize the city's ability to effectuate service of process on one or more unserved parties or impair the city's ability to resolve the matter through negotiation, mediation or other form of settlement. Notwithstanding the City Attorney's written opinion, the Council may under any circumstance, by majority vote, determine that it is in the City's best interests to disclose actions taken in closed session related to litigation. The public report shall be given as soon as possible, but no later than the next regular meeting, and shall include the vote or abstention of every member present. The City Attorney's written opinion shall be made public, along with any action taken and any vote thereon, as soon as any litigation is concluded. The City Attorney shall record any action and vote upon such forms as the City Attorney may deem desirable.

e) No Minutes. No minutes of closed sessions shall be kept. The City Attorney shall record the information necessary to comply with state law and the Palo Alto initiative.

f) Confidentiality. No person in attendance at a closed session may disclose the substance or effect of any matter discussed during the session.[viii]··●●●··

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III. Motions, Debate & Voting

A. Policy. It is the policy of the Council to follow simplified rules of parliamentary procedure for motions, debate and voting. These rules focus on the types of motions the Council can debate and when those motions are properly used.

1. Purpose. The purpose of these rules to facilitate orderly and thorough discussion and debate of Council business. These rules shall not be applied or used to create strategic advantage or unjust results.

2. Summary of Rules. . Palo Alto does not follow Roberts Rules of Order. See the Summary Table below.

B. Motions. A motion is a formal proposal by a Council Member asking that the Council take a specified action. A motion must receive a second before the Council can consider a matter. Matters returning to the Council with unanimous approval from a standing committee will be introduced without a motion if directed by the committee.

1. Types of motions. There are two kinds of motions. These are the "main" motion and any secondary motions. Only one main motion can be considered at a time.

2. Procedure.

a) Get the Floor. A Council Member must receive the permission of the Mayor (or other presiding officer) before making a motion.

b) State the Motion. A motion is made by a Council Member (the "maker") stating his or her proposal. Longer proposals can be written and may be in the form of a resolution.

c) Second Required. Any other Council Member (including the presiding officer) who supports the proposal (or who simply wishes it to be considered) may "second" the motion without first being recognized. A motion to raise a question of personal privilege does not require a second.

d) Motion Restated. The Mayor should restate the motion for the record, particularly if it is long or complex.

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e) Lack of a Second. If there is no second stated immediately, the Mayor should ask whether there is a second. If no Council Member seconds the motion the matter will not be considered.

f) Discussion. The maker shall be the first Council Member recognized to speak on the motion if it receives a second. Generally Council Members will speak only once with respect to a motion. If the Mayor or Council permits any Council Member to speak more than once on a motion, all Council Members shall receive the same privilege.

g) Secondary Motions. Secondary motions may be made by a Council Member upon getting the floor.

h) Action. After discussion is complete the Council will vote on the motion under consideration.

3. Precedence of Motions. When a motion is before the Council, no new main motion shall be entertained. The Council recognizes the following secondary motions which may be considered while a main motion is pending. These motions shall have precedence in the order listed below. This means that a secondary motion that is higher on the list will be considered ahead of a pending secondary motion that is lower on the list:

a) Fix the time to which to adjourn;
b) Adjourn;
c) Take a recess;
d) Raise a question of privilege;
e) Lay on the table;
f) Previous question (close debate);
g) Limit or extend limits of debate;
h) Motion to continue to a certain time;
i) Refer to committee;
j) Amend or substitute;

4. Secondary Motions Defined. The purpose of the allowed secondary motions is summarized in the following text and table.

a) Fix the time to which to adjourn. This motion sets a time for continuation of the meeting. It requires a second, is amendable and is debatable only as to the time to which the meeting is adjourned.

b) Adjourn. This motion ends the meeting or adjourns it to another time. It requires a second and is not debatable except to set the time to which the meeting is adjourned, if applicable. A motion to adjourn shall be in order at any time, except as follows: (a) when

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repeated without intervening business or discussion; (b) when made as an interruption of a member while speaking; (c) when the previous question has been ordered; and (d) while a vote is being taken.

c) Take a recess. This motion interrupts the meeting temporarily. It is amendable, but is not debatable.

d) Raise a question of personal privilege. This motion allows a Council Member to address the Council on a question of personal privilege and shall be limited to cases in which the Council Member's integrity, character or motives are questioned, or when the welfare of the Council is concerned. The maker of the motion may interrupt another speaker if the presiding officer recognizes the "privilege." The motion does not require a second, is not amendable and is not debatable.

e) Lay on the table. This motion is used to interrupt business for more urgent business. A motion to lay on the table requires a second, is not amendable and is not debatable. It shall preclude all amendments or debate of the subject under consideration. If the motion prevails, and the subject is tabled, the matter must be reagendized in the future if further consideration is to be given to the matter.

f) Previous question. This motion “calls the question” by closing debate on the pending motion. A motion for previous question requires a second, is not debatable and is not amendable. It applies to all previous motions on the subject unless otherwise specified by the maker of the motion. If motion for previous question fails, debate is reopened; if motion for previous question passes, then vote on the pending motion. A motion for previous question requires a two-thirds vote of those Council Members present and voting.

g) Limit or extend debate. This motion limits or extends the time for the Council or any Council Member to debate a motion. It requires a second, is amendable and is not debatable. The motion requires a two-thirds vote of those Council Members present and voting.

h) Continue to a certain time. This motion continues a matter to another, specified time. It requires a second, is amendable and is debatable as to propriety of postponement and time set.

i) Refer to a city agency, body, committee, board, commission or officer. This motion sends a subject to another city agency, body, committee, board, commission or officer for further study and report

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back to Council, at which time subject is fully debated. It requires a second, is amendable, and is debatable only as to the propriety of referring. The substance of the subject being referred shall not be discussed at the time the motion to refer is made.

j) Amend or substitute. This motion changes or reverses the main motion. It requires a second, is amendable, and is debatable only when the motion to which it applies is debatable. A motion to amend an amendment is in order, but one to amend an amendment to an amendment is not. An amendment modifying a motion is in order but an amendment raising an independent question or one that is not germane to the main motion shall not be in order. Amendments take precedence over the main motion and the motion to postpone indefinitely.

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Motion	Description	2nd Req'd	Debatable	Amendable	2/3 Vote
Fix the time to which to adjourn	Sets a next date and time for continuation of the meeting	X	Only as to time to which the meeting is adjourned	X	
Adjourn	Sets time to adjourn. Not in order if (a) repeated without intervening business (b) made as an interruption of a member while speaking; (c) the previous question has been ordered; and (d) while a vote is being taken	X	Only to set the time to which the meeting is adjourned		
Take a recess	Purpose is to interrupt the meeting	X		X	
Raise a question of privilege					
Lay on the table	Interrupts business for more urgent business	X			
Previous question (close debate or "call the question")	Closes debate on pending motion	X			X
Limit or extend limits of debate	Purpose is to limit or extend debate	X		X	X
Motion to continue to a certain time	Continues the matter to another, specified time	X	X	X	
Refer to committee	Sends subject to another city agency, body, committee, board, commission or officer for further study and report back to council, at which time subject is fully debated	X	Only as to propriety of referring, not substance of referral	X	
Amend or substitute	Modifies (or reverses course of) proposed action. Cannot raise independent question. Can amend an amendment, but no further	X	Only if underlying motion is debatable	X	

C. Debate and Voting.

1. Presiding officer to state motion. The presiding officer shall assure that all motions are clearly stated before allowing debate to begin. The presiding officer may restate the motion or may direct the City Clerk to restate the motion before allowing debate to begin. The presiding officer shall restate the motion or direct the City Clerk to restate the motion prior to voting.

2. Presiding officer may debate and vote. The presiding officer may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all Council Members. The presiding officer shall not be deprived of any of the rights and privileges of a Council Member.

3. Division of question. If the question contains two or more divisible propositions, each of which is capable of standing as a complete proposition if the others are removed, the presiding officer may, and upon request of a member shall, divide the same. The presiding officer's determination shall be appealable by any Council Member.

4. Withdrawal of motion. A motion may not be withdrawn by the maker without the consent of the Council Member seconding it.

5. Change of vote. Council Members may change their votes before the next item on the agenda is called.

6. Voting. On the passage of every motion, the vote shall be taken by voice or roll call or electronic voting device and entered in full upon the record.

7. Silence constitutes affirmative vote. Council Members who are silent during a voice vote shall have their vote recorded as an affirmative vote, except when individual Council Members have stated in advance that they will not be voting.

8. Failure to vote. It is the responsibility of every Council Member to vote unless disqualified for cause accepted by the Council or by opinion of the City Attorney. No Council Member can be compelled to vote.

9. Abstaining from vote. Council Members should only abstain if they are not sufficiently informed about an item, e.g. when there was a prior hearing and they were unable to view the prior meeting before the current meeting. In the event of an abstention the abstainer in effect, "consents" that a majority of the quorum of the Council Members present may act for him or her.

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10. Not participating. A Council Member who disqualifies him or herself pursuant to the Political Reform Act of 1974 because of any financial interest shall disclose the nature of the conflict and may not participate in the discussion or the vote. A Council Member may otherwise disqualify him or herself due to personal bias or the appearance of impropriety.

11. Tie votes. Tie votes may be reconsidered during the time permitted by these rules on motion by any member of the Council voting aye or nay during the original vote. Before a motion is made on the next item on the agenda, any member of the Council may make a motion to continue the matter to another date. Any continuance hereunder shall suspend the running of any time in which action of the City Council is required by law. Nothing herein shall be construed to prevent any Council Member from agendizing a matter that resulted in a tie vote for a subsequent meeting.

12. Motion to reconsider. A motion to reconsider any action taken by the Council may be made only during the meeting or adjourned meeting thereof when the action was taken. A motion to reconsider requires a second, is debatable and is not amendable. The motion must be made by one of the prevailing side, but may be seconded by any Council Member. A motion to reconsider may be made at any time and shall have precedence over all other motions, or while a Council Member has the floor, providing that no vested rights are impaired. The purpose of reconsideration is to bring back the matter for review. If a motion to reconsider fails, it may not itself be reconsidered. Reconsideration may not be moved more than once on the same motion. Nothing herein shall be construed to prevent any Council Member from making a motion to rescind such action at a subsequent meeting of the Council.

13. Appeal from the decision of presiding officer. When the rules are silent, the presiding officer shall decide all questions of order, subject to appeal by a Council Member. When in doubt, the presiding officer may submit the question to the Council, in which case a majority vote shall prevail. Any decision or ruling of the presiding officer may be appealed by request of any member. The presiding officer shall call for a roll call or electronic voting device vote to determine if the presiding officer's ruling shall be upheld. If said vote passes or results in a tie vote, the presiding officer's ruling shall stand. If said vote fails, the decision or ruling of the presiding officer is reversed.

14. Getting the floor; improper references to be avoided. Every Council Member desiring to speak shall address the chair and, upon recognition by the presiding officer, every Council Member shall be confined to the question under debate, avoiding all indecorous language and personal attacks.

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15. Interruptions. Except for being called to order, a Council Member once recognized, shall not be interrupted when speaking, except as otherwise provided for in these rules. A Council Member called to order while speaking shall cease speaking until the question or order is determined, and, if in order, said Council Member shall be permitted to proceed.

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IV. Quasi-Judicial Hearings

A. Policy. It is the policy of the Council to assure that the due process rights of all persons are protected during City hearings. A "quasi-judicial" hearing is a hearing that requires a higher level of procedural due process because of the potential impact on life, liberty or property. Usually, quasi-judicial hearings involve a single parcel of land and apply facts and evidence in the context of existing law. Findings must be stated to explain the evidentiary basis for the Council's decision.

1. Purpose. These rules are intended to assure that City Council decision making on quasi-judicial matters is based upon facts and evidence known to all parties and to support the autonomy of Boards and Commissions in making recommendations to Council.

Comment [r3]: Not approved by Council on 11/22/10. Referred back P&S. Not discussed at 12/14 P&S.

B. General Requirements.

1. Quasi-Judicial Proceedings Defined. Quasi-judicial proceedings subject to these procedural rules include hearings involving the following matters:

a) Conditional Use Permits
b) Variances
c) Home Improvement Exceptions
d) Design Enhancement Exceptions
e) Subdivisions, other than final map approvals
f) Architectural Review
g) Assessment protest hearings
h) Other matters as determined by the City Attorney
i) Appeals related to any of the above
j) Environmental Review relating to any of the above

2. Restrictions on Council Communications Outside of Quasi-Judicial and Planned Community Zone Hearings. It is the policy of the Council to discourage the gathering and submission of information by Council Members outside of any noticed public meeting, prior to final recommendations by the Architectural Review Board or Planning & Transportation Commission. The following procedural guidelines are intended to implement this policy, but shall not be construed to create any remedy or right of action.

Comment [G4]: Verbiage approv by motion at Policy & Services meet on 12/14/10. Pending Council Appr

k) Identification of Quasi-Judicial Matters. The City Attorney, in conjunction with the City Clerk and City Manager, will identify agenda items involving quasi-judicial decisions on both the tentative and regular Council agendas. This identification is intended to inform the Council, interested parties, and the public that this policy will apply to the item.

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b) Council to Track Contacts. Council Members will use their best efforts to track contacts pertaining to such identified quasi-judicial decision items. Contacts include conversations, meetings, site visits, mailings, or presentations during which substantial factual information about the item is gathered by or submitted to the Council Member.

c) Disclosure. When the item is presented to the Council for hearing, Council Members will disclose any contacts which have significantly influenced their preliminary views or opinions about the item. The disclosure may be oral or written, and should explain the substance of the contact so that other Council Members, interested parties, and the public will have an opportunity to become apprised of the factors influencing the Council's decision and to attempt to controvert or rebut any such factor during the hearing. Disclosure alone will not be deemed sufficient basis for a request to continue the item. A contact or the disclosure of a contact shall not be deemed grounds for disqualification of a Council Member from participation in a quasi-judicial decision unless the Council Member determines that the nature of the contact is such that it is not possible for the Council Member to reach an impartial decision on the item.

d) No Contacts after Hearings. Following closure of the hearing, and prior to a final decision, Council Members will refrain from any contacts pertaining to the item, other than clarifying questions directed to City staff.

3. Written Findings Required. On any matter for which state law or City ordinance requires the preparation of written findings, the staff report and other materials submitted on the matter will contain findings proposed for adoption by the Council. Any motion directly or impliedly rejecting the proposed findings must include a statement of alternative or modified findings or a direction that the matter under consideration be continued for a reasonable period of time in order for staff to prepare a new set of proposed findings consistent with the evidence which has been presented and the decision which is anticipated.

4. Rules of Evidence. Council hearings need not be conducted according to formal rules of evidence. Any relevant evidence may be considered if it is the sort of evidence upon which responsible persons rely in the conduct of serious affairs. The presiding officer may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings while ensuring basic fairness and full

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consideration of the issues involved. Evidentiary objections shall be deemed waived unless made in a timely fashion before the Council.

5. Burden of Proof. The applicant and appellant shall bear the burden of proof on all aspects of the action or relief they seek. The person with the burden of proof must offer evidence to the Council to support his or her position.

6. Council Members Who are Absent During Part of a Hearing. A Council Member who is absent from any portion of a hearing conducted by the Council may vote on the matter provided that he or she has watched or listened to a video or radio broadcast, or video or audio recording, of the entire portion of the hearing from which he or she was absent and if she or he has examined all of the exhibits presented during the portion of the hearing from which he or she was absent and states for the record before voting that the Council Member deems himself or herself to be as familiar with the record and with the evidence presented at the hearing as he or she would have been had he or she personally attended the entire hearing.

7. Appeals. Appeals to the Council shall be conducted *de novo*, meaning that new evidence and arguments may be presented and considered. All matters in the record before any other City board, commission or official shall be part of the record before the Council.

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V. Standing Committees

A. Policy. It is the policy of the Council to use standing committees in open and public meetings to study City business in greater depth than what is possible in the time allotted for Council meetings.

1. Purpose. These rules are intended to enhance public participation and committee meetings so that the best possible decisions can be made for Palo Alto.

B. General Requirements. Council standing committees shall be subject to the following procedural rules.

1. Quorum. A majority of the committee membership shall constitute a quorum.

2. Referrals. Only the Council or City Manager shall make referrals to the standing committees. Referrals will generally be directed to only one of the standing committees. Items may be withdrawn from the committee and taken up for consideration by the Council at any Council meeting with the consent of a majority of the Council, and subject to any applicable noticing or agenda posting requirements. Council members who submit matters to the Council which are referred to a standing committee may appear before the standing committee to which the referral has been made in order to speak as proponents of the matter. Standing committee meetings during which such referrals may be considered shall be noticed as Council meetings for the purpose of enabling the standing committee to discuss and consider the matter with a quorum of the Council present.

3. Function of committees. The purpose and intent of committee meetings is to provide for more thorough and detailed discussion and study of prospective or current Council agenda items with a full and complete airing of all sentiments and expressions of opinion on city problems by both the Council and the public, to the end that Council action will be expedited. Actions of the committee shall be advisory recommendations only.

4. Minutes. The City Clerk shall be responsible for the preparation and distribution to the Council of the minutes of standing committee meetings. The minutes for these meetings shall be sense minutes which reflect the motions made during these meetings. The minutes shall be delivered to all Council Members before the Council meeting at which the committee's recommendations are to be discussed.

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5. Report of committee. The minutes of each committee meeting shall serve as the report to the Council. Any member may write a separate report.

6. Agenda. The chairperson of each standing committee shall prepare the agenda for committee meetings, the sequence of study being, within reasonable limits of practicality, the same as the sequence of referral.

7. Public Participation. Public comment on agenda items will be limited to a maximum of five minutes per speaker, or any alternate time limit specified by the presiding officer.

8. Conduct of standing committee meetings. The chairperson of each committee may conduct meetings with as much informality as is consistent with Council procedural rules, which shall also be in effect during committee meetings. The views of interested private citizens may be heard in committee meetings, but in no case shall a committee meeting be used as a substitute for public hearings required by law.

9. Oral Communications. Opportunities for oral communications shall be provided in the same manner as Council meetings.

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VI. Ad Hoc Committees

A. Policy. The Council may use Ad Hoc Committees on a limited basis where necessary to study City business in greater depth than what is possible in the time allotted for Council and Standing Committee meetings.

1. Purpose. These rules are intended to clarify the distinctions between Standing and Ad Hoc Committees, and to set up guidelines for creation of Ad Hoc Committees.

B. General Requirements. Council Ad Hoc Committees shall be subject to the following procedural rules.

1. Definition of Ad Hoc Committee. An Ad Hoc Committee is an advisory committee composed solely of less than a quorum of members of the Council. The work of an Ad Hoc Committee is limited to a single finite purpose. By contrast, a Standing Committee has continuing subject matter jurisdiction extending for a lengthy time period and/or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the Council.

2. Brown Act. Ad Hoc Committees do not constitute legislative bodies and are not subject to the requirements of the Brown Act.

3. Appointment. The Mayor or the City Council may appoint four or less members of the Council to serve on an Ad Hoc Committee. In contrast, only the Council and not the Mayor alone can create a Standing Committee. The Mayor will publicly announce any Ad Hoc Committee created by him or her, its membership and stated purpose and posted on the City Council website. The City Manager shall prepare a report to Council about the anticipated time commitment required for staff to assist the Ad Hoc Committee.

4. Duration. Ad Hoc Committees are created for a finite period of time. If an Ad Hoc Committee does not complete its task by the end of the calendar year, it shall not continue unless reappointed by the new Mayor in the following year.

5. Members. Ad Hoc Committees shall consist of less than a quorum of Council members only, and shall not include any other persons such as members of other legislative bodies.

6. Reporting. Ad Hoc Committees shall report their recommendations to the Council no less than once per quarter in writing or orally. Any Council

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Member may during the COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS request that an updated Ad Hoc Committee report be placed on the next meeting's agenda.

7. Termination of Ad Hoc Committee by Majority of Council. A majority of the Council may vote to terminate any Ad Hoc Committee following placement of the issue on an agenda.

8. Conclusion. A public announcement shall be made any time the Ad Hoc Committee has concluded its work and/or upon dissolution.

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VII. Election of Mayor

Palo Alto Municipal Code Section 2.04.060 governs the election of the Mayor. Nominations for Mayor may be made by any individual Council Member and do not require a second.

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[i] Palo Alto Municipal Code, § 2.04.080(b).
[ii] Palo Alto Municipal Code, § 2.04.120(c); 2.04.150(b)
[iii] Palo Alto Municipal Code, § 2.04.010(b).
[iv] Palo Alto Municipal Code, § 2.04.050(a).
[v] Palo Alto Municipal Code, § 2.04.070(c)
[vi] Palo Alto Municipal Code, § 2.04.020.
[vii] Palo Alto Municipal Code, § 2.04.030.
[viii] Palo Alto Municipal Code, § 2.04.040.

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CITY OF PALO ALTO
COUNCIL PROTOCOLS
(Updated 11-22-2010)

All Council Members

All members of the City Council, including those serving as Mayor and Vice Mayor, have equal votes. No Council Member has more power than any other Council Member, and all should be treated with equal respect.

All Council Members should:

- Demonstrate honesty and integrity in every action and statement
- Comply with both the letter and spirit of the laws and policies affecting the operation operations of government.
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Palo Alto government
- Work for the common good, not personal interest
- Prepare in advance of Council meetings and be familiar with issues on the agenda
- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Participate in scheduled activities to increase Council effectiveness
- Review Council procedures, such as these Council Protocols, at least annually
- Represent the City at ceremonial functions at the request of the Mayor
- Be responsible for the highest standards of respect, civility and honesty in ensuring the effective maintenance of intergovernmental relations
- Respect the proper roles of elected officials and City staff in ensuring open and effective government
- Provide contact information to the City Clerk in case an emergency or urgent situation arises while the Council Member is out of town

Council Conduct with One Another

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to improve the quality of life in the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

In Public Meetings

- Use formal titles.

The Council should refer to one another formally during Council meetings as Mayor, Vice Mayor or Council Member followed by the individual's last name.

- Practice civility and decorum in discussions and debate.

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action**.** Be respectful of diverse opinions.

- Honor the role of the presiding officer in maintaining order and equity.

Respect the Chair's efforts to focus discussion on current agenda items. Objections to the Chair's actions should be voiced politely and with reason, following the parliamentary procedures outlined in the City Council Procedural Rules.

- Demonstrate effective problem-solving approaches.

Council Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. Council Members are role models for residents, business people and other stakeholders involved in public debate.

- Be respectful of other people's time.

Stay focused and act efficiently during public meetings.

In Private Encounters

- Treat others as you would like to be treated.

Ask yourself how you would like to be treated in similar circumstances, and then treat the other person that way.

Council Conduct with City Staff

The key provisions on Council-staff relations found in section 2.04.170 of the Palo Alto Municipal Code:

"Neither the council nor any of its committees or members shall direct, request or attempt to influence, either directly or indirectly, the appointment of any person to office or employment by the city manager or in any manner interfere with the city manager or prevent the city manager from exercising individual judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately."

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff, which analyze problems and issues, make recommendations, and implement and administer the Council's policies. Therefore, every effort should be made

to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

- Treat all staff as professionals.

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with your Council colleagues, practice civility and decorum in all interactions with City staff.

- Channel communications through the appropriate senior City staff.

Questions of City staff should be directed only to the City Manager, Assistant City Manager, City Attorney, City Clerk, Assistant City Clerk, City Auditor, Senior Assistant City Attorneys, or Department Heads. The Office of the City Manager should be copied on any request to Department Heads. Council Members should not set up meetings with department staff directly, but work through Department Heads, who will attend any meetings with Council Members. When in doubt about what staff contact is appropriate, Council Members should ask the City Manager for direction. However, nothing in these protocols is intended to hinder the access Council-appointed liaisons (e.g. to the San Francisquito JPA or NCPA) may require in order to fulfill their unique responsibilities.

- In order to facilitate open government, all Council Members should make decisions with the same information from staff on agendized or soon-to-be agendized items (i.e. items on the tentative agenda or in a Council Committee).

- Never publicly criticize an individual employee, including Council-Appointed Officers. Criticism is differentiated from questioning facts or the opinion of staff.

All critical comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney, City Auditor or City Clerk should be made directly to these CAOs through private correspondence or conversation.

- Do not get involved in administrative functions.

Avoid any staff interactions that may be construed as trying to shape staff recommendations. Council Members shall refrain from coercing staff in making recommendations to the Council as a whole.

- Be cautious in representing City positions on issues.

Before sending correspondence related to a legislative position, check with City staff to see if a position has already been determined. When corresponding with representatives of other governments or constituents, remember to indicate if appropriate that the views you state are your own and may not represent those of the full Council.

- Do not attend staff meetings unless requested by staff.

Even if the Council Member does not say anything, the Council Member's presence may imply support, show partiality, intimidate staff, or hampers staff's ability to do its job objectively.

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- Respect the "one hour" rule for staff work.

Requests for staff support should be made to the appropriate senior staff member, according to the protocol for channeling communications**.** Any request, which would require more than one hour of staff time to research a problem or prepare a response, will need to be approved by the full council to ensure that staff resources are allocated in accordance with overall council priorities**.** Once notified that a request for information or staff support would require more than one hour, the Council Member may request that the City Manager place the request on an upcoming Council agenda.

- Depend upon the staff to respond to citizen concerns and complaints.

It is the role of Council Members to pass on concerns and complaints on behalf of their constituents. It is not, however, appropriate to pressure staff to solve a problem in a particular way. Refer citizen complaints to the appropriate senior staff member, according to the protocol on channeling communications. The senior staff member should respond according to the Policy and Procedure for Responding to Customer Complaints. Senior staff is responsible for making sure the Council Member knows how the complaint was resolved.

- Do not solicit political support from staff.

The City Charter states that "Neither the city manager or any other person in the employ of the city shall take part in securing or shall contribute any money toward the nomination or election of any candidate for a municipal office." In addition, some professionals (e.g., City Manager and the Assistant City Manager) have professional codes of ethics, which preclude politically partisan activities or activities that give the appearance of political partisanship.

Council Conduct with Palo Alto Boards and Commissions

The City has established several Boards and Commissions as a means of gathering more community input. Citizens who serve on Boards and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect. Council Members serve as liaisons to Boards and Commissions, according to appointments made by the Mayor, and in this role are expected to represent the full Council in providing guidance on Council processes or actions to the Board or Commission. Refrain from speaking for the full Council on matters for which the full council has not yet taken a policy position. In other instances, Council Members may attend Board or Commission meetings as individuals, and should follow these protocols:

- If attending a Board or Commission meeting, identify your comments as personal views or opinions.

Council Members may attend any Board or Commission meeting, which are always open to any member of the public. Any public comments by a Council Member at a Board or Commission meeting, when that Council Member is not the liaison to the Board or Commission, ~~should be clearly made as~~ should make a point to clearly state it is an individual opinion and not a representation of the feelings of the entire City Council.

Comment [G1]: Verbiage not discussed at 12/14 P&S

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- Refrain from Lobbying ~~Limit contact with~~ Board and Commission members ~~to questions of clarification~~.

Comment [G2]: Verbiage not discussed at 12/14 P&S

It is inappropriate for a Council Member to contact a Board or Commission member to lobby on behalf of an individual, business, or developer, or to advocate a particular policy perspective. It is acceptable for Council Members to contact Board or Commission members in order to clarify a position taken by the Board or Commission.

- Remember that Boards and Commissions are advisory to the Council as a whole, not individual Council Members.

The City Council appoints individuals to serve on Boards and Commissions, and it is the responsibility of Boards and Commissions to follow policy established by the Council. Council Members should not feel they have the power or right to unduly influence Board and Commission members. A Board and Commission appointment should not be used as a political reward.

- Concerns about an individual Board or Commission member should be pursued with tact.

If a Council Member has ~~a~~ concerns with the ~~effectiveness of~~ a particular Board or Commission member fulfilling their roles and responsibilities and is comfortable in talking with that individual privately, the Council Member should do so. ~~Alternatively, or if the problem is not resolved, the Council Member should consult with the Mayor, who can bring the issue to the Council as appropriate.~~

Comment [G3]: Verbiage not discussed at 12/14 P&S

- Be respectful of diverse opinions.

A primary role of Boards and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on Boards and Commissions, but must be fair to and respectful of all citizens serving on Boards and Commissions.

- Keep political support away from public forums.

Board and Commission members may offer political support to a Council Member, but not in a public forum while conducting official duties. Conversely, Council Members may support Board and Commission members who are running for office, but not in an official forum in their capacity as a Council Member.

- Maintain an active liaison relationship.

Appointed Council liaisons or alternates are encouraged to attend all regularly scheduled meetings of their assigned Board or Commission.

Staff Conduct with City Council

- Respond to Council questions as fully and as expeditiously as is practical.

The protocol for staff time devoted to research and response is in application here. If a Council Member forwards a complaint or service request to a department head or a Council Appointed Officer, there will be follow-through with the Council Member as to the outcome.

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- Respect the role of Council Members as policy makers for the City

Staff is expected to provide its best professional recommendations on issues. Staff should not try to determine Council support for particular positions or recommendations in order to craft recommendations. The Council must be able to depend upon the staff to make independent recommendations. Staff should provide information about alternatives to staff recommendations as appropriate, as well as pros and cons for staff recommendations and alternatives

- Demonstrate professionalism and non-partisanship in all interactions with the community and in public meetings

- It is important for the staff to demonstrate respect for the Council at all times. All Council Members should be treated equally.

OTHER PROCEDURAL ISSUES

- Commit to annual review of important procedural issues.

At the beginning of each legislative year, the Council will hold a special meeting to review the Council protocols, adopted procedures for meetings, the Brown Act, conflict of interest, and other important procedural issues.

- Don't politicize procedural issues (e.g. minutes approval or agenda order) for strategic purposes.

- Submit questions on Council agenda items ahead of the meeting.

In order to focus the Council meetings on consideration of policy issues and to maintain an open forum for public discussion, questions which focus on the policy aspects of agenda items should be discussed at the Council meeting rather than in one-on-one communications with staff prior to the meetings. Any clarifications or technical questions that can be readily answered can be handled before the meeting. Council Members are encouraged to submit their questions on agenda items to the appropriate Council Appointed Officer or City Manager as far in advance of the meeting as possible so that staff can be prepared to respond at the Council meeting. More detailed procedures relating to agenda questions can be found in the addendum to these protocols titled "Policy and Procedures for Council E-mails for Agenda Related Items"

- Submittal of Materials Directly to Council.

If Council receives materials related to agenda item matters they will notify the City Clerk and the City Manager as soon as possible.

Comment [G4]: Verbiage not discussed at 12/14 P&S

- ~~Late Submittal of Planning Application Materials.~~

~~In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff or to~~

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~~Council members either before or during the meeting. If items are not submitted by this date or if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes, staff will analyze whether the need exists to continue the item.~~

Comment [G5]: Late Submittals covered in Procedures, Page II-5, se II, c. Delete from Protocols.

- Respect the work of the Council standing committees.

The purpose of the Council standing committees is to provide focused, in-depth discussion of issues. Council should respect the work of the committees. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at Committee, the item will be placed on the Consent Calendar unless otherwise recommended by the Committee, Mayor or staff.

- The Mayor and Vice Mayor should work with staff to plan the Council meetings.

There are three purposes to the pre-Council planning meeting: 1) to plan how the meeting will be conducted; 2) to identify any issues or questions that may need greater staff preparation for the meeting; and 3) to discuss future meetings. The purpose of the meeting is not to work on policy issues. Normally, only the Mayor and Vice Mayor are expected to attend the pre-Council meetings with the City Manager and other CAOs. Consideration in building the agenda should be given to the potential length of the meeting and at what point items of significant public concern may be heard.

POLICY & SERVICES COMMITTEE – ROLE, PURPOSE, & WORK PLANNING

The Municipal Code states that the role of the Council Policy & Services Committee is to:

> …consider and make recommendations on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters pertaining to intergovernmental relations, personnel policies, planning and zoning, traffic and parking, public work, and community and human services. (§2.04.220)

In 2009 and 2010, the Council reviewed the purpose and structure of the Committee and adopted recommendations on several items related to this. This section documents these agreements related to the Committee.

Purpose Statement: The purpose of the Policy & Services Committee is to regularly review and identify important community issues and City policies and practices with a focus on ensuring good public policy and best practices. A particular focus of the Committee is to ensure that the City organization is responsive, effective and aligned with community values and City Council priorities.

Comment [G6]: Verbiage not discussed at 12/14 P&S

ENFORCEMENT

Council Members have the primary responsibility to assure that these protocols are understood and followed, so that the public can continue to have full confidence in the integrity of government. As an expression of the standards of conduct expected by the City for Council Members, the protocols are intended to be self-enforcing. They

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therefore become most effective when members are thoroughly familiar with them and embrace their provisions. For this reason, Council Members entering office shall sign a statement affirming they have read and understood the Council protocols. In addition, the protocols shall be annually reviewed by the Policy and Services Committee and updated as necessary.

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CITY OF PALO ALTO
COUNCIL PROTOCOLS
ETHICS ADDENDUM

The citizens, businesses and organizations of the city are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity.

To this end, the City Council has adopted Council Protocols and this Code of Ethics for members of the City Council to assure public confidence in the integrity of local government and its effective and fair operation.

Comply with Law
Members shall comply with the laws of the nation, the State of California and the City in the performance of their public duties. These laws include but are not limited to: the United States and California constitutions, the city Charter, laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of governments and City ordinances and policies.

Conduct of Members
The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council, boards and commissions, the staff or the public.

Respect for Process
Members shall perform their duties in accordance with the processes and rules of order established by the City Council governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of the City Council by City staff.

Decisions Based on Merit
Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

Conflict of Interest
In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence decisions in which they have a material financial interest or where they have an organizational responsibility or personal relationship, which may give the appearance of a conflict of interest.

Gifts and Favors
It is contrary to the city of Palo Alto's ethical standards for any council member to accept gifts or gratuities from an individual, business, or organization doing business, or seeking to do business, with the City or who is seeking permits or other entitlements from the City.

The acceptance of gifts can convey an appearance of favoritism and conflict of interest. Gifts can be perceived as attempts to influence City operations or as compensation for

services rendered and can erode the public confidence in the impartiality of decisions made by Council Members.

Council Members exercise good faith in carrying out this Protocol. It is impossible to list every situation and fact pattern, so it anticipates that Council Members will exercise their good judgment in determining whether the item is a gift or not.

This policy is supplemental to the gift limitations of the Fair Political Practices Commission's Limitations and Restrictions on Gifts, Honoraria, Travel and Loans.

The following are not considered gifts under this Protocol:

- Gifts which the Council member returns (unused) to the donor, or for which the Council Member reimburses the donor, within 30 days of receipt.
- Gifts from a Council Member's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift.
- Minor gifts of hospitality involving food or drink, that the Council Member receives in an individual's home or at another location of business.
- Gifts approximately equal in value exchanged between the Council Member and another individual on holidays, birthdays, or similar occasions.
- Informational material provided to assist the Council member in the performance of their official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.
- A bequest or inheritance.
- Campaign contributions.
- Personalized plaques and trophies with an individual value of less than $250.
- Tickets to attend fundraisers for campaign committees or other candidates, and tickets to fundraisers for organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- Free admission, refreshments, and similar non-cash nominal benefits provided to the Council Member at an event at which the Council Member gives a speech, participates in a panel or seminar, or provides a similar service. Transportation within California, and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also not considered gifts.
- Passes or Tickets which provide admission or access to facilities, goods, services, or other benefits (either on onetime or repeat basis) that the Council Member does not use and does not give to another person.
- Wedding gifts
- A prize or award received in a bona fide competition not related to official status.
- (These exceptions are paraphrased from FPPC publications.)
- Gifts from Sister Cities or other entities, other municipalities, if forwarded to the City.

Confidential Information
Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

Use of Public Resources
Members shall not use public resources, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

Representation of Private Interests
In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any other board, commission or proceeding of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

Advocacy
Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City, nor will they allow the inference that they do.

Positive Work Place Environment
Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

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POLICY AND PROCEDURE FOR CITY COUNCIL E-MAILS FOR AGENDA-RELATED ITEMS

Policy

The Council adopted protocols provide a framework for the policy on e-mail communications between Council Members and Staff on agenda-related items, including the following:

- In order to facilitate open government, all Council Members should make decisions with the same information from Staff on agendized or soon-to-be agendized items (i.e. items on the tentative agenda or in a Council Committee)
- Submit questions on Council agenda items ahead of the meeting, In order to focus the Council meetings on consideration of policy issues and to maintain an open forum for public discussion, questions which focus on the policy aspects of agenda items should be discussed at the Council meeting rather than in one-on-one communications with Staff prior to the meetings. Any clarifications or technical questions that can be readily answered can be handled before the meeting. Council Members are encouraged to submit their questions on agenda items to the appropriate Council Appointed Officer or City Manager as far in advance of the meeting as possible so that Staff can be prepared to respond at the Council meeting.

In its settlement agreement with the San Jose Mercury News of February 2003, the City Council agreed to consider a policy under which the Council would waive any deliberative or other privilege, other than attorney-client privilege, that it might assert with regards to e-mails on agendized items. This policy and procedure implements that agreement. The Council, in adopting this policy, does not waive attorney-client-privilege or any other privilege associated with a closed session authorized under the Brown Act.

Procedure:

- Council Members should direct any questions on staff reports to the City Manager or designee. Questions on reports from the City Auditor, City Attorney, or City Clerk should be directed to the appropriate Council Appointed Officer. Council Members should not direct any questions on agenda items to other members of the City Manager's Staff or the Staff of the other Council Appointed Officers.
- Council Members will submit questions on agenda items no later than 9 a.m. on the Monday of the Council meeting at which the item will be discussed. Any questions received after that time may be responded to via e-mail, or alternatively, will be responded to at the Council meeting.
- Staff will not engage in "dialogues" with individual Council Members regarding questions, i.e. follow-up questions to initial questions will be responded to at the Council Meeting.
- Staff will give highest priority to responding prior to the Council meeting via e-mail only on items on the Consent Calendar. Questions which address the policy aspects of the item on the Council agenda will not be responded to prior to the meeting, although Staff welcomes such questions in advance of the meeting in

order to prepare for the Council and public discussion. Technical and clarifying questions on non-Consent Calendar items will be responded to as time permits.

- If the Staff will be responding to a Council Members Consent Calendar question at the meeting rather responding to the question via e-mail, Staff will inform the Council Member as early as possible after receipt of the question(s).
- Questions and all Staff-prepared responses will be forwarded to all Council Members as well as put up on the special web page created for public review of Council agenda questions and Staff responses. Staff will include the name of the Council Member posing the questions in the "subject" field of the e-mail response.
- Written copies of all Council Member agenda questions and Staff responses will be at Council places at the meeting; additionally copies will be made available in the Council Chambers for members of the public.

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CITY OF PALO ALTO
CITY COUNCIL AND BOARDS AND COMMISSSIONS POLICY
FOR TRAVEL AND MISCELLANEOUS EXPENSE REIMBURSEMENT
March 2006

GENERAL CONSIDERATIONS

This policy is set by the City Council and applies to Council Members and to Board and Commissions members, who will be referred to as "Officials" in the policy. In reimbursing travel and miscellaneous expenses, a municipal purpose requiring the expenditure of public funds must be in evidence; also, in accord with the Charter and Municipal Code, such expenditures must be from authorized appropriations.

ELIGIBLE ACTIVITIES

The following activities ("Eligible Activities") are recognized by the Council as advancing municipal purposes and are eligible for expense reimbursement, subject to limitations on activities and specific and total expenditures described elsewhere in this policy:

1. Communicating with representatives of regional, state and national government on adopted city policy positions;

2. Attending educational seminars designed to improve officials' skill and information levels;

3. Participating in regional, state and national organizations whose activities affect the
city's interest;

4. In collaboration with city staff, implementing a city-approved strategy for attracting or retaining businesses to the city.

All other expenditures require prior approval by the City Council at a regular or special meeting.

OUT-OF-TOWN CONFERENCES OR MEETINGS

Reimbursement

All payments for travel and meetings shall be on the basis of either reimbursement of expenses advanced by the Council Member/Official or payments made directly to travel agencies/websites, hotels, airlines or the organization sponsoring the meeting. All

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requests for payments or reimbursements must be accompanied by supporting vouchers, invoices or paid detailed receipts and a copy of descriptive literature about the conference or meeting. The Mayor or Chair for Officials must approve, in advance, individual travel requests for out-of-town meetings and conferences, e.g., Annual League of California Cities Conference, National League of Cities Conference, etc., including Eligible Activates. Allowable expenses for local or Bay Area Eligible Activates do not require prior approval by the Mayor or Chair.

The total reimbursement shall not exceed the budget adopted by the Council for this purpose.

All reimbursements shall comply with the limits of Policy and Procedures 1-02 (Citywide Travel Policy).

Expense reports should be submitted within 30 days of end of trip. Inability to provide such documentation in a timely fashion may result in expense being borne by the Council Member or Official.

Meals and Incidentals

Notwithstanding the preceding general policy regarding reimbursement, a Council Member or Official may submit a payment request (supported by conference literature) for advance payment of meals and incidentals allowance according to the Internal Revenue Service authorized mileage reimbursement rate and payment for meals and incidentals consistent with City Policy and Procedures 1-02. If the amount advanced is exceeded, additional reimbursement may be requested upon return from the meeting. Requests for additional reimbursement must be supported by a detailed report and receipts for all meals and incidentals. The Mayor shall pro-approve additional reimbursements, and if the expenses are determined to be excessive, they may not be approved.

Lodging Expense

Reimbursements or payment of hotel bills will be limited to the highest group or governmental rate available and will cover room charges, applicable taxes and any other item listed in this policy for the Council Member or Official. Telephone calls to Palo Alto City Hall may be made collect. Other charges on the bill such as extra guests and the like are not reimbursable.

Transportation

1. Air Transportation: Reimbursement or payment will be limited to economy class commercial air carrier, or an available group travel rate if lower.

2. Private Automobiles: Private automobiles may be used for personal or group transportation on extended trips. Reimbursement shall be made at the rate

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established by the Internal Revenue Service authorized mileage reimbursement rate consistent with the City Policy and Procedures 1-02. Mileage reimbursement for private automobiles shall not exceed the cost of round trip air transportation (economy class) and rental car, if applicable, or an available group travel rate if lower.

3. Rental Car: Economy level only when Council Member or Official has traveled by airplane out of the Bay Area.

4. Shuttle/Taxi: When traveling out of the area.

LOCAL OR BAY AREA ACTIVITES

Council Members or Officials who have been requested or designated to represent the City may receive the actual cost of:

1. Meals, if they are a scheduled feature of the activity, e.g., SCCCA dinner meetings.

2. Registration fees where applicable.

3. Mileage if activity is outside the City (mileage claims should be submitted monthly, with details: date and type of meeting, number of miles traveled to be indicated), consistent with City Policy and Procedures 1-02.

4. Council Members and Officials may be reimbursed by the City for use of a private bicycle to attend local or Bay Area activities outside the City of Palo Alto consistent with City Policy and Procedures 2-9.

OTHER EXPENSES

1. Airport parking fees, but Council Members and Officials must use long-term parking for travel exceeding 24 hours.

2. Meal expenses and associated gratuities must be within the limits set in City Policy and Procedures 1-02.

3. Telephone/Fax/Cellular expenses will be reimbursed for actual expense incurred on City business.

4. Internet Fee up to $15 per day, if a Council Member or Official is traveling on official business and needs access for City-related business.

5. Baggage Handling Fee up to $3 per bag will be reimbursed.

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6. Ethics Training Expenses – AB1234 requires ethics training every two years and such fee and related expenses are eligible for reimbursement.

ACTIVITES NOT CONSIDERED REIMBURSABLE

1. Voluntary attendance at any conference or meeting, not representing the City.
2. Meetings of social or service organizations.
3. Meetings of voter groups or with individual citizens concerned with agenda items.
4. Election campaign activities.
5. Alcohol and entertainment expenses.
6. Personal portion of the trip and other non-mileage automobile expenses.

REPORTS TO COUNCIL

Council Members and Officials shall provide brief verbal reports on meetings attended at the City's expense at the next regular Council/Board/Commission meeting. If multiple Officials attended, a joint report may be made. All related documents are subject to the Public Records Act and can be periodically reviewed by auditors.

VIOLATION OF THIS POLICY

Use of public resources or falsifying expense reports is in violation of this policy and may result in any or all of the following:

1) Loss of reimbursement privileges
2) A demand for restitution to the City
3) The City reporting the expenses as income to the elected or appointed Official to state and federal tax authorities
4) Civil penalties of up to $1000 per day and three times the value of the resources used
5) Prosecution for misuse of public resources

MAYOR AND VICE MAYOR ADDITIONAL COMPENSATION

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The Mayor shall receive $150 monthly and the Vice Mayor $100 monthly to defray additional expenses of these offices.

BOARDS AND COMMISSION COMPENSATION

Board/Commission	Frequency	Amount
Human Relation Commission	Quarterly	$ 50.00
Planning and Transportation Commission	Quarterly	$120.00
Architectural Review Board	Quarterly	$120.00

SUPPORT SERVICES

The City Clerk's Office makes travel arrangements for Council Members. This service includes conference registration, hotel reservations, per diem advances and reimbursement of unforeseen expenses. The department liaison for each board and commission will be responsible for arrangements for Officials.

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Page 1: Excerpt from 12/14 P&S Minutes
Page 16: At Places Memo for City Council Meeting on 11/22
Page 22: Excerpt from 11/22 Council Minutes

EXCERPT from 12/14 P&S

2. Procedures and Protocols from City Council 11-22-10.
   - Procedures and Protocols comments, letters, and email communications received from the City Council 11-22 (information only)
   - Developer late submittals, quasi-judicial hears and ex-parte communications

Interim City Attorney Don Larkin spoke regarding the letter he submitted to the Finance Committee. He said it was not intended to be a Staff Report but rather a response to questions discussed at prior Policy and Services Committee meetings. He discussed whether it was possible to disallow ex-parte communications with the public. He stated that members of the public must be allowed to discuss quasi-judicial matters with their Council. It could, however be discouraged during the meetings and as a matter of practice any should be disclosed. He said Staff contacted municipalities across the state to compare policies. No city prohibits all ex-parte communications. Some cities discouraged some gathering of information under certain circumstances. He said that quasi-judicial is defined by the law as a decision that impacts property rights, interested people have a right to due process under the law. The matters that Council reviews most often come up on the Consent Calendar, though there are exceptions. It is an internal policy to treat Planned Community (PC) applications as quasi-judicial but it is not defined as such under the law.

City Manager James Keene spoke regarding Staff's attempts to consolidate the various concerns into concise language for both ex-parte communications and late submittals being the focus for the current meeting.

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Mr. Larkin said that Staff attempted to respond to Council Members comments from the November 22, 2010 Policy and Services Committee meeting as well as those received subsequently.

Council Member Price asked if the first section on page 4 of the letter where it stated "discouraging communications prior to ARB and PTC recommendations" was intended to be conceptual about PC zones. She wanted to know if this revised language would prohibit a Council Member from going to neighborhood meetings regarding the applications or having a discussion with someone in a grocery store.

Mr. Larkin said that the intent was that Council Members may attend public meetings however a casual discussion at a grocery store would be discouraged under the policy.

Council Member Price confirmed that this would discourage but not prohibit this type of casual meeting.

Mr. Larkin said that was correct as the City could not tell a citizen they may not speak to a Council Member.

Council Member Price spoke about a Colleagues Memo regarding an upcoming item at a Planning Commission meeting that she wanted to know more about. She observed that there were two bodies examining similar topics. She said it would be useful for the Council to know what transpired at the Planning Committee meeting.

Planning and Community Development Director Curtis Williams said that the item Council Member Price was referring to was reviewed on November 10, 2010 and rescheduled for the Planning Committee meeting the following day. The affect of the action would be to allow the Planning Commission more flexibility to meet with applicants and public relative to quasi-judicial materials. He said they currently had a policy that strongly discouraged communications between Planning Commissioners and applicants outside of public meetings. He said the action pending the following day, if taken, would delete that sentence. It would also add a handful of disclosure rules.

Council Member Price voiced concern about discussing the same topic with the two bodies not being aware of the others concerns.

Mr. Williams said the Planning Commission knew the City Council was discussing the issue and considered waiting until the Council made a decision.

Council Member Price said this was a significant piece of information. She said the Colleagues Memo created a more moderate approach. She confirmed that it clearly recommended some flexibility in terms of engagement. She requested confirmation that the policy would clearly provide guidance for disclosure.

Mr. Williams agreed that it did.

Mr. Keene said that the issue did not need to be too complex. He stated that the Planning Commission was ancillary to the Council and advisory to them. These are ultimately the Council decisions. He recommended the Council determine how they want to proceed with these issues and the Planning Commission can take their queue from that rather than Council basing their choices on the Planning Commissions decisions.

Council Member Holman asked if site and design projects were quasi judicial.

Mr. Larkin said they were. It was not his intent to exclude them.

Council Member Holman asked about disclosures. She said the agendas are not indicating which items are quasi judicial so they are not being asked for disclosures and they are easy to forget.

Mr. Larkin said Staff would.

Mr. Keene said if the Policy and Services Committee recommended that agenda's indicate which items are quasi judicial Staff would implement it.

Council Member Holman said that study sessions were rigid. She suggested Staff develop methods to make the sessions more informative.

Mr. Keene said that this was not directly connected to the topics on the agenda. He stated it was a larger issue.

Council Member Holman stated that it was pertinent as one argument regarding ex parte communications is that study sessions need to provide better information for the public.

Mr. Keene said they could have a study session on social service needs that might be structured differently than a land use hearing. The setting the study sessions were conducted in could change the nature of them. He also said that defining when a study session occurs with land use items could affect the sequence of when these items come to Council. The Policy and Services Committee could direct Staff to review options.

Council Member Holman said that the Planning Director should also respond to pre-screenings.

Mr. Williams said that projects don't often have study sessions. He said that Staff had discussed changing the approach to study sessions. They will continue to work on refining the format. Study sessions would need to be separated from regular Council Meetings in order to be effective.

Mr. Larkin said the rules would not have to change as the Council already has flexibility change the study sessions.

Council Member Holman said it would be helpful to know what is appropriate versus inappropriate in an ex-parte communication.

Mr. Larkin said that it is concerning when there is a perception of back room deals. It is inappropriate to not disclose information to the public. Secondly where a Council Member has become so invested in a project based on meetings with applicants that when the project comes before the Council that Council Member is no longer objective. Council Members should not help design a project or be so involved to interfere with objectiveness. It's not a black and white question rather it's a question that requires judgment.

Council Member Holman asked what could be accomplished in a private meeting that can't be in a public meeting.

Mr. Larkin said an example would be if a Commissioner visits a site with an applicant. As long as the tour and any learned information is disclosed there is no legal problem in that. Council has the ability to create a more transparent process.

Council Member Holman said site visits can be public meetings.

Mr. Larkin said there are Brown Act issues with meeting in an open space. It is difficult to have a public meeting in a setting where

Council and attendees can be spread over a wide area and not hear all communications. He said it is not conducive to the public's needs.

Council Member Holman said that it made sense for the Council to make a decision regarding ex-parte communications prior to the Planning Commission. There was concern with having ex-parte communications at Planning Commission meetings. Applicants can convince Commissioners based on appearance. By the time the item gets to the Council what is approved is a document that has not been amended by the Commission.

Council Member Shepherd said that making deals before an item was voted on was a problem. She asked if it were possible to give the Policy and Services Committee clear guidance so they have an understanding of what they are allowed to do and what type of information must be disclosed. She had found it helpful to understand the project through direct communication with the applicants.

Mr. Larkin said it would be possible to provide examples of ex-parte communications.

Council Member Shepherd said the liaison tended to clarify the statement.

Mr. Larkin said it was important to understand those conversations are what this language was intending to discourage. He reiterated that Staff would include examples of what is and is not discouraged. Emails and site visits without the applicant are information gathering outside of a public hearing. Yet emails are not discouraged too strongly as they can be forwarded and included in public information.

Council Member Shepherd asked if it was the City Attorney's responsibility to stop ex parte communications from taking place during a meeting.

Mr. Keene said this was not related to the topic.

Council Member Shepherd asked about the difference between a protocol and a procedure.

Mr. Larkin said the context of the two different documents was that procedures defined how the Council conducts itself and the rules by which it relates to the community. The protocols defined how the Council operates internally.

Council Member Yeh said it was important to understand that ex parte communications involved an honor system among Council Members. It was important that the language not prohibit first amendment rights of the public to communicate. He said there had been times where it had been helpful to hear the public's perspective. He said the language addresses that issue and he would be supportive of it. He did not want to rewrite the document word-by-word.

Mr. Larkin added that when the ex parte communications began to impede the impartiality of Council Members was when it became a problem.

Mr. Keene suggested the verbiage state "a Council Member" instead of just "Council" when referring to restrictions on communications outside of publicly noticed meetings. He added that there were many roles and responsibilities for Council Members including a quasi judicial role, and a role as an accessible public official.

Council Member Shepherd asked if they were going to accept the language provided by the City Attorney.

Mr. Larkin said the language revisions on the second item were based on what the Committee had previously approved. He said they could address the language regarding late submittals. There were differences between clarifications and changes in the publications. There was some language regarding what makes Staff change the timeline on applications. The Council needed to decide what they wanted to have further conversation on. He said Staff's recommendation was that everything that goes before Council should come to the packet five days before. He said the language should reflect that items delivered after this date would trigger an analysis by Staff. Staff was not comfortable determining what was important to Council; the direction should come from Council. There was some other language proposed by members of the public. He said Staff had not had an opportunity to study the legal impediments to the public's suggestions. They were open to further revisions. Staff was comfortable with the Committee suggestions already made. He clarified that they might want to add a clarifying sentence regarding applicants and members of the public always having a right to address Council. He was uncomfortable with the previous verbiage because it implied that it was constrained in other places. He suggested "Nothing in this policy is intended to restrict the right of applicants or other

interested parties to respond to information contained in or included with the Staff Report."

Council Member Holman suggested "If any correspondence or other information is submitted after the deadline and Staff determines additional review is needed Staff will reschedule the item to a future Council Meeting." She asked, if Staff was uncomfortable making that decision, how it should be made.

Mr. Larkin said he was comfortable with the way it was written. Staff can determine if new information changes the project and requires postponement. The next sentence about Staff analyzing significant changes was his concern as it is Councils decision.

Council Member Holman asked if the option for Staff to return an item to the Architectural Review Board or to the Planning Commission ought to be provided for.

Mr. Williams suggested the City Attorney would have to comment on the legality of that.

Mr. Larkin said in most cases it would be the City Council's decision.

Council Member Holman asked if language should be added granting that ability to Council.

Mr. Larkin said it could clarify it.

Council Member Holman said she had seen Council struggle on the dais because they felt they didn't have the ability to send an item back to the Planning Commission.

Council Member Price said that she was concerned about being too prescriptive. The issue of the authority of the Council to return a project is widely understood. The language as already stated is well written and clear. They must recognize both Staff's expertise and the Council's authority.

Mr. Larkin said his concern was that commenting on a Staff Report is not a right given by this policy. It is already a Council right.

Council Member Holman said she didn't believe Council was comfortable with that.

Mr. Williams said Council was clear on their authority, even if they have never exercised that specific right.

Council Member Holman was disagreed.

Council Member Price suggested this was a training issue.

Council Member Holman said she wanted it clear that this exercise was to provide good process, transparency, and fairness to all parties.

Chair Yeh said the intention was to clarify. He would support the last addition mentioned by the City Attorney.

Jean McCown of Palo Alto spoke regarding encouraging communications with the public. The language "strongly discourage" sent a negative message. Council should be trusted to gather information without forming a bias. She said the Planning Commission Colleagues Memo was very positive. She added that in her tenure on the City Council they had full disclosure. She would ask the public not to speak with her until after she read the Staff Report.

Council Member Holman asked Ms. McCown if she was indicating that Council should only be allowed to speak with applicants after they read the Staff Report.

Ms. McCown said it does not need to be in writing. This language revision felt like a solution looking for a problem.

Fred Balin of Palo Alto said that according to the City Attorney Council communications outside of quasi judicial hearings were legislative. But the handbook defines it as other matters determined by the City Attorney. . Council Members should refrain from ex parte communications related to quasi judicial items until after Council makes a final decision. He also spoke regarding confusion on late submittals with the City Attorney's revisions. The suggested revision narrows the focus to the Staff Report.

Bob Moss of Palo Alto said that Planning Commissioners often will stop members of the public from speaking to them off-line. They should allow sending it back to the Planning Commission. However if it is not put in writing no one will remember it in five years. Clear standards, understood by all, were important and that was what these documents were. PC's are different than every item and should be handled more restrictively clear. Restricting the time and manner of the public

communicating with Council was not restricting members of the publics right to communicate.

Tom Jordan of Palo Alto said regarding ex parte communication, there were six public letters in favor of the policy and was distributed to everyone. He stated that not defining a policy was like when the financial community said they didn't need a policy. Rules were important and they had not been followed. Speaking to the applicant prior to the Planning Commission decision undercuts their decision.

Council Member Holman commented that appearances were important and could get politicians in trouble. These recommendations were not to impugn integrity but rather to suggest that our standards are high and appearances matter. Restraining our selves until after the Commissions make their decisions eliminates that imposition and perception that decisions had been arrived at earlier. She said that much of the procedures and protocols were intended to provide clarity and adding new items for the purpose of clarity would not be a problem. The quasi judicial hearings, Procedures Handbook IV-I, used the word "autonomy" which concerned her. She suggested instead "the integrity of the Boards and Commissions process in making recommendation to Council will support the independence of. . ."

City Clerk Donna Grider said that was not on the agenda. They had divided the process into smaller bites.

Chair Yeh agreed saying they could discuss that at a later meeting.

Council Member Holman said regarding ex parte on page one of City Attorneys letter the last paragraph regarding restrictions on Council communications "outside of quasi judicial and PC hearings it is the policy of the Council to strongly discourage the gathering and submission of information by Council Members outside of any noticed public meeting including prior to final recommendations by Architectural Review Board or Planning and Transportation Commission."

Mr. Keene suggested it state "when such information may interfere with the impartiality of Council Members."

Council Member Holman said she was omitting that based on a suggestion by Council Member Klein. He suggested that the entire purpose would be negated if it does not impair a Council Members

judgment. So she suggested removing the line. She did want to leave the last line the document:

Mr. Keene said he thought Council Member Klein was saying the Council Member would be exercising their own judgment whether it affected them or not.

Council Member Holman said she thought Council Member Klein was saying that no one is going to compromise a Council Members judgment.

Council Member Price agreed with the City Manager.

MOTION: Council Member Holman moved, seconded by Council Member Yeh to recommend the City Council change the City Council Procedures Handbook Page IV-10, section B-2 to read "Restrictions on Council Communications Outside of Quasi-Judicial and Planned Community Zone Hearings. It is the policy of the Council to strongly discourage the gathering and submission of information by Council Members outside of any noticed public meeting, including prior to final recommendations by the Architectural Review Board or Planning & Transportation Commission. The following procedural guidelines are intended to implement this policy, but shall not be construed to create any remedy or right of action."

Chair Yeh said he supported the motion based on the independent review.

INCORPORATED INTO THE MOTION WITH THE PERMISSION OF THE MAKER AND SECONDER to delete the word "including."

Mr. Keene said that as it as worded it seemed to say that the policy is to strongly discourage the gathering of information including prior to final recommendations period. It did not indicate that there could be any exceptions. The language discussing impairing the Council Members impartiality opens the door to an individual Council Member to have something articulated stating that's what they should do.

Council Member Holman said the City Attorney said they were on the more restrictive end of policies compared to other cities. She disagreed. No Council Member refuses to meet with applicants. It is not restrictive.

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Mr. Larkin said the Palo Alto Council did not act any differently than any other council. His research implied that Palo Alto's language was more restrictive than other cities, but the Council acts the same.

Council Member Holman said there were cities that discourage ex parte communications.

Mr. Larkin said there were some that discourage.

Council Member Shepherd argued against using the word "strongly: and amended to remove it. Discourage was strong enough.

Chair Yeh said this is ultimately an honor code and agreed to remove the word from the motion.

Council Member Holman disagreed.

Council Member Price suggested moderation and thought "strongly" should be removed. She said Council Members should have a clear understanding of disclosure.

Mr. Larkin said that Staff was suggesting changes regarding disclosure.

Council Member Price said she agreed with the language and intention of the rest of the Motion.

Council Member Holman accepted removal of the word strongly.

INCORPORATED INTO THE MOTION WITH THE PERMISSION OF THE MAKER AND SECONDER to delete the word "strongly."

Council Member Shepherd asked, if a developer wanted a PC, how they would search for good information to submit a sound proposal.

Mr. Williams said there was a more formal process with prescreening where the Council provided input. He said there was not much feedback from study sessions, which can be problematic.

Council Member Holman said it was similar to CEQA. She suggested the prescreening process that was in place was important to provide input to applicants. She said she would make a motion to have staff come back with suggestion for prescreening and study sessions so they could be more helpful to everyone and that there will be an action item after the session. That preliminary stage doesn't need guidance.

Chair Yeh asked for comments regarding the motion on the floor.

Council Member Shepherd asked if PC hearings were quasi judicial.

Mr. Larkin said they were not, though Council treated them as such.

Chair Yeh restated the motion.

MOTION RESTATED AS AMENDED: Council Member Holman moved, seconded by Council Member Yeh to recommend the City Council change the City Council Procedures Handbook Page IV-1, section B-2 to read "Restrictions on Council Communications Outside of Quasi-Judicial and Planned Community Zone Hearings. It is the policy of the Council to discourage the gathering and submission of information by Council Members outside of any noticed public meeting, prior to final recommendations by the Architectural Review Board or Planning & Transportation Commission. The following procedural guidelines are intended to implement this policy, but shall not be construed to create any remedy or right of action."

Mr. Keene asked what this meant for communication post ARB or PTC direction. He assumed there were no restrictions on this.

Council Member Shepherd asked if Council Members could still attend PTC meetings.

Mr. Larkin said that was a public hearing and Council Members were free to attend.

Council Member Holman said they were still subject to disclosures as the City Manager pointed out.

Chair Yeh said he would be more comfortable discussing that with late submittals.

MOTION AS AMEDED PASSED 4-0.

Council Member Holman suggested the following verbiage be added to the Procedures and Protocols document on Page II-4/II-5 "Late Submittal of Correspondence or Other Information Related to Planning Applications. In order to allow for adequate Staff review and analysis, and to ensure public access to information, all plans, correspondence, and other documents supporting or commenting on planning

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applications being heard by the City Council must be submitted not later than noon five working days prior to the release of the Council Agenda Packet. If any correspondence or other information is submitted after this deadline and Staff determines additional review is needed Staff will reschedule the item for a future Council meeting. The City Council can determine continuance or referral if significant changes to a project, or significant new information becomes known."

Mr. Larkin suggested adding to the end "nothing in this statement is intended to restrict the rights of applicants or other interested parties to respond to information contained in or included with a staff report."

Council Member Holman agreed with Mr. Larkin's suggested verbiage, but added "related to this item."

Mr. Larkin said the verbiage could state "attached to the Staff Report."

Council Member Price asked for a repeat of the part about the City Council.

Council Member Holman repeated "The City Council can determine continuance or referral if significant changes to a project, or significant new information becomes known."

Council Member Price said she didn't think that statement was needed.

Council Member Holman said it was not always understood and should be added.

Mr. Larkin suggested the sentence be rewritten to say "The City Council can determine whether to continue or refer the item to the appropriate Board and/or Commission if significant changes to a project or significant new information become known."

Mr. Keen suggested the statement read "At the meeting the City Council can determine whether to continue or refer the item to the appropriate Board and/or Commission if significant changes to a project or significant new information become known."

Mr. Larkin changed "can" to "may."

Council Member Holman agreed to the rewrite. She stated that this new verbiage would lead to better outcomes.

Council Member Price agreed.

MOTION: Council Member Holman moved, seconded by Council Member Price to add a Section C on Page II-4/II-5 in Procedures and Protocols be changed to "Late Submittal of Correspondence or Other Information Related to Planning Applications. In order to allow for adequate Staff review and analysis, and to ensure public access to information, all plans, correspondence, and other documents supporting or commenting on planning applications being heard by the City Council must be submitted not later than noon five working days prior to the release of the Council Agenda Packet. If any correspondence or other information is submitted after this deadline and Staff determines additional review is needed Staff will reschedule the item for a future Council meeting. At the meeting the City Council may determine whether to continue or refer the item to the appropriate Board and/or Commission if significant changes to a project or significant new information become known. Nothing in this statement is intended to restrict the rights of applicants or other interested parties to respond to information contained in or attached to a Staff Report.

Mr. Larkin stated that originally the submission was for materials from applicants. He said the same behavior from applicants and opponents should be treated the same. This also applies if Staff has a lengthy environmental report to submit.

Council Member Holman said it is important to support Staff and this was one of the objectives for adding this verbiage.

MOTION PASSED: 4-0

Mr. Keene stated that late submittals can come after the five day period but it's the earlier ones that are received in time to inform the public. The Council has a right to let people speak to an item, even if it is delayed because of late submittals.

Council Member Holman said the public would prefer to show up a second time rather than have incomplete information.

Mr. Keene said that once this policy is in effect the behavior will change and late submittals will decrease.

Council Member Shepherd said that there are times when the Mayor will let them speak, but not again at the next meeting. And the wording in the Motion was "and" not "or" giving some flexibility.

Mr. Grider said that additional information might necessitate a second public hearing notice, making it less desirable to take public testimony at the first meeting.

Council Member Holman asked about study sessions and asked if they could give direction to Staff.

Mr. Larkin said they will bring those study session and prescreening items back. There were other items that could come back as well.

Council Member Holman asked if these additional items could go to straight to Council or if they could at least inform Council there are outstanding items.

Mr. Larkin said they would let Council know the process was not complete yet.

AT PLACES MEMO FOR CITY COUNCIL MEETING ON 11/22

Office of the City Clerk
M E M O R A N D U M

DATE: November 22, 2010

TO: City Council

FROM: Donna Grider, City Clerk

SUBJECT: Agenda Item 16 - Recommendation from the Policy & Services Committee to the City Council on Proposed Changes to the City Council Procedures and Protocols

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In an effort to help streamline Council's discussion on this complex item, I have attempted to divide the items that may warrant further discussion from those that were ministerial in nature or updating existing practice.

Potential for Further Discussion

Procedures

- Page II-4/II-5 – add section c) Late Submittal of Planning Application Materials. In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff or to Council Members either before or during the meeting. If items are not submitted by this date or if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes, staff will analyze whether the need exists to continue the item.

- Page IV-1 section A. 1. – add verbiage at the end of the section on Purpose as follows: <u>and to support the autonomy of Boards and Commissions in making recommendations to Council</u>.

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- Page IV-1 section B. 2. – revise the paragraph as follows: Restrictions on Council Communications Outside of Quasi-Judicial Hearings. It is the policy of the Council to strongly discourage the gathering and submission of information outside of any required hearing, including prior to recommendations by ARB or P&TC, when such information will impair the Council's impartiality on a quasi-judicial decision or planned community zoning application.

Protocols

- Page 4 Council Conduct with Palo Alto Boards and Commissions -- first bullet second sentence: Any public comments by a Council Member at a Board or Commission meeting, when that Council Member is not the liaison to the Board or Commission, ~~should be clearly made~~ should make a point to clearly state it is an individual opinion and not a representation of the feelings of the entire City Council.

- Page 5 – first bullet title: ~~Limit contact with~~ Refrain from Lobbying Board and Commission members ~~to questions of clarification~~.

- Page 5 – third bullet first sentence: If a Council Member has ~~a~~ concerns with ~~the effectiveness of~~ a particular Board or Commission member fulfilling their roles and responsibilities and is comfortable in talking with that individual privately, the Council Member should do so.

- Page 6/7 - Add bullet: Submittal of Materials Directly to Council. If Council receives materials related to agenda item matters they will notify the City Clerk and the City Manager as soon as possible.

- Page 6/7 – Add bullet: Late Submittals of Planning Application Materials. In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff or to Council members either before or during the meeting. If items are not submitted by this date or if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes, staff will analyze whether the need exists to continue the item.

- Page 7 add new section: POLICY & SERVICES COMMITTEE – ROLE, PURPOSE, & WORK PLANNING

  The Municipal Code states that the role of the Council Policy & Services Committee is to:

  …consider and make recommendations on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters pertaining to intergovernmental relations, personnel policies, planning and zoning, traffic and parking, public work, and community and human services. (§2.04.220)

  In 2009 and 2010, the Council reviewed the purpose and structure of the Committee and adopted recommendations on several items related to this. This section documents these agreements related to the Committee.

  Purpose Statement: The purpose of the Policy & Services Committee is to regularly review and identify important community issues and City policies and practices with a focus on ensuring good public policy and best practices. A particular focus of the Committee is to ensure that the City organization is responsive, effective and aligned with community values and City Council priorities.

Ministerial or Existing Practice

Procedures

- Page I-2 Item (2) -- add section d) No person shall enter the staff area of the Council dais without the permission of the Presiding Officer or appropriate Council Appointed Officer.

- Page II-1 A. revise the paragraph on Regular Meetings as follows: ***Regular meetings*** are conducted at City Hall on the first three Monday nights of each month, except during the Council's annual vacation. The meetings will begin at 7:00 p.m. Regular meeting agendas must be posted ~~outside at the Downtown Library~~ in the City Plaza by the elevators no later than 7:00 p.m. on the preceding Friday as required by the Brown Act. ~~but i~~It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding ~~Thursday~~ Wednesday. For major, complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

- Page II-1 – revise the following sentence under Study Sessions: During regular study sessions, public comments are typically received together with

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oral communications at the end of the session or at another appropriate time at the discretion of the chair.

- Page II-6 section (e) (1) -- delete the words "and resolution" from the second line.

- Page II-8 subsection (5) -- delete the words "by a majority of a Council Committee".

- Page II-8/II-9 – move Unfinished business from subsection 7) to subsection 8) (b).

- Page II-9 – subsection 8) (e) Council Matters – revise verbiage at the end of the paragraph to: Colleagues memos should have a section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager or other appropriate senior staff. Council Members should share a final draft of the proposed memo with the City Manager or appropriate senior staff prior to finalization. Completed Council colleague memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

- Page V-1 section B. 4. – delete the words "action minutes" and revise to "sense minutes".

Protocols

- Page 5 – second bullet: delete the last sentence: ~~A Board or Commission appointment should not be used as a political "reward".~~

- Page 5 – sixth bullet: Appointed Council liaisons and/or alternates are encouraged to attend all regularly scheduled meetings of their assigned Board or Commission, ~~or to arrange for an alternate.~~

- Page 6 – OTHER PROCEDURAL ISSUES, third bullet: change the seventh line to remove "Assistant City Manager" and replace with City Manager. Add sentence at the end of the paragraph: More detailed procedures relating to agenda questions can be found in the addendum to these protocols titled "Policy and Procedure for City Council E-mails for Agenda-Related Items."

- Page 7 first bullet second sentence revised to: Council should respect the work of the committees ~~and recommit to its policy of keeping unanimous votes of the committees on the consent calendar~~. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at

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Committee, the item will be placed on the Consent Calendar unless otherwise recommended by the Committee or staff.

- Page 7 second bullet add the following sentence at the end of the paragraph: Consideration in building the agenda should be given to the potential length of the meeting and at what point items of significant public concern may be heard.

- Page 12 Procedure first bullet: Council Members should direct any questions on ~~City Managers Reports (CMRs)~~ staff reports to the ~~Assistant City Manager~~ City Manager or designee.

- Page 12 last bullet first sentence: add the word "highest" before the word "priority."

- Add the existing policy for the City Council for Travel and Miscellaneous Expense Reimbursement which was adopted in March 2006 as an addendum to the Council Protocols.

EXCERPT from 11/22 Council

Recommendation From the Policy & Services Committee to the City Council on Proposed Changes to the City Council Procedures and Protocols.

Council Member Yeh stated the City Clerk's revised Staff Report was the best document to work from. The first two pages pertained to the more substantive changes that were passed by the Policy & Services Committee. The 3rd page contained ministerial changes, and were seen more as housekeeping changes.

City Manager, James Keene recommended the City Council adopt the ministerial items, listed below. He asked about discussing bullet II-9, on page 4 of the revision memo regarding Colleagues Memos. He asked if that was an exclusionary role for the City Manager to only supply Staff and fiscal impacts, or could there be broader policy input.

Ministerial or Existing Practice

Procedures

- Page I-2 Item (2) -- add section d) No person shall enter the staff area of the Council dais without the permission of the Presiding Officer or appropriate Council Appointed Officer.

- Page II-1 A. revise the paragraph on Regular Meetings as follows: ***Regular meetings*** are conducted at City Hall on the first three Monday nights of each month, except during the Council's annual vacation. The meetings will begin at 7:00 p.m. Regular meeting agendas must be posted ~~outside at the Downtown Library~~ in the City Plaza by the elevators no later than 7:00 p.m. on the preceding Friday as required by the Brown Act. ~~but i~~It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding ~~Thursday~~ Wednesday. For major, complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

- Page II-1 – revise the following sentence under Study Sessions: During regular study sessions, public comments are typically received together with oral communications at the end of the session or at another appropriate time at the discretion of the chair.

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- Page II-6 section (e) (1) -- delete the words "and resolution" from the second line.

- Page II-8 subsection (5) -- delete the words "by a majority of a Council Committee".

- Page II-8/II-9 – move Unfinished business from subsection 7) to subsection 8) (b).

- Page II-9 – subsection 8) (e) Council Matters – revise verbiage at the end of the paragraph to: Colleagues memos should have a section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager or other appropriate senior staff. Council Members should share a final draft of the proposed memo with the City Manager or appropriate senior staff prior to finalization. Completed Council colleague memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

- Page V-1 section B. 4. – delete the words "action minutes" and revise to "sense minutes".

Protocols

- Page 5 – second bullet: delete the last sentence: ~~A Board or Commission appointment should not be used as a political "reward".~~

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- Page 6 – OTHER PROCEDURAL ISSUES, third bullet: change the seventh line to remove "Assistant City Manager" and replace with City Manager. Add sentence at the end of the paragraph: More detailed procedures relating to agenda questions can be found in the addendum to these protocols titled "Policy and Procedure for City Council E-mails for Agenda-Related Items."

- Page 7 first bullet second sentence revised to: Council should respect the work of the committees ~~and recommit to its policy of keeping unanimous votes of the committees on the consent calendar~~. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at Committee, the item

will be placed on the Consent Calendar unless otherwise recommended by the Committee or staff.

- Page 7 second bullet add the following sentence at the end of the paragraph: Consideration in building the agenda should be given to the potential length of the meeting and at what point items of significant public concern may be heard.

- Page 12 Procedure first bullet: Council Members should direct any questions on ~~City Managers Reports (CMRs)~~ staff reports to the ~~Assistant City Manager~~ City Manager or designee.

- Page 12 last bullet first sentence: add the word "highest" before the word "priority."

- Add the existing policy for the City Council for Travel and Miscellaneous Expense Reimbursement which was adopted in March 2006 as an addendum to the Council Protocols.

Council Member Yeh stated the sentence further down clarified that the Colleagues Memo should be shared with the City Manager prior to finalization.

Mr. Keene suggested the addition of "a draft Colleagues Memo be shared with the City Manager for review."

Council Member Yeh stated he agreed.

Council Member Klein stated he did not agree with the suggested change requested by the City Manager.

Mayor Burt stated the suggested change had not been voted on.

Council Member Schmid asked about Procedures Page 3, bullet Page II-1 A which read: regular meetings were conducted on the first three Mondays of each month. He stated there had been meetings on the 4th Monday of each month. He asked whether the 4th Monday should be included as regularly scheduled meetings.

Mayor Burt stated all meetings outside of the first three Mondays were considered Special Meetings.

Vice Mayor Espinosa stated regarding Procedures Page 3 bullet II-1A; he asked if the requirement of posting the agenda be on the website and in the plaza.

Council Member Yeh stated the Policy and Services Committee did not discuss that particular issue. He asked the City Clerk for additional language that could be added to clarify the requested addition regarding the agenda posting.

City Clerk, Donna Grider suggested keeping the verbiage about Regular Meetings being "posted no later than 7:00 p.m. the preceding Friday", but add "furthermore the City would upload the agenda to the website for citizens at that time."

> Page II-1 A. revise the paragraph on Regular Meetings as follows: ***Regular meetings*** are conducted at City Hall on the first three Monday nights of each month, except during the Council's annual vacation. The meetings will begin at 7:00 p.m. Regular meeting agendas must be posted ~~outside at the Downtown Library~~ in the City Plaza by the elevators no later than 7:00 p.m. on the preceding Friday as required by the Brown Act. *The City will upload the Agenda to the City website.* ~~but~~ ~~i~~It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding ~~Thursday~~ Wednesday. For major, complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

Vice Mayor Espinosa suggested not eliminating the language stating "a Board or Commission appointment should not be used as a political reward". He asked why that statement would be deleted.

> Protocols, bullet Page 5 – second bullet: delete the last sentence: ~~A Board or Commission appointment should not be used as a political "reward".~~

Council Member Yeh stated that specific item was not discussed in depth; it was an item that the Policy and Services Committee felt did not need to be included.

Vice Mayor Espinosa asked the City Attorney whether stating that the word "strongly" would substantially alter the policies of the City Council in the section referring to Council communications outside of Quasi-Judicial hearings.

> Procedures - Page 2-Potential for Further Discussion, bullet Page IV-1 section B. 2. – revise the paragraph as follows: Restrictions on Council Communications Outside of Quasi-Judicial Hearings. It is the policy of the Council to strongly discourage the gathering and

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> submission of information outside of any required hearing, including prior to recommendations by ARB or P&TC, when such information will impair the Council's impartiality on a quasi-judicial decision or planned community zoning application.

Acting City Attorney, Don Larkin stated there could not be a direct prohibition of contact between the public and the Council. The public had a First Amendment right to petition their representatives in government.

Council Member Scharff stated on page 1 of Procedures, bullet Page II-4/II-5; the middle part of the paragraph read: discussing materials delivered to Staff, he asked whether it should read "and" instead of "or."

> Page II-4/II-5 – add section c) Late Submittal of Planning Application Materials. In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff ~~or~~ *and* to Council Members either before or during the meeting. If items are not submitted by this date or if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes, staff will analyze whether the need exists to continue the item.

Council Member Holman advised that she brought a revised version as follows (changes are in Italic). She stated she had made the change from "or" to "and" in the paragraph and added additional information.

Procedures, Page 1, bullet Page II-4/II-5 – add section c) Late Submittal of Planning Application Materials. In order to allow for adequate staff review and analysis and to ensure public access to materials, all plans and other applicant materials related to Planning applications being heard by the City Council must be submitted not later than noon 5 working days prior to the release of the Council agenda packet. This includes materials delivered to staff or to Council Members either before or during the meeting. If items are not submitted by this date ~~or~~ *and* if staff determines additional review is needed, staff will reschedule the item to a future Council meeting. Additionally, if there are significant changes *to the project*, staff will analyze whether the need exists to continue the item. *Neither public response to the project staff report nor the applicant response to either the project staff report or public comments are constrained by staff's materials deadline.*

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Council Member Scharff asked for clarification of the word "materials", if it was exclusive of changes to the project or inclusive of a citizen's argument against the project.

Council Member Holman supplied Staff with a potential version of the Procedures page in question to be displayed on the projector. She stated the alterations made were made after the Policy and Services Committee discussions in an effort to clarify questions that may have arisen by Council Members needing a more in depth explanation.

Mayor Burt stated he felt that Council would not be able to complete all the items in the substantive changes. He clarified at times Staff and Council received extensive arguments, reports or changes in projects therefore the term "materials" could reference any of those.

Council Member Yeh stated the intent was to formalize the process of submission to the City no later than five business days prior to the City Council meeting. Based on discussions with the Planning Department five days was a sufficient amount of time for their review.

Mayor Burt stated the concern remained the same with there being no direct understanding as to the meaning behind the use of the word "material".

Council Member Yeh stated the discussion the Policy and Services Committee had was focused on the number of days required to adequately review the changes. The definition of the term "material" was not determined.

Council Member Holman stated the intention was that anything an Applicant wanted to provide that would be included in the Staff Report would be provided no later than five days ahead of time. Any later and Staff would not have time to review the items received to see how it impacted the project and their workload.

Council Member Scharff referred to page 2, bullet page IV-1 section B.2 regarding Quasi-Judicial hearing:

> Procedures, Page IV-1 section B. 2. – revise the paragraph as follows: Restrictions on Council Communications Outside of Quasi-Judicial Hearings. It is the policy of the Council to <u>strongly</u> discourage the gathering and submission of information outside of any required hearing, <u>including prior to recommendations by ARB</u>

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> or P&TC, when such information will impair the Council's impartiality on a quasi-judicial decision or planned community zoning application.

He stated his understanding was all Quasi-Judicial hearings went before the Architectural Review Board (ARB) prior to being submitted for review by the Planning and Transportation Commission (P&TC), and then the item went to Council. He asked if there were cases where a project would be agendized for Council having bypassed one or the other.

Mr. Larkin stated there were situations when appeals had gone directly from the ARB to Council.

Council Member Scharff asked if there were projects where a project went directly from the ARB to Council without it being an appeal.

Mr. Larkin stated yes, there were projects that required only an architectural review and not a planning review.

Council Member Scharff stated he did not understand the wording "policy of the Council to strongly discourage the gathering and submission of information outside of any required hearing, including prior to recommendations by ARB or P&TC". He asked if it should be changed to "it is the policy of Council to strongly discourage the gathering and submission of information prior to recommendations by ARB or P&TC".

Council Member Holman stated she had made alterations to Procedures, Page IV-1 section B. 2. with the following changes: She stated for clarity the wording in CAPS were her suggestions.

- Page IV-1 section B. 2. – revise the paragraph as follows: Restrictions on Council Communications Outside of Quasi-Judicial Hearings. It is the policy of the Council to strongly discourage the gathering and submission of information outside of any ~~required hearing~~, ADVERTISED PUBLIC MEETING including prior to *final* recommendations by ARB ~~or~~ *and* P&TC, when such information will impair the Council's impartiality on a quasi-judicial decision or planned community zoning application.

Council Member Scharff asked if the intent of the "advertised public meeting" meant the ARB or P&TC advertised public meeting.

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Council Member Holman stated the reason she changed the wording to advertised public meeting was that when the P&TC changed their Protocols and Procedures to limit ex parte communications on Quasi-Judicial and Planned Community (PC) projects they also encouraged Applicants and members of the public to hold public meetings. The intention of the language in the Council Procedures was to encourage Council to attend public meetings.

Council Member Scharff inquired as to the reason the listing of late submittals was duplicated in the first bullet on the 1st page in Procedures and again in the Protocols.

Council Member Yeh stated he did not recall intentionally adding late submittals to both areas. He would request the Policy & Services Committee revisit the Procedures and Protocols to ensure there were no duplications unless it was deemed necessary.

MOTION: Council Member Klein moved, seconded by Mayor Burt to conclude the item no later than midnight.

Mr. Keene suggested Council Members individually redline the document; provide it to Staff and again to the Policy and Services Committee for reconciliation.

MOTION PASSED: 9-0

Mayor Burt asked the City Clerk to verify on the top of Procedures, Page 4, second bullet, Page II-8, subsection (5), it looked like it should be Page II-8, subsection (4). The discussion under Page 1, bullet IV-1, section A.1, talked about supporting the autonomy of Boards and Commissions. He stated there was not a clear understanding regarding the roles and responsibilities of Council Liaisons. There was a wide range of how the roles of Council liaison had been performed over the years. He asked whether there was a reason for the role of liaison having not been included.

Council Member Yeh stated the Policy & Services Committee had discussed the liaison role and had made suggested language changes.

Council Member Shepherd stated there was a section on the Council liaisons, addressing their specific role and responsibility was not detailed.

Mayor Burt stated concern was unless Council had taken a position on a topic liaisons were not allowed to speak on behalf of the Council. There had been Council Members in the past who viewed their role as liaison as one to answer questions to clarify a point, or believed their function was as an ex parte member of the Committee. He emphasized returning to the purpose of supporting the autonomy of Boards and Commissions. The specific role of the Council liaison should be clarified within the Council Procedures.

Council Member Shepherd stated the section on Council liaisons was located on page 4 and 5 of the Protocols. She noted after review, the section could benefit from more clear language.

Mayor Burt stated there was reference in the existing Protocols where the Council liaison was expected to represent the full Council and refrain from speaking for the full Council on matters where the full Council had not conferred. He clarified the matter was addressed although it needed to be practiced.

Council Member Yeh noted on page 5 of the Council Protocols there were edits to the Council liaison policy which stated to limit contact with Commissioner's regarding their questions and clarifications, and refrain from lobbying Board and Commission members.

Ms. Grider stated in response to Mayor Burt's earlier question, she confirmed on page 4 the second bullet section II-8, should be subsection 4.

Jeff Greenfield urged Council to approve the Protocols and Procedures. There was a need for the updated guidelines for transparency and trust with the public on land use decisions.

Fred Balin felt the inclusion of late submittal language was needed. He stated the change in late submissions, early release of Council agenda packets and the new agenda management program would serve the public interest more satisfactorily.

Bob Moss stated the updated Procedures and Protocols were overdue. He believed the last minute project submittals should be applied to Boards and Commissions procedures.

Tom Jordan spoke on behalf of Palo Alto Neighborhoods. He stated the updated Procedures and Protocols was one set of achievements that PAN endorsed as an organization.

Elaine Meyer spoke in support of the changes to the Procedures and Protocols.

MOTION: Council Member Shepherd moved, seconded by Council Member Yeh to:

1) accept the following ministerial changes:

Procedures

- Page I-2 Item (2) -- add section d) No person shall enter the staff area of the Council dais without the permission of the Presiding Officer or appropriate Council Appointed Officer.

- Page II-1 A. revise the paragraph on Regular Meetings as follows: **Regular meetings** are conducted at City Hall on the first three Monday nights of each month, except during the Council's annual vacation. The meetings will begin at 7:00 p.m. Regular meeting agendas must be posted ~~outside at the Downtown Library~~ in the City Plaza by the elevators no later than 7:00 p.m. on the preceding Friday as required by the Brown Act. ~~but i~~It is City policy to make every effort to complete and distribute the agenda and related reports by the preceding ~~Thursday~~ Wednesday. For major, complex projects and policies, the City will make every effort to distribute these reports two weeks prior to the meeting when the item will be considered.

- Page II-1 – revise the following sentence under Study Sessions: During regular study sessions, public comments are typically received together with oral communications at the end of the session or at another appropriate time at the discretion of the chair.

- Page II-6 section (e) (1) -- delete the words "and resolution" from the second line.

- Page II-8 subsection (5) -- delete the words "by a majority of a Council Committee".

- Page II-8/II-9 – move Unfinished business from subsection 7) to subsection 8) (b).

- Page II-9 – subsection 8) (e) Council Matters – revise verbiage at the end of the paragraph to: Colleagues memos should have a

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section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager or other appropriate senior staff. Council Members should share a final draft of the proposed memo with the City Manager or appropriate senior staff prior to finalization. Completed Council colleague memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

- Page V-1 section B. 4. – delete the words "action minutes" and revise to "sense minutes".

Protocols

- Page 5 – second bullet: delete the last sentence: ~~A Board or Commission appointment should not be used as a political "reward".~~

- Page 5 – sixth bullet: Appointed Council liaisons and/or alternates are encouraged to attend all regularly scheduled meetings of their assigned Board or Commission, ~~or to arrange for an alternate.~~

- Page 6 – OTHER PROCEDURAL ISSUES, third bullet: change the seventh line to remove "Assistant City Manager" and replace with City Manager. Add sentence at the end of the paragraph: More detailed procedures relating to agenda questions can be found in the addendum to these protocols titled "Policy and Procedure for City Council E-mails for Agenda-Related Items."

- Page 7 first bullet second sentence revised to: Council should respect the work of the committees ~~and recommit to its policy of keeping unanimous votes of the committees on the consent calendar~~. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at Committee, the item will be placed on the Consent Calendar unless otherwise recommended by the Committee or staff.

- Page 7 second bullet add the following sentence at the end of the paragraph: Consideration in building the agenda should be given to the potential length of the meeting and at what point items of significant public concern may be heard.

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- Page 12 last bullet first sentence: add the word "highest" before the word "priority."

- Add the existing policy for the City Council for Travel and Miscellaneous Expense Reimbursement which was adopted in March 2006 as an addendum to the Council Protocols;

2) page 3, bullet page II-1 A City Clerk website changes uploading agenda packet

3) page 4, second bullet should be section II-8, subsection 4

4) page 4, bullet Page II-9 Council Members to share a final draft of Colleagues memo for review with City Manager or appropriate senior staff

5) bring back the entire text for discussion.

Mr. Keene stated his concern with Procedures, Page II-9, subsection (8)(e) and asked to delete "or appropriate senior staff". He wanted to insure the City Manager was involved in the review of all Colleagues Memos.

Council Member Yeh stated he was comfortable striking out "or appropriate senior staff".

Mayor Burt stated on Protocols, Page 4 bullet Page 7 the first bullet, he wanted to add
"Mayor has the responsibility for the agenda". It has been clear in the recent past where Council has wanted to discuss an item as a whole and the Mayor should be able to move the item to allow the full Council to discuss it.

> Page 7 first bullet second sentence revised to: Council should respect the work of the committees ~~and recommit to its policy of keeping unanimous votes of the committees on the consent calendar~~. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at Committee, the item will be placed on the Consent Calendar unless otherwise recommended by the Committee or staff.

Council Member Scharff asked if a Council Committee voted 4-0 on an item it then was agendized on the Consent Calendar, but then the Mayor could decide to move the item under Action. He was in favor of the additional language.

Mr. Keene stated for the most part when there was a 4-0 vote the item went on the Council Consent Calendar. There were incidents were it seemed more appropriate to place the item under Action for the reason Council would want to discuss it.

Council Member Scharff stated he was in favor of adding either Mayor or City Manager, his concern was allowing Staff to determine the placement of agenda items.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to include on Page 7 Protocols first bullet second sentence revised to: Council should respect the work of the committees ~~and recommit to its policy of keeping unanimous votes of the committees on the consent calendar~~. If a matter is taken forward to the full Council for approval and it receives a unanimous vote at Committee, the item will be placed on the Consent Calendar unless otherwise recommended by the **MAYOR**, Committee or staff.

Vice Mayor Espinosa stated he felt it was important to place the language Board and Commission appointments would not be used as political rewards in the Procedures and Protocols.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to retain "A Board and Commission appointment should not be used as a political reward" on Page 5, second bullet of the Protocols.

Council Member Schmid asked about page 3, bullet Page II-1 A under Procedures; the sentence ending in "…the City will make every effort to distribute these reports two weeks prior to the meeting…." He asked to confirm major complex projects included both, planning applications and non planning applications. He stated there was a two-week period with restrictions on communications and responses for both types of applications. He asked whether there was clarifying language that should be added regarding the types of activities possible during that period.

Council Member Yeh stated the Policy and Services Committee did not discuss that, but would be open to discuss additional language as necessary.

Council Member Schmid requested the addition of language regarding planning applications where the Applicants' being eligible to make a response up to 3 business days before the City Council meeting.

Mr. Larkin stated the Procedures and Protocols would be returning to the Policy and Services Committee on December 14th regarding late submittal items. He suggested adding the follow-up of the Procedures and Protocols item to the agenda for discussion.

Mayor Burt stated on Protocols, Page 4, bullet Page 5- sixth bullet: regarding appointed Council liaisons and or alternates attending all regularly scheduled meetings. He did not feel it was appropriate to have the alternates and the liaison be required to attend all meetings.

Council Member Yeh stated the intent was to provide flexibility.

Mayor Burt requested to change the language from "and" to "or" which granted the intended flexibility of alternates attending meetings.

Council Member Scharff felt alternates should be encouraged to attend the meetings in an effort to maintain their knowledge of the Board or Commissions' matters being discussed.

Mayor Burt stated his disagreement was for alternates to attend all meetings.

Council Member Klein stated on Procedures, Page 4, bullet II-9, subsection 8) (e): he requested to delete "or other appropriate senior staff, and replace the word "should" with "shall", and add "provide a copy". He felt the Colleagues Memo was a memo between colleagues regarding a matter of importance to them; the City Manager should not have the ability to determine the context.

> Page II-9 – subsection 8) (e) Council Matters – revise verbiage at the end of the paragraph to: Colleagues memos should have a section that identifies any potential staffing or fiscal impacts of the contemplated action. This section will be drafted by the City Manager ~~or other appropriate senior staff~~. Council Members shall ~~should~~ ~~share a final draft~~ *provide a copy* of the proposed memo with the City Manager ~~or appropriate senior staff prior to~~

~~finalization~~. Completed Council colleague memos shall be provided to the City Clerk's staff by noon on the Tuesday prior to the Council meeting that the memo is intended to be agendized, to provide time for the City Clerk to process for the Council packet.

Council Member Yeh agreed the final approval belonged to the colleagues although he felt the City Manager should have input ability.

Council Member Klein clarified it was acceptable for the City Manager to supply input for the colleagues to consider albeit he should not have veto rights.

Mr. Keene stated his concern with the City Manager not reviewing the Colleagues Memo was the possibility of the Memo being in conflict with other policies or projects. He requested the ability to review or discuss the content of the Memo during its composition with the authors rather than post completion.

Mayor Burt stated he believed if the City Manager was being provided a copy, he would have the prerogative to respond.

Mr. Keene stated the question then would be when the City Manager would be expected to receive a copy of the Colleagues Memo for review. He suggested the City Manager receive a copy of the Colleagues Memo no less than 3 business days prior to the Council meeting.

Vice Mayor Espinosa clarified in the current Procedures under Colleagues Memo Guidelines the Council Members were to consult with the City Manager prior to preparing the Memo.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to delete in the Procedures on page II-9- subsection 8) "or other appropriate senior staff, and replace the word "should" to "shall", and add the "provide a copy".

Mayor Burt recommended the deletion of the word "and" on page 4, bullet Page 5- sixth bullet regarding appointed Council liaisons and alternates attending all regular meetings.

Council Member Yeh asked if deleting the "and" precluded the alternates from attending the meetings.

Mayor Burt stated no.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to delete the "and" in the Protocols on page 4, bullet Page 5- sixth bullet regarding appointed Council liaisons ~~and~~ alternates attending all regular meetings.

Council Member Price asked if the incorporated language applied to the City of Palo Alto Board and Commission meetings or outside meetings as well.

Mayor Burt stated the Council Procedures and Protocols referred only to internal Board and Commission meetings.

Council Member Klein requested his Colleagues reconsider removing the line "A Board or Commission appointment should not be used as a political reward", into the Procedures. He added by replacing the statement there was a potential negative inference that could be drawn that it would be acceptable to use those appointments for financial rewards.

Council Member Yeh recalled a discussion at a Policy and Services Committee meeting where the determination was; the appointments of Board and Commission Members was voted on by all 9 Council Members; therefore, the likelihood of the appointment being for political reward was none which was a large reason why the language was stricken initially.

AMENDMENT: Council Member Klein moved, seconded by Council Member Scharff to include the sentence in the Protocols "A Board or Commission appointment should not be used as a political reward".

AMENDMENT PASSED: 6-3 Espinosa, Shepherd, Yeh no

Council Member Price clarified the Procedures and Protocols would be returning to the Policy and Services Committee for review before the end of the 2010.

Mayor Burt stated yes, the ministerial matters would not return, however the substantive matters would return on December 14th.

Council Member Holman stated the assumption throughout the discussion regarding the Colleagues Memos was a copy should be given to the City Manager. She requested to add the language "and other appropriate CAO".

Attachment: 2.15.11 (1422 : Policy and Services Agenda 2/15/2011)

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to add the words in the Procedures "and other appropriate CAO" on page II-9-section 8.

MOTION PASSED: 9-0

MOTION: Council Member Scharff moved, seconded by Council Member Yeh to refer the remainder back to P&S to review with written input from Council.

Council Member Yeh asked if there would be a Brown Act issue having the Procedures and Protocols return to the Policy and Services Committee with written comment from the full Council.

Mr. Larkin stated the written input should be directed the City Clerk who could then consolidate the information and present it to the Policy and Services Committee.

Mayor Burt asked for clarification on the Quasi-Judicial hearings, was it in reference to address any meetings prior to any submittal of application.

Council Member Holman stated it was. She stated she would like the Policy and Services Committee to discuss the restructuring of City Council Study Sessions. She felt the Council would benefit from a venue where there was freer flowing communication and an exchange of information gathering. When Council received a pre-application submittal the idea was not to look for detail, only information which could be retrieved during a Study Session, if it were restructured properly. The ARB and P&TC were constrained on what they could do if Council took a closer look at a project before they were able to review it.

Council Member Klein stated he believed there were other issues to be considered, in the Procedures on Page 2, bullet Page IV-1 section B 2. For example; e-mail had not been addressed, it was not clear as to who was being referenced in the section, he noted according to the law, members of the public and Applicants were to be treated in the same fashion whether it be via e-mail or telephone contact. The title needed to be changed since it was inclusive of Quasi-Judicial and Planned Community. He noted site visits were a time for gathering of information which had not been discussed and he felt site visits should be encouraged. He had concern with the word "autonomy of Boards

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and Commissions", they were not autonomous. Boards and Commissions were an advisory body to the Council.

Council Member Shepherd stated she would not be supporting the Motion. She felt the Policy and Services Committee would benefit from the Councils' input and therefore determined the Procedures and Protocols should remain with the full Council.

Council Member Holman stated if the Motion passed and the item returned to the Policy and Services Committee, she asked when the deadlines would be for Council to provide their input to the City Clerk and for the return to Council after their review.

Mr. Keene stated the meeting on the 14th of December had been agendized for discussion on the matter with the City Attorney's office, the thought was to add this matter to the agenda.

Ms. Grider stated the information needed to be received by the City Clerk by Friday, December 3rd.

Council Member Holman asked when it would return to Council.

Mr. Keene stated the return date would depend on the decisions determined by the Policy and Services Committee.

Council Member Holman stated presuming the Policy and Services Committee completed their review and edits on the 14th of December, when would the item be agendized for the Council.

Mr. Keene stated once Staff received a recommendation from the Policy and Services Committee the recommendation was agendized for the upcoming or at the latest the following Council meeting.

Ms. Grider clarified the earliest the item could return to Council would be January 10, 2011.

MOTION PASSED: 8-1 Shepherd no

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COUNCIL MEETING
12-13-10
[X] Placed Before Meeting
[ ] Received at Meeting

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

10 DEC 13 PM 2:24

The Ethical Hazards of City Council Members Attending Other Board Meetings

BY MICHAEL DEAN

Michael Dean is a Sacramento-based principal and the ethics chair at the legal firm of Meyers Nave. Dean serves as city attorney for the City of Dixon and assistant city attorney for the cities of Colusa and Plymouth. He can be reached at mdean@meyersnave.com. This column is provided as ethics advice and is not intended as legal advice.

Imagine this scenario: The planning commission is considering whether to recommend a zoning change to the city council, which would allow more residential use in the downtown area and promote the mixed-use vision in its General Plan. Wouldn't any city council member want to know as much information as possible? Attending the planning commission meeting and listening to the perspectives of the city planner, engineer, architect, commission members and others might seem like a smart move. The council member may even be able to ask questions of the participants or give his or her views, thus learning about the issues and influencing the matter before it comes before the city council. In fact, city council members can often be found in the audience of planning commission meetings, listening to the proceedings and occasionally participating.

However, this may not be such a good idea. As innocent as a council member's motives may be, when he or she personally attends a planning commission meeting or another subordinate committee meeting, he or she may be crossing an ethical boundary. Council members do not violate any laws by *attending* commission meetings. However, they run the risk of:

- Potentially revealing a biased view, thereby causing their own disqualification should the matter at hand subsequently come before the council;
- Interfering with the role of the commission as an independent advisory body; and
- Not acting in accordance with the views of the city council as a whole.

Most city council members know to steer clear of the somewhat hazy legal boundaries that might cause them to be

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disqualified from the decision-making process due to bias. Many if not most planning commission or other commission decisions are merely advisory to or at least appealable to the city council. Because the right to due process is attached to many of these types of commission decisions, the participants in such proceedings have the right to an unbiased decision-maker at the city council level. A council member who comments at the commission meeting and indicates a firm position on a particular matter may be subjected to a challenge for bias when the same issue reaches the city council.

Related Ethical Challenges

Beyond the issue of perceived bias, participating in a commission meeting raises other ethical questions. For instance, council members generally have the authority to remove a commission member. With this power, a council member's mere attendance at a meeting can be highly influential, especially when he or she makes his or her opinions known. Merely indicating that one is not speaking for the entire council, but rather providing one's own opinion, does not address the significant impact of the "boss" offering an opinion. This influence may also jeopardize a significant role of the commission, which is to provide independent recommendations or decisions to the city council. After all, none of the cities' commissions are required to exist; if the city council wants to have the role of decision-maker, it could take that role. But when a city establishes a commission, the city council has also by implication indicated its desire to have an independent body make decisions or recommendations. The presence of the appointing authority at the commission meetings affects that independence.

Likewise, in a council-manager form of government, the intent and expectation is that a city council will act as a whole, not as individuals. Council members normally receive the same information simultaneously from city staff or from their subordinate commissions or the public's testimony. This allows the council members as a body to draw conclusions in a fair and balanced way based upon the same factual foundation.

City council members may undermine this expectation when they individually attend meetings of a subordinate commission. To some extent the council member who attends collects information that will not reach other council members in quite the same way. Those council members who attend may also subtly influence either the outcome of the commission's deliberations or how the matter will eventually be presented before the council — in ways not available to the council members who did not attend the commission meeting.

Of course, council members do not completely give up their rights as private citizens, and they are both free to and expected to gather information relevant to the performance of their duties. They are entitled to attend a commission's public meeting. However, to remain firmly upright on the ethical tightrope, council members should wait until the commission makes its recommendation to the city council in its entirety — thus preserving the original intent of both the independent commission and the city council.

Alternatives to Attending in Person

This does not deprive council members of the ability to learn what occurs at a commission meeting. A city council member may listen to most meetings online, on television or by using the city clerk's taped recordings. Information can also be obtained by reading the commission's meeting minutes. A council member's personal presence at or participation in a commission meeting, on the other hand, could reveal a biased view, disrupt the independence of the commission or exert undue influence on the commission, regardless of the council member's intent. It is best

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avoided.

For More Information

Learn more about bias in the October 2006 "Everyday Ethics" column, "When an Elected Official Feels Passionately About an Issue: Fair Process Requirements in Adjudicative Decision-Making."

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THIS IS A COURTESY NOTICE ONLY. MEETING DATES, TIMES, AND LOCATIONS ARE SUBJECT TO CHANGE. PLEASE CHECK THE POSTED AGENDA ON-LINE OR AT KING PLAZA IN FRONT OF CITY HALL FOR THE MOST CURRENT INFORMATION. Almost all Palo Alto Council and some Standing Committee meetings are cablecast live on Channel 26. If there happens to be concurrent meetings, one meeting will be broadcast on Channel 29. Palo Alto will not have live meetings on the 1st and 3rd Tuesdays. The agendas for most meetings can be accessed by clicking on "Agendas/Minutes/Reports" on the home web page.

THURSDAY, FEBRUARY 10
Infrastructure Blue Ribbon Committee Meeting, Lucie Stern Community Room, 1305 Middlefield Rd., 5 PM
Human Relations Commission Meeting, CCR, 7 PM

MONDAY, FEBRUARY 14
Special City Council Meeting, Chambers, 6 PM

THURSDAY, FEBRUARY 15
Special Policy and Services Committee Meeting, CCR, 7 PM

WEDNESDAY, FEBRUARY 16
Historic Resources Board Meeting, Chambers, 8 AM
Special City/School Liaison Meeting, 25 Churchill, 8:15 AM

THURSDAY, FEBRUARY 17
Architectural Review Board Meeting, Chambers, 8:30 AM
Director's Hearing, CCR, 3 PM
Rail Corridor Study Task Force Meeting , Lucie Stern Community Room, 1305 Middlefield Road, 6:30 PM
Public Art Commission Meeting, Chambers, 7 PM

THURSDAY, FEBRUARY 22
Parks and Recreation Commission Meeting, CCR, 7 PM

WEDNESDAY, FEBRUARY 23
Planning & Transportation Commission Meeting, Chambers, 6 PM

THURSDAY, FEBRUARY 24
Infrastructure Blue Ribbon Committee Meeting, Lucie Stern Community Room, 1305 Middlefield Rd., 5 PM
Library Advisory Commission Meeting, CCR, 7 PM

TUESDAY, MARCH 01
Finance Committee Meeting, Chambers, 7 PM

WEDNESDAY, MARCH 02
Historic Resources Board Meeting, Chambers, 8 AM
Special Planning and Transportation Commission Meeting, CCR, 6 PM
Utilities Advisory Commission Meeting, Chambers, 7 PM

Persons with disabilities who require auxiliary aids or services in using City facilities or programs, or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-329-2550 (voice) or 329-1199 (TDD), ada@cityofpaloalto.org. Listening assistive devices are available in the Council Chambers. Sign language interpreters will be provided upon request with 72 hours advance notice. Please advise the City Clerk's Office (650-329-2571) of meetings or ch
on Wednesdays for inclusion in the following week's schedule.

City of Palo Alto (ID # 1297)

City Council Informational Report

Report Type: Informational Report **Meeting Date: 2/14/2011**

Summary Title: EPA Proposed Rule on Sewage Sludge Incinerators

Title: Palo Alto Comments on the Environmental Protection Agency's Proposed Rule for Sewage Sludge Incinerator Units

From: City Manager

Lead Department: Public Works

Executive Summary

Staff submitted the attached comment letter to the Environmental Protection Agency (EPA) on the proposed new emissions requirements for sewage sludge incinerators and will return to Council with key information following publication of the final rule. This is a brief informational report to Council regarding the proposed rule making. No action by Council is required.

Discussion

On October 14, 2010, EPA proposed emission limits for new and existing sewage sludge incineration units. Due to a court decision in 2007, EPA was directed to regulate sewage sludge incinerators under Section 129 of the Clean Air Act. Section 129 of the Clean Air Act directs EPA to promulgate emission limits that are based on Maximum Achievable Control Technology. In the proposed rule, EPA determined that the calculated Maximum Achievable Control Technology emission limits for mercury were not stringent enough, and therefore proposed a "beyond-the-floor" mercury emission limit that is even more stringent.

The Palo Alto Regional Water Quality Control Plant is one of the 97 agencies nationwide that utilizes sewage sludge incinerators and is thereby affected by the proposed rule. Palo Alto's sewage sludge incinerators would not be able to meet the proposed "beyond-the-floor" mercury limits without significant and costly emissions control upgrades. Staff has tracked this issue and worked closely with the National Association of Clean Water Agencies in developing the attached comment letter. Staff submitted comments on the proposed rulemaking on November 29, 2010 (Attachment A). EPA acknowledged that many of the comments submitted in response to the proposed emissions guidelines are significant and valid, and EPA requested that the U.S. District Court for the District of Columbia grant a six-month extension to July 2011 for promulgation of a final rule. The Court denied the request, instead ordering EPA to finalize the rule by February 21, 2011. Staff will return to Council after the final rule is published with a staff report discussing the implications of the final emissions rule for Palo Alto's sewage sludge incinerators.

On a longer time frame, staff is studying other alternatives for managing sewage sludge as part of the Water Quality Control Plant's Long Range Facilities Planning Process, which began in the fall of 2010. As directed by Council, staff will be evaluating energy recovery technologies during this process, which is scheduled for completion in 2012.

ATTACHMENTS:

- PA Comments EPA HQ-OAR-2009-0559_Final (PDF)

Prepared By: Karin North, Associate Engineer

Department Head: J. Michael Sartor, Interim Director

City Manager Approval:

James Keene, City Manager

City of Palo Alto
Public Works Department

November 29, 2010

VIA ELECTRONIC SUBMISSION

EPA Docket Center (EPA/DC)
United States Environmental Protection Agency (6102T)
Proposed Rulemaking – New Source Performance Standards and Emission Guidelines for Sewage Sludge Incinerators
Docket ID No. EPA-HQ-OAR-2009-0559
1200 Pennsylvania Avenue NW
Washington, DC 20460

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Regional Water Quality Control
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Re: City of Palo Alto Comments on the Proposed Rule on Standards of Performance fo New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units, 75 Fed. Reg. 63260 (October 14, 2010)

Dear Administrator Jackson:

The City of Palo Alto appreciates the opportunity to comment on the proposed Clean Air Act Standards for Sewage Sludge Incinerators (SSIs) referenced above. The City of Palo Alto operates the Regional Water Quality Control Plant (RWQCP), a wastewater treatment plant, for the East Palo Alto Sanitary District, Los Altos, Los Altos Hills, Mountain View, Palo Alto, and Stanford University and serves a sewer population of approximately 230,000. On average, the RWQCP treats 21.4 million gallons per day. Annually, we incinerate approximately 24,200 wet tons (6,400 dry tons) of sewage sludge solids onsite in a multiple hearth incinerator.

As set forth below, we believe that EPA has not demonstrated that the proposed "beyond-the-floor" mercury standard is achievable using available stack gas control technologies on multiple hearth incinerators. Further, we believe that source control, not end-of-pipe or stack treatment, is the most environmentally protective and cost effective strategy; it should be fully implemented in this case. The EPA-specified stack gas treatment will cost Palo Alto $7 million dollars (an EPA estimate) in an attempt to annually remove 10 pounds (our estimate) of mercury. EPA has significantly overestimated the amount of mercury emitted by SSIs resulting in a flawed cost/benefit analysis. The mercury cost/benefit analysis was further deficient in failing to include all the costs identified by EPA, by failing to include any financial benefits for mercury, and by inappropriately including particulate matter benefits. This can be remedied by using the data

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Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

provided in our detailed comments below and relying on source control rather than stack gas treatment for beyond-the-floor mercury control. *As you will see in our detailed comments, we find that the cost for Palo Alto to comply with EPA's proposed beyond-the-floor mercury standard is $436 million per ton of mercury removed.* Our calculated cost for multiple hearth incinerators nationwide to comply with the beyond-the-floor mercury standard is $188 million per ton of mercury removed. Source control for mercury, however, can achieve very significant mercury reductions at a cost of approximately $18 million per ton.

As an initial matter, we note that it is difficult if not impossible to adequately evaluate and comment on the Agency's beyond-the-floor determinations if the Maximum Achievable Control Technology (MACT) floors themselves were improperly set.[1] There are numerous deficiencies in the methods by which EPA reached its MACT floor determination within the proposed standards for sewage sludge incinerator units. As detailed in the attached comments submitted by the National Association of Clean Water Agencies (NACWA), these include, but are not limited to, the lack of sufficient data to establish an appropriate MACT floor and reliance on outdated information in EPA's analysis. The City endorses the comments submitted by NACWA and rather than repeat them here, our comments focus on our most significant concern, which is EPA's proposed beyond-the-floor mercury standard.

Furthermore, the City is cognizant of the fact that EPA is currently operating under a court ordered deadline to promulgate rules for sewage sludge incinerators. However, EPA is not under any legal obligation to go beyond the floor as part of its proposed rule. Under these time constraints, it may be difficult for EPA to gather sufficient supporting data to adequately inform the establishment of a MACT floor, and it is even more difficult to gather the additional supporting information and analysis needed for establishing a beyond-the-floor mercury standard as EPA has attempted to do under the proposed rule. Given the demonstrated deficiencies in EPA's mercury data, the failure to analyze factors required to be considered when adopting beyond-the-floor standards, and the abbreviated timeline imposed by court order, EPA should consider delaying the adoption of beyond-the-floor standards rather than attempting to incorporate them into this compressed process.

A. Beyond-the-Floor Stack Gas Treatment for Mercury Control Has Not Been Demonstrated to Be Effective for Multiple Hearth (MH) SSIs.

EPA acknowledges that there are no MH SSIs that utilize an activated carbon injection system. Yet, even though there are no proven examples that this technology will work on a multiple hearth incinerator, EPA assumed that this technology will consistently achieve an 88 percent reduction in mercury concentrations. EPA has not demonstrated that it is technologically feasible to meet the proposed standards via activated carbon injection on MH SSIs. EPA states in the rule,

[1] See *Northeast Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 955 (D.C. Cir. 2004)

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

> we believe activated carbon injection is applicable to both types of SSI combustors and do not know of any technical reason that activated carbon injection could not be applied to reduce Hg emissions at MH units. We are requesting comment and additional information on the feasibility of using this technology on MH units. (75 FR 63277)

The St. Paul Metro Wastewater Treatment Plant (WWTP) is the only Publicly Owned Treatment Works (POTW) in the United States that injects activated carbon into its exhaust gas system. St. Paul Metro WWTP's SSI is a fluidized bed incinerator, not a multiple hearth incinerator, and has experienced significant problems with its activated carbon injection system. The carbon is injected into a carbon contact chamber that is followed by a fabric filter. Incinerator exhaust gases entering the contact chamber are first cooled to roughly 350 F by passing through two heat exchangers and a boiler. Since start-up in 2005, the St. Paul Metro WWTP has experienced numerous abrasion and corrosion problems with its carbon system and fabric filter.

A review of EPA's Memorandum *Estimation of Baseline Emissions Rates from Existing Sewage Sludge Incinerators* indicates that there are no MH SSIs that use fabric filters. EPA's contention that none of the existing MH systems will need to install new particulate matter control equipment to meet the beyond the MACT floor mercury limit is not supported by the information in the record. Section D of this letter details the reasons why existing wet scrubbers that provide particulate control cannot be used in conjunction with activated carbon injection for mercury control. Palo Alto concurs with the EPA that activated carbon injection cannot be applied alone to control mercury emissions. Activated carbon injection requires particulate control devices to remove the carbon that is injected to adsorb the mercury. In addition to the lack of suitable particulate controls, there are several other factors that are critical for activated carbon injection to work. These include:

- Residence time
- Flow rates
- Operating temperatures
- Fuel/flue gas analysis
- Mercury levels and mercury speciation in the flue gas

The above process parameters will require, at minimum, a fabric filter, duct work changes, and a carbon reactor to provide the needed residence time. Fabric filters are very large and would require additional building space that most facilities do not have. In addition, exhaust gases from a multiple hearth incinerator are commonly in the range of 1000-1500 F, which is too high for adsorption to occur. An exhaust gas conditioner will be required to bring the temperature to 300-400 F. Palo Alto's engineering consultant has contacted several activated carbon injection system vendors and has confirmed that these vendors have had no experience with activated carbon injection in multiple hearth systems for mercury control.

At the Palo Alto RWQCP, a small site is available for any new facilities that may be required; however it is likely that the space is not adequate for all the new air pollution

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

control equipment. It is clear that Palo Alto would lose a critical roadway within the plant to install the needed air pollution control equipment. This space constraint is severe and will make it extremely difficult to receive chemical deliveries, modify existing infrastructure, and install future wastewater treatment technologies.

Additionally, the mercury concentration in the flue gas streams of SSIs is typically very low as compared to other incinerators such as municipal solid waste incinerators. At low concentrations of mercury in the flue gas, the adsorption process could become mass transfer limited and reduce the removal efficiency. This would require injection of larger quantities of carbon to remove a relatively small quantity of mercury. EPA has erred in not factoring in these variables, which will greatly increase operating costs, into the beyond-the-floor mercury calculations.

The beyond-the-floor mercury reduction of 88 percent for activated carbon injection in multiple hearth systems is arbitrary. While it may be true that data gathered from other combustion processes like coal-fired boilers indicate a mercury control efficiency range of 85-95 percent with activated carbon injection and subsequent particulate removal, the information in the record does not support a conclusion that MH SSIs can achieve significant mercury control to meet the beyond-the-floor limit. Combustion of coal results in flue gas containing relatively stable constant mercury concentrations. In contrast, SSIs combust biosolids with widely variable mercury concentrations, and mercury flue gas concentrations from SSIs are therefore quite variable. To illustrate this point, Figure 1 provides Palo Alto's monthly sludge cake mercury concentration data and triplicate flue gas mercury concentration data since 2001. In setting the MACT floor standards for mercury and other constituents, EPA used the Upper Prediction Limit (UPL) statistical method to account for variability in the data set. EPA's selection of 88 percent as a constant mercury reduction achievable using activated carbon injection fails to account for variability in the performance of activated carbon injection and the other air pollution equipment that will be needed in conjunction with activated carbon injection. Variability in the performance of the activated carbon injection process, coupled with varying mercury concentrations in flue gas upstream of activated carbon injection, may result in removal less than 88 percent and flue gas concentrations that exceed the proposed beyond-the-floor mercury standard.

EPA should not adopt a stringent mercury standard for MH SSIs based on untested assumptions that activated carbon injection technology can be successfully transferred to MH SSIs. Activated carbon injection has not yet been demonstrated to be a sustainable success in its single fluidized bed SSI application. As described above, activated carbon injection on MH SSIs has not been demonstrated and would require multiple new air pollution control components beyond the activated carbon injection itself. Given the multiple system components that would be required and the variability of the mercury concentrations in SSI flue gas, EPA should not assume that a constant 88 percent mercury removal is achievable by this technology.

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

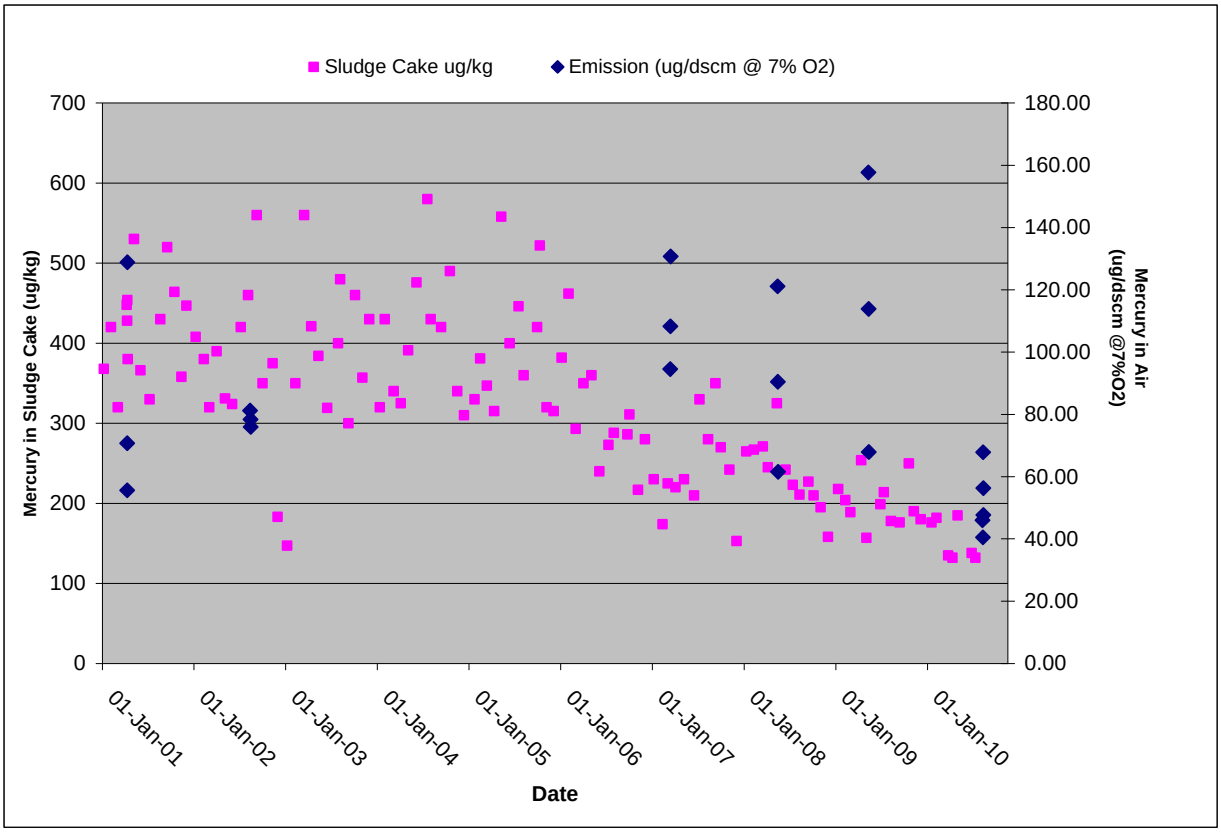

Figure 1: Variability of Palo Alto mercury air emissions compared to concentration of mercury in sludge cake

B. National Source Control is a More Desirable and Cost Effective Way to Achieve Beyond-the-Floor Mercury Reductions for SSIs.

In addition to being more economical, source control prevents environmental release of mercury. Stack gas treatment only transfers mercury from one medium to another. Mercury is an element that cannot be destroyed. Because of mercury's volatility, mercury readily moves from one media to another and it is extremely difficult to actually remove from the environment. Only source control truly prevents environmental release of mercury. We are concerned that the wet scrubbing described in EPA's control strategy analysis would simply transfer airborne mercury to the water stream. Further, attempting to take mercury to a landfill could result in ultimate volatilization and release.

EPA has previously recognized the desirability of using mercury source control for hazardous waste incinerators (EPA Docket HQ: OAR: 2004-0022). EPA should also identify source control as the appropriate technology for beyond-the-floor mercury control for SSIs.

Palo Alto and other communities have demonstrated the effectiveness of mercury source control. Palo Alto assisted in authoring California legislation that eliminated mercury in thermometers, certain switches, and novelty items (Chapter 656, Statutes of 2001). Palo Alto was one of the first California POTWs to require amalgam separators at dental

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facilities; Palo Alto developed training programs for dental office workers which are now in widespread use. Palo Alto has an ongoing drop-off program for all types of mercury-containing equipment including thermostats, thermometers, medical devices, switches, reagents, and medicines containing mercury. More work needs to be done and can be done to eliminate mercury in consumer and commercial products. Mercury has been placed in many products to retard microbial activity. Mercury is also in use in manufacturing seals, measuring devices, switches and reagents, which in turn lead to mercury incorporation in products such as chlorine. Mercury devices are still found in hospitals and laboratories. These uses can and should be eliminated. Palo Alto stands ready to work with the EPA and others on Toxic Substances Control Act regulations, new legislation, and other types of restrictions to eliminate mercury use.

When mercury is eliminated in consumer and commercial products, the mercury concentration in wastewater will drop substantially further. Palo Alto's stack gas emissions have already reached a new low of 0.051 mg/dscm, 70 percent below EPA's proposed MACT-floor level. EPA should now estimate the mercury level that can be achieved in sewage sludge incinerator stack gas after implementation of full source control. This is the appropriate and best way to develop a beyond-the-floor mercury limit.

Details of the Palo Alto Mercury Program can be found in its "2010 Clean Bay Plan." The appropriate chapter of the Plan is an attachment to these comments. Data showing mercury reductions achieved in Palo Alto to date using source control are summarized in Figure 2 below. Palo Alto has achieved a 63 percent reduction since the 2001-2004 timeframe. The significant decrease since 2004 is attributable to Palo Alto's dental amalgam program, which required dental offices to install amalgam separators in 2005. Mercury concentrations in Palo Alto's sludge cake continue to decrease. Other POTWs that have implemented dental amalgam programs that mandate amalgam separators have observed comparable reductions in biosolids mercury concentrations. National source control programs, as opposed to local government programs, will now be needed to continue the work begun by Palo Alto and others. Product and manufacturing restrictions will be needed and are best done by EPA.

Palo Alto has estimated the cost effectiveness of beyond-the-floor mercury reductions associated with its dental amalgam program. Our calculation concludes that the total program cost is approximately $18 million per ton of mercury removed. The figure accounts for the amalgam separator capital and annual maintenance costs for the Palo Alto dental offices and Palo Alto staff time, compared to the actual measured reduction in the mass of mercury discharged to the plant. A Technical Memorandum providing the estimate is attached. This $18 million per ton figure is less than one tenth of our estimate of the cost of stack gas treatment (Table 3), and is far more certain of environmental success.

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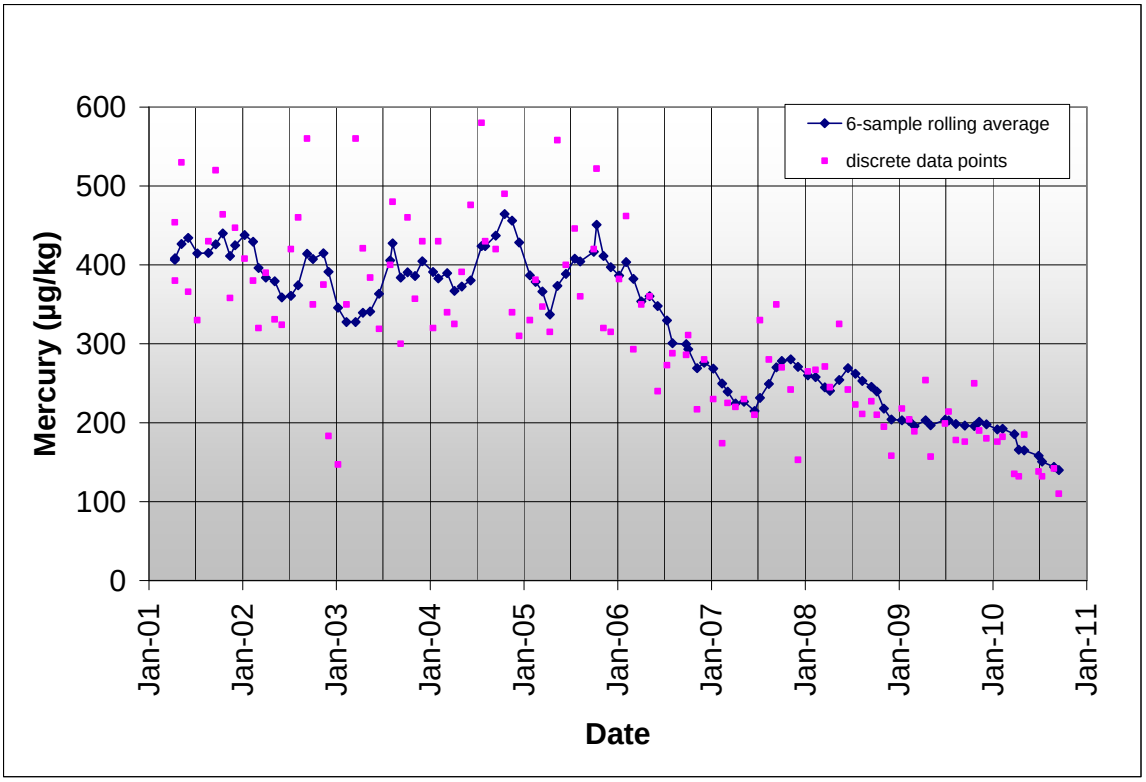

Figure 2: Summary of mercury concentrations in Palo Alto sludge cake' Dental offices were required to install amalgam separators 2005. *(Average mercury concentration in sludge cake before amalgam separators was 397 µg/kg. Current 6-month average mercury concentration in sludge cake is 148 µg/kg, more than a 60 percent reduction.)*

C. EPA Overestimated Baseline Emissions for Mercury

The proposed rule incorrectly estimates that the 218 existing SSIs emit 3.1 tons of mercury per year to the atmosphere. In 2009 the Water Environment Research Foundation released a report titled *Minimizing Mercury Emissions in Biosolids Incinerators*. The report conservatively determined that SSIs collectively emit less than one ton of mercury to the atmosphere each year.

After careful review of the spreadsheets in the attachments to the proposed rule, we found that EPA grossly overestimated the baseline emissions for mercury. EPA's baseline mercury emissions have been overestimated both for facilities that responded to EPA's Information Collection Request (ICR) survey and for facilities, such as Palo Alto, for which data from the ICR facilities was used to develop estimates. Central Contra Costa Sanitation District (CCCSD) is one of the nine facilities that responded to EPA's ICR. We have reviewed both EPA's emission calculation as well as the actual source test data from CCCSD's December 2009 source test and have concluded that ERG, EPA's consultant for the proposed rule, overestimated CCCSD's mercury emissions by 77 percent. ERG multiplied concentration data corrected to 7 percent O_2 with uncorrected flue gas flow rate data. For CCCSD, the flue gas flow during the source test contained 13 percent O_2. The proper way to calculate emissions is by either (a) multiplying concentration data corrected to 7 percent O_2 by flue gas flow rate data corrected to 7

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percent O_2, or (b) multiplying raw (uncorrected) concentration data by uncorrected flue gas flow rate data. By using corrected concentration and uncorrected flue gas flow rate data, ERG overestimated CCCSD emissions by 77 percent. A detailed spreadsheet illustrating this error is included in CCCSD's comment letter.

ERG's error in using uncorrected flue gas flow rate data with corrected mercury concentrations is not limited to the facilities that responded to the ICR, because the sludge feed rates and flue gas flow rates from these facilities were used to develop "flow rate factors" in dscfm/dry tons per hour of sludge that were then used in the subsequent calculation of baseline estimates for the facilities that did not receive the ICR. Therefore, it appears that the mercury baseline emissions for all SSIs were calculated using uncorrected flue gas flow rate data and concentration data corrected to 7 percent O_2.

In estimating baseline mercury emissions from Palo Alto's SSIs, the flow rate factors that were developed resulted in a flue gas flow rate almost 50 percent greater than the actual measured flowrate. This inflated flowrate was then multiplied by EPA's assumed concentration of 0.103 mg/dscm at 7% O_2, introducing the error of using uncorrected flue gas flow rate with corrected concentration. Additionally, Palo Alto's measured mercury concentration is about half of EPA's assumed concentration. These factors combine to result in a baseline mercury emissions estimate for Palo Alto that is about six times higher than the actual emissions, as shown in Table 1 below.

Table 1: Comparison of EPA's annual baseline estimate for mercury to Palo Alto's measured emissions

Emission Estimates	Flow rate (dscfm)	Operating Hours	Concentration (mg/dscm)	Concentration (mg/dscm at 7% O2)	Baseline (lbs/year)	Baseline (tons/ year)
EPA Estimate	19,458	4,200 per incinerator; total 8,400	NA	0.103	63.2	0.0316
Palo Alto Stack Testing	13,380	8,400	0.024	0.051	10.08	0.00504

** EPA assumed that we operate incinerators half of the year; therefore the EPA estimate for each incinerator was summed for an annual number.*

Assuming similar errors on baseline emissions across the board, USEPA and ERG have significantly overstated the baseline mercury emissions from SSIs. EPA must reevaluate baseline emissions, the MACT floor assessment, and the beyond the MACT floor assessment.

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D. Activated Carbon Injection / Wet Scrubber Will Not Achieve Substantial Mercury Reductions to the Environment

In the preamble, EPA states:

> …it is important to note that activated carbon injection cannot be applied alone. It requires particulate control devices to remove the carbon that is injected to adsorb the Hg. Based on our available data, all of these units have some type of PM control device in place so they would not need to install new PM control equipment. (75 FR 63277)

We are deeply concerned with EPA's incorrect assumption that MH SSIs would not need to install new particulate matter control equipment if they already had a wet scrubber in place. Wet scrubbers return the mercury to the water stream and fail to prevent release to the environment. Mercury readily cycles through ecosystems from water to air. As shown in Figure 3 below, 98.2 percent of Palo Alto's mercury mass loading is emitted to the atmosphere via the incinerator stack and 1.7 percent is discharged to San Francisco Bay via the plant's effluent. Palo Alto's lowest mercury discharge limit for the San Francisco Bay discharge is 11 ng/L and our average effluent concentration is 2.5 ng/L. If activated carbon was injected and the particles were collected through the wet scrubber we would soon be in violation of our NPDES discharge permit. EPA's statement that PM control is not required is not accurate; at a minimum, it is necessary to install fabric filter after a carbon injection system. Activated carbon injection in conjunction with wet scrubbers simply will not work.

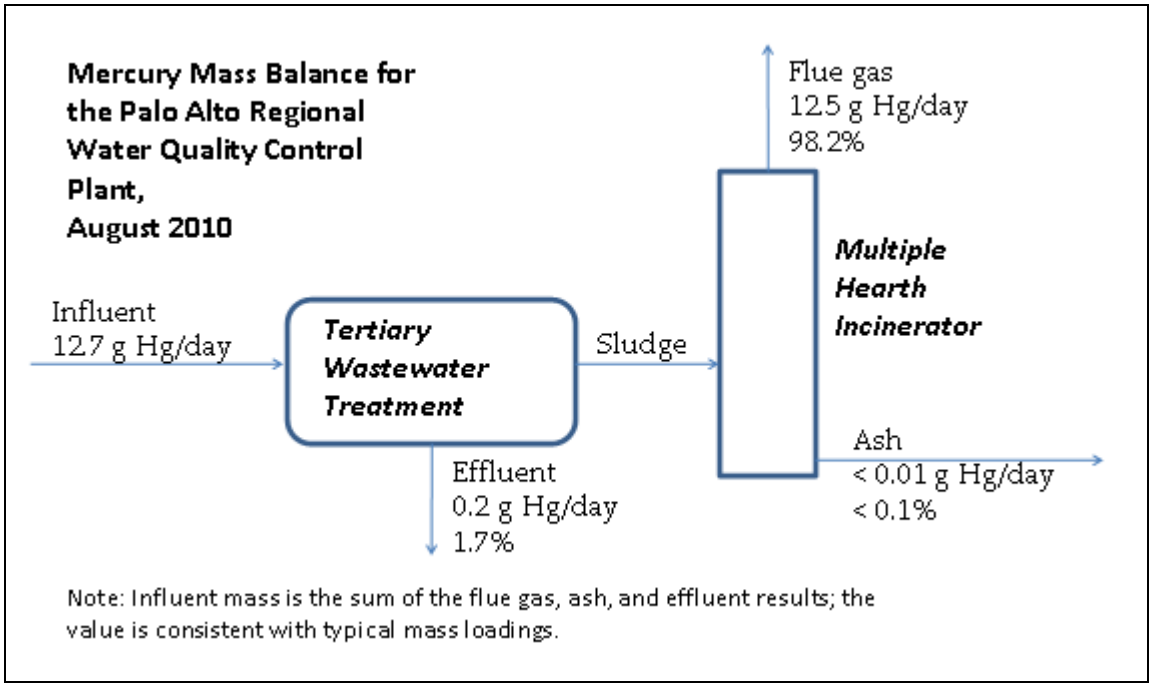

Figure 3: Mercury mass balance for Palo Alto based on August 2010 flue gas, ash, and effluent testing

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E. EPA Failed to Include all the Costs Associated with Controlling Mercury Beyond-the-Floor for Multiple Hearth Incinerators

MH SSIs utilizing activated carbon injection systems, at a minimum, will have to install carbon contact chambers and fabric filters. In the proposed rule EPA states that

> The incremental cost of adding activated carbon injection to all MH units is estimated to be $12 million per ton of pollutants (Hg and CDD/CDF) removed (or $6,000 per pound of Hg removed). However, it is important to note that activated carbon injection cannot be applied alone. It requires particulate control devices to remove the carbon that is injected to adsorb the Hg. Based on our available data, all of these units have some type of PM control device in place so they would not need to install new PM control equipment. (75 FR 63277)

We disagree with EPA's conclusion, as discussed in Section D. Palo Alto will need to install, at a minimum, an activated carbon injection system and a fabric filter. A carbon contact chamber will likely also be required. Therefore, we recalculated the cost effectiveness associated with achieving beyond-the-floor control of mercury. Our cost calculation includes EPA's estimated costs for Palo Alto to install an activated carbon injection system and a fabric filter. EPA's estimated costs are overly conservative because they do not include a carbon contact chamber or any additional pollution control equipment that may be required. As discussed in Section C, EPA overestimated the mercury emissions from Palo Alto's SSIs; therefore, our cost calculation uses Palo Alto's actual measured mercury emissions. EPA's cost effectiveness calculation and our calculation as described above are both provided in Table 2. Our cost effectiveness calculation indicates that Palo Alto's cost to control the lower than anticipated amount of mercury using activated carbon injection and fabric filter is a staggering $436 million per ton, far greater than the $12 million per ton that is calculated using EPA's erroneous assumptions. Again, even this $436 million per ton figure is conservative given that additional air pollution control equipment will likely be needed.

In addition to evaluating the cost effectiveness specific to Palo Alto, we similarly recalculated the cost effectiveness for all MH SSIs to include EPA's estimated costs for an activated carbon injection system and a fabric filter in conjunction with the WERF baseline emissions estimate of 0.9 tons per year. This calculation, as well as EPA's cost effectiveness calculation for MH SSIs, is presented in Table 3. EPA's assumption that fabric filters are not necessary is incorrect; therefore EPA needs to include these additional costs in its cost analyses for beyond-the-floor control of mercury. The proposed rule estimated the incremental cost of adding activated carbon injection to all multiple hearth incinerators to be $12 million per ton of mercury removed. When the WERF baseline mercury emissions are used and both activated carbon injection and fabric filters are included in the calculations, the cost effectiveness weakens to $188 million per ton. Even the $188 million dollar per ton figure is conservative, given that additional air pollution control equipment will likely be needed.

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Table 2: Summary of costs for Palo Alto associated with going beyond-the-floor for mercury control.

Palo Alto Multiple Hearth Incinerators		Cost		Baseline Emissions and Incremental Emission Reductions (tons/year)			
		TCI ($)	TAC ($/year)	EPA Estimate		Palo Alto Estimate [a]	
				Hg (tons)	Incremental Cost-effectiveness ($/ton)	Hg (tons)	Incremental Cost-effectiveness ($/ton)
Baseline Emissions		-	-	0.0316	-	0.00504	-
MACT Floor Total Cost and Emission Reductions				0	-	-	-
Additional Costs and Emission Reductions by Control	Fabric Filter	$6,877,542	$1,593,646	-	-	0.00444	$358,929,279
	Afterburner Retrofit	$2,513,280	$714,328	-	-	-	-
	Packed Bed Scrubber	$3,720,948	$777,212	-	-	-	-
	Activated Carbon Injection	$80,626	$343,366	0.0278	$12,351,295	0.00444	$77,334,685
Total cost per ton					**$12,351,295**		**$436,263,964**

[a.] Palo Alto's estimate uses baseline emissions from actual stack testing and includes the EPA cost estimates for fabric filter and activated carbon injection.

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Table 3: Summary of multiple cost estimates for multiple hearth incinerators to achieve beyond-the-floor mercury control.

Multiple Hearth Incinerators Nationwide		Cost ($)		Baseline Emissions and Incremental Emission Reductions (tons/year)			
				EPA Estimate		Palo Alto Estimate [a]	
		TCI	TAC	Hg (tons)	Incremental Cost-effectiveness ($/ton)	Hg (tons)	Incremental Cost-effectiveness ($/ton)
Baseline Emissions		-	-	3.0536	-	0.9	-
MACT Floor Total Cost and Emission Reductions		$131,764,712	$40,327,113	0.0315	-	0.0093 [b]	-
Additional Costs and Emission Reductions by Control	Fabric Filter	$478,373,914	$115,254,825	0	-	0.7838	$147,046,217
	Afterburner Retrofit	$145,514,140	$43,193,966	0	-	-	-
	Packed Bed Scrubber	$258,596,495	$54,863,534	0	-	-	-
	Activated Carbon Injection	$6,230,844	$32,335,212	2.6235	$12,325,219	0.7838	$41,254,417
Total cost per ton					**$12,325,219**		**$188,300,634**

a. Palo Alto's estimate uses the WERF estimate of 0.69 tons for baseline emissions and includes the EPA cost estimates for fabric filter and activated carbon injection.

b. Assumes MACT floor reduction from the baseline to be some percentage as the EPA estimate (1.03%)

F. EPA Failed to Analyze the Benefits of Source Control When Setting the Beyond-the-Floor Standard for Mercury

Section B of this letter discussed the effectiveness of mercury source control and recommended that EPA establish beyond-the-floor mercury standards based on the reductions that are achievable through source control. Source control is also integral to EPA's consideration of beyond-the-floor mercury standards utilizing activated carbon injection because mercury source control efforts already being planned will lead to reductions regardless of whether EPA establishes beyond-the-floor standards based on source control. These source control efforts will have a significant negative impact on the cost effectiveness of a beyond-the-floor mercury standard based on activated carbon injection technology.

EPA's Office of Water recently announced that it intends to propose a rule in 2011 addressing discharges of mercury from dental facilities. The Office of Water states that the rule is expected to be finalized in 2012, and that the focus will be on amalgam separators. As discussed previously in Section B, source control of dental amalgam mercury is very effective at reducing the amount of mercury entering wastewater treatment plants. Palo Alto has observed a 60 percent reduction in the concentration of mercury in its sludge cake since amalgam separators were required in 2005, and mercury emissions from Palo Alto's SSIs have similarly declined.

Once amalgam separators are in place at dental offices nationwide, consistent with the anticipated Office of Water rulemaking, a reduction in baseline mercury emissions from SSIs of approximately 60 percent can be expected. Table 4 provides a cost effectiveness calculation for EPA's proposed beyond-the-floor mercury reductions for MH SSIs assuming that baseline mercury emissions have been reduced by 60 percent through source control programs. The calculation includes EPA's cost estimates for activated carbon injection and fabric filters, and uses the WERF baseline estimate of 0.9 tons per year reduced by 60 percent. The calculation is analogous to the one provided in Table 3, except that the assumed 60 percent reduction from source control results in a smaller removal of mercury through the addition of activated carbon injection and fabric filters. Once it is assumed that the WERF baseline estimate of 0.9 tons per year is reduced by 60 percent due to source control, the cost effectiveness to remove 88 percent of the remaining mercury through activated carbon injection and fabric filters is $470 million per ton of mercury removed.

In previous rulemakings for hazardous waste and boiler regulations, EPA considered source control during the beyond-the-floor analysis. We encourage EPA to use similar analysis in its development of beyond-the-floor standards for SSIs.

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Table 4: Summary of cost estimates to for multiple hearth incinerators to achieve beyond-the-floor reductions of mercury after implementation of a national dental amalgam program. Based on Palo Alto's dental amalgam results EPA can assume a 60 percent reduction in the amount of mercury entering the wastewater treatment plants.

Multiple Hearth Incinerators		Cost ($)		Baseline Emissions and Incremental Emission Reductions (tons/year)			
				Updated EPA Estimate (using 60 percent reduction in baseline)		Palo Alto Estimate	
		TCI	TAC	Hg	Incremental Cost-effectiveness ($/ton)	Hg	Incremental Cost-effectiveness ($/ton)
Baseline Emissions		-	-	1.2215 [a]	-	0.36 [b]	-
MACT Floor Total Cost and Emission Reductions		$131,764,712	$40,327,113	0.0126 [c]	-	0.0037 [c]	-
Additional Costs and Emission Reductions by Control	Fabric Filter	$478,373,914	$115,254,825	0	-	0.3135	$367,638,995
	Afterburner Retrofit	$145,514,140	$43,193,966	0	-	-	-
	Packed Bed Scrubber	$258,596,495	$54,863,534	0	-	-	-
	Activated Carbon Injection	$6,230,844	$32,335,212	1.0638	$30,395,950	0.3135	$103,142,622
			Total cost per ton		**$30,395,950**		**$470,781,617**

[a.] Baseline emission is EPA estimate baseline of 3.0536 tons reduced by 60 percent.
[b.] Baseline emission is WERF baseline of 0.9 tons reduced by 60 percent
[c.] Assumes MACT floor reduction to be the same percentage as the EPA estimate in Table 3 (1.03%)

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G. EPA Failed to Identify Any Mercury Benefits in the Proposed Mercury Beyond-The-Floor Standard

EPA fails to identify or quantify any benefits resulting from mercury reductions in its cost/benefit analysis for the mercury beyond-the-floor proposed limits. It appears that benefits resulting from reductions in emissions of particulate matter benefits were considered instead. Yet the basis for requiring the beyond-the-floor technology was to control mercury, not to reduce particulate matter. It is not appropriate to use particulate matter benefits in a cost/benefit analysis that is examining the benefits of mercury reductions as compared to the cost of removal. As noted previously, the proposed beyond-the-floor control technologies will not necessarily result in actual mercury reduction benefits because mercury readily moves from one media to another and is extremely difficult to actually remove from the environment. An analysis of reductions in particulate matter cannot serve as a surrogate for actual analysis of the benefits of mercury reduction under various alternatives, including source control. EPA's failure to identify actual mercury benefits in the beyond-the-floor standard renders its analysis deficient in this respect.

H. EPA Failed to Adequately Consider Increased Energy Requirements When Setting the Beyond-the-Floor Standard

EPA acknowledges that it must consider energy requirements when considering setting beyond-the-floor standards, and is under a statutory obligation to do so.[2] However, the analysis found within the document entitled "Secondary Impacts of Control Options for the Sewage Sludge Incineration Source Category" provides no indication that EPA has actually analyzed and considered energy requirements related to the proposed rule. EPA guidance indicates that when examining energy impacts of the proposed beyond-the-floor standard, EPA should address energy use in terms of penalties or benefits associated with a control system and the direct effects of such energy use on the facility. If such benefits or penalties exist, they should be quantified to the extent possible. While the City of Palo Alto does not necessarily agree that the analysis is limited to these considerations, at a minimum EPA should consider potential benefits and penalties in some way when considering a beyond-the-floor standard. We have reviewed numerous documents made available by the EPA in support of the proposed rule, including the "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units." and "Secondary Impacts of Control Options for the Sewage Sludge Incineration Source Category." These documents fail to adequately discuss increased energy requirements associated with the control mechanisms proposed to meet the beyond-the-floor mercury standard. Increased energy use will occur through the addition of a carbon injection system and a fabric filter (bag house), as would be required under the beyond-the-floor standards associated with Option 2, yet the energy use shown for the "MACT

[2] See 75 Fed. Reg. 63275 ("EPA may adopt emission limitations and requirements that are more stringent than the MACT floor (i.e., beyond-the-floor). Unlike the MACT floor methodology, EPA must consider costs, nonair quality health and environmental impacts and energy requirements when considering beyond-the-floor standards.")

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Floor Only" option is identical to the energy use shown for the other two options. The City can only assume that EPA failed to consider or conduct any analysis for this increased energy use as direct consequence of the proposed control system. EPA must examine these increased energy requirements before establishing a beyond-the-floor mercury requirement for sewage sludge incinerators.

I. EPA Failed to Adequately Consider Non-Air Quality Health and Environmental Impacts When Setting the Beyond-the-Floor Standard

EPA acknowledges that it has a statutory obligation to consider non-air quality health and environmental impacts when considering beyond-the-floor standards. However, there is no indication that EPA has analyzed the non-air quality health and environmental impacts in setting the proposed beyond-the-floor standard for mercury. EPA guidance indicates that a consideration of environmental impacts should concentrate on collateral environmental impacts due to control of emissions of the pollutant in question, such as solid or hazardous waste generation and discharges of polluted water from a control device. At a minimum, EPA is required to evaluate any health and environmental impacts that may result directly or indirectly from measures that will achieve the emission reductions.[3]

As noted in other sections of these comments, EPA has failed to consider a number of significant environmental impacts resulting from the chosen method of mercury control. For example, the proposed wet scrubber control mechanism merely returns mercury to the water stream and fails to prevent release to the environment. As a direct result of implementing the proposed technology, increased levels of mercury will be shifted to water, clearly a non-air quality environmental impact. The beyond-the-floor analysis and other supporting materials do not address this probable effect, nor do they address whether and why release of mercury with effluent discharged to surface waters is a superior alternative to air release with respect to environmental goals. In addition, attempting to dispose of mercury in landfills, as would be required in a number of locations under the proposed rule, could result in ultimate volatilization and release of the pollutant. This is a potentially significant environmental impact. While the impact on landfills was addressed as an alternative and considered when performing the cost-benefit analysis, it was only examined through that lens and failed to consider the environmental impacts and consequences of that option. Increased landfilling could potentially have additional non-air quality environmental impacts that were not considered by EPA. The beyond-the-floor analysis also fails to consider the potential hazardous waste generation that may result from the proposed rule. EPA's document titled "Secondary Impacts of Control Options for the Sewage Sludge Incineration Source Category" estimates that greater than 10,000 tons per year of activated carbon would be used by the activated carbon injections systems that would be needed to comply with the beyond-the-floor mercury standard. Given its use in adsorbing mercury, this activated carbon and associated fly ash are likely to require management as hazardous waste. EPA should

[3] See *Sierra Club v. EPA*, 353 F.3d 976, 990 (D.C. Cir. 2004)

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examine these environmental impacts and others before establishing a beyond-the-floor mercury requirement for sewage sludge incinerators.

J. Landfilling Undigested Biosolids is Not an Option in California, and Anaerobic Digestion is Not an Economically Preferable Option to Incinerator Upgrades

In the proposed rule, EPA assumes that small POTWs that currently incinerate biosolids will decide that it is more economical to simply landfill their biosolids, and will abandon their incineration facilities. Although the proposed rule did not suggest that larger POTWs such as Palo Alto would switch to landfilling, it is important to point out the infeasibility of landfilling biosolids as an alternative to incineration for Palo Alto.

In California, the Integrated Waste Management Act of 1989 (AB 939) established solid waste diversion requirements for local jurisdictions. Palo Alto must continue to reduce the volume of its solid waste that is landfilled, and has implemented an extensive and ongoing *Zero Waste Program* to continue this progress. Landfilling of undigested biosolids as an alternative to incineration would prevent Palo Alto from meeting the diversion requirements. Additionally, most California landfills, including Palo Alto's own landfill, are unable to accept wastes with a solids content less than 50 percent. While biosolids are currently used in California landfills for alternative daily cover this is not a sustainable practice, in that it is really no different than landfill disposal.

Even if Palo Alto were to engage in landfilling biosolids, digestion would be required first. Palo Alto has recently developed a planning level estimate of costs for building anaerobic digestion facilities that could replace incineration of biosolids. The total project capital cost was estimated to be $42.2 million, with an annualized project cost of $2.7 million. Total annual operating cost was estimated to be $0.42 million not including ultimate disposal costs. Clearly, anaerobic digestion of Palo Alto's biosolids is not an economically attractive option that could easily be implemented in lieu of complying with activated carbon injection system based beyond-the-floor mercury standards. Palo Alto will almost certainly not be able to switch to landfilling for all of the reasons given above.

K. New Source Performance Standards Will Limit Future Upgrades to Palo Alto's Incinerator; New Source Performance Standards Should be Separately Developed for Multiple Hearth and Fluidized Bed SSIs

The proposed performance standards for new incinerators are based on a very limited amount of air emissions test data obtained from three POTWs utilizing FB SSIs (i.e., St. Paul Metro Plant; Ypsilanti, MI WWTP; and the Greensboro, NC T.Z. Osborne WWTP). Under the Information Collection Request, EPA obtained air emissions data for four of the five SSIs located at these plants. In developing the proposed new source performance standards, EPA used individual one-hour test runs instead of an average of three one-hour test runs. This methodology contradicts the test methods, and is not valid. The average of three one-hour tests is more representative of SSI steady state operations than any individual one-hour test. Sludge variability, operational variances, and seasonal temperatures have not been factored into the criteria; therefore, the same unit may not

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meet the limit in future tests. EPA must collect sufficient data to allow the recalculation of the new source performance standards using averages of three tests, as is the intention of the test methods.

EPA established the proposed new source performance limits by taking the lowest number from the best performing units. EPA must realize that carbon monoxide and oxide of nitrogen emissions from SSIs are inversely proportional. As a result, by selecting a carbon monoxide limit from one SSI and an oxides of nitrogen limit from a different SSI, EPA is establishing limits that no new SSI will be able to meet.

EPA's approach would discourage incremental improvements at MH units because these improvements would trigger FB-based emission limits that cannot be met. EPA has acknowledged the design differences that make meeting these limits impossible, but has provided no pathway by which modified or reconstructed MH incinerator units may achieve compliance. EPA must retain the separate MH and FB incinerator subcategories for both new and existing sources to avoid subjecting newly-constructed or modified MH SSIs to unachievable emission standards. Establishing separate emission limits for new MH and FB incinerators will also preserve incentives for innovation and for improvements in the operation of MH incinerators currently in use.

L. Annual Air Emissions Testing Requirements

The proposed rule requires annual compliance testing of each of the 218 sewage sludge incinerators at a cost of $61,000 per unit, in addition to the $91,500 per unit for initial testing. While this cost is accurate, Palo Alto disagrees with the need for annual compliance testing on each incinerator. Palo Alto has two identical incinerators and only operates one incinerator per year. It will be very costly to place an identical, non-operating incinerator into service simply for an air emissions test. Palo Alto recommends that if EPA moves forward with the proposed emissions guidelines that EPA take the following approach: after the initial testing of each incinerator, subsequent testing be limited to once every five years.

M. Certain Proposed Operating Standards are Neither Necessary Nor Achievable

EPA has proposed a number of operating standards for sewage sludge incinerators that are not practical, achievable, or necessary, as follows:

1. Sludge moisture content

   EPA has proposed that the sludge moisture content be measured on a daily basis, and that it be limited to a range from 10 percent less than to 10 percent greater than the average sludge moisture content during the most recent air emissions test. The example given is that if the moisture content during the most recent test was 20 percent, then the moisture content of the sewage sludge would have to be within 18 and 22 percent every day.

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This is a requirement that is impossible to continuously meet, since the moisture content of the sewage sludge varies. The variability of the moisture content does not impact air emissions, and is therefore not an important factor on which to place limitations.

2. Minimum Scrubber Pressure Drops, Scrubber Flow Rates, Scrubber Liquor pH, and Combustion Temperatures.

   EPA is proposing that the minimum pressure drop across each wet scrubber, the minimum scrubber liquor flow rate, the minimum scrubber liquor pH, and the minimum combustion temperature (or the minimum afterburner temperature) shall be calculated at 90% of the value determined during the most recent air emissions test.

   These minimums will be impossible to continuously meet and contradict the operating parameters contained in 40 CFR Part 60, Subpart O and 40 CFR Part 503.

3. Maximum Feed Rate

   EPA is proposing that the maximum dry sludge feed rate shall be calculated at 110 percent of the average dry feed rate during the most recent performance test.

   EPA must determine at which feed rate each SSI needs to be operated during the test. If the test feed rate is at the SSI's normal feed rate, then the proposed maximum feed rate will be exceeded on a regular basis. The only way that this operational standard will not be exceeded is if the test feed rate is at or near the maximum permitted capacity.

As a result, Palo Alto requests that the proposed operating parameter section of the rule be revised.

N. The CEMS Averaging Times Should Remain as 24-Hour Block Averages

EPA requested comments on changing the averaging times for all CEMS and CASS from 24-hour block averages to 12-hour rolling averages to be consistent with the averaging times of the PS tests. Palo Alto strongly recommends that EPA retain the current 24-hour block averages because 24-hour block averages are more accommodating of the significant variability in the sludge cake feed to SSIs. Additionally, 40CFR503 requirements for SSIs require 24-hour averages. Changing the averaging period to 12 hours under this rule would increase the administrative burden on SSI operators by requiring calculation and reporting in two different formats.

In conclusion, EPA has not demonstrated that the proposed beyond-the-floor requirements for mercury are achievable. Nor has EPA correctly identified the costs and benefits of these controls. Most importantly, EPA has not fairly considered the most cost efficient and more environmentally sound options for source control. Clearly it is source

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control, not stack gas treatment which should be used for any beyond-the-floor reductions which are needed. Palo Alto stands ready to work with EPA in providing any additional information that would assist in developing beyond-the-floor standards for mercury that use source control. Given the extensive revisions to the proposed rule that we believe are demonstrated to be necessary by our comments and those comments submitted by NACWA and others, we respectfully recommend that EPA seek an extension to allow additional time before promulgation of a final rule.

Please do not hesitate to contact Brad Eggleston (Environmental Control Program Manager) at 650-329-2104, or by e-mail (brad.eggleston@cityofpaloalto.org) if you have any questions or require additional information concerning Palo Alto's comments.

Respectfully,

James S. Allen
Manager, Water Quality Control Plant
Public Works Department

FOR:
Phil Bobel
Manager, Environmental Compliance
Public Works Department

Enclosure: National Association of Clean Water Agencies Comment Letter
2010 Clean Bay Plan: Mercury Chapter
Technical Memorandum: Dental Amalgam Memo

cc: Chris Hornback, NACWA, Director of Regulatory Affairs
Amy Hambrick, US EPA
Amy Bartell, City of Palo Alto
Mike Sartor, City of Palo Alto

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NACWA
A Clear Commitment to America's Waters

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EXECUTIVE DIRECTOR
Ken Kirk

November 29, 2010

VIA ELECTRONIC SUBMISSION

EPA Docket Center (EPA/DC)
United States Environmental Protection Agency (6102T)
Proposed Rulemaking – New Source Performance Standards and Emission Guidelines for Sewage Sludge Incinerators
Docket ID No. EPA-HQ-OAR-2009-0559
1200 Pennsylvania Avenue NW
Washington, DC 20460
Via Electronic Mail: *a-and-r-docket@epa.gov*

Re: Comments of the National Association of Clean Water Agencies on the Proposed Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units, 75 Fed. Reg. 63260 (October 14, 2010)

The National Association of Clean Water Agencies ("NACWA") appreciates the opportunity to comment on the United States Environmental Protection Agency's ("EPA" or "Agency") request for public comments on the *Proposed Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units*, 75 Fed. Reg. 63260 (October 14, 2010) ("Proposed Rule") under § 129 of the Clean Air Act ("CAA"). NACWA represents the interests of nearly 300 of the nation's publicly owned treatment works ("POTWs"), which collectively serve the majority of the sewered population of the United States, including approximately half of the sewage sludge incinerators that will be affected by this rulemaking. For over 40 years, NACWA has maintained a leadership role in legal and policy issues affecting the public agencies responsible for cleaning the nation's wastewater, and has been at the forefront of the development and implementation of scientifically-based, technically-sound and cost-effective environmental programs for protecting public and ecosystem health.

EPA's Proposed Rule, if finalized, would have a significant negative impact on the NACWA members that use incineration to responsibly manage the thousands of tons of sewage sludge generated on a daily basis from the treatment of the nation's wastewater. Although wastewater treatment agencies rely on having multiple options for managing their sludge, the list of available options has slowly

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shrunk over the years for many communities. EPA's proposed action, if finalized without significant revision, would severely limit the use of incineration – which is currently used to manage approximately a fifth of the sludge generated annually in the U.S. – into the future and eviscerate progress toward a new, viable source of renewable energy for the country. In fact, the extremely stringent proposed new source performance standards could effectively eliminate the construction of new sewage sludge incinerators ("SSIs"), with no current incinerator manufacturers indicating that they will be able to meet the new limits.

As discussed in more detail below, NACWA believes EPA should abandon this rulemaking and return to its previous plan to regulate SSIs under § 112 of the CAA. The technical corrections discussed in the comments below are warranted under any future rulemaking effort, whether pursuant to § 129 or § 112. NACWA encourages EPA to take the time now to develop a more thorough and accurate understanding of this sector. NACWA's major concerns and recommendations include:

1. EPA should recognize that the CAA requires that POTWs (including their SSIs) be regulated under § 112 and not under § 129.

NACWA urges EPA not to proceed with the promulgation of standards for SSIs under CAA § 129 and instead to return to EPA's earlier approach of addressing SSIs under CAA § 112. Congress directed that POTWs be regulated under § 112, and this includes the incinerators that POTWs operate to manage their sludge. EPA also faces legal obstacles to using § 129 to regulate SSIs because they do not fit the statutory definition of "solid waste incineration unit." As discussed more completely below, EPA faces a more defensible path under § 112 for regulating POTW-operated incinerators.

2. EPA should acknowledge the value of incineration as a local option for residuals management and as an emerging renewable energy source for generating electricity and steam.

Under the Clean Water Act ("CWA"), Congress reserved residuals management decisions to the local POTWs because of their unique ability to balance competing interests and make sound cost determinations on a site-specific basis. *See* CWA § 405(e) ("The determination of the manner of disposal or use of sludge is a local determination."). NACWA has long argued that local communities must have the flexibility to choose the residual management approach that works best for them. NACWA's members have for decades been balancing the complex concerns of local communities over residual management options.

As examples, The Metropolitan District's (Hartford, Connecticut) nearest landfill option is 375 miles away so its choice to incinerate results in less air pollutant emissions than the trucks would emit while transporting its sludge to landfill. The small community of Edmonds, Washington chose incineration because it is 270 miles from the closest landfill and Washington State may not allow that landfill to take sewage sludge. The Northeast Ohio Regional Sewer District ("NEORSD") recently revisited its choice to incinerate and concluded that it was the "greenest" option available for managing residuals. NEORSD is proceeding with a project to install new fluidized bed incinerators that will generate enough electricity to power 1800 homes, will minimize odors, and will avoid the extra fuel and air emissions from 8-12 trucks per hour

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transporting sludge through its surrounding communities to a landfill that is 65 miles away. As Congress has recognized and affirmed, sewage sludge management is a responsibility uniquely suited for local control, where incineration is often the best and cleanest option for residuals management.

The Proposed Rule oversimplifies the decision making process involved in choosing a management option for sewage sludge and, as currently drafted, will make incineration a less viable option for all communities in the future.

3. EPA's rule writers should be given the time, data, and resources to understand POTWs and SSIs sufficiently to regulate them in an appropriate manner within the bounds of existing legal requirements.

EPA's rush to promulgate this rule has been done at the expense of EPA's understanding of POTWs, the nature and amount of sewage sludge that they manage, and the emissions that these incinerators actually generate. Mistakes in the Proposed Rule reveal the depth of this misunderstanding and necessitate fundamental changes to the rule and the analysis that EPA uses to support it. NACWA has asked repeatedly for EPA to slow the rulemaking pace to allow for a more reasoned approach. We ask that EPA withdraw the Proposed Rule until it can collect sufficient data to support an appropriate rulemaking.

4. EPA's fundamental misunderstanding of sewage sludge and the relative cost of landfilling undermine the credibility of its analysis of the rule's impact on small entities.

EPA assumed that "dewatered" sludge contains no moisture. In fact, the average moisture content in dewatered sludge is still 70-80 percent. EPA assumed that dry tons of sludge (instead of wet tons) would be transported to landfill, which underestimated the amount of sludge requiring storage, handling, odor control, and transport by a factor of three to five. EPA relied on this error in finding No Significant Impact on a Substantial Number of Small Entities ("No SISNOSE") under the Regulatory Flexibility Act ("RFA") and the Unfunded Mandates Reform Act ("UMRA"). Given as much as a five-fold increase in the assumed landfill costs, EPA is not justified in concluding that all small entities will prefer to landfill, and it must reconsider the adverse effects of this rule on small entities. EPA cannot know the local calculus for alternative residual management options, but it should start with correct assumptions regarding the amount of sewage sludge that must be diverted and the costs associated with that diversion.

5. EPA should revisit its beyond the floor mercury control determination after correcting the overestimation of the amount of mercury generated by POTWs and after considering more cost effective pollution prevention alternatives for mercury reductions.

EPA significantly overestimated the baseline mercury emissions used in determining the cost effectiveness of beyond the floor maximum achievable control technology ("MACT") controls for mercury. EPA also significantly underestimated the cost of mercury controls applied to SSIs. As a result, the cost effectiveness calculation used to justify beyond the floor mercury controls for SSIs is flawed and must be revisited. Local pollution prevention efforts targeting dental

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offices demonstrate that mercury reduction can be achieved far more reliably and cost effectively upstream of the POTW than by installing add-on control devices at the incinerator.

6. EPA's decision to limit data collection to stack tests at nine facilities undercuts proper MACT floor determinations for the SSI subcategories.

EPA decided to circumvent the Paperwork Reduction Act ("PRA") and the Office of Management and Budget ("OMB") review and comment period by limiting its request for information to nine of the 118 POTWs operating SSIs. EPA then applied statistical methods to extrapolate from this limited data set as if it were a random sample of data representative of SSIs as a whole. The data are not random because the nine POTWs from which the data are drawn were selected based on the type of pollution control equipment employed, without considering sludge characteristics and other factors that affect SSI emissions. The data also are not representative because the tests were snap shots that do not reflect seasonal, regional, or inherent variability in the domestic sewage treated by POTWs. EPA should use other available data to understand the variability and to incorporate that variability into the MACT floor determinations.

7. EPA should use all of its available discretion to mitigate the impact of a rulemaking on public entities already financially over-burdened and resource constrained.

POTWs are facing significant costs to upgrade the infrastructure necessary to clean the nation's domestic wastewater to meet federal standards. Resources are not available for public entities to realistically meet all existing and proposed federal mandates. EPA must ensure that every dollar of implementation cost is absolutely necessary and required. Stack testing should be done every five years, not every year. New monitors should not be required when existing sludge sampling can be used to track compliance. Public entities should be entrusted to develop an operation and maintenance plan for their control devices that utilizes existing data to the maximum extent possible to minimize costs. Stack tests are not a reliable basis for setting operating parameter ranges that vary with the sludge characteristics.

8. EPA should use subcategories to set achievable standards and to further relieve the compliance burden on POTWs.

EPA has broad discretion to subcategorize SSIs to make the limits more achievable. EPA uses just two subcategories (fluidized bed ("FB") incinerators ("FBIs") and multiple hearth ("MH") incinerators ("MHIs")) for existing sources and a single subcategory for new sources. EPA inappropriately assumes that no new MHIs will be constructed or modified. By requiring all new sources to meet FBI standards, EPA is precluding upgrades to MHIs that could improve efficiency and performance for some pollutants. EPA should also create subcategories for limited use units, small units, and isolated units that are so far from a usable landfill that emissions of hazardous air pollutants ("HAP") from incineration are less than HAP emissions from transporting sludge to landfill.

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EPA's errors in the Proposed Rule indicate that the Agency has been rushed to regulate without a clear understanding of POTWs and the incinerators they operate. Additional time is needed to understand the unique regulatory context for POTWs that dictates their regulation under § 112 of the CAA. Additional time is also needed to understand the nature of sewage sludge and its inherent variability and to understand the unique attributes associated with incinerating a material that is 70-80 percent water.

NACWA urges EPA to take this SSI rulemaking off the fast track so that it can be done right. Congress under the CWA wisely left POTWs with the power to choose the residual management option that best meets the needs of each local community after directing EPA's Office of Water to ensure that public health was adequately protected under every option. *See* 40 CFR Part 503. EPA should use the authority Congress granted under CAA § 112 to regulate the remaining HAP in a way that preserves incineration as a viable residuals management option.

I. SEWAGE SLUDGE INCINERATORS MUST BE REGULATED UNDER CAA § 112

Congress has directed EPA to regulate SSIs in a way that is unique from all other incineration source categories. However, EPA's Proposed Rule fails to recognize these differences and instead treats SSIs like one of the several categories of solid waste incineration units to be regulated under CAA § 129. This failure results in numerous legal and technical flaws in the Proposed Rule that EPA must correct.

A. Incinerators at POTWs Historically Have Been Successfully Regulated Under the CWA

Since 1993, POTWs that practice incineration have been subject to a comprehensive, risk-based program for reducing the potential environmental risks of sewage sludge pursuant to CWA § 405 and the implementing regulations set forth in 40 CFR Part 503. Section 405(d) of the CWA requires EPA to establish numeric limits and management practices that protect public health and the environment from the adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from a POTW or other treatment works treating domestic sewage through any use or disposal practice for which regulations have been established pursuant to § 405, except in compliance with the Part 503 regulations.

In the Part 503 regulations, EPA has identified the pollutants in sewage sludge that may adversely affect public health or the environment and has specified the management practices for the utilization and disposal of sewage sludge that are protective of public health and the environment. For disposal by incineration, the Part 503 regulations mandate, among other requirements:

(i) Numerous management practices and general requirements;

(ii) Risk-based, site-specific limits for arsenic, cadmium, chromium, lead, and nickel content in the sewage sludge incinerated;

(iii) Compliance with National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for mercury and beryllium (as discussed below);

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(iv) Operational technology-based emission limits for total hydrocarbon ("THC") or an alternative emission limit for carbon monoxide ("CO"); and

(v) Monitoring, recordkeeping and reporting requirements.

40 CFR Part 503, Subpart E.

Furthermore, in the course of developing the Part 503 regulations, EPA also proposed to establish requirements for dioxins (including specific congeners of dioxin, dibenzofuran, and coplanar PCBs).[1] However, after evaluating the emissions of dioxins from sewage sludge incineration, as well as surface disposal and land application, EPA decided such requirements were not warranted.[2] This decision was based on the results of a comprehensive risk assessment that demonstrated that dioxin levels in biosolids and biosolids incinerator exhaust gases do not pose a significant risk to human health or the environment.[3]

As explained in detail in NACWA's 1997 comments to EPA (pages 15-17), the numeric emission limits and management practices requirements established under the Part 503 regulations were derived from years of study and evaluation of the potential risks to human health and the environment which could be posed by the incineration of sewage sludge.[4] (Attachment A – Compendium of NACWA Correspondence to EPA) The regulation of SSIs under this existing regime is via risk-based standards that were developed to protect human health and the environment from any reasonably anticipated adverse effects from pollutants that may be present in sewage sludge. In fact, the Part 503 regulations for SSIs were developed through a partnership between EPA's water and air offices – a partnership that continues today as EPA conducts its mandated review of the Part 503 standards. As a result, SSIs can clearly demonstrate that the emissions from their units are not adversely impacting human health and the environment by maintaining compliance with the Part 503 requirements. Moreover, the statutory framework of this regime provides ample means for EPA to identify and regulate additional concerns if supported by scientific evidence. For example, CWA § 405 provides for a biennial review process that was specifically established for identifying and regulating any additional pollutants of concern. EPA has repeatedly emphasized its confidence that the Part 503 regulations are adequately protective of public health and the environment.[5]

Additionally, since 1975 EPA has imposed NESHAPs for mercury and beryllium emissions that apply to certain SSIs. *See* 40 CFR Part 61, Subpart E and C. The mercury NESHAP applies, in relevant part, to any source that incinerates sludges from wastewater treatment plants. The NESHAP imposes emission limits for mercury, as well as stack testing, sampling, and monitoring requirements. *See* 40 CFR Part 61, Subpart E. The beryllium NESHAP applies, in relevant part, to incinerators that process beryllium-containing waste. This

[1] *See* Standards for the Use or Disposal of Sewage Sludge: Proposed Rule, 64 Fed. Reg. 72,045 (Dec. 23, 1999).
[2] *See* Standards for the Use or Disposal of Sewage Sludge: Final Notice, 66 Fed. Reg. 66,028 (Dec. 21, 2001).
[3] *See id.*
[4] Prior to 2006, NACWA was known as the Association of Metropolitan Sewerage Agencies (AMSA).
[5] *See* Letter from James A. Hanlon, Director of EPA Office of Wastewater Management, to Greg Kester, State of Wisconsin Department of Environmental Resources (Sept. 20, 2004) ("EPA believes that 40 CFR Part [503] regulations are protective of public health and the environment and we continue to support biosolids management in full compliance with the Part 503 regulation.") submitted with NACWA's August 14, 2006 comments on the reconsideration of the final Other Solid Waste Incinerator rule, included in Attachment A.

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NESHAP imposes emission limits for beryllium, as well as sampling requirements. *See* 40 CFR Part 61, Subpart C. These NESHAPs are expressly incorporated into the 40 CFR Part 503 requirements for POTWs.

Emissions from SSIs are already regulated by other Congressionally-mandated, comprehensive regulations that are adequately protective of human health and the environment. Accordingly, no public health or environmental benefit will be realized from including SSIs under CAA § 129.

B. The 1990 CAA Amendments Direct EPA to Regulate POTWs Under § 112

CAA § 112(e)(5) requires EPA to establish NESHAP for POTWs. Section 112(e)(5) states:

> The Administrator shall promulgate standards pursuant to subsection (d) of this section [112] applicable to publicly owned treatments works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C.A. § 1281 et seq.]) not later than 5 years after November 15, 1990.

42 U.S.C. § 7412(e)(5).

The definition of "treatment works" contained in Title II is broad and includes:

> ... ***any devices and systems used in the*** storage, ***treatment***, recycling, ***and reclamation of municipal sewage*** or industrial wastes of a liquid nature to implement [section 201 of the Act], or necessary to recycle or reuse water at the most economical cost over the useful life of the works, ***including*** intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and ***any works***, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is ***used for ultimate disposal of residues resulting from such treatment***.

33 U.S.C. § 212(2)(A) (emphasis added).

This language clearly encompasses the areas of a POTW used to manage sewage sludge, including the incinerators that are "used for ultimate disposal of residues resulting from" the sewage treatment process. Congress' intentional use of this well-understood term in CAA § 112(e)(5) has no other conceivable meaning. Likewise, EPA's regulatory definition of "treatment works" makes clear the expansive meaning of the term under the CWA. The definition at 40 CFR § 35.905 includes:

> ***Any devices and systems for the*** storage, ***treatment***, recycling, ***and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes*** used to implement section 201 of the Act, or necessary to recycle or reuse water at the most

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> economical cost over the useful life of the works. ***These include*** intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and ***any works***, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated waste water in land treatment systems before land application); ***or any other method or system for*** preventing, abating, ***reducing***, storing, ***treating***, separating, ***or disposing of municipal waste or industrial waste***, including waste in combined storm water and sanitary sewer systems.

(emphasis added).

All SSIs are located within the boundaries of a POTW and nearly all are owned and operated by the municipalities that own and operate the POTW.[6] As Figure 1 (below) depicts, incinerators are integrated physically and operationally into the solids management process making them an essential part of the solids treatment process. Incinerators are designed and operated for the specific sludge volume, water removal capabilities (i.e., sludge thickening, chemical or thermal conditioning and dewatering), and other unique characteristics of a particular POTW.

[6] NACWA is aware that two or three SSIs may be privately owned and/or operated by sludge management companies. These units are still located at a POTW, but for financial reasons the municipality may have chosen to establish a contract-operation agreement with a private entity or to relinquish ownership to the private entity. These SSIs are still integral to the operation of the POTW and are equally essential to reducing, treating and disposing of the sewage sludge generated by these POTWs.

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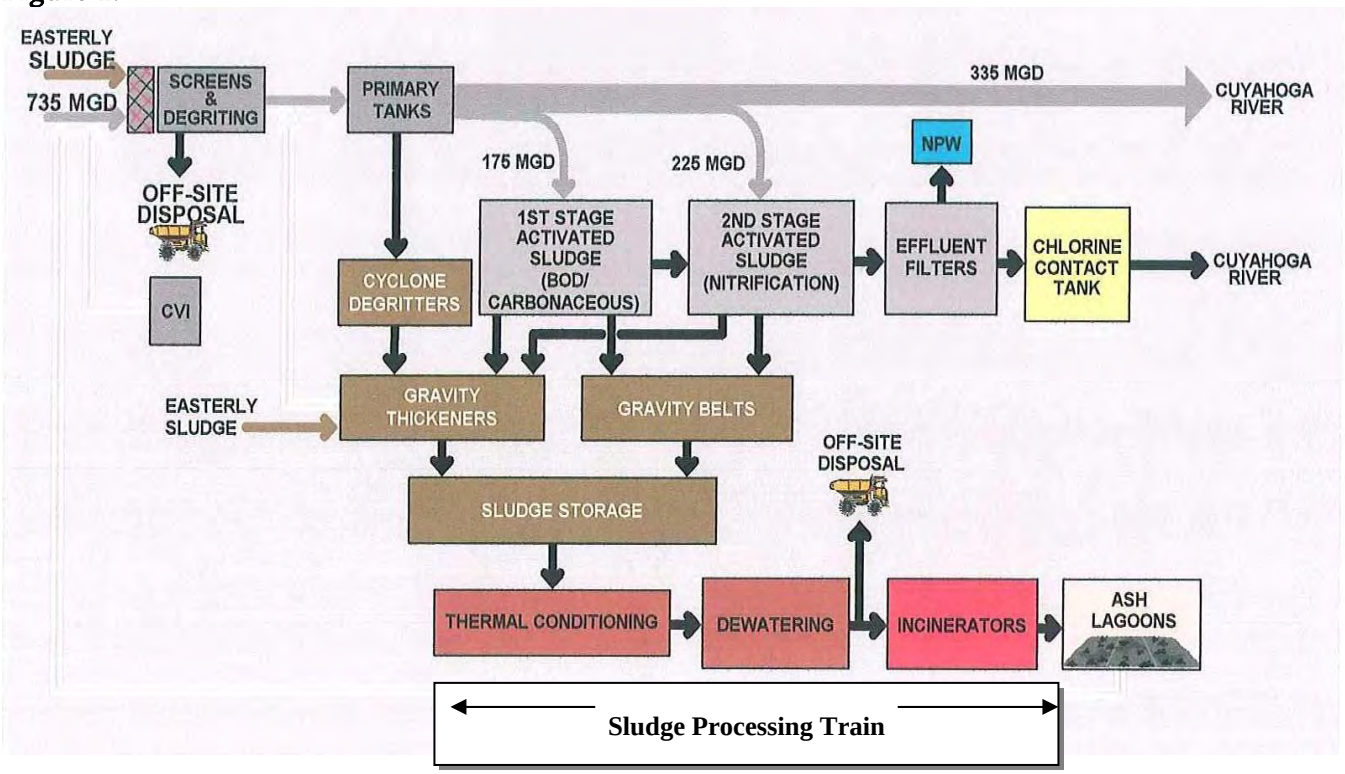
Figure 1:



Furthermore, EPA has long viewed SSIs as included within the CWA "treatment works" definition through its implementation of the CWA Title II construction grant program. EPA consistently approved funding for the construction or upgrade of incinerators through its Title II grant fund, which is specifically limited to "treatment works" as defined above. NACWA has collected information from its members indicating that many SSIs were constructed and/or upgraded using Title II funding. The following NACWA members have confirmed that they received Title II "treatment works" funds to construct and/or upgrade SSIs:

- Northeast Ohio Regional Sewer District, Cleveland, Ohio (all seven existing incinerators)
- Hampton Roads Sanitation District, Virginia Beach, Virginia
- Central Contra Costa Sanitary District, Martinez, California
- The Metropolitan District, Hartford, Connecticut
- The City of Greensboro Water Resources Department, Greensboro, North Carolina

Indeed, it may well be the case that many or all of the 234 SSIs[7] operated by municipalities in the US were constructed or upgraded with CWA Title II construction grants. This would have been contrary to the CWA, and EPA would have illegally approved the use of millions of dollars in grant funds, if the Agency did not consider SSIs to be part of the "treatment works."

[7] The Water Environment Research Foundation counted 234 active biosolids incineration units in its 2009 WERF Report at ES-1 (Attachment B). NACWA asks that EPA take the time to confirm the number of incinerators and that it include dormant incinerators with active operating permits in the total number of SSIs considered for this rulemaking.

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EPA's recognition that sewage sludge management, including incineration, is an inherent part of POTW operations for which federal funding was made available is also reflected in the primary regulatory program for sewage sludge management, the Part 503 program.[8] This was developed under the authority of CWA § 405 and RCRA. For example, EPA has stated that:

> Sewage sludge has been an important concern of the Agency since 1972, when EPA, through the Federal Water Pollution Control Act construction grants program, began assisting in the financing of wastewater treatment facilities.

58 Fed. Reg. 9248, 9260 (February 19, 1993).

> Treatment works treating domestic sewage, as noted above, include facilities dedicated to the disposal of sewage sludge (i.e., surface disposal sites and incinerators).

Id. at 9359; *see also* 40 CFR § 122.2, in which "treatment works" is expressly defined to include sewage sludge treatment systems.

The legislative history of CAA § 112 also indicates that Congress intended the air emissions from POTW operations covered by CAA § 112 to include air emissions from SSIs. For example, Congress indicated that

> [t]he Administrator is specifically directed to include publicly owned treatment works (as defined in the Clean Water Act) and [certain RCRA facilities] among the categories of major sources pursuant to this subsection . . . . The Agency has also indicated that air emission standards for POTWs may be promulgated under the Clean Water Act. There is no standard of protection of either human health or the environment from releases to air under that Act. It is more likely that appropriate standards would survive a legal test, if established pursuant to these new authorities of § 112 of the Clean Air Act.[9]

Senate Report No. 100-231, Committee on Environment and Public Works, 1990 CAA Legislative History 9436, 9668.

The CWA-derived air emission standards that Congress intended to supplement with CAA § 112 include those that control emissions on SSIs. Thus, Congress was well aware that air emissions from SSIs were already regulated by the CWA § 405 requirements and chose § 112 as the means to update these requirements as warranted by the applicable protection requirements. In addition, POTWs and SSIs are both included on a Congressional list of source categories intended to be regulated under CAA § 112.[10] By contrast, as NACWA has

[8] 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge.
[9] Senate Report No. 100-231, Committee on Environment and Public Works, 1990 CAA Legislative History 9436, 9668.
[10] Senate report No. 101-228, Committee on Environment and Public Works, 1990 CAA Legislative History 8338, 8528.

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noted in previous correspondence to EPA, the legislative history of CAA § 129 is silent as to both POTWs and SSIs. *See* Attachment A.

Further demonstrating Congress' clear direction, EPA has already regulated SSIs as intended under CAA § 112 by identifying SSIs as an area source category under this section. EPA examined the issue of the CAA regulation of SSIs in 1992, when it issued its initial list of major and area source categories under § 112. *See* 57 Fed. Reg. 31576 (July 16, 1992). That initial list included SSIs as a § 112 source category. In this notice EPA expressly states "the Agency does not consider sewage sludge incineration units to be covered under § 129 so it has authority to list and set standards for these units under § 112." *See also* 58 Fed. Reg. 9248, 9262, 9276-77 (Feb. 19, 1993) (noting that SSIs are regulated under § 112 of the CAA).

In 1999, EPA promulgated a NESHAP under § 112 for POTW treatment plants. *See* 64 Fed. Reg. 57572 (Oct. 26, 1999). Significantly, while the definition of "POTW treatment plant" is appropriately focused on the treatment part of a POTW, the definition of POTW in that rule is much broader and encompasses everything that is eligible to receive grant assistance under Title II of the CWA. *See* 40 CFR § 63.1595. While EPA's rulemaking preamble inexplicably stated that EPA then believed that SSIs were subject to regulation under CAA § 129, EPA nowhere elaborated on the rationale for this change from its prior approach or justified this new interpretation of the statute. *See* 62 Fed. Reg. 1868 (Jan. 14 1997).

NACWA has previously raised this issue with EPA, including in the September 2009 correspondence mentioned in the preamble to the Proposed Rule. *See* Attachment A. Now EPA claims that it "has taken the position in its regulation of POTWs under the CAA that § 112(e)(5) does not apply to SSI units and for this reason did not regulate them in its POTW § 112(d) emission standards." 75 Fed. Reg. at 63264. Yet EPA still offers nothing but this bare statement to justify its interpretation. EPA does not explain how it reaches the conclusion that SSIs are not covered by the expansive CWA definition of "treatment works" incorporated into CAA § 112(e)(5), how its interpretation is possible in light of the integral role SSIs play in the management of sewage sludge, or how SSIs could have been built and improved using CWA Title II funds if they are not part of the CWA definition of "treatment works."

Further, EPA also fails to recognize its own contrary statements and actions. In fact, shortly after EPA promulgated the POTW NESHAP, EPA reversed its position and expressly stated that SSIs would be regulated under § 112 instead of §129. *See* Unified Agenda 65 Fed. Reg. 23459-01 (Apr. 24, 2000). Then, in February 2002, EPA revised its list of source categories under § 112 to delete SSIs, not because they were not covered by § 112, but because there were no major sources in that category. *See* 67 Fed. Reg. 6521 (Feb. 12, 2002). EPA then added SSIs to the list of area source categories under §§ 112(c) and 112(k) of the CAA. *See* 67 Fed. Reg. 43112 (Jun. 26, 2002); 67 Fed. Reg. 70427 (Nov. 22, 2002). SSIs remain on EPA's current list of area source categories. *See* http://www.epa.gov/ttn/atw/area/70list.pdf (last visited Nov. 29, 2010).

CAA § 129(h)(2) states that: "no solid waste incineration units subject to performance standards under [§§ 129 and 111] shall be subject to standards under [§ 112(d)]." Thus, the language of CAA § 129(h) makes clear that EPA's regulation of sources under CAA § 129 or CAA § 112 is mutually exclusive. EPA has consistently recognized that sources regulated under CAA § 112 cannot also be regulated under CAA § 129. Since area source categories are subject to the promulgation of emission standards under CAA § 112(d), SSIs cannot also be regulated under CAA § 129. As the D.C. Circuit directed EPA in *NRDC v. EPA*, 489 F.3d 1250

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(D.C. Cir. 2007), EPA must follow the plain language of the statute. In the case of SSIs, the plain language of the statute directs EPA to regulate POTWs (including SSIs) under § 112. The court in the *NRDC* case did not address § 112(e)(5), nor did it specifically address the regulation of POTWs or SSIs, so the decision in that case has no bearing on how SSIs are to be regulated under the CAA. Likewise, nothing in § 129 suggests that SSIs are not to be treated as part of the POTW to be regulated under § 112, and it is axiomatic that the specific direction of Congress contained in § 112(e)(5) is controlling over the general provisions of § 129 dealing with solid waste incineration. "However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957).

The bottom line is that CAA § 112(e)(5) unambiguously directs EPA to set emission standards for HAPs from SSIs under § 112(d), and this section does not contain language permitting EPA discretion to regulate SSIs under § 129. While Congress under § 112(d)(1) allows EPA to promulgate differing standards for major and area sources at POTWs and for differing categories of sources at POTWs, the Agency emphatically does not have the authority to set standards under § 129 for POTWs or parts of POTWs, including SSIs. Indeed, EPA has already adopted regulations based on this conclusion. While EPA can change its mind on ***policy*** issues if the Agency develops a reasoned analysis to support the change, *See Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual*, 463 U.S. 29 (1983), it cannot act contrary to a statutory directive that compels a singular outcome, as the CAA does here. The D.C. Circuit decision in *NRDC* does not alter these fundamental principles of statutory construction and, indeed, is based on an admonition to EPA to apply the CAA as written. Any action seeking to regulate SSIs under CAA § 129 is contrary to the plain meaning of §§ 112 and 129.

C. EPA Has No Authority to Regulate Sewage Sludge Incinerators Under § 129

1. Sewage Sludge is Not a Solid Waste[11]

The CAA defines solid waste by referencing the definition of solid waste under RCRA: "The term 'solid waste' . . . shall have the meaning established by the Administrator pursuant to [RCRA]." CAA § 129(g)(6). RCRA defines "solid waste" as:

> any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but ***does not include solid or dissolved material in domestic sewage*** . . . .

42 U.S.C. § 6903(27) (emphasis added). This expressly excludes the sewage sludge in domestic sewage from the definition of "solid waste" in what is commonly referred to as the "Domestic Sewage Exclusion" ("DSE").

This concept of a broad POTW exemption was established by Congress as early as 1965 in the Solid Waste Disposal Act.[12] There was an early recognition that a comprehensive solid waste program, designed

[11] *See also* NACWA's August 3, 2010, comments on the proposed definition of solid waste (75 Fed. Reg. 31844) (Jun. 4, 2010), included in Attachment A.
[12] Solid Waste Disposal Act, Pub. L. 89-272, 79 Stat. 992 (1965).

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primarily to address hazardous wastes, did not apply to POTWs as long as they were effectively regulated under the CWA, which has always been and remains the primary statutory authority for comprehensive regulation of POTW operations. The Solid Waste Disposal Act and RCRA included the DSE in explicit recognition of this critical policy choice.[13]

Indeed, as EPA began its long efforts to define "solid waste" and "hazardous waste" for purposes of Subtitle C of RCRA, the Agency explicitly understood and discussed the importance of the comprehensive federal sewage sludge management program. For example, in the 1980 preamble to EPA's development of the Subtitle C regulations, EPA describes the importance, scope and ultimate supremacy of the to-be developed CWA § 405 program, indicating that, once this program was in place, it would serve as the comprehensive regulatory scheme for use and disposal of sewage sludge. *See* 45 Fed. Reg. 33084, 33102 (May 19, 1980) ("Once such a regulation is in place, sewage sludge will be exempted from coverage under other sets of regulations."). EPA has similarly interpreted the scope of the DSE to include sewage sludge generated by POTWs in the preamble to the Agency's 1990 Final Rule to identify and list hazardous wastes for petroleum refinery process wastewaters. EPA concluded that POTW sewage sludge falls within the DSE:

> These wastes [P038 and K048 wastes] are being added to the list of [hazardous] wastes . . . in order to regulate sludges generated at wastewater treatment facilities on site at petroleum refineries as well as sludges generated at off-site wastewater treatment facilities. It should be noted that if wastewaters generated at petroleum refineries are discharged to a POTW and such wastewaters are mixed with domestic sewage from nonindustrial sources, *the sludges generated in the POTW are covered under the domestic sewage exclusion* and are not included in today's listings.
>
> It should be noted that if wastewaters generated at petroleum refineries are discharged to a POTW and such wastewaters are mixed with domestic sewage from nonindustrial sources, *the sludges generated in the POTW are covered under the domestic sewage exclusion* and are not included in today's listings.

55 Fed. Reg. 46354, 46364 (Nov. 2, 1990) (emphasis added). Thus, there has been a clear recognition for over 30 years that sewage sludge is different than solid waste for regulatory purposes, and that sewage sludge is primarily regulated under the CWA, not RCRA.

Furthermore, when Congress incorporated RCRA's definition of "solid waste" in CAA § 129 in 1990, Congress was well aware that the DSE was encompassed in the definition of "solid waste" and that CAA § 129 would not apply to sewage sludge. This statutory exemption for sewage sludge – the subject of broad consensus and reliance in the regulated community – can not be abrogated by subsequent rule making or preamble statements. Moreover, the 1987 CWA amendments and the subsequent Part 503 rules established a management program for sewage sludge dependent on its exclusion from RCRA regulation.

[13] Solid Waste Disposal Act, Pub. L. No. 89-272, § 203(4), 79 Stat. 992, 998 (1965) (defining the term "solid waste" to exclude "solids or dissolved material in domestic sewage or other significant pollutants in water resources . . . ."); *accord* Resource Conservation and Recovery Act, Pub. L. No. 94-580, § 1004, 90 Stat. 2795, 2801 (1976).

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Lastly, the statutory and regulatory provisions that implement the sewage sludge management program distinguish between sewage sludge and solid waste, and thereby demonstrate that they are different types of material. For example, the preamble to the Part 503 rules states that:

> The standards also do not apply to sewage sludge that is co-incinerated with large amounts of solid waste . . . . However, the standards established in the rule do apply to sewage sludge that is incinerated in a sewage sludge incinerator with incidental amounts of solid waste use as an auxiliary fuel (i.e., 30 percent or less solid waste by weight).

58 Fed. Reg. 9248, 9253. In keeping with the distinctions drawn by Congress between sewage sludge and solid waste, EPA's careful regulatory approach in the Part 503 regulations distinguishes between sewage sludge and solid waste.

2. SSIs Are Not Solid Waste Incineration units

Per § 129(a)(1)(A) and (b)(1), EPA is directed to set emission standards "for each category of solid waste incineration units." Section 129(b) directs EPA to establish emission guidelines for existing solid waste incineration units. Thus, the definition of solid waste incineration unit serves a gate-keeping function – if the incinerator at issue is a solid waste incineration unit, then it is subject to standards under § 129. However, as EPA has recently asserted, sewage sludge combusted in SSIs is a newly generated solid waste derived from the treatment of domestic and industrial sewage within the POTW, a local government-owned and operated facility, and therefore is not a solid waste material "from commercial and industrial establishments or the general public" as defined under § 129(g)(1). *See* 75 Fed. Reg. 31844 (June 4, 2010). SSIs cannot be regulated under § 129 because they are combusting a material that is generated by the POTW, which is neither a commercial or industrial establishment nor the general public.

Section 129(a)(1)(B)-(C) also directs EPA to set standards for "solid waste incineration units [of specified sizes] combusting municipal waste ... ." But to qualify as a unit combusting "municipal waste" the unit must first be a "solid waste incineration unit," which does not include SSIs. Furthermore, the term "municipal waste" is defined as:

> ... refuse (and refuse derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

CAA § 129(g)(5). Although some of the types of wastes listed above (e.g., wood, yard wastes, rock) enter the sanitary sewer system, most of these types of waste are screened out at the POTW headworks and disposed of in landfills. *See* Figure 1 (above). The screened wastes and grit are separated to protect the POTW treatment system and are not contained in the solids that are combusted in SSIs.

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With all of these legal impediments to proceeding under Section 129, including Congress' clear statutory intent to regulate SSIs under § 112 and not § 129, EPA should abandon this rulemaking and return to its previous plan to regulate SSIs under § 112 of the CAA, likely as area sources. The technical corrections discussed in the comments below are warranted under any future rulemaking effort. NACWA encourages EPA to take the time now to develop a more thorough and accurate understanding of SSIs.

II. EPA's Regulatory Flexibility Act Analysis is Flawed and the Impact on Small Entities Must be Revisited.

A. EPA's Small Entity Analysis Assumes All Units Will Abandon Incineration

EPA is required under the RFA to prepare a regulatory flexibility analysis of this rule unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 75 Fed. Reg. at 63292. EPA concluded that none of the 18 small entities[14] identified in the database have cost-revenue ratios greater than one percent because they would all find it cost effective to divert sewage sludge to landfills. Based on this conclusion, the Administrator certified that the Proposed Rule resulted in no significant impact for a significant number of small entities ("No SISNOSE"). In the Regulatory Impacts Analysis ("RIA"), EPA nonetheless identified the following small entity impacts if they were required to install one of the three control technology options under consideration for the final MACT standard:

- Option 1 (MACT floor)
  - 9 of 18 small entities affected at greater than 1 percent cost-revenue ratio
  - 2 of 18 affected at greater than 3 percent cost-revenue ratio

- Option 2 (MACT floor + afterburner for MH)
  - 13 of 18 small entities affected at greater than 1 percent
  - 2 of 18 affected at greater than 3 percent

- Option 3 (Option 2 + fabric filter for MH)
  - 16 of 18 small entities affected at greater than 1 percent
  - 3 of 18 affected at greater than 3 percent

See RIA Tables 4-5, 4-6, and 4-7. EPA's Option 3 with its beyond the floor mercury controls will significantly affect 16 of 18 small entities at greater than 1 percent of their cost-revenue ratios and three of those at greater than 3 percent. These levels of impact would require a more thorough consideration of small entity impacts based on EPA's *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business and Regulatory Enforcement Fairness Act* (November 2006) (disallowing a presumption of No SISNOSE at these levels of impact). Only by assuming the cost-effective landfill alternative for small entities could the Administrator presume No SISNOSE under this guidance and shortcut the administrative protections that the RFA and Small

[14] NACWA invites EPA to reassess the number of small entities operating SSIs when it confirms the number of active SSIs. Regional sewer districts may serve across municipal boundaries making the traditional 50,000 population criterion for small entities difficult to apply. In the absence of an ICR survey, we understand that the small entity determinations were made based on internet searches of population data for the closest related municipal entity. This is not a reliable methodology. For the purpose of this discussion, we rely on EPA's numbers.

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Business Regulatory Fairness Act ("SBREFA") provide for small governments. EPA's rushed analysis, however, has a significant flaw as discussed below.

EPA also relied on this flawed small entity analysis as a central component of its UMRA cost-benefits assessment. *See* 75 Fed. Reg. at 63293 (claiming no Section 203 UMRA obligation because "EPA's analysis shows that for the more likely scenario that small governmental entities switch to landfilling, none of the ratios was greater than 1 percent.") Due to the central flaw discussed below, EPA must also revisit its UMRA analysis.

B. EPA Misunderstood that Sewage Sludge is Wet When Fed to an Incinerator

EPA's rush to propose this rule provided insufficient time for the Agency to gain the fundamental understanding of sewage sludge necessary to this rulemaking. EPA presumes incorrectly that the material fed into an SSI is dry and does not contain moisture. In fact, sewage sludge is typically only 20-30 percent solids and 70-80 percent moisture. While SSIs are rated based on the number of dry tons per day they can combust, the sewage sludge being fed into the incinerator is not dry. When sewage enters the POTW headworks it is over 99 percent water. POTW processes increase the solids content to about 4 percent before it is "dewatered." The dewatering process increases solids content to 20-30 percent before it is fed into the incinerator. The incinerator drives off the rest of the moisture and it combusts the volatile solids. Thus, an SSI rated at 100 dry tons per day will feed 400-500 tons per day of dewatered sewage sludge into the incinerator to combust that 100 dry tons of sewage sludge. EPA incorrectly presumed that the 100 dry ton/day SSI would feed and combust 100 tons of sewage sludge per day.

C. EPA's Error Undercuts its Small Entities Analysis

EPA's fundamental misconception about the nature of sewage sludge affects many aspects of the Proposed Rule. For instance, EPA's cost analysis for the landfill alternative is based on dry tons of sludge, which underestimates the amount of sludge being sent to a landfill by a factor of three to five. The landfill alternative requires as many as five times more truck loads,[15] five times more landfill tipping fees, and five times as much on-site storage and loading capacity. EPA assumed that onsite storage capacity would require a cement pad with a railing, instead of the more costly tankage necessary to contain sludge that is 70-80 percent water. EPA also failed to consider the cost and limitations associated with landfills rejecting wet sludge due to capacity restrictions and moisture limitations. POTWs will have to transport sludge farther in search of landfill capacity willing and able to take wet sewage sludge. NACWA is confident that when EPA corrects its cost analysis for small entities, the landfill alternative will not be cost-effective for many if not all of the small entities. As an example, the City of Edmonds, a small government entity located in Washington State, has reported to NACWA that it has no intention of trucking its sewage sludge to a landfill, the closest of which is 270 road miles away. EPA should abandon the landfill alternative presumption that it used to shortcut small government relief under RFA and UMRA. Instead, EPA should consider the full cost of its proposed control technology on small entities and engage in the appropriate RFA/UMRA processes to evaluate ways to mitigate the burden of this rule on these small entities.

[15] EPA also overestimates the amount of sludge a single truck can hold. As an example, EPA estimated that 34 tons of sewage sludge can be hauled in each truck, when in reality only 15-20 tons can be hauled per truck based on the 80,000 pound total truck weight limit for roadways in Ohio. This alone doubles the cost that EPA assumed to be associated with trucking sewage sludge to landfill.

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III. EPA's Error Also Undercounts the Environmental Benefits of Incineration Compared with Other Sludge Disposal Alternatives

When EPA develops a better understanding of the amount of sewage sludge to be handled, the Agency will also gain an appreciation for the environmental benefits that incineration can offer compared with other residuals management options. At a certain driving distance, the air emissions associated with trucking sewage sludge to landfill exceed the air emissions from incineration. Additional environmental benefits accrue when incineration is used to generate steam and/or electricity that offsets the need to burn fossil fuels. Incineration also avoids the generation of methane, a potent greenhouse gas, produced when sewage sludge is placed in a landfill and it begins to biodegrade. Incineration also reduces odors, which is generally the environmental issue of greatest interest to those living near POTWs. When all of these environmental attributes are evaluated, incineration can be the most environmentally beneficial option for residuals management.

The NEORSD evaluated residuals management options based on both cost and environmental benefits when considering whether to invest in new fluidized bed incinerators. In the final analysis, incineration was significantly "greener" than landfilling for managing sludge from its Southerly POTW. The NEORSD analysis estimated 11,300 to 16,200 truckloads of sewage sludge per year, making a 130-mile round trip to the closest current landfill. Criteria pollutants from the diesel trucks were comparable to the permitted emission levels from the incinerators. Significantly, the organic compounds from the diesel exhaust were over three times higher than the SSI emissions. *See* NEORSD Comments – Section D – on the Proposed Rule. NEORSD concluded that it would emit more air pollution by sending its sewage sludge to landfill 65 miles away than it would operating onsite incinerators. The air emissions benefit from incineration would be even greater for the POTWs that face a greater distance to landfill (*e.g.,* The Metropolitan District of Hartford, Connecticut (375 miles to landfill); Edmonds, Washington (270 miles to landfill)).

The comparison is even more favorable for incineration when considering the electricity generation component of the NEORSD incinerator project. The new fluidized bed incinerators will use excess heat to generate steam, which will be sent to steam turbines to generate electricity for internal use. The electricity will offset approximately 25 percent of the current NEORSD demand for electricity each year, which is equivalent to the electricity needed to power 1800 homes. In Ohio, where most of the electricity on the grid is generated by coal combustion, this demand reduction reduces the mercury emissions and other air contaminants associated with utility coal combustion.

Electricity generation from sewage sludge is not an isolated phenomenon. Ohio, like many states, recognizes the generation of electricity from sewage sludge as eligible for renewable energy credit toward the state's renewable portfolio standard. Utilities required to demonstrate that they generate the required portion of their electricity using renewable or alternate energy means will purchase the renewable energy credits generated from the SSI-electricity project. This provides additional economic incentives to invest in the electric-generating equipment for SSIs. Kern County, California recently announced its intent to install sewage sludge incinerators with 13.5 megawatts of electric-generating capacity to replace land application. This is a trend that is likely to continue because SSIs present a reliable renewable fuel source for baseload electricity generation that utilities will help fund to secure renewable energy credits to meet renewable portfolio standards.

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EPA cannot accurately assess the relative benefits of incineration without understanding the true costs of landfilling. The Metropolitan St. Louis Sewer District notes that EPA's estimate of its additional cost to landfill without incineration is $3.8 million per year, when the District's actual landfill option cost estimate is over $11 million per year. NEORSD similarly estimates that its annual cost to landfill is $9 million more than incineration. This does not include the additional cost of a loading and storage facility that can accommodate up to 12 trucks per hour that NEORSD estimates will cost over $50 million. These costs are difficult to justify when they do not reduce emissions and they eliminate the opportunity to use sewage sludge as a viable alternative energy source for electricity and steam generation.

EPA's miscalculation of the amount of sewage sludge to be landfilled is not just a cost issue; it goes to whether EPA properly evaluated the feasibility of the landfill alternative. The Metropolitan St. Louis Sewer District would need to dispose of an additional 600 tons per day of sewage sludge that is 75 percent water after pressing/dewatering. This would fill the current landfill owned by the District well before it could locate and permit another landfill. NEORSD has been advised that its closest landfill (65 miles away) will not be able to handle all of its sludge. Furthermore, NEORSD has not been able to identify a landfill that will accept the necessary volume or type (wet) of biosolids. EPA has also failed to consider the feasibility of adding the necessary on-site storage, truck loading operations, and odor control measures in local jurisdictions. Landfilling and land application alternatives are just not feasible for many POTWs. EPA needs to revisit every aspect of its Proposed Rule that relied on a landfill alternative and correct its assessment of the feasibility and cost associated with the landfill option.

IV. EPA Lacks the Data Necessary to Evaluate Beyond the Floor MACT Controls for Mercury

In order to justify the proposed beyond the floor controls for mercury, EPA must make a proper cost effectiveness determination. This requires accurate data for the baseline level of mercury being emitted today, accurate information on the potential for mercury emission control, and accurate information regarding the cost of that control. EPA's data is lacking in each of these respects.

A. EPA's Mercury Assumptions Are Inconsistent with Available Data and Past Reports

EPA starts with the inaccurate presumption that baseline emissions from the 218[16] existing SSIs in the U.S. include 3.1 tons of mercury emissions. This is inconsistent with EPA's 1997 *Mercury Study Report to Congress* in which it stated that 0.95 tons of mercury was emitted from sewage sludge incinerators in 1994. More recently, the Water Environment Research Foundation ("WERF") released a 2009 report entitled *Minimizing Mercury Emissions in Biosolids Incinerators* ("2009 WERF Report") (Attachment B). This report used the weekly sewage sludge samples required under Part 503 to calculate the amount of mercury in the sewage sludge being incinerated in the U.S. in a baseline year. The report conservatively assumed that all of the mercury in the sewage sludge was emitted despite the potential for some forms of mercury to be removed by existing particulate control systems. WERF calculated the average uncontrolled mercury concentration in the feed to SSIs and conservatively rounded up to 1 mg/dry kg. WERF concluded that SSIs collectively emit less than 1 ton of mercury to the atmosphere each year. This is consistent with EPA's 1997 report to Congress.

[16] Again, NACWA asks that EPA take the time to confirm the number of incinerators and that it include dormant incinerators with active operating permits in the total number of SSIs considered for this rulemaking.

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The actual amount of mercury in sewage sludge has been going down consistently over time. This is supported by test data from POTWs, including the data from the Upper Blackstone Water Pollution Abatement District (Millbury, Massachusetts) that reveals a significant reduction in the mercury content of its sewage sludge since 1997. *See* Table 1.

Table 1

	1997	2001	2010
Mercury content in Upper Blackstone Sewage Sludge	8.9 mg/ dry kg	1.1 mg/dry kg	0.84 mg/dry kg

The amount of mercury in sewage sludge is decreasing as communities implement efforts to control sources discharging mercury into the sewage system. Dental offices are one of the most significant sources of mercury to sewer systems. The Metropolitan Council Environmental Services (St. Paul, MN) implemented a dental amalgam separator program that achieved a 50 percent reduction in the mercury content of their biosolids. Other dental amalgam separator programs implemented by the City of Palo Alto Regional Water Quality Control Plant and the Central Contra Costa Sanitary District similarly achieved a 50 percent reduction in mercury flowing to their treatment plants. The total annualized cost per dental site has been estimated to be just $717 per year in Palo Alto, California. *See* T. Barron and K. North, "Cost of Hg Diversion Through Dental Office Source Control" (November 16, 2010) (Attachment C). This pollution prevention program reduces mercury at an estimated cost of $9,000 per pound, which is far less than NACWA's estimates that range as high as $190,000 per pound for end-of-pipe mercury control systems added to existing SSIs. These cost effective options for mercury control upstream of the POTW have sustained a declining trend in the content of mercury in sewage sludge.

Declining mercury content in sewage sludge is expected to continue. On September 27, 2010, EPA announced that it intends to propose a national rule to reduce the 3.7 tons of mercury waste discharged from dental offices each year by requiring the installation of dental amalgam separators in dental offices. The American Dental Association has been encouraging its members to install dental amalgam separators for some time and has signaled its support for this rulemaking. With no significant opposition, EPA would be expected to finalize a rule in time to significantly reduce mercury in POTW systems before the proposed SSI rules would become effective. Dental amalgams are generally believed to be at least 50 percent of the mercury loadings to POTWs, which means that the mercury in sewage sludge is likely to be cut in half from 2010 baseline amounts. NACWA supports these efforts to remove mercury from the POTW system as a pollution prevention initiative that is far more efficient and cost effective than SSI mercury controls.

B. EPA's Extrapolation from Limited Data Significantly Overestimates Baseline Emissions of Mercury

In EPA's rush to propose the SSI rule, it did not take the time to benchmark its mercury estimate against these other sources of data. The result is an estimate of mercury that is at least three times higher than other more credible estimates. EPA's baseline 3.1 tons/year mercury estimate relies on the stack test data from the nine units that were the target of the Agency's request for information. EPA generates a mercury emission factor from this data that it applies to all SSIs in the database. These data are snapshots taken over a few hours

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on one day. EPA does not know if these data are representative of normal operating conditions or whether the metals content in the sludge was at the low end or the high end of a typical range. *See* Proposed Rule, 75 Fed. Reg. at 63268 (requesting comment on whether the metals content in the sludge during the test was representative of low or high points in the typical mercury range). This range can vary significantly with a ten-fold difference between the minimum and maximum mercury values. *See* Attachment A of NEORSD Comments on Proposed Rule. Thus, EPA may have miscalculated the mercury content of sewage sludge because its data are not representative of typical mercury values.

EPA also makes significant incorrect assumptions about operating hours and sewage sludge feed rates that impact its mercury estimate. Rather than take the time to collect actual operating data through a formal Information Collection Request ("ICR"), EPA assumes that each incinerator operates at 75 percent of its rated capacity. POTWs and their incinerators are designed to accommodate significant wet weather events that can significantly increase the flow to the headworks of the POTW with minimal notice. As such, the typical operating conditions for the POTW and its incinerators are significantly below the design capacity. *See* Table 2.

Table 2

	NEORSD (3 plants)		Township of Wayne		Anchorage		HRSD Boat Harbor		HRSD Army Base	
	EPA Est.	2009 Actual	EPA Est.	2009 Actual	EPA Est.	2009 Actual	EPA Est.	2009 Actual	EPA Est.	2009 Actual
Sludge incinerated (dry tons per year)	71,000	37,000	4,340	1,560	16,968	6,100	12,306	8,132	8,190	3,337
Hours of operation per year	33,600	27,000	5,430	2,590	8,400	8,200	8,400	8,135	8,400	7,912

These examples indicate that EPA has overstated the amount of dry tons of sludge incinerated per year by a factor of two or more. Hours of operation are also overstated in EPA's analysis but by a lesser amount. EPA must take the time needed to collect the feed rate and operating hours data from all SSIs before it uses this information to calculate the baseline mercury emissions from SSIs. An accurate assessment of baseline mercury content is critical to a proper beyond the floor analysis of the cost effectiveness of additional mercury controls.

The anecdotal information available to NACWA indicates that EPA's calculation significantly overestimates mercury emissions. NEORSD compared EPA's mercury estimate for two of its facilities with its own calculation based on the actual sludge samples taken in 2009 to demonstrate compliance with Part 503 requirements. The NEORSD calculation reveals that EPA's mercury estimate for its Southerly and Westerly plants combined was nearly three times higher than the actual concentration of mercury in the sludge in 2009 based on the Part 503 sampling. Wayne County, New Jersey performed a similar analysis using stack test data

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and found that EPA's mercury estimate was nearly three times the estimate based on site-specific stack test data. Other NACWA members have reached similar conclusions, calling into serious question the reliability of EPA's baseline mercury emissions estimates.

Given these significant errors in the baseline mercury estimate, EPA must revisit its decision that beyond-the-floor mercury controls are cost effective. Cost effectiveness can only be reliably assessed after an accurate baseline is established. EPA assumed at least three times more mercury is being emitted from sewage sludge incineration than has been measured in the sewage sludge. This cannot be right. Moreover, with local and national efforts underway to reduce mercury significantly from dentist offices across the country, the mercury in sewage sludge will be even further below EPA's estimate by the time a rule is promulgated and effective. The actual mercury in sewage sludge after upstream pollution prevention efforts does not justify the significant cost that this Proposed Rule would impose on public entities.

C. EPA Does Not Have Sufficient Data on the Effectiveness of Mercury Control

EPA's mercury control assumptions are also flawed. EPA assumes incorrectly that activated carbon injection ("ACI") can work without significant changes to the existing particulate control devices. This theoretical assumption does not work in practice for POTWs. Most of the existing SSIs use wet scrubber systems for particulate control. The exhaust temperature before the scrubber is typically 1200-1600 degrees Fahrenheit, which is too hot for injecting activated carbon or for adsorption to occur. Also, a contact chamber is necessary to provide adequate residence time for the mercury to adsorb onto the activated carbon. Some POTWs lack the space for these exhaust train changes. Even if the ductwork could be reconfigured to allow the exhaust temperature to cool and to accommodate a contact chamber, the wet scrubber particulate control device will not consistently remove mercury. This is because the scrubber water is typically sent back to the headworks of the POTW for cleaning, thereby recycling any of the mercury that is captured by ACI back through the process that generates sewage sludge. This increases the likelihood of elevated mercury in the POTW effluent and it concentrates mercury in the sludge. EPA has not performed a life cycle analysis to evaluate the potential for the mercury to be released from the activated carbon in a form that is more difficult to keep out of the environment.

Furthermore, when EPA corrects the flawed baseline analysis for mercury, the amount of mercury in the exhaust gas will be significantly reduced. At lower levels of mercury, ACI becomes less efficient at adsorbing and removing mercury resulting in mercury reductions significantly less than EPA's estimated 85-95 percent control efficiency. By contrast, other options for mercury control, including upstream pollution prevention measures at dentist offices and elsewhere, are expected to be far more effective at reducing mercury emissions from SSIs at far less cost per pound of mercury removed.

ACI is not a proven technology on MHIs. NACWA has been unable to locate *any* MH units utilizing the ACI technology advocated by EPA in the Propose Rule. The only active mercury controls known to NACWA are installed on FBIs:

1. Metropolitan Council Environmental Services (St. Paul, MN) installed an ACI system that consists of a carbon contact chamber followed by a fabric filer. Heat exchangers and a boiler upstream of the carbon injection point lowers the exhaust gas temperature to 350 degrees Fahrenheit, and

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2. Ypsilanti, Michigan uses a carbon adsorption system.

Both of these facilities reported serious abrasion and corrosion problems shortly after installation. Unless and until this technology is proven effective and reliable on both FBIs and MHIs, EPA should not consider it as a feasible beyond-the-floor control option.

D. EPA Significantly Underestimated the Cost of Mercury Control Equipment

EPA's cost estimate for the beyond-the-floor mercury control is unreasonably low. EPA determined that the MACT floor mercury limit would require just two of the 163 multiple hearth incinerators to install mercury controls. EPA proposes beyond-the-floor mercury controls for the other 161 MHIs. EPA estimates that these 161 units could install mercury controls for an additional capital cost of $5,000,000 ($31,056 per incinerator) and an additional annualized cost of $32 million ($198,758 per incinerator). *See* 75 Fed. Reg. at 63276 (Table 8). These costs are wildly inaccurate. NACWA members estimate actual capital costs for multiple hearth units will exceed $4 million per incinerator.

First, EPA's cost data assumes that activated carbon can be injected upstream of existing particulate control devices, and does not account for the installation of new fabric filters for each ACI installed. As explained above, ACI systems will require baghouses to collect the carbon injected by the ACI system and heat exchangers and/or boilers to reduce the exhaust gas temperature below 400 degrees Fahrenheit. However, no existing MHIs are equipped with baghouses for particulate control. Instead, all existing MHI units employ wet scrubbers. Wet scrubbers can become clogged by the injected carbon, and this carbon can also be released back into the POTW system through the recycling of the scrubber water to the POTW headworks. Any units equipped with ACIs will therefore require the addition of a baghouse, a fan to pull the exhaust through the fabric filters and a bag leak detection monitor. EPA does not account for these capital costs in its beyond-the-floor cost effectiveness analysis for mercury.

EPA must also consider the annual operating costs of a baghouse. This includes the significant cost of electricity to operate fans large enough to pull the exhaust through the fabric filters. EPA should also consider the mercury and other air emissions associated with the generation of this electricity when it determines whether this beyond the floor option yields a net environmental benefit. EPA must also consider the cost of replacement bags clogged by activated carbon.

EPA also fails to account for other costs associated with ACI mercury controls. The Metropolitan Council Environmental Services (St. Paul, MN) discovered during the design of its incinerators that exhaust gas temperatures leaving the incinerator are so high that carbon injected will combust before it has a chance to adsorb mercury. The Metropolitan Council Environmental Services, as previously reported, installed additional ductwork, along with heat exchangers and boilers to cool the exhaust gas before the activated carbon is injected. They also installed a contact chamber to ensure sufficient adsorption, followed by a fabric filter. These are complex systems that require significant engineering costs for site-specific design and installation oversight. EPA does not account for any of these additional costs in its assumed mercury control cost. NACWA members estimate $3.5 - 4 million for the minimum equipment necessary: a carbon contact chamber and a baghouse for each incinerator. Total capital costs for the 161 MH incinerators would be in the range of $564 -

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644 million. However, the costs to add the required heat exchangers and the boilers, reconfigure the existing air pollution control train and expand the incinerator building could easily raise the price to $8 - 10 million/incinerator or higher. This would result in total capital costs of $1.3 - 1.6 billion or higher.

Applying these mercury control costs to the actual site-specific mercury content (instead of EPA's inflated estimate), reveals extremely high cost effectiveness ratios, many times greater than EPA's $6,000 per pound of mercury control estimate. *See* ERG, Analysis of Beyond the Maximum Achievable Control Technology Floor Controls for Existing SSIs. NEORSD's mercury control cost analysis concluded that its incinerators would need a carbon contact chamber and fabric filter, as well as a heat exchanger and boiler, all of which would require engineering design services and construction management. The average mercury removal cost for NEORSD would be more than $100,000 per pound of mercury removed.[17] The City of Palo Alto Regional Water Quality Control Plant conducted a similar cost analysis that put the national cost of mercury removal at nearly $190,000 per pound, and over $400,000 per pound for the City based on its actual emissions level. *See* Comments filed by the City of Palo Alto on the Proposed Rule. These cost figures are not reasonable when demonstrated pollution prevention options are available at $9,000 per pound for dental amalgam separators.

Carbon adsorption for mercury control is also a costly option. For example, if POTWs were to procure and install activated carbon adsorbors the cost would be at least $3.5 - 4 million per incinerator just for the equipment, for a total capital cost in of $564 - $644 million for the 161 MH incinerators evaluated in the beyond-the-floor analysis. The cost to expand existing incineration facilities, add new ductwork and controls, and engineering related design and construction management costs could easily raise the cost of these units to $5 - $6 million. The resulting total cost would be $800 million - $1 billion or higher for the 161 MH incinerators. It should also be noted that no one in the U.S. manufacturers carbon adsorbers and they would have to be imported from overseas.

Ypsilanti, Michigan's experience suggests that this technology may not be feasible, on a long-term basis for SSIs due to the significant corrosion problems that they have experienced. At a minimum, carbon adsorption polishing must be placed after the particulate control device. For SSIs, the existing particulate control is a wet scrubber, which generates significant amounts of steam and moisture in its exhaust that are incompatible with carbon adsorption. Therefore, the exhaust must be heated high enough so that moisture does not condense as it moves through the carbon adsorption system. Edmonds, Washington reports that it faces a capital cost of $1,500,000 for the exhaust heater and carbon adsorption system to control a portion of 1.5 lbs of mercury measured in the sewage sludge per year. With a useful life, based on Ypsilanti's experience, of less than 10 years, the annualized cost per pound for capital alone is over $100,000 per pound of mercury removed. Edmonds is a small entity that does not have a sufficient footprint for the installation of this system. EPA cannot justify carbon adsorption as a beyond the floor mercury control.

EPA is required to consider energy impacts as part of its beyond the floor analysis. EPA should consider the projects currently underway that will generate electricity from the heat produced by SSIs. Every kilowatt hour of electricity generated by the SSI reduces the POTW demand for electricity from the grid. NEORSD plans to meet 25 percent of its electricity demand through SSI-generated electricity by 2014. In Ohio, NEORSD's reduced demand for electricity from the grid means less coal combustion and less of the emissions that coal would have generated, including less mercury emissions and less reliance on fossil fuels. Beyond the floor

[17] NEORSD's detailed cost analysis is included as Attachment D.

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controls could discourage this advanced energy option, resulting in more coal combustion and more mercury emissions.

EPA's rush to develop the Proposed Rule has resulted in an improper baseline emissions estimate for SSI mercury, inadequate assessments of the feasibility of mercury control as applied to SSIs, and a significant underestimate of the cost of mercury controls for this sector. EPA is compelled to explore alternative, less costly ways to decrease mercury emissions before imposing beyond the floor controls. Therefore, EPA's beyond the floor mercury limits are not justified by the record and should be removed from the final rule.

V. EPA'S MACT FLOOR METHODOLOGY IS FLAWED

In setting emission standards under § 129, EPA is obligated to start with an analysis of the performance of existing sources. From that analysis, EPA is required to determine the "MACT floors," which for new units is "the level of control that is achieved in practice by the best controlled similar unit" and for existing units is "the average emissions limitation achieved by the best performing 12 percent of units in the category… ." CAA § 129(a)(2). EPA can set standards more stringent than the MACT floor only after considering cost, energy and other factors. EPA's assessment of existing source performance was insufficient to set accurate MACT floors.

A. EPA Does Not Have Enough Valid Data to Establish Lawful and Proper MACT Floors

EPA's rush to regulate SSIs has left the Agency with inadequate data to assess existing performance among SSIs. EPA chose to limit its ICR to just nine entities because collecting information from ten or more entities would have triggered the PRA obligations and a more rigorous OMB review. *See* 44 U.S.C. 3502(3)(a)(i) (defining the threshold term "collection of information" as a request "imposed on ten or more persons" other than federal agencies.) EPA's plan to circumvent the PRA and OMB review resulted in an inadequate dataset for this rulemaking that leaves EPA unable to reliably take the first necessary step in a § 129 rulemaking: to determine which of the SSIs are the best performing sources. EPA has built a statistical house of cards on this flawed foundation, which undermines the legality and scientific credibility of the emission standards set forth in the Proposed Rule.

As a consequence of EPA's limited data collection effort, the dataset available for this rulemaking contains actual data from less than 12 percent of the population of sources in each subcategory. Even if all of the data collected could somehow be attributed to top performers, EPA would be unable to determine based on actual data the average performance of the top 12 percent as is required for the existing source MACT floor. *See* ERG Memo, *MACT Floor Analysis for the Sewage Sludge Incinerator Source Category* at 6 (June 2010) ("MACT Floor Memo"). In fact, EPA is using actual data from as little as 4.3 percent of a subcategory (7 of 163 MH units for HCl) to determine how the top 12 percent perform.

The way that EPA targeted its data collection undermines its ability to use statistics to fill data gaps. EPA targeted its ICR to the nine POTWs "expected to have the lowest emissions based on the type of unit and the installed air pollution controls." *See* MACT Floor Memo at p. 6. EPA then uses statistical methods that predict the distribution of all data based on a sample set. This statistical method relies on random sampling of representative data. *See* Attachment F of the NEORSD Comment on Proposed Rule. EPA's targeted approach to collecting data from expected top performers undermines its ability to presume the data is a random sample

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representative of the entire source category or subcategory. If the data gathered is not representative at the outset, then the data cannot reliably be used in a statistical equation to predict the emissions data across the source category or subcategory. Thus, EPA improperly limited the data it considered and therefore cannot accurately determine the range of performance for the category or subcategory to determine the top 12 percent of the existing source subcategories.

NACWA members have determined a number of errors in the data used by EPA in this rulemaking. Specific references to these errors will be in the comments of those members from whom the data were collected. The errors are an indication of inadequate quality assurance and quality control on the data in the database. EPA should not rely on this public comment process for its check on the quality of the data it relies upon in this rulemaking. EPA should take the time to collect sufficient data so that outliers are readily apparent and properly excluded. EPA should also subject the data to a rigorous quality assessment to establish their validity before relying on them to create enforceable limits.

B. EPA's Data are not Sufficiently Representative to Establish Lawful and Proper MACT Floors

To make up for its lack of actual data, EPA tries to extrapolate from the data it has by claiming that it is representative of the source category. This approach fails because the data are not representative of the regional, seasonal and day-to-day variability of sewage sludge. EPA inexplicably characterizes sewage sludge as a "homogeneous" material (s*ee MACT Floor Memo* at 6), in an apparent attempt to support its extrapolations. EPA's only claim of support for this characterization is that sewage sludge concentrations are capped by the CWA regulations under Part 503. A closer look at Part 503 data confirms the common sense conclusion that domestic sewage is an unpredictable and highly variable source that generates heterogeneous sewage sludge that cannot be characterized by EPA's stack test database composed of snap shot measurements over 3-4 hours on a single day during the winter.

Unlike other types of industrial and commercial incinerators that EPA regulates under CAA § 129, POTWs – and their SSIs – are statutorily obligated to manage all of the sewage that enters into the sanitary sewer system. Many different entities and individuals have virtually unlimited access to the POTW through thousands of toilets, sinks and drains throughout the system that flow into the treatment works. The screening system at the headworks of the POTW filters out wood and stones and other large debris, but dissolved material and small particles enter the treatment works and ultimately end up in the sewage sludge. This results in highly variable and often unpredictable spikes in concentrations. POTWs are designed to clean and protect water resources, so treatment focuses on removing metals and other compounds from the wastewater and capturing them in the sludge. The result is a highly variable and heterogeneous waste stream.

POTW inlet concentrations also vary based on the nature and type of dischargers. POTWs treat wastewater from residential, commercial and industrial dischargers in varying degrees. POTWs that are dominated by residential customers will have a different range of sludge constituents than those with significant commercial and industrial dischargers. Some POTWs have significant industrial dischargers that contribute constituents in their wastewater that result in sludge concentrations unlike other POTWs. Pretreatment opportunities also vary because POTW authority to control discharges into the sewer system is limited and the way that authority is exercised varies. Finally, the nature of sewage entering the POTW changes over time as the character of a community changes, the age of the population changes, and commercial and

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industrial dischargers come and go. Sewage sludge constituents and concentrations vary because the discharge to each POTW is unique. Without the use of long-term data to support the level of emission standards, this variability makes numeric technology-based limits impractical and infeasible and should provide EPA strong motivation to look to other regulatory options.

POTWs also face significant regional and seasonal variability that is not captured by EPA's dataset. Initial high flow periods in the spring often scour the sewers and dislodge heavier material that has settled in the sewer system during low-flow periods, which often results in a spike in metals concentrations (e.g., mercury, cadmium, lead) in the sewage sludge. The ICR stack tests in January and February that were used for the EPA database would not have captured these events. In addition, northern cities that use salt for de-icing roadways experience significant increases in chlorides during the winter months. High chloride concentrations are known to improve the effectiveness of mercury control at existing wet scrubbers. *See* 2009 WERF Report at 2-4 (Attachment B). Stack test results during January and February in these communities may not be replicable during other times of year.

EPA has the data it needs to examine sludge variability for metals. Most POTWs have been required to collect weekly sludge samples and test them for the Part 503 metals. In the Table 3 NEORSD has compiled the monthly average sewage sludge content of cadmium, lead, and mercury at two of its facilities. Even when averaged over an entire month, the range of average metal concentrations varies by a factor of three or more.

Table 3: 2009 Monthly Average Sewage Sludge Concentrations (mg/dry kg)

	Cadmium		Lead		Mercury	
	Southerly	Westerly	Southerly	Westerly	Southerly	Westerly
January	7.95	13.25	62.23	97.00	0.68	0.44
February	8.45	11.95	75.60	123.10	0.77	0.41
March	8.90	14.46	84.94	141.20	0.69	0.34
April	9.11	14.96	67.93	123.00	0.84	0.37
May	10.40	12.97	87.16	145.95	0.78	0.36
June	4.60	7.94	99.54	204.30	1.24	0.77
July	4.46	7.92	123.15	218.55	1.24	0.92
August	4.78	9.08	114.10	188.23	3.12	0.59
September	5.13	8.12	103.41	183.93	2.08	0.87
October	3.99	7.19	94.33	129.27	0.98	0.63
November	4.14	6.22	82.78	104.81	0.91	0.58
December	3.80	5.97	74.66	97.55	1.38	0.40

Data collected in January and February from these sources could not be considered representative of the sewage sludge during other months or seasons. NACWA has every reason to believe that other POTWs face variability at this level or greater and that this degree of variability applies to other constituents as well. EPA should consider the Part 503 data that POTWs submit to the Agency regularly to account for variability when setting emission limits.

In the Proposed Rule, EPA bases its MACT floor analysis solely on a limited set of emission test data. However, nothing in the CAA restricts EPA to emission test data when determining MACT emission rates and

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intra-source variability. As EPA recognized in its MACT floor analysis, emission tests provide only a snapshot of emissions at a particular point in time. It is therefore appropriate for EPA to consider non-emission test factors, such as metals content in sewage sludge, in evaluating variability and setting MACT floors. EPA has requested additional sewage sludge metals content information, but has restricted its request to metals content information collected during stack tests. *See* 75 Fed. Reg. at 63269. It is unclear why EPA would deem only metals content during stack tests relevant to variability. POTWs subject to Part 503 are required to track metals data in their sewage sludge year-round, during all periods of operation. *See, e.g.*, Weekly Lead (Pb) and Mercury (Hg) Concentrations from POTWs (EPA-HQ-OAR-2009-0059-0036) (providing lead and mercury variability from 2005 to 2009 at POTWs). True variability can be established by using all metals content data and applying the site-specific control efficiencies determined under Part 503 testing or additional air emissions testing.

C. Part 503 Limits Do Not Render Sewage Sludge Homogeneous

EPA claims that sewage sludge is homogeneous because the Part 503 regulations cap sludge concentrations. This ignores certain realities associated with the health-based standards established under Part 503. First, the Part 503 regulations do not address all of the § 129 pollutants (PM, opacity, SO_2, HCl, NOx and dioxin/furans). Part 503 does not regulate the variability of sulfur, chlorine and nitrogen concentrations in sewage sludge, which have a direct effect on the amount of SO_2, HCl, and NOx generated when the sludge is incinerated. Second, Part 503 establishes risk-based limits for lead and cadmium that are different for every POTW based on feed rates, stack heights, and exhaust flow rates. Within these limits, POTW performance varies significantly depending upon the sources of these compounds in the sewage system, including industrial sources, soil content flushed during rainfall events, or residual material within the sewer system that is cleaned out periodically. While the Part 503 regulations have focused attention on reducing lead, cadmium and mercury compounds in sewage sludge over the years, EPA is wrong to claim that they have eliminated the variability of these compounds in sewage sludge.

In fact, actual performance for all POTWs is far below the health-based limits established under Part 503. As such, the range of actual concentrations can vary by a factor of 100 or more without approaching the Part 503 limit. For example, compilations of weekly mercury data from POTWs demonstrate that concentrations of mercury can range from less than 0.1 mg/kg to as high as 17.25 mg/kg. *See* Weekly Hg and Pb Variability at POTWs, Docket ID No. EPA-HQ-OAR-2009-0059-0036. As a result, mercury concentrations can vary by two orders of magnitude without ever exceeding the NESHAPs limit. In the face of significant data supporting the heterogeneous nature of sewage sludge, EPA's reliance on Part 503 standards as evidence of homogeneity is seriously misplaced.

D. EPA's Misunderstanding of the Variability of Sewage Sludge Leads to Unachievable New Source Limits

EPA incorrectly presumes that stack test results account for the full variability of an SSI's performance. As indicated above, that is based on the erroneous conclusion that sewage sludge is a homogeneous waste with insignificant variability of relevant constituents. This is particularly troubling when applied to the new source standards that are based on a snapshot stack test of the single best performing unit. EPA concedes that it does not know whether the stack test data is even representative of typical operation for the source that was tested. The preamble to the Proposed Rule states:

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> It is not clear from the data available to EPA whether the sludge burned during the emissions tests (that were used to establish the MACT floor) represent typical sludge composition/concentrations or are closer to minimum or maximum levels.

75 Fed. Reg. at 63268. This is an essential missing step in determining how to use the data to set an emission limit. If the sludge burned during an emissions test was not at or near the maximum constituent concentration level (e.g., due to seasonal variability), a new source emission limit based on this data could not be achieved over the full range of expected normal operating conditions confronted by the best performing source. At a minimum, EPA must consider all available data (including Part 503 data) for the best performing source and use that to establish a variability factor applied to the stack test data. EPA's request for metals data during the stack test is insufficient to account for the full intra-source variability. Moreover, variability for the compounds not regulated by Part 503 must be accounted for as well before setting the new source limit.

E. EPA's Misunderstanding of the Variability of Sewage Sludge Leads to Erroneous MACT Floors for Existing Sources

EPA also mistakenly presumes that snapshot stack test data is sufficient to set limits for existing sources because sludge concentration variability is insignificant. As indicated above, EPA did not collect enough data to set existing source limits based on actual data. As such, EPA can only set emission limits by extrapolating based on the presumption that the data it has is representative of the top performing 12 percent of the source subcategories. The fact that these data were not randomly selected undermines the statistical credibility of this exercise. But even if the data were randomly selected from the full source category, the stack test data is inadequately representative as the basis for a lawful MACT floor calculation.

EPA cannot use statistics to make up for its lack of representative data because each step compounds the problem. EPA uses its flawed predicted data set to determine the top 12 percent of existing sources in each source category, and to determine the average emission rate, the intra-source variability, and the upper prediction limit ("UPL") for the subcategory. The sources that are statistically fabricated to fill the data gaps lack the variability of the actual sources that round out the top 12 percent. EPA's method creates a more stringent emission limit than would be justified under a proper assessment of the top 12 percent of existing sources. As such, the proposed emission limits constitute unlawful beyond-the-floor MACT standards that have been developed without considering the required criteria in the CAA, including cost.

EPA's request for additional stack test data to bolster its inadequate database is an inappropriate burden at this stage of the rulemaking. EPA has primary responsibility for gathering the data. It is a circumvention of the PRA and OMB's review to intentionally limit the scope of an ICR to nine entities and then ask NACWA and its members to provide additional stack test data during the 45-day public comment period. EPA's data analysis is an important part of generating the regulatory options. Waiting until the public comment period to gather new data undermines NACWA's ability to comment on the proposed options for regulation. EPA is rushing to the finish line with inadequate data and hoping that the public comments will contribute enough data to justify its proposed path. Even if NACWA and its members were able to secure the resources to conduct additional stack testing to supplement the record, EPA offers insufficient time to conduct

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the stack tests, quality assure the data and submit it for EPA consideration. NACWA has requested, and EPA has rejected, an extension of time for the comment period on the Proposed Rule. EPA should not now blame POTWs for not generating sufficient data during the comment period.

F. EPA Should Not Adjust the Upper Predictive Limit to Compensate for its Lack of Data.

EPA seeks comment on whether to use the 99 percent UPL or a modified 95 percent UPL. EPA ***should not*** use a 95 percent UPL to compensate for its lack of data. This essentially presumes that sources represented by the database would be expected to be out of compliance 5 percent of the time. This is contrary to the CAA requirement that MACT limits must be met at all times and under all reasonably foreseeable conditions. *See Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008). EPA should use a 99 percent UPL to set enforceable limits as has been done in other recent rulemakings. Adjusting the percent basis for the UPL to get to a target emission limit that is more palatable to the Agency would turn the MACT process on its head and be vulnerable to legal challenge.

G. MACT Floor Methodology Must Reflect an Achieved Emission Limit

The proposed MACT standards for SSIs are based on pollutant-by-pollutant analyses that rely on a different set of best-performing sources for each separate § 129 pollutant. *See* 75 Fed. Reg. at 63270 ("The MACT floor analysis was then conducted using all the emissions information for each pollutant in each subcategory."). EPA cannot demonstrate that any of these units is capable of meeting all of the proposed emission limits. The Metropolitan Council Environmental Services' Metropolitan Treatment Plant, which is the best performing source for some pollutants, cannot reliably meet all of the limits under all operating conditions because EPA failed to consider the true operational variability of POTWs. The result is a set of standards that reflect hypothetical performance of a set of sources that simultaneously achieve the greatest emission reductions for each and every § 129 pollutant without regard to whether any such SSI actually exists or whether the resulting standards are in fact achievable by any SSI. This approach is untenable and contrary to the language of § 129.

CAA § 129 unambiguously directs EPA to set standards based on the overall performance of ***incineration units***. Section 129 specifies that emissions standards must be established based on the performance of "units" in the category or subcategory and that EPA's discretion in setting standards for such units is limited to distinguishing among classes, types, and sizes of units. These provisions make clear that standards must be based on actual units and cannot be the product of pollutant-by-pollutant parsing that results in a set of composite standards that do not reflect the overall performance of any actual unit. Congress provided express limits on EPA's authority to parse units and sources for purposes of setting standards under § 129 and that express authority does not allow EPA to "distinguish" units and sources by individual pollutant as is proposed in this rule. *See Sierra Club*, 551 F.3d at 1028.

Section 129 MACT standards present very real problems in this regard because the statute requires maximum achievable limits for both nitrogen oxides and carbon monoxide. For combustion sources, carbon monoxide is controlled by increasing excess oxygen and combustion temperature and nitrogen oxides are controlled by decreasing excess oxygen and combustion temperature. A unit that is over-controlling its combustion unit for NOx would be expected to increase CO. Similarly, a unit that is focused on CO reduction

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in the combustion zone would be expected to increase NOx emissions. If EPA chooses a top performer for NOx and a different top performer for CO, the emission limits may well be unachievable for any source. While afterburners may be added for post-combustion CO control, these units burn fuel that results in a corresponding increase in emissions of NOx and CO. The better alternative is to set limits based on the best performers for both pollutants simultaneously.

VI. EPA' s Two Proposed Subcategories Are Inadequate to Account for Operational Differences Among Types and Classes of SSIs

A. MACT Subcategories for Existing Sources Should Also Apply to New Sources

In the Proposed Rule, EPA correctly determined that MHIs and FBIs are distinct types of combustion units that justify separate subcategories. *See* 75 Fed. Reg. at 63268. FB incinerators have higher turbulences that increase combustion efficiencies and reduce particulate emissions, and many have internal afterburning zones that increase residence time to reduce carbon monoxide, hydrocarbon, and particulate emissions. MH incinerators do not share these characteristics. All of these differences result in lower emissions from FB incinerators that cannot be duplicated by MH incinerators.

Based on these distinctions, EPA created distinct MH incinerator and FB incinerator subcategories. However, EPA only recognized this distinction in setting emission limits for existing units. EPA abandoned these subcategories for new units by basing emission limits for all new incinerators, whether FB or MH design, on emission limits achieved by the best performing FB incinerator. EPA concluded that no new MH incinerators have been built recently and none are expected to be built in the future, and that therefore all newly built units would be FB design. EPA cannot make this determination for POTWs. In fact, EPA is essentially setting a beyond-the-floor MACT limit for MHIs without considering any of the criteria that the statute requires. The new source limits in the proposed rule must reflect the best performing similar source for the multiple hearth design.

EPA also seems to ignore the "modification" trigger for the new source standards. EPA's proposed definition of "modification" could make existing MH units subject to the new source FB-based standards. EPA would impose the new standards on units for which the "cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the SSI unit." First, EPA must make clear in the final SSI rule that the cumulative costs to be considered are only those costs incurred since the effective date of the final SSI rule. This is the approach taken in the Municipal Waste Combustor § 129 rule at 40 CFR § 60.51b. The "life of the unit" reference in the definition of modification could be misconstrued as a retroactive evaluation of incurred costs that pre-date the rule. Second, modified MH units are placed in the untenable position of having to meet emission limits set by the best performing FB incinerator – an impossible feat due to the inherent design differences already recognized by EPA. This will prevent all existing MH units, which make up 75 percent of existing SSI units in the U.S., from investing in changes to those units due to the risk that they might qualify as modifications of the type that would trigger unachievable new source performance standards. This includes combustion efficiency improvements or changes that increase steam output for electricity generation, when these environmentally beneficial changes meet the definition of modification proposed at 40 CFR § 60.4930.

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EPA's approach would discourage incremental improvements at MH units because they would trigger FB-based emission limits that cannot be met. EPA has acknowledged the design differences that make meeting these limits impossible, and has provided no pathway by which these modified or reconstructed MH incinerator units may achieve compliance. EPA must retain the separate MH and FB incinerator subcategories for both new and existing sources to avoid illegally subjecting newly-constructed or modified MH SSIs to unachievable and unjustified beyond-the-floor emission standards. Establishing separate emission limits for new MH and FB incinerators will also preserve incentives to be innovative and improve the use of the 163 MH incinerators currently in use in the U.S. *See* 75 Fed. Reg. at 63268.

B. EPA Should Consider Additional Subcategories Based on Use, Size, and Class

Section 129(a)(2) provides that EPA "may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units) and sizes of sources within a category" when establishing MACT standards. These provisions vest EPA with broad authority to group like units for purposes of establishing emissions limitations. Given the significant differences in operating time, size, and input between incinerators in both the MH and FB categories, it is appropriate for EPA to create further subcategories. After choosing to gather data from only nine entities and consider only add-on pollution control technologies, EPA must not use the lack of data as an excuse for not establishing additional subcategories that may make this standard more achievable for SSIs of all sizes and types.

1. Limited Use SSIs

EPA should include an additional subcategory for limited use SSIs that function as back-up or emergency units and operate at only 10 percent of their annual capacity. These units may be essential to ensuring that POTWs can continue processing sewage sludge in a safe manner when a primary unit is unavailable.

In past rulemakings, EPA has created separate subcategories for limited use and emergency units, recognizing that their unique operating conditions could make it difficult if not impossible to meet the requirements applicable to regularly operating units. In the 2004 Industrial, Commercial, and Institutional Boiler and Process Heater MACT rulemaking, EPA recognized that back-up boilers, which operate "10 percent of the year or less," "are different compared to typical industrial, commercial, and institutional boilers" and that "such limited use units should have their own subcategory." 69 Fed. Reg. at 55232. Similarly, in setting NESHAP for Reciprocating Internal Combustion Engines, ("CI RICE"), 75 Fed. Reg. 9648 (Mar. 3, 2010), EPA recognized that stationary existing CI RICE should be divided into non-emergency and emergency categories "in order to capture the unique differences between these types of engines." *Id.* at 9650. In that rulemaking, EPA found that as "emissions occur only during emergency situations or for a very short time to perform maintenance checks and operator training," EPA found that "[e]missions from these units are expected to be low on an annual basis." [18]

[18] Subcategorization of Stationary Reciprocating Internal Combustion Engines ≤500 HP at 5 (May 15, 2006) (EPA-HQ-OAR-2005-0030-0012). While these statements focus on an "emergency use" subcategory, it is important to note that the limited duration of the use, not the purpose for using the CI RICE is the key issue. For example, the same rule also creates a subcategory for "black start" engines (engines used to start a turbine generator), which operate during both "emergency and high demand days." 75 Fed. Reg. at 9662.

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Some SSI units share several similarities with limited use boilers and emergency CI RICE units. Limited use SSIs are put into service during shutdown or curtailment of a primary incinerator and they operate until the primary unit returns to full service. As a result, these units operate for only a small portion of the year, typically 10 percent of the year or less. Because of this limited operation, annual emissions are expected to be low, making the cost of add-on pollution controls for beyond-the-floor mercury control, performance testing and other requirements unjustified. Also, since these units sustain operation for a shorter duration, they spend a larger percentage of their time in startup and shutdown modes, which have different emission characteristics.

Furthermore, limited use SSIs cannot feasibly accommodate the Proposed Rule's testing obligations without running for a considerably longer period than they would typically otherwise operate. Limited use units also may not operate under steady-state conditions for sufficient periods of time to enable testing. Testing would require these units to extend operations beyond routinely scheduled operations to conduct the testing required by the Proposed Rule. Testing is also problematic for limited use units because the Proposed Rule requires submission of a Notification of Intent at least 30 days before any performance test. *See* 75 Fed. Reg. at 63330 (40 CFR. § 60.5220(a)(8)). Due to this requirement, even if a limited use unit was operated for an entire month after an unplanned start, there would be no time to conduct a properly noticed performance test.

NACWA asks that EPA establish a limited use subcategory set at 10 percent of the annual heat input capacity of a unit. These units would have emission limits that are based on their unique emission characteristics from spending a larger percentage of their time in startup and shutdown modes. Also, beyond-the-floor mercury controls would not be justified because their relatively short periods of operation would render the additional controls not cost effective.

2. Space Constraints Justify a Size Subcategory

Additional subcategories based on size are also appropriate. EPA should exercise its discretion to establish a subcategory for small entities that operate SSIs to relieve the disproportionate cost burden on these small entities. EPA is required to consider mitigation measures for these small entities under the RFA, and establishing a separate subcategory that is consistent with the definition of small entities allows EPA to target relief to these entities to satisfy that obligation. Also, some POTWs will face significant challenges due to space constraints at their facilities. SSIs must be located within the solids handling portion of the POTW and space constraints in these areas of POTWs make it technically infeasible to install large pieces of control equipment. EPA assumes that control equipment can easily fit into existing sites, but this ignores the fact that many POTWs are located in areas where expansion is impossible or impracticable. At NEORSD, only one of three treatment plants could accommodate the additional 30 feet of space needed to install the ductwork, contact chamber and fabric filter system necessary to accommodate an ACI system; the other two treatment plants cannot accommodate them at all. *See* NEORSD Comments on the Proposed Rule. Even larger systems may be necessary to control emissions to control SO_2, NOx, and HCl under the full range of operating conditions confronted by POTWs. EPA's control cost assumptions are based on data that do not reflect all operating conditions, so NACWA is skeptical of EPA's conclusion that most units will not need to install control equipment to meet other emission standards. A subcategory for these small or space-constrained units is warranted to accommodate the unique characteristics of these units.

3. Unique Sewage Sludge Characteristics Justify a Class Subcategory

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Unique differences in the content of sewage sludge may also justify additional subcategories based on the "class" of SSI. For example, there are differences in the composition of sludge feed from treatment plant to treatment plant, which can also vary within a plant depending on the time of the year. There are also differences if the sludge is digested prior to incineration and differences between non-digested sludges that are thermally conditioned or chemically conditioned. Sludge that is digested prior to incineration typically has a solids content that is 50 percent volatile solids or less, compared with 55-80 percent volatile solids for non-digested sludge. *See* Water Environment Federation's (WEF's) Manual of Practice: *Wastewater Solids Incineration Systems* (MOP-30). The low volatile content in digested sludge necessitates more auxiliary fuel to sustain combustion, which changes emission characteristics. Also, thermally conditioned sludge typically has a higher solids content (up to 48 percent solids compared with 20-30 percent solids for chemically conditioned sludge), which results in a higher combustion temperature. Thermally conditioned sludge would be expected to have lower CO emissions and higher NOx emissions due to its higher combustion temperature. These unique attributes justify separate subcategories for digested, thermally conditioned, and other (chemically conditioned) sewage sludge incinerators.

EPA should use its discretion to subcategorize by class to ensure all units have a path to compliance.

4. Distance to Landfill Justifies a Type Subcategory

As indicated above, some POTWs are so far away from a landfill that they will have higher emissions from diesel exhaust during sewage sludge transport than from incineration. EPA should not create emission standards so stringent that they force an environmental detriment. For example, MACT standards that force sewage sludge to be transported to landfill or land application sites equal to or greater than 65 miles away emit higher quantities of the pollutants regulated under § 129 than the emissions from their incinerator. These units should be placed in a separate subcategory to ensure that beyond the floor MACT limits do not force incinerators at these POTWs to shut down resulting in transportation emissions in excess of the emissions that would have been reduced by the MACT rule.

VII. THE PROPOSED RULE PLACES UNJUSTIFIED BURDENS ON OPERATORS

A. EPA Should Require Compliance Stack Testing No More Than Once Per Permit Term

The Proposed Rule requires annual stack testing to demonstrate compliance with emission limits for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling. *See* 75 Fed. Reg. at 63303. EPA estimates that stack testing for all of these pollutants costs an average of $61,000 per test. *See* ERG Memo, *Cost and Emission Reduction of the MACT Floor Level of Control* at 5, Tbl. 6c (June 2010) ("Cost and Emission Reduction Memorandum"). NACWA members report that this number may be significantly higher. Factoring this additional annual cost into already strained municipal budgets will place an extraordinary burden on regulated entities. As EPA recognized, nearly all SSI units are operated by municipal entities. Municipal governments across the country have been struggling with the current economic climate, and many already face budget deficits in the face of declining revenues. Requiring testing on an annual basis would place a significant burden on the municipal entities subject to the SSI rule.

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As noted in Part I.A., *supra*, POTWs are already subject to comprehensive management practices, strict health-based sludge content limits, and NESHAPs under CWA § 405 and the Part 503 regulations. Annual stack testing is not necessary to ensure compliance with emission limits, and such frequent testing would disrupt normal operations that are providing a critical public service.[19] The final rule should require stack testing no more than once per permit term. Minimizing the cost and disruption of stack tests will help alleviate the burden on municipal entities and reduce interference with operations without increasing risks to human health and the environment.

B. The Relatively Inert Characteristics of Sewage Sludge Do Not Justify Stringent Operating, Monitoring and Recordkeeping Requirements

EPA attempts to make the monitoring requirements in the Proposed Rule consistent with those in the Hospital/Medical/Infectious Waste Incinerators ("HMIWI") rule. *See Cost and Emission Reduction Memorandum* at 4. However, the waste combusted in HMIWI units is completely different from the waste combusted in SSIs. There are no similarities between the two waste streams that justify basing SSIs rules on rules developed for infectious waste. EPA's decision to base monitoring and recordkeeping requirements for SSI units on those developed for HMIWI units simply because they are both incinerators is arbitrary and capricious.

Daily pressure taps, as proposed by EPA, are not necessary or feasible for SSI units. Disconnecting pressure taps from related parameter monitoring equipment can trip safety mechanisms and cause the system to shut down. Causing daily shutdowns of the system is an unreasonable interference with POTW operations. Furthermore, operators have not encountered problems with clogged taps, making daily checks unnecessary.

C. SSI Operations Respond to External Factors Affecting Operating Parameter Values That Cannot Be Kept Within an Arbitrarily Designated Range.

EPA has also set operating parameters that will be impossible for most SSI operators to meet. EPA proposes to set operating limits based on the operating parameter values during stack tests. As indicated above, stack tests take a snap shot of a highly variable process. It is unreasonable for operating parameters to remain within plus or minus 10 percent of the minimum or maximum value generated during a stack test. SSI feed rates and moisture contents necessarily vary widely depending upon the amount of wastewater that is coming into the POTW. During storms and other high flow events, the POTW is working hard to keep up with the influent and the sewage sludge feed rates and moisture content are necessarily on the higher end of the normal range. During low flow periods, SSIs may operate significantly below maximum feed rates with sewage sludge moisture at the low end of the normal range. POTWs are responding to external events and cannot control these variables sufficiently to stay within a designated range. To accommodate site-specific variation, operating and maintenance parameters should be established in site-specific operating plans that focus on the parameters that correlate with control device efficiency.

D. Use of a Bypass Stack Does Not Indicate a Deviation for All Emission Standards

[19] EPA requires performance testing less frequently than annually in several MACT rules. *See, e.g.*, NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks, 40 CFR. § 63.7321 (testing twice per permit term); NESHAP for Lime Manufacturing Plants, 40 CFR. § 63.7111 (testing every 5 years); NESHAP for Iron and Steel Foundries, 40 CFR. § 63.7731(a) (testing every 5 years).

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During malfunctions or what our industry refers to as emergency conditions (e.g., loss of draft within a multiple hearth incinerator, loss of the induced draft fan, loss of scrubber water, loss of power, etc.), sludge feed to a multiple hearth incinerator is promptly stopped and all of the sludge within the incinerator (approximately 30 - 45 minutes worth of sludge feed) is burned out. It takes approximately 30 minutes for the burn-out to be completed. If a relief stack is not utilized during emergency conditions, the health and safety of operating personnel can be compromised and the incinerator and associated equipment can be damaged beyond repair.

Fluidized bed incinerators are not equipped with emergency relief stacks. During emergency conditions, the sludge feed to the incinerator is promptly stopped and the fluidizing air blower is shut down. Combustion within the fluidized bed incinerator will cease within a short amount of time, due to the low volume of non-combusted sludge within the unit.

In 40 CFR § 60.4900(d), EPA arbitrarily deems use of a bypass stack when sewage sludge is being charged an "emissions standards deviation for all pollutants listed in Table 1." Bypass stacks are an essential part of the safety equipment and operators should be allowed to open the bypass stack immediately as part of a continuous series of events that includes stopping the sludge feed without triggering a deviation. Moreover, EPA does not have the authority to presume deviations of emission standards, particularly when the bypassed emission controls may not be necessary to meet the emission standard. Contemporaneous Part 503 data can show that the sludge content of cadmium, lead or mercury were so low that it could be met without operating a control device. Use of a bypass stack must not be ***deemed*** a deviation of emission limitations for these compounds in the face of this credible contrary evidence. Assuming that the use of a bypass stack results in emission violations for all pollutants is arbitrary and subsection (d) of 40 CFR § 60.4900 should be removed from the final rule.

VIII. THE PROPOSED RULE FAILS TO PRESCRIBE ACHIEVABLE STANDARDS FOR STARTUP, SHUTDOWN AND MALFUNCTION PERIODS

NACWA is very concerned about EPA's proposal to apply the same proposed emission standards for steady-state operating periods to startup, shutdown and malfunction ("SSM") events. EPA incorrectly claims that its authority to prescribe unique standards for SSM periods is constrained by *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008). Although the preamble states that EPA "believes" SSIs will be able to achieve the proposed standards during startup and shutdown (75 Fed. Reg. at 63282), this claim is not supported by the record and NACWA believes this position fails to recognize that some startup and shutdown conditions may temporarily increase emissions, even among the "best performing" SSIs. EPA makes no claim that SSIs will be able to achieve the proposed standards during malfunctions, yet it does not propose unique standards for malfunction periods because they "should not be viewed as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 129 standards, which, once promulgated, apply at all times." *Id.*

We believe that EPA's proposed SSM approach is flawed from the outset because the Agency starts with the premise that the D.C. Circuit's decision in *Sierra Club* supports EPA's proposed SSM approach – applying

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the same emission standards for all operating conditions. EPA states that *Sierra Club* "requires EPA to apply MACT emission standards on a continuous basis, thereby precluding ***exemptions*** applied for malfunctions or other singular events." 75 Fed. Reg. at 63282 (emphasis added). EPA concludes: "Therefore, consistent with *Sierra Club* v. *EPA,* EPA is proposing that the standards in this rule [i.e., a single set of standards developed for steady-state operating conditions] apply at all times." *Id.*

While it is true that a blanket exemption from any standard may be inconsistent with the *Sierra Club* holding, the opinion does not prohibit EPA from applying ***different, even non-numerical,*** standards during SSM events from those standards that apply during steady-state operations. The court only rejected EPA's decision not to impose ***any*** emission standard whatsoever during SSM periods. *See* 551 F.3d at 1027-28. In fact, *Sierra Club* acknowledged that the definition of emission standard in § 302(k) indicates that any one standard need not apply at all times. The court noted that the Part 63 General Provisions at issue in *Sierra Club* were not a design, equipment, work practice, or operational standard under § 112(h) and expressly did not decide whether EPA could promulgate a work practice or engineering standard under CAA § 112(h) (much less under the analogous § 111(h)) instead of the exemption EPA sought to defend. *See* 551 F.3d at 1028. Far from supporting EPA's effort to ignore SSM periods, *Sierra Club* actually highlights the legal weakness of EPA's proposed SSM approach. Therefore, EPA cannot use *Sierra Club* to justify not setting different standards for SSM events.

A. EPA's Rationale for its SSM Approach is Inconsistent with the CAA and Factually Unsound

Beyond not being supported by *Sierra Club*, NACWA believes EPA's SSM approach is contrary to the requirement under § 129(a)(2) that emission standards be achievable in practice by the best performing units. EPA deals with the complex issue of setting standards for SSM with a bare statement that emissions from supplemental fuels during startup "are expected to generally be lower than from burning solid wastes" – presumably meaning sewage sludge – and that emissions during shutdowns "are also generally lower than emissions during normal operations because the materials in the incinerator would be almost fully combusted before shutdown occurs." 75 Fed. Reg. at 63282-83. Finally, EPA claims that its variability analysis has adequately addressed "any minor variability that may potentially occur during startup or shutdown." 75 Fed. Reg. at 63283.

For the same reasons discussed in Section IV of these comments, EPA's variability analysis cannot justify the use of the same emission standards for SSM periods. That analysis includes only limited stack test data from the nine ICR POTWs and none of those data include SSM periods. Thus, the data used in the variability analysis are not representative of SSM events, and statistical analysis alone cannot correct this fundamental flaw.

Aside from the shortcoming that there is no information supporting EPA's view that SSIs can comply with the proposed standards during SSM events, there is reason to believe that emissions of some pollutants can be expected to be higher during startups and shutdowns. For example, emissions of CO and PM can be expected to be elevated during startup when oxygen levels are higher due to lower combustion temperatures, resulting in higher pollutant concentrations when corrected to 7 percent oxygen. Similarly, absolute pollutant levels tend to increase during startup and shutdown due to incomplete combustion that is unavoidable at lower temperatures. The influence of unstable combustion may be more pronounced during shutdowns as the incinerator combusts the remaining sewage sludge for 30 minutes or more. EPA should also account for

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situations where higher emissions occur during the time it takes to bring control equipment from startup to steady-state operations.

In the case of malfunctions, NACWA disagrees with EPA's newly articulated view that malfunctions are not distinct operating conditions from steady-state operations. SSI operators must treat malfunctions as very distinct events from steady-state operations, depending on the severity of the malfunction requiring anything from shutdown of the unit to emergency fire response actions. Depending on the nature and severity of the malfunction event, emissions often are not capable of being captured and routed to a stack for control and/or measurement and, when they are, test methods do not adequately account for the often short-term and unstable characteristics of the malfunction event.

EPA acknowledges that even the best performing SSIs are subject to any number of potential malfunctions and that the factual complexity of differing processes and of the severity, frequency and duration of malfunctions makes standard setting difficult. So it appears EPA's "determination" that malfunctions are not distinct operating conditions is simply an unjustified decision to ignore the impact that the inherent limitations of combustion and pollution control technologies have on the ability of SSIs to achieve the proposed standards. Compounding this error, EPA declines to use emissions during malfunction periods in its MACT floor analysis for normal operating conditions and fails entirely to address its authority under §111(h) to set alternative work practice and engineering standards. EPA's only explanation for this decision is its suggestion that applying the MACT floor concept of "best performing" to a source experiencing a malfunction "presents significant difficulties." 75 Fed. Reg. at 63283. This argument has no basis in the CAA, which requires EPA to distinguish among types and classes of sources in order to set achievable emission standards and which allows EPA to use a variety of alternative work practice standards when setting an emission standard is too difficult. EPA's thin semantic argument leads it to ignore the fact that there are work practices employed by the best performing SSIs that represent the best practices for minimizing emissions during a malfunction. These practices may include monitoring combustion parameters to identify a malfunction and stopping the charging of materials to an incinerator. While the measures that represent these best practices will depend on facility-specific issues, such as incinerator design, pollution control train, and other factors, they are nonetheless the "best technological system of continuous emission reduction ... adequately demonstrated."

NACWA believes the reality of the technological challenges, and the enormous potential cost that would be necessary to monitor SSIs during SSM, give EPA the basis to prescribe alternative design, equipment, work practice or operational standards for SSM. Therefore, NACWA asks EPA to reconsider its SSM approach and to allow for alternative work practice standards for SSM events in the form of a facility-specific SSM plan. EPA should consider a flexible compliance option that allows the source to elect to comply with the MACT floor emission standards for normal operating conditions or with the requirements of the SSM plan for the SSM event.

B. EPA's "Affirmative Defense" Rests on Unsound Legal Footing and Cannot Make Up for a Failure to Set Achievable Standards for SSM Periods

Recognizing that SSIs experiencing malfunctions will not always be able to comply with the proposed emission standards, EPA offers an "affirmative defense" that shifts the burden to the POTW to prove that a lengthy list of criteria are met and actions are taken by the source in order to avoid enforcement for civil

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penalties. It is unclear where EPA finds the legal authority in the CAA to shift the burden to the regulated community of proving (or disproving) essential elements of an alleged violation. The statute is silent as to the issue and "the ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims." *Shaeffer v. Weast*, 546 U.S. 49 (2005), *quoting* McCormick on Evidence § 337, at 412 ("The burdens of pleading and proof with regard to most facts have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure or proof or persuasion"); C. Mueller & L. Kirkpatrick, Evidence § 3.1, p. 104 (3d ed. 2003) ("Perhaps the broadest and most accepted idea is that the person who seeks court action should justify the request, which means that the plaintiffs bear the burdens on the elements in their claims"). While the Supreme Court has recognized exceptions such as affirmative defenses, courts retain the authority to establish such rules unless Congress acts to delegate that authority.

EPA also does not justify why an affirmative defense would not apply to startup and shutdown events, and would be limited only to "civil penalties," excluding other remedies such as claims for injunctive relief. The proposed regulations also contain elements that are vague and not reasonably connected to whether a source should be penalized for a malfunction event. The following lists some of the most extreme examples:

- The condition requiring "all possible steps" to minimize the impact of the excess emissions is unreasonable in terms of its potential operational and economic impact and therefore essentially impossible to satisfy.

- The requirement that emissions control systems be "kept in operation if at all possible" and that any bypass be permitted only if "unavoidable to prevent loss of life, severe personal injury, or severe property damage" are both unwise and unreasonable. It is often the best operating practice to shut down an emission control device rather than have the equipment risk serious damage. And the latter requirement suggests that EPA is tacitly encouraging sources to weigh worker safety practices (albeit not those that risk "severe" injury) against the risk of enforcement under the CAA.

- Some elements of the affirmative defense are impossibly vague, such as whether "proper design" would have prevented a malfunction.

- The requirement to prepare a written root cause analysis "to determine, correct, and eliminate the primary causes of the malfunction" is unreasonably stringent and would result in some categories of malfunctions potentially never satisfying the proposed affirmative defense. For example, the only method a source has to "correct and eliminate" a malfunction caused by a power failure from the grid is to install redundant power generating facilities. The technological and economic impacts of "super engineering" facilities in the way envisioned by EPA are unreasonable and disconnected from the authority EPA has to set standards under the CAA.

Due to the legal uncertainty and unreasonably stringent restrictions on the proposed "affirmative defense," in a future rulemaking NACWA urges EPA to reconsider the need for separate SSM standards and to propose alternative work practice and engineering standards for SSIs.

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IX. AVERAGING TIMES FOR EMISSION LIMITS AND OPERATING LIMITS SHOULD BE EXPANDED TO ACCOMMODATE THE SIGNIFICANT VARIABILITY OF SEWAGE SLUDGE

EPA requested comment on whether the averaging time using continuous emission monitoring systems (CEMS) should be reduced from 24 hours to 12 hours. *See* 75 Fed. Reg. at 63281. NACWA asks that EPA use broad averaging times (e.g., 30 days or longer) for CEMS, sludge concentration data, and operating parameters to accommodate the significant and unpredictable variability in the influent that must be processed by POTWs. Spikes in compound concentrations are unavoidable in a sewer system and they are unlikely to be captured in the data that EPA has gathered for its MACT database. High concentrations of mercury may be released when segments of the sewer are periodically cleaned downstream of a dentist office where mercury-containing amalgams have been discharged into the sewer. The sewer system can also be the discharge point for 'spring-cleaning' activities, spills, and other periodic discharges that typically arrive at the POTW without warning. The POTW does not have the luxury of refusing material discharged in most instances. It must do its best to respond by cleaning the wastewater before it is discharged to a local water body, which redirects these compounds in higher concentrations to the sewage sludge.

Longer averaging times help mitigate the effect of spikes on compliance demonstrations. NEORSD's Part 503 data from weekly sludge samples taken from 2003 to 2009 reveal that the maximum concentration of lead and mercury were over five times higher than the median concentrations. *See* NEORSD Comments on the Proposed Rule. Spikes of this magnitude are typical for POTWs and they justify broad averaging periods. It takes a significant number of normal data points to bring the median back from a 5-times spike.[20] While the emission standards in the Proposed Rule apply during these spikes, these periodic elevated concentrations are not reflected in EPA's database. EPA should help mitigate the burden of its lack of data by maximizing the averaging times for demonstrating compliance.

EPA should not dictate the averaging times for operating parameters. Facilities should have the flexibility to develop an operations and maintenance plan for their control devices and emission reduction methods. EPA improperly directs that the operating parameter range be limited to the range established during a single performance test. If a stack test confirms that emissions are 50 percent of the emissions limit, the operating parameters derived from that test would be ensuring that emissions remain controlled to 50 percent of the emissions limit during future operations. This more stringent limit is unlawful. It is set at a level that is unquestionably lower than the MACT floor, yet EPA has not conducted any of the analysis necessary to justify a more stringent, beyond-the-floor MACT limit. The operating parameter range should reflect the full range of operating conditions that correlate with emissions up to the emissions limitation. The POTW should be able to develop a continuous compliance plan based on the stack test data and all other available information regarding the correlation of operating parameters to control device performance. This ensures that the operating parameters actually correlate to performance at the emission limit and not at the rate captured during the stack test.

X. NACWA SUPPORTS EPA'S APPROACH ON THE FOLLOWING AREAS FOR WHICH EPA REQUESTED COMMENT

[20]Assuming for illustration purposes that the median concentration is 10 and the limitation is 15, a spike that is five times the median concentration would require eight weeks of normal sample results to bring the average back to the limit.

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A. No Numerical Emission Limit for $PM_{2.5}$

NACWA supports EPA's determination not to include an emission standard for $PM_{2.5}$ due to the potential interferences with moisture from scrubber controls. It is reasonable for EPA to control both total and fine particulate by using surrogates because the use of wet scrubbers is not always compatible with OTM 27. Entrained water droplets that occur when stack gas moisture levels exceed vapor capacity can bias $PM_{2.5}$ particle measurements and provide inaccurate readings of filterable $PM_{2.5}$. It would be unreasonable for EPA to include emission limits that are not subject to accurate measurement. Furthermore, the same control devices would be required to control both total and final particulate. *Cf. Nat'l Lime Assoc. v. EPA*, 233 F.3d 625, 637 (D.C. Cir. 2000) (citing *Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394, 1399 (D.C. Cir. 1996)).

Limits on filterable particulate matter and opacity provide an adequate surrogate for direct fine particulate matter contributing to $PM_{2.5}$. There is also a demonstrated correlation between reductions in SO_2 and NOx and reductions in nitrate and sulfate contributions to $PM_{2.5}$.[21] Therefore, the reductions in SO_2 and NOx resulting from these emission limits will also serve to reduce contributions to $PM_{2.5}$. Given the technical difficulties with accurately measuring $PM_{2.5}$ emissions, and the reductions in $PM_{2.5}$ contributors already incorporated into the rule, it is reasonable for EPA to use filterable PM_{10} as a surrogate for $PM_{2.5}$ emissions.

B. No Beyond the Floor Controls for Non-Mercury Pollutants

NACWA supports EPA's decision not to impose beyond the floor controls for non-mercury pollutants, including CO. The 100 ppmv CO limit in Part 503 is not required for all sources; it is one option for demonstrating compliance with the total hydrocarbon limits contained in the rule. *See* 40 CFR § 503.40(c)(2). Thus, Part 503 does not require sources to install afterburners. Any beyond the floor controls for CO imposed under § 129 would require MH incinerators to retrofit a regenerative thermal oxidizer or other afterburner device onto existing equipment. EPA estimated that installing an afterburner device would increase the cost of MACT compliance by over $145 million, and would have uncertain effects on emissions. *See* ERG Memo, *Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units* at 4-5 & Attachment C.2 (Aug. 2010). Furthermore, afterburners require the use of supplemental fuel, which EPA estimates could require annual combustion of an additional 1700 million cubic feet of natural gas. This would lead to emissions of an additional 84 tons of NOx, 70 tons of CO per year, and an additional amount of greenhouse gas emissions. *See* 75 Fed. Reg. at 63277. In light of these determinations, EPA was correct to eliminate beyond the floor emission limits from the Proposed Rule.

C. Flexible Compliance Options

1. Use of Continuous Emission Monitors in Place of Parametric Monitoring and Annual Testing

NACWA supports flexible compliance options allowing, but not mandating, CEMS for demonstrating compliance. NACWA also supports allowing sources to propose site-specific operation and maintenance plans with procedures for addressing missing CEMS data. Providing small entities with a choice of compliance options is particularly important, as it will allow each POTW to independently assess which compliance option

[21] Russell R. Dickerson et al., $PM_{2.5}$ *Maryland State Implementation Plan Weight of Evidence Report* 4-40 to 6-40 (Jan. 30, 2008)

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is most economical for that facility. NACWA also supports EPA's determination that parametric monitoring and annual testing can be eliminated for those using CEMS. EPA has well-developed guidelines regarding the use of CEMS, and they are relied on by industry and EPA alike to provide accurate emission information. Requiring annual testing and parametric monitoring on top of CEMS would be duplicative and unnecessary.

2. Use of Sewage Sludge Content Monitoring

EPA requested comment on whether facilities should be allowed to demonstrate compliance by monitoring the content of sewage sludge entering the SSI unit. *See* 75 Fed. Reg. at 63281. NACWA strongly encourages EPA to adopt content monitoring of sewage sludge as an alternative to annual testing or continuous emission monitoring for all pollutants for which a correlation can be established between emissions and sludge content. EPA's Office of Water regulates the average daily sludge content of cadmium, lead and mercury to ensure that SSI emissions stay below the health-based standards set under Part 503. *See* 40 CFR § 503.43. Part 503 requires a stack test to set the control efficiency of the control device for each metal. POTWs monitor the sludge feed and the moisture content and use this data to calculate the average daily sludge feed rate in dry tons per day. POTWs also calculate a monthly average concentration of each pollutant based on all the sludge samples taken in a month. EPA should offer this approach to demonstrating compliance as an alternative to the PM surrogate limit in the Proposed Rule. The Part 503 sampling procedure is something NACWA members are familiar with and it will decrease the burden associated with complying with this new rule. Sludge sampling is a cost-effective way for units already regulated under Part 503 to demonstrate compliance with mercury emission limits, and is significantly less burdensome than installing and maintaining CEMS or performing annual stack tests.

NACWA also supports using content monitoring for other pollutants (SO_2, NOx, HCl) for which a correlation can be established between the content of the sewage sludge and the incinerator emissions. For instance, SO_2 stack testing with concurrent sulfur content monitoring can be used to establish a correlation between sludge concentration and emission rate. After that correlation is reliably established, stack testing would no longer be necessary to demonstrate compliance. The POTW could demonstrate compliance by monitoring the sulfur content and, if a control device is used, by monitoring an operating parameter that ensures proper control device operation. NACWA strongly encourages EPA to include a sewage sludge content-monitoring option in the final rule.

D. Use of Prior Performance Tests for Initial Compliance Demonstration

NACWA supports allowing initial compliance demonstrations to be based on earlier performance tests conducted prior to the rule if they represent current operating conditions and used the appropriate test method. EPA should not impose an arbitrary two-year cut-off period for the initial performance test. Any test that meets the above criteria should be accepted, including all emissions testing conducted for the ICR.

E. Less Frequent Testing Based on Test Results

NACWA supports less frequent emission testing when test results demonstrate that a source's emissions are less than 75 percent of the applicable emissions limits. However, as explained in Part VII.A, *supra*, the initial testing frequency should not exceed one test per permit term. The content of sewage sludge is already regulated

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by the CWA to risk-based levels, and additional annual testing is not necessary to reduce health risks from SSIs. If EPA seeks to require more frequent testing, then any final rule should provide for less frequent testing when the results are sufficiently below the emission limit.

F. A Waste Management Plan Would Be Duplicative of the Waste Management Plans Already Required by Part 503

NACWA supports EPA's conclusion that requiring waste management plans under § 129 would be duplicative of the waste management practices already in place under the CWA. The numeric emission limits and management practice requirements established under the Part 503 regulations are based on one of the Agency's largest risk assessments, which was conducted in the late 1980s and early 1990s to protect human health and the environment from any reasonably anticipated adverse effects from pollutants that may be present in sewage sludge.[22] As a result, SSIs demonstrate that the emissions from their units are not adversely impacting human health and the environment by demonstrating compliance with the Part 503 requirements.

Pursuant to 40 CFR Part 403 (Part 403), POTWs additionally implement, through local regulatory authority, pretreatment standards to prevent discharge of pollutants to the POTW that may pass through or interfere with treatment processes. Pretreatment reduces harmful constituents in the sewage sludge combusted by incinerators. Pretreatment has dramatically reduced the contaminants in sewage sludge and accordingly emissions from SSIs have become cleaner. Comparison of the sewage sludge quality measured in the 1980s[23] with the measurements in EPA's 2006-2007 *Targeted National Sewage Sludge Survey* shows a clear improvement in sewage sludge quality since Part 403 and Part 503 were implemented. Specifically, NEORSD, which serves the City of Cleveland and 61 suburban communities, has seen significant decreases in the concentrations of heavy metals in both its influent, attributable to the Part 403 regulations, and its effluent, attributable to both Part 403 and Part 503.[24] Between 1980 and 2004, NEORSD has seen the concentration of lead in the influent reduced by 95 percent while the concentration of lead in the effluent was reduced by 100 percent.[25]

POTWs are already employing successful management practices to comply with Part 403 and Part 503 under the CWA. Requiring additional management plans under CAA § 129 would be duplicative of these efforts and needlessly waste resources that can be better allocated to complying with other provision of the Proposed Rule.

G. Emission Limits Appropriately Apply Only When Sludge Is Being Fed to the Incinerator

NACWA supports an approach that makes emission standards applicable only when an incinerator is being charged. Since an incinerator may only be regulated under § 129 if it is combusting a solid waste, it is appropriate to limit the application of the emission limits to the periods when a solid waste is being combusted. This may also simplify compliance during startup and shutdown, because the sludge is not being fed to the

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[22] EPA, *A Guide to the Biosolids Risk Assessments for the EPA Part 503 Rule*, at 107 (1995) ("[T]he risk assessments quantitatively identified allowable concentrations or application rates of pollutants in biosolids that are used or disposed that protect human health and the environment from reasonably anticipated adverse effects.").
[23] *See* EPA, 40 City Study (1982); EPA, National Sewage Sludge Survey (1988).
[24] See Lita Laven, Frank Foley and Robert Dominak, Improvements in Biosolids Quality Due to EPA's Pretreatment and Biosolids Programs, Residuals and Biosolids Management Conference 2006, at 142-147
[25] *Id.* at 147, Tbl. 1

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combustion chamber during typical startup and shutdown sequences. Most malfunctions are addressed by promptly shutting off the feed to the incinerator.

* * *

Again, EPA's Proposed Rule, if finalized, would have a significant negative impact on the POTWs that rely on incineration and further constrain the list of available sludge management options. NACWA encourages EPA to take the time now to develop a more thorough and accurate understanding of this sector before finalizing emission standards for SSIs.

We appreciate your consideration of these comments. Please do not hesitate to contact Chris Hornback at (202) 833-9106 if you would like to discuss these issues further.

Sincerely,

Ken Kirk
Executive Director

cc: James Hanlon, Director, Office of Wastewater Management, OW, EPA
Ephraim King, Director, Office of Science and Technology, OW, EPA
Suzanne Rudzinski, Acting Director, Office of Resource Conservation and Recovery, OSWER, EPA
Susmita Dubey, Office of General Counsel, EPA
Amy Hambrick, Sector Policies and Programs Division, OAQPS, EPA

Attachment A: Compendium of NACWA Correspondence with EPA
Attachment B: 2009 WERF Report, *Minimizing Mercury Emissions in Biosolids Incinerators*
Attachment C: City of Palo Alto, California – Mercury Source Control Cost Memorandum
Attachment D: NEORSD Mercury Control Cost Memorandum

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

ATTACHMENT A

Compendium of NACWA Correspondence with EPA
(Submitted to the Docket Separately)

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

ATTACHMENT B

2009 WERF Report, *Minimizing Mercury Emissions in Biosolids Incinerators*

(Submitted to the Docket Separately)

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

ATTACHMENT C

City of Palo Alto, California – Mercury Source Control Cost Memorandum

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Cost of Hg Diversion Through Dental Office Source Control

For:	Brad Eggleston Palo Alto RWQCP
Prepared by:	Thomas Barron, PE
Reviewed by:	Karin North
Date:	November 16, 2010

Summary

The Palo Alto RWQCP source control program for dental offices has been active for the past decade. This cooperative effort with the local dental community has been successful in diverting an estimated 5.1 kg/yr from being discharged into the sanitary sewer system. For the entire service area the program is estimated to have an annual cost in the range of $100,000, which consists mostly of expenses for maintaining amalgam separator units. This range in annual costs is equivalent to $18 million per ton of mercury diverted from the sewer system.

Estimate Calculations

Step 1 - Number of Dental Offices

The RWQCP has 135 dental practices in its service area that perform amalgam placement or removal procedures. These practices are served by 116 vacuum systems that each have an amalgam separator installed.

RWQCP Dental Practices & Amalgam Separators

135	Dental offices in the service area that perform amalgam procedures
-19	Less practices that use a shared vacuum system and amalgam separator provided by another office, or by the landlord
116	Net number of amalgam separators

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Step 2 - Amount of Hg Diverted

In its 2008 evaluation of waste mercury sources, the RWQCP estimated that dental practices in the service area have successfully diverted 5.1 kg/yr of this metal from the sewer system. This diversion is equivalent to 0.0056 tons per year.

Step 3 - Cost to Purchase & Install A Separator

In 2008 US EPA published a comparative study of amalgam separators, including their effectiveness and costs (See EPA-821-R-08-014). Data from Table 5-4 of the EPA report are used here, together with information on installation costs from local sources.

Annualized Amalgam Separator Costs

$934	Cost to purchase an amalgam separator (i.e., a Solmetex Hg-5, which is the most common unit in the RWQCP Service Area)
$187	Cost to install the separator (20%)
$1,121	Total installed cost (2008 $$)
10	Anticipated useful life of the separator, yrs
$112	Annualized Cost to Purchase & Install a Separator

Step 4 - Annual Maintenance Costs

Local dental practices indicate that they service their amalgam separators once every 12 to 18 months, with the frequency depending upon the number of practitioners served by the unit and the amount of work that these dentists do.

The following table presents estimated total costs for separators that are serviced once per year. This annual total includes: equipment amortization for 10 years; typical annual maintenance costs of about $600; and 1/8th of a FTE for RWQCP staff to conduct on-going inspections. Costs for maintaining the Solmetex Hg5 amalgam separator are used here because this unit is the most common in the service area.

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Cost per Ton of Diverted Hg
(If All Separators Are Serviced Once Per Year)

$605	Maintenance Service at 12 month intervals ($$/yr)
$112	Annual Cost to Purchase & Install a Separator
$717	Total Annual Cost per site
$83,181	Total Annual Cost for 116 Sites
$15,625	Annual RWQCP Staff Cost
$98,806	Annual cost for RWQCP Service Area
$18	Equivalent cost per ton of Hg diverted ($$ Million/ton)

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ATTACHMENT D

NEORSD Mercury Control Cost Memorandum

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

NEORSD Preliminary Cost Estimate of Complying with the Proposed SSI Rule

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The following is the NEORSD's preliminary estimate of costs to procure and install additional air pollution control devices that would be required to achieve compliance with the proposed SSI rule.

1. Reduction in Particulate Matter and Metal Emissions

A. Advanced Scrubbing Systems

In order to reduce particulate matter and some of the particulate based cadmium, lead, and mercury, an advanced scrubbing system might be required.

Recent bids for the NEORSD's Southerly WWTP's new fluidized bed incineration project, the procurement cost of each of the new "Venturi Pak" advanced scrubbing system was $0.75 million. Assuming $0.5 - 1.0 million for delivery and installation costs, related instrumentation, controls and electrical modifications, and engineering related services, the total cost of a single unit installed would be in the range of $1.25 - $1.75 million/unit (2009 $). This does not include the cost of additional space in a new facility and nor the cost to renovate or expand an existing facility.

B. Wet Electrostatic Precipitators (ESPs)

If wet electrostatic precipitators (ESPs) are required to reduce particulate matter and some of the particulate based metal emissions, costs would be substantially higher than the aforementioned costs for advanced scrubbing systems.

In 2001, bids for a new biosolids handling complex at the Metropolitan WWTP in St. Paul, Minnesota which included the installation of three wet ESPs. The bid price for the three units was $2.49 million or $831,000 per unit. The associated design work and the necessary ductwork, piping, structural, instrumentation and controls, electrical, etc., could total $2.6 million ($867,000 per unit). As a result, total costs averaged $1.7 million per wet ESP (2001$).

Given substantial increases in corrosion resistant metal costs since 2001, along with a 44% increase in the Engineering News Record's construction cost index, costs would be $2.5 - $3 million million per wet ESP (2009 $). This does not include the cost of additional space in the new facility nor the cost to renovate or expand an existing facility.

For the NEORSD's Southerly WWTP new fluidized bed incineration project, approximately 15 feet would have to be added onto the new facility to house the wet ESPs and associated equipment and we do not have room at Westerly or Easterly to add this equipment.

2. Reduction in Sulfur Dioxide and Oxide of Nitrogen Emissions

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A. Sodium Hydroxide

To reduce sulfur dioxide and oxides of oxides of nitrogen emissions, sodium hydroxide could be added to the wet scrubbing systems. Costs to design, procure and install a sodium hydroxide addition system at the Southerly WWTP were estimated to be $0.5 million for three incinerators, with estimated annual chemical costs of $0.7 million/year. This would result in capital costs of $0.25 - $ 0.3 million per incinerator (2009$). This does not include the cost of additional space in a new facility and nor the cost to renovate or expand an existing facility.

B. Urea or Ammonia

To reduce oxides of nitrogen emissions, either urea or ammonia would be added to the hot gases leaving the incinerators. Cost to design, procure and install a urea injection system at the NEORSD's Southerly WWTP has been estimated to be $ 5 million, with annual operating & maintenance costs of $0.5 million (2013$). This could result in capital costs of $1.5 - $2 million per incinerator. This does not include the cost of additional space in a new facility and nor the cost to renovate or expand an existing facility.

The procurement of an ammonia injection system at the Metropolitan WWTP in St. Paul, Minnesota in 2001 had a bid price approximately $400,000/incinerator (2009$). However, the unit is not being used due to the low oxides of nitrogen emissions from the plant's three fluidized bed incinerators. It should also be noted that the use of urea and ammonia results in the conversion of the oxides of nitrogen to nitrous oxide (N_2O) a greenhouse gas that has a global warming potential of 310. This means that each ton of N_2O emissions is equivalent to 310 tons of CO_2 emissions.

3. Reduction in Mercury Emissions

A. Activated Carbon Adsorbing System

In 2005, the Ypsilanti, Michigan WWTP installed a new fluidized bed incinerator equipped with a proprietary activated carbon adsorbing system to reduce mercury emissions. Ypsilanti's Consultant believes that this unit will also reduce dioxin emissions. The cost to procure and install the system was roughly $3 million. This would result in capital costs of $3.5 - $4 million per incinerator (2009$), and does not include a number of other costs which could easily could increase the costs to $ 5 - 6 million per incinerator. In addition, the activated carbon will have to be replaced once every three years.

B. Activated Carbon Injection System followed by a Baghouse

EPA as estimated that the total cost to add simple activated carbon inject for the 163 multiple hearth incinerators will be roughly $5 million. As previously reported, the cost is unrealistic and an entire activated carbon injection system, consisting of an activated carbon injection system, carbon contact chamber, baghouse and heat exchangers and boilers to reduce the exhaust gas temperature to below 350 deg-F prior to the injection point.

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In 2001, bids were received for an activated carbon injection system/baghouse for each of the three new fluidized bed incinerators located at the Metropolitan WWTP in St. Paul, Minnesota. The bid price for the three systems, including procurement, installation, appurtenances and engineering related services, was $6 million or $2 million per unit.

Given substantial increases in corrosion resistant metal costs since 2001 and a 44% increase in the Engineering News Record's construction cost index, costs in 2009$ would be approximately $3 million per system. This would result in capital costs of $3.5 - $4.0 million per system. This does not include the cost of additional space in a new facility, the cost to renovate or expand an existing facility, the cost to revise the air pollution control train, nor the cost to procure and install heat exchangers and/or boilers to reduced the exhaust gas temperature prior to the activated carbon injection point below 350 deg-F. Taking all of this into consideration, the actual cost for all of the require improvements could be $8 - 10 million/incinerator or higher.

It should be noted that the $3.5 - 4 million/incinerator for a carbon injection system, carbon contact chamber and baghouse, or the carbon adsorber as contained in the docket for the proposed SSI rule (document # 2009-0059-0015), does not address the additional costs listed above and need to be updated.

4. Reduction in Carbon Monoxide Emissions

Carbon monoxide emissions can be reduced by utilizing either internal or external afterburners. However, this action, which requires the burning of substantial quantities of fossil fuel, will result in a substantial increase in oxides of nitrogen emissions and greenhouse gas emissions.

While the use of internal afterburners will result in reduced carbon monoxide emissions, most if not all of the POTWs that practice incineration will be required to install external afterburners to meet the potential MACT Standards.

It has been estimated that the cost to procure and install an external afterburning system, along with all appurtenances, engineering services and building space, will be in the range of $3 - 4 million per unit. This does not include the cost to renovate or expand an existing facility.

5. Reduction in Hydrogen Chloride

At this time, we do not know of any method to reduce hydrogen chloride emissions from sewage sludge incinerators, which are negligible.

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Clean Bay Pollution Prevention Plan 2010

The Pollution Prevention Plan for the City of Palo Alto's Regional Water Quality Control Plant

February 2010

For More Information

Additional program information is available at the Environmental Compliance Division web site: www.cityofpaloalto.org/depts/pwd/compliance. Questions about this document should be directed to the Regional Water Quality Control Plant, 2501 Embarcadero Way, Palo Alto, CA 94303, (650) 329-2598, cleanbay@cityofpaloalto.org.

Acknowledgements

The Clean Bay Plan is produced by the City of Palo Alto's Environmental Compliance Division, and describes the pollution prevention activities of the Industrial Waste and Source Control programs. Key staff members in the development and implementation of this plan include Phil Bobel, Maree Doden, Brad Eggleston, Chris Fujimoto, Brian Jones, Jay Kim, Karin North, Jim Stuart, Ken Torke, Julie Weiss, and Margaret Zittle.

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Section 4: Mercury Program

Mercury, a 303(d)-listed pollutant for San Francisco Bay, is present in both wastewater and stormwater discharges to the Bay. Figure 4-1 presents the estimate of mercury sources to the San Francisco Bay, based on the Regional Board's September 2004 TMDL Proposed Basin Plan Amendment and Staff Report (Regional Board, 2004). Bed Erosion and the Central Valley Watershed are the two largest source of mercury to the San Francisco Bay, with the single largest contributor being the historic legacy of abandoned mercury mines.

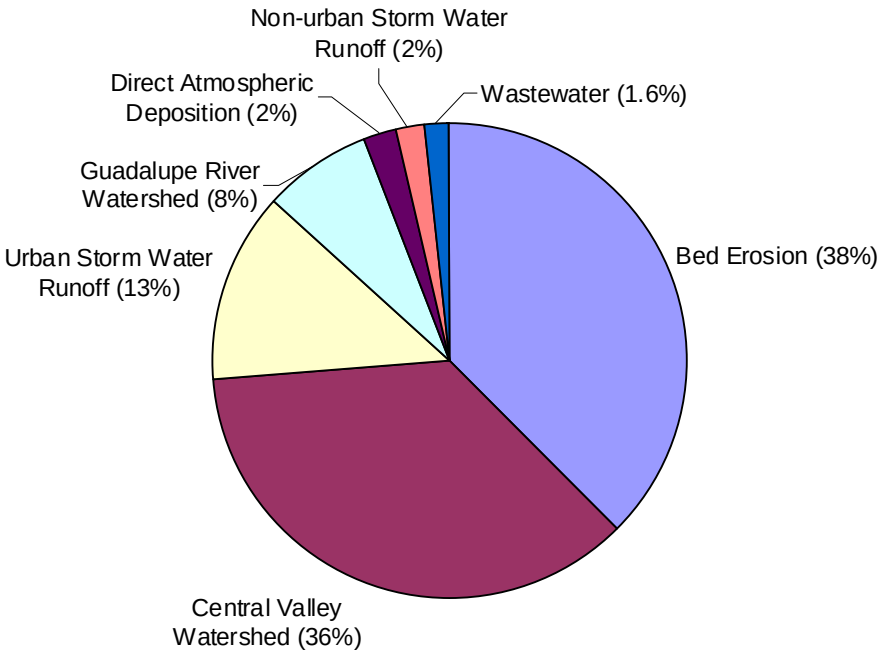

Figure 4-1. Estimated Contributions of Mercury to the San Francisco Bay

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A. Wastewater Sources

Sources of mercury discharge to wastewater include laboratories, hospitals, dental offices, human waste, food waste, and stormwater inflow. Since 1997, the RWQCP has quantified the relative importance of mercury sources using local sampling information in conjunction with data from other wastewater treatment plants and the scientific literature. As noted later in this chapter, the RWQCP's dental amalgam program, which required dental offices to install amalgam separator devices in 2005, has significantly reduced mercury loadings from dental offices. Figure 4-2 presents the mass loading estimates as a percent of the total influent load. The mercury loading estimate was updated in 2008 to reflect the decreased contribution from dental offices ("Mercury Headworks Analysis for 2008", Barron, February 2009). The estimate also accounts for new information about decreases in amalgam procedures at dental offices and the greater importance of mercury in human waste resulting from dental amalgam swallowed by patients during amalgam placement and removal. For comparison, the mercury loading estimates for 2000 and 2008 are both provided in the Mercury Program Evaluation section.

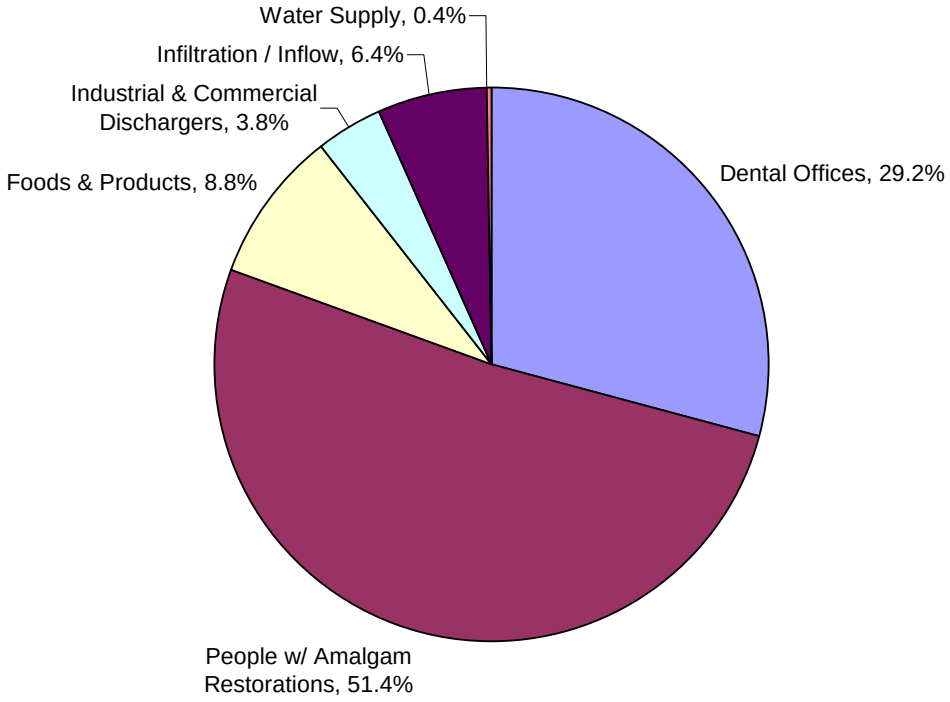

Figure 4-2. RWQCP Mercury Loading Estimate, 2008

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B. Stormwater Sources

The largest stormwater source in the South Bay is abandoned mercury mines. Other contributors in the watershed include:

- Mobile combustion
- Stationary combustion
- Fluorescent lamps
- Construction erosion
- Natural erosion and reservoir spills

C. Residential Pollution Prevention Plan

Table 4-1 summarizes the RWQCP's current efforts and evaluation criteria used to reduce mercury discharges to both the sanitary sewer and storm sewer. Mercury program highlights are described below.

1. Residential Fluorescent Lamp Recycling

The RWQCP initiated a pilot fluorescent light-recycling program at local hardware stores in 2000. In 2004, Santa Clara County adopted and expanded Palo Alto's fluorescent light recovery program county-wide. In that same year Palo Alto also began collecting fluorescent lamps at its recycling center from Palo Alto residents. The quantity of bulbs collected each fiscal year is tracked and reported in the Residential Mercury Program Evaluation section. RWQCP partner cities Mountain View and Stanford cannot establish fluorescent collection at their recycling centers due to either space constraints or concerns about universal waste storage at unmanned sites.

2. Universal Waste and Producer Responsibility

RWQCP staff works with the California Product Stewardship Council (CPSC) to address issues of Extended Producer Responsibility (EPR). The goal of CPSC is to work state-wide with water quality, solid waste, and hazardous waste programs to develop partnerships and/or legislation to change the current system in which local government is tasked with the financial and operational burden of collecting electronic, pharmaceutical, and other wastes. Instead, EPR would involve manufacturers and retailers to reduce the public and environmental risks associated with their products and packaging.

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Table 4-1. Mercury Pollution Prevention Plan

Source	Audiences	Message / Program	Implementation Plan & Timeline	Evaluation Criteria
ALL AUDIENCES				
Air deposition of mercury	Air Quality District	Reduce amount of mercury air emissions	Continue to urge the Bay Area Air Quality Management District to enact strict controls on atmospheric releases of mercury for the expressed purpose of meeting water quality objectives in the State's natural waterways.	Number of correspondences with air district staff
GOVERNMENT AGENCIES				
Fluorescent lights	Purchasing and Utilities Departments	Continue recycling fluorescent lights and purchase low-mercury bulbs	Continue to recycle spent bulbs and to purchase low mercury replacement bulbs. Collaborate with the California Product Stewardship Council to effect legislation requiring extended producer responsibility to cover universal waste disposal costs and operations.	Annual confirmation that low mercury bulbs are being purchased Progress towards legislation.
Mercury-containing thermo-meters, switches and manometers	Facilities, Utilities, and Wastewater Treatment Operations	Identify and replace mercury-containing switches and manometers within City operations	Continue to replace mercury-containing thermometers, switches, and manometers with non-mercury alternatives upon failure.	Number of locations or uses for which alternative switches are identified.

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Source	Audiences	Message / Program	Implementation Plan & Timeline	Evaluation Criteria
COMMERCIAL/INDUSTRIAL				
Mercury-containing thermostats	Building and HVAC contractors	Recycle mercury-thermostats. Install non-mercury thermostats	Following up on the passage of AB2347, which requires mercury-containing thermostat wholesalers to provide collection effective April 1, 2009, staff will review the local status of this effort and assess next steps.	Identification of program reach in RWQCP service area: where are drop off locations, extent of coverage
Fluorescent lights	Facility managers	Recycle fluorescent lamps. Purchase low-mercury lamps.	Via SCVURPPP participation, provide outreach and assistance regarding Universal Waste Rule (UWR) requirements for conditionally exempt small quantity generators.	Continued participation in SCVURPPP project
Scrap amalgam, chairside trap waste, filter waste, and amalgam sludge	Dentists, dental assistants and dental hygienists	Reduce dental mercury discharges through amalgam separator technology and best management practices	Continue implementation of dental amalgam program, including annual self-certification forms and inspection of dental offices to confirm proper amalgam separator maintenance and BMP compliance. Continue to distribute BMP information to community college dental assistant classes. In 2009, 77 students were reached in a dental assistant class and in a dental hygienist class.	Receipt of annual self-certification forms, confirmation of amalgam separator maintenance and BMP compliance through inspections. Continued tracking of treatment plant mercury data Number of students reached

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Source	Audiences	Message / Program	Implementation Plan & Timeline	Evaluation Criteria
RESIDENTS				
Consumer products: Mercury-containing thermostats, Thermo-meters, and other consumer products	Homeowner, landlords and renters	Recycle mercury-containing products	Continue to collect and recycle thermometers and thermostats through the RWQCP dropoff program, HHW programs and special events. In 2010, organize and publicize a service area-wide thermometer takeback campaign. Partner with regional take-back efforts as they arise and CPSC on implementing producer responsibility programs.	Quantity of thermometers, thermostats, and other mercury-containing products collected Progress of CPSC and contributions of RWQCP staff time. Participation in program.
Consumer products: Fluorescent lights	Homeowner, landlords and renters	Recycle fluorescent lights	Monitor and attempt to assist with any funding issues experienced by the County HHW Program to ensure that the County-wide fluorescent lamp collection program continues to serve the RWQCP's entire service area. Continue to collect and recycle fluorescent lamps accepted at the recycling center and at HHW events.	Continuation of County-wide program Quantity of lamps collected at recycling center and HHW events.

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To date, the City of Palo Alto has taken a leadership role in promoting EPR by contributing to CPSC financially, organizing and providing presentations to the water quality community and initiating a 2008 meeting with Assembly member Ira Ruskin to ask for his advocacy for both EPR and CPSC (he later successfully sponsored AB2347 which required wholesalers of mercury-containing thermostats to set up a collection program for mercury thermostats by April 1, 2009).

In 2009, RWQCP partnered with the Palo Alto Zero Waste Program and adopted an EPR resolution and policy to further its efforts in incorporating EPR into its operations. RWQCP leads the City's Green Purchasing efforts and has begun the process of incorporating EPR language for both products and packaging.

3. Residential Thermometer and Thermostat Drop-off Program

The RWQCP's thermometer and thermostat takeback program, which began in 1998, remains in operation. The number of thermometers collected annually has decreased significantly since the conclusion of a very successful campaign in 2004. Thermometer and thermostat takeback will continue at the RWQCP facility, monthly Household Hazardous Waste events, and special events upon request. The RWQCP plans to conduct a reenergized, service area-wide thermometer takeback campaign in 2010 that will involve advertising, multiple locations and tracking of results on the RWQCP's cleanbay.org website.

4. Residential Mercury Program Evaluation

About 98 pounds of mercury, including 8,034 thermometers, have been collected since the program began in January 1998 (Table 4-2). Annual collection varies and can be strongly influenced by residents that occasionally bring in several pounds of bulk mercury at one time. The mass of mercury collected can be compared to the RWQCP's annual influent loading of approximately 13 pounds. Below is a summary of the amount of mercury products collected at the RWQCP (Table 4-2) and the HHW Program (Table 4-3).

Table 4-2: Mercury Products Collected at RWQCP [1]

	Collected in 2009	Total collected to date (since 1998)
Thermometers	34 units	8,034 units
Thermostats	2 units	301 units
Total weight of mercury collected (includes bulk mercury)	0 pounds	77 pounds

[1] *From CPB Mercury_RX__HHW Tracking Form; Calculation of pounds of mercury assumes 1 gram mercury per thermometer and 5 grams mercury per thermostat*

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Table 4-3: Mercury Products Collected at Household Hazardous Waste Events [1]

	Collected in FY 2008-2009	Total collected to date (beginning FY 2007-08)[2]
Devices (mercury thermometers, thermostats)	89 pounds	305 pounds
Fluorescent Lamps	19,445 pounds	38893 pounds
Total weight collected	19,534 pounds	39,198 pounds

[1] *From monthly HHW events and Palo Alto Recycling Center recorded on CIWMB 2008-2009 303a Form*
[2] *Collection at HHW has occurred since program inception. The format of the 303a form changed in 2009. For this report, totals mercury containing device collection will be tabulated from fy 2009.*

D. Dental Office Source Control

Since 2000, the RWQCP has partnered with the Mid-Peninsula Dental Society (MPDS) to educate dentists about their role in preventing mercury contamination in San Francisco Bay. RWQCP prepared training materials, conducted training seminars, made on-site consultations, and defined voluntary best management practices (BMPs) to prevent mercury amalgam from reaching the environment.

In 2004, the RWQCP adopted an ordinance requiring all owners and operators of dental vacuum suction systems to install an ISO 11143 certified amalgam separator device by March 31, 2005. The ISO 11143 certification process for amalgam separators includes demonstrating that the separator removes a minimum 95% of amalgam from the wastestream. In addition to the amalgam separator requirement, the following best management practices (BMPs) that directly affect sewer discharges were required by the ordinance:

- Do not rinse chairside traps, vacuum screens, or amalgam separator equipment in a sink or other sanitary sewer connection.
- Train staff in the proper handling and disposal of amalgam materials and fixer-containing solutions; training records are available for inspection.
- Do not use bleach or other chlorine-containing disinfectants to disinfect the vacuum line system.
- Do not use bulk liquid mercury; use only precapsulated dental amalgam.
- Store amalgam waste in accordance with recycler or hauler instructions.

Other amalgam-related BMPs, though not required by the ordinance, are encouraged.

1. Dental Program Implementation

Based upon the information collected by the RWQCP in 2004, it was determined that 134 dental offices in the RWQCP's service area were required to install amalgam separators. A small

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number of dental offices are exempt from the ordinance because they specialize in fields of dentistry in which amalgam removal or placement is uncommon, and the removal or placement of amalgam fillings occurs at their facility no more than 3 days per year.

By late 2006, each of the dental offices subject to the amalgam separator requirements had been inspected at least once. A typical inspection lasted approximately 20 minutes, and addressed the following issues:

- Implementation of amalgam best management practices (BMPs);
- Presence of an amalgam separator;
- Review of separator maintenance records; and
- Management of amalgam wastes and x-ray processing wastes.

In 2007, the RWQCP developed a new database to help track dental offices and dentists within our service area. The dental database is complex because many amalgam separators are shared by multiple dental practices or managed by a landlord or property management company. The database also tracks when the separator was last maintained from the data collected on the annual amalgam separator form. RWQCP staff sends an amalgam self-certification form to the dental offices, which requires each dental office to self-certify that the office is maintaining its amalgam separator and complying with the required BMPs. The dentists complete this form annually, assisting the RWQCP in tracking new business information and prioritizing inspections.

2. Ongoing Dental Program

With all of the dental offices subject to the ordinance having installed amalgam separators, the primary goals of the ongoing program are to verify that amalgam separators are properly maintained, maximize compliance with BMPs, and ensure that new dental offices are captured by the program.

The key components of the ongoing dental amalgam program are as follows:

- Track new dental offices through the building permit process and ensure that amalgam separators are installed
- Require submittal of annual report forms from all dental offices to allow self-certification of BMP compliance and amalgam separator maintenance
- Inspect dental offices to verify compliance and to educate dentists
- Maintain database using information obtained through inspections and annual report forms
- Maintain web site that includes electronic versions of the brochure, forms, ordinance text, list of approved separators (linked to list maintained by Bay Area Pollution Prevention Group) and answers to frequently asked questions.

In February 2009, RWQCP staff sent amalgam self-certification forms to 131 dental offices. Based on the response, the RWQCP inspected 25 dental offices to confirm that they are following the required BMPs and maintaining their amalgam separators. Staff also inspected those offices with new owners to ensure compliance with the ordinance requirements. In 2010, RWQCP staff will look for dentists that may not be listed in our database to ensure compliance with the dental ordinance requirements.

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3. Dental Program Evaluation

a. Dental Facilities in Compliance with Ordinance

In 2009, RWQCP staff confirmed full compliance with separator maintenance requirements through a combination of annual report forms and inspections. Inspections have also confirmed that dental offices are following the BMPs, although a small number of dental offices have been found to continue to place chairside traps in the trash. In these instances, the inspection is used as an opportunity to educate the office and a follow-up letter is sent reminding the office that following BMPs is required by the ordinance. As discussed previously, inspections confirmed that all dental offices have installed an amalgam separator.

b. Decrease in estimated loading from dental facilities

The RWQCP's mercury loading estimate was updated in 2008 to reflect lower contributions from dental facilities after implementation of the dental amalgam program. Figures 4-3 and 4-4 illustrate the dramatic reduction in estimated mercury loading from dental offices between 2000 and 2008[1]. The dental office contribution is estimated to have decreased from 56 percent to 29 percent of the RWQCP's influent mercury loading. During this same period of time, the overall influent mercury loading has decreased by approximately one-third.

The methodology employed to estimate the annual mass of mercury discharged to the sanitary sewer for individual dentists can also be used to estimate the mass of mercury captured (e.g. collected for appropriate disposal by amalgam separators and implementation of Best Management Practices) due to the RWQCP's dental amalgam program. The 2008 analysis estimates that the current loading to the sewer from dental offices in the Palo Alto service area is 5.1 pounds per year, with 47.4 pounds per year captured by use of best management practices and amalgam separators. It is estimated that the dental loading would be 16.3 pounds per year if the dental amalgam program had not been implemented. Therefore, the RWQCP estimates that 11.2 of the total 47.2 pounds captured or collected by dentists is attributable to the dental amalgam program.

[1] The 2000 Mercury Loading Estimate displayed in Figure 4-5 differs from the 2000 Estimate provided in previous Clean Bay Plans. As the 2008 Estimate was in process, it was noted that the original 2000 Estimate used a lower number of dentists than the number now known to be practicing in the RWQCP service area. In addition, the "People with Amalgam Restorations" estimate had been understated because excretion of mercury swallowed during dental procedures had not been considered. For details, see "Mercury Headworks Analysis for 2008", Barron, February 2009.

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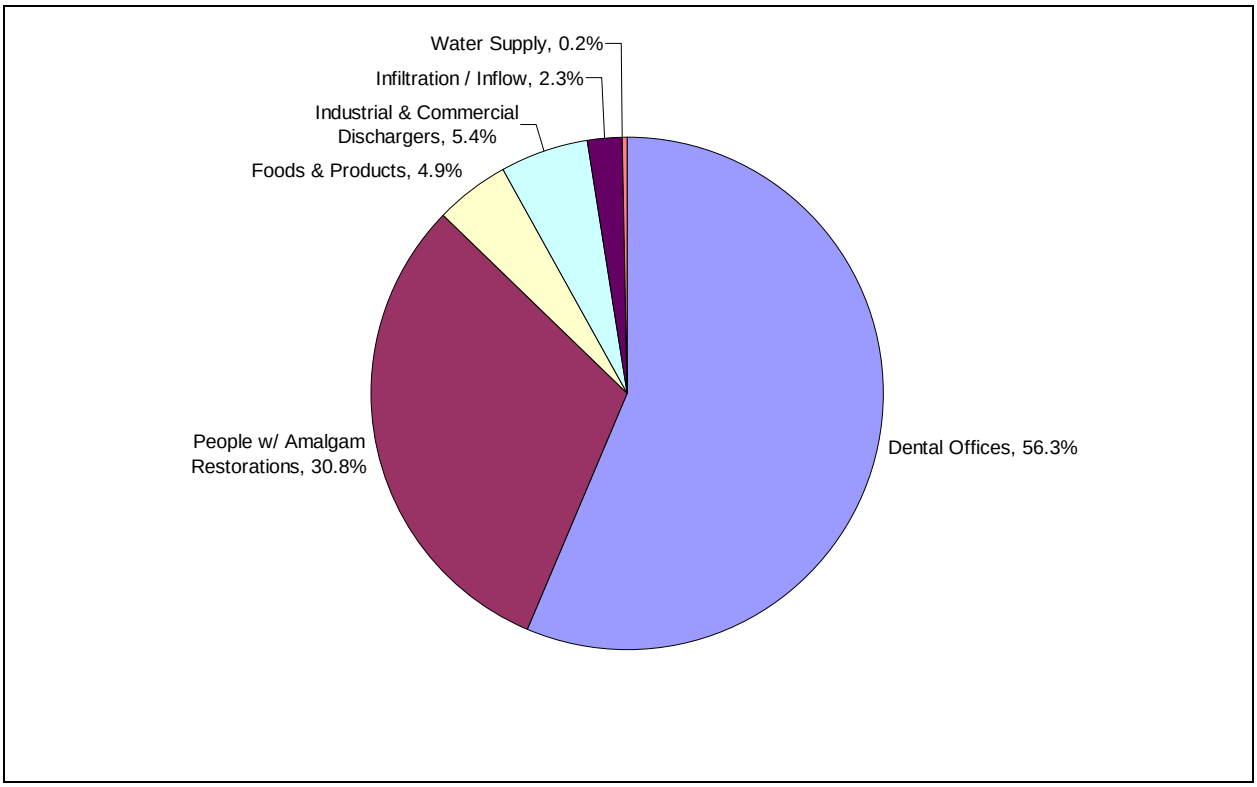

Figure 4-3. RWQCP Mercury Loading Estimate, 2000

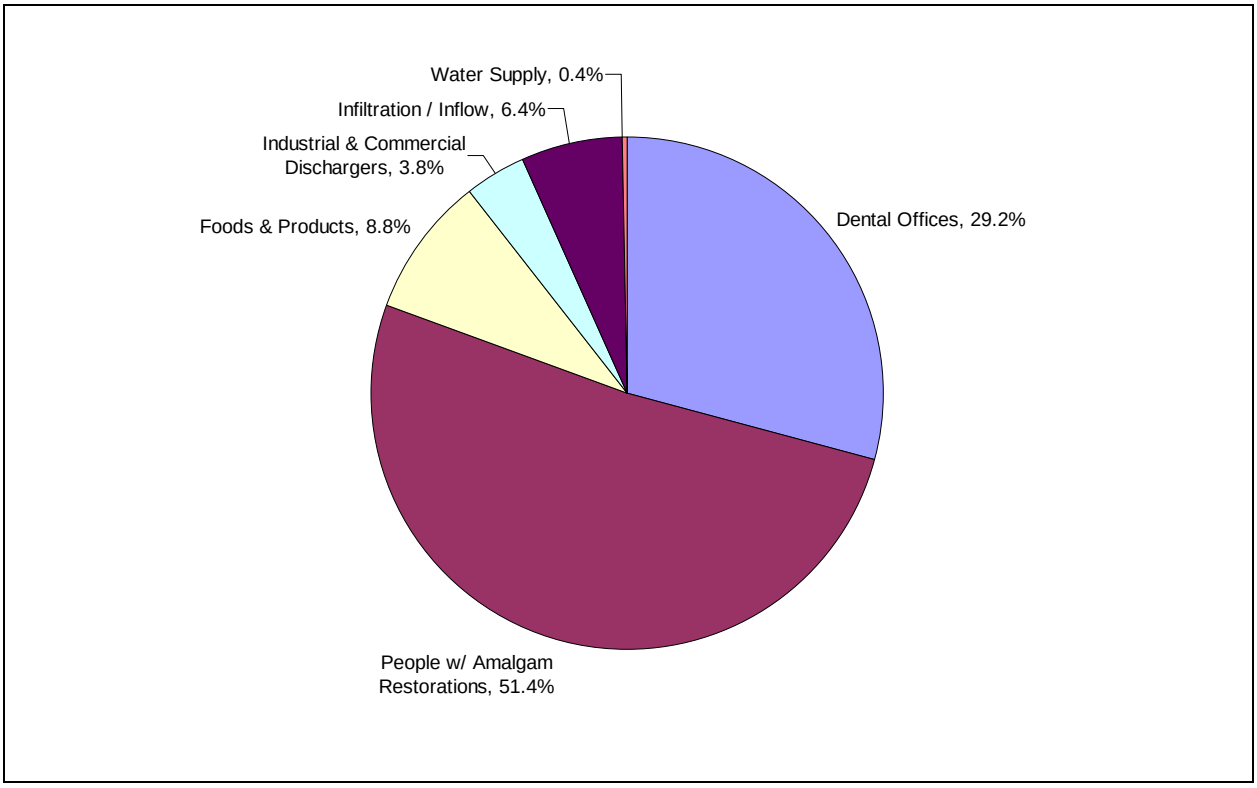

Figure 4-4. RWQCP Mercury Loading Estimate, 2008

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4. Educating Other Bay Area Wastewater Agencies

Since December 2006, staff from the RWQCP spearheaded and helped organize three dental amalgam training sessions that were co-sponsored by the Bay Area Pollution Prevention Group (BAPPG). The overall goals of the workshops were to provide wastewater agencies with the tools and knowledge to start their own dental amalgam programs.

The most recent training was held in January 2010, which was attended by 55 inspectors and program managers. Both trainings were well-received and participants now feel more knowledgeable when they inspect a dental office.

5. Educating Dental Hygienists and Dental Assistants

Palo Alto has partnered with the Foothill College Dental Hygienist program to educate new hygienists about minimizing mercury pollution from dental offices. In 2009, BAPPG decided to expand this outreach to educate all dental hygienists and dental assistants in the Bay Area. Most recently, Palo Alto educated 77 dental hygienists at Foothill College. In 2009, BAPPG's contractor also educated over 400 students throughout the Bay Area. BAPPG also created an outreach page for dentists and dental hygienists located on the baywise site. In 2010, BAPPG will continue to fund a contactor to educate dental hygienists and assistants on ways to reduce pollution from dental offices.

E. POTW Mercury Use Investigation

In 2003, RWQCP conducted a thorough investigation of the uses of mercury at the Plant. The investigation included the following:

- An inventory of the mercury used at the Plant, focusing on switches and reagents, but including all uses
- A listing of available non-mercury alternative products
- Recommendations and a time schedule for action by Palo Alto where appropriate

The inventory is presented in Table 4-4, organized into three separate sections: lights, switches, and lab reagents. The list includes currently inventoried mercury-containing products, as well as the plan for action, as appropriate.

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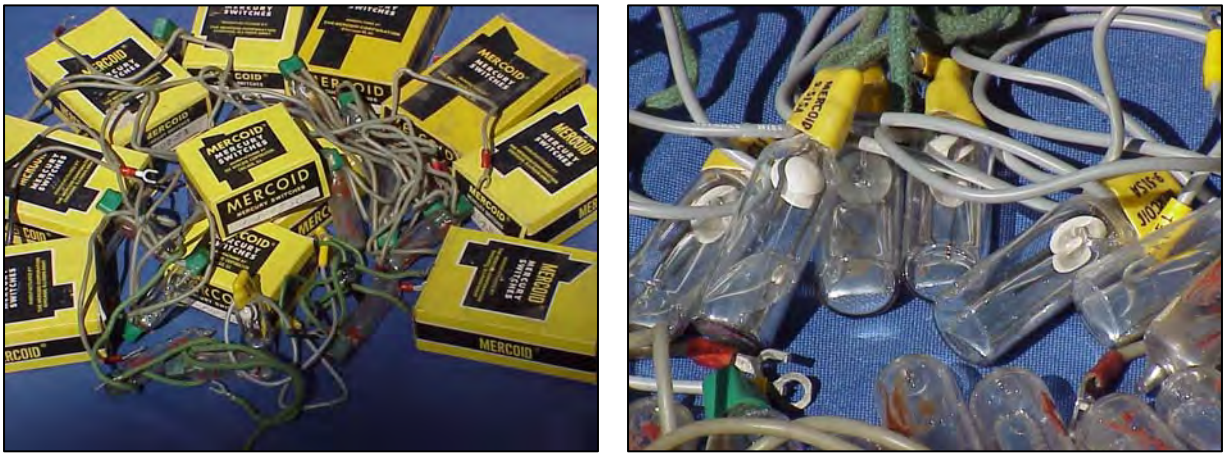

Figure 4-5. Some of the mercury alarm switches that were removed from service or pulled from storage at the RWQCP in 2002.
(All such switches are turned in to the City's municipal hazardous waste collection for recycling.)

In 2005, the RWQCP reviewed these results and found no additional mercury-containing components to add to the list. If additional sources are identified in the future, the RWQCP will review applicability of alternative products and recommend any additional actions.

As for previously identified products, the schedule is presented in Table 4-4. The primary items for which alternatives have been identified are mercury switches (Figure 4-5). In those cases, because there is no immediate pathway between the switches and the environment, the schedule involves removing mercury switches upon failure.

F. POTW Mercury Replacement Effectiveness

Effectiveness of this program is measured by:

- Numbers of switches collected and replaced
- Adoption of a mercury-free alternative to the COD laboratory procedure
- Further identification of other sources and alternatives

1. RWQCP mercury replacement

Since 2002, RWQCP has replaced or removed 52 mercury switches (approximately 3.1 pounds) from the plant. Many of the switches that were recycled were not in service but were inventory in the shop and warehouse contributing to the large amount of mercury recycled in a short period of time. In 2010, RWQCP replaced one float switch with contained approximately 50 grams of mercury.

In 2008, the RWQCP's laboratory switched to a mercury-free Chemical Oxygen Demand (COD) laboratory method following the method's approval by EPA. The RWQCP laboratory typically analyzes approximately 350 samples per year for COD. The actual number of COD vials used is greater than 350, as many are analyzed in duplicate and quality control samples must also be analyzed.

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2. Identification of sources and alternatives

City staff identified an alternative float switch, which is a non mercury bulb and is produced by the same manufacturers as the mercury switches. For other applications, such as temperature or pressure switches, there are a variety of techniques for replacement, usually by digitizing the signal and using logic to control a switch. In addition the RWQCP uses a Programmable Logic Controller (PLC) system to make contacts when necessary while monitoring a signal. These are usually a case-by-case modification rather than a universal replacement. Other situations arise where the switch is an integral part of an existing system that does not retrofit, such as the torque alarms on the clarifier sweeps. Nothing short of redesigning the sweep arms can replace the mercury switches; these will not be replaced.

Table 4-4. Inventory Results and Current Plans

Product	Use at RWQCP?	Plan for Seeking Alternatives
Lights		
Fluorescent	Yes – common	Now using low mercury lights – formally initiated in 2001
Metal halide (high intensity discharge lamps w/blue-white light)	None found	
High pressure sodium (yellow-white lights used for street lamps, outdoor security, and some lighting in process areas)	Yes – common	In 2010, plan to evaluate potential for replacing these lamps with LED lighting
Mercury vapor lamps	Yes – uncommon use (2-3 only)	No current plan
Switches		
"Silent" wall switches (prior to 1991)	None found	Will replace any overlooked upon failure
Wall-mounted office thermostat	Yes – 6 to 10	Will replace upon failure
Airflow/fan limit controls	None found	
Building security systems	None found	
Pressure control	None found	Will replace, upon failure, any overlooked devices and replace with Hg-free
Torque-arm alarm switches	Yes – about 12 to 16	Will not replace; integral part of existing torque arm
Float control (used for sump pumps)	Yes	Will replace with Hg-free upon failure.
Lab Reagents		
Pre-mixed test tubes for monitoring chemical oxygen demand (COD)	Yes	In 2008, the laboratory switched to a mercury free COD test procedure.

G. Mercury Program Evaluation

The best measure of the mercury program's overall effectiveness is the mercury concentrations in influent, effluent and biosolids; figures 4-9 through 4-14 present

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

RWQCP data on influent and effluent mercury concentrations and mercury concentrations in sludge cake prior to incineration.

The dental amalgam program has proven very effective in reducing mercury loadings to the Plant and to the environment; the average effluent concentration for 2006 through 2009 declined 49 percent compared to the average effluent concentration for 2001 through 2004 (Table 4-5). These reductions are believed to result primarily from the dental amalgam program, not from other residential and commercial programs addressing mercury, because they occurred after the takeback programs for thermometers, thermostats, and fluorescent lamps had been in place for a number of years.

Table 4-5. Summary of the average mercury concentration before and after the installation of amalgam separators for influent, sludge cake and effluent

Location	Average Mercury Concentration		Percent Reduction (pre- vs. post-separators)
	2001-2004 (pre-amalgam separators)	2006-2009 (post-amalgam separators)	
Influent	0.31 µg/L	0.20 µg/L	37%
Sludge Cake	397 µg/kg	248 µg/kg	37%
Effluent	0.006 µg/L	0.003 µg/L	49%

As shown in Figures 4-6 and 4-7, influent mercury concentrations have decreased significantly since 2004. Influent samples are collected on a weekly basis. Since the ordinance required installation of amalgam separators by March 31, 2005, data from 2001 through 2004 are used as the "pre-separator" baseline. The average influent concentration for 2006 through 2009 was 37 percent lower than the average influent concentration for 2001 through 2004.

With respect to influent data gathering, there is a data gap that must be acknowledged. Mercury amalgam particles are very dense, and are more likely to travel along the bottom of sewer pipes than to be suspended throughout the water column. Due to the configuration of the RWQCP influent sampling location, it is believed that some mercury amalgam particles would not be captured in the influent samples. These amalgam particles would not enter the RWQCP's primary treatment process, but would be trapped in the "grit" channel at the headworks of the RWQCP. Because the grit is highly irregular, it is not feasible to conduct accurate, representative sampling. The grit is disposed of at a landfill, and its pollutant content has never been included in the various mass balances that have been conducted. Therefore, we recognize that undetected decreases in the mercury content of that material may have occurred.

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Figures 4-8 and 4-9 present effluent mercury concentration data. Effluent samples are collected on a monthly basis. The average effluent concentration for 2006 through 2009 declined 49 percent from the average concentration for 2001 through 2004. The 2009 average effluent concentration is the lowest annual average concentration to date for mercury. As shown in Figure 4-9, the effluent mercury concentration since early 2005 trended steadily downward through early 2006, then upward, then downward again. Since the installation of amalgam separators, the correlation between effluent suspended solids and mercury has become much stronger, and these trends track well with suspended solids removal performance.

Mercury concentrations in the RWQCP's pre-incineration sludge cake are presented in Figures 4-10 and 4-11. Sludge cake samples are collected monthly. Sludge cake mercury concentrations have declined substantially since 2004. The average concentration for 2006 through 2009 is 37 percent lower than the average for 2001 through 2004.

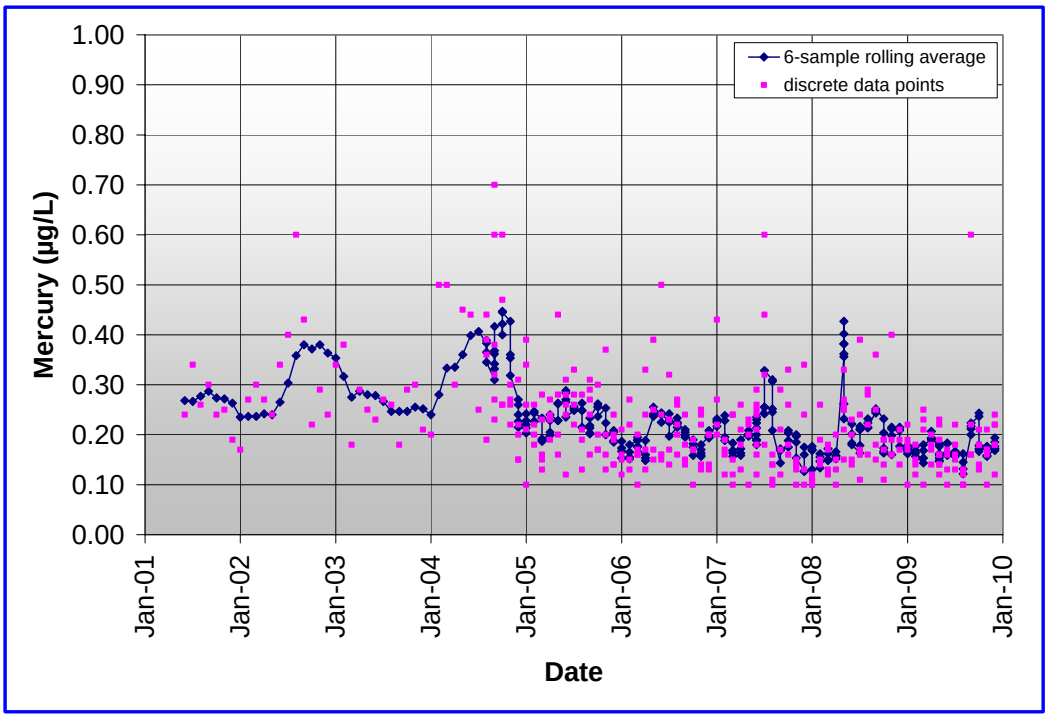


Figure 4-6. RWQCP Mercury Influent Concentrations: 2001-2009

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

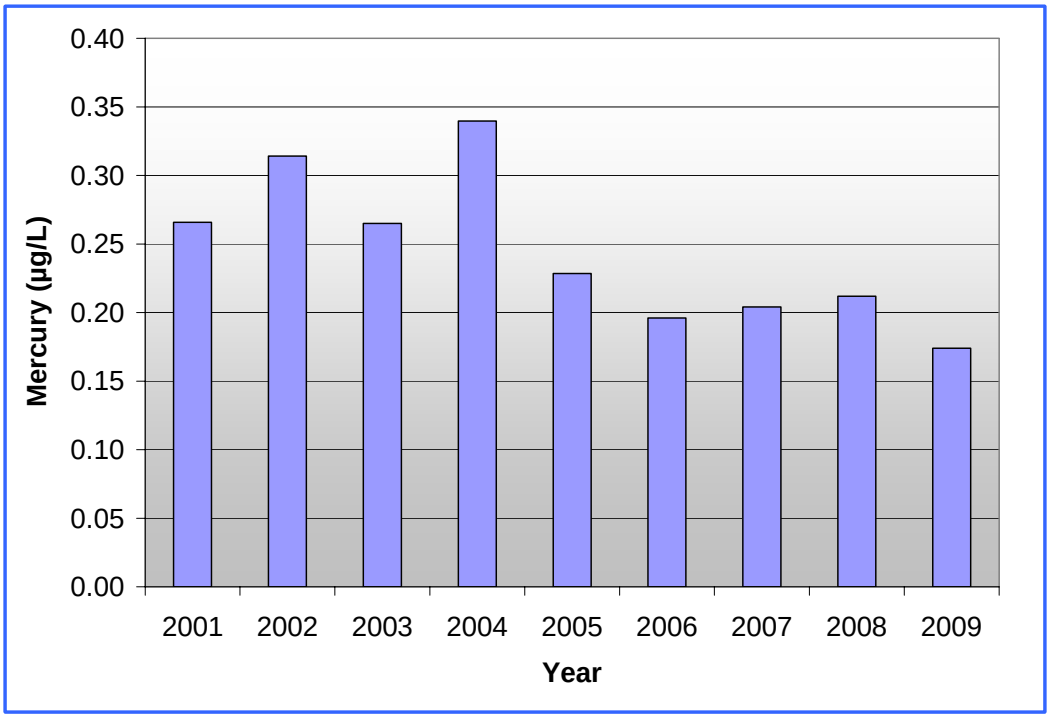


Figure 4-7. RWQCP Average Mercury Influent Concentrations: 2001-2009

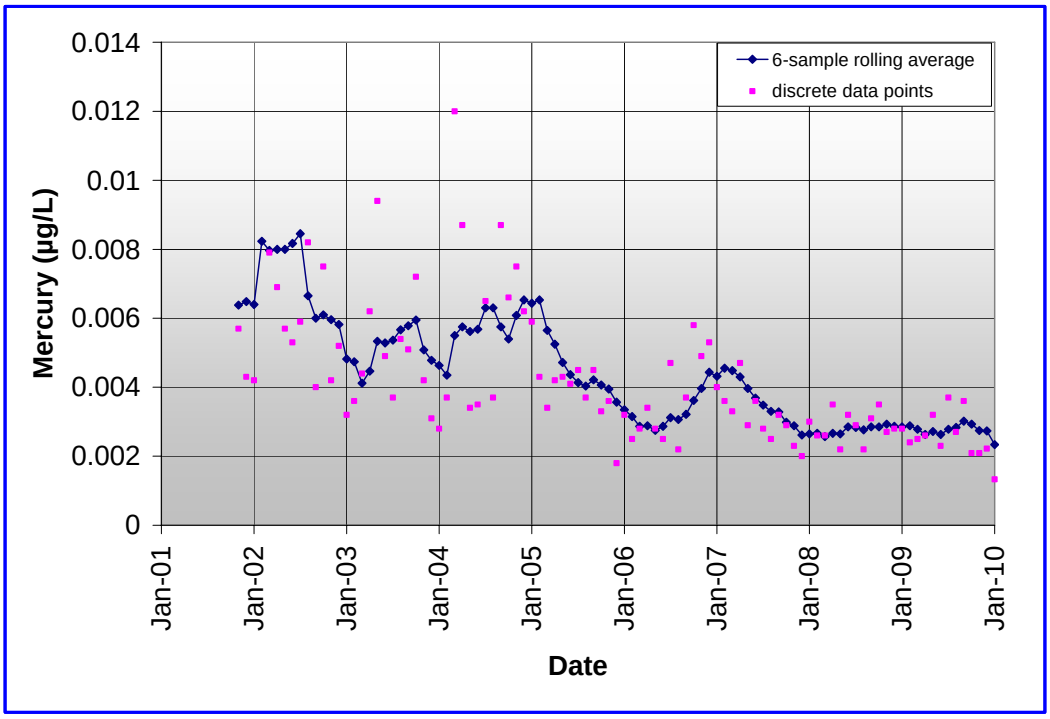


Figure 4-8. RWQCP Mercury Effluent Concentrations: 2001-2009

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

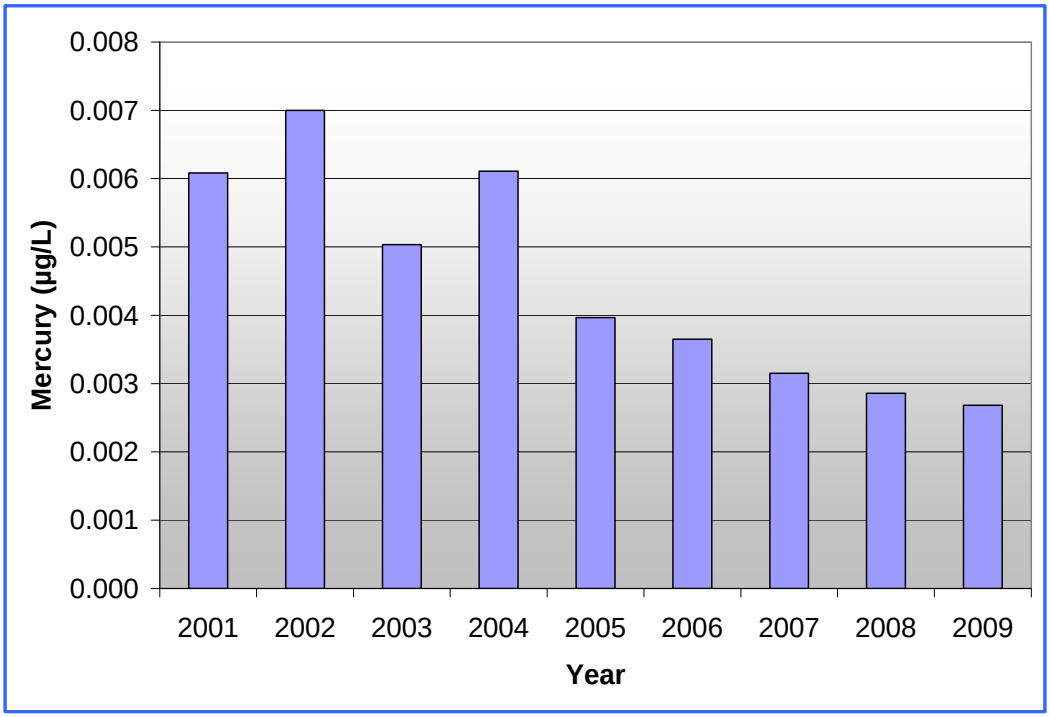


Figure 4-9. RWQCP Average Mercury Effluent Concentrations: 2001-2009

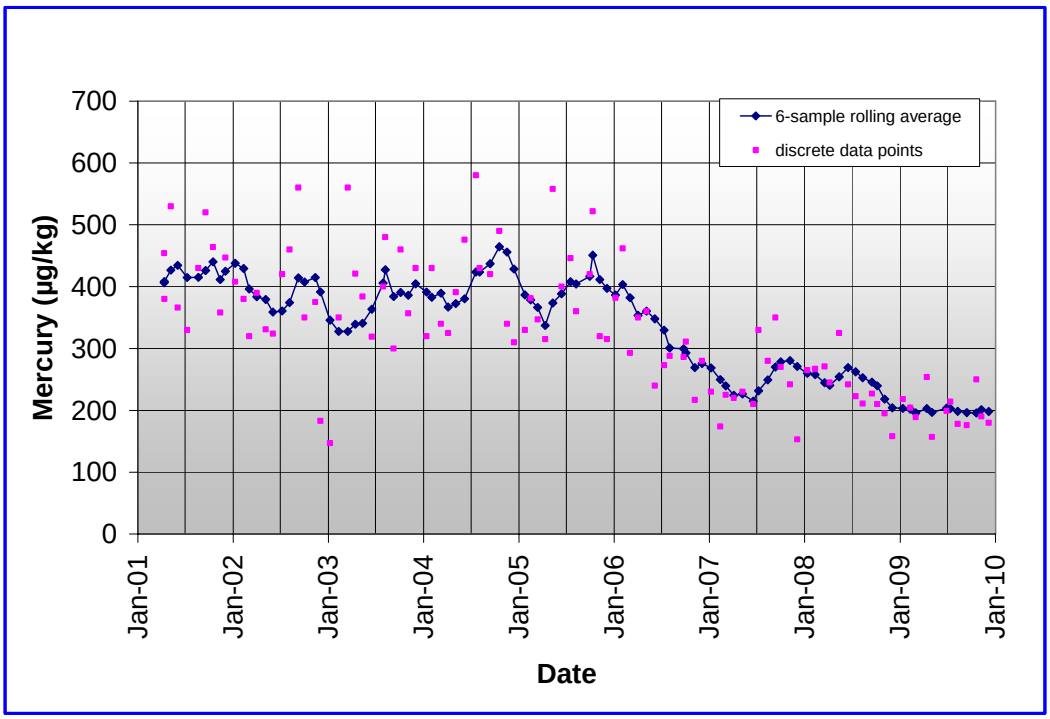


Figure 4-10. RWQCP Sludge Cake Mercury Concentration: 2001-2009

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

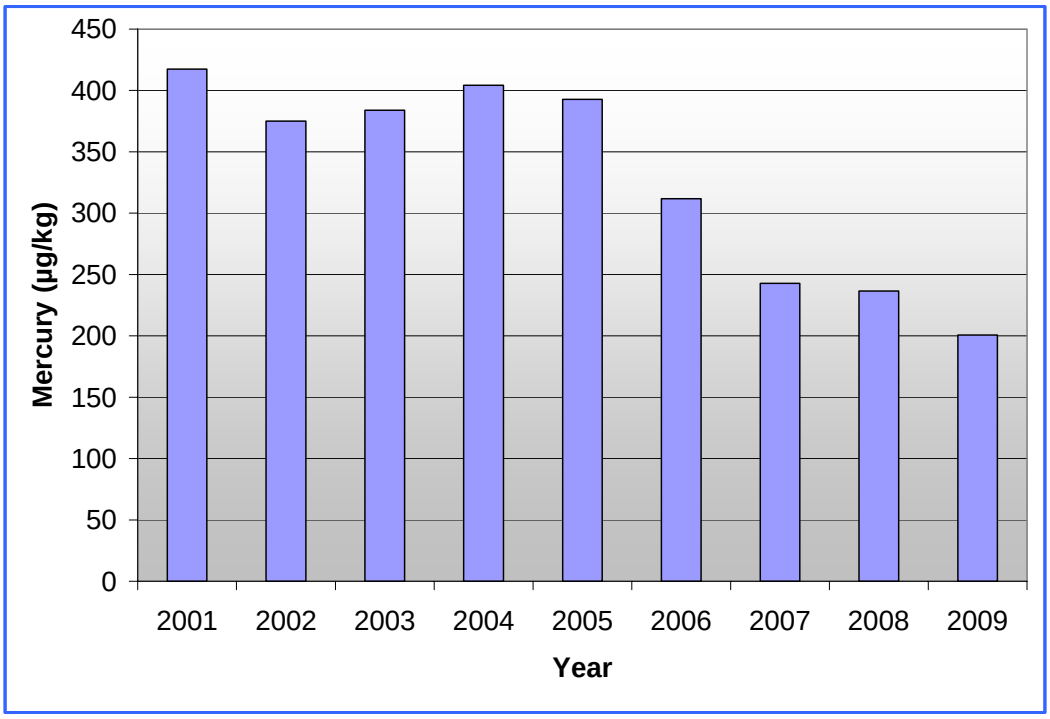


Figure 4-11. RWQCP Average Mercury Sludge Cake Concentrations: 2001-2009

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

Cost of Hg Diversion Through Dental Office Source Control

For:	Brad Eggleston Palo Alto RWQCP
Prepared by:	Thomas Barron, PE
Reviewed by:	Karin North
Date:	November 16, 2010

Summary

The Palo Alto RWQCP source control program for dental offices has been active for the past decade. This cooperative effort with the local dental community has been successful in diverting an estimated 5.1 kg/yr from being discharged into the sanitary sewer system. For the entire service area the program is estimated to have an annual cost in the range of $100,000, which consists mostly of expenses for maintaining amalgam separator units. This range in annual costs is equivalent to $18 million per ton of mercury diverted from the sewer system.

Estimate Calculations

Step 1 - Number of Dental Offices

The RWQCP has 135 dental practices in its service area that perform amalgam placement or removal procedures. These practices are served by 116 vacuum systems that each have an amalgam separator installed.

RWQCP Dental Practices & Amalgam Separators

135	Dental offices in the service area that perform amalgam procedures
-19	Less practices that use a shared vacuum system and amalgam separator provided by another office, or by the landlord
116	Net number of amalgam separators

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

Step 2 - Amount of Hg Diverted

In its 2008 evaluation of waste mercury sources, the RWQCP estimated that dental practices in the service area have successfully diverted 5.1 kg/yr of this metal from the sewer system. This diversion is equivalent to 0.0056 tons per year.

Step 3 - Cost to Purchase & Install A Separator

In 2008 US EPA published a comparative study of amalgam separators, including their effectiveness and costs (See EPA-821-R-08-014). Data from Table 5-4 of the EPA report are used here, together with information on installation costs from local sources.

Annualized Amalgam Separator Costs

$934	Cost to purchase an amalgam separator (i.e., a Solmetex Hg-5, which is the most common unit in the RWQCP Service Area)
$187	Cost to install the separator (20%)
$1,121	Total installed cost (2008 $$)
10	Anticipated useful life of the separator, yrs
$112	Annualized Cost to Purchase & Install a Separator

Step 4 - Annual Maintenance Costs

Local dental practices indicate that they service their amalgam separators once every 12 to 18 months, with the frequency depending upon the number of practitioners served by the unit and the amount of work that these dentists do.

The following table presents estimated total costs for separators that are serviced once per year. This annual total includes: equipment amortization for 10 years; typical annual maintenance costs of about $600; and 1/8th of a FTE for RWQCP staff to conduct on-going inspections. Costs for maintaining the Solmetex Hg5 amalgam separator are used here because this unit is the most common in the service area.

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

Cost per Ton of Diverted Hg
(If All Separators Are Serviced Once Per Year)

$605	Maintenance Service at 12 month intervals ($$/yr)
$112	Annual Cost to Purchase & Install a Separator
$717	Total Annual Cost per site
$83,181	Total Annual Cost for 116 Sites
$15,625	Annual RWQCP Staff Cost
$98,806	Annual cost for RWQCP Service Area
$18	Equivalent cost per ton of Hg diverted ($$ Million/ton)

Attachment: PA Comments EPA HQ-OAR-2009-0559_Final (1297 : EPA Proposed Rule on Sewage Sludge Incinerators)

CITY OF PALO ALTO OFFICE OF THE CITY AUDITOR

February 14, 2011

The Honorable City Council
Palo Alto, California

Sales Tax Digest Summary - Third Quarter Sales (July – September 2010)

BACKGROUND

Sales and use tax represents about 13%, or $18.2 million, of projected General Fund revenue in the City's Adopted Operating Budget for fiscal year 2011. According to the Administrative Services Department (ASD), projected sales and use tax revenue has increased and is now estimated at $19.5 million for fiscal year 2011. This revenue includes sales and use tax for the City of Palo Alto and pool allocations[1] from the State and Santa Clara County.

The City Auditor's Office contracts with MuniServices LLC (hereafter MuniServices), the City's sales and use tax consultant, to provide sales and use tax recovery services and informational reports. The City Auditor's Office uses the recovery services and informational reports to help identify misallocation of tax revenue owed to the City, and to follow up with the State Board of Equalization to ensure the City receives identified revenues. The City Auditor's Office includes information on sales and use tax recoveries in our quarterly reports to the Finance Committee.

The City Auditor's Office also shares the information provided by MuniServices with the Administrative Services Department (ASD) for use in revenue forecasting and budgeting, and Economic Development/Redevelopment for business outreach strategies. We coordinated this informational memo with them.

DISCUSSION

The attached report (Attachment A) was prepared by MuniServices and covers calendar year third quarter sales (July through September 2010). These funds are reported as part of the City's fiscal year 2011 revenue. Due to the timing of reporting by businesses and the State, MuniServices' detailed reports on fourth quarter sales (October through December 2010) should be available by May 2011. ASD advises that in mid-March, it should receive information from the State on aggregate sales and use tax receipts for fourth quarter 2010.

[1] See definitions on page 4.

Following are some highlights of the sales and use tax information we received:

- In Palo Alto, overall sales and use tax revenue (cash receipts) for the third quarter ending September 2010 increased by approximately $586,000, or 12.8%, (including pool allocations) compared to the third quarter ending September 2009.

- Statewide, some regions in California experienced increases while other regions experienced declines in sales and use tax revenue for the year ending September 2010, compared to the prior year ending September 2009. After ten consecutive quarters of decline or no growth, statewide sales and use tax revenue showed growth beginning first quarter ending March 2010. Statewide sales and use tax revenue has shown growth of 3.7% during the third quarter ending September 2010 compared to the third quarter ending September 2009.

- Sales and use tax revenue totaled $19.0 million for the year ending September 2010, an increase of 2.4% from $18.6 million in the prior year ending September 2009. This amount includes sales and use tax for the City of Palo Alto and pool allocations from the State and Santa Clara County.

More detailed information is shown on Attachment A.

Economic Influences on Sales and Use Tax

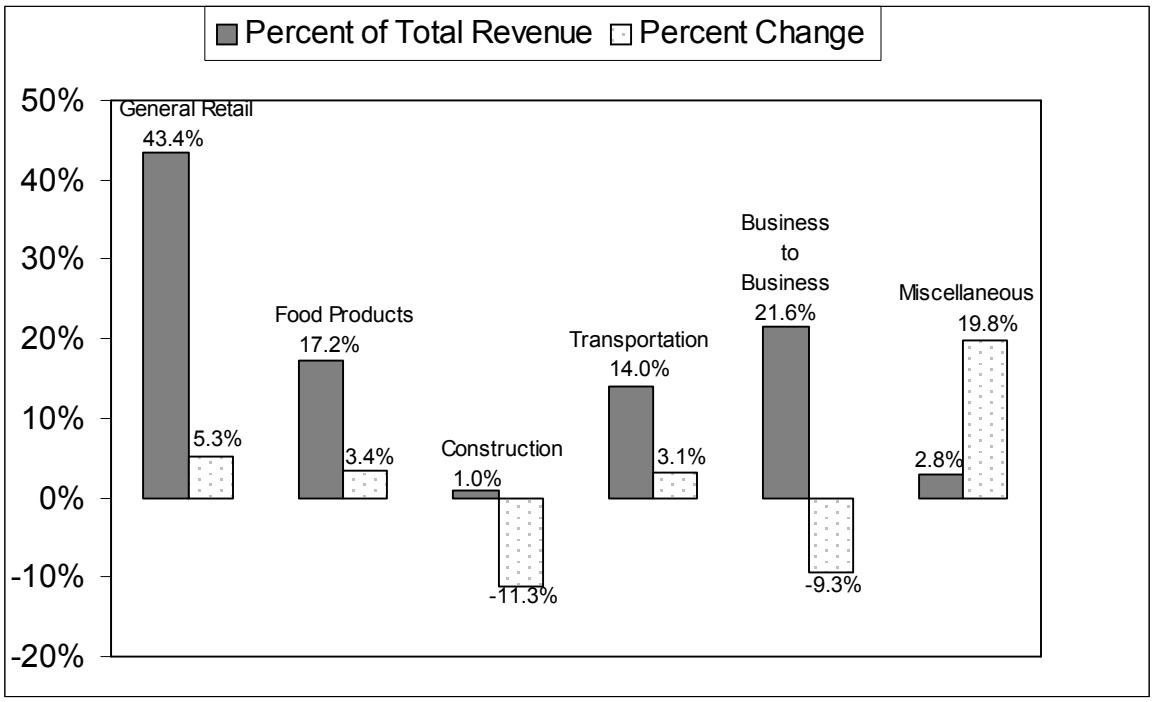
In its Economic Outlook (Attachment B), MuniServices discusses economic influences including online and retail sales, consumer confidence, auto sales, and forecast information that may affect the City's sales and use tax revenue.

Preliminary estimates show the December 2010 unemployment rate in Santa Clara County at 10.4% and Palo Alto at 5.6%.

Economic Category Analysis

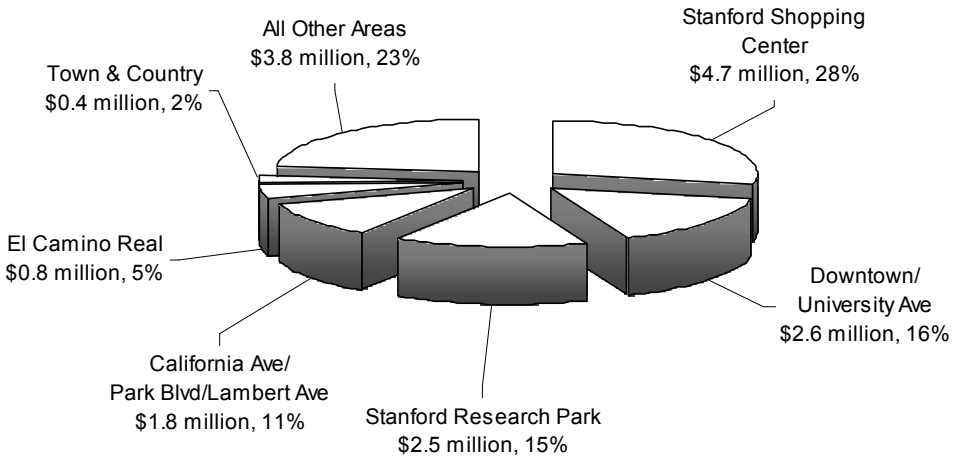
Analysis of six economic categories, for the year ending September 2010, shows that General Retail comprised the largest percentage of Palo Alto's sales and use tax revenue and experienced 5.3% growth. Business to business experienced a 9.3% decline and comprised 21.6% of total revenues. Construction experienced an 11.3% decline, but it also represented only 1.0% of total sales and use tax revenue.

Exhibit 1 - Comparison of Palo Alto's Sales and Use Tax Revenue and Percent Change by Economic Category for the Year Ending September 2010



The following chart shows sales and use tax revenue by geographical area based on information provided by MuniServices.

Exhibit 2 - Palo Alto's Sales and Use Tax Revenue by Geographical Area For the Year Ending September 2010 (Amounts include tax estimates and exclude pool allocations)



DEFINITIONS

In California, either sales tax or use tax may apply to a transaction, but not both. The sales and use tax rate in Palo Alto is 8.25%, and the City should receive 1% of every taxable transaction. A temporary tax rate increase to 9.25% went into effect April 1, 2009 and is scheduled to expire on July 1, 2011.

Sales tax - imposed on all California retailers; applies to all retail sales of merchandise (tangible personal property) in the state.

Use tax - generally imposed on: consumers of merchandise (tangible personal property) that is used, consumed, or stored in this state; purchases from out-of-state retailers when the out-of-state retailer is not registered to collect California tax, or for some other reason does not collect California tax; leases of merchandise (tangible personal property).

Countywide/statewide pools - mechanisms used to allocate local tax that cannot be identified with a specific place of sale or use in California. Local tax reported to the pool is distributed to the local jurisdiction each calendar quarter using a formula that relates to the direct allocation of local tax to each jurisdiction for a given period.

Examples of taxpayers who report use tax allocated through the countywide pool include construction contractors who are consumers of materials used in the improvement of real property and whose job site is regarded as the place of business, out-of-state sellers who ship goods directly to consumers in the state from inventory located outside the state, and California sellers who ship goods directly to consumers in the state from inventory located outside the state.

Other examples of taxpayers who report use tax through the pools include auctioneers, construction contractors making sales of fixtures, catering trucks, itinerant vendors, vending machine operators and other permit holders who operate in more than one local jurisdiction, but are unable to readily identify the particular jurisdiction where the taxable transaction takes place.

Sources: MuniServices; the State Board of Equalization; the City's Adopted Operating Budget Fiscal Year 2011

Audit staff: Lisa Wehara

ATTACHMENTS:

- Attachment A: City of Palo Alto Sales Tax Digest Summary (PDF)
- Attachment B: Economic Outlook (PDF)

City of Palo Alto
Sales Tax Digest Summary
Collections through December 2010
Sales through September 2010 (2010Q3)

California Overview

The percent change in cash receipts from the prior year was 1.1% statewide, 1.4% in Northern California and 0.9% in Southern California. The period's cash receipts include tax from business activity during the period, payments for prior periods and other cash adjustments. When we adjust for non-period related payments, we determine the overall business activity increased for the year ended 3rd Quarter 2010 by 0.1% statewide, 0.4% in Northern California and declined by (0.1%) in Southern California.

City of Palo Alto

For the year ended 3rd Quarter 2010, sales tax cash receipts for the City grew by 2.4% from the prior year. On a quarterly basis, sales tax revenues increased by 12.8% from 3rd Quarter 2009 to 3rd Quarter 2010. The period's cash receipts include tax from business activity during the period, payments for prior periods and other cash adjustments.

Excluding state and county pools and adjusting for anomalies (payments for prior periods) and late payments, local sales tax increased by 1.3% for the year ended 3rd Quarter 2010 from the prior year. On a quarterly basis, sales tax activity grew by 11.0% in 3rd Quarter 2010 compared to 3rd Quarter 2009.

Regional Overview

This seven-region comparison includes estimated payments and excludes net pools and adjustments.

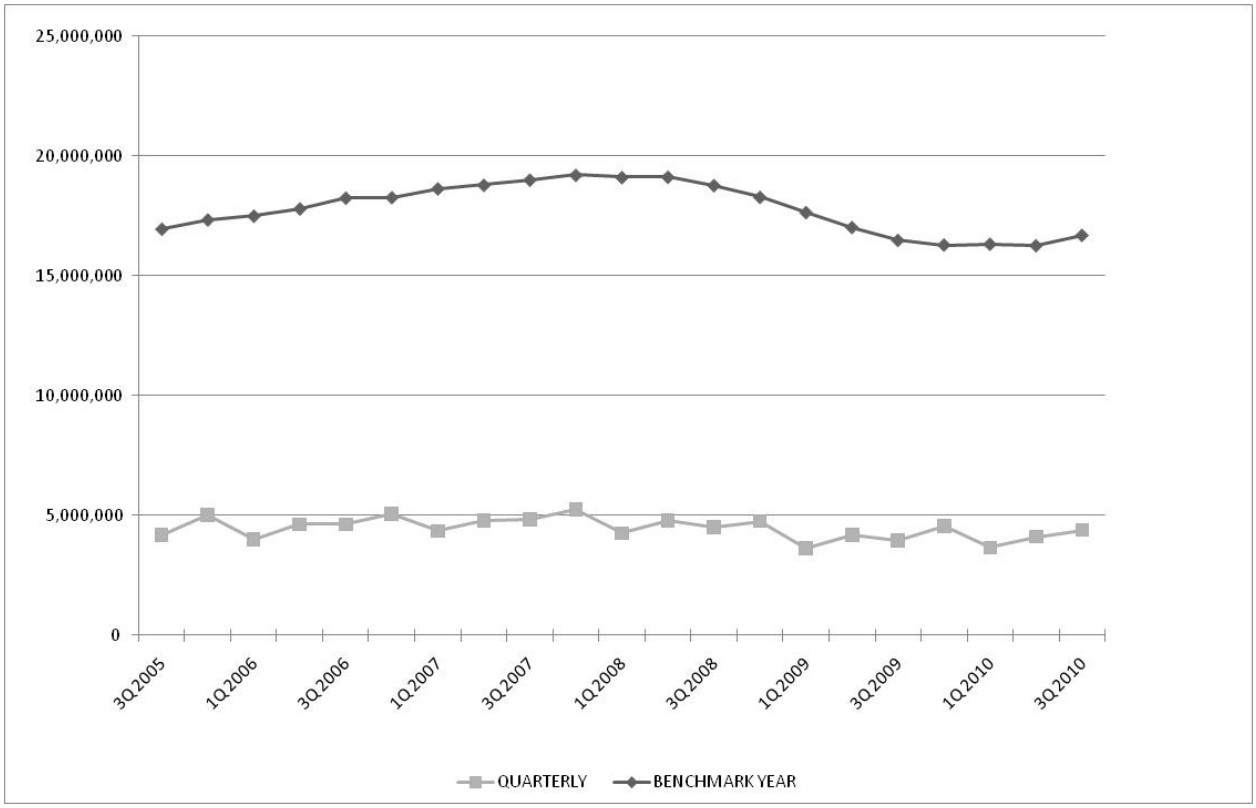
ECONOMIC CATEGORY ANALYSIS FOR YEAR ENDED 3rd QUARTER 2010								
	Palo Alto	California Statewide	S.F. Bay Area	Sacramento Valley	Central Valley	South Coast	North Coast	Centr Coas
General Retail *% of Total / % Change*	*43.4 / 5.3*	*30.9 / 0.5*	*30.5 / 0.9*	*31.0 / 0.0*	*33.7 / 1.3*	*30.8 / 0.1*	*30.4 / -0.3*	*33.6 / -*
Food Products *% of Total / % Change*	*17.2 / 3.4*	*19.4 / -1.1*	*19.9 / -0.1*	*17.5 / -1.6*	*17.7 / -1.0*	*19.9 / -1.3*	*19.3 / -0.8*	*29.8 /*
Construction *% of Total / % Change*	*1.0 / -11.3*	*8.7 / -6.0*	*8.3 / -4.3*	*10.4 / -9.0*	*10.8 / -7.8*	*8.0 / -5.2*	*12.3 / -11.9*	*9.3 / -*
Transportation *% of Total / % Change*	*14.0 / 3.1*	*22.3 / 7.0*	*19.4 / 10.3*	*24.4 / 3.4*	*23.6 / 5.9*	*22.7 / 6.3*	*26.8 / 7.2*	*19.4 / 1*
Business to Business *% of Total / % Change*	*21.6 / -9.3*	*17.4 / -3.6*	*20.6 / -2.8*	*15.3 / -5.9*	*13.1 / -4.4*	*17.4 / -4.1*	*8.9 / -0.2*	*6.4 / -*
Miscellaneous *% of Total / % Change*	*2.8 / 19.8*	*1.3 / -8.2*	*1.3 / -7.3*	*1.3 / -6.4*	*1.1 / -5.1*	*1.2 / -12.4*	*2.4 / 131.3*	*1.5 / 7*
Total	***100.0 / 1.3***	***100.0 / 0.1***	***100.0 / 1.0***	***100.0 / -1.5***	***100.0 / 0.0***	***100.0 / -0.2***	***100.0 / 1.2***	***100.0 /***

THREE LARGEST SEGMENTS FOR YEAR ENDED 3rd QUARTER 2010								
	Palo Alto	California Statewide	S.F. Bay Area	Sacramento Valley	Central Valley	South Coast	North Coast	Central C
Largest Segment *% of Total / % Change*	**Restaurants** *14.8 / 2.2*	**Restaurants** *13.2 / -1.0*	**Restaurants** *13.7 / -0.2*	**Department Stores** *13.1 / 2.5*	**Department Stores** *16.1 / -0.4*	**Restaurants** *14.0 / -0.8*	**Department Stores** *13.2 / -0.6*	**Restaur** *19.7 / -*
3rd Largest Segment *% of Total / % Change*	**Department Stores** *13.6 / 5.5*	**Department Stores** *11.5 / 1.9*	**Department Stores** *10.4 / 3.0*	**Restaurants** *10.9 / -2.6*	**Service Stations** *10.7 / 14.7*	**Department Stores** *11.0 / 2.1*	**Services Stations** *12.2 / 18.4*	**Misc. Re** *10.7 / -*
3rd Largest Segment *% of Total / % Change*	**Electronic Equipment** *Confidential/ -10.0*	**Service Stations** *9.5 / 14.8*	**Service Stations** *8.2 / 16.3*	**Service Stations** *9.5 / 14.6*	**Restaurants** *10.3 / -2.0*	**Service Stations** *9.5 / 14.0*	**Restaurants** *9.9 / -3.4*	**Departn Store** *9.3 / -*

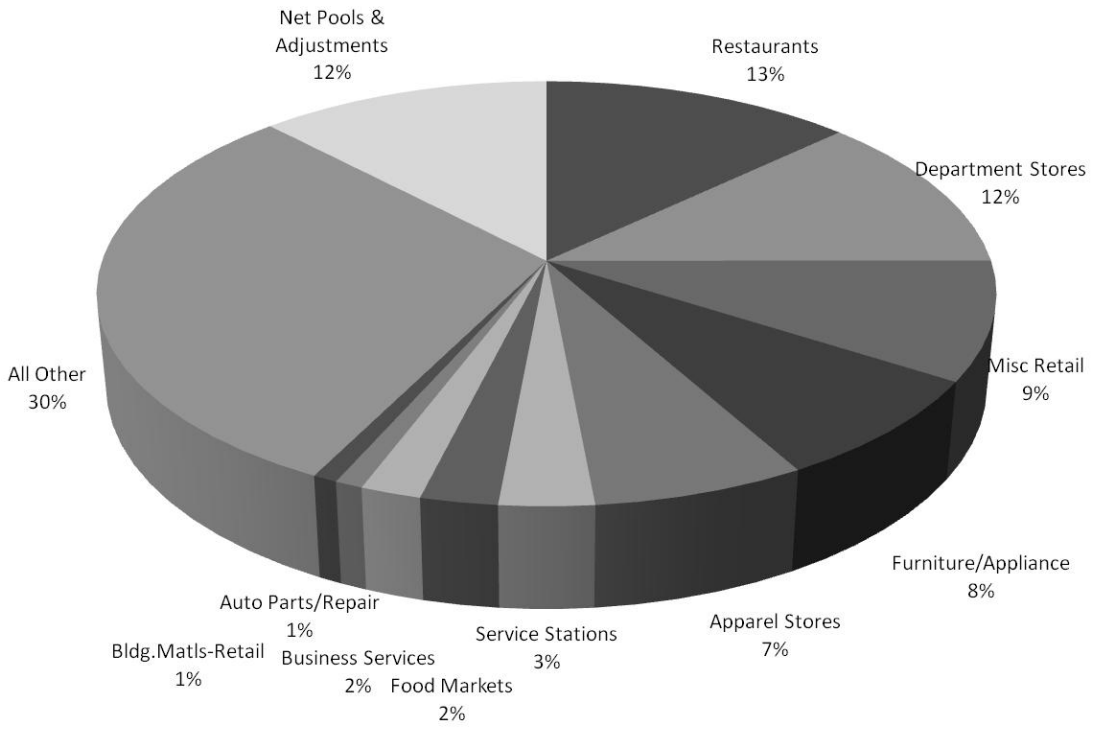
Attachment: Attachment A: City of Palo Alto Sales Tax Digest Summary (1371 : Sales Tax)

City of Palo Alto

Gross Historical Sales Tax Performance by Benchmark Year and Quarter (Before Adjustments)



Net Cash Receipts for Benchmark Year 3rd Quarter 2010: $18,999,513

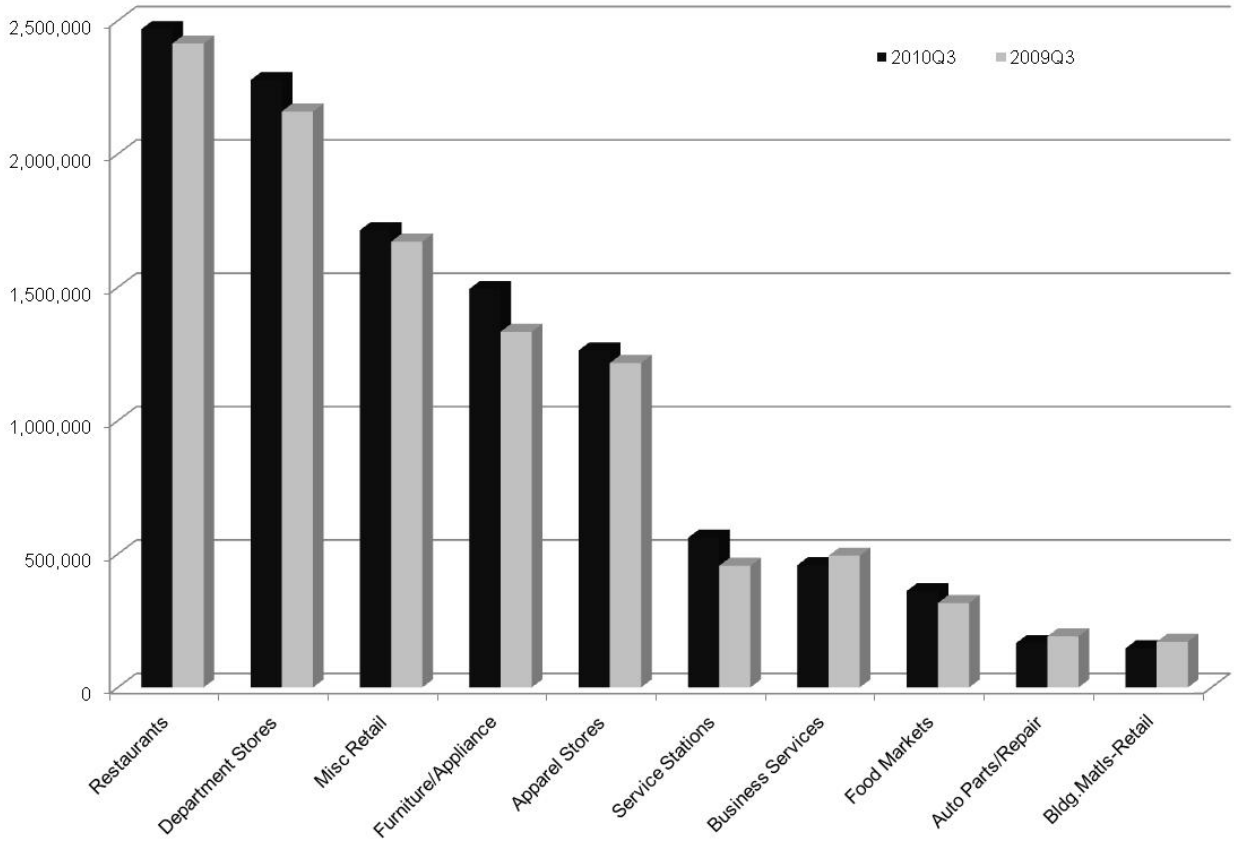


TOP 25 SALES/USE TAX CONTRIBUTORS

The following list identifies Palo Alto's Top 25 Sales/Use Tax contributors. The list is in alphabetical order and represents the year ended 3rd Quarter 2010. The Top 25 Sales/Use Tax contributors generate 52.1% of Palo Alto's total sales and use tax revenue.

Anderson Honda	Hewlett-Packard	Stanford University
Apple Stores	Integrated Archive Systems	Stanford University Hospital
Bloomingdale's	Keeble & Shuchat Photography	The Gap
Carlsen Motor Cars	Loral Space Systems	Tiffany & Company
Carlsen Subaru	Macy's Department Store	Valero Service Stations
Crate & Barrel	Magnussen's Toyota	Varian Medical Systems
CVS/Pharmacy	Neiman Marcus Department Store	Walgreen's Drug Stores
Dow Jones & Company	Nordstrom Department Store	
Fry's Electronics	Pottery Barn	

Sales Tax from Largest 10 Non-confidential Economic Segments



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Historical Analysis by Calendar Quarter

Economic Category	%	2010Q3	2010Q2	2010Q1	2009Q4	2009Q3	2009Q2	2009Q1	2008Q4	2008Q3
General Retail	35.1%	1,810,271	1,864,922	1,473,821	2,064,636	1,615,455	1,671,676	1,401,746	2,134,924	1,942,546
Business To Business	19.5%	1,006,576	788,373	849,181	993,411	894,386	1,096,153	871,861	1,003,360	949,417
Food Products	14.1%	726,360	739,629	666,388	699,788	665,680	694,271	649,563	730,351	733,080
Transportation	11.2%	576,597	551,313	534,793	516,345	594,725	726,213	495,640	596,634	665,857
Miscellaneous	4.2%	217,465	78,340	67,673	70,822	79,799	79,758	101,377	111,476	115,678
Construction	0.9%	44,171	40,415	37,914	48,862	44,182	38,589	56,568	59,367	72,868
Net Pools & Adjustments	15.2%	782,981	626,593	487,801	634,071	684,537	508,710	619,790	331,300	550,414
Total	100.0%	5,164,421	4,689,585	4,117,571	5,027,935	4,578,764	4,815,370	4,196,545	4,967,412	5,029,860

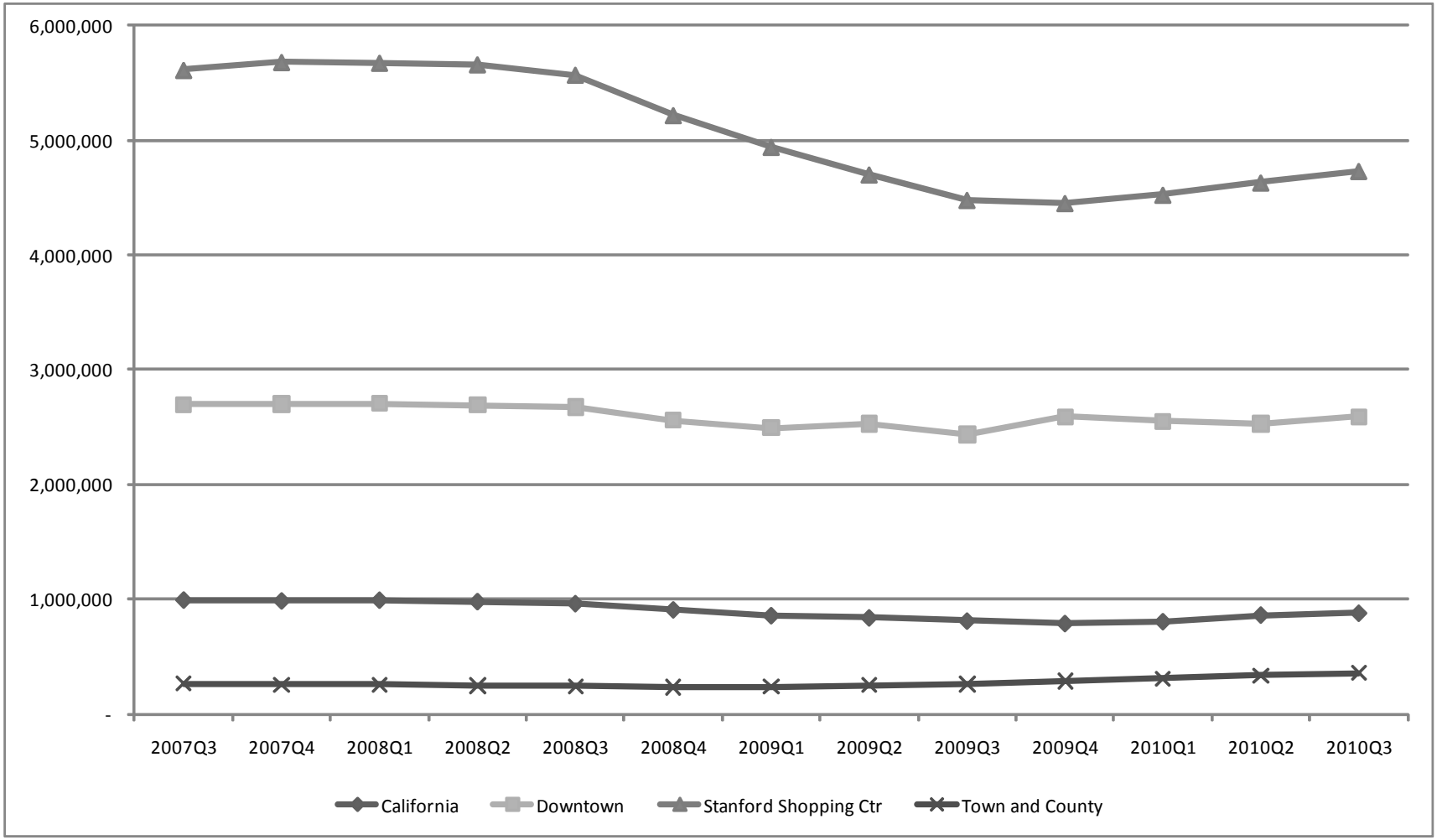
Economic Segments	%	2010Q3	2010Q2	2010Q1	2009Q4	2009Q3	2009Q2	2009Q1	2008Q4	2008Q3
Restaurants	12.1%	622,517	636,566	568,305	597,762	580,829	604,861	565,461	627,710	641,492
Department Stores	10.5%	541,942	565,706	455,378	714,431	480,038	529,267	426,855	723,247	571,259
Miscellaneous Retail	7.7%	396,580	381,222	325,512	459,998	341,947	360,311	304,199	474,090	412,826
Furniture/Appliance	8.7%	447,946	416,128	282,989	345,141	352,050	302,007	292,437	378,643	449,934
Apparel Stores	5.8%	299,340	321,787	267,315	375,133	286,511	299,896	243,222	385,510	335,428
Service Stations	2.8%	143,233	140,859	139,906	128,317	134,369	119,637	95,957	111,830	173,307
Business Services	2.2%	112,153	143,241	110,989	113,481	124,575	116,394	109,472	143,531	132,365
Food Markets	1.8%	93,651	92,036	86,892	88,469	74,317	75,997	72,517	88,559	78,856
Auto Parts/Repair	0.9%	45,689	40,037	39,150	39,592	40,669	65,174	37,341	39,787	49,199
Leasing	0.8%	40,480	36,129	34,760	37,222	41,697	34,892	36,308	37,049	45,324
Bldg.Matls-Retail	0.8%	39,747	35,783	33,297	38,766	39,314	33,879	50,548	53,188	61,367
Liquor Stores	0.2%	10,192	11,027	11,162	13,297	10,534	13,313	11,585	14,075	12,707
Miscellaneous Other	0.1%	5,751	7,689	6,550	9,061	7,637	6,730	6,092	9,847	7,223
Heavy Industry	0.1%	3,288	4,887	4,782	5,944	5,090	5,369	5,596	9,069	5,829
Bldg.Matls-Whsle	0.1%	4,424	4,632	4,617	10,096	4,868	4,710	6,020	6,179	11,501
All Other	30.5%	1,574,507	1,225,263	1,258,166	1,417,154	1,369,782	1,734,223	1,313,145	1,533,798	1,490,829
Net Pools & Adjustments	15.2%	782,981	626,593	487,801	634,071	684,537	508,710	619,790	331,300	550,414
Total	100.0%	5,164,421	4,689,585	4,117,571	5,027,935	4,578,764	4,815,370	4,196,545	4,967,412	5,029,860

*Net Pools & Adjustments reconcile economic performance to periods' net cash receipts. The historical amounts by calendar quarter: (1) include any prior period adjustments and payments in the appropriate category/segment and (2) exclude businesses no longer active in the current period.

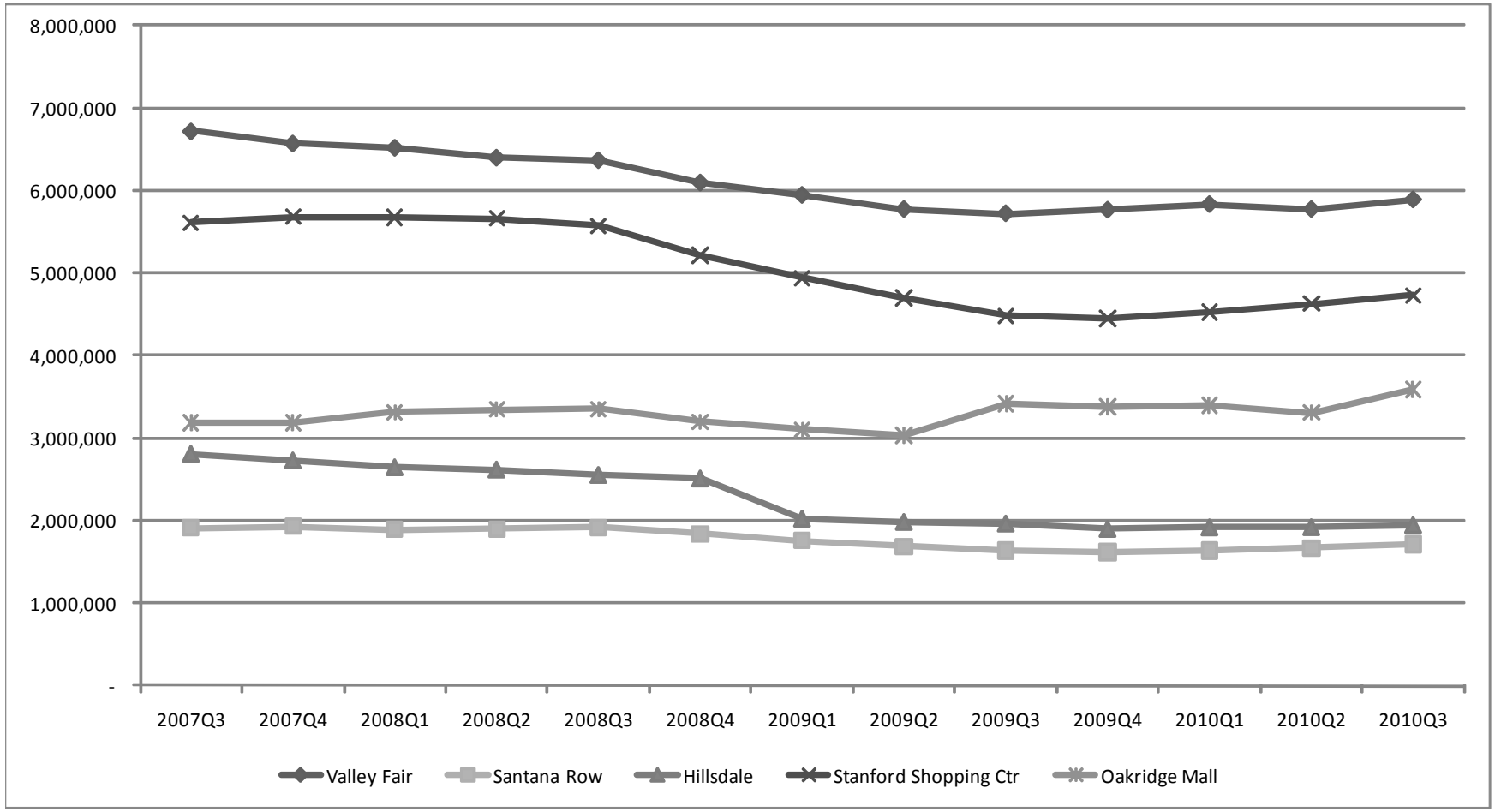
Quarterly Analysis by Economic Category, Total and Segments: Change from 2009Q3 to 2010Q3

	General Retail	Food Products	Transportation	Construction	Business to Business	Miscellaneous	2010/3 Total	2009/3 Total	% Chg	Largest Gain	Second Largest Gain	Largest Decline	Second Largest Decline
Campbell	-3.1%	1.5%	7.0%	-13.5%	-5.2%	-6.6%	1,733,523	1,783,223	**-2.8%**	Service Stations	Food Processing Eqp	Bldg.Matls-Whsle	Miscellaneous Retail
Cupertino	-8.2%	1.2%	12.1%	0.7%	51.1%	-12.7%	4,461,000	3,337,693	**33.7%**	Business Services	Office Equipment	Department Stores	Health & Government
Gilroy	2.3%	-6.0%	0.4%	-11.6%	25.6%	-5.6%	2,692,328	2,661,020	**1.2%**	Apparel Stores	Energy Sales	Bldg.Matls-Whsle	Auto Sales - New
Los Altos	-5.4%	5.4%	10.7%	-29.1%	-11.1%	56.0%	473,545	465,583	**1.7%**	Service Stations	Restaurants	Miscellaneous Retail	Bldg.Matls-Retail
Los Gatos	20.8%	2.0%	-10.4%	-12.4%	9.2%	24.3%	2,042,911	1,850,955	**10.4%**	Miscellaneous Retail	Furniture/Appliance	Auto Sales - New	Office Equipment
Milpitas	8.8%	4.1%	38.4%	-2.0%	33.8%	8.4%	3,642,746	3,091,848	**17.8%**	Electronic Equipment	Auto Sales - New	Office Equipment	Food Process. Eqp
Monte Sereno	31.1%	-100.0%	-38.5%	-100.0%	-25.5%	52.9%	2,419	3,084	**-21.6%**	Miscellaneous Retail	Department Stores	Auto Parts/Repair	Chemical Products
Morgan Hill	0.3%	0.1%	12.0%	-2.7%	64.4%	-29.9%	1,202,237	1,080,429	**11.3%**	Electronic Equipment	Service Stations	Recreation Products	Apparel Stores
Mountain View	-7.1%	0.5%	12.3%	3.8%	57.3%	2.5%	3,444,926	3,068,504	**12.3%**	Electronic Equipment	Business Services	Department Stores	Light Industry
Palo Alto	9.6%	5.7%	-3.8%	14.8%	-8.8%	170.7%	4,181,443	3,946,875	**5.9%**	Health & Government	Furniture/Appliance	Auto Sales - New	Electronic Equipment
San Jose	7.4%	1.3%	5.4%	16.9%	13.5%	-3.7%	28,914,688	26,713,952	**8.2%**	Office Equipment	Bldg.Matls-Whsle	Heavy Industry	Recreation Products
Santa Clara	12.1%	1.5%	5.2%	22.0%	4.9%	15.1%	7,403,481	6,890,693	**7.4%**	Bldg.Matls-Whsle	Electronic Equipment	Bldg.Matls-Retail	Misc. Vehicle Sales
Santa Clara Co.	-2.6%	9.4%	-10.1%	2.1%	50.4%	-90.2%	826,839	894,483	**-7.6%**	Energy Sales	Food Process. Eqp	Health & Government	Service Stations
Saratoga	24.8%	3.8%	4.6%	0.4%	7.5%	-15.5%	234,438	218,143	**7.5%**	Miscellaneous Retail	Restaurants	Furniture/Appliance	Liquor Stores
Sunnyvale	23.2%	3.8%	-9.2%	-3.1%	12.2%	5.1%	5,857,875	5,532,366	**5.9%**	Office Equipment	Department Stores	Auto Sales - New	Bldg.Matls-Whsle

City of Palo Alto - Selected Geographic Areas of the City Benchmark Year 3rd Quarter 2010													
	2007Q3	2007Q4	2008Q1	2008Q2	2008Q3	2008Q4	2009Q1	2009Q2	2009Q3	2009Q4	2010Q1	2010Q2	2010Q3
California	991,900	984,263	990,771	978,463	960,772	908,095	858,391	839,591	812,294	790,954	807,490	863,730	879,364
Downtown	2,694,704	2,703,079	2,705,829	2,692,680	2,674,057	2,557,974	2,493,666	2,528,443	2,434,567	2,591,213	2,549,106	2,528,095	2,589,660
Stanford Shopping Ctr	5,612,325	5,681,340	5,674,646	5,661,387	5,570,554	5,218,085	4,941,824	4,701,109	4,479,311	4,451,986	4,524,318	4,631,095	4,731,800
Town and County	266,728	256,553	256,612	248,359	243,683	233,208	237,307	251,608	261,294	288,103	309,848	336,444	360,254



City of Palo Alto - Regional Shopping Mall Comparison Benchmark Year 3rd Quarter 2010													
	2007Q3	2007Q4	2008Q1	2008Q2	2008Q3	2008Q4	2009Q1	2009Q2	2009Q3	2009Q4	2010Q1	2010Q2	2010Q3
Valley Fair	6,719,867	6,571,449	6,520,191	6,399,179	6,367,597	6,093,294	5,941,991	5,769,466	5,717,263	5,761,442	5,829,695	5,769,507	5,887,510
Santana Row	1,913,632	1,930,733	1,892,646	1,894,799	1,919,027	1,840,846	1,755,862	1,685,331	1,635,305	1,615,462	1,637,476	1,667,967	1,711,667
Hillsdale	2,808,965	2,727,880	2,644,727	2,616,817	2,551,004	2,509,227	2,020,719	1,981,010	1,961,708	1,895,456	1,915,711	1,917,510	1,943,391
Stanford Shopping Ctr	5,612,325	5,681,340	5,674,646	5,661,387	5,570,554	5,218,085	4,941,824	4,701,109	4,479,311	4,451,986	4,524,318	4,631,095	4,731,800
Oakridge Mall	3,184,516	3,183,645	3,313,152	3,349,138	3,355,538	3,199,518	3,105,561	3,035,077	3,419,383	3,380,772	3,395,994	3,308,231	3,589,119



Economic Outlook

4Q2010 News

Attachment: Attachment B: Economic Outlook (1371 : Sales Tax)

National Economy

Growth too listless to spur hiring.
Economy shows signs of life, but not enough to change jobs picture.

The American economy is showing a little more pep in its step, the government reported recently, but not enough to help bring down high unemployment or put the country on the road to sustained and widespread prosperity.

The nation's gross domestic product - the total value of all goods and services produced inside U.S. borders - grew at a modest annual rate of 2 percent in the third quarter, up from 1.7 percent in the second quarter, the Commerce Department said.

"The most striking thing about the report on gross domestic product is that it shows that the U.S. economy is still smaller today than it was when the recession began -- even after more than a year after the recession officially ended," said EPI economist Josh Bivens."This remains an historically slow recovery. Never since (World War II) has it taken so long to recover to pre-recession levels of GDP," he said.

Business investment, too, was solid in the July-to-September period. Companies' spending on equipment and software again rose by double digits, although at a slower pace than in the second quarter, and investment in offices and other commercial buildings posted the first upturn after eight straight quarters of decline.

What's more, federal government expenditures continued to add juice to GDP growth. So why wasn't U.S. economic output stronger than 2 percent? In a word, imports. Although American exports were up in the quarter, imports rose at an even faster clip. And the resulting trade deficit, in effect, amounted to a halving of the GDP growth rate in the third quarter."It does say that we continue to basically consume more than we produce," said economist Lynn Reaser of the National Association for Business Economics. To be sure, exports are helping boost overall GDP, she said, and import growth is not a bad thing, as it reflects stronger American demand. But, she added, "We've got to do something about the trade deficits."

Friday's economic report isn't likely to change companies' outlook for the economy or give them more reason to beef up hiring. The GDP data was in line with expectations, painting a picture of an economy that faces a reduced threat of falling back into recession but that is nonetheless plodding along at an unsatisfactory speed. "The pace of growth is still too weak to get a real recovery in the labor market... and that's the key ingredient to a sustained recovery that'll lead to more consumer spending and more support for the housing market," said David Regan, a senior investment specialist at JP Morgan Private Wealth Management in Los Angeles.

Weak economic growth expected through 2011

Survey sees little improvement in jobs, housing and the deficit.

Top forecasters say the economy will grow this year and next at a slower pace than previously thought, weakened by governments and consumers spending less so they can pay down debt.

That's the findings of a new survey released recently by the National Association of Business Economics. The 46 economists polled tempered their expectations after seeing weak expectation after seeing weak economic data in recent months. The panel reduced its forecast for annual economic growth to 2.6 percent in 2010 and 2011. That's down from its forecast of 3.2 percent in May. The economists expect the economy will add jobs through the end of 2011, but not enough to bring down the unemployment rate below 9.2 percent. They don't see home prices rising much or the nation's soaring deficit falling much.

The mainly downbeat report comes as persistently high unemployment, weak consumer spending and stagnant wages drag on the U.S. economy. The nation emerged last summer from the deepest recession since the 1930s.

Attachment: Attachment B: Economic Outlook (1371 : Sales Tax)

But the economic recovery has not yet led to widespread job gains or growth. "This summer's slowdown has exposed the economy's sensitivity to wealth losses, the unwinding of debt, and the reductions in economic stimulus," NABE President elect Richard Wobbekind said in a statement. The NABE's Outlook survey is conducted four times per year. It compiles economists' big picture expectations for factors such as growth, hiring, home prices and spending. The economists work for industry groups, government agencies, banks and economic analysis firms.

The economy grew at a 1.7 percent annual rate in the second quarter, according to the government's latest estimate. That's a sharp slowdown from a 3.7 percent growth rate logged in the January-March quarter. Most economists expect growth to be similarly weak in the July - September quarter, with estimates ranging between 1.5 percent and 2 percent.

Consumer spending accounts for about 70 percent of economic activity. Economists told the NABE that consumer spending is likely to remain low over the next year. The housing market also will struggle, the economists said. Home prices will not rise enough in 2011 to keep up with inflation, and housing starts will remain near record lows, they said. Still, they expressed few concerns about inflation, deflation or so-called stagflation - a dangerous mix of rising prices and slow economic growth.

The economists expected hiring to increase at a painfully slow rate. They predicted the economy will add 150,000 or fewer jobs each month until the middle of 2011, after which the numbers will improve to about 175,000. Only then will the jobless rate begin dropping, from 9.6 percent to 9.2 percent, the economists said. The economy needs to add 125,000 net new jobs each month just to keep up with population growth. The biggest concern among the economists was the federal deficit. They predicted it will shrink by only about $100 billion to $1.2 trillion - a level the NABE called "extreme."

There were a few bright spots. Economists expected businesses to increase spending on equipment and software as their profits keep rising. Spending by businesses has helped keep up demand for goods from American factories, a vital sector for the economic recovery.

Growth will strengthen over the next three years, but not enough to bring unemployment back down to more normal levels of around 5.5 percent to 6 percent, according to the Fed's forecasts. At best, the Fed projects 3.6 percent growth in 2011, and 4.5 percent growth in 2012 and 2013.

The latest Fed projections also suggest no better than 8.9 percent unemployment next year, roughly 8 percent in the 2012 presidential election year and, at best, just under 7 percent for 2013. Under one rule of thumb, the economy would need to grow by 5 percent for a full year to push down the unemployment rate by a full percentage point. The Fed acknowledged that progress in reducing unemployment has been "disappointingly slow."

Cyber Monday sales top $1 billion for first time

Free shipping and sales made it busiest online shopping day ever.

Americans jumped on deals and promotions offered online on Cyber Monday, spending $1 billion and making it the busiest online shopping day ever, according to new data. Research firm comScore Inc. says revenue rose 16 percent from a year ago to $1.03 billion on the Monday after Thanksgiving, the first one-day spending total above $1 billion ever. Since the beginning of November, online sales are up 13 percent to $13.55 billion.

Meanwhile, another company that tracks online spending, IBM's Coremetrics, found Cyber Monday sales rose 19.4 percent over last year. Cyber Monday was also PayPal's biggest day ever. Online payments rose 19 percent from last year. Though it is growing quickly, online spending makes up only 8 to 10 percent of total holiday spending.

The Cyber Monday figures come a day after a report showed American's confidence in the economy rose to a five-month high in November and is welcome news for retailers hoping that Americans start spending more freely. But shoppers are still holding out for bargains and spending cautiously as unemployment remains high. According to ShopperTrak figures, revenue at stores in shopping malls was flat over the weekend following Thanksgiving, but traffic rose 2.8 percent. ComScore said the number of buyers online increased at a slower rate than total spending, up 4 percent to 9 million. The average shopper spent 12 percent more, at $114.24 each, according to the data.

Cyber Monday got its name from the National Retail Federation trade group in 2005 to describe the unofficial kickoff to the online shopping season. The idea was that people returning to work after the long weekend would shop at their desks. It never really was the busiest online shopping day of the year, but it has gained significance as sellers have trained shoppers to expect deals that day. Nearly 90 percent of U.S. retailers offered some kind of Cyber Monday promotion this year, compared to 72 percent in 2007.

While people used to shop at work to take advantage of broadband connections, the data shows even though broadband has become common at home, about 49 percent of the dollars spent at U.S. Web sites originated from work computers, down 4 percent from last year, comScore says. Buying at home rose just 4 percent to make up about 45 percent of dollars spent. International shoppers on U.S. sites made up the rest.

The fact that buying at work remains so prevalent suggests they are doing it "to shop for holiday gifts while minimizing the risk that their children, spouses and significant others might see" them shop, Fulgoni said.

Holiday Retail Sales

Shopping surge spurs higher holiday outlook.

A bigger-than-expected surge in holiday spending in November led a prominent research firm to raise its forecast for the season for the second time in a matter of weeks. The upgraded forecast by ShopperTrak follows an upgraded outlook from the National Retail Federation. The early buying surge is likely to offset a disappointing start to December.

ShopperTrak, based in Chicago, said it expects holiday sales to rise 4 percent over last year, up from a projection of 3.2 percent made in mid-November. The original estimate was for a 2.9 percent increase. ShopperTrak said November's revenue rose 5.8 percent compared with a year ago, as stores successfully pulled in shoppers with discounts. ShopperTrak had expected 3.7 percent.

The National Retail Federation now expects total holiday sales to rise 3.3 percent, 1 percentage point higher than the original 2.3 percent growth forecast. The increasing optimism comes as government figures released recently showed that retail sales for November jumped 0.8 percent over October, marking the fifth straight monthly gain. The increase was led by department stores, which posted a 2.8 percent gain.

Retail Sales November

Retailers see best November in four years.

Generous discounts lured American’s to stores and online for holiday gifts in November, providing cheer and delivering the best gains for retailers in four years. That raises hopes, already buoyed by reports of crowded malls and early numbers, for a strong holiday shopping season and is an encouraging sign for the economic recovery.

The International Council of Shopping Centers' index reported a 5.8 percent gain, much better than the 3 to 4 percent increase expected. It marked the biggest increase since March when a quirk of the Easter calendar

Attachment: Attachment B: Economic Outlook (1371 : Sales Tax)

resulted in a 9 percent gain. Aside from that month, the last time retailers reported such a big increase was in September 2006, when it registered 6.2 percent increase.

"All forces came together to yield a performance better than what we've seen in the last four years," said Mike Niemira, chief economist at International Council of Shopping Centers. November's sales results are being compared with weak spending over the last two years, but Niemira said that plenty of discounting along with what appears to be a sustained recovery is helping to boost spending.

As retailers report their monthly results, they showed that many types of shoppers were in the mood to buy - if the product and price were right. Stores reporting gains that topped Wall Street expectations included Costco Wholesale Corp., Target Corp., Victoria's Secret and pricey teen retailer Abercrombie & Fitch.

Others who topped expectations:

- Target Corp., with a 5.5 percent increase, above the 3.7 percent estimate.

- Limited Brands, which owns Victoria's Secret and Bath & Body Works, 10 percent increase, 4 percent expected.

- Macy's Inc. reported a 6.1 percent gain; analysts had expected 5 percent. The department store chain raised its outlook for fourth-quarter earnings and revenue at stores open at least a year.

- Teen retailer Abercrombie & Fitch, which had been hurt by young people flocking to less expensive brands during the depths of the recession, reported a robust 22 percent gain, far above the 6.8 percent estimate. That compares with a 17 percent drop in 2009 compared with the previous year. That's a strong signal that teen shoppers are ready to splurge, Perkins said.

Consumer confidence hits 5-month high

Americans' confidence in the economy rose to a five-month high in November amid more hopeful signs. The Conference Board, a private research group based in New York, said recently that its Consumer Confidence Index rose to 54.1 in November, up from a revised 49.9 in October. The November reading is the highest since June, when the index stood at 54.3. Economists surveyed by Thomson Reuters expected 52.0. September's index had been the lowest since February and was down sharply from 53.2 in August. It takes a level of 90 to indicate a healthy economy, which hasn't been approached since the recession began in December 2007.

One component of the index, how Americans feel now about the economy, rose to 24.0, up from 23.5. The other gauge, which measures how American feel about the economy over the next six months, rose to 74.2, up from 67.5 last month.

"Consumer confidence is now at its highest level in five months, a welcome sign as we enter the holiday season," Lynn Franco, director of The Conference Board Consumer Research Center, said in a statement. "Consumers' assessment of the current state of the economy and job market, while only slightly better than last month, suggests the economy is still expanding, albeit slowly. Hopefully, the improvement in consumers' mood will continue in the months ahead."

The index, which measures how respondents feel about business conditions, the job market and the next six months, has recovered fitfully since hitting an all-time low of 25.3 in February 2009. In October 2009, the index stood at 48.7. Since then, it has hovered in a tight range between the mid-40s and the high 50s. May 2010 was the only month when the index topped 60.

Economists watch confidence closely because consumer spending accounts for about 70 percent of U.S. economic activity and is critical to a strong rebound. But a rebounding job market is necessary for shoppers to feel like spending again.

There have been some encouraging signs. Americans' income rose 0.5 percent in October, boosted by a 0.6 percent rise in wages and salaries, according to a government report released last month. That was after incomes didn't rise at all in September.

November Auto Sales

Major automakers, except Toyota, show strong November sales gains.

All major automakers except Toyota reported strong U.S. sales increases in November as the auto industry's slow-motion recovery continued to gain traction. Ford, General Motors, Chrysler, Nissan, Hyundai and Honda all reported double-digit increases, and only Toyota, which has been hurt by a string of safety recalls, had a sales drop. Overall, according to Autodata Corp., U.S. sales last month rose 17 percent from November 2009, a month marked by consumer paralysis due to high unemployment.

The November performance helped an industry that is trying to recover from last year's historic lows as credit froze up and two major automakers slid through bankruptcy court. Sales started the year with promise, peaked in May as consumer confidence rose, fell off during the summer and now have started to rebound.

Industry analysts say the solid November sales numbers, combined with a strong October, show that consumers who have kept their jobs through the economic downturn are now feeling confident enough to spend money and replace older vehicles. Bob Carter, Toyota's top U.S. sales executive, said Toyota could tell things were shifting because buyers are opting for more highly equipped sport utility vehicles, which indicates they aren't buying just because they need family transportation. "At the beginning of the year, the vast majority of buyers were those who needed a car, versus wanted a car," he said.

Those who spent money last month also bought crossovers like the Chevrolet Equinox and the Hyundai Santa Fe. Midsize cars like the Ford Fusion and Hyundai Sonata also sold well. The increased sales are probably due to a combination of rising confidence and delayed buying as people replace vehicles they have kept for longer than normal during a severe auto industry downturn, said Bruce Clark, senior vice president of Moody's Investors Service. "There is a degree of pent-up demand that's being met gradually by people who have kept jobs and can go out and afford to do such things," Mr. Clark said. The sales are not as robust as historic highs from the early 2000s, but they are still a good sign for the industry, Mr. Clark said.

Yingzi Su, GM's senior economist, said the stable and increasing auto sales mean that consumers with jobs are starting to spend again, the start of an upward trend for automakers and a good sign for the broader economic recovery going into next year. Incentives such as sweet lease deals and rebates also helped push up sales last month. Automakers raised incentive spending about 6 percent over October to an average of $2,712 per vehicle, said the auto website TrueCar.com.

Of the major automakers, Hyundai Motor Co. had the biggest increase, up 45 percent from the same month last year. Nissan Motor Co. sales were up 27 percent, followed by Honda Motor Co. at 21 percent and Ford Motor Co. with 20 percent. Chrysler had a 17 percent increase, while General Motors reported sales up 11 percent from November of last year.

Toyota sales dipped 3 percent, with the company blaming the drop on a 60 percent cut in sales to fleet buyers such as rental car companies. Mr. Carter said Toyota didn't want to match competitors' low prices on fleet vehicles.

Toyota said sales to individual customers were up slightly, but that they didn't increase as much as the industry average.

December Auto Sales

U.S. auto sales rose 11 percent in 2010

Toyota only major automaker to sell fewer cars last year than in 2009

Auto sales rose in the United States last year for the first time since the recession. They're still far from what they were just a few years ago — but that's just fine with the downsized auto industry, which can post profits even if it sells millions fewer cars and trucks.

For the year, new car and truck sales came in at 11.6 million, up 11 percent from last year, automakers reported Tuesday. For December alone, sales were 1.14 million, also up 11 percent from a year earlier.

While the figures have some in the industry talking about a return to the glory days, it's a fragile idea. Rising gas prices or more economic trouble could still shake the confidence of American car buyers.

But for now, executives are optimistic about this year. General Motors, Ford and Toyota all predict sales will come in at 12.5 million to 13 million for 2011. It will take years, analysts expect, to get back to the peak sales of last decade - more like 17 million.

"The economic downturn has lasted quite a while," says Jessica Caldwell, director of pricing and analysis for consumer website Edmunds.com. "It's going to be slow and gradual rather than a fast bounceback."

Toyota was the only company that sold fewer cars and trucks than in 2009. The company was stung by sudden-acceleration recalls in early 2010 and never fully recovered despite luring buyers with generous incentives. Production problems at its San Antonio plant cut its supply of Tundra and Tacoma pickup trucks, and troubles importing the Prius hybrid also hurt sales.

Over the past two years, many Americans, even those who had enough money to buy a car during the recession, had been wary to commit to monthly car payments, so they put off making such a large purchase. Many opted to repair or make do with what they had.

Those buyers are easing back into the market, replacing aging vehicles. The average vehicle on U.S. roads is now 10.2 years old — the oldest since 1997 and a full year older than in 2007, before the recession, according to the National Automobile Dealers Association.

"With 240 million vehicles out there on the road, a lot of them are going to be ripe for replacement," says Ellen Hughes-Cromwick, Ford's chief economist.

Auto sales peaked in 2005 at 17.4 million and bottomed out at 10.6 million in 2009. The peak was fueled, in part, by big incentives — like the employee-discounts-for-everyone schemes that were popular in the summer of 2005. But those deals may be a thing of the past.

Chipmakers bullish on next year

Survey shows that most expect increased revenue in 2011.

Despite the still sluggish economy, senior chip-industry executives generally are upbeat about 2011 and many are even planning to do some hiring, according to a survey released recently. Of 118 executives queried in September and October by the corporate advisory firm KPMG, in conjunction with the Semiconductor Industry Association, 78 percent said they expect their revenue to grow by more than 5 percent next year and 29 percent predicted their workers' ranks would increase by about the same rate.

Attachment: Attachment B: Economic Outlook (1371 : Sales Tax)

That is noteworthy given what usually happens when chip sales surge in any given year, as was the case in 2010 when chip sales jumped 33 percent, said Ron Steger, a KPMG partner who specializes in the chip business. "If you look at the history of the semiconductor industry, whenever you have a year of growth of 20 percent or more, it is almost always followed by a year of double-digit decline," he said. Consequently, after seeing the survey results, he added, "I was surprised."

Overall, about 90 percent of the executives surveyed said they expected some revenue increase and 39 percent foresee their sales rising by 10 percent or more in 2011, said Gary Matuszak, another KPMG executive involved with the study. In addition, 37 percent expect their profit to increase by more than 5 percent next year.

"That was pretty optimistic," Matuszak said, noting that many of the executives planned to expand their operations in the United States, which suggests a significant number of their new employees will be added in this country. Asked which market sectors they expected to boost sales of chips next year, 68 percent of the executives cited wireless communication devices, 62 percent energy-efficient gadgets and 38 percent automotive products. In addition, 70 percent considered China the most important driver of chip sales in the next three years. But an increasing number of executives see Europe and the U.S. as important sources of revenue, too.

Still, experts generally agree the remarkable growth in chip sales experienced last year is tailing off. While worldwide sales for 2010 are expected to total $300.5 billion, an increase of 33 percent over 2009, the increase should only be 6 percent in 2011 and 3.4 percent in 2012, the Semiconductor Industry Association predicted last month.

UCLA Anderson Forecast

No quick fix to state's jobless.

California will remain stuck at a historically high unemployment rate for at least two more years and any recovery will likely be spurred by the high-tech and health care industries, a report released recently says. By the time the final three months of 2012 roll around, California should manage a jobless rate of 9.9 percent, the UCLA Anderson Forecast said in a closely watched report. California's unemployment rate at present is about 12.4 percent. "It is difficult to be very optimistic about the near term," said Jerry Nickelsburg, a senior economist with the forecast. "On the job front, California has yet to make meaningful progress."

California must scale an economic Mount Everest. Since the recession began, the statewide employment loss has been about 1.3 million jobs. Yet through the first 10 months of 2010, California has added 48,000 payroll jobs, or an average of 4,800 jobs a month. Put another way, at that pace of per-month job creation, it would take 270 months, or more than 22 years, for California to get back to where it was in 2008 before the slump began. "These are scary numbers," said Christopher Thornberg, a partner with Beacon Economics, which tracks regional economies. "Things are in a bit of a mess." If job creation picked up to a robust 48,000 jobs a month, it would take more than two years for California to reach its pre-recession heights.

Other economists think California must traverse an even more forbidding financial landscape. Jeffrey Michael, director of the Stockton-based Business Forecasting Center at the University of the Pacific, said the state will not achieve a jobless rate below 10 percent even by the end of 2012. "We see things as being even weaker," Michael said. "The double-digit jobless rate in California will continue until the second half of 2013."

Among the key predictions for the UCLA Anderson Forecast:

- The unemployment rate, now at 12.4 percent, will drop to an average 11.4 percent in 2011 and an average 10.3 percent in 2012, before dropping to 9.9 percent by the end of 2012.

- Personal income, adjusted for inflation, will rise 1.4 percent in 2010, by 1.6 percent in 2011 and 3.6 percent in 2012.

- Taxable sales, on an inflation-adjusted basis, will increase 1.1 percent in 2010, 1.4 percent in 2011 and by 2 percent in 2012. "As compared to our forecast of last June, the current forecast is slightly weaker in the near term and slightly stronger in the long term," said Nickelsburg, the Anderson economist.

The collapse of the housing market was one of the prime culprits that unleashed the national and statewide recession. In California, those woes persist amid an economic recovery that a number of pundits trumpet. "The problem is one part of our economy, the housing and construction markets, have been hit so hard by the downturn," Thornberg said. "The other problem is California has such a high proportion of low-skilled workers."

He suggested numerous jobs that have materialized in the feeble upswing are beyond the skill sets of many unemployed workers."Those low-skilled workers will find it hard to secure employment on the back end of this downturn," Thornberg said. "The recovery is too weak to carry these low-skilled workers."

Until housing improves measurably, California could remain mired in economic woes. "Housing and construction have gone nowhere," Michael said. "Nearly half of the jobless problems California has had are related to real estate and construction. Those industries are still lying flat on the floor."

Yet as brutal as things seem now, the future remains promising for California, the Anderson forecasters said."We are seeing a restructuring of the economy in California that is laying the foundation for longer-term economic growth," Nickelsburg said." The primary drivers of the long-term rebound in California will be high-tech and other sectors, he said. "There is growth in high-tech manufacturing, exports, logistics, and professional business services," he said. "They might not be hiring right now. But they are laying the groundwork to absorb a larger work force in the future."

Sources:
Valley Times
San Jose Mercury News
San Francisco Chronicle
Wall Street Journal
Economy.com

DOCUMENTS IN THIS PACKET INCLUDE:

LETTERS FROM CITIZENS TO THE
MAYOR OR CITY COUNCIL

RESPONSES FROM STAFF TO LETTERS FROM CITIZENS

ITEMS FROM MAYOR AND COUNCIL MEMBERS

ITEMS FROM OTHER COMMITTEES AND AGENCIES

ITEMS FROM CITY, COUNTY, STATE, AND REGIONAL AGENCIES

02/14/2011

Note: Documents for every category may not have been received for packet reproduction in a given week.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:15

From: Braulik, Rob
Sent: Friday, February 04, 2011 2:56 PM
To: Council, City
Cc: Keene, James
Subject: FW: 302Bs for FY11- Proposed House CR.doc
Attachments: 302Bs for FY11- Proposed House CR.doc

Dear Mayor Espinosa and City Council members. Please find below messages received this week from our federal legislative advocacy firm. The first concerns action in the House of Representatives. The second concerns the Senate. The latter indicates there will be no federal Senate earmark appropriations requests accepted for FY12 with the possible exception of transportation and water resources items. The House had already indicated they were not accepting earmarks for FY12. If you would like more information or would like to discuss please let me know. Thanks. Rob

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From: Young, Thane [mailto:tyoung@vsadc.com]
Sent: Friday, February 04, 2011 5:50 AM
To: Braulik, Rob; Keene, James
Cc: Palmer, Steve; Morgan, Laura; Morgan, Casey
Subject: FW: 302Bs for FY11- Proposed House CR.doc

U.S. House of Representatives item

Yesterday Republicans in the House announced a plan to cut an additional $35 billion from FY 2010 spending levels as Congress prepares to complete the FY 2011 appropriations process. As you know, Congress has adopted a series of Continuing Resolutions (CRs) to keep the government funded after failing to adopt any of the 12 annual appropriations bills. The attached chart outlines how those proposed cuts will be distributed among the 12 bills. House Republicans plan to debate the measure during the week of February 14, the same week that President Obama will announce his FY 2012 budget. The current CR for FY 2011 expires March 4, and Congress will likely be forced to adopt another short-term CR before a final spending plan is negotiated with the Senate and signed by the President.

U.S. Senate item

As the appropriations process for FY 2012 continues to unfold, Senate Appropriations Committee chairman Daniel Inouye (D-HI) announced today that his committee will not consider earmark requests for FY 2011 and FY 2012. He expressed his support for maintaining the prerogative of Congress to direct federal spending and stated that this decision would be subject to review at the end of the year. This decision is similar to the ban on earmarks announced earlier this month in the House of Representatives. We met with the offices of Senator Feinstein and Senator Boxer today. Senator Feinstein will not have an earmark request form this year. Senator Boxer sent a form out a couple of weeks ago and set a deadline of February 18 for completed forms. Her office has not yet decided whether to proceed with the forms as a means of gathering information from constituents on priority projects and concerns. We will keep you advised as we learn more detail. Today's announcement pertains only to appropriations earmarks in the Senate. Still undetermined is the interpretation of "earmarks" for other pieces of legislation such as the transportation authorization bill and the Water Resources Development Act.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

The following table outlines the spending limits and cuts announced by Chairman Rogers for each Appropriations Subcommittee for the CR:

Fiscal Year 2011 Allocation Table

Regular Discretionary only

(Budget authority; in millions)

		Fiscal Year 2011					
	FY 2010	Presidents	Appropriations	Appropriations 302(b)s less:			
Non-Defense/Non-Security	Enacted	Request[1]	302(b)s	2010	Request	2010	Request
Agriculture, Rural Development, FDA	23,304	23,129	20,065	-3,239	-3,064	-14%	-13%
Commerce, Justice, Science	64,315	60,539	54,115	-10,200	-6,424	-16%	-11%
Energy and Water Development	33,465	35,344	29,984	-3,481	-5,360	-10%	-15%
Financial Services and General Government	24,186	25,253	21,151	-3,035	-4,102	-13%	-16%
Interior, Environment	32,240	32,377	29,596	-2,644	-2,781	-8%	-9%
Labor, Health and Human Services, Education	163,585	170,611	157,020	-6,565	-13,591	-4%	-8%
Legislative Branch	4,656	5,134	4,562	-94	-572	-2%	-11%
State, Foreign Operations	48,764	56,646	46,953	-1,811	-9,693	-4%	-17%
Transportation, HUD	67,900	68,738	56,325	-11,575	-12,413	-17%	-18%
Domestic and International Spending, Subtc	462,415	477,771	419,771	-42,644	-58,000	-9%	-12%
Defense, Security and Veterans Spending							
Defense	508,122	530,941	517,714	9,592	-13,227	2%	-2%
Homeland Security	42,534	43,636	42,517	-17	-1,119	0%	-3%
Military Construction, Veterans Affairs	76,600	75,997	74,682	-1,918	-1,315	-3%	-2%
Security Spending, Subtotal	627,256	650,574	634,913	7,657	-15,661	1%	-2%
Total, Regular Discretionary	**1,089,671**	**1,128,345**	**1,054,684**	**-34,987**	**-73,661**	**-3%**	**-7%**

1/The President's request for FY 2011 is adjusted to include baseline funding for Pell Grants. The Budget proposed this funding be shifted to mandatory spending.

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -9 AM 7:57

From: Larkin, Donald
Sent: Tuesday, February 08, 2011 5:43 PM
To: 'peterfcarpenter@me.com'
Cc: Council, City; City Mgr; Clerk, City
Subject: RE: Brown Act Cure and Correct Demand re your 7 Feb. 2011 City Council meeting

Dear Mr. Carpenter,

Thank you for your concern. We have reviewed the information provided below, and have determined that no Brown Act violation occurred. With regard to the agenda, the City Council followed the agenda that was posted pursuant to the Brown Act requirements. While there was a slight difference in the order of items between the posted agenda and the draft agenda posted on the internet, that change does not constitute a Brown Act violation because there were no changes to the items themselves. Even if the order of items were changed at the time of the meeting, the Brown Act does not prohibit adjusting the order of items, provided that no items are heard before the noticed start time of the meeting. Further, the Mayor clearly indicated that the order of items was being changed and announced each item as it was being presented. No items were discussed that were not on the posted agenda.

Your second concern was with regard to the opportunity for oral communications. As you noted, the Brown Act requires that the agendas include an opportunity to comment on issues pertaining to the City that are not on the agenda. A time was provided on the agenda for such communications, and several members of the public took the opportunity to make comments to the Council. The Brown Act also requires that the Council allow members of the public to speak to items that are the subject of discussion. There is no requirement, however, that the opportunity to speak to items on the agenda be written on the agenda. No person was denied an opportunity to comment on any agenda item.

I apologize for the confusion at the meeting. The discrepancy between the internet draft and the posted agenda was due to a transition to new agenda management software. Certainly the existence of two agendas that were identical in substance, but not formatting, was an unfortunate error. That error did not amount to a Brown Act violation.

Regards,

Donald Larkin
Interim City Attorney
City of Palo Alto
(650) 329-2171

donald.larkin@cityofpaloalto.org

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: Peter Carpenter [mailto:peterfcarpenter@me.com]
Sent: Tuesday, February 08, 2011 6:54 AM
To: Council, City
Cc: City Attorney; Clerk, City; City Mgr
Subject: Brown Act Cure and Correct Demand re your 7 Feb. 2011 City Council meeting

Dear City Council,

I regret to inform you that your meeting of 7 Feb. 2011 violated the Brown Act in that the Council **failed to follow the published agenda**, which had been provided in a timely

Attachment: Public Letters to Council (1424 : Public Letters to Council)

fashion, and also **failed to modify by vote of the Council the posted agenda before proceeding to conduct its meeting with a revised agenda.** Any actions taken once the Council deviated from its published agenda are therefore null and void.

Agenda Requirement
At least 72 hours prior to a regular meeting, the body must post an agenda containing a brief general description of each item to be discussed or transacted at the meeting, including items to be discussed in closed session. (§ 54954.2(a).) The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body.
The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.

In addition, your published 7 Feb. 2011 agenda failed to provide opportunities for the public to speak to items which were on that agenda. Any actions taken on items where the public **was not advised in advance in the published agenda of their right to comment** on that specific item are therefore also null and void.

Public Testimony
Every agenda for a regular meeting shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter jurisdiction of the body. With respect to any item which is already on the agenda, or in connection with any item which the body will consider pursuant to the exceptions contained in section 54954.2(b), the public must be given the opportunity to comment before or during the legislative body's consideration of the item. (§ 54954.3(a).

The Council must therefore "Cure and Correct" these violations within 30 days or it may be subject to legal action.

Respectfully,

Peter F. Carpenter
1 Larch Drive
Atherton, Ca 94027
650-323-1162

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Minor, Beth

From: Jeff Hoel [jeff_hoel@yahoo.com]
Sent: Friday, February 04, 2011 4:55 PM
To: UAC
Cc: Hoel, Jeff; Council, City
Subject: More about Chattanooga's municipal FTTP &smart grid

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:15

Commissioners,

In my message to you of 1-24-11, 15:36, I recommended an article about how Chattanooga is using FTTP to connect smart meters.
<http://www.wired.com/epicenter/2011/01/internet-meets-smart-grid/all/1>

Here's MuniNetworks' perspective, 2-4-11, "Chattanooga Smart-Grid Receives Record Recognition"
<http://www.muninetworks.org/content/chattanooga-smart-grid-receives-record-recognition>
Please read the whole thing, but I'll cite this excerpt:

> For those critics who think utilities should focus on wireless networks for smart-grid applications (often because it is less expensive in the short term), article author Lee Baker sees it differently:
>
> > Virtually unlimited bandwidth gives EPB lightning-fast, two-way communication with ever[y] device in its distribution system. While a network this robust is overkill for metering, EPB realized that fiber is essential for tightly coordinated load shedding activities, for the split section responsiveness required in distribution automation and, for a virtual real-time energy management tool for customers.
>
> Further, the network will have to accommodate millions of smart meters, smart appliances, and who knows what in coming years -- each of them sending signals every 15 minutes to start and more frequently as EPB increases its capacity to handle so much data. Most utilities do meter reads ever 30 days -- greatly reducing their ability to quickly deal with problems and help customers avoid needlessly using more power than they intend to.

Thanks.

Jeff

Jeff Hoel
731 Colorado Avenue
Palo Alto, CA 94303

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -3 AM 8: 14

Minor, Beth

From: Ellen Fletcher [ef@ellenfletcher.net]
Sent: Wednesday, February 02, 2011 8:38 PM
To: Council, City
Subject: CA Ave water fountain

Honorable Mayor and City Councilmembers:

I am happy that the Arts Commission chose the water fountain that they did.

The members of the Arts Commission are chosen for their artistic expertise and I respect their decision. I hope the Council will support their choice.

Ellen Fletcher
899 E. Charleston Road #E-407
Palo Alto, CA 94303-4650

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -3 AM 8:14

From: Frank Ingle [frankwingle@gmail.com]
Sent: Wednesday, February 02, 2011 3:51 PM
To: Council, City
Subject: California Avenue fountain: "Palo Alto Process" becoming even worse

City Council members,

I am writing to offer constructive criticism of the process used by the City Arts Commission in selecting the design of the new fountain for California Avenue.

As I understand it, when the city proposed to replace the defunct fountain with a Beasley sculpture, the local residents organized and presented you with a petition signed by 800 people, opposing the Beasley design and requesting a fountain more like the original one. This plan was scrapped, perhaps partly because of the excessive cost.

The City Arts Commission recently requested new proposals for a replacement fountain, with a much tighter budget, and then winnowed the proposals down to three to present to the public.
The Commission set up a site on the city website and asked people to "vote" on their choice and offer their comments as well. The citizens were not told of the cost of each selection.
When the votes were in, the more traditional design by Reed and Madden drew 208 votes, the modern art design by Szabo drew 130 votes among Palo Alto voters. If outside voters are included, the results are closer, with Reed Madden at 213 and Szabo 182. At this point, it seemed clear that the Palo Alto public prefers the traditional design represented by the Reed Madden proposal.

At the Arts Commission meeting two weeks ago, the Commission members learned only at the start of the meeting that the pool structure under the sculpture would need to be replaced for an additional $10k. The Szabo design included a new pool, and the Reed Madden did not. Originally the Szabo cost was about $10k more than the Reed Miller piece, and with this late breaking information, the costs of the two designs were approximately equal. The Commission members then voted 5-1 to recommend the Szabo design. Reasons cited were their own personal artistic preferences, the nature of the content of the comments left on the city website, and the City Council's instruction to make an exciting choice. No discussion was offered on the earlier petition asking for a more traditional fountain, or the larger number of Palo Alto voters who preferred the Reed Madden design.

What went wrong here? The City almost chose the expensive Beasley design two years ago, which the public disliked enough to generate 800 signatures on a petition opposing it.
The City Arts Commission asked for public input for the new design, and then apparently ignored it.
The citizens were not told the cost of the designs for the new designs, and yet the cost was one of the determining factors of the Commission choice.
The Commission did not report on the proportion of votes received from citizens in the local community who live close to the fountain, by which I mean west of the tracks, whose lives are most often affected by the design chosen.
The Commission included and discussed the preferences of votes and comments by people outside Palo Alto, and seemed impressed by comments from outside the area.
Unfortunately, the selection process gave the impression of being a done deal discounting public input and using last minute cost change information to justify their decision.

Is this the best Palo Alto can do? My impression is that many citizens do not like some of the past choices of the City Arts Commission, and feel misused again by the appearance of public input, which has twice been ignored.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

What can the City Council do to make the citizens feel actually included in the process? The present process used in selection of the design of the new fountain leaves the public feeling ignored and abused.

My suggestions:
Meetings to describe the project should fully define the constraints and how the decision will be made, before seeking the input of the public.
Use the website to solicit input from the public only if the intent is to consider public input in making the selection.
The City Council should instruct the City Arts Commission that their job is to make the public proud of our city, and not to leave the citizens feeling railroaded by a process which is all appearance and no substance.
And, perhaps it is time to shorten the tenure of the members of the Commission, to keep them more in touch with the interests of the public. I recommend adoption of term limits for the City Arts Commission and replacing 2 members each year, in rotation.

And finally, the City Arts Commission recommends the fountain design choice to the City Council. The City Council actually makes the selection. I recommend that the City Council ask the City Arts Commission to make a second and hopefully better attempt to include input from the public, or else the City Council should choose the Reed Madden design, since it better reflects the preference of the public.

Thank you,

Frank Ingle, Ph.D.
814 Richardson Ct.
Palo Alto, CA 94303

cellphone 650-799-3813

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:16

From: DeMarzo, Elise
Sent: Friday, February 04, 2011 9:43 AM
To: 'frankwingle@gmail.com'
Cc: Council, City; Keene, James; Grider, Donna; Betts, Greg; Antil, Pamela; Clerkson, Linda
Subject: California Avenue Fountain

Dear Mr. Ingle,
Thank you for taking the time to write to the Council regarding the California Avenue fountain selection process and offer recommendations. City Manager Jim Keene has asked me to respond, and I will do my best to address the issues brought forth in your email.
The Bruce Beasley proposal that came forward to Council in 2008 was met by opposition to the cost and scale of the project. There were two different documents circulated at that meeting: an informal survey asking whether the public would prefer a fountain or a sculpture at the site with 382 signatures, and a petition that asked if the fountain should be replaced, "by an art sculpture, or an art sculpture with an added water feature" with 434 signatures, for a total of 816 signatures confirming that a fountain should remain on the site. Neither of those documents refers to a "traditional" fountain. Council then directed staff to come back with a lower cost artistic fountain and involve the community in the process.
The Public Art Commission held a community meeting in the Spring of 2009, in which the community identified key elements to the new fountain design. Some of the more important criteria included that the fountains make a "splashy water sound", that the new footprint not impede pedestrian and bike traffic, and that the design not create a large visual barrier that could be a safety issue. These key elements were included in the Request for Proposals outlining the $50,000 project. The twenty-five proposals submitted by artists were reviewed in early 2010 and narrowed to five finalists. A group of stakeholders including a California Avenue Area Development Association representative, three art Commissioners, an employee of a California Avenue business, a neighborhood representative, and an Ex-Councilmember with a business on California Avenue helped select the three final proposals. Those three finalists were then asked to create the final materials that went on view to the public and press.
The decision to use Open City Hall was a way for the Commission to collect both quantitative and qualitative input from the public. The Commission was clear in asking for input from the public, inviting them to "choose their favorite" and offer comments. The Public Art Commission clearly stated that the use of Open City Hall was one of a variety of ways in which community members could relay their thoughts and preferences to the Commission (www.cityofpaloalto.org/knowzone/agendas/arts.asp). Input gathered via Open City Hall was not meant to be a binding vote, and it is regrettable that a portion of the public believed that to be the case. I can see how some folks could construe that this was a simple "vote" but that was not the intent. This was the first time a Commission has utilized the Open City Hall forum to gather input, and this misunderstanding is one of the lessons learned. In the future we will explicitly state that this is not an election but a chance to gather input. I hope though that this clarification of intent is helpful.

Through the Open City Hall on-line forum, two fountain proposals emerged as the clear favorites – the Reed/Madden proposal and the Szabo proposal. The Commissioners reviewed the maps and 64 pages of comments and information available on Open City Hall previous to the meeting January 20th. During the public meeting, staff did highlight the features matrixing information by residency, individual Palo Alto neighborhood, and even in the radius from the fountain itself.
The Art Commission wanted the public to weigh in on the three final proposals (all under the $50,000 budget) based on the artistic merit of each proposal. During the course of the Open City Hall forum, the press exposed the $14,198 gap between the least and most expensive fountains. A few of the online participants referenced a rumored $20,000 gap in the budgets. Quite a few in favor of the Reed/Madden proposal referenced cost as the main reason for their choice. The week of the public meeting, the Art Commission learned that the footprint of the fountain would have to move. This change brought the proposals all within $5,000 of one another. Additionally, Commissioner Richter raised concerns about the fragile state of the existing fountain bowl and questioned the wisdom or feasibility of reusing it in a new fountain.
The comments made by the Commissioners at their January meeting reflect how seriously they took the content of the input from participants. They each mentioned the inspired comments on behalf of each of the three proposals. Commissioner Usich spoke of how the comments for the Reed/Madden proposal resonated with her own memories and fondness for the existing fountain. However, after reading the comments, she was inspired and moved by the comments advocating for the Szabo piece as more fitting for Palo Alto and California Avenue's diverse community. Commissioner Collins spoke of having moved to Palo Alto because it is a community that thinks "outside the box", she mentioned that

Attachment: Public Letters to Council (1424 : Public Letters to Council)

the Szabo proposal better reflected the spirit of Palo Alto and would create a community gathering place.
I hope this helps clarify the history and actions of the Public Art Commission regarding the California Avenue fountain.
Should you have additional questions or comments, please feel free to contact me at 650.329.2519. Thank you.
Sincerely,
Elise DeMarzo
Manager
Palo Alto Public Art Commission

PA
PAC

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8: 14

From: Wayne Martin [wmartin46@yahoo.com]
Sent: Saturday, February 05, 2011 2:56 PM
To: Council, City
Cc: Keene, James; hgrobinson@menlopark.org; jcboyle@menlopark.org; kjfergusson@menlopark.org; racline@menlopark.org; amcohen@menlopark.org
Subject: Private Roads on Stanford Lands To Off-load Increased Stanford Traffic
Attachments: pacc_stanford_private_roads.doc

Palo Alto City Council
City of Palo Alto
Palo Alto, CA 94301
Cc: James Keene
Menlo Park City Council

Subject: Private Roads on Stanford Lands To Off-load Increased Stanford Traffic

Elected Public Officials:

The attached MS-WORD file contains some thoughts about Stanford University's building private roads to carry the current, and increased, load of its operations and refurbishment of its hospital.

Wayne Martin
Palo Alto, CA

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Palo Alto City Council
City of Palo Alto
Palo Alto, CA 94301
Cc: James Keene/Menlo Park City Council

Subject: Possibility of Private Road on Stanford Lands to Off-load Stanford Traffic From Public Streets?

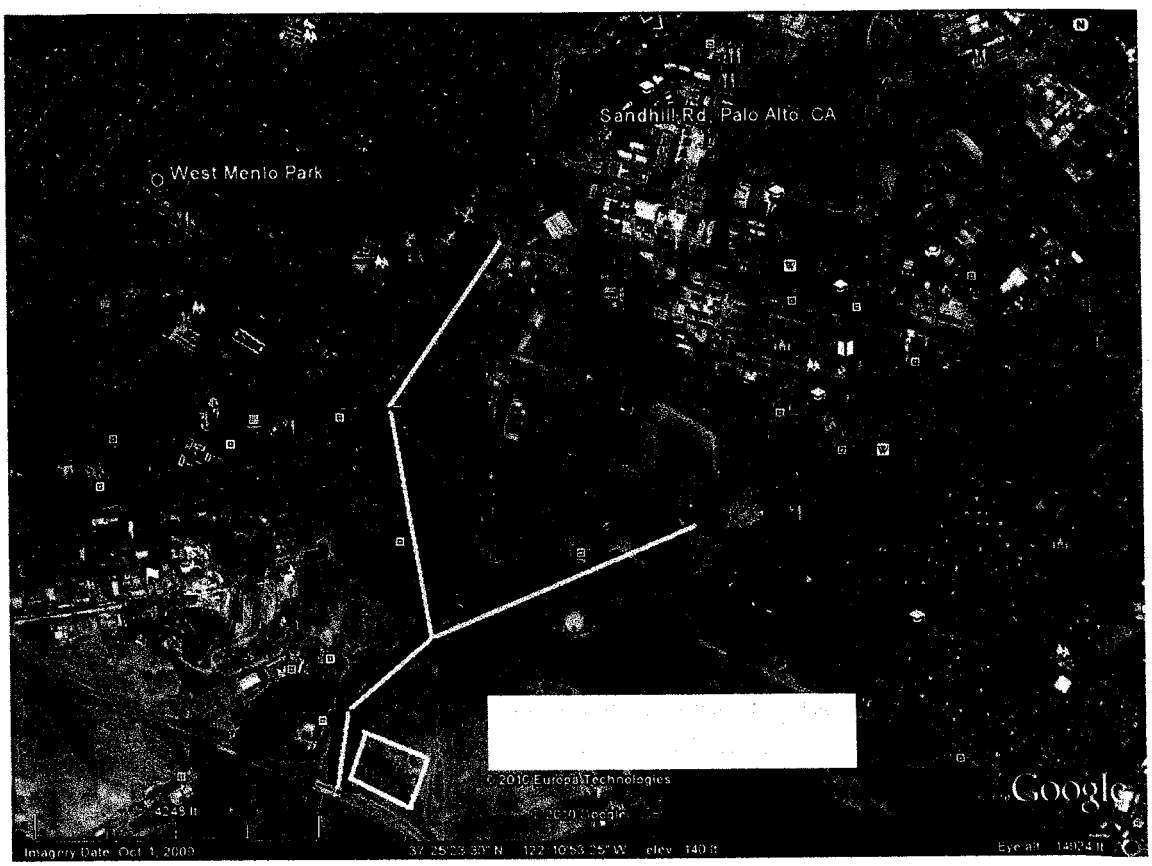
Elected Council Members:

As the City of Palo Alto is currently negotiating with Stanford University, relative to the permitting process for the expansion of the Stanford University Hospital, the matter of traffic is on the table again. Stanford's offering to buy Caltrain passes for fifty years (or until it changes its mind), does not offer much in terms of traffic reduction on Palo Alto (and Menlo Park) streets. There does not seem to be traffic modeling being performed to help understand the current traffic loads, much less how our streets will handle increased traffic from this expansion.

Private Roads On Stanford Lands

One proposal which does not seem to be on the table is for Stanford to build one (or more) roads on its property to handle the current, and increased, traffic from this expansion. The following aerial photo shows (in yellow) possible locations for new roads that would allow traffic to move from the public streets in Palo Alto/Menlo Park onto the Stanford lands:

Attachment: Public Letters to Council (1424 : Public Letters to Council)



The square near the H.280/Sand Hill Road is a location where Stanford could construct a parking lot (to be serviced by shuttles) that would reduce the traffic on these roads, perhaps reducing the footprint of these roads, and the cost of construction.

Inclusion in Planning Process

Given that Stanford is willing to spend upwards of $100M for Caltrain passes, which currently offer no concrete reduction to traffic on our city streets, this sort of proposal would be significantly less expensive, and would offer a clear reduction of city street traffic, at least on the western side of the Stanford Campus.

Council Members—the current Stanford proposal is not nearly as effective as this sort of solution. Yet, there does not seem to be any effort on the part of the Palo Alto planners to even make such a suggestion, much less fighting for its acceptance by Stanford.

Please consider this proposal, and make suggestions to the Palo Alto planners to include it in the mix of traffic management suggestions currently under negotiations with Stanford University before this permitting process comes to its end.

Wayne Martin
Palo Alto, CA
www.twitter.com/wmartin46
www.scribd.com/wmartin46

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -7 AM 8:16

Minor, Beth

From: NTB [aarmatt@gmail.com]
Sent: Friday, February 04, 2011 7:14 AM
To: Council, City
Subject: Recent changes on Arastradero

To the Members of the Palo Alto City Council:

A word of thanks from a grateful south Palo Alto resident. In 1996 I moved to the Greenacres I Neighborhood next to Terman Middle School. For fifteen years I have traveled with fear and trepidation on Arastradero. When either turning into my neighborhood from Arastradero or trying to cross it on foot to access Juana Briones Park, I felt I was taking my life into my hands.

The left turn pockets have been an enormous boon. Waiting in that designated place, I no longer watch furtively for cars coming up behind me and possibly hitting me (which actually did happen to my son). Yes, sometimes it does take a little longer to make the turn but, as with all things in life, there are trade offs. I am glad to wait for a few more seconds if I can wait with safety.

The newly constructed mid block crosswalk at Clemo is like a dream come true. Even though the flashing lights are not yet functioning, just having that island refuge and the excellent signage has made the crossing safe. I tested it the other day and felt a new found freedom. Funny that such a simple thing could be so exhilarating but it was. Having that safe crossing in such a convenient location encourages one to get out and walk places rather than drive.

These changes have made our south Palo Alto area much more livable. Thank you for your support.

Sincerely,
Nina Bell
4245 Los Palos Avenue

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -8 AM 11:35

From: sdeck24@aol.com
Sent: Monday, February 07, 2011 11:20 PM
To: Council, City
Subject: Noise from Railroad tracks

What's going on at the railroad tracks at east meadow and Alma? I saw that it's some type of improvement, but repetitive banging noise that awakes me at 1115pm is ridiculous.

Thanks,
Steve Deck
650-793-4079
3580 South Court

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:15

From: Wayne Martin [wmartin46@yahoo.com]
Sent: Friday, February 04, 2011 12:58 PM
To: CalTrain Board
Cc: Mike Wasserman; Dave Cortese; Don Gage; Liz Kniss; George Shirakawa; Ken Yeager
Subject: Vehicular Fatality Data On Highway 101 (1999:2005)
Attachments: wem_highway_101_Vehicular_Fatalities.doc

Caltrans Board of Trustees
Caltrain

1250 San Carlos Ave.
San Carlos, CA 94070-1306

Subject: Vehicular Accident Data On Highway 101 (1999:2005)

Elected Board Members:

The attached MS-WORD file contains accident data for Highway 101 for the years 1999:2005.

This data is being forwarded to you for your consideration, in response to comments attributed to General Manager Scanlon about the possible termination of Caltrain.

Wayne Martin

Palo Alto, CA

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Caltrans Board of Trustees
Caltrain
1250 San Carlos Ave.
San Carlos, CA 94070-1306

Subject: Highway 101 Vehicular Fatalities (1999:2005)

Elected Board Members:

In a local Palo Alto on-line blog sponsored by a local paper, the following comments, attributed to General Manager Scanlon, appear:

> People look at the costs but don't understand the greater impacts. With more people driving instead of taking the train, more car accidents will occur, Scanlon said.
>
> "The fact is that more people will die," he said.

The article provides no data, or sources of data, leaving the taxpayers wondering what Mr. Scanlon must be talking about?

As it turns out, the CHP maintains the accident data for the state. Using CHP-provided data, the following levels of fatal vehicular accidents along Highway 101 can be seen:

Highway 101 Vehicular Fatalities (1999:2005)				
Year	Total Deaths	Alcohol Involved	Caltrain Not Running	Caltrain Running
1999	22	3	7	15
2000	19	7	4	15
2001	25	7	9	16
2002	22	7	4	18
2003	20	10	11	9
2004	24	13	8	16
2005	19	12	11	8
Source:				
Raw Data Obtained From CHP				

Accident Detail Data:

Juris-diction	Caltrans County	Collision Year	Primary Road	Secondary Road	Caltrans County	Killed Victims	Collision Date	Colli Time
9725	SCL	1999	RT 101	LEAVESLEY AV	SCL	2	19990117	
9725	SCL	1999	RT 101	CASTRO VLY RD	SCL	1	19990312	

Attachment: Public Letters to Council (1424 : Public Letters to Council)

9725	SCL	1999	RT 101	CHURCH AV OC	SCL	2	19990326	13
9725	SCL	1999	RT 101	COCHRANE RD	SCL	1	19990410	16
9725	SCL	1999	RT 101	MASTEN AV	SCL	1	19990526	18
9725	SCL	1999	RT 101	METCALF RD	SCL	1	19990607	16
9725	SCL	1999	RT 101	METCALF RD	SCL	1	19990701	10
9725	SCL	1999	RT 101	TENNANT AV	SCL	1	19990711	12
9340	SCL	1999	RT 101	1 UC	SCL	1	19990827	22
9725	SCL	1999	RT 101	BERNAL RD	SCL	1	19991025	3
9350	SF	1999	RT 101	MARINA BL NBOFF/R	SF	1	19990406	14
9335	SF	1999	RT 101	3 OC	SF	1	19990414	5
9335	SF	1999	RT 101	RT 280	SF	1	19990808	4
9335	SF	1999	RT 101	ARMY SBON/R	SF	1	19990912	2
9330	SM	1999	RT 101	EMBARCADERO RD	SM	1	19990704	16
9330	SM	1999	RT 101	PENINSULA AV OC	SM	2	19990717	4
9330	SM	1999	RT 101	UNIVERSITY AV OC	SM	1	19990912	22
9330	SM	1999	RT 101	MARSH RD	SM	1	19991222	5
9335	SM	1999	RT 101	SIERRA PT SBOFF	SM	1	19991227	5
					Total:	22		
9725	SCL	2000	RT 101	COYOTE CRK GOLF DR	SCL	1	20000224	2
9340	SCL	2000	RT 101	LAFAYETTE	SCL	1	20000331	20
9725	SCL	2000	RT 101	BUENA VISTA AV OC	SCL	1	20000702	
9725	SCL	2000	RT 101	LEAVESLEY RD	SCL	1	20000716	2
9340	SCL	2000	RT 101	GUADALUPE PKWY OC	SCL	1	20001106	1
9340	SCL	2000	RT 101	N TULLY RD	SCL	1	20001119	
9725	SCL	2000	RT 101	SARGENTS OC	SCL	1	20001213	
9340	SCL	2000	RT 101	RT 237	SCL	1	20001225	1
9725	SCL	2000	RT 101	E DUNNE AV	SCL	1	20001225	2
9725	SCL	2000	RT 101	CASTRO VLY RD	SCL	1	20001228	2
9330	SM	2000	RT 101	WILLOW RD OC	SM	1	20000107	1
9330	SM	2000	RT 101	PENINSULA AV	SM	1	20000512	
9335	SM	2000	RT 101	SF1A NBON/R	SM	1	20000711	1
9330	SM	2000	RT 101	RALSTON AV OC	SM	1	20000712	
9330	SM	2000	RT 101	HILLSDALE BL OC	SM	1	20000815	2
9335	SM	2000	RT 101	SAN BRUNO AV NBOFF	SM	2	20001006	1
9330	SM	2000	RT 101	RALSTON AV OC	SM	1	20001104	2
9335	SM	2000	RT 101	SFO NBON/R	SM	1	20001119	
					Total:	19		
9340	SCL	2001	RT 101	BLOSSOM HILL RD	SCL	1	20010111	1
9340	SCL	2001	RT 101	CAPITOL EXPWY	SCL	1	20010201	
9725	SCL	2001	RT 101	METCALF RD	SCL	1	20010408	
9725	SCL	2001	RT 101	BERNAL RD	SCL	1	20010519	2
9340	SCL	2001	RT 101	MATHILDA AV	SCL	1	20010612	1
9340	SCL	2001	RT 101	OAKLAND RD	SCL	1	20010613	1
9340	SCL	2001	RT 101	MONTAGUE EXPWY	SCL	1	20010707	

Attachment: Public Letters to Council (1424 : Public Letters to Council)

				OC				
9340	SCL	2001	RT 101	GREAT AMERICA PKWY	SCL	1	20010721	1
9725	SCL	2001	RT 101	METCALF RD	SCL	2	20010903	2
9725	SCL	2001	RT 101	METCALF RD	SCL	1	20010925	2
9725	SCL	2001	RT 101	COYT CRK GLF DR UC	SCL	1	20010930	
9340	SCL	2001	RT 101	YERBA BUENA RD	SCL	1	20011001	
9340	SCL	2001	RT 101	RT 880 OC	SCL	1	20011022	
9725	SCL	2001	RT 101	BUENA VISTA AV OC	SCL	1	20011027	2
9725	SCL	2001	RT 101	MASTEN AV	SCL	1	20011116	2
9725	SCL	2001	RT 101	BURNETT AV	SCL	1	20011206	1
9335	SF	2001	RT 101	22 OC	SF	1	20010225	
9335	SF	2001	RT 101	SF CO LINE	SF	2	20010506	2
9330	SM	2001	RT 101	HOLLY	SM	1	20010421	
9335	SM	2001	RT 101	SIERRA PT NBON/	SM	1	20010711	
9335	SM	2001	RT 101	MILLBRAE CIL SIGN	SM	1	20010830	
9335	SM	2001	RT 101	S AIRPORT NBOFF/R	SM	1	20011025	
9335	SM	2001	RT 101	SIERR PT PKWY OF/R	SM	1	20011214	
					Total:	25		
9725	SCL	2002	RT 101	CARNADERO CREEK BR	SCL	1	20020221	1
9340	SCL	2002	RT 101	RT 280	SCL	1	20020317	2
9725	SCL	2002	RT 101	RONAN DIVERSION CHNL BR #3	SCL	2	20020414	
9725	SCL	2002	RT 101	BERNAL RD	SCL	1	20020515	
9340	SCL	2002	RT 101	RT 280	SCL	1	20020704	2
9330	SCL	2002	RT 101	ELLIS ST	SCL	1	20020715	1
9340	SCL	2002	RT 101	MONTAGUE EXPWY	SCL	1	20020824	2
9725	SCL	2002	RT 101	BERNAL RD	SCL	3	20020826	1
9340	SCL	2002	RT 101	GREAT AMERICA PKWY	SCL	1	20020908	2
9340	SCL	2002	RT 101	FAIR OAKS AV	SCL	1	20020919	1
9340	SCL	2002	RT 101	TULLY RD	SCL	1	20020920	2
9340	SCL	2002	RT 101	MATHILDA AV	SCL	1	20020927	2
9340	SCL	2002	RT 101	RT 280	SCL	1	20021013	1
9350	SF	2002	RT 101	GOLDEN GATE BR	SF	1	20020323	
9330	SM	2002	RT 101	UNIVERSITY AV	SM	1	20020406	
9330	SM	2002	RT 101	RT 84	SM	1	20020823	1
9330	SM	2002	RT 101	KEHOE AV	SM	1	20020825	2
9335	SM	2002	RT 101	SFO BART	SM	1	20021019	2
9335	SM	2002	RT 101	LIGHT POLE NO 05959	SM	1	20021209	1
					Total:	22		
9725	SCL	2003	RT 101	LEAVESLEY RD OC	SCL	1	20030207	2
9340	SCL	2003	RT 101	RT 880	SCL	1	20030223	1
9725	SCL	2003	RT 101	RT 85	SCL	1	20030615	
9340	SCL	2003	RT 101	MONTAGUE EXPWY	SCL	1	20030810	

Attachment: Public Letters to Council (1424 : Public Letters to Council)

9340	SCL	2003	RT 101	ALUM ROCK AV	SCL	1	20030928	23
9725	SCL	2003	RT 101	BERNAL RD	SCL	1	20031012	22
3801	SF	2003	RT 101	SAN BRUNO AV	SF	1	20030108	18
3801	SF	2003	RT 101	SACRAMENTO ST	SF	1	20030114	14
9350	SF	2003	RT 101	RT 1	SF	1	20030726	19
3801	SF	2003	RT 101	SACRAMENTO ST	SF	1	20030914	
9335	SF	2003	RT 101	25TH ST	SF	1	20030917	2
9330	SM	2003	RT 101	HARBOR BL	SM	1	20030112	
9330	SM	2003	RT 101	BROADWAY AV	SM	1	20030324	4
9335	SM	2003	RT 101	SIERRA POINT PKWY	SM	1	20030328	22
9330	SM	2003	RT 101	MILLBRAE AV	SM	1	20030413	10
9335	SM	2003	RT 101	W FIELD ST	SM	1	20030709	4
9335	SM	2003	RT 101	SIERRA POINT PKWY	SM	1	20030718	2
9335	SM	2003	RT 101	SOUTH AIRPORT BL	SM	1	20030824	2
9330	SM	2003	RT 101	MARSH RD	SM	1	20031102	2
9330	SM	2003	RT 101	UNIVERSITY AV	SM	1	20031206	
					Total:	20		
9725	SCL	2004	RT 101	COYOTE CREEK BR 37 349L	SCL	1	20040305	4
9340	SCL	2004	RT 101	CAPITOL EXPWY	SCL	1	20040306	1
9725	SCL	2004	RT 101	MASTEN AV	SCL	1	20040403	1
9340	SCL	2004	RT 101	RT 280	SCL	1	20040425	
9725	SCL	2004	RT 101	BLOSSOM HILL RD	SCL	1	20040428	2
9725	SCL	2004	RT 101	COYOTE CREEK BR # 37 349L	SCL	1	20040524	1
9340	SCL	2004	RT 101	GREAT AMERICA PKWY	SCL	1	20040531	
9330	SCL	2004	RT 101	MOFFETT BL	SCL	1	20040605	
9725	SCL	2004	RT 101	RT 25	SCL	1	20040611	1
9725	SCL	2004	RT 101	SAN MARTIN AV	SCL	1	20040704	1
9340	SCL	2004	RT 101	RT 237	SCL	1	20040728	2
9725	SCL	2004	RT 101	BUENA VISTA AV	SCL	1	20040904	
9725	SCL	2004	RT 101	SAN MARTIN AV	SCL	1	20040906	
9340	SCL	2004	RT 101	RT 87	SCL	1	20041031	1
9725	SCL	2004	RT 101	6TH ST	SCL	1	20041104	1
9725	SCL	2004	RT 101	COCHRANE RD	SCL	1	20041207	2
9330	SM	2004	RT 101	BRITTAN AV	SM	1	20040320	
9330	SM	2004	RT 101	MAPLE ST	SM	1	20040411	2
9335	SM	2004	RT 101	GRAND AV	SM	1	20040705	1
9330	SM	2004	RT 101	WILLOW RD	SM	1	20040828	
9330	SM	2004	RT 101	PENNSYLVANIA AV	SM	1	20040928	2
9330	SM	2004	RT 101	UNIVERSITY AV	SM	1	20041014	2
9330	SM	2004	RT 101	HOLLY ST	SM	1	20041028	1
9330	SM	2004	RT 101	MILLBRAE AV	SM	1	20041203	
					Total:	24		
9725	SCL	2005	RT 101	EAST DUNNE AV	SCL	1	20050123	1
9725	SCL	2005	RT 101	BAILEY AV	SCL	1	20050430	

Attachment: Public Letters to Council (1424 : Public Letters to Council)

9340	SCL	2005	RT 101	FAIR OAKS	SCL	1	20050530	2
9725	SCL	2005	RT 101	METCALF RD	SCL	1	20050715	2
9340	SCL	2005	RT 101	LAWRENCE EXPWY	SCL	1	20050813	
9725	SCL	2005	RT 101	LEAVESLEY RD	SCL	1	20050912	
9340	SCL	2005	RT 101	GREAT AMERICA PKWY	SCL	1	20051002	
9330	SCL	2005	RT 101	SHORELINE BL	SCL	1	20051004	2
9725	SCL	2005	RT 101	RT 25	SCL	1	20051004	1
9340	SCL	2005	RT 101	GREAT AMERICA PKWY	SCL	1	20051213	
9335	SF	2005	RT 101	SILVER AV	SF	1	20050919	
3801	SF	2005	RT 101	JACKSON ST	SF	1	20051205	
9335	SM	2005	RT 101	REVERSE GORE POINT	SM	1	20050507	2
9330	SM	2005	RT 101	MARSH RD OVERCROSSING	SM	1	20050530	1
9330	SM	2005	RT 101	RT 92	SM	1	20050626	
9330	SM	2005	RT 101	HENDERSON RAIL RD	SM	1	20050801	
9330	SM	2005	RT 101	MARSH RD	SM	1	20050910	
9330	SM	2005	RT 101	DORE AV	SM	1	20050918	
9335	SM	2005	RT 101	SIERRA PT	SM	1	20051022	
					Total:	19		

Where:

Caltrans County (SF=San Francisco, SM=San Mateo, SCL=Santa Clara)

Discussion

The idea that a shift in ridership of the 18,000-20,000 unique people that currently are the main constituency for this $130+M government sponsored "alternate transportation system" will result in "more deaths" would take a much more intensive investigation than that offered in this communication. However, the baseline for yearly death rate can be seen in this data.

In this data, accidents have been flagged which involve the use of alcohol, and when Caltrain is not running. A better analysis would actually look only at accidents by hour. While it stands to reason that peak hours of highway use (0600-1000 and 1600-1900), when vehicular volumes are the highest would increase the likelihood of accidents, this might not necessarily be true, as higher volumes tend to reduce vehicular speeds. A more complete analysis would also remove those accidents that occurred outside the service area of Highway 101.

While the number of yearly non-fatal accidents ranges in the 3,000 to 4,000 events along the Highway 101 route in San Francisco, San Mateo, and Santa Clara counties, these accidents are reflective of highway segment volumes of as much as 160,000 vehicles a day. It would not be hard to believe that upwards of 500,000 to 1,000,000 vehicular trips occur on Highway 101 alone, whereas the number of vehicular trips that Caltrain

Attachment: Public Letters to Council (1424 : Public Letters to Council)

represents is unknown, since the effects of carpooling and increased use of buses, and even telecommuting can not easily be estimated. However, it's likely that no more than 25,000 additional vehicle trips a day would be added to the Highway system (including Highway 280).

By-and-large, the number of people killed on the Caltrain tracks, for whatever reason, would seem to be about the same as those killed on Highway 101, on a yearly basis.

Conclusion

While this data is believed to be correct, it is suggested that Caltrain should be using Caltrans/CHP data, rather than the blatantly political comments of the Caltrain General Manager to make decisions. It is clear that from the 1999-2005 data offered herein, the number of fatalities that occur on Highway 101 during the daily timeframes that Caltrain operates are very, very, small. It is insulting to the taxpayers to be told that "people will die" because this train system is terminated by someone whose job and lavish pension depend on the continued subsidy of 18,000 to 20,000 unique people out of a service area of over 3M people..

The taxpayers and residents of the Bay Area deserve better than this. Please, Board Members of the Caltrain Joint Powers, insist that the General Management use hard data, and always speak the truth.

It's clear that this system can not be sustained. Do the right thing, and insist on an orderly termination of the operation at the earliest possible moment.

Wayne Martin
Palo Alto, CA
www.twitter.com/wmartin46
www.scribd.com/wmartin46

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:16

From: Wayne Martin [wmartin46@yahoo.com]
Sent: Thursday, February 03, 2011 5:49 PM
To: Dave Cortese; Don Gage; Liz Kniss; George Shirakawa; Ken Yeager
Cc: Council, City
Subject: Caltrain vs Our Highway System

Santa Clara County Supervisors
County of Santa Clara
San Jose, CA
cc: City of Palo Alto City Council

Caltrain's yearly Ridership report show that during the weekday about 8500 unique people, from San Jose's 1+M population, and 2,500 unique people from San Francisco's 800,000+ population, board trains headed north and south. Together, this very small group generate about 55% of the passenger traffic of the whole Caltrain system on a weekday basis. These 11,000 unique people constitute less than .4% of 3+M living in Caltrain's Peninsula service area.

Looking forward at Caltrain's funding problems, and understanding the extremely high costs of government-managed/subsidized transportation systems, the operating/maintenance costs of this system can be shown to be about $8+B for the coming 30 years. That's $8+B providing transportation for no more than 18,000-20,000 unique people a day.

Our Bay Area highway system, on the other hand, provides perhaps half-million(estimated) "trips" for vehicles of all kinds for the 6.5+M residents, and who knows how many travelers who pass through the Bay Area on a daily basis. There is no one in the Bay Area who is not dependent on the goods that are delivered, and the services that are facilitated, on Highway 101 and Highway 280. Caltrain, on the other hand, outside of transporting this small segment of our population, does not enable our general economy, as these two highways do.

Caltrain needs to be terminated, and any/all public dollars intended for its future improvement redirected to our very neglected, and very useful, highway system.

Wayne Martin

Palo Alto, CA

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 10: 16

Minor, Beth

From: Julianne Frizzell [julianneasla@pacbell.net]
Sent: Monday, February 07, 2011 9:51 AM
To: Council, City
Subject: Eucalyptus at E. Pardee Park

To the honorable members of the City Council,

The signs have recently been posted on the Eucalyptus trees in Eleanor Pardee Park. They all come down February 28. We and many of our friends and neighbors continue to be deeply upset.

It disturbs me greatly that the council chose to side with the vocal group that wanted all of the trees removed all at once rather than the staff recommendation. The staff conducted 7 meetings gathering input from the public and professionals. Staff also received and considered hundreds of emails. Some of the input was rational and some was irrational, some truth and some fiction, some good science some poor. (For example. Dave Muffly, who wrote a letter –he did not write an arborist report, made statements that are not supported by the two professionals who did write reports - Eric Krebs, and Torrey Young. Both Krebs and Young are far more qualified than Muffly in the analysis of the health of large trees).

The staff considered the health of the trees, the safety of the community, and the aesthetics of the park (including shade for the playground area). After careful and thorough consideration the staff composed the "phased" compromise plan with the input of T. Young and Eric Krebs. The council should have supported the staff recommendation.

We who care for the trees didn't form a "crusading" force as did the people who wanted the trees cut down. We actually assumed that council would accept the superior understanding of the situation that the staff recommendation reflected. We were sure wrong! Unfortunately, the loudest voices often "carry the day" in Palo Alto.

Julianne Frizzell
1175 Channing Avenue

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 PM 2: 18

From: Kinnear, Joyce
Sent: Monday, February 07, 2011 2:10 PM
To: 'vz2200-list@yahoo.com'
Cc: Council, City; Fong, Valerie; Auzenne, Tom; Mitchell, Karen
Subject: RE: Home Energy Reports and Curb replacement

Ms. Goldfein, our Electric Operations Manager checked into your concern about the project on curbs and electric work at your property last summer. He found that your home, the adjacent unit in your duplex, and the two duplexes next to your unit all receive electricity from an overhead line at the rear of the property. The electric line (a low voltage open wire connected to your home) was replaced with an upgrade to reduce tree-caused outages. Your transformer was also replaced, and maintenance was completed on poles. The contractor who completed this work did drive through the driveway to gain access to the electric pole; however, the replaced concrete curb and gutter were not driven on. The new asphalt in the driveway was driven on, but was checked and found to be dry and drive-able.

Regarding the concrete work to replace your curb and gutter, this was performed by a contractor at the direction of the Department of Public Works. I am copying Karen Mitchell of Public Works, who can find out the answers to any remaining concerns about this issue that you might have.

Joyce Kinnear

Manager, Utility Marketing Services

City of Palo Alto Utilities

650-329-2652

From: vz2200-list@yahoo.com [mailto:vz2200-list@yahoo.com]
Sent: Wednesday, February 02, 2011 5:03 PM
To: Kinnear, Joyce
Cc: Council, City
Subject: Home Energy Reports and Curb replacement

Hi,

Just who is supposed to save money from the Home Energy Reports? What is your metric for cost-effectiveness? The city seems to raise rates more when usage goes down so it isn't at all clear that reducing demand does anything but shift some costs to high users, while increasing costs for everyone. Since the city earns less money (via the utility tax) if usage is reduced, how would this save money for the city? The utility bills alone, along with the high level of support for a more sustainable life in Palo Alto, provide far more incentive for energy conservation to townspeople than your report which has been useless to me and probably to many others, going by comments on the town square forums.

I already have CFL's, no dishwasher and a front loading washing machine and a gas stove. I have one wall air-conditioner that I run only on the hottest nights. It would cost many thousands of dollars to run a gas line for a dryer so I'm stuck with an electric dryer. I drop my heat at night and

Attachment: Public Letters to Council (1424 : Public Letters to Council)

warm my bedroom with a space heater. There is nothing more for me to do but remember to turn off my lights.

My recommendation is to drop the Home Energy Report program as soon as possible and use your skills and the money saved for figuring out how to underground utilities faster and fix city-owned sidewalks and streets. Just finding a way to better coordinate all the different entities who continually dig up Alma street (Comcast, ATT, other communication companies, and the myriad of different departments of the Palo Alto utilities) could save lots of money for repaving.

For example, the same day last summer the curbs and the area next to the curbs next to my property were replaced with new concrete and asphalt, another branch of Palo Alto utilities scheduled the replacement of an electrical line in my backyard, ensuring heavy equipment driving over the new concrete and asphalt within 24 hours of laying it. That can't have been good for it. The utility crew also broke up a concrete pad next to the curb where garbage cans sit in anticipation of replacing it - and then didn't fix it at the last minute because of a change order to use more expensive concrete that would cure faster and reduce the amount of time one lane of Alma would be blocked. This cost me over $1,000 to replace. This also meant that they didn't fix the cracked driveway next to the median owned by the city.

It is indeed ironic that Palo Alto spent all that extra money to prevent one lane of Alma for being closed a couple more hours when the HSRA plans to permanently close 2-3 lanes of Alma to avoid having to acquire land on the other side of the railroad tracks to widen the right of way, even though much of the right of way along Alma is 100 ft.wide, which they say is what they need. I've seen little or no protest from the city for this plan, although I have high hopes that someone in the background - probably Pat Burt - is working on this.

When Palo Alto has so many serious issues to deal with and so much infrastructure to repair, your program seems frivolous indeed. I want to see more actual infrastructure repairs and less marketing. I hope you don't wait an entire year to cancel it.

Kathleen Goldfein
Concerned citizen of Palo Alto
3163 Alma Street 94306
650 494-6231

From: "Kinnear, Joyce" <Joyce.Kinnear@CityofPaloAlto.org>
To: vz2200-list@yahoo.com
Sent: Tue, January 25, 2011 7:42:09 AM
Subject: RE:

I am sorry that you didn't find anything useful in the program. I would suggest that you log on to the web-link at www.cityofpaloalto.org/HomeEnergyReports and check out the ideas and advice tab, where you might find some useful tips to reduce your energy usage. Since your natural gas usage is about or below average, it does appear that the thermostat and insulation have really helped you reduce natural gas use. If you are interested in reducing electric charges, look at the tips for appliances and cooling, which are both more electric related that the work you have done to date (except for the fluorescent lights, which do clearly reduce your electric costs).

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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We will continue to monitor this program for cost-effectiveness. You are correct that in a time of limited budgets, we do need to make sure that only the most cost-effective programs are continued. Based on the research done at other utilities, this type of program is typically extremely cost-effective, but we, of course, want to make sure that this is the case here. We will report on the programs' success after the first year of implementation.

Thank you for your comments.

Joyce Kinnear

Manager, Utility Marketing Services

City of Palo Alto Utilities

650-329-2652

From: vz2200-list@yahoo.com [mailto: vz2200-list@yahoo.com]
Sent: Monday, January 24, 2011 9:33 PM
To: Kinnear, Joyce
Subject: Re:

Hi Joyce,

I hope this program is not renewed. I did not find the information of any use in finding ways to save energy. I've already insulated my ceiling, added doublepane windows, put in a dual thermostat, utilized fluorescents lights wherever possible etc etc. It wasn't hard to figure out what to do.

With a very limited budget, I think Palo Alto should eliminate this program and the ever-increasing number of irrelevant handouts in the utility bills and use the funds for much needed infrastructure repairs.

This is particularly annoying when the replacement of the city owned portion of the driveway next to my house (it is badly cracked) was canceled due to increased costs of cement used on the curbs, at the last minute after the project was started.

Kathleen Goldfein
Palo Alto Homeowner
3163-3165 Alma Street

From: "Kinnear, Joyce" <Joyce.Kinnear@CityofPaloAlto.org>
To: "Kinnear, Joyce" <Joyce.Kinnear@CityofPaloAlto.org>; "Hart, Andrea" <Andrea.Hart@CityofPaloAlto.org>; Irene Scher <irene.scher@opower.com>
Sent: Mon, January 24, 2011 11:14:57 AM
Subject:

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Dear City of Palo Alto Utilities Customer,

Last week you received your Home Energy Report by email. While the information in the report was accurate, the links, unfortunately, were not functional. We regret that this occurred, as we aim to deliver high-quality services that meet our customers' expectations.

We identified and resolved the issues with the email links, and our future e-delivery reports will be fully functional. This month, please visit www.CityofPaloAlto.org/HomeEnergyReports to view updated information about your home's energy use, find the best ways to save and see what tips are popular in your area.

Should you have any questions about your emailed Home Energy Report or the information you can view online, please don't hesitate to let me or a member of the City of Palo Alto Utilities customer service staff know.

Thanks!

Joyce Kinnear

Manager, Utility Marketing Services

City of Palo Alto Utilities

650-329-2652

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:15

From: Pat Marriott [patmarriott@sbcglobal.net]
Sent: Friday, February 04, 2011 1:29 PM
To: Council, City
Cc: 'Doug Schmitz'; jwalgren@losaaltosca.gov
Subject: Leaf blowers

Council Members:

This document from Newport Beach, dated February 9, 2010 should be of interest:

Recommendations from Environmental Quality Affairs Committee Regarding Regulation of Leaf Blowers in Residential Areas http://www.newportbeachca.gov/Modules/ShowDocument.aspx?documentid=8818

Noise and particulate matter blowing in the air are problems with gas or electric blowers. But according to the California Air Resources Board, lawn mower engines produce, gallon for gallon, 93 times the amount of air pollution of automobile engines. http://www.arb.ca.gov/msprog/mailouts/msc0005/msc0005.pdf

Small engines (lawn mowers, leaf blowers, chain saws, etc.) put in excess of 22 tons of smog-forming chemicals into the air each day in California, equivalent to pollutants produced by 800,000 cars.

I hope you will keep the ban on gas-powered blowers!

Thank you,
Pat Marriott
1530 Oakhurst Ave.
Los Altos

Attachment: Public Letters to Council (1424 : Public Letters to Council)

1/21/11

CITY OF PALO ALTO CA
CITY CLERK'S OFFICE
11 FEB -3 AM 9:30

"Make every drop count."

Right! So I'm saving water by the cupfuls in my kitchen, not flushing every time, rain barrel, low-flow toilet etc. Meanwhile, every time a new project comes up, the City puts in a fountain that evaporates more water in a day than I can save in a week.

Water conservation should begin with the City!

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -7 AM 8:15

From: Billie Barewald [bbar7@sbcglobal.net]
Sent: Saturday, February 05, 2011 2:48 PM
To: Council, City
Subject: Fluoridation Legal action:

Dear Mayor and Council Members,

Since the City of Palo Alto has fluordated water, you should be aware that the American Dental Association sent an e Gram to dentists, 11/9/2006, warning against re-constituting infant formula with fluoridated water.

Relative to that concern, New Hampshire State Representative Lars Christiansen has introduced two bills in the New Hampshire Legislature for the 2011 legislative session . One of them, **HB312**- "An Act relative to notice required for the fluoridation of drinking water", has been referred to the House Health and Human Services committee and will have a public hearing Tuesday, February 1 .

The legislation requires that all fluoridation communities in New Hampshire place a statement on all water bills disclosing that the water is fluoridated and warning citizens not to reconstitute baby formula using fluoridated water.

Since the 2006 National Research Council (NRC) report on fluoride showed that infants were consuming **3-4 times** more fluoride than adults contributing to overexposure. Dental researchers and medical experts have agreed that children under 12 months of age should not be consuming fluoridated water. Just this month, the **US Department of Health and Human Services** recommended lowering "optimal" water levels to 0.7 ppm to decrease the epidemic of dental fluorosis afflicting over 41% of adolescents aged 12-15. Even at 0.7 ppm, an infant using fluoridated water will still consume up to **175 times more fluoride** than a breastfed baby.

The Council should notify Palo Alto residents of this new information and stop fluoridation of Palo Alto's water supply immediately.

Sincerely,

Billie Barewald, R.N.
321 Sleeper Avenue
Mountain View, CA 94040
Mountain View Citizens for Safe Drinking water
650-968-1424

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -8 AM 11:34

From: Peter Carpenter [peterfcarpenter@me.com]
Sent: Tuesday, February 08, 2011 6:54 AM
To: Council, City
Cc: City Attorney; Clerk, City; City Mgr
Subject: Brown Act Cure and Correct Demand re your 7 Feb. 2011 City Council meeting

Dear City Council,

I regret to inform you that your meeting of 7 Feb. 2011 violated the Brown Act in that the Council **failed to follow the published agenda**, which had been provided in a timely fashion, and also **failed to modify by vote of the Council the posted agenda before proceeding to conduct its meeting with a revised agenda.** Any actions taken once the Council deviated from its published agenda are therefore null and void.

Agenda Requirement
At least 72 hours prior to a regular meeting, the body must post an agenda containing a brief general description of each item to be discussed or transacted at the meeting, including items to be discussed in closed session. (§ 54954.2(a).) The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body.
The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.

In addition, your published 7 Feb. 2011 agenda failed to provide opportunities for the public to speak to items which were on that agenda. Any actions taken on items where the public **was not advised in advance in the published agenda of their right to comment** on that specific item are therefore also null and void.

Public Testimony
Every agenda for a regular meeting shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter jurisdiction of the body. With respect to any item which is already on the agenda, or in connection with any item which the body will consider pursuant to the exceptions contained in section 54954.2(b), the public must be given the opportunity to comment before or during the legislative body's consideration of the item. (§ 54954.3(a).

The Council must therefore "Cure and Correct" these violations within 30 days or it may be subject to legal action.

Respectfully,

Peter F. Carpenter
1 Larch Drive
Atherton, Ca 94027
650-323-1162

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -9 AM 8:58

From: Larkin, Donald
Sent: Wednesday, February 09, 2011 8:20 AM
To: 'peterfcarpenter@me.com'
Cc: Council, City
Subject: RE: re the Mayor's comments last night restricting the right of speakers to address the Council

Mr. Carpenter,

I agree completely with the advice given by the Attorney General. That is why, no matter how wildly inaccurate, offensive and abusive Mr. Petersen-Perez's comments have been, neither I nor the Mayor have made any effort to prevent him from criticizing me or any other City employee during oral communications. However, the Mayor was correct to point out that oral communications are an opportunity for the speaker to address the legislative body. It is not an appropriate time to attempt to engage the appointed City Attorney in debate or discussion.

Regards,

Donald Larkin
Interim City Attorney
City of Palo Alto
(650) 329-2171

donald.larkin@cityofpaloalto.org

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: Peter Carpenter [mailto:peterfcarpenter@gmail.com]
Sent: Tuesday, February 08, 2011 4:41 PM
To: Palo Alto Free Press
Cc: City Attorney; Council, City
Subject: re the Mayor's comments last night restricting the right of speakers to address the Council

Here is the Attorney General's guidance:

When a member of the public testifies before a legislative body, the body may not prohibit the individual from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body. (§ 54954.3(c).) This provision does not confer on members of the public any privilege or protection not otherwise provided by law.
Public meetings of governmental bodies have been found to be limited public fora. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. **Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional.** (*Leventhal* v. *Vista Unified School Dist.* (1997) 973 F.Supp. 951; *Baca* v. *Moreno Valley Unified School Dist.* (1996) 936 F.Supp. 719.) These decisions found that prohibiting critical

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -9 AM 7:57

From: Peter Carpenter [peterfcarpenter@gmail.com]
Sent: Tuesday, February 08, 2011 4:41 PM
To: Palo Alto Free Press
Cc: City Attorney; Council, City
Subject: re the Mayor's comments last night restricting the right of speakers to address the Council

Here is the Attorney General's guidance:

When a member of the public testifies before a legislative body, the body may not prohibit the individual from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body. (§ 54954.3(c).) This provision does not confer on members of the public any privilege or protection not otherwise provided by law.
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In Ops.Cal.Atty.Gen. 224, 230 (1995), this office opined that the body could prohibit a speaker from making comments that were outside the body's jurisdiction. However, when applying this opinion, the body must take into account the court's broad decisions as discussed above.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -9 AM 7:57

From: editor@paloaltofreepress.com
Sent: Wednesday, February 09, 2011 7:35 AM
To: Espinosa, Sid
Cc: City Attorney; Council, City
Subject: re the Mayor's comments last night restricting the right of speakers to address the Council]

Peter:

"[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste on all public institution." **Bridges v. California, 314 U.S. 252,270. (1941)**

As an outspoken "prominent police critic". City council past and present, continues issuing unconstitutional verbal speeding tickets. I just throw them in the trash.....

Mark

ps. City attorney Donald Larkin has ordered email address paloaltofreepress@gmail.com sequestered and it's only a matter of time before [new] editor@paloaltofreepress.com is impounded.

pss. Few people if any, like yourself beleive in the United States Constitution nor to do they understand that the US constitution "trumps" city and state law's.

On Tue, Feb 8, 2011 at 4:40 PM, Peter Carpenter <peterfcarpenter@gmail.com> wrote:

Here is the Attorney General's guidance:

When a member of the public testifies before a legislative body, the body may not
prohibit the individual from criticizing the policies, procedures, programs or services
of the agency or the acts or omissions of the legislative body. (§ 54954.3(c).) This

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Public meetings of governmental bodies have been found to be limited public fora. As
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subject relating to the business of the governmental body. Any attempt to restrict the
content of such speech must be narrowly tailored to effectuate a compelling state
interest. **Specifically, the courts found that policies that prohibited members of the
public from criticizing school district employees were unconstitutional.** (*Leventhal* v.
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el lugar adecuado en el momento oportuno

Editor - Mark Petersen-Perez

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:14

Minor, Beth

From: editor@paloaltofreepress.com
Sent: Saturday, February 05, 2011 5:32 PM
To: t.ciampi@hotmail.com
Cc: loretta.king@usdoj.gov; gerald.engler@doj.ca.gov; jrosen@da.sccgov.org; nancy.brown@calbar.ca.gov; Council, City; Keene, James; City Attorney; sfpd.commission@sfgov.org; jerry@jerrybrown.org; robert.miller@oirgroup.com; michael.gennaco@oirgroup.com; Brown, Sandra
Subject: RE: Did the PAPD attempt to entrap me?

Tony:

Emails and voice mails into Genanco's office continues to go unsnswered. Has that been the case with you?

Thanks,

Mark

ps. Do you know if they received their 25K contract monies up-front?

el lugar adecuado en el momento oportuno

We don't print racy material, we just expose the "Naked" truth!!

Editor - Mark Petersen-Perez

> -------- Original Message --------
> Subject: RE: Did the PAPD attempt to entrap me?
> From: <editor@paloaltofreepress.com>
> Date: Wed, February 02, 2011 3:50 pm
> To: "Tony Ciampi" <t.ciampi@hotmail.com>;
> Cc: loretta.king@usdoj.gov, gerald.engler@doj.ca.gov, jrosen@da.sccgov.org, nancy.brown@calbar.ca.gov, city.council@cityofpaloalto.org, james.keene@cityofpaloalto.org, city.attorney@cityofpaloalto.org, sfpd.commission@sfgov.org, jerry@jerrybrown.org, robert.miller@oirgroup.com, michael.gennaco@oirgroup.com, "Sandra Brown" <Sandra.Brown@CityofPaloAlto.org>;

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Tony,

I asked the IPA PAPD police team to also preserve the MAV tapes on these two officers. Did you receiv an acknowledgment from Genanco or Miller on your request to do the same?

Thanks,

Mark

ps. This is your original email distribution list and Donald Larkin continues to beleive it is I who fills up his email box....at; city.attorney@cityofpaloalto.org although he has never identified which email box.....

loretta.king@usdoj.gov, gerald.engler@doj.ca.gov, jrosen@da.sccgov.org, nancy.brown@calbar.ca.gov, city.council@cityofpaloalto.org, james.keene@cityofpaloalto.org, city.attorney@cityofpaloalto.org, sfpd.commission@sfgov.org, jerry@jerrybrown.org, robert.miller@oirgroup.com, michael.gennaco@oirgroup.com, "Sandra Brown" <Sandra.Brown@CityofPaloAlto.org>;,

It should be duly noted: The only person I added was Sandra Brown to the distribution list, only because she has stated she's handling your case file on everything. But also, because you have had similar problems with these two rouge police officers.

el lugar adecuado en el momento oportuno

We don't print racy material, we just expose the "Naked" truth!!

Editor - Mark Petersen-Perez

> -------- Original Message --------
> Subject: Re: Did the PAPD attempt to entrap me?
> From: Palo Alto Free Press <paloaltofreepress@gmail.com>
> Date: Wed, February 02, 2011 2:34 pm
> To: Tony Ciampi <t.ciampi@hotmail.com>;
> Cc: loretta.king@usdoj.gov, gerald.engler@doj.ca.gov, jrosen@da.sccgov.org, nancy.brown@calbar.ca.gov, city.council@cityofpaloalto.org, james.keene@cityofpaloalto.org, city.attorney@cityofpaloalto.org, sfpd.commission@sfgov.org, jerry@jerrybrown.org, robert.miller@oirgroup.com, michael.gennaco@oirgroup.com
>
> Tony,
>
> Did you receive an answer from either Robert Miller or Mr. Gennaco on this complaint?
>
> Mark
>
> On Wed, Nov 10, 2010 at 11:38 PM, Tony Ciampi <t.ciampi@hotmail.com> wrote:
>
> 11/10/12010
>
> Loretta King

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Deputy Assistant Attorney General

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Mrs. King,

At approximately 10:35 PM (Pacific Standard Time) I exited the "7-11" convenience store on Waverly Ave in Palo Alto, California.

As I exited the store a Palo Alto Police Officer, (I believe whose name is Louis Parham), was standing on the sidewalk about twenty feet from me. He asked me if some garlic and and an apple sitting on a cement barrier between the sidewalk and the parking lot were mine. I did not say anything to him.

Between Officer Parham and me was the under cover burgundy police car with MAV system activated, as such the encounter was being recorded. I got on my bike and exited the parking lot crossing the street heading North on Waverley St crossing Lytton Ave on a green light. As I was crossing the street, Officer Parham yelled at me stating that I was crossing on a red and to come back. I knew I was not crossing on a red and I feared for my safety and kept going.

I believe that Palo Alto Police Officer Louis Parham and another officer, Asian I believe, were attempting to entrap me by planting drugs on me in order to wrongfully and falsely charge with a crime.

All of this should have been recorded on the MAV system.

I believe this act is retaliatory for the civil lawsuit I have brought against several Palo Alto Police Officers including police chief Dennis Burns.

I am now stressed out and am in fear of being persecuted by the Palo Alto Police.

Who is going to protect me from the Palo Alto Police falsely incriminating me of a crime?

Joseph (Tony) Ciampi
P.O. Box 1681
Palo Alto, CA 94302
650-248-1634

--
el lugar adecuado en el momento oportuno

Editor - Mark Petersen-Perez

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -3 AM 8: 14

From: editor@paloaltofreepress.com
Sent: Wednesday, February 02, 2011 2:51 PM
To: Tony Ciampi
Cc: loretta.king@usdoj.gov; gerald.engler@doj.ca.gov; jrosen@da.sccgov.org; nancy.brown@calbar.ca.gov; Council, City; Keene, James; City Attorney; sfpd.commission@sfgov.org; jerry@jerrybrown.org; robert.miller@oirgroup.com; michael.gennaco@oirgroup.com; Brown, Sandra
Subject: RE: Did the PAPD attempt to entrap me?

Tony,

I asked the IPA PAPD police team to also preserve the MAV tapes on these two officers. Did you receive an acknowledgment from Genanco or Miller on your request to do the same?

Thanks,

Mark

ps. This is your original email distribution list and Donald Larkin continues to beleive it is I who fills up his email box....at; city.attorney@cityofpaloalto.org although he has never identified which email box.....

loretta.king@usdoj.gov, gerald.engler@doj.ca.gov, jrosen@da.sccgov.org, nancy.brown@calbar.ca.gov, city.council@cityofpaloalto.org, james.keene@cityofpaloalto.org, city.attorney@cityofpaloalto.org, sfpd.commission@sfgov.org, jerry@jerrybrown.org, robert.miller@oirgroup.com, michael.gennaco@oirgroup.com, "Sandra Brown" <Sandra.Brown@CityofPaloAlto.org>;,

It should be duly noted: The only person I added was Sandra Brown to the distribution list, only because she has stated she's handling your case file on everything. But also, because you have had similar problems with these two rouge police officers.

el lugar adecuado en el momento oportuno

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Editor - Mark Petersen-Perez

> -------- Original Message --------
> Subject: Re: Did the PAPD attempt to entrap me?
> From: Palo Alto Free Press <paloaltofreepress@gmail.com>
> Date: Wed, February 02, 2011 2:34 pm
> To: Tony Ciampi <t.ciampi@hotmail.com>;

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Cc: loretta.king@usdoj.gov, gerald.engler@doj.ca.gov, jrosen@da.sccgov.org, nancy.brown@calbar.ca.gov, city.council@cityofpaloalto.org, james.keene@cityofpaloalto.org, city.attorney@cityofpaloalto.org, sfpd.commission@sfgov.org, jerry@jerrybrown.org, robert.miller@oirgroup.com, michael.gennaco@oirgroup.com

Tony,

Did you receive an answer from either Robert Miller or Mr. Gennaco on this complaint?

Mark

On Wed, Nov 10, 2010 at 11:38 PM, Tony Ciampi <t.ciampi@hotmail.com> wrote:

11/10/12010

Loretta King
Deputy Assistant Attorney General

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

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Attachment: Public Letters to Council (1424 : Public Letters to Council)

Who is going to protect me from the Palo Alto Police falsely incriminating me of a crime?

Joseph (Tony) Ciampi
P.O. Box 1681
Palo Alto, CA 94302
650-248-1634

--
el lugar adecuado en el momento oportuno

Editor - Mark Petersen-Perez

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -3 AM 8: 15

From: editor@paloaltofreepress.com
Sent: Thursday, February 03, 2011 7:58 AM
To: t.ciampi@hotmail.com
Cc: gerald.engler@doj.ca.gov; nancy.brown@calbar.ca.gov; jrosen@da.sccgov.org; mgreenwo@pdo.sccgov.org; jay.boyarsky@da.sccgov.org; assemblymember.john.perez@assembly.ca.gov; assemblymember.atkins@assembly.ca.gov; assemblymember.bill.berryhill@assembly.ca.gov; assemblymember.alejo@asm.ca.gov; assemblymember.allen@assembly.ca.gov; assemblymember.olsen@asm.ca.gov; assemblymember.norby@assembly.ca.gov; assemblymember.nielsen@assembly.ca.gov; assemblymember.mendoza@assembly.ca.gov; assemblymember.miller@assembly.ca.gov; assemblymember.ma@assembly.ca.gov; assemblymember.lowenthal@assembly.ca.gov; assemblymember.jones@assembly.ca.gov; assemblymember.hill@assembly.ca.gov; assemblymember.halderman@asm.ca.gov; assemblymember.gatto@assembly.ca.gov; assemblymember.buchanan@assembly.ca.gov; assemblymember.ammiano@assembly.ca.gov; assemblymember.conway@assembly.ca.gov; assemblymember.donnelly@assembly.ca.gov; assemblymember.fletcher@assembly.ca.gov; assemblymember.garrick@assembly.ca.gov; assemblymember.gorell@assembly.ca.gov; assemblymember.hagman@assembly.ca.gov; assemblymember.yamada@assembly.ca.gov; senator.alquist@sen.ca.gov; Wilcox,Justin; Dianda,Mario; jgreen@dailynewsgroup.com; Ray Bacchetti; Brown, Sandra; Council, City; Keene, James; City Attorney
Subject: Santa Clara County Crime Lab Complaint Follow Up
Attachments: SandraBrownVoiceMail.mp3

Dear Tony:

Let me further add that I am the only, the only news reporting agency ordered "Blacklisted" by city attorney Donald Larkin and carried out by his chief PAPD media Lieutenant Sandra Brown.

Listen in on her marching orders received by the city of Palo Alto's TOP attorneys and champion's of our Constitution.

Please note the comments and response of a seasoned news reporter:

"With that said, I did listen to your voice message attached. ***I was very shocked!*** Being part of a new publication twice before (***redacted***) is fairly new as well) at one point, I did get blacklisted from some places but never so directly like that! I'm sorry to hear you're having such a rough time."

el lugar adecuado en el momento oportuno

We don't print racy material, we just expose the "Naked" truth!!

Editor - Mark Petersen-Perez

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

-------- Original Message --------
Subject: Re: Santa Clara County Crime Lab Complaint Follow Up
From: Palo Alto Free Press <paloaltofreepress@gmail.com>
Date: Thu, February 03, 2011 7:13 am
To: Tony Ciampi <t.ciampi@hotmail.com>;
Cc: gerald.engler@doj.ca.gov, nancy.brown@calbar.ca.gov, jrosen@da.sccgov.org, mgreenwo@pdo.sccgov.org, jay.boyarsky@da.sccgov.org, assemblymember.john.perez@assembly.ca.gov, assemblymember.atkins@assembly.ca.gov, assemblymember.bill.berryhill@assembly.ca.gov, assemblymember.alejo@asm.ca.gov, assemblymember.allen@assembly.ca.gov, assemblymember.olsen@asm.ca.gov, assemblymember.norby@assembly.ca.gov, assemblymember.nielsen@assembly.ca.gov, assemblymember.mendoza@assembly.ca.gov, assemblymember.miller@assembly.ca.gov, assemblymember.ma@assembly.ca.gov, assemblymember.lowenthal@assembly.ca.gov, assemblymember.jones@assembly.ca.gov, assemblymember.hill@assembly.ca.gov, assemblymember.halderman@asm.ca.gov, assemblymember.gatto@assembly.ca.gov, assemblymember.buchanan@assembly.ca.gov, assemblymember.ammiano@assembly.ca.gov, assemblymember.conway@assembly.ca.gov, assemblymember.donnelly@assembly.ca.gov, assemblymember.fletcher@assembly.ca.gov, assemblymember.garrick@assembly.ca.gov, assemblymember.gorell@assembly.ca.gov, assemblymember.hagman@assembly.ca.gov, assemblymember.yamada@assembly.ca.gov, senator.alquist@sen.ca.gov, editor@paloaltofreepress.com, "Wilcox, Justin" <jwilcox@bayareanewsgroup.com>, "Dianda, Mario" <mdianda@bayareanewsgroup.com>

Tony,

Thank you for passing this on. You have certainly demonstrated and perhaps far exceeded the work of any seasoned attorney or forensic expert in preparing what appears to be inculpatory evidence that should without doubt, raise serious questions that of Palo Alto city attorney Donald Larkin's involvement in this alleged Tazer voice and data file manipulation and potential cover-up by the PAPD.

Mark

On Wed, Feb 2, 2011 at 10:44 PM, Tony Ciampi <t.ciampi@hotmail.com> wrote:

2/2/2011

Gerald A. Engler,
Senior Assistant Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Dear Mr. Engler,

I have asked the ASCLD/LAB to investigate the Santa Clara County's Crime Lab. I hope

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

that Jerry and Kamala will do the right thing and hold the culpable police officers accountable for trying to put me in prison by using edited and fabricated videos and retrieve the original videos.

ARTICLE 5 EXECUTIVE SEC. 13.
Subject to the powers and duties of the Governor, *the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced.* ***The Attorney General shall have direct supervision over every district attorney***

Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law

Joseph (Tony) Ciampi
P.O. Box 1681
Palo Alto, CA 94302
650-248-1634

From: t.ciampi@hotmail.com
To: rkeaton@ascld-lab.org; tplummer@ascld-lab.org; ken.melson@atf.gov; rromero@washoecounty.us; jay.jarvis@gbi.ga.gov; pam.bordner@state.or.us
Subject: Crime Lab Complaint Follow Up
Date: Wed, 2 Feb 2011 22:35:53 -0700

2/2/2011

Ralph Keaton
ASCLD/LAB Executive Director
139 Technology Drive Ste J
Garner, NC 27529
http://www.ascld-lab.org/

Dear Mr. Keaton,
thank you for your response. I trust you will conduct a very thorough investigation. I have sent you most of my evidence including a copy of all the videos and my own analysis of the videos and other evidence. You should be receiving them through the US mail in the next three days.

One, Santa Clara County Crime Lab analyst Christopher Corpora verifies that the two taser videos do not have corresponding amounts of time, yet somehow determines that nothing is wrong with them.

Two, Santa Clara County Crime Lab analyst Mario Soto determined that the Hash values to not match verifying that editing has taken place, yet concludes that nothing is wrong with the video.

Three, Santa Clara County Crime Lab analyst John Burke determined that the taser videos are not in chronological order, (frames not properly indexed), yet appears to conclude that nothing is wrong.

Four, the taser guns' data ports are missing approximately three months of activations.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Five, Burger's taser gun's data port has documented the activation out of chronological order.

NOT ONE OF THE CRIME LAB ANALYSTS DOCUMENTED THE TASER GUNS ACTIVATIONS AS A PART OF THEIR ANALYSIS OF THE EVIDENCE.
http://www.ascld-lab.org/cert/cert149.pdf
Still no word from Santa Clara County DA Jeff Rosen as to whether he will provide me with the notes of the analysis conducted on the evidence including the taser gun activation data.
Six, I've just learned that the taser guns may have just recently been removed from evidence and sent to Taser International.

Seven, the MAV recordings have an embedded watermark in them in order to authenticate the videos. The Defendants, at the direction of Kustom Signals, the manufacturer of the MAV system, removed the watermark from the MAV videos in order to make copies of the videos. See Court Document 115 on the Federal Court of Northern California's (San Jose Division), PACER system.

Kustom Signals explanation is that in order to make copies played on DVD's for the Courts, the watermark must be removed. If that is the case, then why doesn't Kustom Signals have the ability to produce these DVD playable copies themselves?

One of the mores significant pieces of evidence that you will discover from the information that I sent to you is that two taser guns fired taser probes during the altercation, yet only one firing is captured on the MAV and Taser recordings verifying that video footage has been removed from Temores' MAV video and Temores' taser video. Officer Burger himself verifies that two discharges took place with Sgt. Powers lines 21 and 22 of page 10 of Burger's MAV transcript and also verifies with the paramedics that four probes were fired during the incident, pages 13 and 14 of Burger's MAV transcript. Burger also acknowledges that the taser probe in the fence did not come from his taser gun corroborating the trajectory of Burger's firing which verifies that it would be physically impossib.le for the probe in the fence to have come from Burger's taser gun.

Additionally, you will discover that the taser videos provided to me were created on two different file types, ASF and AVI. This is interesting for Taser International's own website, Taser International's Taser Camera Manual, a Department of Justice study as well as a study conducted by the British Government all verify that the taser cameras record in MPEG-4. Taser International has explained this discrepancy by stating that the taser camera records in M4S2 Codecs which is an MPEG4 file. The problem with that is Codecs are not videos.

Taser has declared the AVI a wrapper file which holds the M4S2. So the question is, why are MPEG-4 videos also called wrapper files which can contain a variety of Codecs?

There are MPEG4 wrapper files and there are MPEG4 codec files.

Taser identifies the ASF wrapper as the ASF video.
Taser identifies the AVI wrapper as the MPEG4 video.

Why is Taser International inconsistent in identifying its videos?

Gregg Stutchman an audio/video forensic expert, of Napa California, (http://www.stutchmanforensic.com/), who conducted an initial analysis of the ASF files determining them to have been falsified actually created an AVI file of the ASF file to demonstrate how the ASF file could have been tampered with for the AVI file as well as the ASF file are both

Attachment: Public Letters to Council (1424 : Public Letters to Council)

easy to edit regardless of the type of codecs used to create the two different types of video files.

A good forensic lab would be able to determine that the dialog of "Back up, back up." and "Taser, taser, taser," were stated simultaneously by Officer Burger which is humanly impossible, page 4 lines 23 to 25 of Burger's MAV transcript. Using aural, waveform and spectrographic analysis you will be able to verify that no one at the scene of the incident stated "taser, taser, taser," and that those words were added to the recording at a later date. I would have had Stutchman continue his analysis but I ran out of funding.

I look forward to the conclusion of your investigation.

Regards,

Joseph (Tony) Ciampi
P.O. Box 1681
Palo Alto, CA 94302
650-248-1634

Subject: RE: Crime Lab Complaint
Date: Fri, 28 Jan 2011 08:35:10 -0500
From: RKeaton@ascld-lab.org
To: t.ciampi@hotmail.com

Mr. Ciampi,

ASCLD/LAB is in receipt of your allegation against the Santa Clara County Crime Laboratory. This matter will be considered in accordance with our procedure for handling allegations against crime laboratories and their personnel.

Regards,
Ralph Keaton

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el lugar adecuado en el momento oportuno

Editor - Mark Petersen-Perez

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 PM 1:06

From: editor@paloaltofreepress.com
Sent: Monday, February 07, 2011 10:41 AM
To: Brown, Sandra
Cc: Council, City; Tony Ciampi
Subject: Blacklisted

7 Feb	09:06:47 AM	Firefox 3.6	MacOSX unknown	San Francisco, California, United States	Digg.com (64.71.7.198) paloaltofreepress.com/paloaltofreepress-com-blacklisted-by-palo-alto-city-attorney-donald-larkin/ No referring link

Sandra,

As you know Mr. Larkin claims in an email dated 1/6/2011 that your voicemail [excerpt] message was taken out of context....quote:

"Your continued reliance on an out of context excerpt of a voicemail message ignores the fact that we discussed this issue for more than an hour last October. You understood our position at that time, yet you continue your harassing and inappropriate messages."

Therefore the entire massage can now be listened to in it's entirety.....I beleive it is very clear what your instructions were and received from city attorney Donald Larkin.

lastly, Do you remember that white binder I had in my lap during the alleged one hour meeting we had.....I will address these and other issues this evening.

Mark

el lugar adecuado en el momento oportuno

We don't print racy material, we just expose the "Naked" truth!!

Editor - Mark Petersen-Perez

> -------- Original Message --------
> Subject: Blacklisted
> From: <editor@paloaltofreepress.com>
> Date: Mon, February 07, 2011 8:06 am
> To: "Sandra Brown" <Sandra.Brown@CityofPaloAlto.org>;

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -8 AM 11:34

Minor, Beth

From: editor@paloaltofreepress.com
Sent: Tuesday, February 08, 2011 8:09 AM
To: Minor, Beth; Loo, Glenn; Council, City
Cc: John Chase; Larkin, Donald
Subject: California Public Records Act - Microsoft email box capacity - et.al

California Public Records Act - Confirmation To last nights CPRA - Oral Communications

Dear Beth:

Re: California Public Records Act - Microsoft Office Email Box Capacity i.e. user manual.

1. Please provide a copy of Microsoft Office email manual provided to new hires during employee orientation. i.e. How to manage your email box.

2. Please provide data storage capacity / total standard number of emails and email attachment capacity for each employee in-box.

3. Please provide technical data storage attachment capacity used for each employee incoming email box.

4. Please provide city email user manual.

5. Please provide technical hierarchical (flow chart) distribution of emails received at email address city.council@cityofpaloalto.org and city.attorney@cityofpaloalto.org

6. Please provide copies of all useless emails and attachments deemed "useless" at the following email addresses: city.attorney@cityofpaloalto.org, donald.larkin@cityofpaloalto.org or city.council@cityofpaloalto.org

Must be received by: February 19, 2011 - 6255 of the Government code

The agency must provide assistance

by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)

see: Government Code & 6253 re time limits for said disclosure pursuant to the California Public Records Act.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -8 AM 11:35

From: abjpd1@juno.com

Sent: Tuesday, February 08, 2011 1:55 AM

To: svdebug@newamericamedia.org; betsy237@prodsyse.com; t.ciampi@hotmail.com; MJGennac@lasd.org; iamernestchavez@gmail.com; jdhersey@yahoo.com; Muata@stanfordalumni.org; thehallof2truths@gmail.com; Blanca.Bosquez@faf.sccgov.org; shamako@hiphopcongress.com; megabusive@gmail.com; charissedomingo@gmail.com; jrosen@da.sccgov.org; jay.boyarsky@da.sccgov.org; Council, City; mgreenwo@pdo.sccgov.org; HRC; eduardoguilarte@gmail.com; sccala@pacbell.net; james.gleason@ido.sccgov.org; depps@ado.sccgov.org; mdiederichs@pdo.sccgov.org; Burns, Dennis; ash.kalra@sanjoseca.gov; sam.liccardo@sanjoseca.gov; bsaucedo@pdo.sccgov.org; HRC; timothygray@sbcglobal.net; JKapp@pdo.sccgov.org; alphonse9947@gmail.com; dprice@padailypost.com; ironworkrdanny@aol.com; miguel.rodriguez@pdo.sccgov.org; nhughes@pdo.sccgov.org; douglasfort4epa@yahoo.com; dminkler@dminkler.com; rdavis@cityofepa.org; ray.samuels@att.net; Espinosa, Sid (internal); liz.kniss@bos.co.santa-clara.ca.us; Yeh, Yiaway; Gsaldivar@scscourt.org; dryan@scscourt.org; RNavarro@scscourt.org; thansen@scscourt.org; kmurphy@scscourt.org; PPennypacker@scscourt.org; smanley@scscourt.org; seanjamesp1@gmail.com; iamernestchavez@gmail.com; charissedomingo@gmail.com; cbrouillet@igc.org; p-a-patriot@yahoogroups.com; femmelibre@aol.com; Scharff, Greg; Schmid, Greg; Denson, Mike; Watson, Ron; MyraW@smcba.org; swagstaff@co.sanmateo.ca.us; gmunks@co.sanmateo.ca.us; ladoris.cordell@sanjoseca.gov; Holman, Karen (internal); sam.ho@sjeccd.org

Cc: Lee, Craig; Kan, Michael; Honiker, Mike; Wagner, April; Burger, Kelly; tbarrett@scscourt.org

Subject: Are California jails and our prisons torture chambers? --you decide!

2/8/2011

Hi Folks:

Only if all of the players in the criminal justice system (and the community) come together--do we have a chance to stop this type of gratuitous violence by members of law enforcement (see link below). How long will we remain in denial? How long will we look the other way? Who among our government officials will be the first to step forward to say no more? What do you have to say on the issue?

Aram James

P.S. When will every district attorney's office in the state have a strong and independent police crimes unit? It's time to prosecute bad/violent members of law enforcement-- just like we do violent thugs on the streets of this state. It's time that members of law enforcement be treated equally under the law. No longer can we afford to have one standard of justice for the ordinary citizen and a separate set of rules/laws for members of law enforcement.

http://www.latimes.com/news/local/la-me-jail-assault-20110208,0,427671.story

Attachment: Public Letters to Council (1424 : Public Letters to Council)

a

COUNCIL MEETING
2-7-11
[✓] Placed Before Meeting
[ ] Received at Meeting

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -7 PM 1:05

Minor, Beth

From: Annette Glanckopf [annette_g@att.net]
Sent: Monday, February 07, 2011 12:06 PM
To: Council, City
Cc: Clerk, City
Subject: Fire Department "Services, Resources and Utilization Study"
Attachments: Comments to distribute City Council February 7, 2011 fire study report.doc

Dear Mayor Espinosa and Council Members,

Please accept these comments on the Fire Department "Services, Resources and Utilization Study"
I have summarized my key points on page 2.
Page 3 has additional comments and questions.

Sincerely,
Annette Glanckopf Chair, PAN Committee for Emergency Preparedness
"*Chance favors those who are prepared.*"

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Annette Glanckopf
2747 Bryant Street
650-321-8913

"Fire Department "Services, Resources and Utilization Study"
City Council Meeting February 7, 2011

Dear Mayor Espinosa and Council Members,

I am writing on just the OES and citizen/community preparedness recommendations.

This report - which we all have been waiting for (along with the companion report on OES that is due this month) - is a catalyst to move ahead. First let me say that I have much respect for the firefighters; there is no question that PAFD is a professional, competent and very caring group of individuals.

This is a very dense and complex report with close to 50 recommendations - some with short term solutions, some long term. I recommend that the OES and community preparedness components be reviewed by the Palo Alto/Stanford Citizen Corps Council (CCC)[1], the entity you created to serve as the "umbrella" for such topics. As described in your Study Session on emergency preparedness on September 13 last year, the CCC has a charter to advise the City on such details. At the State of the City address, Mayor Espinosa stated that one of his 2011 goals was to strengthen the role of the CCC. If this is truly a goal of the Mayor and Council, this is a first and easy step. The CCC has within its scope and charter to weigh in on specific elements of the plan; many elements in the study those relating to OES & Citizen preparedness fall under the charter of the CCC.

I respectfully request that this report, as well as the upcoming report on OES, be reviewed and vetted by the Citizen Corps Council.

It should review both plans together and prepare recommendations and a work plan to move forward. This is especially important, since the two studies examine many of the same elements.

I whole-heartily agree with the recommendation to retain the position of Public Safety Chief with a Director of Emergency Services (emergency manager/director)[2]. Speaking as a member of the Citizen Corps Council (CCC) Steering Committee, we have much faith in & respect for Chief Burns.

I ask that the position of Director of Emergency Services (a position established in Municipal code) be created. Since emergency planning encompasses both Police and Fire, the preferred reporting structure for the Director of Emergency Services is to report to the Chief. I initially favored this position reporting to the City Manager, but now that we have combined the Police/Fire administration, the balance really is tipped in that direction.

As a direct-report, Chief Burns should be the one who makes the ultimate decision on staffing and credentials. He should be supported in doing so by a CCC panel of community partners in emergency preparedness.

It is **critical** that the new Director of Emergency Services position needs to be staffed with a police or fire professional who must have the appropriate background and training, and thus will enjoy staff and community respect. The person who is appointed must have the respect from the disaster volunteers and the neighborhood volunteers. This person will also need organization skills, operational and technical experience.

[1] Created on August 3, 2009
[2] In line with Municipal Code Sections 2.12.030(3), 2.12.050(b), and 2.12.060(6).

Attachment: Public Letters to Council (1424 : Public Letters to Council)

In conclusion: What I recommend is more community and stakeholder involvement in the areas that concern us most. Let's parse these study recommendations out and look at implementing a handful of recommendations in the short term. We need to move with urgency.

From the study:

> *"For Palo Alto, where threat of an earthquake is an ever-present concern, having close police and fire coordination for emergency management is essential." "The city should begin to fill key positions as soon as possible after decisions have been made as to the department's future direction."*

<end>

==========

My Key Points:

1) The Role of the CCC needs to be strengthened as supported by Mayor Espinosa's 2011 State of the City Address and Mayor Burt's State of the City address in 2010

> *Mayor Burt: Our recent power losses and the quakes in Haiti and Chile reinforce why Emergency Preparation is crucial for our well being and the stability of our economy. Before a major emergency hits it is easy to ignore the need for comprehensive preparations. The day after the emergency there will be no doubt what our highest priority is. On that day we'll ask ourselves what we should have done to prepare better. We need to ask ourselves now why we're not doing those things before the emergency hits.*
>
> *Launch of the Citizen Corp Council (CCC). This is the city's umbrella organization for the many public, private and non-profit organizations involved in emergencies. This group is focused on building a team that will be ready to deliver an effective coordinated response when a big one hits.*

2) CCC to review Fire report and Prepare
   - Recommendations
   - Work Plan
   - Arrietta Chakos report on OES to go to the CCC for same as above

3) **ASAP**

   Enable/Create position of Director/Chief of Public Safety and appoint Dennis Burns

4) **ASAP**

   Implement position (already in municipal code) for Director of Emergency Services
   - Create position under the Director/Chief of Public Safety
   - Have Chief Burns appoint Director
   - Position needs to be filled by someone with a professional fire or police background
   - If there is a need to post job, compose the community panel from the CCC
   - Give this position - authority, budget, staff
   - Structure: all related <homeland security, emergency services, OES, dispatch> fire and police activities should report to the Director do Emergency Services

5) Director of Emergency Services
   - Work plan reviewed by the CCC
   - Create Volunteer Opportunities in emergency planning

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Comments/Notes:

- Page 1 - Suzan Minshall title: Why is it stated she is the Interim Emergency Manager and PIO title? It is my understanding she was the OES Coordinator. That is what she used in her tag line.
  Page 11 has OES Coordinator (the position occupied by Cimino, Minshall and now Mallonee) as well as position for EMS Coordinator (Kim Broderick)
  Page 14: the EMS Coordinator is Kim Brodrick. Perhaps the position "Emergency Services Coordinator" is the OES Coordinator, since it is listed under training?
- Stanford is paying 30%. They should weigh in on the plan. They are a stakeholder in the CCC.
- Ludicrous to think of using CERTS for staffing Fire Station 8. The City should investigate the use of the Fire Corps, which is an established function of the CCC[3]
- Nowhere does this study mention the CCC, nor does it mention the Palo Alto Neighborhoods Block Preparedness Coordinator Program.
- The report emphasizes that the majority of the work is EMS based with a growth trend, and the workload needs to be adjusted accordingly.
- Yes, I agree with county or regional dispatch. This will take some time for the MOUs.
- Yes, on one department/division for all of code enforcement. This would really make it easy for the public.
- The report hammers on the need for accurate data. Thus, I am not sure how accurate the analysis of response time is w/o accurate data. Response time in the flat areas is much different that response time in the Foothills.

Citizen Corps Partner Programs http://www.citizencorps.gov/partnersandaffiliates/

- CERT
- Fire Corps
- VIPS
- Medical Reserve Corps
- USA on watch
- Corporation for National and Community Service

Questions:

- Consultants view of qualifications of Director of Emergency Services
- Boundaries of neighborhoods and how that relates to Fire districts
  - "Residents relate more to Neighborhoods than fire districts". That is why the BPC is so important. Why have a fire district structure that doesn't overlap with neighborhood?
  - Study lays out some topics for study but cannot go into the depth that the CCC can
  - If you want us (neighborhoods) to be your partner, the city/staff structure has to be conducive
- Fire training to public – how this would coordinate with the PAN Eprep program
  - It could coordinate, but these comments are in a vacuum
- Page 176: What does this mean?
  Re CERT.....by creating a structure under the director and using both police and fire department resources, the capacity of the unit can be fully realized. Because it is volunteer, it is also cost effective for the city to build the CERT rather than hiring full-time personnel.

[3] Fire Corps promotes the use of citizen advocates (volunteers) to support and augment the capacity of resource-constrained fire and emergency service departments at all levels: volunteer, combination, and career. Fire Corps is funded through the Department of Homeland Security and is managed and implemented through a partnership between the National Volunteer Fire Council and the International Association of Fire Chiefs, and with direction from the National Advisory Committee, a group of 15 national organizations representing the fire and emergency services, to provide the program with strategic direction and important feedback from the field.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

"Fire Department Services, Resources and Utilization Study"
City Council Meeting February 7, 2011

My name is Al Dorsky. Since 2006 I have been an active PANDA and have been associated with the PAN BPC Program. I am currently the co-chair of that program working specifically with tactical and training issues *i.e.* instruction modules for BPCs and NPCs, planning and implementing drills and coordinating with the PANDA organization, police, fire and homeland security. I would like to speak specifically to two items in the Tri Data report.

The first of these issues is Recommendation 8 (p. 22) which deals with the creation of an Emergency Manager (Figure 3, p. 19) to serve under the Public Safety Director and coordinate emergeny management of both fire and police. Recommendation 8 in the report suggests that this position should be a civilian. I respectfully disagree. From my experience working in this area, the person in this position will have the respect of the disaster volunteers , the neighborhood volunteers and the uniformed personel in both fire and police. I believe only a professional with experience in either the fire or police organization would have the tactical, operational and technical skills to be effective and respected in this position.

The second issue is Recommendation 28 (p. 97.) The cost of maintaining Station 8 on a part-time basis is only one part of the consideration. With the recent State budget problems, there is a suggestion that Cal Fire's budget be cut turning over the responsibility of dealing with fires in areas like that covered by Station 8 to municipalities (see SF Chronicle 2/3/2011, page 1.) The City may not be equipped to handle such a fire and the loss of Cal Fire's mutual aid would be disastrous in such a situation. Furthermore, the suggestion of developing an auxiliary from the existing CERT members is a very poor suggestion. I have personally taken the woodlands fire module and do not believe that our present CERTs could handle this type of situation and would be exposing themselves to great personal danger if they did.

Respectfully,

Albert Dorsky
PANDA
Co-Chair PAN BPC Program Committee

COUNCIL MEETING
2/7/11
[ ] Placed Before Meeting
[✓] Received at Meeting

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

11 FEB -9 AM 7:57

From: Art Liberman [art_liberman@yahoo.com]
Sent: Tuesday, February 08, 2011 3:43 PM
To: Council, City
Cc: City Mgr; Larkin, Donald; Williams, Curtis
Subject: Comments on the Fire Department Consultant Study

Council Members -

One of the recommendations made by the ICMA and TriData consultants was to "discuss sharing of rescue and hazardous material response capabilities." I don't how they came to this recommendation because their report completely ignored the issue of hazardous materials spills and releases in Palo Alto. There was not even one mention of this topic in their report. Not one !

Maybe they were not aware that companies in the Stanford Research Park store and use a variety of very hazardous materials and there is an unfortunate history of accidental releases of these materials over the years. Were they also unaware that some of these companies and their hazardous materials are located at the interface of the Research Park and residential areas?

Maybe they did not know about the toxic fume release in 2005 from one of these companies, CPI, that sent nitric acid vapors into the residential area of Barron Park where I live. CPI is not listed on the map of Target Hazards in their report (Figure 14 on page 54); perhaps CPI is the dot on Hansen Way near El Camino that's not labeled and is partially obscured.

Maybe the consultants were unaware of the types and quantities of extremely hazardous materials at CPI. The data at the Fire Department offices is not easily to analyze, but if they'd dug deeply they would have discovered that CPI has hundreds of pounds of potassium cyanide, and thousands of pounds of concentrated nitric, sulfuric and hydrochloric acids - all of it in tanks and huge containers just **tens of feet** from houses in Barron Park and much of it in the same room in the 2nd floor of a building where they could potentially mix and form a cloud hydrogen cyanide gas in case of a severe natural disaster.

Maybe the consultants were unaware of the California Accidental Release Program – Title 19, and therefore didn't know that CPI is the only site in Palo Alto using quantities of extremely hazardous materials above the thresholds listed in the Title 19 regulations.

If they had been aware of all of this information, the consultants would have certainly agreed that the Fire Department should never have given the green light to CPI to significantly increase its hazardous materials in 2005, and certainly not without consulting or even notifying the immediate neighbors. I wish the consultants had investigated this issue in their study.

In any event, the City – through its Fire Department – did give CPI authorization to put those extremely hazardous materials adjacent to our homes in Barron Park. And until or unless they are moved – the sooner the better in my view – the City needs to have its own Fire Department hazardous material responders positioned in the immediate vicinity (now located in Station 2), and ought certainly not move them to some more distant station, or worse - outsource them - as recommended by the Consultants.

Arthur Liberman

751 Chimalus Drive

Palo Alto

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:16

From: Bob Moss [bmoss33@att.net]
Sent: Friday, February 04, 2011 12:53 PM
To: Council, City
Cc: Keene, James; Williams, Curtis
Subject: Soft Story Building Threat

Soft Story Building Threat Feb. 4, 2011

Mayor Espinosa and Councilmembers;

Last May I sent a letter expressing concerns that your Emergency Preparedness priority omitted a significant safety problem, potential collapse of unreinforced masonry and soft story buildings. Once again Emergency Preparedness is a Council priority, and again remediation of at-risk buildings is omitted from the list of concerns and action items. While Prevention is noted as a phase of emergency preparedness, details of how to prevent future problems are left to the "broad based comprehensive strategy". I believe we need more specific actions to reduce the threats from structural failure of buildings.

Unreinforced masonry buildings are mainly commercial structures plus a hotel and mixed commercial and apartment building. There are no more than 28 such buildings that still need reinforcement, and they seem to be slowly getting upgraded or replaced. While they need attention, they do not present the risk to lives that soft story buildings do.

The January 24 issue of the San Jose Mercury News had a front-page article about hazards from soft story buildings, noting the number of such buildings in each city in Santa Clara County. San Jose has the most, over 4500. Palo Alto has 130 soft-story buildings with 1263 dwelling units.

CMR 227-06, May 2006, describes dangers to apartment buildings with soft story construction. Soft story buildings are multistory wood frame structures with open front first-floor parking areas. The opening concentrated on one side of the building causes a stress imbalance during earthquakes that may cause the building to collapse. There were 7,700 soft story buildings with 16,000 housing units that were made uninhabitable by the Loma Prieta earthquake, and over 34,000 housing units that were made uninhabitable by the Northridge earthquake in 1994, including at least 16 deaths in the Northridge Meadows apartments.

International building codes specify how to retrofit soft story buildings. Burbank, Fremont and Berkeley have ordinances specifying retrofit standards. Berkeley notifies owners if they may have a hazardous building. Owners then must notify all current and future tenants of the hazards plus post a warning sign on the building. They then are given 2 years to submit a structural analysis to the city per the international building code for soft story retrofitting. Actual retrofitting is not mandated.

I suggest Palo Alto adopt a similar strategy, taking the steps outlined below. Unfortunately any new tasks such as this are difficult considering our reduced and more heavily loaded staff and restricted funding, but upgrading soft story buildings does fit in the Emergency Preparedness priority and in the Prevention part of the Comprehensive Strategy inherent in emergency preparedness. Please consider the following actions:

1) Ask Santa Clara County to identify the 130 soft story buildings in Palo Alto.
2) Planning staff will identify the owners of each of these buildings.
3) Staff will verify that each of the buildings listed by the County has not been upgraded or retrofitted to

Attachment: Public Letters to Council (1424 : Public Letters to Council)

remediate soft story construction.

4) Send letters to all of the owners
   a) telling them that their building has been identified as at high risk of failure from a major earthquake because of the soft story construction.
   b) Asking the owner if the building is planned for upgrading or retrofitting, and if so, when.
5) Modify our existing ordinance that requires unreinforced masonry buildings to have warning notices posted and given to all tenants to add that requirement for soft story buildings.
6) Consider what incentives can be offered to property owners to upgrade soft story buildings. PAMC allows density bonuses to be credited when unreinforced masonry buildings are strengthened and then found to be structurally sound by a licensed structural engineer. Will similar density bonuses be attractive to owners of soft story buildings, or is there something else that is more appealing? Hold discussions with property owners and organizations such as PAN and CCC to establish meaningful soft story retrofitting incentives.
7) Consider a time limit for completing voluntary retrofitting and upgrading of soft story buildings, after which other actions will be required. They could be:
   a) Voiding occupancy permits so that people will not be at risk from living in a structure with high potential for structural failure.
   b) Requiring structural upgrades within a specific time or fines will be assessed. The allowed time should not be unreasonably short.
   c) A new ordinance prohibiting occupancy of any units in soft story buildings after current occupants leave or move away, to take effect after time to retrofit has expired.

Suggestions 1 to 4 require some staff time, but should not have significant impacts on work loads or interfere with standard tasks. Suggestion 5 should be very simple since the basic ordinance exists and just needs addition of definition of soft story buildings and adding them to the sections on notification. Suggestions 6 and 7 are the most challenging and likely to take the most time and effort. However they won't be ripe for action for several years, by which time staff and funding pressures and limitations should be lower.

Please give these concerns and suggestions careful attention and ask staff for comments and proposals to improve them.

Yours truly,

Bob Moss

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Minor, Beth

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
11 FEB -7 AM 8:16

From: Alice Smith [asmith36@sbcglobal.net]
Sent: Thursday, February 03, 2011 10:38 PM
To: Council, City
Subject: So did Palo Alto get a D or an F?

The interesting message that I received from Supervisor Yeager challenges Palo Alto to improve its grade. I am all for that. Hope you will put this on your list of actions which for little if any money could greatly improve the health of the city.

Alice Smith
asmith36@sbcglobal.net

--- On **Thu, 2/3/11, Supervisor Yeager** ***<supervisor.yeager@BOS.SCCGOV.ORG>*** wrote:

From: Supervisor Yeager <supervisor.yeager@BOS.SCCGOV.ORG>
Subject: Supervisor Yeager Newsletter
To:
Date: Thursday, February 3, 2011, 3:31 PM

February 3, 2011

COUNTY GETS NATIONAL RECOGNITION FOR TOBACCO POLICIES

Last week, the American Lung Association in California released its annual State of Tobacco Control report that issues grades to cities and counties in California on key tobacco control policies. The report card grades each of the State's 480 cities and towns as well as all 58 counties on policies related to smoke-free outdoor environments, smoke-free housing, and reducing sales of tobacco products.

Thanks to comprehensive new policies I introduced last year, Santa Clara County raised it grade from an F to an A. I am proud of this recognition.

As I talked about in previous newsletters, Santa Clara

ALSO IN THIS ISSUE

State Follows County on Cutting Fleet Waste

County to Get Better Representation on Regional Board

Congestion Relief Comes to U.S. 101

Earn it! Keep it! Save it!

Calendar of Events

Supervisor Ken Yeager

Attachment: Public Letters to Council (1424 : Public Letters to Council)

County's A grade comes from passing one of the most stringent anti-smoking policies in the country. Affecting the unincorporated areas of the county, the new laws make it harder for retailers to sell cigarettes to minors by requiring a retailers to maintain a tobacco retail permits and limiting the location and density of tobacco sales.

County Government Center
70 W. Hedding St., 10th Floor
San José, CA 95110
P: (408) 299-5040
F: (408) 299-2038
supervisor.yeager@bos.sccgov.org
www.supervisoryeager.org

The ordinances also prohibit smoking in county parks, outdoor service areas, hotels and motels, and multifamily dwellings. Collectively, these new policies create a rare opportunity for government to have a truly life-changing effect on people.

While the County itself received top marks, the cities within Santa Clara County did not do as well. Out of 15 cities, 10 received F's and five received D's. Statewide, about 80 percent of cities and counties received D's or F's overall. Of the 10 largest cities, San Francisco and Oakland were the only ones to receive B's. Statewide, only 9 municipalities received an overall A grade.

Read the full report at LungUSA.org.

Many cities believe that public health issues fall solely under the purview of the County, relieving cities of any responsibility. These grades should serve as a wakeup call. County government can only do so much. Cities must get involved to protect the health of their residents through their land use authority.

I encourage city councils to look at the ordinances we've passed at the County and pass similar laws. They don't have to keep on reinventing the wheel. Cities owe it to their constituents to pass as many tough anti-tobacco ordinances as they can. While each city needs a champion on their City Council to say "we want this to move forward," some cities have already gotten started. For instance, San Jose earlier this year passed its own tobacco retail permit ordinance.

In California, tobacco use continues to take a significant toll on public health and taxpayer dollars. Nearly four million people in California smoke, and tobacco-related illness remains the number one preventable cause of death in the state, responsible for more than 36,000 deaths each year—that's more people lost to tobacco than to alcohol, HIV/AIDS, car crashes, illegal drugs, murders, and suicides combined.

As always, I encourage you to contact my office if you have any concerns or are interested in additional information. You can reach me at 299-5040 or via e-mail at Supervisor.Yeager@bos.sccgov.org.

STATE FOLLOWS COUNTY ON CUTTING FLEET WASTE

I applaud Gov. Brown's executive order last week to reduce the size of the State's passenger vehicle fleet. Two years ago, I made a similar call for reducing waste in Santa Clara County's budget. The County has since reduced its fleet size by 14%, saving $7 million in one-time capital costs and $250,000 in ongoing maintenance. Over the next year, we hope to double those fleet reductions and savings.

I believe that government should root out waste and inefficiency wherever it can. In 2008, I found

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myself dismayed that the costs for the County's passenger vehicle fleet had ballooned to over $16.6 million a year. Since there had not been a comprehensive review of the fleet in nearly 30 years, I asked the Board's in-house auditors to assess our current vehicle usage and needs.

The subsequent audit found the potential for tremendous short-term and long-term savings. At that time, 276 of the County's 1800 fleet vehicles were driven fewer than 5,000 miles a year. Moreover, greater than half of the County's 180 pool vehicles sat idle one or more days a week.

The audit also revealed a lack of controls for vehicle use that could lead to misuse by County employees. For instance, policies at that time allowed employees to drive out of the County without written authorization or documentation. As a result, the appropriateness of over 1,700 out-of-county fuel purchases from that year could not be determined.

Upon my urging, the Board of Supervisors made policy changes that have since saved us millions. I'm glad that Governor Brown will be doing the same. As the State considers billions in budget cuts that will be passed onto local government, they owe it to us to find as much waste as possible.

COUNTY TO GET BETTER REPRESENTATION ON REGIONAL BOARD

The Metropolitan Transportation Commission (MTC) is one of several regional bodies on which I have represented Santa Clara County over the years. It is responsible for long-term transportation planning for the Bay Area and distributing state and federal transportation dollars to local cities and counties. Unfortunately, Santa Clara County has not been receiving its fair share. This week, my fellow commissioners voted to support a plan that will remedy the situation.

While much of the money MTC distributes is based on pre-set formulas, a significant portion is decided by those serving on the Commission. Based on population, Santa Clara County has one-quarter of the Bay Area's population. However, we don't receive that much from the pool of discretionary funding. In fact, we have been shortchanged by as much as $87 million over the past five years. The County of Alameda has found itself similarly shortchanged.

Furthermore, Santa Clara and Alameda Counties contain the cities of San Jose and Oakland. As two of the biggest cities in the region, they will be responsible for much of the planning for transit-friendly residential and business developments to meet state mandates for reducing greenhouse gas emissions. It is inherently unfair to ask those cities to take on that burden without giving them an adequate voice in decision-making.

A big part of the problem has to do with the makeup of the Commission. When MTC was created by the State Legislature in 1970, the distribution of seats was based partially on population. That allocation has not changed in 40 years—years where Santa Clara County has grown leaps and bounds ahead of other counties both in terms of jobs and population.

In June of last year, Supervisor Dave Cortese and I were joined by San Jose Mayor Chuck Reed and other local leaders to urge the Commission to increase equity with regard to representation. At that time, the Commission created an ad hoc committee—to which I was assigned—to study the issue.

The ad hoc committee presented a proposal to increase the number of commissioners from 16 to 18. Under the proposal, the two new commissioners will be a member of the city councils of San Jose

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and Oakland that are appointed by their respective mayors. This would guarantee the region's two most populous counties three seats on the Commission.

After a year of hard work crafting a plan, a resolution supporting the new plan was approved. I am excited that Santa Clara County is well on its way to getting the representation it deserves. MTC will now ask the State Legislature to pass a bill allowing the changes to be made.

CONGESTION RELIEF COMES TO U.S. 101

As a member of the Metropolitan Transportation Commission (MTC), it is my honor to help secure funding for transportation projects that will improve the lives of Santa Clara County residents. Pulling that funding together can take years. That is why I am happy to announce that ground will finally be broken next week on a project to improve one of the worst bottlenecks in the County.

The interchange at U.S. 101 and Tully Road is one of the oldest in the area. It is one of several interchanges south of I-280 that are outmoded and overcrowded. Anyone who has travelled in the area knows that traffic frequently comes to a standstill there.

The U.S. 101/Tully Improvement Project has long been in the works. A partnership between the City of San Jose, VTA, and the California Department of Transportation (Caltrans), it is a project that I have been supportive of since my days on the City Council. Construction was actually slated to begin last year, but State budget cuts caused a delay.

To kick start the project, my fellow MTC commissioners agreed last year to backfill funds from the federal stimulus plan so that work could get done right away. As a silver lining to the delay, the recession resulted in a bid $10 million under projected costs. Those funds will hopefully be redirected for use on a congestion relief project at the U.S. 101/Capitol Expressway interchange.

The project will cost $45 million and take 16 months to complete. Improvements will include:

- Replacing the Tully Road over-crossing over U.S. 101;
- Reconfiguring some of the cloverleaf ramps on the interchange into diagonal exits;
- Constructing an additional lane on southbound U.S. 101 between Tully Road and Capitol Expressway;
- Extending the south bound auxiliary lane from Tully Road to Capitol Expressway;
- Widening the northbound and southbound off-ramps;
- Installing traffic signals at the ramp terminus; and
- Realigning the off-ramps to meet up with future Express lanes.

This project is long overdue, and it will provide much needed traffic relief. I am excited that it is finally underway.

EARN IT! KEEP IT! SAVE IT!

Local nonprofit agencies are partnering with the IRS to raise awareness about a refundable tax credit called the Earned Income Tax Credit (EITC). EITC can be a big financial boost for working

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people hit by hard economic times. Many individuals who saw their incomes drop in 2010 may qualify for the first time.

The credit has been making the lives of workers a little easier for more than 35 years. Yet it remains little known, possibly because people move into and out of eligibility as their financial, marital and parental statuses change. IRS estimates four of five eligible people claim and get their EITC.

Residents who earned $48,362 or less last year could be eligible to receive as much as $5,666. A federal income tax return claiming the credit must be filed to get it. Unlike other tax credits, both EITC eligibility and the amount of the credit is based on several factors such as the source and amount of your income, or combined incomes if married, whether you have qualifying children and how many. Workers without children also may qualify.

The amount of the credit peaks and then phases out at certain income limitations depending on filing status and other factors. You may qualify for EITC even if you had no federal tax withheld or are not otherwise required to file. Residents can determine their eligibility online at www.irs.gov/eitc.

The Volunteer Income Tax Assistance (VITA) Program is a local partnership that offers free tax help to low- to moderate-income (generally, $49,000 and below) people who cannot prepare their own tax returns. Certified volunteers sponsored by various organizations receive training to help prepare basic tax returns in communities across the country.

VITA sites are generally located at community and neighborhood centers, libraries, schools, shopping malls, and other convenient locations. Most locations also offer free electronic filing. Volunteers are trained to prepare basic 2010 Forms 1040EZ, 1040A, 1040 with Schedule A, B, limited Schedule CEZ, C, and California State Income Tax returns. VITA sites and schedules can be found at www.211scc.org or by calling 2-1-1.

CALENDAR OF EVENTS

Early Intervention Plan Community Meeting
What: Santa Clara County Mental Health Department has initiated an inclusive and comprehensive year long planning process aimed at establishing a Mental Health Prevention and Early Intervention Plan for our County. The Department is holding a meeting to recruit members for a community planning team that will determine how to spend over $2 million in federal grants for new mental health programs. The Planning Team Members will represent the community in the following targeted zip codes: 95008, 95110, 95111, 95112, 95113, 95117, 95118, 95119, 95123, 95125, 95126, and 95128. Childcare and interpretation services will be available as needed.
When: February 9 from 5 p.m. to 8:30 p.m.
Where: Center for Employment Training, 701 Vine St, San José
More Information: Call Larry Soto at 793-5872.

34th Annual Valentine Fun Run/Walk
What: Join the fun at the 34th Annual Valentine's Fun Run/Walk. 10K Run and 5K Run divisions are offered for all ages. Awards will be given to the top three male and female finishers in each of the 10K and 5K Run Divisions. The race course follows the Campbell Par Course and Los Gatos

Attachment: Public Letters to Council (1424 : Public Letters to Council)

Creek Trails out to Lark Avenue and back. Pre registration guarantees each participant a Race T-shirt. Registration is $30 for adults and $15 for youth ages 19 and under.
When: February 12 at 9 a.m.
Where: Campbell Park, Corner of Campbell Ave. and Gilman Ave., Campbell
More Information: Call 866-2104 or visit
http://www.ci.campbell.ca.us/recreation/specialevents/funrun.htm.

This is an informative newsletter designed to keep you up-to-date on issues that I am working on, local updates, events in District 4, and County resources. If you do not wish to receive this newsletter, please send an e-mail to jim.weston@bos.sccgov.org with the subject: Remove me from your mailing list. To receive a text-only version of the newsletter, please send an e-mail to jim.weston@bos.sccgov.org with the subject: Text-only version of the newsletter. If you would like to be added to our mailing list, please send an e-mail to jim.weston@bos.sccgov.org with the subject: Add me to your mailing list.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

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California Seeking to Ride the Alkaline Hydrolysis Wave

COUNCIL MEETING
2/7/11
[ ] Placed Before Meeting
[X] Received at Meeting

Bill Advances to Senate, Approval Expected

Taken from the May 13, 2010, edition of the Memorial Business Journal

Sacramento – Last week the California State Assembly unanimously approved A.B. 2283, which would amend the state's Health and Safety code to change the definition of cremation to include alkaline hydrolysis, a "chemical dissolution process using heat, high pressure water, and potassium hydroxide to hydrolyze human tissue and the consumable container."

Introduced by Assemblyman Jeff Miller, the bill has been advanced to the state senate for consideration. If approved, California would join Florida, Maine and Oregon as states that have taken legislative action to permit the process for the general public. A number of other states, including Minnesota and Colorado, permit the practice for institutional procedures, such as the disposition of cadavers at medical and veterinary schools. Meantime, a number of states are having the conversation about amending their laws to include the process in their approved methods of disposition of human remains. Some states argue that while the process isn't officially "legal" in their states for public consumption, it isn't illegal either. Meaning a business could test the waters and seek to install a facility following the licensing and permit process currently on the books.

The California bill also instructs the state's Cemetery and Funeral Bureau to adopt regulations for the safe operation of alkaline hydrolysis chambers no later than July 1, 2011.

Robert J. Achermann, executive director of the California Funeral Directors Association, which supported the bill, noted that there is no opposition to the A.B. 2283 and he does not expect there to be any problem getting the bill through the state senate and signed by the governor.

"The association has had meetings with Miller's office about some of the technical issues about how you define the process," Achermann said. "I think most funeral directors believe this is something that will generate consumer interest as an alternative to traditional cremation." Another consideration in the state — cemeteries in California, especially near the major metropolitan areas, are running short on space.

Supporters call alkaline hydrolysis, which is also referred to as bio-cremation, Resomation or water resolution, a "greener" alternative to traditional cremation. The process itself reportedly uses about less than 20 percent of the energy used for a cremation. Further, CO_2 emissions are reduced by nearly 90 percent and the process avoids putting mercury and other harmful contaminants into the atmosphere.

Basically, a body is placed into a stainless steel container with potassium hydroxide (a form of lye) and heated to more than 300 degrees F. Turbulence is used to accelerate the dissolving of flesh and soft tissue. Usually the process takes, on average, about three or four hours. What's left is a sterile liquid substance containing amino acids, peptides, sugars and salts that are purportedly environmentally friendly and can be washed down the drain. The remaining bone fragments are whiter in appearance than those that are cremated. The bones are then pulverized into a fine white, ash-like substance and can be returned to the family.

Attachment: Public Letters to Council (1424 : Public Letters to Council)

"I am told there are no discharge issues, it is a process that has been used in Europe for some time," Achermann said. "But being California the environment is always at the forefront."

Assemblyman Miller was approached with the idea by a funeral director, Chris Miller (no relation), owner of Thomas Miller Mortuary in the assemblyman's home district of Corona. Chris Miller also approached the state association to lobby to have the law changed.

Eye on the Process

The forward progress in California has turned a spotlight on the process as a whole. The technology evolved out of necessity in Europe as the high volume of cremation in densely populated areas compelled nations to put limits on the emissions. The first application of alkaline hydrolysis to be used for processing human remains in the United States took place in 1998 at the University of Florida, Gainesville, to dispose of medical school cadavers. The second system, also for institutional purposes, was in 2005 at the Mayo Clinic in Rochester, Minn.

Currently, there are no funeral homes offering alkaline hydrolysis as a means of disposing of human remains in the United States. The first commercial application of the process is scheduled to be installed this summer by Matthews International, which partnered with a Scottish firm, Resomation Ltd. in 2008. The location of the unit, pending final approvals of the necessary permits, is at the Anderson-McQueen Family Tribute Center in St. Petersburg, Fla., which will be a showcase for the use and application of bio-cremation for the public.

According to Steve Schaal, division manager for sales and marketing of Matthews Cremation, Apopka, Fla., the opening of the facility is just a few months away. "The emission test data and technical solution are in the hands of the local St. Petersburg Waste Water authorities," he said. "We believe we've thoroughly answered every technical requirement and anticipate approvals within the next few months. Because it's the first in the world within a funeral home, we're going where no other company has gone."

Matthews and BioSAFE Engineering, Brownsburg, Ind., are two of just a handful of firms in the United States to offer the equipment. Another competitor, CycledLife, Denver, unveiled its prototype vessel this month. Transition Science, a Toronto-based company is the licensed distributor of Resomation in Canada. That country's first bio-cremation system is currently being installed in Toronto.

A Significant Investment

Where alkaline hydrolysis accelerates the decomposition process, there is not likely to be much acceleration in the legislative pace even as a number of states are currently discussing the process. However, once the conversation advances past the legal hurdles (no small task especially if you are talking about introducing any liquid remains into a sanitary sewer system), getting into the alkaline hydrolysis business is not an inexpensive investment. Equipment ranges in price from $200,000 to $400,000, which is about 3 to 5 times the cost of a traditional cremation retort.

However, the alkaline hydrolysis chambers may offer savings in other areas. In California, for example, funeral homes or crematories investing in the technology would not be required to acquire air emission permits, which is an expensive, time-consuming process, Achermann said. Manufacturers suggest that the alkaline hydrolysis vessel offers lower maintenance than a traditional retort, which has to be rebricked after so many hours.

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With Matthews manufacturing both traditional cremation retorts and bio-cremation vessels, Schaal commented on the maintenance issue. "Since there is no refractory, there would be none of these costs for floors, walls or ceiling," he said, adding that since the interior is all stainless steel, the occasional bath rinse is required.

"The biggest maintenance we initially see is the door seal, which would be monitored and replaced probably once per year with an annual inspection," Schaal said. "The material cost is probably less than $50 so we view this as a direct saving to owners/operators."

David Nixon, Nixon Consulting, Chatham, Ill., said that the technology is still too new to have a solid compilation of data. "A traditional retort will have to rebrick after so many hours," he said. "But we don't know what the long-term picture is. Until a history of data is developed, maintenance of the alkaline hydrolysis chambers is speculative. Five or 10 years down the road we will find out what the maintenance issues are."

Maine and Oregon revised their crematory and licensing rules in late 2009. So far, neither state has a working facility nor is one planned. "I don't think any are in the formative phase," said Sally Belanger, executive director of the Maine Funeral Directors Association, "Word of such activities would travel fast through Maine," she added. Last fall Maine revised its definition of cremation to include "The technical process, using direct flame and heat, or other process, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation, or through other processes, including, but not limited to, chemical dissolution."

More than 60 percent of the deaths per year in Oregon are cremated. Mark Stehn, executive director of the Oregon Funeral Directors Association, said the association did support last year's effort amend ORS 692 which allows the state's Mortuary & Cemetery Board to license new and emerging technology, if it meets the permit requirement within the county.

To the north, Jewell Steffensen, executive secretary of the Washington State Funeral Directors Association, said that a process to review changes to the law to allow alkaline hydrolysis is underway. Steffensen said a letter was sent to the Department of Licensing, Funeral & Cemetery Division by Matthews International asking what type of requirements would be needed in order to have a unit installed in a funeral home in Washington. "In April the board members met for their regular meeting in which I attended," Steffensen said. "They moved to form a committee with stakeholders to review what changes, if any, to the Revised Code of Washington and/or the Washington Administrative Code would be needed to regulate the bio-cremation system. All of them felt that this would eventually pass."

Neither the National Funeral Directors Association nor the International Cemetery, Cremation & Funeral Association have adopted a position on the alkaline hydrolysis process. "We see it as another disposition option from which families may choose, in addition to earth burial, entombment in a mausoleum or cremation," said Jessica Koth, NFDA public relations manager. "The only challenge that might exist for an individual or family that wants to select alkaline hydrolysis for themselves or a loved one is availability – it is not something that is generally available to consumers.'

Koth added that NFDA encourages further study of the alkaline hydrolysis process to fully understand its impact on the environment and the health and safety of funeral professionals and communities.

However, the Cremation Association of North America has recognized alkaline hydrolysis as a form of disposition that is similar to cremation and is including it as a variant of the cremation process. "Our recently revised Model Cremation Law speaks of the 'mechanical and/or thermal or other dissolution

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process that reduces human remains to bone fragments,' which is certainly includes alkaline hydrolysis," said John Ross, CANA executive director. "Further, the application of heat remains a factor given that the solution is heated to 400 degrees F."

As for the legislative process in California, Achermann said the legislature will adjourn Aug. 31. After that the governor has 39 days to sign the bills on his desk, so the outcome will be known by late September, if not sooner.

Despite California taking care of the leg work in preparation of the new technology, Dan Isard, president of The Foresight Companies, Phoenix, said alkaline hydrolysis is "at least 10 years away from the real world. The investment is huge and ultimately the consumer is going to pay for it," he said. "Very few eco-consumers are going to pay 400 to 600 percent more for alkaline hydrolysis rather than a cremation. State law allowing it and consumers and professionals understanding it is a long way away, if it ever comes to be."

Preparing for the Next Wave

As individuals live more environmentally conscious lives, the more likely these feelings will continue into how they are remembered with baby boomers once again leading the charge. The development of the alkaline hydrolysis process comes on the heels of a move toward burial in "green" cemeteries where the bodies are not embalmed and a buried in a biodegradable container such as a wicker basket and lowered into the ground.

"Green proponents will get laws passed to permit alkaline hydrolysis, I mean, who would dare argue against being green?" asked Mike Kubasak, Kubasak Associates, Mesquite, Nev. He commented on what he called an amazing turn of events over the last 40 years. "In the 1970s, cremation was being pushed by some people because they saw earth burial as a threat to the environment," he said. "Now, it's cremation, or fossil-fuel cremation being touted as the threat to the environment"

With only about 10 percent of the United States even legally allowed to offer alkaline hydrolysis, the best thing that a funeral director can do, in the words of one funeral director, is keep your ear to the ground.

"The reason that I keep my ear to the ground, and I may have to keep it there a long time, is I don't want to be too quick to discount any new idea, because you hate to make the mistakes of the past like when it came to cremation," said John Williams, funeral director with Farley Funeral Homes and Crematory, with locations in Venice, North Port and Englewood, Fla. Williams, who is also president of the Florida Funeral Directors Association, said that for a long time as consumer interest in cremation was growing, the funeral profession "kept their heads in the sand for so long, [and] really kind of missed the opportunity to embrace what people wanted and master it, perfect it and do right by people."

Nixon agrees. "Funeral directors can't abdicate their duty to be knowledgeable and informed like they did with cremation," he said. "It is kind of like the green movement, if funeral directors aren't at least informed or aware they will be passed by."

According to Joe Sehee, executive director of the Green Burial Council, Santa Fe, N.M., funeral directors need to be able to present these offerings to the public and stand behind whatever is being purported. "We shouldn't be judging," Sehee said. "That was the mistake that was made trying to diminish cremation as being a less than decent form of disposition. It didn't do families or the funeral service community any good. That is why I think that green burial is being treated with kid gloves to

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some degree. If the market wants this, it is going to get it so we shouldn't stand in the way of it."

Alkaline hydrolysis offers the same service options as with traditional burial or flame base cremation. Schaal noted that meaningful and appropriate services must remain front and center in the educational process. "We see bio-cremation offering the same platform for creative services but the education will remain in the hands of the funeral professional," he said. "With bio-technology, it will not consume a traditional casket (burial or cremation) so the requirement of a specially made 'rental insert' is necessary. Matthews has designed a stainless steel insert that fits into any rental casket that will allow for visitation and can go directly from the rental into the Bio cremator."

Curt Rostad, executive director of the Indiana Funeral Directors Association, said he could only assume that the memorialization component will be identical. "Those funeral directors that have done a good job showing that cremation is not 'instead of a funeral' will do a good job with hydrolysis too."

To illustrate his point, Rostad recalled a newspaper article he saw where a funeral director commented on the effect of the recession on the funeral business. The funeral director said: "Some people can't afford a funeral so they are choosing cremation." Said Rostad, "That's the guy that is in trouble regardless of the process used."

Williams said he is not sure whether alkaline hydrolysis is going to have a mainstream appeal or will become a kind of a boutique way to appeal to a niche of folks. Regardless, he said funeral directors need to learn from the mistakes made when cremation was starting to gain in popularity and have the conversation with any interested families.

"Funeral service forgot to include as part of the story where the memorialization process plays into it," Williams said. "They got fixated on the actual disposition and not what leads up to it. The meaning and the value was never on the table during the discussion."

Williams said that some funeral homes will make the investment in alkaline hydrolysis right off the bat and he will be watching very closely. "A lot of our efforts and energies will continue to go into talking about the meaning and the value of the funeral and memorialization," Williams said. "We'll put more of our eggs in that basket than we are in the actual process of crematory vs. bio-cremation."

First Ones in the Pool

The first ones in the pool to offer alkaline hydrolysis will be setting the bar on pricing — taking into account the size of their investment, the likely number of families interested in the process and competition, among other factors. Nixon believes that the early entrants into the market should adopt high-end pricing, considering the risks associated with cremation (fire or water) are higher than for earth burial. "They are going to have to recoup the initial investment," he said. "If operators are smart they will charge accordingly and try to recoup their investment. It is going to take quite a while to get a return on investment of that magnitude. I think you price it high to start with, especially if you are the only one in the area. "

Rostad sees little choice for funeral homes that invest in the technology other than to base initial pricing on costs. "Right now, the major cost is in equipment," he said. "I understand [the number] of man hours required [for the process] is similar and the cost of gas vs. chemicals is within a few dollars of each other. If public acceptance of the process grows and the units become more mass produced, we can expect the cost to eventually come down so maybe the costs will be comparable."

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But therein lies the real question: What level of public acceptance will this method receive? Rostad believes that alkaline hydrolysis will have a public relations or public perception issue. "I've heard it referred to as the 'yuck' factor," he said. "Cremation has a historical basis. Even though much of that history has a negative context, that has largely been overcome and it is widely accepted here and abroad. Some even view the return of the elements back to nature in the form of fire to be spiritual or comforting.

"But hydrolysis has no history while flame is acceptable to a lot of people," Rostad continued. "It's a little harder to put into acceptable terminology that their loved one is going to being dissolved and put down the drain, or as some suggest, recycled as fertilizer."

Robert Fells, external chief operating officer and general counsel for ICCFA, concurred with Rostad's point. "If the proponents want this method to advance, they should develop an accurate summary of what happens," Fells said. "Even with traditional cremation, consumers are not necessarily aware of the 'pulverizing' part. I think consumer disclosure would be key where alkaline hydrolysis is offered. Providers could be running a risk of potential liability by not disclosing how the process works. In other words, 'I didn't know you were going to do that to Mom!'"

Nixon said that funeral homes not interested in the alkaline hydrolysis would describe the process much differently than those who are. "The people who don't have a unit will combat a competitor with a unit, they will be using the word 'flush' in reference to the liquid remains going down the drain," he said. "The idea of flushing grandma down the drain isn't a pretty picture."

Brad Crain, president of BioSAFE Engineering, knows what to expect from opponents of the process. "Naysayers will make it sound pretty gruesome," Crain said. "We're returning organic components of the body back to the ecosystem just like nature intended. Ashes to ashes — we're accelerating the natural decomposition."

Schaal said he views alkaline hydrolysis as a form of cremation. "But instead of the catalyst being nature or propane fuel, the catalyst is 95 percent water with 5 percent potassium hydroxide.

"We're providing our funeral professionals an option for the cremation consumer who wants a more environmental process that lowers greenhouse gases, lowers the use of natural resources, etc.," Schaal added. "I think it's fascinating that at least in my 20-plus years in funeral service, we're talking about providing a service that is actually relevant in today's market. Normally we are several steps behind the consumer but with this opportunity, we are step in step."

Schaal said that in Matthews' consumer research completed last fall, the overwhelming majority recognizes that in order to be environmentally driven — it comes with a price. "We see this bio-cremation service coming with a premium over traditional flame because of the capital investment. In our research, we found the tipping point for the consumer who would pay a premium for a 'direct cremation' was at roughly +$500. They made it clear that the environmental advantages must be spelled out within the education so that they can justify needing to spend more. If the environmental advantages are +10 percent but the cost is +50 percent, the math doesn't work. We need to remain respectful with the expectations."

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PUBLIC ART COMMISSION
Thursday, February 17, 2011
Palo Alto Civic Center
Council Chambers
250 Hamilton Avenue
7:00 p.m.
AGENDA

ROLL CALL
AGENDA CHANGES, REQUESTS, DELETIONS
ORAL COMMUNICATIONS
(*Members of the public are invited to address the commission on any subject not on the agenda. A reasonable time restriction may be imposed at the discretion of the Chair.)*

Materials related to an item on this agenda submitted to the Public Art Commission after distribution of the agenda packet are available for public inspection in the front office of the Palo Alto Art Center during normal business hours

APPROVAL OF MINUTES – January 20, 2011

FINANCIAL REPORT - CIP BUDGET GENERAL FUND BUDGET

NEW BUSINESS

1. Way finding Project – Presentation by City Manager's Office regarding way finding project. (15 minutes)

ACTION

2. Donation – Request by staff for Commission to accept a donation of artworks from the Palo Alto Art Center Foundation. (15 minutes)

3. Retreat – Request by Chair Acebo-Davis for funds for the retreat February 26. (10 minutes)

NON-ACTION

4. Collections/Maintenance – Report by Chair Acebo-Davis. (10 minutes)

5. *Digital DNA* by Adrianna Varella – Report by staff on status of project. (5 minutes)

6. *Confluence* by Michael Szabo – Report by Commissioner Richter on the status of the project. (10 minutes)

7. *Bliss in the Moment* by James Moore – Report by Commissioner Richter on the status of the dedication. (10 minutes)

Attachment: PAC Agenda February 17 2011 (1425 : Public Art Commission)

8. Mitchell Park Library/Community Center Art Projects - Report by staff on status of contracts. (15 minutes)

9. Main Library & Art Center Project – Report by Commissioner Smit on status of RFQ. (10 minutes)

10. Brochure – Report by Commissioner Usich on brochure. (5 minutes)

11. Database- Report by staff on the status of the online database. (5 minutes)

FOR YOUR CALENDAR:

a. Next meeting: March 17, 2011
b. Retreat – February 26, 2011

ANNOUNCEMENTS
ADJOURNMENT

Attachment: PAC Agenda February 17 2011 (1425 : Public Art Commission)