NOT YET ADOPTED

ORDINANCE
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALO ALTO AMENDING TITLE 18 (ZONING) OF THE PALO ALTO MUNICIPAL CODE TO ADD A NEW CHAPTER 18.44 (GREEN BUILDING REGULATIONS)

WHEREAS, the City of Palo Alto’s (City) Comprehensive Plan sets forth goals for preserving and improving the City’s natural and built environment, protecting the health of its residents and visitors, conserving water and energy, and fostering its economy; and

WHEREAS, the City Council of the City of Palo Alto has identified Environmental Protection as one of its top four goals, and green building is a key component of environmental protection; and

WHEREAS, green building design, construction, restoration, operation, and maintenance can have a significant positive effect on energy, water, and resource conservation, waste management and pollution generation, and the health and productivity of a property’s residents, workers, and visitors over the life of a building and/or site; and

WHEREAS, the provisions of California Assembly Bill 32 (Global Warming Solutions Act) require actions on the part of State and local governments to significantly reduce greenhouse gas (GHG) emissions such that statewide GHG emissions in 2020 are lowered to 1990 levels; and

WHEREAS, failure to address and significantly reduce greenhouse gas emissions could result in rises in sea level, including in San Francisco Bay, that could put at risk Palo Alto homes and businesses, public facilities, and Highway 101 (Bayshore Freeway); and

WHEREAS, green building regulations comprise an important component of a whole systems approach to the City’s sustainability program related to building and land development, other components of which include but are not limited to requirements for: disposal of construction and demolition debris, storm water quality and flood protection, tree protection, water conservation, recyclable materials storage, parking lot landscaping, and transportation demand management.

Now, the Council of the city of Palo Alto does ORDAIN as follows:

SECTION 1. Findings. The City Council finds as follows:

A. The City’s Climate Protection Plan (CPP), adopted by the City Council on December 3, 2007, identifies green building as an important approach to reducing greenhouse gases generated in the Palo Alto community. The CPP notes that building construction and maintenance accounts for approximately
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38% of U.S. greenhouse gas emissions (U.S. Department of Energy) and approximately 40% of the energy use in the Palo Alto community. Buildings also account for much of the 14% of emissions that are generated by waste materials; and

B. Green building and landscape design, construction, operations and maintenance techniques are increasingly widespread in residential and commercial building construction, and green building benefits can be spread throughout the systems and features of a building, such that green buildings can include: the use of certified sustainable wood products and high-recycled content products; reuse of existing facilities and recycling and salvage; reduced demands on heating and cooling systems; increased energy efficiency; enhancement of indoor air quality; reduced per capita demand on water resources and infrastructure; and the installation of alternative and renewable energy systems; and

C. At the national and state levels, the U.S. Green Building Council has taken the lead in promoting and defining commercial green building by developing the Leadership in Energy and Environmental Design (LEED) Rating System™; and

D. At the state level, Build It Green has taken the lead in promoting and defining residential green building by developing the GreenPoint Rated Rating System™; and

E. Nothing in this ordinance is intended to duplicate, contradict, or infringe upon provisions of state law, including the California Building Standards Code. The ordinance and the associated checklists provide many opportunities to achieve required points and credits that do not impact areas where state law has established building standards.

F. On April 9, 2008, the Planning and Transportation Commission held a duly noticed public hearing and heard testimony regarding a green building ordinance, and recommended adoption of the green building ordinance to the City Council.

G. On May 12, 2008, the City Council held a duly noticed public hearing and heard testimony regarding the proposed green building ordinance.

H. Because the design, restoration, construction, and maintenance of buildings and structures within the City can have a significant impact on the City’s environment, greenhouse gas emissions, resource usage, energy efficiency, waste management and the health and productivity of residents, workers and visitors over the life of the building, requiring commercial and residential projects to incorporate green building measures is necessary and appropriate to achieve the public health and welfare benefits of green building.
SECTION 2. A new Chapter 18.44 (Green Building Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code is hereby added to read as follows:

Chapter 18.44

GREEN BUILDING REGULATIONS

Sections:

18.44.010 Purpose
18.44.020 Applicability
18.44.030 Definitions
18.44.040 Standards for Compliance
18.44.050 Incentives for Compliance
18.44.060 Administrative Procedures and Promulgation of Implementing Regulations
18.44.070 Hardship or Infeasibility Exemption
18.44.080 Appeal

18.44.010 Purpose.

The purpose of this Chapter is to enhance the public health and welfare by promoting the environmental and economic health of the City through the design, construction, maintenance, operation and deconstruction of buildings and other site development by incorporating green building practices into all development. The green building provisions referred to in this Chapter are designed to achieve the following goals:

(a) Increase energy efficiency in buildings;
(b) Encourage water and resource conservation;
(c) Reduce waste generated by construction projects;
(d) Provide durable buildings that are efficient and economical to own and operate;
(e) Promote the health and productivity of residents, workers, and visitors to the city; and
(f) Recognize and conserve the energy embodied in existing buildings.

18.44.020 Applicability

This ordinance applies to all projects defined as “Covered Projects,” as defined below, except that it shall not apply to any project for which a planning entitlement application (except for a preliminary architectural review application) or building permit application has been submitted prior to the effective date of this ordinance.

18.44.030 Definitions.
NOT YET ADOPTED

The following terms shall have the ascribed definition for the purposes of applying the criteria of this chapter. When the definition differs from a definition in Section 18.04 of this code, the provisions of this section shall apply.

(a) "Addition" means new construction square footage added to an existing structure.

(b) "Applicant" means any entity that applies to the city for the applicable permits to undertake any covered project within the city, or any subsequent owner of the site.

(c) "Compliance official" means the Director of Planning and Community Environment or his or her designee.

(d) "Compliance threshold" means the minimum number of points or rating level of a green building rating system that must be attained for a particular Covered Project, as outlined in the Standards for Compliance in Section 18.44.040.

(e) "Covered project" means any planning entitlement application(s) or building permit application(s) for commercial (nonresidential) new construction or renovations, or for any multi-family or single-family or two-family residential new construction or renovation subject to the Standards for Compliance outlined in Section 18.44.040.

(f) "Good faith effort" means a project that has not met the required compliance threshold, but for extenuating reasons or reasons beyond the control of the applicant, the Compliance Official has found the project meets the good faith effort provisions of Section 18.44.060.

(g) "Green building" means a whole systems approach to the design, construction and operation of buildings that substantially mitigates the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide a healthy, productive indoor environment.

(h) "Green building project checklist" means a checklist or scorecard developed for the purpose of calculating a green building rating.

(i) "Green building rating system" means the rating system associated with specific green building criteria and used to determine compliance thresholds, as outlined in the Standards of Compliance adopted by City Council resolution. Examples of rating systems include, but are not limited to, the LEED and GreenPoint Rated systems.

(j) "GreenPoint Rated" means a residential green building rating system developed by the Build It Green organization.

(k) "GreenPoint Rated Verification" means verification of compliance by a certified GreenPoint Rater, resulting in green building certification by Build It Green.
NOT YET ADOPTED

(l) “LEED®” means the “Leadership in Energy and Environmental Design” green building rating system developed by the U.S. Green Building Council.

(m) “LEED®/USGBC Verification” means verification to meet the standards of the U.S. Green Building Council (USGBC) and resulting in LEED certification of the project by the USGBC.

(n) “Mixed use” means the construction of a building or buildings that include both commercial and residential uses.

(o) “Multi-family residential” means a building containing three or more attached dwelling units.

(p) “New construction, commercial (nonresidential)” means the construction of a new or replacement retail, office, industrial, warehouse, service, or similar building(s), or additions to such building(s).

(q) “New construction, residential” means the construction of a new or replacement single-family or two-family dwelling unit or of new or replacement multi-family residential building(s), or additions to such building(s).

(r) “Qualified green building professional” means a person trained through the USGBC as a LEED accredited professional or through Build It Green as a certified green building professional, or similar qualifications if acceptable to the Compliance Official. For projects requiring “self-verification,” the project architect or designer is considered a qualified green building professional.

(s) “Renovation” means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible. The valuation of renovation improvements shall be determined by the Director of Planning and Community Environment, upon recommendation of the Chief Building Official. The Chief Building Official may exclude from such valuation the cost of (a) seismic upgrades, (b) accessibility upgrades, or (c) photovoltaic panels or other solar energy or similar devices exterior to the building. Renovation valuation thresholds identified in the Standards for Compliance shall be adjusted annually to reflect changes in the City’s valuation per square foot for new construction in Palo Alto, using valuations in effect as of July 1, 2008, as the base index.

(t) “Self-verification” means verification by the project architect, designer or a qualified green building professional certifying that the project has met the standards and has attained the compliance threshold as indicated for the Covered Project type as set forth in the Standards for Compliance outlined in Section 18.44.040.

(u) “Single-family or two-family residential” means a single detached dwelling unit or two units in a single building.
NOT YET ADOPTED

(v) “Square footage,” for the purposes of calculating commercial, multi-family residential, and single-family and two-family new construction square footage, means all new and replacement square footage, including basement areas (7 feet or greater in height) and garages, except that unconditioned garage space shall only count as 50% of that square footage. Areas demolished shall not be deducted from the total new construction square footage.

(w) “Threshold Verification by LEED AP” means verification by a LEED accredited professional certifying that each LEED checklist point listed was verified to meet the requirements to achieve that point. Documentation of construction consistent with building plans calculated to achieve energy compliance is sufficient verification in lieu of post-construction commissioning.

18.44.040 Standards for Compliance.

The City Council shall establish by resolution, and shall periodically review and update as necessary, Green Building Standards for Compliance. The Standards for Compliance shall include, but are not limited to, the following:

(a) The types of projects subject to regulation (Covered Projects);
(b) The green building rating system to be applied to the various types of projects;
(c) Minimum thresholds of compliance for various types of projects; and
(d) Timing and methods of verification of compliance with these regulations.

The Standards for Compliance shall be approved after recommendation from the Director of Planning and Community Environment, who shall refer the Standards for recommendation by the Architectural Review Board, prior to Council action.

18.44.050 Incentives for Compliance.

(a) In addition to the required standards for compliance, the City Council may, through ordinance or resolution, enact financial, permit review process, or zoning incentives and/or award or recognition programs to further encourage higher levels of green building compliance for a project.

(b) For residential projects, the number of GreenPoint checklist points required shall be reduced by:

1. 5 points for maintaining a minimum of 75% of existing walls, floors, and roof of a structure;
2. 5 points (in addition to 1 above) for maintaining a minimum of 95% of existing walls, floors, and roof of a structure; and/or
3. 10 points (in addition to 1 and/or 2 above) when applied to a structure that is designated on the City’s Historic Inventory as a Category 1 or Category 2
NOT YET ADOPTED

historic structure as defined in Section 16.49.020 of this code or any contributing structure located within a locally designated historic district, subject to determination by the Historic Resources Board that such additions and/or renovations are consistent with the Secretary of the Interior’s Standards for Rehabilitation.

18.44.060 Administrative Procedures and Promulgation of Implementing Regulations.

(a) The Director of Planning and Community Environment shall promulgate any rules and regulations necessary or appropriate to achieve compliance with the requirements of this Chapter. The rules and regulations shall provide, at a minimum, for the incorporation of green building requirements of this Chapter into checklist submittals with planning entitlement and building permit applications, and supporting design, construction, or development documents to demonstrate compliance with this Chapter.

(b) The procedures for compliance documentation shall include, but not be limited to, the following:

(1) Preliminary Documentation. Applicants for a Covered Project are encouraged, but not required, to meet with the Compliance Official or his or her designated staff, in advance of submittal of an application, to determine required green building thresholds for compliance and to review the proposed green building program and details to achieve compliance.

(2) Discretionary Planning Entitlements. Upon submittal of an application for any discretionary planning entitlement for any Covered Project, including but not limited to Individual Review, Major or Minor Architectural Review, Site and Design, Planned Community, Conditional Use Permit, or Variance requests, application materials shall include the appropriate completed checklists, as required by the Standards for Compliance specified in Section 18.44.040, accompanied by a text description of the proposed green building program and expected measures and milestones for compliance. The Compliance Official may allow the use of alternative checklists for historic buildings or for buildings that retain or re-use substantial portions of the existing structure.

(3) Building Plan Check Review. Upon submittal of an application for a building permit, building plans for any Covered Project shall include a checklist and green building program description, reflecting any changes proposed since the planning entitlement phase (if a planning entitlement was required). The checklist shall be incorporated onto a separate plan sheet included with the building plans. A qualified green building professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the requirements of the Standards for Compliance outlined in Section 18.44.040, prior to issuance of a building permit.
NOT YET ADOPTED

(4) Final Building Inspection, Verification, and Occupancy. Prior to final building inspection and occupancy for any Covered Project, a qualified building professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the requirements of the Standards for Compliance outlined in Section 18.44.040. This information shall include, but is not limited to:

i. Documentation that verifies incorporation of the design and construction related credits specified in the project approval for the Covered Project;

ii. A letter from the qualified green building professional that certifies that the Covered Project has been constructed in accordance with the approved green building project checklist;

iii. Any additional documentation that would be required by the LEED reference guide for LEED certification (if required), or by the GreenPoint Rated manuals for GreenPoint Rated certification (if required); and

iv. Any additional information that the applicant believes is relevant to determining that a good faith effort has been made to comply with this chapter.

(5) Final Determination of Compliance and Good Faith Effort to Comply. Prior to the scheduling of a final building inspection for a Covered Project, the Compliance Official shall review the documentation submitted by the applicant, and determine whether the applicant has achieved the required compliance threshold as set forth in the Standards for Compliance outlined in Section 18.44.040 and/or demonstrate that measures are in place to assure compliance not later than one year after approval of final building inspection. If the Compliance Official determines that the applicant has met the requirements of Section 18.44.040 for the project, the final building inspection may proceed, provided the Covered Project has received approval of all other inspections required by the Chief Building Official. If the Compliance Official determines that the required green building rating has not been achieved, the Compliance Official shall find one of the following:

i. Good Faith Effort to Comply: When an applicant submits a request in writing to the Compliance Official for approval of a good faith effort to comply, the Compliance Official shall determine that the applicant has made a good faith effort to comply with this chapter when finding that either a) the cost for providing green building documentation or assuring compliance is disproportionate to the overall cost of the project, or b) the green building materials and technologies on the green building checklist are no longer available or not yet commercially available, or c) at least 80% of
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the required green point credits have been achieved, and measures are in place to assure full compliance not later than one year after approval of the final building inspection. Determination of a good faith effort to comply shall be made separately for each item on the green building project checklist. Granting of a good faith effort to comply for one item does not preclude the need for the applicant to comply with the other items on the green building checklist.

ii. Non-Compliant Project. If the Compliance Official determines that the applicant has not made a good faith effort to comply with this chapter, or if the applicant fails to submit the documentation required within the required time period, then the project shall be determined to be non-compliant, and the final inspection and approval for the project shall be withheld. A final inspection shall not take place until the applicant has implemented equivalent alternate measures approved by the Compliance Official or unless an exemption is granted for the project.

(6) Post Final Inspection Requirement. Not later than one year after approval of the final building inspection, the applicant or current owner shall submit to the Compliance Official documentation detailing compliance with the operation, efficiency, and conservation related credits from the approved checklist documentation for any Covered Project, if required by the Compliance Official. The applicant may also provide any additional information the applicant believes is relevant to determining its good faith efforts to comply with this chapter.

(7) Non-Compliance. If, as a result of any inspection, the City determines that the Covered Project does not or is unlikely to comply with the approved plans or green building checklist, a stop order shall be issued if the Compliance Official determines that continuation of construction activities will jeopardize the project’s ability to meet the required compliance threshold. The stop order shall remain in effect until the Compliance Official determines that the project will be brought into compliance with the approved plans and/or checklist.

(8) Interim Compliance Effort. For residential projects initiating construction not later than two years after the effective date of this ordinance, a good faith effort shall be deemed to have been made when at least 75% of the required minimum green points have been achieved prior to final building inspection, and adequate remaining checklist points are outlined to demonstrate that at least 90% of the minimum points and GreenPoint certification will be achieved not later than one year after final inspection. If 75% of the required minimum green points are not achieved prior to the request for final building inspection, the final inspection shall be withheld unless an exemption is granted by the Compliance Official.
NOT YET ADOPTED

(9) Lack of Inspectors. If the Compliance Official determines that there is a lack of third party or City inspectors available to perform green building inspections within a timely manner, the Compliance Official may allow self-verification of the project and determine that green building requirements have been met.

(c) The Compliance Official shall have the responsibility to administer and monitor compliance with the green building requirements set forth in this chapter and with any rules and regulations promulgated thereunder, and to grant exemptions from the requirements, where so authorized.

(d) Compliance with the provisions of this chapter shall be listed as a condition of approval on any Architectural Review or other discretionary permit approval, and on the building plans for building permit approval, for any Covered Project.

18.44.070 Hardship or Infeasibility Exemption.

(a) Exemption. If an applicant for a Covered Project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Chapter, the applicant may request an exemption as set forth below. In applying for an exemption, the burden is on the Applicant to show hardship or infeasibility.

(b) Application. If an applicant for a Covered Project believes such circumstances exist, the applicant may apply for an exemption at the time of application submittal. The applicant shall indicate the maximum threshold of compliance he or she believes is feasible for the covered project and the circumstances that he or she believes create a hardship or make it infeasible to fully comply with this Chapter. Circumstances that constitute hardship or infeasibility include, but are not limited to the following:

(1) There is conflict with the compatibility of the green building rating system with other City goals, such as those requiring historic preservation;

(2) There is conflict with the compatibility of the green building rating system and the California Building Standards Code;

(3) There is conflict with the compatibility of the green building rating system and the City’s Zoning Ordinance and/or Architectural Review criteria;

(4) The green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; and/or

(5) There is a lack of commercially available green building materials and technologies to comply with the green building rating system.

(c) Review by Architectural Review Board (ARB) and/or Historic Resources Board (HRB). For any covered project for which an exemption is requested and Architectural Review is required by the ARB, the ARB shall provide a recommendation to the Director regarding whether the exemption shall be
NOT YET ADOPTED

granted or denied, along with its recommendation on the project. For any project for which an exemption is requested based on the historic character of the building or site, the Historic Resources Board (HRB) shall provide a recommendation to the Director regarding whether the exemption shall be granted or denied and shall determine whether the project is consistent with the Secretary of the Interior's Standards for Historic Rehabilitation.

(d) Granting of Exemption. If the Director determines that it is a hardship or is infeasible for the applicant to fully meet the requirements of this chapter based on the information provided, the Director shall determine the maximum feasible threshold of compliance reasonably achievable for the project. The decision of the Director shall be provided to the applicant in writing. If an exemption is granted, the applicant shall be required to comply with this chapter in all other respects and shall be required to achieve, in accordance with this chapter, the threshold of compliance determined to be achievable by the Director.

(e) Denial of Exemption. If the Director determines that it is reasonably possible for the applicant to fully meet the requirements of this chapter, the request shall be denied and the Director shall so notify the applicant in writing. The project and compliance documentation shall be modified to comply with this chapter prior to further review of any pending planning or building application.

(f) Council Review of Exemption. For any covered project that requires review and action by the City Council, the Council shall act to grant or deny the exemption, based on the criteria outlined above, after recommendation by the Director.

18.44.080 Appeal.

(a) Any aggrieved Applicant or person may appeal the determination of the Director regarding: (1) the granting or denial of an exemption pursuant to Section 18.44.070; or (2) compliance with any other provision of this ordinance.

(b) Any appeal must be filed in writing with the Department of Planning and Community Environment not later than fourteen (14) days after the date of the determination by the Director. The appeal shall state the alleged error or reason for the appeal.

(c) The appeal shall be processed and considered by the City Council in accordance with the provisions of Section 18.77.070(e) of the City of Palo Alto Municipal Code.

SECTION 3. Not later than one year after the effective date of the ordinance, a report shall be prepared for presentation to the Architectural Review Board, Planning and Transportation Commission, and City Council regarding the results of implementation of the ordinance. The report shall include, but is not limited to, documentation of the number and types of projects subject to the ordinance, explanation of whether and how compliance was achieved, identification of any problems arising from implementation, and any recommendations for revisions to the ordinance or accompanying resolution and Standards for Compliance tables.
SECTION 4. Severability. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 5. The Council hereby finds this ordinance is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an action taken by a regulatory agency for the protection of the environment.

SECTION 6. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

APPROVED:

Mayor

City Manager

Director of Planning and Community Environment
RESOLUTION NO. ______
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALO ALTO ADOPTING GREEN BUILDING STANDARDS FOR COMPLIANCE FOR PRIVATE DEVELOPMENT PROJECTS

WHEREAS, on May 12, 2008, the City Council considered regulations for the incorporation of green building techniques and materials in private residential and nonresidential development projects and introduced Ordinance No. ______; and

WHEREAS, the Ordinance specifies that green building standards for compliance shall be set forth by resolution of the City Council after recommendation from the Director of Planning and Community Environment and the Architectural Review Board. Such standards for compliance shall include the types of projects subject to regulation, green building rating systems to be applied to various types of projects, minimum thresholds for compliance and timing and methods of verification of compliance with green building regulations; and

WHEREAS, the Director of Planning and Community Environment and the Architectural Review Board does hereby recommend that the City Council approve the proposed green building standards for compliance for private development projects set forth in Table A and Table B attachments to this resolution.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby approve the green building standards for compliance for private development projects as set forth in the Table A and Table B attachments to this resolution.
NOT YET APPROVED

BE IT FURTHER RESOLVED by the Council of the City of Palo Alto that this resolution shall take effect upon the effective date of Ordinance No. _____.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

City Manager

Deputy City Attorney

Director of Planning and Community Environment
**Table A**

City of Palo Alto  
Green Building Standards for Compliance for Private Development  
Nonresidential Construction and Renovation

<table>
<thead>
<tr>
<th>Type of Project</th>
<th>Building Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Checklist Required</td>
</tr>
<tr>
<td>Nonresidential Construction and Renovation¹</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>New construction ≥ 25,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>New construction ≥ 5,000 sf and &lt; 25,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>New construction ≥ 500 sf and &lt; 5,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>Renovation ≥ 5,000 sf and ≥ 50% of project sf and ≥ $500,000⁶ valuation³</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>Other renovation ≥ $100,000⁶ valuation</td>
<td>LEED-CI Checklist</td>
</tr>
<tr>
<td>New construction &lt; 500 sf and renovation &lt; $100,000⁶ of valuation</td>
<td></td>
</tr>
</tbody>
</table>

**Mixed Use or Other Development**  
Commercial and residential criteria as applicable⁴

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¹ Cumulative new construction or renovations over any 2-year period following adoption of these requirements shall be considered as a single project, unless exempted by the Planning Director as impractical for compliance.

² Compliance with other LEED® checklists, including but not limited to LEED-CS (Core & Shell), LEED-CI (Commercial Interiors), or LEED-EB (Existing Buildings) may be substituted for the designated rating system where deemed appropriate by the Planning Director, after recommendation by the Architectural Review Board (if ARB review is required).

³ Pro-rated formula = (new construction sf/5,000) x 33 points, but not less than 17 points.

⁴ To be determined by the Planning Director; generally the provisions of Table A will apply to the commercial portion of the development, and the provisions of Table B will apply to the residential portions of the development.

⁵ Exemptions may be available for historic structures, pursuant to Section 18.44.070 of the ordinance. The Compliance Official may allow the use of alternative checklists for historic buildings or for buildings that retain or re-use substantial portions of the existing structure.

⁶ To be adjusted annually to reflect changes to the City’s valuation per square foot of new construction.
### Table B
City of Palo Alto
Green Building Standards for Compliance for Private Development
Residential Construction and Renovation

<table>
<thead>
<tr>
<th>Type of Project</th>
<th>Building Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Checklist Required</td>
</tr>
<tr>
<td>Multi-Family Residential</td>
<td></td>
</tr>
<tr>
<td>New construction of 3 or more (attached) units</td>
<td>Multifamily GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations with permit valuation $\geq $100,000&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Multifamily GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations with permit valuation $&lt; $100,000&lt;sup&gt;5&lt;/sup&gt;</td>
<td>No requirement</td>
</tr>
<tr>
<td>Single-Family and Two-Family Residential</td>
<td></td>
</tr>
<tr>
<td>New construction of $\geq$ 2,550 sf</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>New construction of $\geq$ 1,250 sf and $&lt; 2,550$ sf</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions ($&lt; 1,250$ sf) and/or renovations with permit valuation $\geq $350,000&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions ($&lt;1,250$ sf) and/or renovations $\geq$75,000&lt;sup&gt;5&lt;/sup&gt; and $&lt; $350,000&lt;sup&gt;5&lt;/sup&gt; permit valuation</td>
<td>Home Remodeling Green Building Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations of $&lt;75,000&lt;sup&gt;5&lt;/sup&gt;$ permit valuation</td>
<td>No requirement</td>
</tr>
<tr>
<td>Mixed Use or Other Development</td>
<td></td>
</tr>
</tbody>
</table>

<sup>1</sup> Cumulative new construction or renovations over any 2-year period following adoption of these requirements shall be considered as a single project, unless exempted by the Planning Director as impractical for compliance.

<sup>2</sup> For any multi-family residential project with 30 or more new units proposed, a LEED-ND (Neighborhood Development) checklist shall also be completed and submitted with the application, for information only.

<sup>3</sup> To be determined by the Planning Director; generally the provisions of Table A will apply to the commercial portion of the development, and the provisions of Table B will apply to the residential portions of the development.

<sup>4</sup> Exemptions may be available for historic structures, pursuant to Section 18.44.070. The Compliance Office may allow the use of alternative checklists for historic buildings or for buildings that retain or reuse substantial portions of the existing structure, and may reduce the minimum threshold (points) required as outlined in Section 18.44.050.<sup>5</sup> To be adjusted annually to reflect changes to the City’s valuation per square foot of new construction.
PLANNING & TRANSPORTATION
COMMISSION
MINUTES

MEETINGS ARE CABLECAST LIVE ON GOVERNMENT ACCESS CHANNEL 26

Wednesday, April 9, 2008
6:00 PM, Council Chambers
Civic Center, 1st Floor
F250 Hamilton Avenue
Palo Alto, California 94301

ROLL CALL: 6:05 PM

Commissioners:
Karen Holman - Chair
Daniel Garber - V-Chair
Samir Tuma
Paula Sandas
Arthur Keller
Lee I. Lippert
Susan Fineberg

Staff:
Curtis Williams, Assistant Director
Amy French, Current Planning Manager
Jennifer Cutler, Associate Planner
Donald Larkin, Assistant City Attorney
Amy Bartell, Deputy City Attorney
Lisa Green, Admin Associate

AGENDIZED ITEMS:

1. Study Session: Proposed Green Building Criteria for Use in a Mandatory Green Building
   Program for Private Developments
2. Review and recommendation to City Council of 1) an Ordinance Amending Title 18
   (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building
   Regulations) and 2) a Resolution to Adopt Green Building Compliance Thresholds,
   Rating Systems, and Compliance Verification for Private Development Projects.
3. 3924 El Camino Real

APPROVAL OF MINUTES: Meeting of March 12, 2008

Chair Holman: I would like to call the meeting of Wednesday, April 9, 2008 of the Planning and
Transportation Commission to order please. Would the Secretary call the roll, please? Thank
you. Seven present.

Our first item on the agenda is a Study Session on Green Building Criteria for use in the
Mandatory Green Building Program for private developments. This is continued from the
meeting of March 12, 2008. Does Staff have a presentation to make?

UNFINISHED BUSINESS:
1. **Study Session:** Planning and Transportation Commission Review and Comment on the
   Proposed Green Building Criteria for Use in a Mandatory Green Building Program for
   Private Developments (continued from March 12)

   Mr. Curtis Williams, Assistant Director: Yes just briefly to summarize what we have done in the
   Staff Report which is provide some responses to questions that were raised at the last meeting
   either during the meeting or in some questions before the meeting that we weren’t able to
   provide answers to. So we have given you some statistics about home demolitions, also some
   very rough estimates regarding LEED Certification costs, property tax impacts, we have attached
   some examples of Green Building ordinances that have been adopted in the cities of Albany,
   Rohnert Park, and West Hollywood with somewhat different approaches.

   Then we provided an overview of some of the activities that have taken place surrounding
   basement issues and in particular the dewatering of basements and potential other impacts.
   Included with that we attached an environmental study that was prepared during the Zoning
   Ordinance Update by EIP Associates looking at the impacts and cumulative impacts of
   basements and then also the current policy of the Public Works Department regarding basements
   and basement dewatering.

   So with that I think our intent here until seven o’clock or thereabout to have any other general
   discussion about Green Building issues. Then at that point we can move into the ordinance
   discussion. If you still have additional issues surrounding Green Building generally you can
   certainly bring those up after we begin the ordinance issue as well since it is all tied together.
   That’s it.

   Chair Holman: Okay. Commissioners, are there questions for Staff? Commissioner Tuma.

   Commissioner Tuma: Just for the record I wasn’t here at the last study session however I did
   review all of the minutes from that session. I have a question regarding the range for LEED
   Certification requirements $5,000 to $100,000. Is the information that we have that you can
   actually get certification for as little as $5,000?

   Mr. Williams: Let me see how I worded that. I should also point out that we have someone here
   who may be able to answer some those. I don’t want to put him on the spot but he works with
   the US Green Building Council and is familiar with LEED issues. The costs $5,000 really
   depends on the size and complexity of the project. I think it is probably possible to get
   certification of a small project for not a lot more than $5,000. There might be some time issues
   associated with that because some of this is commissioning buildings after construction is
   completed and so there are some time concerns about how long that can take. The $100,000 was
   related to and basically it was more than $100,000 on Stanford’s new environmental sciences
   building or whatever it is called. They in fact did not go through that certification so they could
   use that money in other ways on the project.

   Commissioner Tuma: So those numbers particularly the bottom end is it the information that we
   have that that is really what the overall cost would be to an applicant or is that just the actual
certification? Usually there is some input, other people you would have to hire, what I am
getting is what is the real burden here at the lower end of these projects?

Mr. Williams: I am not really sure of those other costs. Certainly that covers the fees, the
registration fee and the certification fee, for those lower-end projects. I don’t know what the
associated costs are with the consultants on those. The $100,000-plus I believe did include, I
think that was from Stanford quoting the commissioning costs and that as well. So there is a
pretty wide range depending on complexity and size of the projects.

Chair Holman: Other Commissioners? I am seeing no questions from Commissioners.
Commissioner Sandas.

Commissioner Sandas: At our last meeting about this subject I had questions about dewatering.
I know it is in the packet and I am just having trouble finding the page. So if you wouldn’t mind
just give a grade-schoolers explanation of dewatering for me that would be great.

Mr. Williams: Okay. This is whole issue of dewatering is one that has been modified over the
last few years and kind of gets tightened up, and tightened up, and tightened up a little bit. So
some time ago it was very common for basements to get constructed and if you have
groundwater below, not all basements do, but if you have groundwater below and it gets into the
excavation area and you need to pump it out in order to construct your basement. That was not
only true for the construction phase but often true after construction as well because groundwater
would still infiltrate the basement and you would need to have essentially continual at least
wintertime pumping.

Since then the policy has evolved up to a couple of years ago when the Public Works
Department started prohibiting the post construction pumping so that it had to be designed
essentially to be waterproof so that there would not be a need to do post-construction watering.
So that still left the construction period dewatering of getting it out of the excavation. There
were some concerns and at that point the designs were such that in some cases the Public Works
Department was relying on an applicant’s geotechnical report other information from the
applicant to define where the water level was and then when the project came on it actually
ended up being higher in some cases. So they now have information from the Santa Clara Valley
Water District that is more accurate that allows them to be sure that the construction does attain
the right design as appropriate to be able to keep the water out of the basement.

During the construction period the water is taken from that excavation area and at some points in
the past was basically discharged over land, or on the street, or something like that. The Public
Works Department policy then evolved to require permitting for the permit to be gained for
dewater and to tie it to the storm drain system.

There also had been some instances, and this does not relate so much to dewatering as just
construction of the basement, where someone had gone too close to a property line or something
like that where they were causing some problems, they were not shoring up the building
basement area well enough and it was causing some problems to neighbors. So now the review
process includes being sure that shoring is in place and there are not any impacts across the
property line.

There were concerns about trees and the effect of dewatering on the trees, the effect of the
excavation on the trees. So we do review the project, Dave Dockter looks at them when there are
basements to be sure that they are not doing that, and also has reported to us that the water levels
themselves and the temporary nature of any rise in there during the construction phase does not
adversely impact any significant size tree.

So we still have a permit process that goes through Public Works, dewatering occurs and is now
tied into the storm drain system. Public Works still has some concerns on occasion, particularly
during the winter, that the storm drain system may not be capable of handling the surcharge that
occurs naturally from infiltration during storms as well as this dewatering. So they are now
looking at ways to be sure and may need to further restrict or prohibit in some instances where
there is that problem dewatering or prohibit basements if that is necessary in those cases. So
they are looking at that.

They are looking at but have not at this point come up with any particular policy in terms of how
to minimize the amount of water that is discharged. There is sometimes a significant amount of
water that is discharged. It is discharged over a six month or however long period of time that it
takes to construct the basement, so it is not all at once. Generally, the geotechnical report and
reports that the Public Works Department has received from the Water District and from the
USGS have indicated that the overall groundwater regime is not affected and that the water that
is discharged ultimately recharges the groundwater. So there is not really an impact on the
groundwater regime itself in any long-term kind of way. Nevertheless, they do want to continue
to monitor particular storm drain capacity and look and see if there are some places particularly
on larger lots where you can retain the water onsite more and maybe there are some flatter or
lower-level elevation areas where you can berm or something and store water there and let it
infiltrate rather than pumping it to the storm drain system. So those are some of the things they
are looking at now.

They are preparing a report for the Council that we will share with the Commission when they
put it together. Some of the information I put in here came from their conveyance to me of some
of these things that they are looking at. They are going to present that information to the Council
and continue to try to address some of these issues.

They also have indicated that there is no instance that they have encountered where the water
was contaminated and withdrawn by the dewatering system. If they are anywhere in proximity
to an area of a plume or some known hazard then they would need to get with the Regional
Water Quality Control Board and assess that. If there were any potential for that we would have
to prohibit that in that instance. So they are doing a lot of things. There has been a lot of
concern around this issue and it has progressed over the last three or four years quite
substantially.

It doesn’t get entirely around the issue of the fact that basement take a lot of concrete and
materials and that there is in some of these instances quite a bit of water that is discharged from
the site even if it does ultimately stay in the ecosystem, it is not at that location and it seems to be wasteful. Some of it inevitably is lost to evaporation or whatever but overall the cumulative effect of it is not significant on our groundwater regime. Nevertheless, if we can avoid pumping it anywhere that would be preferable but most sites are really too small to really retain the water onsite.

Commissioner Sandas: Curtis, I actually had a bunch of questions and you answered them all down the line. The one thing that is more of a comment than a question and it is something that we should keep in mind to take up when we talk about wells, aquifers, groundwater, soil contamination, and basements is the energy usage required to pump out the ground even after a basement is built because it is quite substantial. When we are talking about green building and so forth we have to kind of look at the whole picture. Maybe the groundwater is making its way back, the regime is not particularly harmed, however, when you think about all that pumping that has to be done that does require energy. That’s it.

Chair Holman: I have two cards from members of the public and since these two items are essentially the same we will take public comments towards the end of the Study Session or at the first of item number two since they are essentially the same topic. Commissioner Keller to be followed by Commissioner Lippert.

Commissioner Keller: Since we seem to be on the topic of groundwater and pumping of groundwater. You had mentioned Curtis, that there is no evidence that dewatering has caused a discharge of hazardous materials or whatever you find in the plume. Is that right?

Mr. Williams: There is no evidence that the dewatering has withdrawn toxic, contaminated water out of the plume and into the storm drain system or over land.

Commissioner Keller: Is there any data on whether dewatering has caused plumes to spread even if it didn’t reach the location of where the dewatering occurred? Is there evidence one way or the other on that?

Mr. Williams: I don’t think so. Public Works indicated that they were not aware of any instance where that has happened but I don’t think they have studies on whether that might have happened in some location or not. They didn’t document that to me.

Commissioner Keller: So is it fair to say that Public Works is not aware whether or not dewatering has caused plumes to spread elsewhere? Is that fair?

Mr. Williams: It is fair to say that they have not or I didn’t ask that specific question of them and they didn’t provide it without my asking. So I don’t know. It could be that they know and I didn’t ask the right question so they didn’t answer that question.

Commissioner Keller: Sorry, I didn’t think to ask that question earlier when you could have gotten that answer for which I am sorry. That is the nature of discussion here, we hear what other Commissioners ask and we hear the answers and that gives us other things to think about.
I notice in Attachment G of the Staff Report to item one it talks about the idea that the Department of Public Works will not permit the use of basement exterior drainage systems consisting of perforated pipes located on the exterior of basement walls or underneath the slab to collect water which is then pumped to the surface. Are post-construction other than the wells that are mentioned – I think that there is a mention of basement level exterior spaces, but other than the basement level exterior spaces are there other kinds of dewatering from inside the basement or any kinds of things of that nature? It is a few pages from the very back.

Mr. Williams: Yes. Their indication to me was the only type of interior dewatering that occurs now is from these light wells or below grade patios where you have some exposure to the outside.

Commissioner Keller: So I take it that some pumps interior to basements are not allowed?

Mr. Williams: Right, that is my understanding. They are not necessary it is just the light well type areas.

Vice-Chair Garber: If I may interrupt, the clarification here is simply that I wouldn’t use the term dewatering from an exterior basement location. It is a sump pump that takes the rain that falls into those light wells out and then it drains back into the system.

Mr. Williams: Yes, we are not talking about groundwater there we are talking about water that falls.

Vice-Chair Garber: Right, so there is no groundwater. That is water that is coming from the air. Okay.

Commissioner Keller: That is fair. Vice-Chair Garber, you don’t have any comments about the sump pumps interior to basements?

Vice-Chair Garber: Anything that is inside the house has to go back out through the sewage system but none of that is water that is taken from the earth it is all taken from the house itself.

Commissioner Keller: Thank you.

Vice-Chair Garber: Just again as a clarification, the way that the code reads is that the house has to be built in such a way that it resists any water entering it because you are not allowed to dewater the ground after it has been built.

Commissioner Keller: Okay, thank you. There is a mention in the last paragraph of Attachment G it looks like the second sentence. I will read the thing because giving context will help. It says, drainage systems are required and will be permitted for basement level exterior spaces such as stairwells, light wells and patios. These drainage systems consist of a sump, a sump pump, and closed pipe from the pump to a dissipation device onsite, such as a bubbler box in a landscaped area, so that water can percolate into the soil and/or sheet flow across the site. I am
wondering is there concern to the extent that there is such sheet flow that it would impact
adjacent sites?

Mr. Williams: There is always that concern and it is reviewed on every project to be sure that
that is not the case. That is part of engineering review of the drainage plans for the project.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I had a couple of questions. You mentioned that we had a representative
from the Green Building Council and the question is do you want me to ask those questions now
of that individual since Staff is not really able to answer some of those questions or whether you
want to do that during the public hearing or after the presentation by Staff?

Chair Holman: It would seem appropriate to ask questions of them now but I would like Staff’s
input.

Mr. Williams: I was going to say that is fine. I just want to point out I know the speaker is
prepared to make some remarks to you. Mr. Keller invited him and I don’t want to represent that
I have told him that he should be prepared to answer questions from you. I don’t know if Arthur
did or not so if he is comfortable doing that that’s fine otherwise I do know he does want a
chance to speak to you.

Commissioner Lippert: Maybe we should do it after we open the public hearing.

Chair Holman: That is fine. Is that David Kaneda? Are you the representative? Come to the
microphone if you would. Just to clarify, you are not going to speak now I just wanted to
identify that is who you are, because there is card turned in by someone from Cupertino. So now
I know who you are. We will get to you shortly. Thank you.

Commissioner Lippert: Then I had one other comment with regard to the dewatering. Typically
when it comes to foundations and pumping of water it might be worth considering adoption of a
annual moratorium on digging basements and just simply put in the ordinance somewhere that
perhaps between the months of say the end of October to the beginning of March there wouldn’t
be any digging of full basements. That is really the time when you are going to have the most
problem with water infiltrating the hole and then having to be pumped out. During the dry
seasons we really don’t have that problem. Maybe Vice-Chair Garber has some other experience
with basements but that has been my experience.

Chair Holman: Curtis.

Mr. Williams: First of all, as we talked about last time I think there is some concern about when
you can do grading. I know that is a little different than when the hole is open and subject to the
water but my main point is that is not a zoning code item. We have Chapter 16, Building and
Grading Requirements and I think that is where that would go.
In fact let me step back just a minute it was part of my initial presentation on the next item but we talk about Green Building and a Green Building Program for the City is much more expansive than what you are looking at tonight. So you are going to be looking at this system of rating and looking at the structure specifically. There are a number of things related to stormwater requirements and grading and tree protection and other things that certainly are part of a Green Building package that most of which has already been done to a large extent. So there may be some items that you want to identify that are outside of this but if you think they are important for us to include in that that we come back with those to you as well and they become companion pieces to this zoning ordinance. That is one and we would have to probably explore with Public Works how they would manage that timing issue. If you can get the basement all done in a way that it is all during the dry season I imagine it depends on a lot of factors in that respect. So we would have to have some pretty detailed discussions with Public Works and probably with Building as well.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: In our Study Session I asked several questions that are on page 11 of the verbatim minutes. I will have to beg your forbearance because as I am coming up to speed as a Commissioner I don’t always know how things get handled but I had not submitted those questions in writing. So I don’t know if I should have the expectation that we would get answers. I would still like to ask again if there is an understanding of how the LEED checklist would impact the areas of Palo Alto that are in 100-year floodplains? Will we get weird distortions of people having to raise the base elevation using fill or will it allow them to continue to use extra materials to raise the base elevation with shear walls? Will there be penalties for doing both of those or is that a plus for raising the base elevation? Do we understand enough about what impact that will have for I think it is several thousand homes that many of them are coming up on 50 years old, many of them at the end of their life, and many of them are going to be redeveloped in the next ten or so years?

Mr. Williams: Yes, and I am sorry and I guess I thought we had responded to that. I think we do understand that there are special circumstances around homes that are in floodplains that require special design techniques. What we have done relative to this ordinance is first of all in terms of the design, and I am assuming most of those are going to be two-story so they will go through an Individual Review process so there will be some look at those designs so there are not design distortions associated with that. From the Green Building standpoint where there are potentially some conflicts between something that is done for one reason, the flood reason, and it might be in some way counter to something we would be doing on Green Building we built in an exception process. We have it going either way but primarily in this document we built it in so that for those unusual circumstances there is some relief to accommodate whatever seems to be what the City wants the most. If you can’t meet all the points here because of something you have to do for floodplain I think the answer is that you get relief from this Green Building regulation not that you are not allowed to build in the floodplain or nearly what you would otherwise. So it is certainly not intended that this is going to in some way restrict what you can build in the floodplain area.
Commissioner Fineberg: So for instance if you are in the floodplain and you have to raise your base elevation you can either haul fill in and let’s say build up on a three or five foot mound or you can build shear walls maybe have parking or storage and then your first floor is three or five steps up. Do we understand whether LEED will favor building those earthen mounds or using the shear wall, it is extra material but it is less hauling earth? Are the point calculations going to drive people in one direction or another versus what is best in the already built situation?

Mr. Williams: It is the Build It Green for the homes as opposed to the LEED, but I don’t know that I have seen anything that necessarily drives that in one direction or another. It seems like number one, there are adequate points elsewhere in the checklist probably to meet the requirements regardless of which one of those choices you make. To the extent that nothing comes to mind that would specifically say that one or the other is going to penalize you in some way as far as this goes. Now, it may be that if you are doing the shear walls and you are using recycled material or something like that that you can get a point you couldn’t have gotten with bringing in the fill. So I think it is only from that standpoint that there may be some advantage that one or the other may give you. I think at least starting out we are probably low enough on the point total scale that they will have flexibility. That is one of the reasons why we are not starting too high up in terms of required points is that we need to see how some of these things work and where some of the tough decisions get made in these rating systems before we really ratchet up and get to 100 points as a minimum or something like that, which some cities have done.

Chair Holman: Let’s pass it along to Vice-Chair Garber. We can come back around.

Vice-Chair Garber: Two comments here. One following on Commissioner Fineberg’s question and not that I want to pass myself off as an authority but my experience in LEED and Green Point projects is that I think the effect is essentially neutral to being in the floodplain or not. There may be opportunities where you can gain points by dealing with things in unique ways that may support a more sustainable approach and there are opportunities within both of these criteria to gain points that way. There is a lot of flexibility as Curtis was describing in how you go about getting points. It is designed in such a way that getting points in one way negates getting points in other ways so that you have to make some choices through there. There may be others on Staff that have more authority and insight than I do in this.

The second comment I wanted to come back to one that I had made last time we reviewed this topic regarding compliance. At the moment the proposal is really self-policing in that the City will make a criterion that projects will be submitted and the checklists need to come with them, and there is not a requirement for them to be certified by an outside certifier or something of sort. So the criteria will be on the set of drawings that goes to a contractor that is executed in the field. I am just curious to know if there was any discussion about inspectors possibly getting involved with this sort of education, if they would be looking against that? A number of the things are not specifically the sorts of things that a building inspector has to look at. They are not part of code necessarily. It is one thing to present it and have it on record it is another to actually see if it is actually executed. I am just sort of curious if there has been discussion in the Staff of the various departments about that topic.
Mr. Williams: We have talked about that pretty extensively and anticipate a lot more discussion around the area of who gets trained and how much of this is Staff enforced and how much of it is a third-party type of review or something like that. What we have set forth in the ordinance as far as residential goes is for any new home at least to go through the Build It Green/Green Point certifier or Green Point Rater, which is qualified third-party review basically of that and not be relying a whole heck of a lot on Staff other than just generally understanding sort of what that process is. So the self-verification, what we have outlined is that we are really just relying on the architect/designer to basically put things on the plan and go through that. It is really only on the very minor additions and remodels. On the LEED side it is a little different because we have suggested that only going through the USGVC full verification process for buildings over 25,000 square feet in size and that smaller buildings be done essentially have a LEED Accredited Professional look at those and document what is happening there short of the building commissioning aspect which tends to be costly and time consuming as a transition at least into this program, again to see how that works. So in that instance it is not so much self-policing but there is the opportunity there that we are not going to know as well what is really going in there. We are relying on somebody else's judgment to tell us that.

Now I don't know if Larry wants to talk about what the Building role is and Larry Perlin, our Chief Building Official is here. We have talked about getting more training and we have talked about whether we should have somebody in-house who is trained on the residential side and somebody on the commercial side either accredited in either Green Point Rater or LEED Accredited Professionals to do that. I don't think we have come up with exactly what the answer is as to doing that versus getting everyone more familiar with the systems and then relying more on the third-party type of review. Do you want to say anything Larry or does that cover it?

Mr. Larry Perlin, Chief Building Official: Trying to figure out how we are going to implement this thing once it gets adopted is probably one of the top two or three issues that is taking up my time right now. My staff, the Building Inspectors, currently is not up to the task of doing the Green Point Rating and really looking. You have hit the nail right on the head. The kinds of issues and things that Building Inspectors look at in the field and what they focus on are really different than what these Green Building requirements are. So what I have concluded is that there really needs to be a parallel process in place with either third-party raters or perhaps in-house raters that we would have to hire that would work in concert with the Building Inspectors to ensure that not only are building codes being satisfied but the Green Building Ordinance requirements are being satisfied and that ultimately it all comes together at the end of the process when it is time to finalize the building permit or issue a certificate of occupancy.

I think the process will be a little more straightforward on the commercial buildings that will have to satisfy the LEED criteria because with LEED I think you are going to have to get LEED Certified professionals involved. A lot of the LEED rating occurs after the building is actually really finaled and the occupancy has been granted, and it occurs during the first year after occupancy when the systems all have to be commissioned. By that time certainly the role of the Building Inspectors is long over. So what I see is probably some sort of a verification/certification/documentation process that will have to occur. On the residential side though I think that the Building Inspectors along with whoever is doing the Green Point Rating
or the Green Point verification will have to kind of work collaboratively with one another and then ultimately insure at the end of the project that the requirements have been satisfied.

So I have been talking about it with our staff. Quite frankly none of the Building Inspectors at least at this point seem to have a whole lot of interest in this. It doesn’t surprise me. I don’t think this is uncommon among Building Inspectors generally. Over time I think as it becomes more mainstream the Building Inspectors in general will start to pick up on it and probably we will start to see more Building Inspectors going through training. I think here in Palo Alto I guess what I have been keeping my eye on throughout this whole process is what I don’t want to have this ordinance do is cause any additional delays during construction or during the time it takes to obtain a permit. I am not as concerned about the cost. I think in Palo Alto most builders or most developers are willing to pay that additional incremental cost to comply with the ordinance. So cost has never been a big concern with me. What has been a concern is schedule. I have been very sensitive to this throughout the entire evolution of this ordinance and want to ensure that the overall time it takes to pull a building permit and to perform construction does not get lengthened as a result of having to comply with Green Building. I think if it does we will hear a lot of complaints about the program. Time and schedule seem to be the primary concerns and not so much cost.

So back to the Building Inspectors, if they have to refocus some of their time and effort on insuring compliance with the Green Point Rating requirements I am concerned that it will simply bog down the building inspection process and it will just take longer to complete construction. So working with third-party raters and/or in-house City Staff there has to be a parallel process in place to make this ordinance work effectively I believe and that is what we are noodling on at this time is what would be the best way to do that. I think initially as the ordinance gets rolled out and we start to implement it we will be working with third-party raters and then eventually we will be able to evaluate whether it would make sense to have in-house staff available to perform the ratings as well for a fee of course, but at least we would be able to provide the service in-house.

Chair Holman: Thank you Mr. Perlin. I have lights from Commissioners Keller, Lippert, Sandas, and I anticipated that Commissioner Fineberg would have more questions too. So Commissioner Keller, a couple of questions?

Commissioner Keller: Yes. First I will make a comment about in the Attachment G to the Staff Report of March 12 I didn’t tell you this last time but the pages are reordered in a strange way where they were upside down. I notice that has been reproduced this time not upside down but they have been switched so they don’t go in sequential order so it is hard to follow. So I would suggest that before you reproduce this for the City Council that you fix that error. It occurs for example with some of the other later ones for example if you look at LEED for Commercial Interiors some of those pages are in the wrong order. You can fix that for next time.

I want to follow up on something that was mentioned by Commissioner Lippert with respect to a moratorium on digging full basements. I understand that we have long had rules for when grading can be done at least in the Foothills area, in the Open Space area. Is that right? I am wondering whether similar partial or full – isn’t there some moratorium?
Mr. Williams: It is not a formal moratorium and I think it applies broader than just the Foothills area but discretion of the Director of Public Works, and I don't know if Building is involved as well, for grading during the wet season. It is not just the Open Space.

Commissioner Keller: Great, thank you for that correction. So I am wondering if that discretion could be used in order to satisfy the intent expressed by Commissioner Lippert to have limits on the digging full basements or perhaps even significant partial basements during the rainy season. However, a meteorologist might define as the period of most likely rain. Is that a reasonable way to handle that problem?

Mr. Williams: I think that is what they basically do is they have a window. I don't think our ordinance specifically says it. I know some cities say October 15 to April 15 or something like that that grading can't be done. I don't think ours has specific dates like that but it does say during the – it is generalized language like you are saying. Something along the lines of when precipitation is expected or periods of prolonged rain or something like that.

Commissioner Keller: I am wondering if somebody reading the ordinance the way that things are currently worded would consider that to be sufficient notice or whether putting something in the ordinance being more explicit might give architects and designers and property owners more notice in terms of when the building construction could or could not occur.

Mr. Williams: We can certainly talk to Public Works about that. Again, that is in their grading ordinance in Title 16.

Commissioner Keller: Great. There was also a question based on Vice-Chair Garber's comments about third-party raters versus in-house raters and such. I notice a couple of things. I believe that when one submits a building plan one can either go through internal plan check or one can hire a third-party plan checker in order to speed up the process of getting a building permit. Is that correct?

Mr. Williams: Yes. I will defer to Larry and Amy as far as the mechanics of how that works but yes you kind of have your choice.

Mr. Perlin: There are three options for plan review. There is in-house plan review and we have three plan check engineers on staff. We also have several firms that are under contract with the City to perform plan review. So we take in the plans and then we will send them out to one of these firms. We have arrangements in place, the fee doesn't change, and the turnaround time doesn't really change. The other process is what we refer to as elective or third-party plan checking. This is where we have a pre-qualified list of outside plan review firms that an applicant can select from if they want to avail themselves of that process and negotiate whatever arrangement they want or can negotiate with those firms. If they want quicker turnaround and are willing to pay for it they can do that. We control the process but we don't actually perform the work. When the plan review is done the plans come back to us and we do a back-check or a quality control check before the permit is actually released.
We are in the process right now of updating that list. We have just solicited proposals for both the contract and elective plan checking. We have received 17 proposals or a lot of interest in working with us. So we are going through a process right now to renew the list of both contract firms and third-party firms.

Commissioner Keller: Thank you. So in terms of this notion of a third-party rating to the extent that there is this self-certification processes, I guess we will learn more about this in the next step. But to the extent that there are self-assessment processes or of such does it make sense to think about having a third-party sort of self-assessment verifier if you will to the extent that you don’t do a full certification? Does that kind of thing make sense as opposed to the honor system that the architect does his own self-certification?

Mr. Williams: I think that is pretty much where we – the self-certification or self-verification column in here is one which is only for very minor projects. So to us it isn’t worth going the third-party route for that at least at this point in time. We want to focus on where sort of the biggest bang for the buck in terms of emissions reduction is and that is new homes, new buildings, and major remodels. So those kind of things on the residential side Green Point Rated raters who are third-party trained in the system would be involved with and on the commercial side over 25,000 square feet would be LEED same kind of thing. The in between category is what we have called in here LEED Equivalent Verification and would like to probably change that name because it really is not equivalent to LEED, maybe LEED Professional Certification or Verification where a LEED Accredited Professional does do that review. We have not specifically excluded that professional being on the applicant’s team, possibly being the architect on the applicant’s team or somebody else on that team, but they do have to have that accreditation to do that review. That is certainly something you can talk about whether you are comfortable with that or to go to the next higher level or require it all to be third-party.

Commissioner Keller: Thank you.

Chair Holman: Commissioner Lippert to be followed by Commissioner Fineberg.

Commissioner Lippert: I have a question for Planning Staff and then I have a couple of questions for the Chief Building Official if I might. With regard to historic buildings would they be exempt from the Green standards or would they also have to comply?

Mr. Williams: They are not exempt from the Green standards however they are the first item listed under the exceptions, to allow exceptions. So some historic buildings can comply quite well with the standards and others have reasonable problems.

Commissioner Lippert: Historic buildings by nature are the ultimate sustainable piece of architecture.

Mr. Williams: Right, so they are not outright exempt from it. So if you are completely remodeling the interior or something like that there may be some things you need to do but there may be some that you don’t need to do as well through the exception.
Commissioner Lippert: Okay, and CDD that would automatically be part of the initial points that people would get as part of our checklist.

Mr. Williams: Right.

Chair Holman: I'm sorry, CDD?

Commissioner Lippert: Construction ....

Mr. Williams: C & D.

Chair Holman: C & D.

Commissioner Lippert: C & DD.

Mr. Williams: Yes, so you are putting the two D's in there.

Chair Holman: I was just trying to clarify, thank you.

Commissioner Lippert: It is just easier to say CDD.

Commissioner Fineberg: Can you translate that to English, please?

Commissioner Lippert: Construction and Demolition Diversion, okay?

Chair Holman: Is that enough?

Commissioner Fineberg: Yes.

Chair Holman: Okay.

Commissioner Lippert: Then for the Chief Building Official the State of California is actually going through the 45-day public comment period on the Green Building Code, which is supposed to go into effect in 2009 voluntarily, and then adopted or made mandatory in 2010, correct?

Mr. Perlin: Well, what they are talking about is that in the next code adoption cycle is when they would consider mandatory Green Building Code for California, mandatory statewide code. So the code that has been released for the 45-day comment now that the Building Standards Commission is considering along with the other state agencies is really a voluntary code intended to begin to set the stage for a statewide mandatory code that would be folded into the 2010 code cycle which if it went according to schedule would be effective in 2011.

Commissioner Lippert: Okay. So if the State of California adopted a Green Building Code in 2010 as part of the normal code cycle then your Building Inspectors and Building Plan Checkers would have to adopt and use those rules and regulations anyway, correct?
Mr. Perlin: Quite likely.

Commissioner Lippert: Okay.

Mr. Perlin: It depends on how the code would be written and what it would apply to but it is quite likely that it would apply to buildings for which we are the enforcement agency of Building Code. Then we would have to apply it much like the energy code for example.

Commissioner Lippert: Okay, so where would that fall on things like hospitals where they fall under the auspices of OSHPD?

Mr. Perlin: Well, OSHPD is actually one of the state agencies right now that have also released their 45-day notice along with the State Architect’s Office, and HCD, and the Building Standards. So the various state agencies that have responsibility for various kinds of buildings within California are also considering adoption of this Green Building Code but they are all considering it a little bit differently depending on what their purview is. So they have all posted their 45-day review notices and they have also identified in their matrix adoption tables that are part of the code which sections of this Green Building Ordinance they would be adopting and would be applicable to the buildings that are under their authority.

Commissioner Lippert: I guess where my line of questioning is going is that what I am trying to avoid is this collision of all these different agencies that say no, I have authority over Green Building rules. So in our case we have a Green Building Ordinance. While we are doing the review for Stanford Medical Center for instance but OSHPD actually has the building inspection portion of that, and the problem is what if our standards and the state standards are not the same and there is some duplication? Do we simply just say well, we waive our standards in lieu of the state because it is a higher standard?

Mr. Perlin: I think what it ultimately comes down to is which entity has the authority over that particular building type and occupancy. So while the City is reviewing the Stanford project when that project is ultimately approved through the City process here the hospital and the medical center and all of those facilities that are under OSHPD authority we won’t be seeing those plans, we won’t be inspecting the project. We really don’t have any authority over that project. I think we may have authority over it from a planning/zoning standpoint and I don’t know all the particulars of it and we do have authority over the shopping center portion of the project, the commercial portion of the project, and we will be the ones inspecting and plan reviewing and have the enforcement authority over that portion. The hospital, the medical center, and the School of Medicine we don’t have any authority over and we won’t be involved during the building process.

So looking forward if the state Green Building Code were in effect now it would be whatever portions of that OSHPD has adopted would be applicable to that project regardless of what the City has adopted.
Ms. Amy Bartell, Deputy City Attorney: I can speak to a little of this if you want. I can’t actually speak too much to the OSHPD piece of it but I do know there are. When you do a Development Agreement, which it sounds like the hospital and the shopping center expansion would be done under, with the City there are special rules for that and you can kind of craft your own solutions that might be independent of what the Building Code says. Setting that aside, if the state adopts a Green Building Code just like the current Building Standards Code we are preempted from doing anything different than that and we have to comply with it whether we adopt it or not. That said, the only way we can deviate from the existing state building code whether it is green, brown, or yellow is if we make those local findings and we say that we have special topographic, geographic, or climatic conditions that say that the local conditions here in Palo Alto require that we make these special amendments. Now that is one piece.

The other thing is that the Green Building Ordinance as the Staff has written it has a lot of components to the checklists and various hoops that you jump through as you do the green building that aren’t really about building code items at all. So those would be completely separate and we could do whatever we want in that area. I am thinking of like design and aesthetic component, which there are quite a few of. So hopefully that helps a little.

Chair Holman: Thank you. Commissioner Fineberg.

Commissioner Fineberg: Two questions about dewatering again. How can I say this? One of my questions about dewatering is what impact has or might dewatering have on subsidence? And what licensed professional or City employee would be qualified to determine whether there has been dewatering and if there are any limits of dewatering that we might be bumping up against? Is that something that our Public Works Staff has experience at or do we need to engage outside professionals either seismologists or soils engineers so that we know that we are not bumping up against where we cause harm?

Mr. Williams: Yes, a couple of things. One is that Public Works Staff has explored the subsidence issue with the Water District and USGS. They both have confirmed that they are not aware of any but negligible levels of subsidence from dewatering or any other groundwater issues. As far as the professionals go there are requirements for geotechnical reports on all of these projects. While our Public Works Staff I don’t think has on staff a geotechnical engineer they are civil engineers who deal with and review geotechnical reports and understand them all the time. So they review those and if they have questions they can pursue any concerns they have that come out of those but that is basically where they are going to glean information about what the specifics are of this basement and what the connection to anything that for instance might potentially cause destabilization along the property line or something like that. So all of that is part of the permit review that the Public Works Staff Engineers do.

Commissioner Fineberg: Would the permit review of a single property no matter whether it is one home or a larger complex consider the cumulative effects of all the dewatering on all of the properties? My concern is if there is some amount of dewatering, one house or whatever, but 100 houses or 1,000 houses or 2,000 houses is there an upper limit or one at a time it is just never going to be a problem?
Mr. Williams: The individual reports for the houses don’t consider that. That was considered as part of our study that we had done and it was also considered by the Water District in discussions with Public Works. They have strongly said that they do not believe that there is a cumulative impact on the groundwater regime particularly because again these are all very transient type of impacts. You have a basement go in here and then a couple of lots down maybe a year later a basement goes in but by that time the other one has been stabilized and the groundwater is back to normal. So it is not where – maybe if you were building 200 basements in a quarter square mile area all at one time there could be something happening. The way these are sequenced even if they are fairly close together does not cause that cumulative impact.

Commissioner Fineberg: Thank you. Is there any possibility, has there been consideration of capturing, I don’t know what you call it but the water that is being dewatered, can that water be reclaimed and used for offsite irrigation or street cleaning or any other practical reuse?

Mr. Williams: I don’t think they have gotten very far in that but Public Works is aware that that’s a concern. As I mentioned they are looking on larger sites at the potential for perhaps storing the water on the site rather than discharging it from the site but that is not practical on a lot of lots. So they have just indicated that they are looking at options there but I don’t think they have any particular plan at this point as far as what that might be. They are aware that that’s an issue and they are looking into it but right now it just continues to be discharged but again to the storm drain system as opposed to a neighbor’s yard or to the street.

Chair Holman: I want to jump in with just a couple of questions I do note that we are after seven o’clock. Since the items are merged together I don’t think we are running into a big problem here.

The Staff Report on page 3 in response to a question that I had asked last time says that Building Staff estimates that a 1,500 square foot basement with eight inch thick walls and 14 inch slab would entail the need for about 100 cubic yards or 200 tons of concrete. I have been told by numerous people as recently as today that eight-inch walls aren’t really what is typical in basement walls and 14-inch slabs are not necessarily typical either. I heard as much as two feet thick. I have also heard as small as ten inches to 16 inches, I have heard 18 inches, I have heard two feet. So maybe the Chief Building Official would care to respond to that.

Mr. Perlin: I am not sure who you talked to but the estimates that I provided to Curtis, which I think made it your way, are really for typical residential construction here in town. It is what we generally see. It may vary by a few inches, ten inches, 12 inches, but those figures represent typical basement construction for residential projects in town.

Chair Holman: Okay. I think this actually may be a question for the Build It Green person. I am going to go to Commissioner Keller who has another couple of questions too.

Commissioner Keller: Thank you. I have a question for madam City Attorney. This is in respect to your comments about special amendments to the Building Code. If the state were to adopt a green building code would that enable us to still have an amendment to it? I am not sure what the nature of the amendment in terms of using Green Point Rated or using LEED points,
would we be precluded from that? Would we be allowed to do that because it is beyond those
things that are specifically in the Building Code? How would we handle that?

Ms. Bartell: It is a little tough to answer that now. I haven’t reviewed the Green Building Code
thoroughly. Assuming it is going to be the same as the standard Building Code I could take a
guess but until I really review it I am not sure what the amendment process would be. The
amendment process for the Building Code we have now is you make these topographic,
geologic, or climactic findings. So an example that helped me understand it when I first looked
was a city that is in the Sierra Foothills might say that it needs to make an amendment to require
stronger roofs because there is so much snow that is always resting on the roofs that they need
this special amendment and so they amend the Building Code to take care of that. As far as how
the LEED checklist and Build It Green checklist might factor in I can’t really say at this point.

Commissioner Keller: So do we have any amendment for Palo Alto currently?

Ms. Bartell: Larry might be able to answer that. I am not aware of specific amendments related
to Green Building. I think we do have some amendments for other areas.

Mr. Perlin: Well, we do have amendments to the Building Code, the Electrical Code, the
Plumbing Code, and the Fire Code. So we do have local amendments. Now with the exception
of some of the amendments for the Plumbing Code, which can be construed as greening of the
Plumbing Code a little bit, the amendments that we have are not intended to promote green
building.

Commissioner Keller: Okay, thank you. So we do have amendments now and presumably we
could have amendments in the future. It is not clear whether or not a Green Point Rating or
LEED Certification would need to be an amendment or would be a separate issue and required to
go through an amendment process. Is that reasonable to say?

Ms. Bartell: It is reasonable to say. I think it is pretty safe to say right now that you would not
need an amendment to do something like a LEED or Build It Green program. The way they
setup those programs it is kind of a smorgasbord of options that you get to pick and so many of
them are not really Building Code related that I think you can still do those concurrently.

Commissioner Keller: Okay, that is very helpful. The second thing is there was a comment
about, I believe Curtis you said in terms of Attachment H to the Staff Report for item one, you
were referring to the study that was done. I couldn’t tell from the study what assumptions were
given to, I think it was in response to Commissioner Fineberg’s questions, what assumptions
were given to the people who did the study in terms of how many basements were actually being
constructed a year. Do we know what assumptions were given to them for their analysis?

Mr. Williams: I know we gave them what we had seen in the last couple of years in terms of
number of basements being constructed. At that time I don’t know that it was as much as it is
now so there may be more now than there were then. I know we went over with them some of
the building statistics for what we were seeing in terms of number of basements constructed
citywide. We didn’t focus in on one neighborhood or anything like that but just citywide what
that was.

Commissioner Keller: So because the number of basements back then, I am taking your answer
to mean the number of basements back then was smaller than there may be today and they may
be more concentrated, who knows, that it is not clear the extent to which this study applies in the
aggregate to the situation currently.

Mr. Williams: The study is not directed at the number that currently, and I am not absolutely
sure that it is less than or more than what was done back then. Assuming that it is it wasn’t done
specifically to that, however, I think the information in there as well as the information we have
received from the Water District is talking about it in a way that assesses cumulative impact and
I don’t see that it would be a significant change. There were quite a few back then and it may be
more now but it is not like there were none then and now there are 50 a year.

Commissioner Keller: I guess also part of the issue is that the dewatering is to the shallow
surface water and not the deep water and so I am not sure the extent to which that affects the
subsidence.

Mr. Williams: Right. Again, they and the Water District have both reported that they don’t
believe it does.

Commissioner Keller: My last question in this series is when a building is constructed with a
basement do we know the typical length of time in say months that dewatering is occurring
during construction?

Mr. Williams: I don’t know. Bob Morris in Engineering said that six months sounded like that
was either typical or on the outside.

Commissioner Keller: I think Larry has something to say.

Mr. Williams: Good.

Mr. Perlin: For a residential basement two to three months. They would start the dewatering
and then they would start the excavating, continue with the dewatering, the forming of the walls
and the slab, and eventually get the basement built, and they could stop the dewatering.

Commissioner Keller: The do the backfill and then they can stop the dewatering? Okay, thank
you.

Mr. Williams: Madam Chair I think we should probably start the Regular Meeting.

Chair Holman: Yes, pretty soon. I am going to jump in on that one because Mr. Perlin I have
witnessed myself basements that have been dewatered for months and months and months, much
longer than two to three months.

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Mr. Perlin: I am sure there are exceptions but generally two to three months are sufficient.

Chair Holman: I am not sure if we are in the same town or not, I don’t mean to be challenging, just my personal experience is I have seen those long hoses running to the storm drains for many months at a time.

Mr. Perlin: Well, what might be happening is the dewatering might be going on for a longer period of time but as to how long the dewatering is really necessary, the contractors like to dewater the site for as long as they possibly can, and often times will extend dewatering for longer than they really need to. But for the critical timeframe of construction of a basement probably a couple of months is all that is necessary and then they could turn the pumps off. They don’t really have to dewater beyond that.

Commissioner Lippert: By way of a clarification, it is two to three contractor months.

Chair Holman: That is an excellent clarification. That was very good, Commissioner Lippert. So you raise an interesting point. So if all that is necessary is two to three months why would we allow longer when we have already Public Works looking into seeing if we are over-challenging our storm drain system?

Mr. Perlin: I can’t speak for Public Works but I would imagine that as they start to tighten down on their dewatering policy we will probably see dewatering occur for a much shorter period of time. I think they will get more aggressive on this.

Chair Holman: Okay, thank you.

Mr. Williams: We will pass that along to Public Works too.

Chair Holman: Again, I don’t mean to challenge you I am just referencing my personal experience.

Commissioner Lippert had a couple of questions. Did you have a follow up Commissioner Fineberg?

Mr. Williams: Our attorney has advised that we really need to start the other one. We can get back to questions after our presentation on number two if you have additional that relate.

Chair Holman: We can close this item and go to item two. We will have I am sure questions that still refer back to this but since they are pretty much the same. It was a question I had asked previously about limiting this study session to an hour. So as long as we are okay with spilling over then okay. So Commissioner Lippert and Fineberg we will carry you over to item number two. So we will conclude item number one.

AT 7:25 PM
Chair Holman: We held the public hearing to item number two and didn’t have that during item number one so we will pick that up there. Also, we need to have Oral Communications as this point in time as start our regular seven o’clock meeting albeit at seven-twenty-five.

**ORAL COMMUNICATIONS.** Members of the public may speak to any item not on the agenda with a limitation of three (3) minutes per speaker. Those who desire to speak must complete a speaker request card available from the secretary of the Commission. The Planning and Transportation Commission reserves the right to limit the oral communications period to 15 minutes.

**AGENDA CHANGES, ADDITIONS AND DELETIONS.** The agenda may have additional items added to it up until 72 hours prior to meeting time.

Chair Holman: I have no cards from anyone who wishes to speak to an item that is not on the agenda. So I will close Oral Communications and go to item number two. Review and recommendation to City Council on an Ordinance Amending Title 18 of Zoning of the Palo Alto Municipal Code to add a new Chapter 18.44, Green Building Regulations; and second a Resolution to adopt Green Building Compliance Thresholds, rating systems, and Compliance Verification for Private Development Projects. Would Staff care to make a presentation?

**NEW BUSINESS**

**Public Hearings:**

2. Review and recommendation to City Council of 1) an Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building Regulations) and 2) a Resolution to Adopt Green Building Compliance Thresholds, Rating Systems, and Compliance Verification for Private Development Projects. Environmental Assessment: Categorically exempt from the provisions of CEQA per Section 15308 of the CEQA Guidelines.

Mr. Williams: Yes, in fact I am going to go to the podium so I can face you more directly. Some of this presentation you did see at the beginning of the Study Session on March 12 if you will bear with us some in audience may not have been at that so we thought it would be useful to run through a little bit of that again.

First of all, Green Building, and this is as it is defined in the proposed ordinance means a whole system approach to the design, construction, and operation of buildings that substantially mitigates environmental, economic, and social impacts of buildings. There is some more language there. We are looking at, and you will see in the checklists that we discussed that there are a number of different areas in terms of planning, site layout, energy, natural resource use, etc., etc. So it is a multi-disciplinary type of approach. As I mentioned this is really part of an overall Green Building Program. This is a zoning ordinance but we have a number of other activities that the Commission has been involved with or Staff has been involved with in recent years that relate as well to Green Building activity. Our Construction and Demolition Ordinance mentioned before to minimize the amount of materials that are necessarily hauled to landfills and instead are recycled, reused, salvaged, or not taken away at all and reused on the site. Storm
Water Pollution Prevention to minimize pollutant runoffs to creeks and other waterways. ARB review of Green Building that has been going on for some time and last year you will recall that an Ordinance Amendment was passed to strengthen ARB’s findings relative to sustainability and Green Building and to require checklists on a voluntary basis of all discretionary review applicants. In the last couple of years we have included in the zoning code context-based criteria which specify certain sustainability and Green Building aspects in terms of solar orientation, use of solar panels, trees, etc. in diagrammatic form in the Zoning Ordinance. Landscape requirements were strengthened including a 50 percent shade requirement over new parking lots, creek protection and setbacks that were added to the zoning code to again provide buffers along waterways and minimize discharges directly to the creeks. Lastly, from a larger perspective Planning and Land Use aspect, the incorporation of facilitating mixed use zoning and providing for a pedestrian and transit overlay district zoning. There are other activities that are not listed here as well and then others that are ongoing that relate to how buildings are constructed in Palo Alto and provide benefits to the environment.

The purposes of this ordinance before you tonight are to achieve what are stated goals of the organizations, in particular the US Green Building Council and the Build It Green organization of increased energy efficiency, water and resource conservation, minimizing waste, and providing durable buildings. Then finally something that has been little addressed historically is promoting the health and productivity of residents, workers, and visitors to the city both in terms of health benefits outside and walking and walkability and such as well as indoor air quality, which has become a primary concern.

The ordinance is organized into a number of chapters, Definitions, Applicability, the substance of the ordinance is in the Green Building Criteria, which are actually referenced in the two tables that are before you. Those would be adopted by resolution which allows the Council to as conditions change relatively expeditiously be able to reflect that in those tables rather than going back a through a Zoning Ordinance change. We have a provision for exemptions, outline of the basics of the review procedure, and how project compliance is verified, and then a section allowing for incentives to be provided as well.

Definitions. There are a number of definitions and just a few of them that are key to our discussion tonight. New Construction is basically new floor area whether that is additions or new buildings whereas Renovation is improvements generally to the interior of the structure that involve negligible new floor area.

The various rating systems and organizations, again we went over before, Build It Green and their Green Point Rated system and US Green Building Council and LEED, Leadership in Energy and Environmental Design, checklist and point system.

We have also defined some of the compliance verification terms that are used in the tables and the ordinance, again this Green Point Certification by a Green Point Rater who is trained by Build It Green to provide this third-party service. LEED Certification, which requires compliance review by the US Green Building Council trained professional, LEED Accredited Professionals. What we are now suggesting to call LEED Professional Verification that does not result in the Green Building Council giving you a certificate saying you are certified but it would
essentially require a LEED Accredited Professional to document that these features were part of
the project and that the points were met as specified in the checklist. In self-verification again on
those very minor projects where essentially a project architect or another Green Building official
could certify to us in a letter that the compliance with the checklist has been met.

The ordinance as proposed would apply to all applications that are filed after the effective date of
the ordinance. So right now we are expecting that effective date would probably be July 1, 2008
or thereabout assuming the Council would act on May 12, Second Reading, and then 30 days to
become effective.

We would exclude from that those applications if there were a preliminary ARB review that had
been submitted. For those of you who are not too familiar with it a preliminary review is
essentially a conceptual type of review that does not involve the level of detail that a typical
application would. So many times those projects change substantially between the preliminary
review and the formal application. So a preliminary review, having that application in, would
not exempt you from these requirements but any other application that is in would. It would
apply both to the planning entitlements stage and to building permit. So if something required a
building permit but didn’t need a planning entitlement such as a single-family home that doesn’t
have to go through the Individual Review process, the building permit stage would still catch it
in terms of requiring that it be reviewed under these criteria.

So the key elements of the Green Building Criteria, Table A relates to commercial and other
nonresidential development, Table B relates to residential development criteria. Again, we have
exemptions, review procedures and verification process in the ordinance. These Green Building
checklists have been widely accepted now by architects, agencies, environmental organizations,
and the building industry is becoming more and more familiar with using both the LEED
checklist and the Green Point Rated checklist. As I think we reported last time the Home
Builders Association of Northern California has announced its support for the use of the Green
Point Rated system for residential building in California. LEED checklist, US Green Building
Council develops those. They primarily have been used for commercial/multi-family although
they have developed or are developing others for homes, for neighborhoods, for hospitals, they
have a lot of work underway and so those will be coming down the road as well. There are four
different kinds of commercial checklists that may in instance or another be applicable in Palo
Alto. Each of them has point levels for compliance. Each of them has Certified Silver, Gold,
and Platinum levels of certification, and requires a variety of graduated point levels to get to
those various certification levels. There is a process for being certified through LEED, through
the US Green Building Council, it starts with registration and a checklist and consulting with the
Council staff and information they have available getting permits issued and then a string of
verification processes through the design and construction levels of the project. As has been
mentioned the commissioning of the building to ensure that the systems all work in a certain way
to justify the points comes after the construction is essentially complete and occupied. Only at
that point will a certification actually be granted by the US Green Building Council.

So Table A relative to commercial what Staff is proposing is to use the LEED checklist, it should
generally be the new construction checklist but there could be exceptions here for some of the
other kinds of checklists. I would be glad to discuss that if you would like to but that any new
construction over 5,000 square feet demonstrate compliance with the Silver level of Green
Building, and if it is less than 5,000 square feet we have developed a prorated system so that the
points come down depending on the size of the project, which would not necessarily result in
certification through the LEED process. For major renovations, which we have defined as being
more than half of the building being renovated, more than $500,000, and more than 5,000 square
feet of floor area being renovated, there would be a requirement to meet the certified level of the
new construction checklist which is 26 points rather than 33 points. Minor renovations and
additions that are less than some of those thresholds would just provide the checklist and
document what they are doing but we would not be into the same level of verification and trying
to achieve a certain number of points. Then finally new construction that is less than 500 square
feet and has renovation that is less than $100,000 would have no requirement at all and wouldn’t
have to submit any documentation.

The verification, we have talked about this a couple of times tonight, but the only category that
we have suggested absolutely be required to go through the US Green Building Council
certification for a Silver rating is if the construction is over 25,000 square feet. If it is less than
that then we have discussed this LEED Professional Verification where an Accredited LEED
Professional documents the compliance with the checklist but it does not actually go through the
post-construction commissioning process to demonstrate compliance there unless the applicant
chooses to, which they are certainly welcome to to gain the LEED Certificate. Major
renovations the same thing and then on those minor ones, again the smaller projects, would be
the self-verification.

We have kind of gone through what the LEED verification is, the professional verification, we
do have in the ordinance some expectations since a lot of this happens after construction that a
certain percentage of the points would be demonstrated to be in place at the time of final
inspection and how are you going to get the rest of the points demonstrated as well? There is not
really a way at final inspection to know that all of these things have been addressed. We talked
about self-verification.

On the residential side we would be proposing to use the Built It Green, Green Point Rated
checklists. They are available for multi-family and single family residential, and also for home
remodeling although there is no point system on the home remodeling checklist at this point.
They require minimum points in these different resource areas and a minimum of 50 points for
certification as far as the basic checklist requirement goes that is not necessarily what we would
propose. So for multi-family development we have essentially said new construction of multi-
family, which is more than three units, would require a minimum of 70 points rather than the 50
that the Green Point Rated would generally stipulate, and have the Green Point Rater verify that
at the end of the project. For renovation over $100,000 of multi-family we would just look at the
checklist and not specify a number of points and for renovation less than $100,000 there would
be no requirement for the Green points on that.

For single family what we have created is a system beginning at 70 points on the single-family
checklist and then increasing that depending on the size of the structure. So to try to help
address the fact that we know that larger structures use more materials, use more energy, etc.,
etc. and the fact that we don’t have the ability to specify energy limits because that is an Energy
Code issue, we can specify additional points being required. We have started at 2,550 square
feet basically at the 70 points and the reason why we use that number is because that is what the
allowable floor area is for a 6,000 square foot R-1 lot. So the basic allowable floor area would
be the 70 points. As you go up from that for each additional 70 square feet we would have one
additional point so that as you get larger and larger houses more points would be required under
the Built It Green, Green Point Rated system. Then under 2,550 new construction would be 70
points.

I have three examples of this. One is a 3,500 square foot home. Also we have included
basements here so although in our floor area calculations we don’t include basements, it is very
ger ame to this discussion so we have included basement areas in this as well. So for a 3,500
square foot new home there would be 70 points for the 2,550 square foot threshold and then the
additional 950 square feet would require 14 more points. So that home at 3,500 square feet
would require 84 points. Similarly, a 5,000 square foot home would require 105 points. A
10,000 square foot home, which isn’t allowed in any of our zoning districts except the Open
Space District it is the only one that doesn’t have a 6,000 square foot maximum, would require
176 points under that formula. However, we have chosen at least at this point to set a cap of 150.
You can do more than 150 and we would like you to but set 150 because it is going to get
marginally more difficult because you are going to start bumping up against the maximums
available at that point. I do believe that home that you saw on Alexis Drive did a checklist and
had 176 points in fact. It is more than 10,000 square feet. So that is the theory, to try to have
this sliding scale so that larger homes including the basements do more in terms of the Green
Building effort.

On the renovation side we have basically set a threshold relative to dollars evaluation. We have
used three, we have done a lot of discussion with Larry and his folks about the valuation of a
remodel that might constitute essentially a whole house remodel and essentially said at that point
you should be meeting the 70 points of the checklist just like a new home would. When it is less
than that we would only be requiring the checklist and if it were less than $75,000 there wouldn’t
be any requirement. So if you are just going to do an addition of a bathroom or something and
you can get away with doing under $75,000 then you don’t have to go through this checklist.

Verification on the residential side, most of these would require the third-party Green Point
Rated review. For the new construction and major remodels self-certification by the architect or
Green Building Professional would be allowed for those renovations and additions less than
$350,000.

From an enforcement standpoint as Larry mentioned we have been talking about a lot of these
issues recently. We have tried to outline in the ordinance what has to be done at the time of final
inspection, so it is meeting a percentage of the points, like 80 percent of the points and then
indicating how you are going to assure that that other 20 percent is met. We may, after we see
how this works for a year or two, look at things like performance bonds or stuff like that or
something where there is going to be a transition period we need to see how this works and
where we think the holes are.
We have also included as most other cities have that we have reviewed their ordinances what is called a good faith effort clause. It allows the Planning Director to provide some relief at the end of the project if there appears to be some good reason why like certain materials were not available or something happens that they can’t quite get those last couple of points, and still would be allowed to be deemed in compliance. Then we have also incorporated mostly for single family but for residential generally a two-year transition period where the project would have to demonstrate meeting 75 percent of the points in order to get final inspection and 90 percent of the points within a year after the final. So that doesn’t quite get you to 100 percent of the points but this is going to be brand new to residential homeowners and we don’t know quite how this is going to work. We thought that rather than moving the points down and being more lenient on the points it would be better to provide some flexibility, keep the points a little bit higher and have some flexibility in terms of determining compliance at the end.

The exemptions would be available through a process of application to the Director. If there were a project that was coming to ARB then ARB would have some input to that. If it were a Site and Design project it comes through all the Boards and Commissions and all of you would have some input on whether you thought those exemptions were appropriate or not. Again, for historic structures for some of these as Commissioner Fineberg mentioned relative to a floodplain issue or something like that if that was necessary for an exemption, materials and some other reasons that need to be shown that there is a reason for that. There is an appeal process to that if it is granted and somebody doesn’t think it should have been or it is denied and the applicant wants to appeal it all the way to Council.

As far as incentives go there is a provision in the ordinance that essentially says that incentives may be developed through resolution to help encourage this and we still are not to a point of having something to present. When we do we will come back through you but the primary incentive at this point is likely to come from Utilities in the form of rebates or financial incentives where these minimum levels are exceeded by the applicants. The ARB certainly will be looking at some kind of recognition and awards for projects that are exemplary in terms of the Green Building. Then we have talked about some planning incentives, we have mentioned to you before, but at this point we don’t have anything to propose and we need to consider whether any of those are viable and come back at some future date if they do seem to be possible.

Then I just wanted to let everyone know that we do have a number of resources available in terms of Green Building. We have Build It Green’s Ask an Expert program available through the Development Center with a phone number that you can call and get advice on Green Building. We have a kiosk at the Development Center with a lot of Green Building materials, pamphlets and such. We do have some Staff that has been trained not as raters but as Certified Build It Green Staff that can provide some additional input and have our C & D Coordinator and others who are familiar with the C & D efforts. We have established this website for putting this ordinance and additional materials on there for the public to review. Then Build It Green and US Green Building Council both have websites to go where you can get a lot more information from them.

So our next steps are after the meeting tonight we are going to ARB next Thursday, April 17, and presenting this information to them. It is not on there but we are also going to touch base with
HRB on the 16th and make them aware of the ordinance and see if they have any input relative to
historic building issues. Then we will go to the Council on May 12. Then we obviously have a
considerable amount of work to do at a Staff level to develop forms and handouts, and all those
guidance documents that we need to try to get in place in some way, shape, or form by the time
this takes effect on July 1. We will be having ongoing efforts to train additional Planning and
Building Staff in these areas. I do want to mention we do have in the audience Lee May, who is
a Contract Planner who works on our Individual Review program. She is LEED Accredited and
is looking at the Green Point Rater possibility as well, but she is LEED Accredited right now.
We have a couple of Engineers in Public Works who are LEED Accredited which is helpful in
design of our Public Safety Building and other public projects and helping us attain Green
Building Certification for those. I think that is the last slide and will be glad to answer any
additional questions.

Chair Holman: Carried over from our last item Commissioner Lippert would be next in line and
Commissioner Fineberg if you have clarifying questions. If we could keep it to clarifying
questions at this time and then go to the public.

Commissioner Lippert: Curtis, with regard to the exemption, when it comes to historic structures
generally the Historic Resources Board is the Board that determines historic rehabilitation plans
as well as whether the State Historic Building Code is applicable to historic building. Would
they also be the body that would say or make a judgment as to whether a building would be
exempt from the green standard compliance, or would that be made by the Chief Building
Official, or would that be made by the Chief Planning Official?

Mr. Williams: The decision is basically made by the Director, Steve Emslie, or his designee. So
in some cases I am sure it will be Chief Building Official and in some cases it may be more
planning related. We did not anticipate going to HRB but that certainly is an option. I would
think there might be circumstances where that would be a good idea. I don’t know that it is
always necessary but I think it would be certainly appropriate to add in here that for exemptions
requested on the basis of historic structure that that option is there. If it is something where we
are very comfortable that it is fine then I don’t see that it would necessarily be beneficial to hold
up a project to go to HRB. If it is something where there is some contention about whether or
not there truly is an impediment on the historic side then that probably would be a good time to
go. So I think our preference would be to have some latitude in there to do it but not necessarily
to require it every time.

Commissioner Lippert: Well, my understanding is that they are the “local historic authority”
having jurisdiction. So I think that discussion needs to happen and maybe they might be the
appropriate body.

Then with regard to the LEED Certification, LEED is a franchise or actually I think the only
game in town right now as far as commercial buildings are concerned. There are other rating
systems coming onboard. The majority of the expense is on the front-end with the LEED
Accredited individual consultant creating the list, certifying that the building does in fact comply
with LEED. Why not go all the way and require the commissioning if you are going to go
through all the steps leading up to it? It is almost like leaving money on the table so to speak.
Mr. Williams: This comes primarily from some of the architects that we are familiar with that have gone or started to go through that process and that is actually a very expensive part of the project, particularly the commissioning end of it. Sometimes they feel like their money can be better spent improving their program or whatever than going through and actually getting the certification from Green Building Council. It also is a very laborious and long process sometimes more than a year after the building is constructed. I don’t think Staff has any major objections to doing that and requiring going through for the certification on the projects but I take their comments seriously. So our thought was again coming out of the gate providing the flexibility not to have to get to that point and seeing how this goes. We expect that with these other Energy Code changes and statewide Green Building Code and LEED is looking at some changes in checklists, all of them are continual changes in checklists that we will be back in a year probably to look at what might be modified. That would give us some better experience understanding some of these things. Some of them we are not going to understand for two or three years because quite honestly if a project comes in July 2 here, a commercial project in particular, it is going to be months and months and months before it is approved, let alone constructed, let alone commissioned. You might easily be looking at three years down the line. So it is going to take some time to really put this together and we ought to try to collect some more information before we get as strict as to say if you are 5,000 square feet or more you have to go through the full blown process.

Commissioner Lippert: Thank you.

Chair Holman: Commissioner Fineberg and let’s try to stick with clarifying questions at this point and then we will go to the public and then we will come back for more questions.

Commissioner Fineberg: Okay. For the incentives I have seen a number that are financial, energy rebates, in other projects multi-family or commercial there might be reduced parking requirements. Those are incentives for performance. Does any of the scope of what we are looking at have any disincentives or fees? So for instance for dewatering is there any financial penalty or fee or a disincentive on any undesirable, un-green or non-green practices?

Mr. Williams: The checklists don’t really build that in. What we have done on the homes at least is increase the level of points that you need to get so that a basement that wouldn’t count in your floor area under zoning is going to count regardless if you are dewatering or not, even if it is not hitting groundwater. That was our thought, that this is the best way through this kind of approach that we can address those kinds of issues is by requiring a higher level of achievement for larger homes and homes with basements.

Commissioner Fineberg: Then in the discussion about the actual certification sort of leaving money on the table are there enough qualified architects and Green Building professionals to support the demands of what the residents will have once if and when this becomes part of our code?

Mr. Williams: That is a good question, a very good question that we have had quite a bit of discussion about too. We have become familiar with a couple local Green Point Raters who we
could potentially contract with and maybe have them devote time more to Palo Alto than to others that they may be working on just like we do with any other contract consulting type situation. They are being trained pretty rapidly knowing all this is coming down and the same thing on the LEED side. It is pretty rare that you don’t have some LEED Accredited Professional in most of the architectural firms these days. I would think within a few years it is going to be just a regular type of thing that the newer ones are mostly going to have that accreditation. For the demand I think on the commercial side because the numbers of projects are not so substantial, there are projects and there is a lot of complexity to them, but I don’t think that is going to be a difficulty. On the residential side is where we have been a little more concerned if we have 100 to 200 homes and major additions and that that need to have a Green Point Rater on and we going to have the time. That is as Larry was mentioning we are looking at is there a combination of maybe having a person in-house and then supplementing that with contract help, third-party contract help, or relay primarily on that and just have some training in-house. Those are the kinds of things we have to balance but we do need to find a way to be sure that we are covered because they could get overwhelmed with not just Palo Alto but Mountain View, and Los Altos, and everybody else that is going to be adopting these regulations and having the same kind of demands for verification.

Chair Holman: Commissioner Keller, clarifying question and then Commissioner Tuma.

Commissioner Keller: Let me just first state for the record that I have had conversations with people both from Build It Green and actually attended part of one of their trainings, and I have had conversations with people from the US Green Building Council.

With respect to remodels I am wondering why the point rating you are specifying looks to be from the LEED NC for New Construction Point Chart as opposed to the LEED for Existing Building Point Chart. I think there is a discrepancy there.

Mr. Williams: No there is not. The reason is that the New Construction checklist is for new construction and major remodels, which truly means major remodels. The lesser remodels we have indicated is a CI, which is Commercial Interior Checklist, and that deals with tenant improvements and that kind of things at perhaps a lesser level. The EB, Existing Building, tends to be an operations and maintenance type of a thing not so much an interior construction as much as are the operations and maintenance things that you are doing to be as green as possible.

Commissioner Keller: Thank you for that clarification. With respect to the remodel thresholds for residential construction I am wondering to the extent that there is a discrepancy between the amount that the homeowner actually pays and the amount that is declared on the permit for the purposes of the valuation of the amount of the remodel.

Mr. Williams: I will call on Mr. Perlin to respond to that.

Mr. Perlin: You mean they wouldn’t be honest with us when they present their valuation? I can’t imagine that. We look at valuations carefully and we do have tables that we keep handy at the counter and in the back of the office to do a reality check on the valuation information that is submitted. I think overall we do a pretty good job at arriving at a fair valuation. Valuation in
Palo Alto, a home in Palo Alto you could run into the $400, $500, $600, $800 a square foot depending on all the finishes and materials that are used to customize a home. The building permit, the work required of the building department doesn’t really increase because of those costs. So what we are really trying to get at more what is a fair valuation that will translate to the workload required of the Building Department. We know what those costs are and we are able to ensure that when applicants submit for a permit and provide a valuation there are minimums that we will accept. If they try to submit something less than that we won’t accept it.

Commissioner Keller: So what dollar amount per square footage would you use in terms of a remodel? Or let me put it this way, suppose I am doing an addition of say 500 square feet. What would be the minimum valuation of that increase that you would allow based on your formulas?

Mr. Perlin: I don’t know the exact number but I want to say it is around $170 to $175 a square foot.

Commissioner Keller: So therefore an addition of 500 square feet to a home, which I would consider to be a reasonably sizable addition, would be if I did the math right less than $100,000 for the purposes of valuation. In fact it would be just over $75,000.

Mr. Perlin: That is probably about right.

Commissioner Keller: So in other words if I did a 400 square foot addition to my home that wouldn’t even reach the $75,000 threshold. Is that correct?

Mr. Perlin: Probably not but it would be close. It would depend on the nature of the addition, is it a second story addition, is it a first story addition, what is actually being added on? Is it just a living room or a bedroom or is it a kitchen and a bath? It would be close. Four to five hundred square feet is where you would get close to the $75,000 valuation.

Commissioner Keller: Let’s suppose I take the typical tract home in South Palo Alto of 1,500 square feet and somehow or another 1,500 square feet could fit on top of it as a second story and I were to put a couple of bedrooms and say two bathrooms for 1,500 square feet, which I would consider to be a fairly major remodel. Most people I know would think so. So what I am wondering is could you give an estimate of 1,500 square feet what the dollar amount of that would be?

Mr. Perlin: For 1,500 square feet?

Commissioner Keller: Two bathrooms totaling 300 square feet.

Chair Holman: If I could interrupt you for a second, I am wanting to know the point of your exploration here.

Commissioner Keller: The point of my exploration is to understand whether the $75,000 and $350,000 thresholds for these checklists – well I am trying to relate them to some sort of reality. So I am trying to....
Chair Holman: Curtis.

Mr. Williams: Yes, and that is exactly what we did. These numbers are in here because we have done exactly the exercise you are going through. We generally felt like first of all 1,500 square foot second story is under the new construction of great than 1,250 square feet and has to meet the 70 points under the second line there. So it doesn’t have to be a new home. The second line of the single-family residential new construction of greater than 1,250 square feet is required to meet the 70 points.

We did basically back out and say that you could do almost a 2,000 square foot type of renovation and be right about that $350,000. What we were trying to do was essentially say if you gutted a home in Palo Alto and rebuilt it what is kind of the threshold. We actually started at $500,000 and went down to like $250,000 and back up to $350,000. So trying to find that line again recognizing that we have some of these minimums kind of that people may go down to although most cases they are not going to be down at $175 a square foot they are going to something more than that and report it that way.

It is an arbitrary number. It is what we think is a workable system to move forward with. You can look at it and say well it should be 400 square feet or it should be $50,000 and $250,000 instead. It is not a big deal to us which way that goes but that was our thought process.

Commissioner Keller: Thank you, and one last quick question in follow up to what Commissioner Lippert said. Would it be reasonable in terms of historic resources if there is an historic exemption requested that the decision is still to be made by the Director or his designee but that it is referred to the HRB for a validation that the historic property requires that exemption?

Mr. Williams: I think we would have to think about that. That is one approach to do it and HRB never makes the decision it is always a recommendation to the Director. I still have some concern again getting back partly to Larry’s thing about the process and lengthening the process. ARB meets every couple of weeks they may or may not be able to consider an exception. If it is a Category I or Category II and it is clearly historic and this exemption clearly was meant for this situation do we really need to go through that step and take perhaps another month to wait to make that decision.

Commissioner Keller: To what extent in terms of these thresholds would the project have to go to HRB anyway?

Mr. Williams: To the HRB? It doesn’t go to the HRB at all unless it is in one of those historic categories.

Commissioner Keller: Thank you.

Chair Holman: Commissioner Tuma, clarifying questions.
Commissioner Tuma: Yes, quick clarifying question on the slide on enforcement that you talked about. What happens in a situation where after final when someone is at 75 percent or a year later at 90 percent and they just simply don’t comply, they don’t make a good-faith effort? Is there any additional or what are the options for enforcement at that point? They have already been finaled and they are already occupying the property, what happens? I don’t see anything in the ordinance that addresses that.

Mr. Williams: At this point they would essentially be the enforcement mechanisms of the zoning code. The zoning code allows if you are not complying with the requirements, and this would have been a requirement of the zoning code, if they couldn’t voluntarily get compliance then initiate proceedings that would I assume potentially result in some kind of injunction or some requirement that the situation be remedied. Again, this is an area where initially we want to get some of this information too so I am not sure how hard and fast we would be with that initially. We would also probably ask if an exemption had been warranted and should that be a mechanism to go through instead of meeting the 90 percent.

Commissioner Tuma: I’m sorry I didn’t ask that question very well. Is there a process that automatically triggers these follow up inspections? I come build my house and I only get to 75 percent. A year later is there going to be proactive enforcement or are we counting on people to do it? I think the reality is we don’t do a lot of proactive enforcement so it seems like there is an out here at 75 percent from a practical perspective.

Mr. Williams: In this case for most of what we are talking about in residential we do have the third-party Green Point Raters and they check at the various stages to be sure that things are moving along with the checklist. Then they have a point after construction where they are coming back and checking on things. So there would be a method in terms of having somebody inspecting later and coming back and reporting on that.

Now if the report was that they have not gotten there yet then I think that is where we are in more of a bind and we have to undertake some kind of enforcement. It wouldn’t be the Building Inspector it would be the Green Point Rater.

Chair Holman: Okay, Commission, we have three members of the public who wish to speak to us and then after that if we could hold our questions, we have been here since six o’clock so it will take us to about 8:30, and after that we will take about a ten minute break and then come back. Three cards. The first speaker is David Kaneda the second speaker is Steve Broadbent. You will have five minutes.

Mr. David Kaneda, Cupertino: I am an architect and an engineer, a LEED Accredited Professional, and I have a keen interest in Green Building. I happen to be on the Cupertino Planning Commission also so I understand a lot of what you are going through and I salute you because you are a couple of steps ahead of Cupertino.

I spoke with Dan Geiger who is the Executive Director of the USGBC, Northern California Chapter earlier today. I am not talking officially for USGBC because that takes a Board Meeting
and they have to vote on things and stuff like that. They asked me to kind of express some viewpoints.

The first thing is USGBC generally is neutral on kind of whether cities should adopt a LEED standard but if you decide that you want to do something like that they strongly prefer a third-party method for verification. If don’t do that I think the preferred method is doing something more like a self-certification route. So this idea of having a LEED AP certify your projects is problematic for two reasons. The first reason is that I am a LEED AP and if you asked me to certify a building I would be honest with you I can’t do it because the training you give you to become a LEED AP and the test you have to take gives you enough general understanding of what the points are and how to apply for the points and do the paperwork but you don’t really have in depth understanding. So for example I am doing a project for the City of San Jose that is going for LEED Certification. One of the points we are going for is the site lighting point, the light pollution point. As we got into it you really need to dig in in a really, really serious way to really understand exactly what the requirements are to meet that point. So we actually submitted it and it got bounced back. Then we had to start doing digging and research. There is no way a normal LEED AP would have that level of knowledge to be able to say you don’t meet that point or you do meet that point. So I think to ask a LEED AP person to review that and then say they get a LEED equivalency or a LEED Silver equivalency is a little bit dangerous because it starts really muddying the waters of is this a LEED Silver building or not. It is one thing to say it is sort of self-certified and everybody understands that that’s not the same thing but if you say a LEED AP reviewed this and signed off on it I would as the public assume that that must be pretty much a LEED Silver building and it is not.

I know training is a big issue and Cupertino is talking about this training stuff. It is a huge issue. So the USGBC just wanted to let you know that they are very interested in helping to educate the stakeholders both Staff and also the public. Their chief concern is to help develop a process that if you adopt it will actually work.

There were two little issues that came up during your discussions one was about the floodplain. The floodplain is just one of the points in sustainable sites. So if you build in a floodplain you will not be able to get that one point. The second thing is you used the word “commissioning” and I think the way you are using that word commissioning is to talk about doing the paperwork to submit it or that is the impression I got from your discussions. Commissioning is also there is a required commissioning and then there is a commissioning that is a point. If you don’t do that commissioning that is making sure all the systems are actually working as designed, you just don’t get that point. So that is just another point that you wouldn’t get but that is different than doing the paperwork which I think a lot of people were talking about how much does that cost. One hundred thousand dollars seems hugely expensive to do the paperwork for a single building, by the way. The numbers I have typically heard quoted are in the $15,000 to $20,000 range. I guess I am done. Thank you. If you have any questions I have a couple of other things.

Chair Holman: Are you going to be available to stay around for a little while?

Mr. Kaneda: I certainly could stay around.
Chair Holman: Okay, thank you. Our next speaker is Steve Broadbent to be followed by Jody Davidson. That is our final speaker unless someone else wants to turn a card in.

Mr. Steve Broadbent, Palo Alto: Thank you. I am resident of Old Palo Alto. I want to address two points tonight. One is around the cost benefit of the Green Building program and the other one is some comments relative to the Staff Report on dewatering relative to basement construction.

The first thing and all the good work that has been done in the Green Building Ordinance and the development of that sort of stuff I see very little reference if any to the cost implications of doing this. What is the incremental cost to a resident? I am a resident and if I want to build a new home that is where my interests are but there is very little reference if any to what is the cost to me to do a Green Building Certification whether it be the permit fees, the Green Point reviews, the materials and labor costs associated with the incremental cost that I would associate on that. So I would hope that in addition to looking at the benefits for the community on a Green Building Ordinance that one would also address and be proactive in showing what the costs are.

Let me turn to the question of the building. I go to the Staff Report page 3, item one, and I will start with the conclusions here. I fully agree with what Staff says around Staff believes that the use of basements deserves continued scrutiny, it certainly does. Towards the end you talk about approaches would require extensive discussion as to when and whether to continue to allow basements, a discussion that would require substantial time and community input. In recent ordinance discussion this issue was broached but not pursued. So I do appreciate the questioning that the Planning Commission has been asking on this and I hope that it continues and there is more engaged discussion in the community about basements, and especially the dewatering aspects.

So I want to finish with talking about some of the dewatering implications. If we go to point one in the Staff Report it says that localized drawdown in the water table due to dewatering does not impact trees as their roots do not typically extend to that depth. However in the EIP report that Staff also references there is a statement here that says in the adjacent areas to the site being dewatered the water table would be lowered temporarily during the dewatering process. This effect could extend from several feet to several tens of feet beyond the excavation depending upon the method used, the level of the water table at the time of dewatering, the permeability of the material adjacent to the excavation, and the length of time the excavation needed to be kept open and dry. The possibility exists that adjacent landscaping could experience deterioration from reduced groundwater availability. So I do and in fact in the area that I live I have seen basement construction with dewatering I see some noticeable dryness of the vegetation and the trees around the area.

Looking further in the report it says a typical three-month excavation period, well in Old Palo Alto the basements I have seen around there and to Chairman Holman’s point they have gone a lot longer than three months. I have seen them go longer than six months and I think almost as much to a year. In some cases pumping as much as 100,000 gallons a day of water from our aquifer whether it be a shallow aquifer or the groundwater that is an awful lot of water going down the storm drain. It is being drawn out from not just that property where the development is
being concerned but all the adjacent properties, water underneath my house is being drawn out as a result of the dewatering efforts.

They talk in here about the recharging of the aquifer. It is ironic that they talk about the importation of potable water to recharge the aquifer. This reference here is more towards the Santa Clara Valley District as a whole where there has been over the years of groundwater pumping there has been subsidence in the whole of the Santa Clara Valley and there is an effort underway to recharge that aquifer by importing potable water and recharging the aquifer. So it is implied in here that if I pump my basement out of water, we will have to get potable water to recharge it.

There is also reference in here about the impact of basements. The water goes around the basements and I think there are some implications on flooding. Also subsidence, I have concerns around the subsidence issues because I believe subsidence references that the USGS has talked about are in a macro scale right at the lower deep water aquifers but I am worried about the local effects under my local property when an adjacent property next to me is taking out water from underneath my property I do believe there is subsidence. I have seen cracks in my house, I have seen cracks in the streets, and I have seen cracks in the fencing. I do believe there is additional discussion that is needed on this point whether it be in the Green Building context or in the broader context of City ordinances through Public Works or through Planning. Thank you.

Chair Holman: Thank you. Our final speaker is Jody Davidson.

Ms. Jody Davidson, Palo Alto: Good evening Commissioners. I attended a water environment meeting last night at Stanford. It was one of many meetings on water that I have been attending. It was a final meeting. I met with Professor Jeff Coseff who is a Civil and an Environmental Engineer and Director of the Woods Institute for the environment at Stanford. He is also a Professor in Environmental Fluid Mechanics. Jeff was integral behind the criteria for building Y2E2. Although Y2E2 is not LEED Certified they used the Stanford Performance Criteria for high performance buildings, which is supposed to be LEED Platinum equivalent. Jeff was not happy with the LEED point system since they failed to address certain issues like waste and material disposal.

Other things I learned. He is a neighbor and he is a Palo Alto resident. He told me that any building that requires dewatering should not be allowed to be any part of a Green Building program. Then he added the word ‘absolutely.’ The Dean of Earth Sciences, Pam Madson, discussed how the water from underground aquifers belongs to everyone in a community and the withdrawal and effects of it affect the entire community. She did an entire lecture of this last night. I tried to get a hold of her today for further comments but she was in meetings all day.

Jeff mentioned that basement excavation also causes pressure sink. Now this pressure sink was brought up by another resident last time we were here. He was doing something like this I guess from using a drawdown well and that it would bring things in so I thought that was kind of neat because this guy is a Fluid Mechanic. He also confirmed that the banking up of the water around a home with a basement does occur. It really does.
A geologist friend of mine from the Santa Clara Valley Water Department was with me during most of this discussion. His job at Santa Clara Valley Water District is to respond to the numerous complaints from citizens in the county over basements, flooding to adjacent homes for basements, or basements flooding, or people who are concerned about water being lost. They contact the Santa Clara Valley Water District office so he is the guy who has to send all the reports. So he was standing with me there talking to Jeff about this.

Of course you all know how I feel about dewatering we don’t need to go there. I am not happy with it at all and it was just quite by accident that I met this Professor who is adamantly against it. It should not be in a green code at all. I tried to get him to come here tonight so that I was nearly on my knees begging him to please come. Anyway, I would urge the Commissioners to please disallow dewatering in any new green building program. If a well test comes up positive for water simply deny a basement permit. It is as easy as that then we won’t have to go through all of this are we going to pull a plume, are we mitigating problems, it will free up Public Works’ time, and we won’t have to worry about residents’ adjacent homes being flooded. It will just be out of the thing. Then again we are going to start asking residents to cutback water. It really will affect people when they see lots of water being discharged because they will want to go water their lawns with it. Thank you. I was able to cover everything.

Chair Holman: Thank you very much. So we will take a ten-minute break and come back and perhaps have questions for the recent speakers. Thank you.

If I could get your attention again please we would like to reconvene the meeting. Thank you all that was very responsive. Commissioners, do you have questions for the previous speakers?

Commissioner Lippert:

Commissioner Lippert: Mr. Kaneda, I know you don’t speak for the Green Building Council but if you clarify a couple of things for me. Could you just go through and describe what the difference might be between say LEED and I guess it is Green Globe?

Mr. Kaneda: I can’t answer that I am not that familiar with the Green Globe rating system.

Commissioner Lippert: Wasn’t there an attempt by US Green Building Council to get green standards adopted by ASHRAE?

Mr. Kaneda: Actually it is interesting that you say that. I just today heard about, and this came down from USGBC National, there is a standard that I am not familiar with that is ASHRAE 189 and it is joint ASHRAE, USGBC, IESNA, which is Illuminating Engineering Society of North America, so it is a lighting standard that is being developed. While I was sitting here waiting to speak I was kind of cruising the net trying to get information. It appears to be a green building standard. What little I have heard about it is it is something similar to a LEED standard that is being developed that I think the intent is to hand it out as like a model code for cities to adopt but that is my very uninformed knowledge of it.

Commissioner Lippert: Okay, thank you very much.
Chair Holman: Commissioner Keller and then Commissioner Tuma.

Commissioner Keller: I am happy to go after Commissioner Tuma.

Chair Holman: Commissioner Tuma.

Commissioner Tuma: This is a question for both Staff as well as our Chief Building Official. There is reference in the incentives section to a focus group that talked about recognition being an incentive. Also you previously made a comment that you had heard something to the effect that time was more important than money with respect to the impacts and what people were saying. What is the nature of the people that makeup this focus group and who are making those comments? Are these average residents, architects, and developers? I would like to get a little light on that to understand.

Mr. Williams: This was specific to LEED and it was commercial architects and developers specifically a half dozen or so. These are frankly people who are all over Green Building already pretty much and they thought that you really shouldn’t need incentive to build green that they should be doing it basically. Recognition is nice but don’t need other kinds of incentives.

Mr. Perlin: My comment about time is a common theme that I have heard since I have been with the City about the building process in general that anything that can be done to constrain and collapse the schedule is just the highest priority for builders.

Commissioner Tuma: Maybe I misunderstood what you said and I am just trying to understand. What I thought I heard you say was that these same people also said that the costs of implementing the program weren’t a big issue. Is that more developers and large-scale projects or is that individual homeowners?

Mr. Perlin: No, I guess what I was trying to say was that from my perspective, and this maybe somewhat intuitive but it has been borne out in just some casual conversations that I have had one on with say a builder, a contractor, a designer, that the incremental cost of green building is not a tremendous concern that the clients generally are more than willing to absorb that cost. They recognize the returns that they will achieve from building a project green. But the time, if the length of time that it takes to pull the permit or perform construction and eventually gain occupancy of the building is stretched out that is when it becomes a very, very expensive because of the carrying costs and the financing costs of these projects. Time is everything.

Commissioner Tuma: Okay, great, that clarifies.

Mr. Williams: If I could add it was the same group that expressed the concern about the cost and time of the LEED Certification. It was really a combination response to the other gentleman’s comments. It was really a combination of the commissioning, meaning the actual checking of the equipment and balancing it out and making adjustments and all that kind of thing, along with the substantial amount of paperwork that went with that that caused a lot of extra dollars and it was a considerable amount of time that they felt was not worth the dollars and time that it took.
Chair Holman: Commissioner Keller.

Commissioner Keller: Thank you. I understand from what Larry said and what other people have said that having a schedule incentive makes sense. I am wondering what can be done in terms of helping those things that are of a certain threshold, let’s suppose that somebody is in a LEED Gold building when we are acquiring a LEED Silver or somebody who say takes 20 or 30 or some arbitrary number like that of extra points in a residential project, what kinds of incentives can we do? Can we for example put them ahead of the line in terms of checks? Can we give them priority in terms of building inspections? Are there things along those lines that we can do in terms of issuing a permit faster?

Mr. Perlin: That has been discussed. Some cities have attempted that. I have yet to find a city where that process really works well. It is very difficult to create what some cities refer to as a fast lane or fast-track lane to have the permit expedited. There is just a certain amount of time that it is going to take to perform a plan check and there is not much that we can really do on our end to shorten that short of allowing the elective process that we have. If an applicant can find an outside plan check firm that is qualified that can turnaround the plans quicker we are very supportive of that. There is maybe a little more we can do on inspection side. We can consider possibly for projects that are maybe achieving a certain threshold to allow for those inspections to be maybe a priority. But in general, builders in Palo Alto really don’t have to wait very long to schedule an inspection. Generally our turnaround is usually 24 or 48 hours maximum. My concern is really with the Green Point Rated inspections that have to occur or any inspections as a result of the LEED process.

You were touching upon it earlier when you asked how many raters are around capable of doing this. There are not a whole lot of them right now. If a lot of cities start adopting these ordinances requiring Green Point Rated projects there ain’t going to be enough raters to go around. We have done some estimating based on building permit statistics from the last couple of years and it appears as though we are going to need about the equivalent of a full-time person to implement the ordinance the way it is currently drafted with the projects that have gone through the system over the past 24 months. So if we have to rely entirely on outside people to perform those inspections and they are not available then the projects are going to have to stop until those inspections can occur. So what I am focusing on is what can we do to keep the length of time from increasing and then we will also look at maybe ways where we have more control over it and can perhaps shorten it. There really isn’t a lot that I have identified that we can do no our end when you are in the building plan check or construction phase.

Mr. Williams: On the Planning side we have looked at that as well and it really hasn’t seemed feasible because firstly you don’t want to put somebody on an agenda before they are ready to go. We generally move as quickly as we can once they have all their information. You don’t want to see a project when the information is not all there for you, ARB doesn’t want to see a project without all the information either. The other thing is on the end of the project you have expedited the project and what if they don’t make it to Gold at that point? Then they have received some of the benefits of that and now they are going to have to argue their way out at the end somehow. That is also the problem with some of the incentives we talked about like floor area or height or something like that. You have already granted them something and then at the
end they don’t meet the green rating that justified granting it. So that is one reason why the Utilities and fee type things can be something that they don’t get until they have shown they have achieved the standard.

Commissioner Keller: My second question has to do with a clarification. Based on what I understood you to say in response to my earlier questions I want to be clear that additions are considered new construction and that when you have existing footprint of a building that you change that is considered a remodel. Is that correct?

Mr. Williams: Yes, I read those definitions at the beginning. Essentially, new construction is new square footage and renovation is negligible change in the square footage.

Commissioner Keller: I am going to just suggest that those definitions actually be part of the ordinance just to be clear.

Mr. Williams: They are.

Commissioner Keller: Okay. Maybe I didn’t see them. I didn’t them as part of the Definitions maybe I missed it.

Chair Holman: Okay, we can move it around here and we will come back. I am going to jump in with a couple of questions. Mr. Perlin, in one of the reports it says that in the calendar year 2007 the home demolitions were 85 and in 2008 the number is 78. We are only in April is 78 the number of home demolitions for 2008 to date?

Mr. Perlin: Well, I don’t know.

Mr. Williams: I believe that was the fiscal year.

Chair Holman: It says calendar year in the Staff Report.

Mr. Williams: Oh, it does?

Mr. Perlin: I don’t know.

Chair Holman: It was in the item one Staff Report on page 2 at the top.

Mr. Perlin: We can easily confirm those. We will go back and check to see how many demo permits were issued. Off-hand I am trying to think if there was some unusual situation where there was a bunch and I can’t think of any really. It does seem like a lot.

Chair Holman: My understanding is that home demolitions have about the same, about 80 to 100 a year for the last about ten years. Is that your understanding?

Mr. Perlin: That sounds about right.
Mr. Williams: I have the backup here. That was 2006 and 2007 not 2008. It is calendar year but it for those years.

Chair Holman: That makes more sense. I have asked a question about the number of demolitions and new construction project for single-family homes that involve basements. My understanding and again observation has been that pretty much, not everything but pretty much, everything that isn’t in the floodplain gets a new basement. Yet the number that came back was 30 percent of new single-family homes have basements. Do you feel like that 30 percent is accurate?

Mr. Perlin: Thirty percent of homes?

Chair Holman: Thirty percent of new single-family homes.

Mr. Perlin: I don’t have a real good feel for that. I would have to check with the staff tomorrow to find out. I don’t have a good feel for that. I think most of the basements I sense kind of get built around the older historic areas in town.

Ms. Amy French, Current Planning Manager: I am not sure I have much to add but that didn’t really break it down between are these basements the ones that we are seeing under new two story homes or are they existing one story homes lifting up and putting a basement underneath. We could get further statistics I suppose.

Chair Holman: Really, I was just looking for how many basements.

Mr. Williams: I did ask Lee May, who I mentioned does a lot our Individual Review, and her estimate is she thought it was closer to 50 percent but is not all of them.

Chair Holman: Okay. Having to do with the single family residential criteria when it comes to an adaptive reuse or restoration or remodeling project or an historic building was there any testing done to see if a restoration project could actually meet this number of 70 points? Take for instance a house in Professorville you could easily spend more than $350,000 on a restoration but because so much of the existing material is being reused and the criteria used for single family building allows nothing for reusing material from an existing building can you actually get to 70 points? Has anybody tested that?

Mr. Williams: I don’t think we have on that kind of a renovation, most of the experience that we have shows that certainly for new construction those numbers, 50 points or 70 points, are pretty low. We have had projects coming in with a checklist but not renovations. If it is in Professorville and they can’t or if it were in any other kind of historic situation they would have an exception process if they feel that they can’t make that. We have gone through the list and it seems like there are a lot of things that people readily do as part of their remodeling and rebuilding and new construction that would get a lot of these points but not specifically that kind of a structure being remodeled if it exceeds the $350,000 threshold.
Chair Holman: Last question and then I will pass it on. Is Staff concerned about sending a mixed message say for instance if you are restoring an older home and it is not one of the larger Professorville homes but it is an existing home and you want to restore or remodel it. You can’t get to that threshold of 70 points again because the criteria we are using doesn’t allow any points for reuse of an existing building. Is there any concern that we are sending a negative message to the public that you can’t reach this number of points so you don’t have a green project? Is there any concern that we are sending an incorrect message?

Mr. Williams: I don’t think there is a concern about that. I think that we would prefer to recognize that they complied by the nature of reusing and that we may very well in those cases feel like it is, again if you are exceeding the $350,000 figure then the 70 points is a target but we have ways in there to say you still comply even though you can’t make those numbers. That would be one of the things that we would specifically recognize.

Chair Holman: How would it be recognized since the point system we are using doesn’t acknowledge existing buildings?

Mr. Williams: Because there are a lot of other things that just automatically get you 50 points, and you are going to be awful close, and you tell us that it is in an historic district like that, and we grant an exemption and say you have complied.

Chair Holman: I am not sure we are quite communicating.

Mr. Williams: Unless you want to designate it just because it is this kind of building as a green building that is fine but if we are going to use these systems then you are right we don’t have a way through the point system to say they are certified.

Mr. Perlin: We certainly don’t want to convey the wrong message. So if we find out that maybe we are, then I think we want to revisit what we potentially are doing. For a project like that what we may find at the beginning is that the appropriate checklist is not the point-based checklist from Build It Green but the remodeling checklist that they are coming out with, which is really not point-based. It is more criteria-based where you go through and identify the various measures on the checklist but is not really point driven. It is a checklist that is soon to be released and I am not sure if we have referenced that in the table. Have we referenced the remodel checklist in the table? I know we have talked about it but I don’t know if it is in there.

Mr. Williams: We have provisions for the Director though to determine that other checklists may be used.

Mr. Perlin: Yes, we knew it was coming so there might be a better tool to use for those kinds of projects.

Ms. French: Also we know the LEED 3.0 the US Green Building Council is working with the National Trust and that agency for historic preservation to raise the level of points with the idea that no more points would be awarded for reuse of existing homes or existing buildings but that
checklist is not going to be available until 2009 or something. Again, that is why we have flexibility to modify these tables.

Chair Holman: Okay, I will pass it on. Commissioner Lippert is next. He accidentally hit the switch so Commissioner Fineberg then.

Commissioner Fineberg: I am hearing discussion about the question I asked earlier about whether there are enough professionals. Would Staff have any recommendations for formalizing some kind of pressure release if the measures are in place, and it is in code, and a builder whether it be a homeowner or a large complex can’t comply because there aren’t professionals around to certify if it adds whatever one defines as an undue amount of time? Should there be something formal in the code that gives the Director of Planning or someone the ability to trigger a pressure release and let folks off the hook without them having any kind of financial or time burden if it is because of a lack of trained professionals? Then how would one decide when that is happening rather than someone not attempting to meet the spirit of what the requirements are?

Mr. Williams: It does get more discretion in the process but I certainly think that as part of the verification and enforcement section of this ordinance we could probably say something to the effect that the Director has authority to allow self-certification in the event that third-party inspectors are not available to fulfill that function and require the architect or another Green Building official or professional associated with the project to provide the documentation to support that rather than relying on the Green Point Rater. We can certainly give ourselves that and then it would again require some discretion on the part of the Director to say have you gone far enough, and checking on the materials that are submitted by the self-certification process to allow that.

Commissioner Fineberg: Maybe that was something that might time-limit it not necessarily a set date unless that would be better, but something that would show the intent during the ramp up period so that it is not something that would carry for the next 20 years.

Then my second question if I could on costs, are there any estimates on what the costs would be one, to City Staff; two, to individual homeowners or multi-family or commercial buildings; and then three, have the costs of not implementing this translated from physical effects into dollars been calculated?

Mr. Perlin: Well if we start with residential what we have heard and what we feel fairly confident in is that the additional cost to do the full Green Point Rating Certification for a single family residence is probably in the $1,500 to $2,500 range depending on the complexity of the project. That would include the hours of time for a Green Point Rater to stay with the project from the permitting phase through the construction phase and documenting and turning the documentation over to the City or to the Build It Green organization.

We don’t have a good estimate at this point but we are going to be working on that between now and the time that the ordinance eventually makes it to the City Council to give them an indication of what the cost to the City is going to be. This program is not going to come free there are costs associated with this.
On the commercial side, what I have heard or what I have read are more percentages, the additional percentage increment of cost to take a building to LEED Certified or LEED Silver or LEED Gold. I have heard on the low-end four to five percent additional cost and on the high end I have heard upwards of maybe ten to 15 percent. On the Staff side again I just don't know.

Mr. Williams: In fact I looked at a couple of studies in the last couple of days, at least on the LEED website, and I have not seen them specifically documenting the percentage but essentially the point they make is that the additional cost is recouped on a lifecycle basis of savings on energy and water and other factors. So they have done this. Another one of the studies was showing that they looked at like 60 office buildings and some of them were LEED Certified and some of them were Silver and some of them were Gold and some of them were not LEED at all and you couldn’t tell the difference in the cost of building on an average per square foot cost. There were a lot of the buildings that were not involved in LEED at all that cost more than the ones that did go through it. There is similar information and in fact I will try to get to our one speaker some of the cost studies that were done on through Build It Green and associated organizations on the residential. There is an incremental cost of providing the green components of the building. As Larry was talking about the cost of actually getting it inspected and certified, and then there is the cost benefit of the savings over time and that those tend in most cases to at least balance out if not be more beneficial. As Larry said, we are looking at the staffing costs. We do anticipate that that is ultimately going to translate into additional cost for the applicant because we are most likely going to pass that through in terms of our fees and charges. So it most likely is not cost directly to the City but it is an additional cost to the applicant but I don’t think it is going to be on the order of these other costs.

Mr. Perlin: Just one other point, I was reading an article today and there were some statistics in there that I am going to eventually use in a presentation to the City Council in a few weeks looking at commercial buildings that were LEED Certified. It indicated on average the additional lease rate or rent that could be charged to tenants in a LEED Certified building in addition to the decrease vacancy rates in these buildings, so the buildings are more occupied, they command a higher lease or rental cost, and then there were also some statistics about just improved worker productivity and attendance and these sorts of intangibles. So when you really start looking at all of the benefits I think where the data is going to lead is that you more than makeup that initial upfront cost over the life of the building.

Chair Holman: Commissioner Tuma to be followed by Vice-Chair Garber.

Commissioner Tuma: This is a question for Staff. Do you have some sense if these were implemented, did you go back in time in order to make any predictions as to going forward what the workload would be? In other words, how many in the previous 12 months or in any period of time that you look at, how many building permits would be impacted by this? If so, also a breakdown of those in commercial and multi-family residential versus residential?

Mr. Perlin: The short answer is yes we did. That is how we estimated here the amount of man-hours that we think it is going to take or full-time equivalent positions that it would take to implement the residential component of the ordinance. We did pull the statistics for the
commercial buildings but we haven’t really focused on that. Our focus has really been more on
the residential side since that is going to go mandatory – that is the bulk of the permit activity
that we are engaged in. So we did look back two years. We looked back for permits that were
issued in 2006 and 2007. I just went across the street and looked on my desk, I had it with me.

Chair Holman: Sir, if you would come to the microphone.

Mr. Tom Wagner, Local Green Building Consultant: I have been working with Larry on this
issue. As I remember we looked back at the historical building permit data for two years and
then I took that data and assumed that the next two years would be representative of that and then
developed a workload based on that. As I remember I think the first six months required about
one-fourth full-time equivalent and then the next six months it went up to 50 percent and within
a year and a half or at the end of the second year it was one full-time equivalent. I think that was
the schedule. I would have to look at that.

Commissioner Tuma: The question I am trying to get at is, and maybe it is one that you don’t
have the numbers readily available for, is how many applications are we talking about? How
many people are going to be impacted by this?

Mr. Perlin: On the residential side there were….I just had it. It was a couple of hundred permit
applications.

Mr. Wagner: That is my recollection.

Mr. Perlin: On the commercial side I want to say something like maybe 20 to 30 or so is what I
remember.

Commissioner Tuma: Okay, I was just trying to get a rough – if that is roughly accurate that will
be good, thanks.

Chair Holman: Thank you. Vice-Chair Garber to be followed by Commissioner Keller.

Vice-Chair Garber: One topic two questions. If I am understanding the proposal correctly the
idea is to establish this ordinance, go through a testing phase or a discovery phase of two to three
years or something like that, at which point to refine it to bring it back to the Commission and to
the Council for some sort of refinement. If I am understanding correctly this discovery period,
again the proposal here is that rather than requiring certification in the case of LEED or Green
Point calls it certification too, right? So rather than requiring certification during this testing
period what you are really doing is you are looking to, and again correct me here, is to establish
that the project has actually been designed with these criteria and that was the basis of your
thinking that you had to create a parallel process which would essentially be an evaluation of the
building documents to see if they met either the LEED criteria or the Green Point criteria. Is that
what I am understanding?

Mr. Williams: The only alternation to that I would make is I think on the LEED that is correct
that we are not going all the way to the certification area for most projects. On the Build It
Green, Green Point Rated what we have essentially said is this sort of 75 percent at building final
inspection and then 90 percent within a year after that but we are specifying a Green Point Rater,
third-party, so we are going all the way with that. We are not saying that that is somebody else
or self-certification or any of that and intentionally 90 percent of 70 points is 63, which is still
well above the 50. So the Green Point rating will give them something that says they are
certified. So we still on the residential side generally would expect we would see them certified
hopefully in most cases I think they will be able to get to 70 because the ones we have seen so
far don’t seem to have a problem doing that, although they haven’t been verified and they have
just come through the planning process. I think the place where we are not going as far as
possible on the residential is saying 100 percent or all the points.

Vice-Chair Garber: Okay, so just to state what I said before, during this discovery period when
it initiates for residential we will be requiring certification but at an assumed lower point level,
which we are going to test. During this period for the commercial project, which are LEED that
is really an establishment of or the focus there will be on whether the documents themselves
have been produced with this green criteria. Then the test there is really to establish if we can
move forward with requiring certification after that period. Got it, thank you.

Chair Holman: Commissioner Keller.

Commissioner Keller: Thank you. Earlier I believe it was mentioned that 50 percent of new
homes have basements. Is that right?

Mr. Williams: The Building Division provided us with information that said 30 percent. Our
Individual Review Planner has estimated roughly 50 percent so somewhere in that range it looks
like is the correct number.

Commissioner Keller: Do we have any data on what percentage of homes that are not in the
floodplain have basements? Obviously homes in the floodplain are not allowed to have
basements.

Mr. Williams: No, we don’t at this point.

Vice-Chair Garber: I was just going to ask, the Individual Review Planner, just so I understand
is that person involved with just the Individual Review process and those projects so it is 50
percent of just those?

Ms. French: Yes, 50 percent of two-story homes is more likely and that would explain the 30
percent of all homes, which includes the one-story homes in town.

Vice-Chair Garber: Just so I understand, another way to understand that is that 50 percent of the
two story homes that have been reviewed might have that 50 percent but that would include any
house that is built with a basement and only a single story. Thank you.

Commissioner Keller: Do we have an idea of how many homes in a typical year are built in the
floodplain versus how many homes outside the floodplain are being built?
Mr. Perlin: We could get that but off the top of my head I wouldn’t know.

Commissioner Keller: In some sense the data that would be interesting from my perspective is how many homes that could have a basement do have a basement. If half the homes have basements and half the homes are in the floodplain then all the homes that could have basements have them and the other ones don’t have basements presumably because they can’t. So understanding that mix would be helpful in further analysis.

In terms of the number of trained professionals I understand from talking to people at Build It Green that they are in the rapid phase of training professionals and they have at least one and often two or more trainings a month at which they train somewhere on the order of 100 or more Green Point Raters and training. They have a training which is the Green Professional training, I am not sure of the exact name of that, and then you can take that for a few days and then you can take the next few days to become a Rater. So I would presume that based on that that within the next year they will train somewhere on the order of 1,000 or more Green Point Raters. The question is how many of them will be available for Palo Alto, is an open question. Certainly considering that we would have an ordinance in Palo Alto that is Green Point Rating and not very many cities would have ordinances yet for Green Point Rating that I would expect that Raters would gravitate towards Palo Alto to do that.

The question is with respect to the ordinance I notice that there are a bunch of whereas kind of things at the beginning and findings. I am wondering whether the whereas’ and/or findings should make reference to two things in particular. One is the state AB32 law and the second is whether the whereas’ and/or findings should make reference to the potential that the greenhouse gases will cause sea level rise which puts homes in Palo Alto at risk. Those seem reasonable to me and I am wondering whether Staff thinks that they should be.

Ms. Bartell: You certainly could mention both of those things in the findings. I know that they did discuss greenhouse gases specifically but without mentioning AB32 specifically. If Staff and the Commission feel that they want to talk about AB32 that would be fine.

Commissioner Keller: With respect to potential for sea level rise putting homes in Palo Alto at risk is that also worthwhile or reasonable to include?

Ms. Bartell: I assume there is data to support that. That maps have come out and shown, yes I think I have seen some of those myself. So I think that wouldn’t be a problem either.

Commissioner Keller: Thank you.

Chair Holman: I have a question for Mr. Kaneda. Are you familiar with how the Green Point system was determined? In other words, how the specific things were determined to have one, two, three points accredited?

Mr. Kaneda: For LEED or for Built It Green?
Chair Holman: For Build It Green.

Mr. Kaneda: I am not.

Chair Holman: Do you know was it systematic?

Mr. Kaneda: I am not that familiar with the Build It Green checklist.

Chair Holman: What about with LEED?

Mr. Kaneda: LEED I have some knowledge on how they developed it. I am not an expert on this by any means but I have some knowledge.

Chair Holman: Anything you could just briefly state about that?

Mr. Kaneda: It developed over time and the attempt was made as a green buildings became something that people were interested in building there is a lot of what they call green-washing going on, which is people making claims about what was green. So the US Green Building Council put a coalition together of people trying to represent not just architects and engineers but also developers and manufacturers and a broad group to come up with a rating system. They came up with the five categories. Then what they have done is there is a guy named Paladino who took this rating system and they developed that point system and then they also are doing kind of a statistical analysis on the points and how often people get them. So with the idea for example if you look at the sustainable sites lighting point the number of people that get that point is practically zero in the LEED and C2.0 So if they found out that point was too difficult to achieve they kind of relax those points. If they found out a point was really easy to get they actually have tightened them down.

Chair Holman: Do you know anything about or very much about how they determine to begin with whether something was one point or two points?

Mr. Kaneda: No that I don’t know.

Chair Holman: Okay, thank you very much.

Mr. Donald Larkin, Assistant City Attorney: Chair Holman, I just wanted to remind the Commission under your procedural rules that prior to nine o’clock in the evening the Commission is supposed to make a determination whether it will hear items that come up after ten o’clock in the evening. It looks like this item is going to go past ten o’clock so that decision is past due.

Chair Holman: Thank you for the reminder on that. Commissioners, we still have more questions coming I can see by lights. Do you think we can wrap this up in half an hour or even an hour? It doesn’t mean we have to reach conclusion.
Mr. Larkin: No, there are a number of members of the public here as well as Staff that is here only for item three. So it is to let them know if it is worth their time to stay. The other reminder is the Commission’s rules state that you will make every effort to complete the meeting by eleven o’clock.

Chair Holman: Commissioners, I would hope we could finish both these items this evening but I would like to get a reading from the Commission. If we can take another half an hour or 45 minutes maybe on this do you think we can wrap this item up in that amount of time? Do we have many more questions? I have two more lights for questions and I have a couple of more questions. So maybe after that we could get to a motion and then we will have some discussion of the motion? Commissioner Tuma.

Commissioner Tuma: As a body do we have to agree that we are going to hear an item after ten o’clock?

Mr. Larkin: It doesn’t require a formal motion it is just a poll of the Commission.

Chair Holman: Just to get a feeling of how much more work there is to be done on this item. I am seeing that Commissioners look like we can finish this item in the next half hour or 45 minutes. So if the members of the public can hang in there with us we can get to this item tonight. Commissioner Sandas.

Commissioner Sandas: My question is about item three. Should we start item three say in the next 30 minutes and can’t wrap it up by eleven o’clock is there the option to continue it to April 23 or May 14?

Chair Holman: Let me offer a different thought which is equally complex. If we could finish our questions on this item, table it, take item three, and then come back to this item would that be agreeable to Commissioners?

Commissioner Lippert: Yes, that is what I was going to recommend.

Chair Holman: Okay. Curtis, you are not looking happy on that.

Mr. Williams: That never works from my standpoint. You will take time on that and you will be very weary coming back to this item and have to sort of regroup as to where you are. It just seems to me that it is much more efficient to try to push for the next half hour and get a motion out on the table and work from there but it is your call.

Chair Holman: Again, just to be clear, we don’t have to finish this item by ten we are just stating to the public that we are going to get to their item this evening.

Mr. Williams: Right. It is your call.

Chair Holman: Commissioners, do you have a strong preference? Somebody state.
Commissioner Tuma: I do. I would like to see us push through and make every effort we can to get this one done. I think going back and forth is difficult, you lose continuity, and it becomes inefficient. So I would like to see us push this one through. I think if we can get a motion on the table maybe within the next five or ten minutes or so that we can get there.

Chair Holman: I don’t see anybody from the public waving their hands violently saying they have to leave. We have a stampeding public here. We will get to you just as soon as possible.

Commissioner Lippert: If we don’t have this item wrapped up by ten o’clock I would say that we would have to table it and then come back to it.

Chair Holman: Okay, that is what we will do then. We will make every effort to complete this item by ten if not, then we will table it and come back to it. Commissioner Fineberg do you have something you need to say?

Commissioner Fineberg: If we don’t have item two finished by ten and we have to come back to it do our rules say we have to come back to it tonight or could we continue it to another night and then be more lucid and thoughtful?

Mr. Larkin: You can continue this item. One of the items that I am going to inform you about at the end of this meeting is a recent court decision that requires notice of this body’s recommendation on zoning ordinances prior to agendizing for City Council. So if it doesn’t get completed tonight and it doesn’t look like there is any chance to bring it back in time. So what it means is this won’t go to Council probably until after budget season, probably not until September if we don’t keep it on schedule.

Chair Holman: Okay. So I don’t anticipate any more questions from members of the public so I will close the public hearing. I’m sorry Commissioner Keller does have. I have two other lights, Commissioner Tuma, questions? Okay. Commissioner Keller, questions still.

Commissioner Keller: Yes actually I would like to ask my questions of Mr. Kaneda. Could you please rejoin the podium, thank you?

So I am wondering if you could tell us about the cost and time and benefit of the LEED Certification. I think we have been talking about that but I don’t think we have gotten enough clear information about that so if you could tell us that would be helpful.

Mr. Kaneda: I will do the best I can. There is a Davis Langdon study out that perhaps you could look up online. The numbers that I have seen are for LEED Certified, which is the lowest level, the average number is something less than one percent additional cost and for LEED Platinum, which is the highest level and my company does a lot of this work, we have done two LEED Platinum buildings and at that level the average number is something in the range of six and one-half percent additional cost for the cost of the project.

Again, while you were speaking I was looking up the fees because somebody asked about what the fees are and the best I can tell the fees start at $1,750 if the firm that is registering is a
member and the project is less than 50,000 square feet. It looks like it tops out at $22,500 if the
firm that is registering is a nonmember and the project is over 500,000 square feet. So I hope
that helps.

Commissioner Keller: Yes. The next question I am going to ask is could you compare those
figures with what the cost is for architect fees for particular construction? Is that one percent, six
percent, ten percent, or 15 percent?

Mr. Kaneda: I think the best I can tell is 15 to 20 percent something like that for total, not just
architects but engineers and civil engineers. I think it is something in that range but you may
have better knowledge on this than I have.

Commissioner Keller: So what you are suggesting is that the incremental cost of LEED
Certification is significantly less than the amount that is being paid for architects and engineers
to design the building that is helpful.

Mr. Kaneda: Yes, clearly.

Commissioner Keller: Okay. The next thing is there has been a question about commissioning
the building. Could you tell us a little bit about the commissioning process and the benefits of
doing commissioning the “LEED way” if you will and what happens if you just do the checklist
and don’t go through the commissioning process?

Mr. Kaneda: Okay. Surprisingly when a new building gets built, and my knowledge is primarily
on commercial buildings not residential, but surprisingly when a building gets built and handed
over one would think that it is designed to be highly energy efficient and it would in fact be
highly energy efficient but the sad fact of the matter is that in the normal case a lot of the systems
are not working correctly and sometimes they are actually not functioning well at all. So what
research has found out is that buildings do not perform as designed unless they are
commissioned. I don’t exact numbers to give you but I do know that the energy efficiency of a
building when you move in is up here and then it takes quite a bit of time of tweaking to actually
get the system working right. If you don’t have that commissioning process that just doesn’t
happen and the building operates in a pretty inefficient way. I just moved into a brand new
building that we will eventually go for LEED Certification on and I think it will be Silver or
Gold and it is amazing how many things were not working when we moved into the building and
we are still fiddling around with trying to get them to work. So I think that is where the
commissioning process really pays off.

Commissioner Keller: Could you quantify the cost of commissioning and compare that to the
savings?

Chair Holman: Commissioner Keller.

Mr. Kaneda: I don’t know the cost of commissioning. I do know, I have seen some statistics
from the Pacific Energy Center on something called retro-commissioning where the other thing
that happens is over time buildings gradually lose some of their efficiency and the paybacks on
some of these activities are measured in months rather than years as far as kind of the energy
savings versus the cost of the commissioning.

Commissioner Keller: I will pass that and I think Vice-Chair Garber has some follow up.

Chair Holman: I think we are trying to wrap up the questioning. Does anybody have a burning
question? Vice-Chair Garber.

Vice-Chair Garber: I was just going to pass on my follow up. I think there is a bunch of topics
that this particular speaker has brought up but I think that there are a host of open-ended
questions that would require a lot more time to close. I was going to not say anything more and
see if we could get a motion on the table.

Chair Holman: So let’s close the public hearing then and see if there is a motion to be made.
Commissioner Sandas.

MOTION

Commissioner Sandas: Thank you. I move that the Planning and Transportation Commission
upon concluding our discussion of the proposed ordinance and resolution adopting tables setting
forth Green Building Compliance Thresholds, rating systems, and compliance verification for
private development projects, forward a recommendation to the City Council for their adoption,
which is tentatively scheduled for the May 12 City Council Meeting.

SECOND

Commissioner Tuma: Second.

Chair Holman: Commissioner Tuma, was that you who seconded? Commissioner Sandas would
you care to speak to your motion?

Commissioner Sandas: Briefly. Let’s go for it.

Chair Holman: Commissioner Tuma, would you care to speak to your second?

Commissioner Tuma: I would. I think in looking at an ordinance like this and particularly in the
context of the bigger picture and what we are trying to resolve I think it is important to keep a
couple of things in mind. I think if we take a step back what we are really trying to accomplish
here is to reduce impacts on the environment. I think generally Palo Altoans want to do that. I
think a lot of people in the industry want to see these things happen. My only concern is that if
we burden the process with expenses and with time delays more than are necessary the intentions
will not be fulfilled. So I am glad that there has been a lot of discussion tonight and there has
obviously been a lot of discussion on the part of Staff and the Building Department as to how we
can make sure these things are minimized. I think Curtis’ point earlier about distinguishing
between the costs of doing the work and the cost of the process of proving it if you will need to
be borne in mind. I think Palo Altoans generally speaking, particularly where the costs of doing
the work are things that do get paid back and that what the studies show us, the extra costs of the
process need to very, very carefully prescribed and monitored. A couple of thousand dollars on
the front end plus if we are going to have the average homeowner bear a similar amount of costs
from what the City's costs are plus the additional design fees, the checklist preparation, the
monitoring of the construction process, the final sign off, these things will get expensive. So I
think it is really important to set expectations as to what these costs are going to be, make sure
everybody understands what they are going to be, and if there is more input or research that can
be done on that before it goes to City Council I think that would be valuable. I think the public is
going to need to know with on the order of ten to 20 times as many residential applications that
are being made than commercial applications we really need to understand the average
homeowner, a person who is building. While the commercial applications are important it is
harder for an individual to add ten to 15 percent to a project I believe. So I just want to make
sure that we are talking to the residents, we are talking to the architects who deal with the
residents, we are talking to the builders who deal with the residents and not just on the
commercial side. Yes, architects and people working on these larger projects think there is a
good incentive strictly based on recognition or awards or those types of things. That stuff I don't
think is going to resonate with homeowners. I really don't think so. There may be a person or
two but not the average homeowner. If this thing is going to cost me $20,000 or $30,000 more
on a $400,000 renovation that is what they are going to be concerned about. So I know you guys
are doing a lot. I am glad to see it but really driving out those details I think are going to be
important because if we don't and it gets too burdensome we will not achieve the ultimate goal,
which is to have these things done. People will do things like break a $350,000 renovation down
into a series of different renovations and they will find ways to skirt the issues. They won't do it.
So let's be smart about it and I think we can get Palo Altos willing to do it.

Chair Holman: Curtis.

Mr. Williams: I was just going to try to hopefully expedite. I heard four or five things during
discussion, which I think Staff generally indicated we were comfortable with clarifying in the
ordinance. So if I can just read through those and if you all think that is what you heard and
would like to incorporate. One was that for the exemption on historic that we involved HRD in
the review of that. Second is that we emphasize that the Planning Director has the flexibility to
use the appropriate checklist for a specific project and the reuse of an historic building was used
as an example. We have some language in there I think it is more oriented towards LEED
though than towards residential so we can put that language in there too. So as Larry said, we
might use a remodeling checklist even though it is $350,000 rather than the new construction
checklist. Third that when we are discussing the ramp up period, the couple of years that we
have this provision that if there are not adequate third-party inspectors available that the Planning
Director may have discretion to use a self-certification process along those lines. The fourth is
the couple of "whereas" or findings relative to AB32 and to sea level rise and homes at risk that
Commissioner Keller outlined.

Chair Holman: Maker, would you care to accept those as amendments?

Commissioner Sandas: Yes.
Chair Holman: Can Staff propose amendments? I guess you can just by reference.

Mr. Williams: I am just mentioning what I heard you all say and seem to agree to.

Chair Holman: Okay. Commissioner Tuma would you accept those?

Commissioner Tuma: Yes.

Chair Holman: Can I ask one clarification on the second one that you mentioned regarding I don’t know if it is just historic you intended or adaptive reuse or just reuse or remodeling that at the Director’s discretion a different checklist could be used. How would anybody know that? Where would that be indicated?

Mr. Williams: It would be on both in the ordinance and on the table.

Chair Holman: Okay, great.

Mr. Williams: It would be an additional – it actually is, there is a footnote like that on the commercial table but not on the residential.

Chair Holman: Great, thank you. Commissioner Lippert, comments.

Commissioner Lippert: I am going to support the motion. I think that this is a work in progress and it is really a very good first start. Within the next couple of years we are going to see the Green Building Code come online with the next code revision, hopefully. With that there will be a City of Palo Alto amendments to that Green Building Code.

There are a couple of things that I have some concerns about but as I said this is a first really good start in getting our hands around the whole issue of green building issues and sustainability and slowly but surely reducing the carbon footprint of this city. One of the concerns that I have is that LEED is a proprietary process. By that what I mean is that it requires that LEED Accredited individuals prepare the documents if it is going to be certified. By doing so in some ways it is a franchise or a monopoly on a process. Fortunately right now it is really the only game in town but I believe that there will be other processes that will come about that will be as green and acceptable for this. That will happen probably coincidentally when the Green Building Code comes about. Just to let you know, the Green Building Council is working very closely with ASHRAE to set some green building standards and those are the ones that the State of California is looking to adopt and incorporate into the code. Then at that point green building standards will be integral to the building code and they will be enforceable and they will be a lot more ministerial rather than how should we say under the discretionary approval process.

I do believe we do have some opportunities here and I am just again thinking out loud and mentioning that Larry when you are talking to outside plan check consultants and you are beginning to enlarge that list you might want to in that process enlist them in terms of their abilities to do green building or LEED Certification review, that process. My thought here is rather than put the burden on your staff that when somebody submits a process we could actually
accelerate the process by having the whole building review sent outside. You are always behind
the eight-ball as they say when it comes to plan review, and just simply by taking the ones that
require a higher degree of review for LEED Certification those go to an outside plan checker that
is familiar with that. That is just thinking out loud in terms of that.

Then I guess those are really my most pressing comments. There was just one other thing and
that is for Planning Staff is that we do have a lot of buildings that do come forward that ask for
LEED Gold, Silver, or Platinum and those are generally PC projects. They are really supposed
to demonstrate public benefit and 80 percent of a building’s lifecycle costs are really in the
operation of that building. Those buildings should be meeting that conditioning requirement. It
is really just for the Silver, Gold, and Platinum if they are going to belly up to the bar they should
be willing to pay for that and have that happen. Maybe a reasonable timeframe might be within
a three-year period of time they have to have that conditioning complete.

Chair Holman: Commissioner Keller, comments.

Commissioner Keller: I have some comments and some proposed amendments. The first
proposed amendment is that we have a report back after a year of effectiveness of the ordinance
to see how well this worked.

Commissioner Sandas: Accepted.

Chair Holman: Commissioner Tuma?

Commissioner Tuma: Yes.

Commissioner Keller: The second proposed amendment and this is possibly more controversial
and we haven’t really discussed this other than my questions. I would like to see for multi-
family residential properties in excess of 30 units, which is pretty sizable, that the LEED for new
development checklist, no requirement on how many points they get but simply the checklist be
filled out so that we can get some data on how many points these are for future analysis. There
is such a checklist I understand.

Chair Holman: Commissioner Garber, clarification.

Vice-Chair Garber: There is LEED for New Developments. There is also LEED for Homes,
which talks about essentially manufactured or housing developments of single-family units,
which just went live in the last couple of months. So maybe the way that you want to describe
your amendment or your suggestion here is that as new criteria is developed by LEED and/or
other agencies that they be included or evaluated for their appropriateness for inclusion, perhaps
something of that sort?

Commissioner Keller: Well, for multi-family residential we don’t have any reference to LEED.
So I am simply suggesting and I will be happy with LEED for Homes being acceptable as an
alternative but I am just suggesting that they fill out the checklist for LEED for Homes or new
development for existing buildings for multi-family residential developments of 30 units or
greater.

Chair Holman: Maker?

Commissioner Sandas: Yes, accepted.

Chair Holman: Seconder?

Commissioner Tuma: I want to ask Staff for their input on this before accepting it.

Mr. Williams: LEED for Neighborhoods is a pilot program right now under LEED. Next year,
2009, at some point they expect to release it as a product to be used. I don’t have any problem if
we see projects like that asking them to fill out the checklist which sounds like it is all the same,
I am just not sure it needs to be in the ordinance. It seems like something that we can just do and
have them do that. We just don’t have many projects that are in that category and it just kind of
clutters up the ordinance a little more.

Chair Holman: Commissioner Sandas, do you have a question about this?

Commissioner Sandas: I do. Curtis, this is a question for you. What if it is just in the graph or
the table, Table A or Table B?

Mr. Williams: That is where I was thinking it probably could be and that is not a big deal to put
another footnote that essentially says that. Under Checklist Required we can have a footnote
there for multi-family that essentially says if more than 30 units. I would prefer not to have a
separate line that calls that out since it is not really in effect but maybe have a footnote that if it is
more than 30 units that they submit LEED ND checklist.

Commissioner Fineberg: Can I add a data point to that? My understanding is Council on
Monday night past talked about putting the LEED ND on their agenda within 90 days
consideration of it. So they have it scheduled coming down the pike too.

Mr. Williams: My understanding is it is not on their agenda per se that it is an item of the
Commission and the Council getting together to talk about the Comprehensive Plan and LEED
ND was one concept that I think Council Member Schmidt knows is a pilot program now and we
have talked with him about being sure that we keep track of that and start looking at how that
might affect projects. So I think this might be a good interim step to ask people on this.

Chair Holman: So Commissioner Sandas accepted that as an amendment. Commissioner Tuma
you need to weigh in.

Commissioner Tuma: That is fine.

Commissioner Keller: Two other things which are just comments. One is I did find where it
said new construction and it is under Residential New Construction and Commercial New
Construction it would just be helpful to have an item there that says New Construction see Residential New Construction or Commercial New Construction so that people who are challenged alphabetically as I am in that way could find it more easily.

The final thing is I would recommend that the Staff get data from Build It Green regarding the costs both in terms of the rating process and in terms of the incremental costs of satisfying a certain number of points as well as the number of raters that are available within say ten miles of the Palo Alto area, that we request that data and that that date be given to the Council as part of the Staff Report for this item. Thank you.

Chair Holman: It is about two minutes to ten. We have three Commissioners who have not commented at all and I have a few comments about the ordinance itself. So if I might suggest and I know this isn’t your heart’s desire but if I might suggest the public has been very, very patient in waiting and we are not going to finish this in five minutes. Commissioners Fineberg, Garber, and Holman none of us have spoken. I don’t think it will take us that long but I do feel bad making the public wait. So if the Commission is so minded we will table this item for a little while that it would take us to manage item number three.

Commissioner Keller: Second.

Chair Holman: Okay, so we will table this item for the moment. I don’t think we need a vote on that, Mr. Attorney? Okay.

So we will go to item number three, and we do have a number of speakers. Well we need to have the Staff Report first. Item number three is review and recommendation to the City Council on a Conditional Use Permit and Record of Land Use Action to allow beer and wine service and late night business activities until 2:00 AM for a new restaurant “Ramen Club.” Would Staff care to make their presentation and we will go immediately to the public.

3. 3924 El Camino Real*: [08PLN-00017]: Review of and recommendation to the City Council on a Conditional Use Permit and Record of Land Use Action to allow beer and wine service and late night business activities until 2:00 AM for a new restaurant “Ramen Club”. Environmental Assessment: Exempt from the provisions of CEQA. Zone District: CN.

Ms. Jennifer Cutler, Associate Planner: Good evening Commissioners. This project involves a Conditional Use Permit for a new restaurant called The Ramen Club at 3924 El Camino Real.

The restaurant will be a small noodle house as described in the project description letter and menu attached to the item’s Staff Report. The building previously used for Quizno’s requires only minor interior decorative changes and a new hood in the kitchen. No other physical changes are proposed.

The Conditional Use Permit is required for two distinct items. The first item is beer and wine service. Currently the proposed conditions limit this to end at 9:30 PM and the applicant has agreed to this condition. The second element that requires a Conditional Use Permit is the request for late night hours within 50 feet of residential properties. There is a proposed
condition, which restricts the parking access to the alley behind the property that is between the
property and the residential after 10:00 PM. The applicant has agreed to that as well.

The application was submitted January 18, 2008. No comments were received during the 21-day
public comment period and so a tentative approval letter was mailed on February 26, 2008.
Numerous comments were received between March 5 and March 11 during the 14-day request
for hearing period. This included two specific requests for public hearing, which brings us here
today.

Staff held a meeting with some of the interested neighbors on March 10 to better understand their
issues and concerns. These focused on the noise and other nuisances in the alley at night that are
currently going on and concerns that this would be increased by this use. At the end of the
meeting all but one of the neighbors attending seemed willing to forego the public hearing if the
approval was conditioned on the 9:30 PM end time for beer and wine, and blocking off of the
parking lot to prevent traffic at the same time. Both of these conditions are currently proposed in
this evening’s Staff Report. Based on this feedback Staff recommends that the Commission
recommend approval with the proposed conditions.

The remaining neighbor was concerned about the larger issues and all of the neighbors were but
specifically concerned that we come to this public meeting to discuss some of these larger issues.
They center around the use of the private alley called Cypress Lane and the use of the Happy
Donuts property which is adjacent to 3924 El Camino Real. These issues are beyond the scope
of the Conditional Use Permit but Staff feels that this is a valuable opportunity to discuss them.

As a result of this neighbor meeting Staff held a meeting with representatives from Fire, Police,
Transportation, Public Works, and the Attorney’s Office to discuss these larger issues. Further
discussion was also held with Code Enforcement, Utilities and the Real Property Division of the
Administrative Services. As a result of these discussions the Utility Department has agreed to go
out and look a broken water meter to assess what must be done. This was one of the major noise
issues with cars driving through the alley. Staff has also scheduled a meeting with the owner and
managers of Happy Donuts. That meeting was held on April 1 with staff from Planning,
Transportation, and Code Enforcement. The Happy Donuts managers’ experience is that college
students who use the donut shop late at night are very quiet and want to study.

It seems that it is high school students that are noisy and hang out in the rear of the parking lot
causing the problems. For this reason the manager was more than happy to try and find some
solutions to these problems. The owner has agreed to install additional lighting in the rear of the
property as well as signage to discourage loitering or label the area as a quiet neighborhood or
something similar since this would help their business as well. Staff has also suggested that we
might request an increase of police presence in the area on a few Friday or Saturday nights to try
and discourage the students from congregating in the location. In addition the owner has agreed
to look into installing a three or four foot wall along part of the rear property line to delineate the
edge of the property though not restricting access to the alley. It is hoped that the combination of
the lighting, signage, and increase in police presence as well as the wall should reduce the
nuisance caused by the loud noise near to the residential neighbors.
Staff has put responses to the written questions from Commissioners at places and the applicant was here earlier to make a presentation. I believe he had to go pick up his kids but his sister is here to speak on his behalf. If you have questions I am here.

Chair Holman: Any clarifying questions for Staff?

Mr. Larkin: If I could make a real quick comment. There is a lot of information about Happy Donuts is provided by way of background. The Commission understands this Conditional Use Permit if for the noodle restaurant it is not for Happy Donuts. So it is important to know what is going on because you can consider whether or not the addition of the noodle house would exacerbate and create conditions to prevent the noodle house from exacerbating any existing condition but probably can't work by any change to the existing condition. However, those things are going on.

Chair Holman: There are lights from Keller and Fineberg. Are these literally clarifying questions? Commissioner Keller.

Commissioner Keller: Yes, the first clarifying question is I just want to make sure that your comment about a wall at the back of the property referred to Happy Donuts and not to the subject property.

Ms. Cutler: Correct.

Commissioner Keller: The second question is in response to the questions of somebody from April 9, for 5-b it says give that Happy Donuts has angled parking do you mean Happy Donuts there or do you mean the subject property?

Ms. Cutler: I believe that both properties do have angled parking.

Commissioner Keller: So which were you referring to there?

Chair Holman: That was my question and I was referring to Happy Donuts because there was talk about limiting the use of the alleyway. I know we are not talking about Happy Donuts but there was talk in the Staff Report about limiting that use and Happy Donuts' parking points you to go out the alleyway.

Commissioner Keller: Okay. Is there sufficient space for the subject property for turning around? I am not sure there is.

Ms. Cutler: No, there is not.

Commissioner Keller: Okay, thank you.

Chair Holman: Commissioner Fineberg and then Commissioner Lippert.
Commissioner Fineberg: I am a bit confused by your description tonight and the statement in the Staff Report that there was the installation of a new hood in the kitchen area but no physical changes except for interior decoration. I went out today to the subject property and did the best I could to peek in the windows and what I saw was a new hood with an ansel system and I saw what looked like a gas range and deep fat fryer both of which are heavy duty cooking equipment that typically require permit. Quizno's does not use a deep fat fryer in their menu so unless this was the only location that they had preexisting equipment that hadn't been pulled out and their happened to be stub-ins, did they install this and was there a permit?

Ms. Cutler: I believe that the applicant, or the applicant's sister who is here, could answer that question.

Chair Holman: We will get to you ma'am. Commissioner Lippert you had a clarifying question?

Commissioner Lippert: Yes. Has ownership of Cypress Lane ever been determined?

Ms. Cutler: Yes, over the years there has been a lot of discussion of this issue. The understanding is that half of Cypress Lane actually belongs to the commercial properties and the other half belongs to an unknown heir of the Barron Estate.

Commissioner Lippert: Okay.

Chair Holman: City Attorney, would you care to clarify that?

Mr. Larkin: I haven't looked at the exact map but it is a very old subdivision. Typically the way the ownership interests goes when a property is subdivided like this is that it is owned jointly by all of the members of the subdivision. So I don't know exactly how many units are in the subdivision but each unit has one share of ownership in that alley. We would have to go back and look at the actual subdivision map to determine how that ownership was done and if there is a map.

Commissioner Lippert: Okay, but at least it has been determined that there is ownership in that. I remember reviewing this several times and nobody knew who owned what.

Ms. Cutler: A title report was performed in 2002 and it did find that it is still owned by Jones or their heirs and is what we have noted here.

Commissioner Lippert: Okay, and then with that I guess the alleyway would be restricted after certain hours. How would the parking lot be able to be used? Would cars pull in and then back out onto El Camino Real? I don't think that is a safe condition.

Ms. Cutler: The proposed condition is actually that the parking lot be blocked off from use except by employees or the residential unit on that property so after ten o'clock any customers would use the parking along El Camino Real.
 Commissioner Lippert: Thank you.

Chair Holman: Commissioner Sandas, you have a clarifying question?

Commissioner Sandas: I do. I just wanted to clarify, can you please tell me what the concessions were again that the owner had made in terms of stopping the sale of beer and wine at 9:30?

Ms. Cutler: There were two conditions that are recommended that were not part of the original tentative approval. They are that beer and wine would only be served until 9:30 PM and that a rope or similar would be placed across the parking lot to prevent entry and therefore use of the alley at ten o’clock.

Commissioner Sandas: So there was no consideration for closing the restaurant when the parking lot was closed off and the beer and wine sales were stopping?

Ms. Cutler: That is not currently recommended by Staff due to the desire of the business owner to be able to be open to Stanford students studying late at night but that is up to you for your recommendation.

Chair Holman: Okay. It doesn’t appear that I have a card from the applicant.

Mr. Larkin: A couple of reminders before you open the public hearing. I know there was one site visit. This is quasi-judicial so Commissioners should make disclosures prior to the public hearing. The second is under you process the appellant actually goes first.

Chair Holman: This was a request for a hearing it is not really an appeal, right?

Mr. Larkin: It is the same. The person requesting the hearing goes first.

Chair Holman: Just to try to speed things along here just a site visit if there is no interaction it does not need to be disclosed, correct?

Mr. Larkin: Under the rules that the Commission adopted it does.

Chair Holman: Okay, Commissioners, disclosures? We will just go down the line, Commissioner Fineberg.

Commissioner Fineberg: I visited the site. I did not speak with the applicant or anyone on the property.

Chair Holman: Commissioner Keller.

Commissioner Keller: I visited the site but did not speak with anybody.

Chair Holman: Commissioner Garber.
Vice-Chair Garber: I have not visited the site for this particular project but I am very familiar with it having gone to Happy Donuts before.

Chair Holman: Commissioner Sandas.

Commissioner Sandas: I visited the site and drove past by car. I did not stop or speak with anyone.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I didn’t visit the site but I am familiar with the site because I reviewed it when I was on the Architectural Review Board and have visited the site several times subsequently.

Chair Holman: Commissioner Tuma.

Commissioner Tuma: I live in the neighborhood, drive by the site every day, been to Happy Donuts a few hundred with my kids and visited Quizno’s, but I have not talked to the applicant in this context.

Chair Holman: I did not visit the site on this particular occasion, as I am very familiar with the site for a number of reasons. Given that now have we decided Staff if we are going to treat this as an appellant or how are we going to do this?

Mr. Larkin: Semantics aside it is an appeal. The amount of time that is given is at the discretion of the Chair, 15 is standard but it is 15 divided among all of the people appealing and that may not make sense.

Chair Holman: I only have one card that indicates Appellant and I was going to question that. As Appellant I have list Bob Sikora. So you will speak first and if you wish you can have 15 minutes and if don’t need it. So you are up first to be followed by the Applicant and I don’t seem to have....can you bring your card forward then? Thank you very much. Mr. Sikora.

Mr. Bob Sikora, Appellant: Hello. I live on the street parallel to El Camino just behind the subject property. In the spirit of green, the last agenda item, there are only four copies for you to share. I am representing a group of residents some of them who were at the previous meeting on the topic and few others who were not able to make the meeting.

I have a statement here that lists our concerns. We appreciate your consideration of our concerns and the Staff’s recommendation of restrictions to the proposed Conditional Use Permit to respond to these concerns. We also appreciate that Mr. Chen is proposing the kind of establishment that the neighborhood will patronize and we want Mr. Chen as well as our commercial area in general to be successful.
The preliminary meeting on March 10 was our first involvement in the Conditional Use Permit process. The meeting was limited in time and not all concerns were fully presented. We realize that the terms of this permit will set precedent for future Conditional Use Permits.

Since this meeting we have met as a group to prepare our concerns as a neighborhood. This presentation will detail our common concerns and recommendations for compatible business operations in our Neighborhood Commercial zone. We have two significant concerns with the permit as recommended, hours of operation and policy on the use of Cypress Lane, which we refer to as ‘the alley.’ Number one, hours of operation, although the March 10 discussion focused mostly on the hours of beer and wine service and alley access the hours of operation are of equal concern. Primary concerns regarding hours of operation are noise and other disturbance. Limiting the hours of alcohol service does not eliminate our concern for noise to the adjacent homes. The most significant problem with noise in the neighborhood is currently generated by Happy Donuts, which does not serve alcohol. The noise from Happy Donuts results from customers smoking, socializing, and playing music from car stereos outside the building. Police received 59 complaints in 2007 due to excessive noise or disturbance caused by patrons of Happy Donuts.

The second item is compatibility with the neighborhood. The site is zoned Neighborhood Commercial, which defines it as serving the immediate neighborhood, and assuring maximum compatibility with surrounding residential area. Late night hours of operation would not serve the needs of our neighborhood. Patronage of the establishment by the immediate neighborhood would likely cease by ten to eleven at night. The norm for all other restaurants in the area is to close at or before eleven o’clock. Happy Donuts’ hours are an exception that we do not support. These extended hours of operation were not open to public review or comment.

Number three, historical experience. Late night business in this area has proven to be a problem in the past. Armando’s Bar operated at the same address and the La Cumbre Night Club previously located across the street were both closed down due to a long history of police intervention in the early morning hours. The late hours also serve to attract regional rather than local patrons. In consideration for the adjacent homes and compatibility with the neighborhood we strongly feel that the restaurant should cease operation by eleven o’clock at night.

At the March 10 meeting closing by eleven o’clock was proposed and the applicants indicated some willingness to agree to this. The applicants were very responsive to our concerns in general and willing to work with us. We appreciate this greatly and wish to work with them as well. If the hours of operation were limited to eleven o’clock we would be willing to agree that alcohol service continue until eleven o’clock. This would allow the applicant the additional opportunity to generate revenue and would also eliminate the difficulty of having to manage the end of the alcohol service in the normal operation.

The second item of concern is the policy of use of Cypress Lane or the alley. We appreciate Staff’s response by recommending limited access to the alley after ten o’clock. However, we are concerned about the continued use of the alley at all hours not just after ten o’clock. The current use of the alley is a significant concern to the well being and safety of the neighborhood. The primary concerns with the alley affecting the neighborhood are as follows: illegal activity in the
alley including dumping mattresses and other items. As of today there are four mattresses in the alley. These are fire hazards. Homeless persons and vagrants loiter and camp in the alley and leave open alcohol containers and trash. Multiple fires start in the alley from unknown sources most likely smoking. Abandoned, non-operative vehicles parked in the alley for over 72 hours. Customer traffic from Happy Donuts and the Laundromat as well as teens joyriding through the alley at all hours with loud music playing. Open dumpsters with food creating a rodent and health problems. Then proximity to homes of course, the alley runs only 20 feet from the bedrooms of some of the neighborhood residents and some are even closer. The items above expose neighbors to increased incidents of theft, property damage, noise, and health issues.

There is a continually deteriorating condition at present in the alley with an absence of accountability and responsibility for these problems. This needs to be addressed and resolved and will be exacerbated by additional use of the alley for customer traffic especially late into the evening hours. Many of us have tried to resolve problems through contacting police, Utilities, and business owners, and the City but to date these efforts have had little if any affect. We feel very strongly that this is something we cannot do alone. It must be addressed at the City policy level. We respectfully request that the City of Palo Alto develop consistent policy regarding the alley that ensures the safety, health, and welfare of the neighborhood.

At the March 10 meeting we requested a hearing to address the issues of the alley before the permit hearing. Due to the scope of the alley issue it did not seem reasonable or fair to the applicants to delay their process any further. We support the restaurant and would like to see it be successful if this is possible without significant negative impact to the neighborhood. If the restaurant could be successful without allowing traffic into the alley this would be the best option. In lieu of addressing the alley through the permit application we are asking for a commitment from Planning and Transportation or other appropriate City departments to conduct an inquiring and hearing on the use of, and the responsibility and maintenance for the alley, and to work with us to ensure the safety, health, and welfare of the neighborhood. Until this issue is resolved we request the Conditional Use Permit include language that allows the terms of alley access to be subject to change in the future.

Thank you for your consideration of our concerns. We hope that we can come to a solution that will work for everyone, and that this business is a positive and successful addition to our neighborhood. We look forward to working with the Planning Department to improve conditions, safety, and quality of life in our neighborhood. Thank you.

Chair Holman: Thank you very much. We will next here from the Applicant, Julie Chen, and you also will have 15 minutes.

Ms. Julie Chen, Palo Alto: I just want to start by saying that my brother and I thank the neighborhood for the warm welcome and we are really looking forward to hopefully come to an agreement and making this all possible.

What they have proposed for the eleven o’clock hours of operation as well as being able to serve beer and wine until that time we are in agreement to that. In terms of the access and using the alleyway we are open to having our employees park in those spots except for the handicap spot
to kind of avoid any traffic going to the back. However there is a residential unit right behind
our building so we can’t block it off completely. They need to be able to access their home, their
parking garage from our driveway.

Other than that we are new neighbors, we are going to be neighbors with these great people
behind us, and we are hoping now that being there we see that the alleyway does need some
attention. It is really needed. Now that we have invested our time and money in building this
business the last thing we want is our building to be vandalized or have people loitering in the
back. We are hoping to bring a positive and great business for the neighborhood to make it
family-friendly. So that is all we have to say.

Chair Holman: Thank you so much.

Ms. Chen: Also regarding the permits we did attain all the required permits in getting all of the
things installed. So we have everything cleared and today was the final health inspection and
everything has all been cleared through to answer that question.

Chair Holman: Thank you very much. Commissioner Keller has a question for you.

Commissioner Keller: Thank you. I am looking at this diagram, just so people know and people
have seen this. It looks to me like this property has five parking spaces. What I am wondering
and maybe I am redesigning it or whatever, but I am wondering if you put parallel parking along
the adjacent Happy Donuts and parallel parking along the 60-foot long property I could imagine
that you could probably fit six parking spaces and allow people to turn around. Would that work
or not work?

Ms. Chen: In our parking lot I don’t think it would be possible because of the residential unit
that is right behind us.

Commissioner Keller: Maybe somebody….

Chair Holman: Commissioner Keller, I think this maybe a question for later and our job isn’t
necessarily to redesign it. It is just to approve a use or not. I know we have some considerations
about the alley but hold that question if you would please and we will address that later.

Commissioner Keller: Sure, thank you.

Chair Holman: Thank you. Thank you very much, Ms. Chen. We have other members of the
public who like to speak, Bob Henshel to be followed by James Thalmann. Thank you for
bearing with us this evening.

Mr. Bob Henshel, Palo Alto: I am happy to be here and happy to hear this. I grew up on La
Selva, my mother’s house is still there. It backs up to the alley and apparently no one has
responsibility for the alley that we could find. No one will take the responsibility for it.
I own property at 513 Military and it fortunately/unfortunately the side yard of this property is at
the alley so I have a double whammy. It has always been a problem and while it is not part of
this hearing because of liquor stores it is a great problem. My wife and I certainly welcome a
noodle shop. We go up to University Avenue now so having someone in Barron Park like that is
kind of nice.

Eleven o’clock my tenants complain to me now, eleven o’clock they like to be asleep. It is pretty
late. Many restaurants historically aim to close at nine. You want something you can go to the
donuts but you want a dinner you have to get in there before nine. So I don’t know why they
have to be open until eleven. That is my only objections. I love the idea of having a noodle shop
there. So you will have my business. Thank you very much.

Chair Holman: Thank you sir. James Thalmann to be followed by John Benza.

Mr. James Thalmann, Palo Alto: Good evening. I am a 22-year resident and homeowner. I
wanted to brief you on my personal experiences with the alley of Cypress Lane so you could
make a more informed decision. The permit as it is setup for approval here requires protection
for residential properties from excessive noise. So I wanted to speak to that in terms of my
personal experiences that we have had so far. It has been my experience that these businesses
can sometimes act as a catalyst for noise. That is something that we should consider as we are
working through this. My next-door neighbor had an interesting relation to tell me the other day.
His five-year-old daughter came out of her bedroom at eight o’clock at night on a weekday and
she came out to say she couldn’t sleep. Why not? It was because of these booming car stereos
actually parked in the parking lot of the business. They are not driving through the alley they are
just parked there. The building is so immense that the entire ground is shaking, the entire house
is shaking, and it is a nightmare. If you are trying to sleep through that you are going to wake up
every 45 minutes or so if you are a light sleeper or you are just not going to get a good deep
nights sleep. So the booming car stereos are a big problem no matter where they are and as they
go driving by they are getting within 20 feet of my bedroom making the bedroom pretty useless.
As they are crossing the alley if they hit it at just the right time they hit this water cover that you
were talking about. Actually what it is is a big metal grate that covers the water meter for the
Laundromat and it is imbedded in the alley and the cement is cracked a little bit so it doesn’t
quite lie flat. So when someone goes over it it goes ba-bum ba-bum and makes a huge noise like
somebody knocking on your door. So we haven’t been able to get people to fix that.
Laundromat customers go through the Happy Donuts, they could go through other businesses,
and they park behind in the alley running the stereo waiting for their laundry to finish. It has
been one thing after another with the alley. How much more time do I have?

Chair Holman: You have about 30 seconds.

Mr. Thalmann: I guess in the future the permit of two o’clock in the morning seems a little bit
inconsistent to me with the Neighborhood Commercial zone as was pointed out earlier. It
doesn’t really serve the immediate neighborhood I don’t believe in order to have something open
at two o’clock. It does serve the Stanford students but we are not Stanford we are Barron Park.
The Noise Ordinance is not really a priority for the Police Department. You might be able to get
the unit now but it wanes off eventually. That goes for the repair of the water meter cover too.
Thank you.

Chair Holman: Thank you so much and again thank you for your forbearance with us. John
Benza to be followed by Bob Moss who I do not see here.

Mr. John Benza, Palo Alto: Yes, Bob left.

Chair Holman: So our final speaker will be Peter Eng.

Mr. Benza: Good evening. I am a resident of Barron Park and I have lived in my house for 14
years. I do own a copy of the map of the parcel deed that is available from the county offices. I
would be willing to share it. I have probably done most if not all of the research in that area on
that and would dispute Bill Feldman’s – in fact Bill and I were in agreement in 1994 when we
first raised this issue on the alley. Before I get to the alley I would like to thank the applicant. I
am looking forward with my family to the eleven o’clock liquor and closure after that. It sounds
like there is some semblance of agreement on that.

I brought a few photographs that I will flip through as I talk about the alley. These are the
mattresses for example. They show up better with the light dim but we may not be able to do
that. The biggest concern about the alley and the two properties in question the old Quizno’s
facility, which used to be Armando’s Tavern, bar, whatever you call it, before that. When
Armando’s closed and Quizno’s moved in there were modifications made to that property that
opened the access to the alley. There is passion about the alley because never before and never
on Cypress Lane has the alley been used for through commercial traffic. It has always been
closed. You can see business. That is great, thank you. So you can see this Happy Donuts right
about over here so their driveway comes out here. These things just get dumped by people who
are there at late hours or whatever. As we scroll through you will see others. Neither Happy
Donuts nor the Armando’s property ever had traffic passing through this alley. These are
typically the business owners conserving the spaces in the strip mall. You can see there are
containers here of chemicals, just stored, this is problematic to the alley. These are some of the
other businesses. Often this business here, Barron Park Florist, which used to be an automotive
shop that was rezoned. They will abandon vehicles in the alley quite frequently. He has recently
installed this. I have to talk faster because I only have three minutes. They have recently
installed this. I don’t know if that was permitted but this is the edge of the alley right here, the
edge of his property and the beginning of that 20-foot lane called Woodland Avenue lane. This
is the corner, Military Way right here, and this is an exposed liquor store. When A-1 was rebuilt
it was not required to have an enclosed garbage container. Don’t know why. This is often left
out here in the curb line. Moving down to the other side of Cypress Lane. I see my time is
running if I may have a few seconds more. This is an unpaved access road. There is not one
business on this alley that has open access to it. The fear of the neighborhood is that by setting
precedents with Happy Donuts, if I might continue jus a moment, setting a precedent with Happy
Donuts and with the Quizno’s and now the noodle shop having access what is to stop Taco Bell
from opening theirs, which they once tried. You can see their shopping carts. Here homeless
people will sleep in these areas.
Chair Holman: I do need to ask you to wrap up, sir.

Mr. Benza: Okay, I will. The biggest problem on this portion of the road is many of these businesses can open up and you can see the road is fully deteriorated with huge potholes that result in mud on buildings. This was a recently repainted building. I am scrolling through. A car bottomed out on the road you can see the oil spill, leaking contaminates all in the area. This is the access way to the Taco Bell shop. So our concern is that Celia’s restaurant, which is also tight on parking, could theoretically open up because we now have precedent to Cypress Lane, Taco Bell could put in a drive-through, etc. It really does need some attention. I appreciate the extra time.

Chair Holman: Thank you sir. So at this time the Applicant can make closing comments. You have up to three minutes and then the Appellant will close with also three minutes. I apologize I overlooked the last speaker who is Peter Eng, and I do apologize.

Mr. Peter Eng, Palo Alto: Thank you. My family is the property owner of the property adjacent to the proposed noodle club. We have owned property for over two years. I had observed a lot of changes positive as well as negative and become familiar with the neighborhood. I am a very active owner. I go there to cleanup. I recently, last year, become a parking lot attendant because Quizno’s customers invariably drive into our parking lot and say oh, I am just going to go over there for a few minutes. I say no, this is private parking you cannot do that and they cannot understand why.

As far as parking is concerned I really don’t understand how a restaurant can be built with five parking spaces. What is the requirement for eating establishments as far as parking requirements are concerned? I think that is way under the standard. Who created this problem? I think it goes back to the Building Department. Allowing such a small number of parking spaces for an eating establishment.

Parking from my experience the Building Department can interpret whatever they want to however they want to even if it is not written in the book. They might have adjusted it so you can get by with five parking spaces. Let me give you an example. Under the ordinance we were allowed, permitted, to have a tenant on the second story operate educational offices. They will not permit us to do that. You have to have an elevator. Where is it on the zoning ordinance that we are supposed to have an elevator for this? Nowhere to be found. Fred Herman and the Staff decided this and the requirement is nowhere to be found. I suspect that the parking, the so-called substandard number of parking spaces at this location was a result of the Building Department’s oversight.

I appreciate the neighbors voicing their concerns. I concur with them. The alley has been really a nightmare. We don’t us it. Our lot has a gate to close it. We don’t want our people to access through the alley nor allow people from other establishments to come through our parking lot to get on El Camino Real. That gate is always locked and we only need to open it for our access. I try to keep the alley as clean as possible through our due diligence we keep the area clean. Thank you very much for your time.
Chair Holman: Thank you. Sir, there is a question for you.

Commissioner Keller: Just for the record could you identify which property you said that you own?

Mr. Eng: It is 3944 El Camino Real.

Commissioner Keller: So that is the property that has a couple of buildings and the laundry, is that right or is it a different one?

Mr. Eng: No, no as you are facing the Ramen Club restaurant it is to the left side.

Commissioner Keller: Towards Los Robles?

Mr. Eng: Yes, correct, next to the driving school.

Commissioner Keller: Thank you.

Chair Holman: Thank you. So the Applicant will have three minutes, Ms. Chen and then the Appellant will have three minutes, Mr. Sikora.

Ms. Chen: I just want to end by saying that we are going to do our part in making sure that doing our due diligence and making sure the area is clean and doing our part in making sure that the alleyway doesn’t get much traffic. We are going to try to block it off the best that we can. In addition, again the whole beer and wine until eleven we can promise our customers that it is purely just for the pleasure of our clients who are dining-in. We are not there to promote drinking or parties or anything like that. It is purely just to enjoy with their meal and we can promise that. I think that is all we have to say. We are going to do our best and hopefully we can all come to an agreement.

Chair Holman: Ms. Chen there is a question for you. Commissioner Sandas.

Commissioner Sandas: I just wanted to clarify I think you said earlier that you will hold your hours of operation until eleven.

Ms. Chen: Preferably, yes.

Commissioner Sandas: Okay. I had one other question. I don’t know if you know the answer to this and maybe it is for Staff. In talking about the ownership of the alley and that each of the commercial businesses that backup to the alley are responsible or they own a portion of the alley. Would that include the Ramen Club because there is a house behind the Ramen Club?

Ms. Chen: That I don’t know because we just lease the building. So we don’t know how that ownership works.
Ms. Cutler: It is one property that has the residential and the commercial on it. So I would assume that it is attached to that property.

Chair Holman: Okay, thank you. Thank you Ms. Chen. Commissioner Fineberg, did you have a question for the Applicant? I am so sorry Ms. Chen.

Commissioner Fineberg: Yes I do. Could you clarify for me if there is a chain hung to close access will it be between the parking lot and the alley or from El Camino to the parking lot?

Ms. Chen: That is going to be kind of difficult for us. I can’t say just because we haven’t really talked to the resident that is living behind. We can’t just block it off because if they want to use it as their way out we can’t obviously restrict them from it. We will do what we can to keep our patrons from parking in that parking lot except for the handicap so they don’t go through the alleyway. But in terms of the resident I can’t say.

Commissioner Fineberg: Okay, so I guess at some point we are going to have to come to some sort of closure of if your operations are until eleven at what hour would liquor stop? When would the chain go up and then would it be front or back? How do you practically implement that because if you are putting the chain up at El Camino so new cars can’t come in how do the patrons who are eating their noodles leave? Do they just lower the chain and then the next car comes in? Or do you put it on the alley in the back and then cars will continue to come in because they don’t know they are not supposed to? I don’t know that I understand how that would be implemented.

Ms. Chen: I think what we are going to try to do is have our employees park in these designated spots so that obviously there is not going to be any parking available for our patrons that way there won’t any traffic going through. In terms of the chain that was something that was mentioned in our first initial meeting but again I don’t think that will work unless the resident is willing to agree to it because if we close up and put a chain up and they work at six o’clock in the morning obviously it isn’t going to work.

Commissioner Fineberg: So which designated spots would your employees park in?

Ms. Chen: In the five spaces that are noted in the photo that was shown. There are five parking spaces.

Commissioner Fineberg: So there would be no onsite customer parking?

Ms. Chen: We would try to have them park along El Camino.

Chair Holman: Commissioner Keller, you had a question for the applicant and then let’s move to the Appellant.

Commissioner Keller: Yes, just be clear. I think that what you agreed to just to clarify Commissioner Sandas’ question, I think what you agreed to is the idea of closing the restaurant
at eleven o’clock and not serving alcohol beyond eleven o’clock. Is that what you are suggesting?

Ms. Chen: That is correct.

Commissioner Keller: Okay. And just to be clear I am going to ask the question of the Appellant if the restaurant closes at eleven o’clock is there a need for a chain because I am not sure if that is needed or not. That is one thing that we need to do. I am wondering to the extent and probably there is not enough time to explore this but the idea of if the parking lot .......Mr. City Attorney.

Chair Holman: Commissioner Keller, we have the Applicant standing at the microphone so if you have a question for Staff.

Commissioner Keller: Well, I would like to ask the question of Staff whether we could condition this on restriping the parking lot.

Chair Holman: That is a question for Staff.

Commissioner Keller: But then I would have to ask the Applicant whether they would be agreeable to that if it is feasible.

Chair Holman: I don’t think that would necessary. I think that is a question for Staff.

Commissioner Keller: Okay, thank you.

Chair Holman: Commissioner Lippert, you have a question for Staff later. So Ms. Chen I think that is the last question for you. The Appellant, Bob Sikora, you will have three minutes.

Mr. Sikora: Thank you very much. I want to thank you for the opportunity to present our concerns. I want to thank you for the three hours for us to get more familiar with the Applicant. I think we can work something out when it comes to parking. I am not exactly sure. It seems like we have something here that is workable either by employees parking in the spaces or a chain across at ten o’clock so that customers can exit out the back hopefully before eleven o’clock. Something can work but I think that we also want to make sure that the broader question of access to the alley is something that we would like to get your commitment to help us with because it is not going to – working at it on our own does not seem to work and some policy on future use of the alley as well as current is justified. Thank you very much.

Chair Holman: Commissioner Tuma, is your question for the Appellant or for Staff? Okay. Thank you very much. So I will close the public hearing and come back to questions by the Commission. I have Commissioner Sandas first.

Commissioner Sandas: I have a couple of questions. This one is about the previous tenant, Quizno’s, what time did they close? Does anybody know?
Ms. Cutler: They didn’t have a use permit so we don’t know.

Commissioner Sandas: Does anybody in the neighborhood have any recollection of what time they might have closed? About nine, okay. I was just wondering because I would think that they would have a noisier crowd than the Ramen Club would.

Chair Holman: Commissioner Fineberg, questions.

Commissioner Fineberg: I am still a bit troubled by the question of the Staff Report indicating that there would be no physical changes except for interior decorations and the installation of a hood. That paints to me a very different picture than the installation of a kitchen that costs probably with equipment $25,000 to $100,000. To me it goes to painting a picture that I don’t understand what happened in reality versus what is described and I don’t know whether that is from the applicant or a misunderstanding with Staff. The Applicant indicated that they got their health permit today but I am still left with the question of did the installation of the kitchen equipment require a permit being pulled. I had asked a Staff member earlier and without giving much time for preparation his indication was a quick look, no. Does anyone in Staff have information about whether there was a requirement for building permits to be pulled? And then if they were required, were they granted?

Ms. Cutler: If so, they were not routed to me. So I am not aware of them. I do know that there was a requirement from Fire for a permit for the hood.

Ms. French: We wouldn’t necessarily get routed a plan that wouldn’t call for planning review such as a TI kitchen improvement. It could have escaped our notice in Planning. In other words, just have been handled at the counter or something, except for the hood, if there was some other kind of improvement. They can open a restaurant there without any permit.

Commissioner Fineberg: But not with heavy equipment.

Mr. Larkin: None of that relates to a Conditional Use Permit.

Commissioner Fineberg: It relates to the integrity and the past performance of compliance.

Mr. Larkin: You can’t consider past performance or compliance except if you are going to revoke an existing use permit but since there is no use permit there is nothing to revoke.

Commissioner Fineberg: Aren’t we counting on the promises made by the Applicant for the CUP?

Mr. Larkin: No, we are counting on our own code enforcement efforts, police, and alcohol and beverage control.

Chair Holman: Commissioner Keller you have a question?
Commissioner Keller: Yes. To what extent are we allowed to condition as a condition of approval for the Conditional Use Permit closing access to the alley?

Mr. Larkin: To the extent that you make finding that the proposed use could exacerbate problems in the alley and you can make those findings based on substantial evidence then you can make that consideration only for that section of the alley that is accessed through this property.

Commissioner Keller: I mean closing access to the alley from the subject property.

Mr. Larkin: Yes, to the extent that you can make findings based on substantial evidence that access is or that that is necessary to prevent problems for the neighborhood then you can do that.

Ms. French: However, I would like to add that Transportation Staff/Planning Staff we don’t think that closing the alley – you need to get out of that parking lot and the way to get out of that is pretty much the alley the way it is designed currently.

Commissioner Keller: Hence my question about whether it is possible or feasible to restrripe the parking lot in order to provide entrance and exit through the driveway to allow it to leave. I am wondering whether that has been explored.

Ms. Cutler: Staff has taken a look at the size and space on the property and there is not sufficient space in some other configuration to do two-way driving and keeping the five spaces.

Commissioner Keller: Have you analyzed parallel parking along both sides of the alley?

Ms. Cutler: We have not considered any parking on the alley.

Commissioner Keller: I am sorry, I mean along the driveway. I don’t mean along the alley I mean the driveway. Have you considered parallel parking on both sides of the driveway of the existing parking lot in between the Ramen Club and the adjacent Happy Donuts?

Ms. French: We don’t have recollection of all of the possibilities that were discussed in this one meeting we had but it pretty much would seem that you would lose at least a space if not more. It would probably likely result in a reduction in the total number onsite and that was a concern.

Ms. Cutler: It could also provide difficulties in access to the residential unit in the back and getting through there.

Commissioner Keller: I am sorry I didn’t think of this earlier to provide it but according to the design that I have the building with the Ramen Club is 63 feet and two inches which as far as I understood is sufficient for three parking space adjacent to that and the adjacent Happy Donuts is approximately the same width which would be able to handle three parking spaces. So I am not sure about the width of this particular driveway and whether the driveway is wide enough to provide two-way access plus a row of parking on either side but if it is my calculation would indicate that that is sufficient for six parking spaces so I don’t quite understand.
Ms. Cutler: The difficulty is that there is no space at the rear of the property for cars to turn around once they have entered so there would be no way for them to exit the property once entered unless they have access to the alley because of that residential building in the back.

Commissioner Keller: Okay, so the problem is not being able to turn around. Thank you.

Ms. Cutler: Correct.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I have similar questions on the parking. If we were to grant the request here and were to chain off the parking lot, doesn’t that create problems? Already we are talking about it being substandard in terms of the amount of parking there. The number of spaces doesn’t comply with the FAR. I think the building is like 1,800 square feet and if you divide it by 200, which is what we normally would do, you would need about nine spaces I think.

Ms. Cutler: Yes.

Commissioner Lippert: So it doesn’t comply. We often times have what are called offsite parking agreements. Would they need to then enter into some sort of offsite parking agreement? It is a requirement that we have this square footage parked generally and in this case it is not compliant.

Ms. Cutler: Though this building is grandfathered in because of the age of the building.

Commissioner Lippert: Right, but it is grandfathered in for the number of spaces that it has.

Ms. Cutler: Correct.

Commissioner Lippert: So what we are doing is increasing the noncompliance.

Mr. Williams: How?

Commissioner Lippert: By denying the use of the parking that is there.

Ms. French: They are still provided. I think the intention was after hours when the spaces on El Camino are certainly more freed up that it is more of a concession to the neighborhood. The parking is still there it hasn’t been eliminated it is where they are directed. It will still be used by the employees and the resident there. So they may be mostly full anyway. I don’t know how many employees would be there at that point in time.

Commissioner Lippert: Okay. Then the second question that is a follow up to that is there is a handicap accessible parking space there. Again by chaining off or closing off the parking lot we are denying access to a disabled individual.
Ms. French: I think it could be chained off in a way that doesn’t block off an ADA space. I think we may need to look at where that is located with respect to the door and sort of thing.

Mr. Larkin: I don’t think the Commission is being asked today to decide exactly how access would be blocked off. I think now it is a condition that it not be used for customer parking after a certain hour.

Chair Holman: Commissioner Tuma is next. I am a little troubled by the question about the parking but also I think the concerns are about what Commissioner Lippert talked about as increasing a nonconformance because personally I have questions about allowing required parking to be on the street, and this is an under-parked site. So I think that is why these questions. Commissioner Tuma.

Commissioner Tuma: I have a couple of quick questions and then I would like to do something else. If the hours of operation that were being proposed were until ten o’clock and if there were no beer and wine being served would we be here? Would there be any CUP application?

Mr. Williams: No.

MOTION

Commissioner Tuma: Okay. So it seems to me that this discussion really is about an hour later and beer and wine. I think clearly there are some … well, with that said I would like to make a motion that Planning and Transportation Commission recommend that the City Council approve a Record of Land Use Action approving the Conditional Use Permit as modified to further restrict hours of beer and wine, onsite customer parking to allow the establishment of a new Ramen Club until eleven PM seven days a week based upon the findings and conditions of approval in the Record of Land Use as modified to reflect alcohol and closure to happen at eleven PM.

SECOND

Commissioner Lippert: Second.

Chair Holman: Commissioner Tuma, would you care to speak to your motion?

Commissioner Tuma: Just briefly. I think clearly there are some issues that are going on in the alley and the neighborhood. I live not too far from there but far enough not have a conflict. I spend time in that area. I think the issues that you folks are talking about are very, very valid and need to be addressed through the process. However, the Conditional Use Permit that is being applied for here is simply to go one hour later than would normally be required and to allow them to serve alcoholic beverages. I don’t see those two things as being something that sounds terribly objectionable to the neighborhood. I am impressed by the Applicant’s willingness to work with the neighborhood, wants to be a good resident, came here tonight asking for two o’clock, folks said eleven o’clock, they said they would be willing to do that. To me this should just go through.
Commissioner Lippert: In seconding this I want to say that this site is very similar to Antonio’s Nut House. We have already done this one before. They had a similar situation where there was noise being propelled onto the neighboring residential neighbor and it was problematic. The only difference is that instead of an alleyway behind the proposed site as with the site here there was a public parking lot. The solution was simply to chain off or restrict parking in the parking lot after hours. As an amendment I would recommend similar sorts of things where there is no parking in the alleyway after hours and that it be patrolled by Palo Alto Police.

There was one other condition, I asked for a friendly amendment on this condition, which is that in a year the Commission reviews this again. If in fact, there are numerous complaints we could revoke the Ramen Club’s Conditional Use Permit.

Mr. Larkin: A Conditional Use Permit is an entitlement that can’t be revoked without a public hearing. So you can’t automatically set a review.

Commissioner Lippert: Correct. It would be rescheduled, it would be noticed, and we would review it again.

Mr. Larkin: Well, you wouldn’t reschedule a notice and review again unless there was cause to do so. So if there were code enforcement complaints then it could be brought back for review.

Commissioner Lippert: Correct, that is what they did with Antonio’s Nut House. I am sorry. So that would be my friendly amendment.

Chair Holman: I don’t know that that requires an amendment.

Commissioner Lippert: It doesn’t?

Mr. Larkin: That is how it works. If there are code enforcement complaints it comes back for either alteration or revocation of the permit.

Commissioner Lippert: That is fine and we haven’t seen Antonio’s Nut House so they have complied.

Chair Holman: Commissioner Sandas, comments.

Commissioner Sandas: Yes, a couple of comments. I have a comment and a question. I am moved by the Applicant’s willingness to bend with the neighbors. I think it is wonderful that you have come to an agreement together to limit your operating hours to eleven and serve alcoholic beverages up until that point in time.

What I am worried about is I would hate to see the Applicant bending so far that you bend yourself right out of business. What little I know about the restaurant industry and any food business is that the profit margins are very low and I am not sure that the people who are living within walking distance are going to be enough to support your business. I believe that you will
need to have people coming from a little distance out of the neighborhood and they will be
coming in their cars and they are going to need a place to park. We hope that they can be as
respectful as possible to the neighbors but I would hate to see you putting conditions on your
business that will cause your business not to succeed. So I don’t have a recommendation but I
am just urging a little bit of caution in blocking off your parking lot and chaining things and
putting your employees’ cars in the parking lot doesn’t offer a space for a cash-paying customer
to park. So this is just a note of caution.

The second thing is that a lot of this discussion has centered around that darn alley. We know an
heir to the Barron Estate owns part of the alley but who is this person? What can the City do to
ensure that this alley is maintained and that it is safe and that it is not a dumping ground for old
mattresses and a playground for rodents? Especially when there are children who’s bedrooms
border on the alley and who live so close. So my question is what happens now to fix this
situation, to remedy it? I don’t know what the process is and who would initiate whatever it is?

Mr. Larkin: It is a lengthy answer and it probably isn’t directly related to this topic but we will
come back and we can talk about that at a future meeting.

Chair Holman: Vice-Chair Garber. Staff, will you update the neighbors on progress?

Ms. Cutler: Yes, we can send a notice.

Chair Holman: Thank you. Vice-Chair Garber.

Vice-Chair Garber: I think my comments have been covered by the previous Commissioners. I
will be supporting the motion.

Chair Holman: Commissioner Keller.

Commissioner Keller: I am wondering if I can request a friendly amendment that we get a report
on the number of complaints that have occurred as a result of this property after one year
independent of the revoking of the permit. I just think it would be helpful to get that out in the
public record.

Chair Holman: City Attorney.

Mr. Larkin: That probably wouldn’t be part of the Conditional Use Permit because I don’t think
we can require the Applicant but if you want to make that request we can forward that onto
Council.’

Commissioner Keller: It is a request of Staff to apprise the Commission and the Council if they
wish with the number of complaints so that we can evaluate the effectiveness of this.

Mr. Larkin: This would be a direction to the Police Department Staff, which is not something
the Commission can do directly. So we can forward that recommendation onto Council. If
Council wants to direct the City Manager to direct the Police Department Staff to do that then they can do that.

**Commissioner Keller:** Yes, number and nature, please. And that is what I want added to the motion appropriately. Will the maker accept?

**Chair Holman:** Maker?

**Commissioner Tuma:** My only hesitancy to doing that is beginning this process of micromanaging Staff and asking Council to micromanage Staff on a CUP. It just seems excessive and I am not sure that it is our place to do that. I am open to talking about it but it just doesn’t seem like what we ought to be doing.

**Commissioner Keller:** Well, my reason for that is in some sense we are asked to make a decision. We don’t get feedback in terms of making the decision and my understanding of total quality management and continuous improvement is that the way we can make better decisions is to get that feedback. I am basically requesting that we close the loop and give us that.

**Chair Holman:** I think the City Attorney has said that if there were complaints that it would be a code enforcement matter. If there is an action or a requested action or an indication that an action by the City Staff to revoke the Conditional Use Permit and if that is appealed then that would come to us.

**Mr. Larkin:** If such a report were created it would be information only. The Commission would not be able to act on it because the Commission cannot direct Staff to do code enforcement. The Commission can make a recommendation to do code enforcement they can’t direct Staff to do code enforcement.

**Commissioner Keller:** Yes.

**Mr. Larkin:** So it would be pure information only.

**Commissioner Keller:** My intent is to get information for us to understand how effective the measures we put into place are.

**Mr. Williams:** If I could just add. I appreciate that. I am concerned that it is one more thing for us to sort of put on a list to try to record somewhere and remember and come back in a year with. If every use permit has this kind of reporting requirement it just detracts from and we just don’t have enough Staff to keep up with what we have to try to do this.

We have a process where if we start having a lot of complaints about that I am sure that you are going to end up getting a report from us and letting you know that. But if we have one or two, for us to come back in a year and tell you we have had one or two and why where those, and have that discussion just seems to me to divert our attention from other things.
Mr. Larkin: As a practical matter it will be nearly impossible to distinguish which complaints are coming from the Ramen Club versus which are coming from Happy Donuts versus which are coming just off El Camino.

Commissioner Keller: Okay, I will withdraw it. Let me say two other things. One is that in contrast to what some of my fellow Commissioners have identified it seems to me that what I understand about restaurants is that very little profit is made on the food and most of the profit is made on the beverages, especially alcoholic beverages. As a result of that it is actually beneficial to the restaurant to close at eleven o’clock and to serve alcohol through eleven o’clock, for an hour and a half extra of alcohol service than it is to stop alcohol service at 9:30 and keep the restaurant open for food only until two. So while this is a concession of the restaurant owner I believe it probably accrues financially to the benefit of the restaurant owner for that particular accommodation. I appreciate the fact that the Appellant and the community is proposing that because I think that is a good accommodation between both of them to try to work it out together.

I am not sure how this should be related but with respect to the parking lot and such I am not sure exactly where we left that in terms of the parking lot being closed off or the parking lot being left open. I just observe that is you close it off at the alleyway after ten o’clock people will enter and it will be like the roach motel, you can get in but you can’t get out, especially since I have been told that you can’t get out that way because otherwise we would have people get out that way.

The other thing is that if you closed it at the El Camino side people might think that the restaurant is closed unless there is appropriate signage saying ‘park on El Camino.’ So I think there might be some concern about that. I hope that the Applicant would work with the neighbors to figure out that nature.

Then finally, to the extent that the neighbors have shown that the upkeep of that alleyway is in some sense a public nuisance I am wondering what cause of action could be brought against the alleyway owners and who would bring that action?

Chair Holman: Commissioner Keller, that is not a part of this action. It is an item of interest but I think you can follow up with that separately.

Mr. Larkin: That is exactly what we would bring back for discussion in response to Commissioner Sandas’ question.

Commissioner Keller: Thank you.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: I think the troubling aspects of this project have more to do with conditions on the alley than the, I will characterize it as, the wonderful compromises I have seen between the Applicant and the Appellant. I think the neighbors are welcoming the restaurant and the owners of the restaurant are working to satisfy the needs of the neighbors and I just think that
is great. That is what we would want to see to have comfortable neighbors and a successful, viable business in place.

I am seeing on this project a property that is substandard with regard to parking. That is not any fault of the Applicant. They are leasing a building that is coming to them that way. I am seeing that maybe it is an opportunity for us to look, and it is beyond the scope of tonight, but to come back and look at how should we be handling that kind of property. It is a discussion for another night whether we allow the conditions to become worse within that property or we somehow change the codes and the regulations when we have properties that are substandard, over-built, under-parked, whatever the standard is. I think it is an opportunity for us to come and fix places where we have those deficiencies and in certain situations like this might be making it worse. So the code has guidance for us on how to make our decisions.

Given that I think the closure at eleven, the removal of alcohol and the late night hours where I think it would cause the most problems with noise and disorderly conduct, I would be comfortable approving the application.

The last thing for the residents who have stayed here so late thank you for being here, thank you for sharing your voices, and I would urge you to continue to share your voices when it is appropriate. If there is a fire in the alley call the Fire Department. If there are noisy people call the police. Your voices will only be heard in the numbers when the incidents occur. So please continue to stay active, stay on top of it, it is all of our homes. Thank you.

Chair Holman: I will be brief and quick in my comments. I do have a couple. I am going to support the motion. I am going to ask for one change to the ordinance if I could. Section three, number one, Conditional Use Permit Findings. It is similar to a comment I have made before, strike the last sentence, please, which is the sale of alcoholic beverages will be conducted in a manner that will injurious to property or improvements in the vicinity or detrimental to public health, safety, and general welfare, or convenience. It basically states that it is compliant because it is compliant. So if you would please strike that sentence if the maker and seconder would approve that change?

Commissioner Tuma: It is fine.

Chair Holman: Seconder?

Commissioner Lippert: Accepted.

Chair Holman: Then I am going to approve this and just quickly with the eleven o'clock and eleven o'clock. As much as I absolutely appreciate and understand and have experienced the difficulties in the alley one of the question I asked of Staff is what jurisdiction or what kind of control do we have over the alley and the response was very little. So I don't think it is feasible to try to block off the alley.

I would ask one other quick amendment which is very similar to what we did with Antonio's Nut House because there were noise problems there. Staff can call up the language but to ask the
Applicant to post signage inside and also outside of the building to ask patrons to respect the location and proximity to the neighborhood so when they are leaving the premises late at night. Staff will remember that language or something similar to that. Do you recall it enough to be able to repeat to Commissioners? You get the drift though. It is basically it is just asking the patrons to be good neighbors.

Commissioner Tuma: I think that is fine and appropriate so I will accept it.

Chair Holman: Seconded?

Commissioner Lippert: I accept that. I think maybe they should just look in the file for Antonio’s Nut House and see what the language was there.

Chair Holman: Yes, would Staff be amenable to that? Then one last thing, I am being quick here. One last thing is that the dumpster at the back, it is one of the conditions of approval under Public Works, actually this isn’t Public Works it’s Water Quality. What we have on other projects, and I think Antonio’s Nut House may have been one of those, is said that the garbage and recycling not be done after let’s say eleven o’clock, or if they close at eleven maybe 11:30, nothing later than 11:30. So we limit that too so we don’t have staff cleaning up at midnight and throwing stuff out in the recycling containing. Is the maker amenable to that?

Commissioner Tuma: How about if we just raise it as within a half-hour of closing?

Chair Holman: That is fine with me.

Commissioner Tuma: It is fine with me then.

Chair Holman: Seconded?

Commissioner Lippert: Agreeable.

Chair Holman: With that I am complete except one thing. Do we need to at all comment on the 20-minute parking in front which also to me seems quite problematic. It is not included in the ordinance so is that nothing that Staff is going to pursue then after this?

Ms. Cutler: We will look into it but it is independent. It was not a condition of approval.

Ms. French: In that meeting we had the Applicants were amenable to and interested in having the City look at doing the 20-minute parking. So we are working with our Transportation and we will work with police and all that.

Chair Holman: Okay. Good.

Ms. French: It is on El Camino so we have to make sure to check our bases but that is the plan.

Chair Holman: Okay, very good. Commissioner Keller.
Commissioner Keller: I realize we have closed the public hearing and whatever. I am just wondering whether 30 minutes is the right amount.

MOTION PASSED (7-0-0-0)

Chair Holman: It doesn’t matter. They will make it work. Don’t you think, Staff? They will make it work. Otherwise we are going to be back here again with a lot of complaints.

So with that we will vote on the motion to approve the Conditional Use Permit to allow operations of the Ramen Club including service of alcoholic beverages until eleven PM seven days a week with a change to the ordinance, section three, item one, striking the last sentence and adding the signage that will be pulled akin to the Antonio’s Nut House asking and 30 minutes after close of business for use of the dumpster and recycling facilities. With that all those in favor of the motion say aye. (ayes) Opposed? So that passes on a seven to zero vote. Good luck to you all. Staff will report back to the neighbors about the alley and what can be done in that situation. Thank you all very much.

With that we will take up again item number two and hopefully quickly conclude that. I will wait just a moment until the members of the public leave.

Okay I believe we are ready to take up item number two again. So if Commissioners would take their seats. Not to spring it on you but Commissioner Fineberg I believe you were the next speaker to speak to the motion. We are again back on item number two, the Green Building Code.

Commissioner Fineberg: It is a good thing made notes. I just need to find them.

Chair Holman: If we could ask members of the public to take their conversation out to the lobby that would be most appreciated. Thank you.

Commissioner Fineberg: Could I ask that the motion be repeated? I think that would be a good place to start this discussion.

Mr. Williams: The motion is to approve the ordinance and resolution tables with I have eight amendments. One is historic, that exemptions related to historic structures be reviewed by the HRB and recommended to the Director. Secondly that the Director have the flexibility to provide the appropriate checklist I think we would say particularly related to reuse or historic structures. In the section about the transition and ramping up the ordinance that the Director have discretion to allow self-verification when it is determined that there is lack of Green Building Inspectors. The fourth is to add the whereas/findings regarding AB32 and sea level rise. The fifth one was to report after one year regarding the status and progress of the ordinance. The sixth one is the on multi-family on Table B we include an asterisked reference that if there are over 30 units in the multi-family project that they complete a LEED ND checklist. Or homes? Oh, ND or LEED for Home. The seventh one was to restructure the definitions so that it is New Construction, Commercial and New Construction, Residential. The
eighth one which I don’t consider a change to the ordinance but still a recommendation is to develop data and cost information from Built It Green and pass that along to the Council at the time they hear this ordinance.

Chair Holman: Thank you, Curtis. Commissioner Fineberg.

Commissioner Fineberg: I like the amendment to the resolution a lot. I think they will answer many of the questions that are still open in my mind. At my core I believe that the Green Building Criteria will move us in the right direction. My only hesitation is whether it is the right time or a little too soon to do them. Knowing that we have the ability to lead gets me over some of those reservations. I still think we need to understand more fully the implications of dewatering and whether these criteria need to disincent dewatering more than they do now. I think the potential negatives impacts if the anecdotal evidence we are hearing is indeed correct or if there is subsidence or other negatives down the pike if those are indeed real we are not taking them as seriously as we should to protect property and protect the future environment. So that is one of my big reservations about the criteria that we have now. I like them as a start. I like that they will be adaptable as for instance the new LEED ND Criteria come up to speed. I like that they can be layered and I will be voting for this tonight. Thank you.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: I will be supporting the motion. I do have a couple of comments. Not as any part of the motion, but I would be interested in the growing checklists of criteria that will be evaluated during the testing period. There are a number of things, which I think my comments and the other Commissioners’ comments sort of point to as the sorts of criteria that will end up defining what this will be in three years.

Let me just list a couple of the ones that I have here right now. One of which is the whole verification process versus certification, creating sort of a new industry of reviewers of the project that are not specifically focused on Building Code but are focused on looking at project documents in the same manner but for a different set of criteria, obviously green criteria is new, and whether we can find that in the marketplace, whether we have to build it ourselves, what the real burden of that is on the City is unclear to me and I think we will find out in the next couple of years.

The whole issue of fees, fees is one thing there are also consequent costs for the industry both to learn how to do this, so there are startup costs for architects, contractors, and other consultants to get up to speed with this, but then there are also the costs that are not related to fees but are related with the ongoing management to make this happen. One of the big differences been Green Point and LEED at least in our office is the amount of paperwork that has to be submitted for the LEED projects in order to demonstrate that the certification can be made. That is not a part of any fee but that is something that is either borne by the consultants or the builder in some cases or passed onto the clients. So there is an imbedded cost there that is not always seen.

Then there are the operational pieces and what I mean by that are the operations of the City. Does the green review of the documents end up as part of the conditions of approval and get
added to the document and does that get iterated and add to the process or is it simply a yes/no?
I am not looking for an answer tonight but I am sort of curious as to how we address that. I
suspect that that’s only the tip of the iceberg.

Then just a caution in terms of grammar and syntax. Commissioning is not certification
commissioning is a very set set of activities that occurs around building systems but is only a
portion of the overall certification process and is only a subset of the overall costs. So being
careful about when we are using those terms and when they are used in the process is important.
I will stop there. Thank you.

Chair Holman: I have a number of comments and frankly I am not quite sure where I am going
to end up on this. It depends on what the Commission might be willing to entertain or not. A
couple of data points. One is that 50 percent of the homes that get built have basements using
the eight inch wall or using the 16 inch wall and that is not the maximum that I have been told by
architects, but just using those numbers that is 200 to 400 tons of concrete that is manufactured.
If you look at the manufacture of concrete and its environmental impacts if you go online and
look the numbers are everything from 40 percent to a one-to-one ratio of pollutants created with
the manufacture of concrete. The Commissioner to my right has just said it is the highest carbon
footprint of any of the materials. So it is an enormous, enormous impact that we are essentially
incentivizing in Palo Alto because we don’t count it as square footage and I think it is an
environmental impact that— it is one of the places where LEED and Green Building just don’t
get the big picture. I think that is one of the areas. It may be because not all part of the country,
of course Build It Green is California, but some parts of the country don’t have this kind of
situation although much of this area certainly does. So if you look at how much pollutant carbon
that puts out in the atmosphere on the low end it is 3,200 tons a year and on the high end it is
16,000 tons a year. That is just the concrete that goes into basement construction in Palo Alto in
one year. So how environmentally friendly is that? How green is that?

In 2006 there were 85 single-family home demolitions, and this is just the single-family homes,
and 78 in 2007. The 2006 Waste Characterization Study that was put out 78,000 tons of waste
was created in Palo Alto. Almost half of that was C & D and almost half of that were problem
materials that there is no recycling potential for. None. There is no market. If you read the
Waste Characterization Study it clearly states that. So where this leads me is I have at least one
issue about basements. I actually have more but I have at least that one issue that is quantifiable
in terms of its impacts. In terms of demolitions all along I have been absolutely supportive and
have been wanting the City to go towards a green building-like point system for granting permits
for several years. However, I am still very disappointed that even though it is coming, it is very
slow in coming, and it isn’t included here to any real measurable way, giving points that really
are representative of the embodied energy in existing buildings.

I really do worry for a few reasons that exempting buildings will send the wrong message. We
are exempting them which means you don’t have to satisfy any green points so we are essentially
telling them that your building isn’t green you just get an exemption. That sends a wrong
message to people. I have heard people say that they want to restore their building and rehab
their building but they can’t make it green so they tear it down. That is the message that we are
going to further impress upon people if we pass what we are looking at tonight.
Also, the people who are, is it not their fault. It is because of the systems, the LEED and Build It Green systems, the people who are going to be trained to evaluate these projects are going to have no training and no information as far as I can tell in historic preservation or in adaptive reuse or in the energy that is actually saved by using existing windows but doing other treatments like interior storm windows and those sorts of things that are alternatives. So I think we are going to lose buildings by just not having the proper training for people to deal with our community’s already built resources.

I mentioned earlier that we don’t count basements as part of square footage. Actually I very, very much like the language that was on the presentation. Curtis, I thought you did a great job on the presentation this evening. On the first page it says that Green Building means a whole systems approach to the design, construction, and operation of buildings that substantially mitigates the environment, economic, and social impacts of buildings. I think that is much better stated than how the ordinance is written, frankly. I think that language really hits the nail on the head when it comes to the more broad goals of a Green Building Code. So I am actually going to suggest some language changes there.

Under the Purpose of Draft Ordinance, again in your presentation this evening Curtis, the second, third, and fourth bullets say, encourage water and resource conservation, resource conservation is not used in the ordinance that I could find at least. I think that term speaks much better to what the overall goal of sustainability is that the Council passed. The third bullet is, reduce waste generated by construction projects. Again adaptive reuse would do a great deal to satisfy that goal but that isn’t included in any significant way in what is before us this evening. The fourth is provide durable buildings that are efficient and economical to own and operate. Probably a few of you have heard me say before when I have been on my little perch is that what we are doing is tearing down smaller homes, I know we are going to have a study session about housing here before long, but we are not having a discussion here about house size at all. It is going to be a difficult one to address but I think environmentally, socially, economically it is one we have to take up and where we land is something else. But we are not addressing that at all and again, it is part of the purpose of this ordinance. We are tearing down smaller homes, it says that since you have been keeping track it is something like 1,575 square foot homes, and that doesn’t include the garages, and we are tripling the cost or the sales price of the homes where we teardown houses and build new houses with basements. It is easy to see a property go on sale for $1.3 to $1.5 million and it comes back on the market for $4.5 million rebuilt with a full basement. That is not sustainable. It is not socially responsible. It is not economically feasible. We talk about jobs/housing imbalance and it is all relative in terms of what people can afford here but we are making it harder and harder for people to be able to live and work in our community.

The C & D Ordinance, salvage is referenced here but there is not much focus on it. We have had the C & D Ordinance in place for some time and the salvage aspect of it is still not very well implemented. I am not trying to blame anyone for that. I don’t know if it is availability of Staff or training of Staff or what but it is still woefully lacking. A great deal still gets chipped up and we can’t look at recycling as being as good as salvaging or reusing buildings. It just simply is not.
I think one last comment and then I will try to make a handful of changes here. Actually, other people have comments so I will go to them next. Two things actually. Under ‘Incentive’ and I couldn’t find it although I know I read it in here somewhere it talks about reduced parking. We just did the Zoning Ordinance Update and as a part of that we looked at parking requirements. So personally I would not favor in any fashion parking reduction in exchange for Green Building compliance. The other is and this is not in the ordinance but since this is going to be passed by resolution it is a concern I think I need to bring up. Renovation on a couple of occasions was referenced as interior improvements or remodeling. Renovation when it comes to existing buildings, historic or not, can often times affect the outside too. So to limit it to just interior by definition is very, very difficult I think to apply in the real world.

The last thing I will say at this moment is the exceptions are listed separately so you have to – they are part of the ordinance but they are not obvious. They are certainly not a part of Table A and Table B. So if you have an historic home and you go in and you ask for these checklists you are not going to know that you are eligible for exceptions that I can tell. It sound like you want to correct me there and I am happy to be corrected on that.

Mr. Williams: If all you are looking at is the table it is our job to tell you that it is not the table. It is just like if you look at the tables in the Zoning Ordinance for CN it tells certain height things and everything but there are sections after that that tell you more about it. We started out with a table that if somebody got a hold of it they would just be overwhelmed by the amount of information trying to fit it in a table. If you try to sort of get everything in there and in the footnotes and it had 12 footnotes and more. So I understand that but I think is our responsibility to tell them if they have an historic home that we have an exception process and lead them to understand this is all one thing. It is not just the tables that they have to comply with.

Chair Holman: In a perfect world I agree with you and I do trust Staff will do due diligence but people are going to go online and download these Tables A and B and they are not going to see that. They are going to be talking to their architects and contractors and they are going to be down the road and come in with decisions made, I fear.

Two other Commissioners have lights on Commissioners Sandas and Keller and now Commissioner Tuma I see you have a question. Did you want to say something right now as a follow up?

Commissioner Tuma: Just to your point. Couldn’t the concern that Chairman Holman has on this particular issue be addressed if you put just some sort of notification in bold at the top of the table that pointed the applicant to make sure to review the whole thing and not just this page?

Mr. Williams: Yes, we certainly can a bold disclaimer essentially that this relates to that ordinance and please review all of this as one package.

Chair Holman: Commissioner Fineberg.
Commissioner Fineberg: Can I suggest some wording on that? Maybe something like ‘historic homes or homes with significant adaptive reuse may be eligible for extra points at the discretion of the Director,’ so that they get what it is for and that answers your semantic issues that it is points, it is green, it is not exemption.

Mr. Williams: We could probably do that as a footnote. Then this will be kind of overriding at the top or way at the bottom. The reference we are making here is to much more than the historic part of it.

Chair Holman: Correct.

Mr. Williams: We mean looking at the whole ordinance when you are considering what is in the tables.

Chair Holman: It was why I asked the question earlier of Staff and also of David Kaneda earlier this evening about how points were determined and there didn’t seem to be a good answer available. So I don’t know why we couldn’t use some kind of rational point system for adaptive reuse or restoration of building.

Mr. Williams: Well, I think the answer to that is it depends on whether we want somebody to get something that they can have certified through a process or not. Right now LEED and Built It Green are not going to recognize those points. We can’t write points for them.

Chair Holman: But if you are talking about single family residential and sometimes they are going to want to get accredited to but a lot of people are not going to want to go to that level, I don’t think.

Mr. Williams: Yes, so we can’t artificially change the rating systems. What we could do is consider doing something separate that recognizes those buildings in a special way as green if you do something as far as reusing the building and then maybe comply with certain ones of these items on the remodeling checklist or something like that. I think that is a customized process of creating our own list, which we have sort of been directed frankly not to do at this point so we can get out and get on the train moving forward on these Green Building checklists. There is not a reason why we couldn’t on a separate track here get something else going regarding acknowledging and recognizing and do our own, some kind of, program for the kind of building that you are talking about.

The whole rest of it as far as disincentives for basements and all that I think you know is a big economic issue in the community and in the region. We have started that discussion on a couple of occasions and it has not gone to a point where changes have been made. So I don’t know how to address that.

Chair Holman: I said I certainly acknowledge that it is a difficult discussion but I don’t know how we can not have the discussion. This body certainly hasn’t had that discussion. I believe Commissioner Sandas was next.
Commissioner Sandas: I am going to apologize ahead of time because I am only half awake. There are a couple of things. The first thing is that Chair Holman is just remarkable. I am so tired I am so sorry I am having a hard time saying this. You are remarkable. All those things that you have brought up I share those concerns and I didn’t even realize it until I heard from you. As the maker of the motion however, and I am not sure that I am saying this out of expediency so that this can get to Council, should it go to Council considering some of the points Chair Holman has brought up this evening? On the hand on the other hand, I am kind of toying in my own mind. I think that this is a starting point. I think we are talking about progress and not perfection. I am curious about our ability to revisit this ordinance as time goes on. I know Commissioner Lippert has mentioned that LEED won’t be the only game in town at some point so we should be prepared to readdress the Green Building issues when there are competitors in the marketplace to LEED. So I am thinking that we have had a lot of amendments to the motion. I think you said there were eight of them and they have all been accepted. How many?

Mr. Williams: Ten if you include the two footnotes.

Commissioner Sandas: Okay, so I don’t know if I can re-move the motion, say it again, but I think that let’s go with this starting point. Are we okay with going with this as a starting point? We have everybody speaking to their support of the motion and make sure that we have the opportunity to address these other issues that Chair Holman has brought up. Does that make sense to everybody at this late hour? It doesn’t make sense to Commissioner Keller.

Chair Holman: Commissioner Keller you had your light on too.

Commissioner Keller: Yes, thank you. Firstly with respect to Chair Holman’s comments I believe that Built It Green certification requires 50 points. Is that correct?

Mr. Williams: Their basic certification as opposed to what we are proposing, yes.

Commissioner Keller: Yes, and therefore to the extent that we allowed points to be counted for adaptive reuse or remodels for the 70 points, to the extent that we allowed for that, if they still got at least 50 points on the official Build It Green scale they could still get that certificate and be happy. So I think that to the extent that we allow additional points for those considerations as long as we didn’t allow more than 20 points it would still work for them to get a nice certificate they could hang on their wall.

Chair Holman: Is that an amendment?

Commissioner Keller: No, it is not an amendment. I don’t think it needs to be an amendment. I think that it is understood with respect to that.

I would like a clarification to one of the things that I said, just to be clarified. I referred to sea level rise of houses I also think it should refer to City facilities which are in the floodplain, commercial property, and Highway 101, which are all endangered by sea level rise. So I am not sure if that needs to be an amendment or it is just a clarification of that.
With respect, I am going to make this as a recommendation but not as a formal amendment, I am
going to recommend that as part of this process that the Planning Department basically have a
customer survey of some sort and ask the applicants to give feedback on how well this is
working for them, and that that data be part of the data that comes back to us in a year. I think
we would like to know how much is this costing them, how much the additional effort is, how
much the benefit it, do the houses sell faster, or whatever. At least we will have some sort of
data on that.

With respect to whether this is too soon, considering the life of these buildings is 50 years or
more, I think it is not too soon. The experts tell us that we have maybe ten years to turnaround
the amount of carbon dioxide that is being produced and start turning that to be lower.
Considering vehicles are turned over much faster than buildings the sooner the better from my
perspective. So I would like to see this go in the future.

One thing that I am not sure is part of the amendments to the ordinance but I believe it was
something that in a written response to my questions was agree to by Staff is including
basements whose height is seven feet or greater and including garages in the square footage. I
just want to make sure that that’s part of the ordinance. Is that okay as an amendment if
necessary by the maker?

Commissioner Fineberg: Is it in the ordinance?

Commissioner Sandas: Can you please repeat that?

Mr. Williams: It is understood by us. We don’t object to actually writing that where we have
the part about the basements to also mention that attached garages would be part of the....

Commissioner Keller: Right. That basically basements be included in this, and being explicit
that basement with a height of seven feet or greater and attached garages are also included in the
square footage.

Commissioner Sandas: Does that need to be an amendment, yes or no?

Mr. Williams: To specifically put that language in the ordinance yes it needs to be an
amendment.

Commissioner Sandas: I will accept that even though I said I wasn’t going to take anymore
stinkin’ amendments.

Commissioner Fineberg: Clarifying question on that.

Chair Holman: The seconder first. Seconder?

Commissioner Tuma: Fine.

Chair Holman: Okay. Yes.
Commissioner Fineberg: For green purposes why does it matter whether the garage is attached or detached? It is still using resources.

Mr. Williams: It is but it is not connected to particularly the energy use of the house. My understanding is there are actually some provisions or maybe even a point in one of these systems for detaching garages because then you don’t have – there are certain energy losses that happen between the house and the garage if you have an attached garage. So you have to really seal if you are building above it or right next to it because that is not conditioned space. There are some energy implications related to that that don’t happen if you have a detached garage.

Commissioner Keller: I got distracted when you were reading your list of things. Can you remind me what number seven was?

Mr. Williams: Seven was the definitions, the New Construction that we break it out and call it New Construction, Residential.

Commissioner Keller: Thank you. I would just like to make two more quick comments. One is I would support not as a part of motion us at some point considering dewatering in more detail and basements. I am supporting that coming back to us at some point.

Lastly, in terms of adaptive reuse I think that is a very important concern. I am actually collaborating with Build It Green on a project that they are doing where they are trying to create a database and system of the measures to correlate with the point systems for Build It Green and try to quantify the greenhouse gas implications of doing those measures. I am with an organization that is actually giving them money to help them with this project. As part of that I would be happy to have them try to quantify the idea of adaptive reuse versus teardown and start from scratch. Perhaps that can be done as part of this database and system so that we could have better data for future ordinances and for future point systems.

Chair Holman: Commissioner Lippert, you had put your light on.

Commissioner Lippert: I just want to say this is a first step. This is not a perfect process at all. There are things that I am still unhappy with on this but I think that it is prudent and important that we take that first step. There will be time and opportunities for us to improve this in the future.

With regard to Chair Holman’s comments with regard to basements the process on basements has evolved and the net result of that is there have been unintended consequences, which continue to impact the whole issue of concrete and the carbon footprint it causes. One of them is that because you can no longer pump out the foundation around a basement and pump it out to the street those basements actually have to stay within the ground. The groundwater wants to push the basement out of the ground so more concrete needs to be added to those basements and those walls need to be made larger and dead weight has to be added so that they stay in the ground. The net result of that of course is that concrete is a gross carbon polluter when it is produced. It can be reduced by using more fly ash in it but then walls aren’t really retaining
walls and they are not heavy enough to be 3,000-psi concrete, which is what you need for a retaining wall.

So again it is not a perfect process. I think that the Green Building Code will eventually hash out a lot of these issues we just have to be patient with the process and let it play itself out. Until then I think the best we can do is to adopt this ordinance with the amendments that we have addressed this evening.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: I wanted to follow up a little bit on Chair Holman’s comments about how to handle the reduced parking requirements as an incentive for green. In certain projects where they are located near the urban centers where they are near public transit....

Mr. Williams: I am sorry I am a little confused why – we are not considering any incentives at this point in time. Those were in there listed as things that have been brought up to consider at some point but right now that is just a laundry list of suggestions that have come to us and there is nothing being proposed other than the ordinance has a sort of placeholder saying at some point the City may adopt incentives.

Commissioner Fineberg: Okay, because I remember having seen it in the Staff Report and at this late hour forgive me if I didn’t distinguish between future so thank you for that correction. That does answer that.

Then I also want to talk a little bit about, Commissioner Lippert has talked about the unintended consequences, there are going to be some surprises. We are not going to know where things pop up. We are anticipating possible problems with basements. We are anticipating possible problems with how when these are applied maybe historic properties get torn down. Are there any quick releases or triggers that if we are seeing something happening, trends happening, that either really are not green or causing distortions where we don’t want them what is a quick way to get on top of that? Are we prepared or do we have to go through some long process and continue to have those unintended consequences?

Mr. Williams: If there is something that is really egregious for some reason we can bring that forward quickly but what I am expecting is we are coming back in a year and frankly I think very little will have happened probably by that point. Again, we are talking about going through the planning process, and going through the building review process, so we will not have any homes or commercial buildings constructed to the point of determining their compliance level in that one year. It is going to be probably two-years. I think coming back in one year will be adequate to at least be able to assess what we have learned so far, as far as how these checklist work, what kind of additional cost and time constraint is that adding to the homeowner and the architect, and such and such? Have there been any issues that have arisen that might relate to historic buildings or how basements have been dealt with and trying to flag those things actually before they are out in the field being constructed? So I think one year is a good timeframe for that. We had talked about having this sort of one-year transition and ended up with a two year just because one year isn’t enough time to really be able to see what is happening as far as making the
transition. We do want to come back because there will be some things that we learn in that year to report back to you. Some new checklists could be out then too.

Chair Holman: I have just a couple of wording things to add to the ordinance and then one clarifying question about Attachment B. Attachment B is the resolution and the resolution refers to Attachment A and Attachment B and those attachments refer to LEED NC checklist for instance but those checklists are going to change over time so I am wondering if there needs to be some other reference so that we don’t have people getting upgraded checklists and there be confusion. In other words, NC checklist as of X-date isn’t referenced.

Mr. Williams: Oh, yes and we originally had that but our concern was that those are going to change and then it won’t be on here and we will not have updated it and they change and we should be using the most current of each of those checklists. We could put that on here, ‘most current version of each checklist,’ or something like that.

Chair Holman: It is your choice I was just trying to avoid confusion.

Mr. Williams: We might be able to put that with the number two footnote that talks about compliance with other checklists. We are going to do a similar one for Table B so it probably wouldn’t hurt.

Chair Holman: Okay, great. Then Commissioner Sandas, as maker of the motion I do have just a small handful of language additions or changes I would like to add if you are so amenable. On Attachment A, the first page, again there is no reference on this page having to do with restoration. So in the third ‘whereas’ if we could add after ‘construction’ in that first line add ‘restoration’ and in the second line just to the right of that add ‘resource conservation’ as opposed to ‘efficiency,’ which is consistent with what was presented this evening. So it would read, “Whereas green building design, construction, restoration, operation, and maintenance can have a significant positive effect on energy, water, and resource conservation.”

Mr. Williams: So you added restoration and what was the other?

Chair Holman: Changed efficiency to conservation after resource. Are those agreeable to the maker and seconder?

Then the same thing on page two, H, because the design, restoration, construction, and maintenance of buildings and structures. So adding the word ‘restoration.’

Commissioner Sandas: Yes.

Chair Holman: Seconder?

Chair Holman: Then on page three, ‘the purpose of this chapter is to enhance the public health and welfare,’ I really so much like the language that is used on your presentation this evening. It talks about energy efficiency in building and water and resource conservation and reduce waste generated by construction projects, provide durable buildings that are efficient and economical to
own or operate, promote the health and productivity of residents, workers, and visitors to the
city. That language is so good and I am not sure of the best way to incorporate that plus one
bullet, this is an easy one, add one letter (f) under the Purpose statement is to recognize the
energy in existing buildings. Would that be agreeable to add, Commissioner Sandas? Recognize
the energy in existing buildings and this under Purpose, (f).

Commissioner Sandas: Recognize the energy or the energy use?

Chair Holman: Well there is a lot of embodied energy in existing buildings, which is the term
that is used having to do with reuse.

Commissioner Keller: Can I suggest how about recognize the energy that was used to construct
the existing buildings?

Chair Holman: That is the embodied energy. Curtis.

Mr. Williams: I was going to say recognize and conserve the energy embodied in existing
buildings.

Chair Holman: Fine by me if that is agreeable to the maker.

Commissioner Sandas: Okay.

Chair Holman: Seconder?

Commissioner Tuna: Yes.

Chair Holman: I don’t want to try to wordsmith this it is too hard at this point but if the maker
and seconder are agreeable to just trying to get in the Purpose section the language that is in the
fourth box on the front page of the presentation, Purposes of Draft Ordinance, into this Purpose
section. It is the front page of your presentation this evening, Curtis.

Mr. Williams: The fourth box, Purposes of Draft Ordinance, is that what you are saying?

Chair Holman: You know I am not the night person I used to be it is there. So thank you for
that. Yes, it is pointed out to me that the second box, Green Building, means a whole systems
approach is under Definitions but it is not under Purpose. I am not sure if that is where it best
lies.

There was one correction in the Definitions. It talks about single family and R-2 seemed to be
not mentioned, although it is mentioned under T. There was another place where it mentions
single family and multi-family but it leaves out R-2 because it talks about three units or more and
single family. There is no reference to two units so if you just scan through you will find it.

Mr. Williams: Okay, because R has it in it too, Residential New Construction, single family or
two-family.
Chair Holman: Some places it is and some places it isn’t.

Commissioner Keller: I believe it is in definition E where it says any multi-family or single-family residential new construction.

Chair Holman: Thank you that is it. Thank you Commissioner.

Mr. Williams: Or two family.

Chair Holman: I think that is the end of my windy comments here.

Commissioner Sandas: Amenable.

Chair Holman: So with that we have two more. Commissioner Sandas and Commissioner Keller you have your lights on.

Commissioner Sandas: No, no.

Chair Holman: Commissioner Sandas not. Commissioner Keller your light is on.

Commissioner Keller: I just want to make sure that we do not need an explicit amendment to the motion or explicit guidance to you with respect to your being able to do the appropriate wordsmithing in response to my question seven.

Mr. Williams: Yes, we don’t need anything more than that. It is just an order issue. New Construction, Commercial and New Construction, Residential.

Commissioner Keller: No, my question seven not your item seven. My question seven had to do with the use of the LEED name and what certification and that.

Mr. Williams: Yes, we will put the trademark.

Commissioner Keller: Also clarifying the notion of certification versus verification sort of cleanup. Do you need that as part of the motion?

Mr. Williams: No, we already talked about it. That is just a cleanup item we will do.

Commissioner Keller: Great.

Mr. Williams: Another one to mention to you are the two table s where it says mixed use at the bottom refers to using the residential table or the commercial table and they are mixed up. It says Table A for the residential and Table A is actually the commercial so we will change that.

Chair Holman: The last thing I am going to say this evening other than let’s vote is I am really torn because part of me really wants to support all of this and I know it is going to pass. It is
going to pass at least with six votes. I am sorely tempted to vote against it just because I want to impress the importance of these other aspects that are not addressed. So Commissioner Tuma.

Commissioner Tuma: Let's call the question.

MOTION PASSED (6-1-0-0, Chair Holman voting nay)

Chair Holman: So the question will be voted on now, the motion as amended numerous times, which I don't think we need to reiterate at this point.

I said that up front. I said I didn't know where this would lead me or where I would come down. I said that up front. I did before, yes I did.

Thank you, Commissioner Tuma you are right. So all those in favor? (ayes) All those opposed? (nay) So that motion passes on a six to one vote with Chair Holman voting nay. Commissioners Tuma, Lippert, Sandas, Garber, Keller, and Fineberg voting aye.

With that we have a tiny little bit of business to still carryout. We have approval of minutes from March 12.

APPROVAL OF MINUTES: Meeting of March 12, 2008

MOTION

Vice-Chair Garber: So moved.

SECOND

Commissioner Sandas: Second.

MOTION PASSED (6-0-1-0, Commissioner Tuma abstained)

Chair Holman: All those in favor? (ayes)

Commissioner Tuma: Just for the record I am abstaining, I was not present.

Chair Holman: That motion passes on a six to zero vote with Commissioner Tuma abstaining.

Reports From Officials and Committees. Staff?

REPORTS FROM OFFICIALS/COMMITTEES.

Mr. Larkin: I indicated I was going to report on a case. I am going to hold that because I have a long drive and want to go home.

Chair Holman: Curtis?
PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO: PLANNING AND TRANSPORTATION COMMISSION

FROM: Amy French
Planning Manager

DEPARTMENT: Planning and Community Environment

AGENDA DATE: April 9, 2008

SUBJECT: Review and recommendation to City Council of 1) an Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building Regulations) and 2) a Resolution to Adopt Green Building Compliance Standards for Private Development Projects. Environmental Assessment: Categorically exempt from the provisions of CEQA per Section 15308 of the CEQA Guidelines.

RECOMMENDATION:
Staff recommends that the Planning and Transportation Commission (Commission) discuss the proposed Ordinance and Resolution (adopting attached tables setting forth green building compliance thresholds, rating systems, and compliance verification for private development projects), and forward a recommendation to the City Council for their adoption, which is tentatively scheduled for the May 12, 2008 City Council meeting.

BACKGROUND:
On March 12, the Commission held a study session to review staff’s proposal for green building criteria for private development and continued the session to April 9, 2008 for further discussion. A separate staff report for the continued session has been provided to the Commission, including the March 12 staff report. Much of the background from that report is included in this report’s background section for the ease of readers who may be new to the City’s development of a green building program. As noted in the March 12, 2008 report, the Council has supported an aggressive timeline for requiring green building and the Northern California Homebuilders’ Association has publicly supported mandatory green building for residential projects, so many other communities are hastening their mandatory residential green building programs. Council adoption of the proposed Ordinance and Resolution would result in commencement of the mandatory residential green building program in 2008 rather than in 2009 as initially reported to

On March 25, 2008 and April 1, 2008, staff held publicly noticed outreach sessions at City Hall to present the proposals for both residential and non-residential private development to respective building professionals and the general public, and hear any feedback. Only about a dozen people attended the two meetings, but they were helpful in clarifying some of the details of the requirements. In the weeks prior, staff had held three focus group meetings of building professionals to share working draft tables and discuss issues related to program implementation.

Regionally, the use of Build It Green's (BIG) GPR™ (Green Point Rated) residential green building program and the U.S. Green Building Council (USGBC) LEED™ (Leadership in Energy and Environmental Design) non-residential green building program is recommended. BIG's program originated with the use of a green building checklist for homes by Alameda County's Waste Management Authority several years ago, is used only in California and only for residential projects, and it references Title 24 and other California-specific regulations. The LEED™ New Construction checklist is recommended for non-residential projects but can be used for residential projects over four stories. Other Bay Area cities have adopted policies and ordinances referring to these industry-recognized programs. The Santa Clara County Association of Cities’ Green Building Collaborative advocates the countywide use of the LEED™ checklist for non-residential projects and the GPR™ checklist for residential projects. Staff and a Council member are among the membership of the Collaborative, and Palo Alto’s program development is being shared with the group.

**Green Ribbon Task Force Recommendations**

The 2006 Mayor’s Green Ribbon Task Force (GRTF) Building Committee recommended the Council pursue an incremental approach to requiring BIG’s program for residential projects and the USGBC’s program for non-residential projects. The GRTF encouraged zoning approaches to green building (e.g. transit oriented housing) and recognized the need to have LEED™ trained staff or consultant(s) and incentives in place prior to requiring a certain level of green building points in projects. The complete GRTF recommendations were provided to Council in December 2006 and referenced in the Council adopted climate protection plan of December 2007.

**City Council Action**

On August 6, 2007, Council received a staff report (CMR 333:07) referencing staff and the ARB’s charts of green building approaches for private and public development projects, and setting forth an anticipated schedule for implementation of mandatory programs, with non-residential and multi-family residential projects targeted for July 2008, and low density residential projects targeted for July 2009. The Council also adopted a green building ARB approval finding and zoning language allowing the City to require green building checklists. In December 2007, the City Council adopted an amended green building policy for City facilities that lowered the threshold from 10,000 square feet to 5,000 square feet, raised the LEED™ level from Certified to Silver, and included exemptions. Also in late 2007, the Council adopted the California Building Code, which went into effect in January 2008 and referenced the California
Energy Code.

**Green Building Working Group**
The Green Building Working Group (Group), led by the City's Chief Building Official and comprised of City staff of multiple departments, is focused upon issues related to establishing a mandatory green building program. Last summer, the group coordinated the presentation of two educational sessions in the Council Chambers regarding the USGBC/LEED™ and BIG/GPR™. These sessions were intended for Council members in particular but were attended by others. The Group is now preparing for a Council study session providing a “primer” on LEED™, planned for April 28, 2008. The primer will include a description of the differences between LEED™ levels, will identify LEED™ checklist points most frequently gained by development projects registered with the USGBC, and will likely use a local LEED™ certified building as an example to facilitate understanding of the costs, savings, and certification steps involved in green building. The group includes a BIG certified professional and a LEED™ Accredited Professional (AP); the group has also sought input from the two ARB members and a contract planner (working in the Individual Review program), who are all LEED™ AP.

The Group has been assembling data to assist in the development of the ordinance and tables for private development. The Group is interested in realizing the greatest efficiencies, staff training, rebates for certification or similar incentives to increasing the level of green building. Some building data was provided to the Commission at the March 12 study session, and further data was to be provided at the continued study session. The Group plans to track Title 24 data in future year summaries of building permit activity. The Group is also aware of the possibility cumulative new construction or renovations over time would avoid triggering greenbuilding thresholds; the tables prepared to be adopted by Council resolution include a provision that in any two-year period a cumulative project shall be considered as a single project for greenbuilding compliance purposes, unless exempted by the Planning Director as impractical for compliance. Group staff members are attending regional BIG meetings, green building seminars and workshops, and Group members are looking toward obtaining additional training in LEED™ and GPR™ in conjunction with the rollout of the mandatory programs.

**Use of Green Building Checklists**
On October 11, 2007, the zoning ordinance changes regarding sustainability became effective, allowing staff to require checklists to be submitted with ARB applications and providing more “teeth” in the ARB’s sustainability finding. Green building checklists are also now being submitted with other planning entitlement applications, including single family residential individual review applications for two story homes. Green building checklists have not been required or provided with Building Permit application materials to date. Green building checklists are provided at the Development Center kiosk and the Development Center website provides a link to USGBC and BIG web sites. The City is funding an “ask-the-expert” program for applicants who wish to consult with knowledgeable green building professionals on materials, checklist completion, BIG certification or other green building matters. All LEED™ and GPR™ checklists include points available for energy efficiency and LEED™ checklists include points for retention of substantial portions of an existing building.
Incentives to Increase Green Building
The focus group members noted one of the best incentives for green building is recognition. The ARB design awards, which are presented every five years, present an opportunity for recognition of built projects and one of the criteria is innovative approach to sustainability. The Green Building Working Group is looking at various possibilities for incentives, considering programs of other cities such as Austin, Seattle, Boulder and Anaheim. Financial incentives for exceeding minimum required GPR™ points are under consideration; specifically, the use of Utilities funds earmarked for improved energy efficiency in Palo Alto and for training and education. Rebates associated with a dollar amount per point exceeded are being considered, and this concept is supported by the ARB. The program would be designed to offset costs associated with review of the checklists and verification by a third party green point rater (for residential buildings). Other topics being studied by the group include incentives for innovative stormwater management solutions, including use of cisterns, green roofs and permeable pavers. Expedited permits, a tool used by other cities as an incentive for green building, is not as relevant an incentive for green building in Palo Alto, which uses an outside plan check system to expedite building permit review.

DISCUSSION
Staff proposes to implement the mandatory green building program through adoption of a zoning ordinance amendment (Attachment A) to create a new Chapter 18.44 (Green Building Regulations) of the Zoning Ordinance. Council adoption of the attached tables A and B by resolution in conjunction with a zoning ordinance would allow flexibility for periodic amendments by resolution rather than by legislative ordinance changes. The following discussion outlines the organization and key provisions of the proposed ordinance and resolution.

Ordinance Sections
The proposed ordinance contains the following sections:
18.44.010: Purpose
18.44.020: Applicability
18.44.030: Definitions
18.44.040: Standards for Compliance
18.44.050: Incentives for Compliance
18.44.060: Administrative Procedures
18.44.070: Hardship and Infeasibility Exemption
18.44.080: Appeals

Ordinance Applicability and Definitions
The Applicability section would exempt projects that have planning and/or building permits on file at the effective date of the ordinance. The Applicability section refers to “Covered projects”, which are set forth in the definitions section and in Tables A and B. The categories in this term are outlined specifically by thresholds and valuations set forth in the Tables adopted by Resolution. Preliminary ARB review applications would not be exempt, however.
The proposed Ordinance contains definitions of the following terms as they are relevant to this chapter: Applicant, Commercial (nonresidential) new construction, Compliance official, Compliance threshold, Covered project, Good faith effort, Green building, Green building project checklist, Green building rating system, GreenPoint Rated™, GPR™ verification, LEED™, LEED equivalent, LEED/USGBC verification, Mixed use, Multi-family residential, Renovation, Residential new construction, Self-verification, Single-family or two-family residential, and Square footage. “New construction” is defined generally as new floor area, while “renovations” include interior improvements that involve only negligible new floor area. The definition of “renovation” includes a clause that allows the Chief Building Official to exclude from valuation retrofits for seismic stability and accessibility, and for green-building specific features such as a cool-roof and/or photo-voltaic panels, so that such projects alone would not trigger the green building thresholds set forth in the Tables.

Standards for Compliance
This section of the proposed ordinance refers to tables adopted by the proposed resolution (Attachment B). The resolution and Tables set forth proposed timing, thresholds, green building levels, and verification requirements for both non-residential projects (Table A) and residential projects (Table B). The Tables were presented in draft form to local stakeholders and amended further after internal and outreach meetings.

Table A
In Table A for non-residential construction, four LEED™ checklists are referenced and thresholds are proposed as follows:

- A LEED™ Silver level rating (33 points out of a total of 69 available points) is proposed for buildings of 5,000 square feet or more, consistent with the City’s adopted policy for public facilities. LEED “equivalent” verification at that level would be required, except for projects at or in excess of 25,000 square feet.
- The 25,000 square foot threshold would require verification by the USGBC for construction at or above that threshold.
- New construction of less than 5,000 square feet would also require pro-rated points, based on the size of the project, but not less than 17 LEED™ points, with LEED “equivalent” verification.
- The table also addresses renovations, such that major renovations (based on size and valuation) would be required to attain the LEED™ Certified level with LEED “equivalent” verification.
- New construction less than 500 square feet and renovation less than $100,000 of valuation would be exempt from the green building requirements.
- The table also addresses mixed use projects, which may use LEED™ or a combination of LEED™ and GPR™, as determined by the Planning Director.

The Green Building Working Group and focus groups discussed the expense and timing of certification (and re-certification for LEED™ Existing Building verification) through USGBC, and the fact that a certain percentage of verification of a building’s green points would occur after final inspection and occupancy, at which time “commissioning” by qualified experts is
required to test the building’s energy performance. The proposed “LEED equivalent verification” would allow for verification by a LEED™ Accredited Professional (AP) certifying that each LEED™ checklist point listed was verified to meet the requirements to achieve that point, but not requiring subsequent “commissioning” due to the time and expense involved. This verification differs from USGBC certification which is also done by a LEED™ AP to the level of USGBC standards and results in LEED™ certification of the project by USGBC.

**Table B**

Table B for residential construction begins with a minimum of 70 GPR™ points required for the following:

- New multi-family (three or more units) construction,
- New single-family construction of 1,250 square feet or more, and
- Additions and renovations of single family homes where the valuation of the improvements are equal to or greater than $350,000.

Verification would be provided by a third-party, certified Green Point Rater under the auspices of Build It Green for all of the above.

Table B also includes the following:

- A graduated scale standard for larger homes having a threshold of 2,550 square feet of floor area (including basement area), with an increase in the number of points as the home size is increased up to a maximum requirement of 150 GPR™ points (though more GPR™ points can be voluntarily implemented).
- Projects having a valuation equal to or greater than $75,000 and less than $350,000 would require “self-verification.”
- Projects having a valuation less than $75,000 would be exempt from green building requirements.
- A reference to Mixed Use projects identical to that outlined in Table A.

The difference between Green Point Rated and self-verification is that, rather than a certified Green Point Rater under the auspices of Build It Green, the project architect or other qualified green building professional could verify that the project meets standards and has attained the compliance threshold as indicated for the Covered Project type as set forth in the Ordinance in the Standards of Compliance section.

**Incentives**

This ordinance section would allow for adoption of incentives programs by Council via Resolution or Ordinance. No specific incentives are proposed at this time, however.

**Administrative Procedures**

This ordinance section allows the Planning Director to establish compliance rules and procedures, and establishes the types of procedures including the timing and content of documentation to be submitted with permit applications, along with building inspection and compliance regulations.

The Interim Compliance Effort section allows for a gradual transition into compliance for an
initial two-year processing after the ordinance becomes effective. Applicable projects processed during the first two years of the ordinance would be considered compliant with regulations if 75% of the required green points are achieved prior to final building inspection, and 90% of the minimum green points are achieved within one year of the final inspection. If less than 75% of the minimum points are not achieved prior to final building inspection, inspection would be withheld unless an exemption is granted.

**Hardship and Infeasibility Exemption**
This ordinance section provides for exemptions from the green building requirements, and outlines the process for review of exemption requests, and would provide the Director discretion to determine the maximum feasible number of credits reasonably achievable for the project. For any covered project for which an exemption is requested and Architectural Review is required by the ARB, the ARB would recommend to the Director regarding the exemption along with its recommendation on the project. The City Council would grant or deny the exemption, based on the criteria set forth in the section, for any project requiring Council approval.

Exemptions may be requested by the applicant for hardship or infeasibility at the time of application submittal, where the applicant would indicate the maximum number of feasible credits anticipated and hardship circumstances. Such circumstances could include: (1) a conflict with the compatibility of the green building rating system with other City goals, such as those requiring historic preservation; (2) a conflict with the compatibility of the green building rating system and the California Building Standards Code; (3) a conflict with the compatibility of the green building rating system and the City's Zoning Ordinance and/or Architectural Review criteria; (4) the green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; and/or (5) there is a lack of commercially available green building materials and technologies to comply with the green building rating system.

**Appeals**
This ordinance section allows for appeal to the City Council of exemptions and other green building determinations, and refers to the existing Zoning Code Chapter 18.77 with regards to the process for appeal to City Council.

**Architectural Review Board Input**
On March 6, 2008, the ARB held a public hearing regarding the proposed tables and hardship and feasibility section of the draft ordinance. On April 3, 2008, staff provided an update to the ARB, and on April 17, 2008, the ARB will conduct a public hearing and provide a recommendation to the City Council on the attached documents. The ARB’s annotated comments of March 6, 2008 are attached to this report (Attachment C). The highlights of the ARB recommendations include that the residential minimum points be increased in 2008 to 70 points from the 50 points proposed previously, that key staff receive training to become LEED™ accredited and Green Point Raters, that zoning incentives include parking, that major renovation be included with new construction in Table A, and that the City might consider allowing an applicant to opt for LEED™ certified level via USGBC certification process instead of Silver level verification by accredited professional. The ARB also noted their support for the larger house “disincentive” and inclusion of basement area.
California Energy Code
The City has contacted an expert in the field of local energy code modification to assist the City in preparing a study and proposal for submittal to the State of California Energy Commission. The changes anticipated in the new CEC may increase the amount of energy efficiency required for construction up to approximately 15% above Title 24. A local amendment can go further to increase energy efficiency. In the meantime, the attached zoning ordinance sets forth a minimum number of green building checklist points without requiring energy efficiency beyond the existing, enforceable energy code.

Building Reuse and Preservation
The National Trust for Historic Preservation is currently working with the USGBC to revise the existing LEED™ rating system. Currently the LEED™ system assign a maximum of 3 points for retaining 75% of a structure and the GPR™ checklist provides no points, though an extensive number of points is available for the deconstruction and the reuse or recycling of materials. It is recognized by staff and supported by statistics that retention of existing buildings is often the “greenest” choice for projects, and Comprehensive Plan policies support adaptive reuse of existing buildings as well. Incentives for reuse are more directly addressed in terms of tax and other measures. If a building is retained, the green building checklists are generally not applicable.

Attachment D to this report includes a summary of a meeting held in Berkeley on March 27, 2008, sponsored by the Berkeley Architectural Heritage Association, on the role of historic preservation in sustainability and greenbuilding. Three city staff members (the City’s historic preservation planner, a current planner and an engineer from Public Works Engineering Division) attended the meeting, and the current planner prepared the attached meeting summary.

Attachment E is an article distributed at the meeting on anticipated changes to LEED™ that would increase credits available for retaining existing buildings. The article notes that the anticipated new LEED™ 3.0 version, which would have credits weighted according to Life Cycle Analysis Indicators, will be available to the public May 1, 2008 and likely go into effect in January 2009, though the reuse and preservation provisions may not be developed for an additional year. Life Cycle Analysis efforts are supported by the City’s sustainability policy.

POLICY IMPLICATIONS
The proposed ordinance and resolution are consistent with the City's sustainability policy, green building policy for City facilities (which also sets a LEED™ Silver level for buildings over 5,000 square feet), and with Comprehensive Plan policies regarding protection of energy and water resources and natural resources.

ENVIRONMENTAL REVIEW
The adoption of the proposed ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15308 of the CEQA Guidelines.
CONCLUSION
Supplemental documentation and discussion is provided to the Commission with the Study Session materials. Staff believes the ordinance and implementing resolution and tables provide a significant initial step in providing for green building requirements for all new development and major remodels.

The ordinance anticipates a gradual implementation system and staff will focus on tracking the program's success and issues during the first year. Staff anticipates revisiting the tables after the first year of implementation, in mid-2009. The ordinance allows for an initial two-year processing after the ordinance becomes effective, for a gradual transition into compliance for the first years of ordinance implementation.

Staff members will be pursuing Green Point Rater and LEED training in 2008 and developing approaches to the use of green building consultants to assist applicants and staff at the earliest opportunities in the planning and building processes.

ATTACHMENTS
Attachment A: Draft Zoning Ordinance, Palo Alto Municipal Code Chapter 18.44
Attachment B: Resolution
• Exhibit A: Table A, Green Building Standards (Nonresidential Construction and Renovation)
• Exhibit B: Table B, Green Building Standards (Residential Construction and Renovation)
Attachment C: Annotated Comments of Architectural Review Board, March 6, 2008
Attachment D: Summary of Berkeley Architectural Heritage Assn. Meeting, March 27, 2008
Attachment E: Article from Preservation Nation, March 24, 2008

PREPARED BY: Amy French, Manager of Current Planning

DEPARTMENT/DIVISION HEAD APPROVAL: Curtis Williams, Assistant Director
SUMMARY OF HRB AND ARB COMMENTS OF APRIL 16 AND 17, 2008

**Historic Resources Board**
On April 16, 2008, the HRB voted unanimously (7-0) to recommend Council adoption of the ordinance and tables by resolution. The HRB holds that historic preservation is a green approach and therefore supports:

(1) using as many Green Point Rated Innovation points as possible for retaining historic structures;
(2) getting points for retention of historic structures into the LEED™ program as fast as possible; and
(3) adding to the exemptions section 18.44.070 (b)(i) the Planning and Transportation Commission’s recommendation for such projects to be reviewed by the HRB and further, to require such projects to conform to the secretary of interior standards for rehabilitation.

The HRB also asked staff to provide to City Council a document that was provided to HRB in their April 16, 2008 packet (Item #4 Attachment B).

**Architectural Review Board**
On April 17, the ARB voted unanimously (4-0-0-1, with boardmember Wasserman absent) to recommend Council adoption of the ordinance and tables by resolution, with the following changes:

(1) Clarify in Table B that the 2,550 square foot home size is per unit (to address two-family residential development).
(2) Clarify in Table B that the more restrictive threshold applies if the new construction is less than three units.
(3) Un-conditioned space, including garages and basements, should have 50% of the area count as floor area for calculating greenbuilding thresholds, and detached garages should also count in house size for determining the greenbuilding threshold.
(4) Tie the valuation threshold to the Building Division’s index for the construction cost per square foot to account for the inflation factor.
(5) In the definitions section of the ordinance, provide a definition for “additions” and eliminate the requirement for LEED AP as a part of USGBC verification.
PLANNING DIVISION

STAFF REPORT

TO: HISTORIC RESOURCES BOARD AND ARCHITECTURAL REVIEW BOARD

FROM: Amy French Planning Manager

DEPARTMENT: Planning and Community Environment

AGENDA DATE: April 16, 2008 (HRB)
April 17, 2008 (ARB)

SUBJECT: Review and recommendation to City Council of 1) an Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building Regulations) and 2) a Resolution to Adopt Green Building Compliance Standards for Private Development Projects. Environmental Assessment: Categorically exempt from the provisions of CEQA per Section 15308 of the CEQA Guidelines.

RECOMMENDATION:
Staff recommends that the Historic Resources Board (HRB) and Architectural Review Board (ARB) discuss the proposed Ordinance and Resolution (adopting attached tables setting forth green building compliance thresholds, rating systems, and compliance verification for private development projects), and forward a recommendation to the City Council for their adoption, which is tentatively scheduled for the May 12, 2008 City Council meeting, to allow the ordinance to become effective by July 2008.

BACKGROUND:
On March 6, 2008, the ARB held a public hearing regarding the proposed mandatory greenbuilding program, with focused feedback on the two draft tables and an excerpt of the draft ordinance. On April 3, 2008, the ARB received an update from staff on outreach sessions and the development of the ordinance. Background information was provided to the ARB at March 6 and April 3 meetings, and the ARB’s comments on April 6, 2008 were made available to the Commission in the staff reports (Attachments F and G) for their April 9, 2008 study session and public hearing on greenbuilding. All staff reports are available on the City’s website.
On April 9, 2008, the Planning and Transportation Commission (Commission) reviewed and recommended Council approval of the draft Zoning Ordinance establishing a mandatory green building program for private development, subject to modifications and with additional comments incorporated into the recommendation as enumerated below:

1. The requested exemptions for historic structures would go to the HRB for recommendation to the Planning Director.
2. The ordinance and both tables should allow flexibility for the use of alternate checklists to address re-use and remodeling (a la Table A footnote 2).
3. During the initial “discovery period” of the ordinance, the Planning Director should be able to allow for self certification if there is a shortage of green point raters.
4. A whereas/finding should be added to the ordinance to reference State Assembly Bill (AB) 32 and the danger of sea level rise for residential and commercial properties, public facilities and Highway 101.
5. A status/progress report should be brought to the Commission a year after adoption (this should include a customer survey to provide feedback for Commission review and could include any research that may be done by BIG to quantify adaptive re-use).
6. Add a footnote to Table B that multiple family residential projects greater than 30 units should also be required to submit a LEED™ Neighborhood Development (ND) or LEED™ for Homes checklist.
7. Add a footnote regarding the availability of exceptions for historic structures in both tables.
8. Add a qualifying note to both tables to advise applicants to review the entire ordinance.
9. The ordinance should include a reference to the inclusion attached garages in the residential calculation of floor area for determination of requirements.
10. Add to section 18.44.010: “(f) Recognize and conserve the energy embodied in existing buildings.”
11. Add “two-family” to the definition for “Covered project” in Section 18.44.030.
12. Add “most current” to the footnote in the tables regarding other checklists.
13. Other miscellaneous Ordinance wording edits/clarifications.
14. Data on costs and benefits related to the Build It Green rating process should be obtained and provided to the City Council in conjunction with the CMR for adoption of the ordinance.

The dissenting vote (Chair Holman) was supportive of a green building ordinance, but was concerned the effect would be to encourage demolition of historic structures, and disappointed that the ordinance did not include additional points for retention of existing buildings and also felt further staff training in adaptive re-use and historic preservation is needed. She prefers an emphasis on “resource conservation” in the ordinance to reduce waste from construction through preservation of buildings and adaptive re-use, with respect to efficient buildings. She believes the large home size is not sustainable and is especially concerned about the carbon footprint represented by the extensive amount of concrete used in the construction of basements in Palo
Alto.

There were four public speakers at the Commission meeting on April 9, 2008, including a LEED Accredited Professional and a Green Point Rater. The City’s Chief Building Official participated in the discussion as well as staff from Planning and Attorney’s offices.

**DISCUSSION**
In summary, staff proposes to implement the mandatory green building program through adoption of a zoning ordinance amendment to create a new Chapter 18.44 (Green Building Regulations) of the Zoning Ordinance. Council adoption of the attached tables A and B by resolution in conjunction with a zoning ordinance would allow flexibility for periodic amendments by resolution rather than by legislative ordinance changes.

The Commission report dated April 9, 2008, attached to this report, provides a relevant discussion section describing the components of the ordinance and tables. Based upon Commission input as noted in the Background section of this report, the draft ordinance and tables will be modified for the May 12 City Council review. The miscellaneous edits and clarifications recommended by the Commission included provision of a definition for “Non-residential new construction” as separate from residential new construction, and included exterior improvements as well as interior improvements within the definition of “renovations”.

**CONCLUSION**
Staff believes the ordinance and implementing resolution and tables provide a significant initial step in providing for green building requirements for all new development and major remodels.

The ordinance anticipates a gradual implementation system and staff will focus on tracking the program’s success and issues during the first year. Staff anticipates revisiting the tables after the first year of implementation, in mid-2009. The ordinance allows for an initial two-year processing after the ordinance becomes effective, for a gradual transition into compliance for the first years of ordinance implementation.

Staff members will be pursuing Green Point Rater and LEED training in 2008 and developing approaches to the use of green building consultants to assist applicants and staff at the earliest opportunities in the planning and building processes.

**ATTACHMENTS**
Attachment A: Draft Zoning Ordinance, Palo Alto Municipal Code Chapter 18.44
Attachment B: Resolution
- Exhibit A: Table A, Green Building Standards (Nonresidential Construction and Renovation)
- Exhibit B: Table B, Green Building Standards (Residential Construction and Renovation)
Attachment C: Annotated Comments of Architectural Review Board, March 6, 2008
Attachment D: Summary of Berkeley Architectural Heritage Assn. Meeting, March 27, 2008
Attachment E: Article from Preservation Nation, March 24, 2008
Attachment F: Planning and Transportation Commission April 9 Staff Report
Attachment G: Planning and Transportation Commission April 9 Study Session Report

Prepared by: Amy French, AICP, Manager of Current Planning

Manager Review: Curtis Williams, AICP, Assistant Director of Planning and Community Environment
NOT YET ADOPTED

ORDINANCE ______
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALO ALTO AMENDING TITLE 18 (ZONING) OF THE PALO ALTO MUNICIPAL CODE TO ADD A NEW CHAPTER 18.44 (GREEN BUILDING REGULATIONS)

WHEREAS, the City of Palo Alto’s (City) Comprehensive Plan sets forth goals for preserving and improving the City’s natural and built environment, protecting the health of its residents and visitors, conserving water and energy, and fostering its economy; and

WHEREAS, the City Council of the City of Palo Alto has identified Environmental Protection as one of its top four goals, and green building is a key component of environmental protection; and

WHEREAS, green building design, construction, operation, and maintenance can have a significant positive effect on energy, water, and resource efficiency, waste management and pollution generation, and the health and productivity of a property’s residents, workers, and visitors over the life of a building and/or site; and

WHEREAS, green building regulations comprise an important component of a whole systems approach to the City’s sustainability program related to building and land development, other components of which include but are not limited to requirements for: disposal of construction and demolition debris, storm water quality and flood protection, tree protection, water conservation, recyclable materials storage, parking lot landscaping, and transportation demand management; and

Now, the Council of the city of Palo Alto does ORDAIN as follows:

SECTION 1. Findings. The City Council finds as follows:

A. The City’s Climate Protection Plan (CPP), adopted by the City Council on December 3, 2007, identifies green building as an important approach to reducing greenhouse gases generated in the Palo Alto community. The CPP notes that building construction and maintenance accounts for approximately 38% of U.S. greenhouse gas emissions (U.S. Department of Energy) and approximately 40% of the energy use in the Palo Alto community. Buildings also account for much of the 14% of emissions that are generated by waste materials; and

B. Green building and landscape design, construction, operations and maintenance techniques are increasingly widespread in residential and commercial building construction, and green building benefits can be spread throughout the systems and features of a building, such that green buildings
NOT YET ADOPTED

can include: the use of certified sustainable wood products and high-recycled content products; reuse of existing facilities and recycling and salvage; reduced demands on heating and cooling systems; increased energy efficiency; enhancement of indoor air quality; reduced per capita demand on water resources and infrastructure; and the installation of alternative and renewable energy systems; and

C. At the national and state levels, the U.S. Green Building Council has taken the lead in promoting and defining commercial green building by developing the Leadership in Energy and Environmental Design (LEED)™ Rating System; and

D. At the state level, Build It Green has taken the lead in promoting and defining residential green building by developing the GreenPoint Rated™ Rating System; and

E. Nothing in this ordinance is intended to duplicate, contradict, or infringe upon provisions of state law, including the California Building Standards Code. The ordinance and the associated checklists provide many opportunities to achieve required points and credits that do not impact areas where state law has established building standards.

F. On April 9, 2008, the Planning and Transportation Commission held a duly noticed public hearing and heard testimony regarding a green building ordinance, and recommended adoption of the green building ordinance to the City Council.

G. On May 12, 2008, the City Council held a duly noticed public hearing and heard testimony regarding the proposed green building ordinance.

H. Because the design, construction, and maintenance of buildings and structures within the City can have a significant impact on the City’s environment, greenhouse gas emissions, resource usage, energy efficiency, waste management and the health and productivity of residents, workers and visitors over the life of the building, requiring commercial and residential projects to incorporate green building measures is necessary and appropriate to achieve the public health and welfare benefits of green building.
NOT YET ADOPTED

SECTION 2. A new Chapter 18.44 (Green Building Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code is hereby added to read as follows:

Chapter 18.44

GREEN BUILDING REGULATIONS

Sections:

18.44.010 Purpose
18.44.020 Applicability
18.44.030 Definitions
18.44.040 Standards for Compliance
18.44.050 Incentives for Compliance
18.44.060 Administrative Procedures and Promulgation of Implementing Regulations
18.44.070 Hardship or Infeasibility Exemption
18.44.080 Appeal

18.44.010 Purpose.

The purpose of this Chapter is to enhance the public health and welfare by promoting the environmental and economic health of the City through the design, construction, maintenance, operation and deconstruction of buildings and other site development by incorporating green building practices into all development. The green building provisions referred to in this Chapter are designed to achieve the following goals:

(a) Increase energy efficiency in buildings;
(b) Encourage water and resource conservation;
(c) Reduce waste generated by construction projects;
(d) Provide durable buildings that are efficient and economical to own and operate; and
(e) Promote the health and productivity of residents, workers, and visitors to the city.

18.44.020 Applicability

This ordinance applies to all projects defined as “Covered Projects,” as defined below, except that it shall not apply to any project for which a planning entitlement application (except for a preliminary architectural review application) or building permit application has been submitted prior to the effective date of this ordinance.

18.44.030 Definitions.

The following terms shall have the ascribed definition for the purposes of applying the criteria of this chapter. When the definition differs from a definition in Section 18.04 of the Zoning Ordinance, the provisions of this section shall apply.
NOT YET ADOPTED

(a) "Applicant" means any entity that applies to the city for the applicable permits to undertake any covered project within the city.

(b) "Commercial (nonresidential) new construction" means the construction of a new or replacement retail, office, industrial, warehouse, service, or similar building(s), or additions to such building(s).

(c) "Compliance official" means the Director of Planning and Community Environment or his or her designee.

(d) "Compliance threshold" means the minimum number of points or rating level of a green building rating system that must be attained for a particular Covered Project, as outlined in the Standards of Compliance in Section 18.44.040.

(e) "Covered project" means any commercial (nonresidential) new construction or renovations, or any multi-family or single-family residential new construction or renovation subject to the Standards of Compliance outlined in Section 18.44.050. "Covered project" includes any planning entitlement application(s) or building permit application(s) applicable to such projects.

(f) "Good faith effort" means a project that has not met the required compliance threshold, but for extenuating reasons or reasons beyond the control of the applicant, the Compliance Official has found the project meets the good faith effort provisions of Section 18.44.060.

(g) "Green building" means a whole systems approach to the design, construction and operation of buildings that substantially mitigates the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide a healthy, productive indoor environment.

(h) "Green building project checklist" means a checklist or scorecard developed for the purpose of calculating a green building rating.

(i) "Green building rating system" means the rating system associated with specific green building criteria and used to determine compliance thresholds, as outlined in the Standards of Compliance adopted by City Council resolution. Examples of rating systems include, but are not limited to, the LEED™ and GreenPoint Rated™ systems.

(j) "GreenPoint Rated™" means a residential green building rating system developed by the Build It Green organization.

(k) "GreenPoint Rated™ Verification" means verification of compliance by a certified GreenPoint Rater, under the auspices of Build It Green.
NOT YET ADOPTED

(l) "LEED\textsuperscript{TM}" means the "Leadership in Energy and Environmental Design" green building rating system developed by the U.S. Green Building Council.

(m) "LEED Equivalent Verification" means verification by a LEED accredited professional certifying that each LEED checklist point listed was verified to meet the requirements to achieve that point. Documentation of construction consistent with building plans calculated to achieve energy compliance is sufficient verification in lieu of post-construction commissioning.

(n) "LEED\textsuperscript{TM}/USGBC Verification" means verification by a LEED accredited professional to meet the standards of the U.S. Green Building Council (USGBC) and resulting in LEED certification by USGBC of the project.

(o) "Mixed use" means the construction of a building or buildings that include both commercial and residential uses.

(p) "Multi-family residential" means three or more attached units in a building.

(q) "Renovation" means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible. The valuation of renovation improvements shall be determined by the Planning Director, upon recommendation of the Chief Building Official. The Chief Building Official may exclude from such valuation the cost of (a) seismic upgrades, (b) accessibility upgrades, or (c) photovoltaic panels or other solar energy or similar devices exterior to the building.

(r) "Residential new construction" means the construction of a new or replacement single-family or two-family home or of new or replacement multi-family building(s), or additions to such building(s).

(s) "Self verification" means verification by the project architect or a qualified green building professional certifying that the project has met the standards and has attained the compliance threshold as indicated for the Covered Project type as set forth in the Standards of Compliance outlined in Section 18.44.040.

(t) "Single-family or two-family residential" means a single detached unit or two units in a single building.

(u) "Square footage," for the purposes of calculating commercial, multi-family residential, and single-family new construction square footage, means all new and replacement square footage, including basement areas. Area demolished shall not be deducted from the total new construction square footage.
NOT YET ADOPTED

18.44.040 Standards for Compliance.

The City Council shall establish by resolution, and shall periodically review and update as necessary, Green Building Standards for Compliance. The Standards for Compliance shall include, but are not limited to, the following:

(a) The types of projects subject to regulation (Covered Projects);
(b) Checklists or guidelines to be applied to the various types of projects;
(c) Minimum thresholds of compliance for various types of projects; and
(d) Timing and methods of verification of compliance with these regulations.

The Standards of Compliance shall be approved after recommendation from the Director of Planning and Community Environment, who shall refer the Standards for recommendation by the Architectural Review Board, prior to Council action.

18.44.050 Incentives for Compliance.

In addition to the required standards for compliance, the City Council may, through ordinance or resolution, enact financial, permit review process, or zoning incentives and/or award or recognition programs to further encourage higher levels of green building compliance for a project.

18.44.060 Administrative Procedures and Promulgation of Implementing Regulations.

(a) The Director of Planning and Community Environment shall promulgate any rules and regulations necessary or appropriate to achieve compliance with the requirements of this Chapter. The rules and regulations shall provide, at a minimum, for the incorporation of green building requirements of this Chapter into checklist submittals with planning entitlement and building permit applications, and supporting design, construction, or development documents to demonstrate compliance with this Chapter.

(b) The procedures for compliance documentation shall include, but not be limited to, the following:

(1) Preliminary Documentation. Applicants for a Covered Project are encouraged, but not required, to meet with the Compliance Official or his or her designated staff, in advance of submittal of an application, to determine required green building thresholds for compliance and to review the proposed green building program and details to achieve compliance.

(2) Discretionary Planning Entitlements. Upon submittal of an application for any discretionary planning entitlement for any Covered Project, including but not limited to Individual Review, Major or Minor Architectural Review, Site and Design, Planned Community, Conditional Use Permit, or Variance requests, application materials shall include the appropriate completed checklists, as required by the Standards for Compliance
specified in Section 18.44.050, accompanied by a text description of the proposed green building program and expected measures and milestones for compliance.

(3) Building Plan Check Review. Upon submittal of an application for a building permit, building plans for any Covered Project shall include a checklist and green building program description, reflecting any changes proposed since the planning entitlement phase (if a planning entitlement was required). The checklist shall be included on a page of the building plans. A qualified green building professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the Verification requirements of the Standards for Compliance outlined in Section 18.44.040, prior to issuance of a building permit.

(4) Final Building Inspection, Verification, and Occupancy. Prior to final building inspection and occupancy for any Covered Project, a qualified building professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the Verification requirements of the Standards for Compliance outlined in Section 18.44.050. This information shall include, but is not limited to:

i. Documentation that verifies incorporation of the design and construction related credits specified in the project approval for the Covered Project;

ii. A letter from the qualified green building professional that certifies that the Covered Project has been constructed in accordance with the approved green building project checklist;

iii. Any additional documentation that would be required by the LEED™ reference guide for LEED certification (if required), or by the GreenPoint Rated™ manuals for GreenPoint Rated certification (if required); and

iv. Any additional information that the applicant believes is relevant to determining its good faith effort to comply with this chapter.

(5) Final Determination of Compliance and Good Faith Effort to Comply. Prior to approving a final building inspection for a Covered Project, the Compliance Official shall review the documentation submitted by the applicant, and determine whether the applicant has achieved the required compliance threshold as set forth in the Standards for Compliance outlined in Section 18.44.040 and/or demonstrate that measures are in place to assure compliance not later than one year after approval of final building inspection. If the Compliance Official determines that the applicant has met the requirements of Section 18.44.040 for the project, final building inspection may proceed, provided the Covered Project has received
NOT YET ADOPTED

approval of all other inspections required by the California Building Standards Code. If the Compliance Official determines that the required green building rating has not been achieved, the Compliance Official shall find one of the following:

i. Good Faith Effort to Comply: When an applicant submits a request in writing to the Compliance Official for approval of a good faith effort to comply, the Compliance Official shall determine that the applicant has made a good faith effort to comply with this chapter when finding that either a) the cost for providing green building documentation or assuring compliance is disproportionate to the overall cost of the project, or b) the green building materials and technologies on the green building checklist are no longer available or not yet commercially available, or c) at least 80% of the required green point credits have been achieved, and measures are in place to assure full compliance not later than one year after approval of final building inspection. A good faith effort to comply shall apply to the items on the green building project checklist on an individual basis. Granting of a good faith effort to comply for one item does not preclude the need for the applicant to comply with the other items on the green building checklist.

ii. Non-Compliant Project. If the Compliance Official determines that the applicant has not made a good faith effort to comply with this chapter, or if the applicant fails to submit the documentation required within the required time period, then the project shall be determined to be non-compliant, and the final inspection and approval for the project shall be withheld. A final inspection shall not take place until the applicant has implemented equivalent alternate measures approved by the Compliance Official or unless an exemption is granted for the project.

(6) Post Final Inspection. Not later than one year after approval of final building inspection, the applicant or current owner shall submit to the Compliance Official documentation detailing conformance with the operation, efficiency, and conservation related credits from the approved checklist documentation for any Covered Project, if required by the Compliance Official. The applicant may also provide any additional information the applicant believes is relevant to determining its good faith efforts to comply with this chapter.

(7) Non-Compliance. If, as a result of any inspection, the City determines that the Covered Project does not comply with the approved plans, a stop order shall be issued if the Compliance Official determines that continuation of construction activities will jeopardize the project's ability to meet the required compliance threshold. The stop order shall remain in effect until
the Compliance Official determines that the project will be brought into compliance with the approved plans.

(8) Interim Compliance Effort. For residential projects initiating construction not later than two years after the effective date of this ordinance, a good faith effort is assumed where at least 75% of the required minimum green points have been achieved prior to final building inspection, and adequate remaining points are outlined and anticipated subsequent to final inspection to achieve compliance with at least 90% of the specified minimum points not later than one year after final inspection. If less than 75% of the minimum points are not achieved prior to final building inspection, inspection shall be withheld unless an exemption is granted.

(c) The Director of Planning and Community Environment shall be deemed the Compliance Official and shall have the responsibility to administer and monitor compliance with the green building requirements set forth in this chapter and with any rules and regulations promulgated thereunder, and to grant exemptions from the requirements, where so authorized.

(d) Compliance with the provisions of this chapter shall be listed as a condition of approval on any Architectural Review or other discretionary permit approval, and on the building plans for building permit approval, for any Covered Project.

18.44.070 Hardship or Infeasibility Exemption.

(a) Exemption. If an applicant for a Covered Project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Chapter, the applicant may request an exemption as set forth below. In applying for an exemption, the burden is on the Applicant to show hardship or infeasibility.

(b) Application. If an applicant for a Covered Project believes such circumstances exist, the applicant may apply for an exemption at the time of application submittal. The applicant shall indicate the maximum number of credits he or she believes is feasible for the covered project and the circumstances that he or she believes create a hardship or make it infeasible to fully comply with this Chapter. Such circumstances may include, but are not limited to the following:

(1) There is conflict with the compatibility of the green building rating system with other City goals, such as those requiring historic preservation;

(2) There is conflict with the compatibility of the green building rating system and the California Building Standards Code;

(3) There is conflict with the compatibility of the green building rating system and the City's Zoning Ordinance and/or Architectural Review criteria;

(4) The green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; and/or
NOT YET ADOPTED

(5) There is a lack of commercially available green building materials and
technologies to comply with the green building rating system.

(c) Review by Architectural Review Board (ARB). For any covered project for which
an exemption is requested and Architectural Review is required by the ARB, the
ARB shall provide a recommendation to the Director regarding whether the
exemption shall be granted or denied, along with its recommendation on the
project.

(d) Granting of Exemption. If the Director determines that it is a hardship or is
infeasible for the applicant to fully meet the requirements of this chapter based on
the information provided, the Director shall determine the maximum feasible
number of credits reasonably achievable for the project and specify which credits
have been exempted. A decision of the Director shall be provided to the applicant
in writing. If an exemption is granted, the applicant shall be required to comply
with this chapter in all other respects and shall be required to achieve, in
accordance with this chapter, the number of credits determined to be achievable
by the Director.

(e) Denial of Exemption. If the Director determines that it is reasonably possible for
the applicant to fully meet the requirements of this chapter, the request shall be
denied and the Director shall so notify the applicant in writing. The project and
compliance documentation shall be modified to comply with this chapter prior to
further review of any pending planning or building application.

(f) Council Review of Exemption. For any covered project that requires review and
action by the City Council, the Council shall act to grant or deny the exemption,
based on the criteria outlined above, after recommendation by the Director.

18.44.080 Appeal.

(a) Any aggrieved Applicant or person may appeal the determination of the Director
regarding: (1) the granting or denial of an exemption pursuant to Section
18.44.070; or (2) compliance with any provision of the ordinance.

(b) Any appeal must be filed in writing with the Department of Planning and
Community Environment not later than fourteen (14) days after the date of the
determination by the Director. The appeal shall state the alleged error or reason
for the appeal.

(c) The appeal shall be processed and considered by the City Council in accordance
with the provisions of Section 18.77.070(e) of the City of Palo Alto Municipal
Code.

SECTION 3. Severability. If any section of this ordinance, or part hereof, is held
by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable,
such section, or part hereof, shall be deemed severable from the remaining sections of this
ordinance and shall in no way affect the validity of the remaining sections hereof.
NOT YET ADOPTED

SECTION 4. The Council hereby finds this ordinance is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an action taken by a regulatory agency for the protection of the environment.

SECTION 5. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

APPROVED:

Mayor

City Manager

Director of Planning and Community Environment
RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALO ALTO ADOPTING GREEN BUILDING STANDARDS FOR COMPLIANCE FOR PRIVATE DEVELOPMENT PROJECTS

WHEREAS, on May 12, 2008, the City Council considered regulations for the incorporation of green building techniques and materials in private residential and nonresidential development projects and introduced Ordinance No. ______; and

WHEREAS, the Ordinance specifies that green building standards for compliance shall be set forth by resolution of the City Council after recommendation from the Director of Planning and Community Environment and the Architectural Review Board. Such standards for compliance shall include the types of projects subject to regulation, checklists or guidelines to be applied to various types of projects, minimum thresholds for compliance and timing and methods of verification of compliance with green building regulations; and

WHEREAS, the Director of Planning and Community Environment and the Architectural Review Board does hereby recommend that the City Council approve the proposed green building standards for compliance for private development projects set forth in Attachment A and Attachment B to this resolution.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby approve the green building standards for compliance for private development projects as set forth in Attachment A and Attachment B to this resolution.
NOT YET APPROVED

BE IT FURTHER RESOLVED by the Council of the City of Palo Alto that this resolution shall take effect upon the effective date of Ordinance No. _____.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:                    APPROVED:

_________________________  ___________________________
City Clerk                  Mayor

APPROVED AS TO FORM:

_________________________
City Manager

_________________________
Deputy City Attorney

_________________________
Director of Planning and Community Environment
### Table A

City of Palo Alto  
Green Building Standards for Compliance  
for Private Development  

Nonresidential Construction and Renovation

<table>
<thead>
<tr>
<th>Type of Project</th>
<th>Building Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Checklist Required</td>
</tr>
<tr>
<td>Nonresidential Construction and Renovation&lt;sup&gt;1&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>New construction ≥ 25,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>New construction ≥ 5,000 sf and &lt; 25,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>New construction ≥ 500 sf and &lt; 5,000 sf</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>Renovation ≥ 5,000 sf and ≥ 50% of project sf and ≥ $500,000 valuation&lt;sup&gt;2&lt;/sup&gt;</td>
<td>LEED-NC Checklist</td>
</tr>
<tr>
<td>Other renovation ≥ $100,000 valuation</td>
<td>LEED-CI Checklist</td>
</tr>
<tr>
<td>New construction &lt; 500 sf and renovation &lt; $100,000 of valuation</td>
<td></td>
</tr>
<tr>
<td>Mixed Use or Other Development</td>
<td></td>
</tr>
</tbody>
</table>

<sup>1</sup> Cumulative new construction or renovations over any 2-year period following adoption of these requirements shall be considered as a single project, unless exempted by the Planning Director as impractical for compliance.

<sup>2</sup> Compliance with other LEED checklists, including but not limited to LEED-CS (Core & Shell), LEED-CI (Commercial Interiors), or LEED-EB (Existing Buildings) may be substituted for the designated rating system where deemed appropriate by the Planning Director, after recommendation by the Architectural Review Board (if ARB review is required).

<sup>3</sup> Pro-rated formula = (new construction sf/5,000) x 33 points, but not less than 17 points.

<sup>4</sup> To be determined by the Planning Director; generally the provisions of Table A will apply to the residential portion of the development, and the provisions of Table B will apply to the commercial portions of the development.
Table B
City of Palo Alto
Green Building Standards for Compliance for Private Development
Residential Construction and Renovation

<table>
<thead>
<tr>
<th>Type of Project</th>
<th>Building Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Checklist Required</td>
</tr>
<tr>
<td>Multi-Family Residential</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>New construction of 3 or more (attached) units</td>
<td>Multifamily GreenPoint Checklist</td>
</tr>
<tr>
<td>Renovation or new construction of $\geq$100,000 of permit valuation</td>
<td>Multifamily GreenPoint Checklist</td>
</tr>
<tr>
<td>Renovation or new construction of $&lt;100,000 of permit valuation</td>
<td>No requirement</td>
</tr>
<tr>
<td>Single-Family and Two-Family Residential</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>New construction of $\geq$2,550 sf</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>New construction of $\geq$1,250 sf and &lt; 2,550 sf</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations with permit valuation $\geq$350,000</td>
<td>Single-Family GreenPoint Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations $\geq$75,000 and $&lt;350,000 permit valuation</td>
<td>Home Remodeling Green Building Checklist</td>
</tr>
<tr>
<td>Additions and/or renovations of $&lt;75,000 permit valuation</td>
<td>No requirement</td>
</tr>
<tr>
<td>Mixed Use or Other Development</td>
<td>Commercial and residential criteria as applicable³</td>
</tr>
</tbody>
</table>

¹ Cumulative new construction or renovations over any 2-year period following adoption of these requirements shall be considered as a single project, unless exempted by the Planning Director as impractical for compliance.
² Compliance threshold applies to the area of the entire structure.
³ To be determined by the Planning Director; generally the provisions of Table A will apply to the residential portion of the development, and the provisions of Table B will apply to the commercial portions of the development.
ATTACHMENT C

ANNOTATED ARB COMMENTS OF MARCH 6, 2008 PUBLIC HEARING

On March 6, 2008, the Architectural Review Board:

1. Recommended having Green Point raters on staff, at least “non-inspecting” rater training, to understand details.
   Two planners will be registered for green point rater training in 2008; in addition, our Individual Review program contract architect will complete green point rater training.

2. Recommended requiring 65 to 70 points this year for residential; 50 points is too low.
   Staff’s table reflects a minimum 70 points required as of July 2008 and will likely be ramped up to 100 points in a year or two.

3. Members liked the rebate associated with a specified dollar amount per point above the minimum points required.
   Amount is under consideration by Utilities staff.

4. Zoning incentives should include parking, like a 20% reduction added to the parking adjustment list, for a higher level of greenbuilding. One possibility is to trade LEED points for parking spaces – not necessarily for a transportation-related project feature – not sure how this would be enforced. Staff is looking at including specified LEED points above minimums in the list of parking adjustment considerations.

5. Asked about the status of implementing PTOD combining district downtown. The PTOD downtown district is not under development at this time and not scheduled for consideration.

6. Questioned the buffer points idea. Buffer points are not proposed at this time, as staff is concerned that the lower thresholds would become the standard.

7. Commented that verification is complicated, onerous, an issue, and suggested the City should have LEED trained staff. One contract planner is LEED accredited – staff will explore the need and resource impacts of training full time staff. LEED certification by USGBC is only proposed for the largest of projects (greater than 25,000 square feet).

8. Noted concern about determining hardship and infeasibility, in that some board members may not be comfortable with having to determine circumstances on a case by case basis. The ARB would recommend to the Director, who would determine on a case by case basis.

9. Recommended adding Major Renovation to the New Construction cell of Table A. Staff has included major renovation using floor area, percentage and valuation methods.
10. Noted that thresholds should consider phasing over several years as standard, recommending staff explore and determine how to manage the values in a phasing approach to greenbuilding. Footnotes in the tables address this.

11. Recommended the table leave room for alternate checklists since the USGBC is always coming up with new checklists. Since the tables are to be adopted by resolution, they can be readily amended by Council (with ARB input) to introduce new checklists.

12. Recommended using LEED accredited professional (rather than LEED accredited architect) for verification column. Footnote #6 on Table A addresses this.

13. Discussed ethics surrounding an architectural firm using in-house green professional versus using an outside accredited professional.

14. Discussed whether to recommend allowing for an applicant to opt for LEED certified level via USGBC certification process instead of Silver level via accredited professional. This is not now in Table A, but will be evaluated.

15. Consensus was reached among board members regarding the larger house “disincentive” with the 3600 sq.ft. house threshold being appropriate using a sliding scale to address homes nearing or beyond the 3600 sq.ft. threshold. Staff is proposing 2,550 square feet as the threshold (inclusive of any basement area), with larger houses requiring a greater number of green points.

16. Commented that basement area counting toward the green home size threshold, coupled with consideration for different (less) energy use than above ground floor area, was a good idea but needed to be fleshed out. Footnote #2 on Table B for new construction includes basement area in the square footage.
March 27, 2008

Berkeley Architectural Heritage Association

*Sustainable Stewardship – Historic Preservation’s Essential Role in Fighting Climate Change*

First Church of Christ, Scientist, 2619 Dwight Way, Berkeley, CA, a National Historic Landmark

Speakers: Bruce Judd, Principle, Architectural Resources Group
          Jon Carroll, Columnist, San Francisco Chronicle
          Richard Moe, President, National Trust for Historic Preservation

Historic preservation’s motivation:
1) Originally motivated by cultural values – iconic landmarks, “founding fathers” etc.
2) Emphasis shifted to economics – adaptive re-use, value as a tool for reinvestment and revitalization of older neighborhoods – “Main Street” program
3) Recent shift to social benefits > makes more livable communities – built environment fabric, diversity, etc.
4) New phase – preservation as an essential role player in global warming environmental crisis. Preservation should be part of the “green building” agenda

Statistics presented:
1) US represents 5% of the world’s population and is responsible for 22% of greenhouse gases. Of that 22% transportation impacts represent 27% but the construction and operation of buildings represents 48%. *If you remember nothing else, remember this “Nearly half of the greenhouse gases we send into the atmosphere comes from our buildings.” Preservation can be a key component but obviously not the entire answer.

2) Sustainable stewardship – embodied energy (energy that is already inherent in a building, representing manufacture of materials, transport, construction etc that are part of a building that has already been constructed). Demolition would represent a total waste of that embodied energy + the energy cost of demolition and landfill

3) Energy saved by building an increased energy efficient new bldg? recent research indicates that even if 40% of the materials are recycled from demolition it takes 65 yrs for a green, energy-efficient bldg to recover the energy lost in demolishing an existing bldg. + reconstruction

4) Brookings Institute report projects that by 2030 US will demolish and replace nearly 1/3 of all existing buildings
Quotable quotes, "We cannot build out way out of the global warming crisis. We need to conserve our way out."

"The secret to staying young is to die young - but the trick is to do it as late as possible." Ashley Montague, anthropologist

Ie: old bldg put to new uses stays young longer

LEED developed for new construction - if bldgs are a big part of the problem how can constructing more new buildings and ignoring the old ones solve the problem? Most historic bldgs were built to last - the cultural direction was not disposable but built to last 'forever' - also, historic does not necessarily mean energy "inefficient" - often constructed with large thermal masses, sited to take advantage of passive solar, deep overhangs, appropriate window placement, etc. (Also recent findings re: windows from Berkeley lab indicate old fashioned winter storm windows are quite effective when compared with new windows in a controlled lab setting, are repairable whereas new window failure represents total window replacement)

Solutions:

Political and regulatory: Start with the Federal Gov't - further tax incentives that address the re-use of older buildings that are not necessarily historic
   1) that would help homeowners use green technology for maintaining and renovating their homes
   2) address affordable housing
   3) assure continued availability of the incentives

Building Codes that allow flexibility to make existing bldgs more energy-efficient

Improve green-building rating systems to incorporate bldg re-use. "Under the current LEED rating system, reusing 75% of an existing building core and shell is assigned the same value as merely using environmentally-friendly carpet." True??! (Trust is working with Green Bldg. Council to revise LEED rating system).

Trust is developing Green Lab based in Seattle - r & d - zoning ordinances, bldg. codes etc.

Audience input:

Check out - 20/30 Challenge - Ed Masoria in Arizona
New Version of LEED to Incorporate Better Metrics for Historic & Existing Buildings

by Barbara Campagna on March 24th, 2008

Sustainable Preservation Coalition

The National Trust for Historic Preservation created the Sustainable Preservation Coalition two years ago in order to impact further development of the LEED (Leadership in Energy & Environmental Design) Building Rating Systems. We partnered with several national organizations who were developing separate sustainability agendas including the AIA, APT International, the National Park Service, General Services Administration and the National Conference of State Historic Preservation Officers. We realized we could make a bigger impact integrating historic preservation and green building values by working together.

Our first goal was to meet with the U.S. Green Building Council, the developer of LEED, and open up a dialogue to discuss improvements to their products which would better reflect the importance of existing buildings to sustainable stewardship of our planet and its limited resources. While LEED does much to encourage more sustainable development, and historic buildings can achieve the highest LEED rating, we believed it could certainly do better because the current version of LEED (LEED 2.2):

1. Overlooks the impact of projects on cultural value;

2. Does not effectively consider the performance, longer service lives and embodied energy of historic materials and assemblies;

3. And is overly focused on current or future technologies, neglecting how past experience helps to determine sustainable performance.

Our meeting with the President of USGBC (Rick Fedrizzi) and the Director of LEED Technical Development (Brendan Owens) was quite successful, ending with Rick inviting us to help them prepare preservation metrics for the revised versions of LEED. Over the past year, our coalition has been meeting with USGBC and are delighted to announce that soon LEED 3.0 will be unveiled.

The LEED Revisions

At the Traditional Building Conference in Boston on March 14th, Brendan Owens of USGBC, Carl Elefante (Principal at Quinn Evans Architects in Washington, DC and Co-Chair of the APT Technical Committee on Sustainable Preservation) and I presented a panel entitled “LEED & Preservation: It Works!” We presented the following information:

1. USGBC has determined that they are going to launch an interim version of LEED this year called LEED 3.0. There are so many changes that need to be made, they decided they would implement some changes this year and then work on the really complicated ones (social/preservation/cultural metrics) next year. This also gives their membership time to ease into the transition and makes some much-needed changes immediately.

2. LEED 3.0 will go out for public comment May 1st and be adopted by the membership at GreenBuild in November in Boston. It will in essence go into effect January 1st, 2009.

3. What is LEED 3.0? LEED 3.0 will adopt the new system where the credits are weighted according to Life Cycle Analysis Indicators. (This is really, really important for existing buildings and what we’ve been promoting). The LEED rating system is increasing from a total of 69 points to 100 points. In many cases now in the new version, the points related to existing buildings will be much higher and more effectively addressed in the new weighting system.

4. In addition, there will be an “interim compliance route” in LEED 3.0 which existing buildings can choose that specifically focuses on the Durability of materials and assemblies in existing buildings in the Materials & Resources Category (where many of the targeted existing buildings points are). This does not exist in LEED 2.0.
5. The amount of points a building will now get will be different for every building depending on its materials, their durability, etc. But in many cases it may mean more points for existing buildings, but more importantly, the inherent durability and embodied energy will be much better represented, where it currently is not addressed at all.

6. Immediately after LEED 3.0/2009 goes out for public comment, we are going to start working on LEED 3.0/2010 with USGBC which will change the structure of LEED even more. Here is where we will apply a new overlay of cultural/social/preservation metrics in addition to the durability metric which will already have been implemented with LEED 3.0. This is the really complicated stuff that hasn’t been done before. BRE out of Europe has done it a little, but USGBC is committed with our help to figure this out and get it implemented for 2010. In addition, they are looking to filling the gaps they’ve identified with our help and others, and will probably be adding new credits as well.

Stay tuned – we will keep you updated!

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7 Responses to “New Version of LEED to Incorporate Better Metrics for Historic & Existing Buildings”

1. Paul Says:
   March 24th, 2008 at 9:06 am
   
   Great news Barbara!

2. Milford Wayne Donaldson FAIA Says:
   March 25th, 2008 at 10:40 am
   
   Barbara, excellent work throughout the many years and thanks for including the NCSHPO in the Sustainable Preservation Coalition.

3. Kim O'Connell Says:
   March 25th, 2008 at 12:33 pm
   
   It must be gratifying to see all this hard work come to fruition. I look forward to seeing what the new incarnation of LEED does for our historic buildings and downtowns. Great job Barbara!

4. Terri Treinen, Studio One Design Says:
   March 25th, 2008 at 2:57 pm
   
   At last, acknowledgment of all the harvested building materials, related labor support resources, and site specific endowments already invested from the planet and embodied in our nation’s historical structures. We don’t need to open another hole in the earth from which to mine more gold, we just need to polish the treasures already standing in our midst! LEED 3.0 gives historical buildings an even playing field from which to make a case when the ‘everything has to be new, cutting edge, and redeveloped’ Green-monsters come threatening at Historic Districts’ doors. Thanks for all your hard work.

5. Historic Preservation is Green Design « Christine Celsor - Community Planner Says:
   March 25th, 2008 at 8:40 pm
   
   [...] is being revised to give better consideration to historic preservation. Link to the full story New Version of LEED to Incorporate Better Metrics for Historic & Existing Buildings on [...] 

6. Pamela Reilly Says:
   March 26th, 2008 at 9:50 am
   
   I am glad to see a more old building inclusive approach being developed—as a preservationist, it is hard to imagine what took them so long to notice the inherent greeness of reusing what you already have! Has there been any effort to pull HUD into this discussion? HUD’s current approach to federally funded low income housing rehab programs is not very green or very preservation savvy. All those wooden windows replaced by short life, lower R value, vinyl ones in efforts to reduce maintenance costs and lead paint exposure definitely have an environmental impact. I hope the LEED principals will become more universally used in all construction/rehab projects.

7. **LEED to better acknowledge historic & existing buildings** « PreserveNJ Says:
March 27th, 2008 at 1:19 pm

[...] under Uncategorized According to the National Trust’s Preservation Nation blog, the US Green Building Council has decided to launch an interim version of LEED this year called [...]
Attachment F

PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO: PLANNING AND TRANSPORTATION COMMISSION
FROM: Amy French Planning Manager
DEPARTMENT: Planning and Community Environment

AGENDA DATE: April 9, 2008

SUBJECT: Review and recommendation to City Council of 1) an Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Add a New Chapter 18.44 (Green Building Regulations) and 2) a Resolution to Adopt Green Building Compliance Standards for Private Development Projects. Environmental Assessment: Categorically exempt from the provisions of CEQA per Section 15308 of the CEQA Guidelines.

RECOMMENDATION:
Staff recommends that the Planning and Transportation Commission (Commission) discuss the proposed Ordinance and Resolution (adopting attached tables setting forth green building compliance thresholds, rating systems, and compliance verification for private development projects), and forward a recommendation to the City Council for their adoption, which is tentatively scheduled for the May 12, 2008 City Council meeting.

BACKGROUND:
On March 12, the Commission held a study session to review staff’s proposal for green building criteria for private development and continued the session to April 9, 2008 for further discussion. A separate staff report for the continued session has been provided to the Commission, including the March 12 staff report. Much of the background from that report is included in this report’s background section for the ease of readers who may be new to the City’s development of a green building program. As noted in the March 12, 2008 report, the Council has supported an aggressive timeline for requiring green building and the Northern California Homebuilders’ Association has publicly supported mandatory green building for residential projects, so many other communities are hastening their mandatory residential green building programs. Council adoption of the proposed Ordinance and Resolution would result in commencement of the mandatory residential green building program in 2008 rather than in 2009 as initially reported to

On March 25, 2008 and April 1, 2008, staff held publicly noticed outreach sessions at City Hall to present the proposals for both residential and non-residential private development to respective building professionals and the general public, and hear any feedback. Only about a dozen people attended the two meetings, but they were helpful in clarifying some of the details of the requirements. In the weeks prior, staff had held three focus group meetings of building professionals to share working draft tables and discuss issues related to program implementation.

Regionally, the use of Build It Green’s (BIG) GPR™ (Green Point Rated) residential green building program and the U.S. Green Building Council (USGBC) LEED™ (Leadership in Energy and Environmental Design) non-residential green building program is recommended. BIG’s program originated with the use of a green building checklist for homes by Alameda County’s Waste Management Authority several years ago, is used only in California and only for residential projects, and it references Title 24 and other California-specific regulations. The LEED™ New Construction checklist is recommended for non-residential projects but can be used for residential projects over four stories. Other Bay Area cities have adopted policies and ordinances referring to these industry-recognized programs. The Santa Clara County Association of Cities’ Green Building Collaborative advocates the countywide use of the LEED™ checklist for non-residential projects and the GPR™ checklist for residential projects. Staff and a Council member are among the membership of the Collaborative, and Palo Alto’s program development is being shared with the group.

Green Ribbon Task Force Recommendations
The 2006 Mayor’s Green Ribbon Task Force (GRTF) Building Committee recommended the Council pursue an incremental approach to requiring BIG’s program for residential projects and the USGBC’s program for non-residential projects. The GRTF encouraged zoning approaches to green building (e.g. transit oriented housing) and recognized the need to have LEED™ trained staff or consultant(s) and incentives in place prior to requiring a certain level of green building points in projects. The complete GRTF recommendations were provided to Council in December 2006 and referenced in the Council adopted climate protection plan of December 2007.

City Council Action
On August 6, 2007, Council received a staff report (CMR 333:07) referencing staff and the ARB’s charts of green building approaches for private and public development projects, and setting forth an anticipated schedule for implementation of mandatory programs, with non-residential and multi-family residential projects targeted for July 2008, and low density residential projects targeted for July 2009. The Council also adopted a green building ARB approval finding and zoning language allowing the City to require green building checklists. In December 2007, the City Council adopted an amended green building policy for City facilities that lowered the threshold from 10,000 square feet to 5,000 square feet, raised the LEED™ level from Certified to Silver, and included exemptions. Also in late 2007, the Council adopted the California Building Code, which went into effect in January 2008 and referenced the California
Energy Code.

**Green Building Working Group**
The Green Building Working Group (Group), led by the City's Chief Building Official and comprised of City staff of multiple departments, is focused upon issues related to establishing a mandatory green building program. Last summer, the group coordinated the presentation of two educational sessions in the Council Chambers regarding the USGBC/LEED™ and BIG/GPR™. These sessions were intended for Council members in particular but were attended by others. The Group is now preparing for a Council study session providing a "primer" on LEED™, planned for April 28, 2008. The primer will include a description of the differences between LEED™ levels, will identify LEED™ checklist points most frequently gained by development projects registered with the USGBC, and will likely use a local LEED™ certified building as an example to facilitate understanding of the costs, savings, and certification steps involved in green building. The group includes a BIG certified professional and a LEED™ Accredited Professional (AP); the group has also sought input from the two ARB members and a contract planner (working in the Individual Review program), who are all LEED™ AP.

The Group has been assembling data to assist in the development of the ordinance and tables for private development. The Group is interested in realizing the greatest efficiencies, staff training, rebates for certification or similar incentives to increasing the level of green building. Some building data was provided to the Commission at the March 12 study session, and further data was to be provided at the continued study session. The Group plans to track Title 24 data in future year summaries of building permit activity. The Group is also aware of the possibility cumulative new construction or renovations over time would avoid triggering greenbuilding thresholds; the tables prepared to be adopted by Council resolution include a provision that in any two-year period a cumulative project shall be considered as a single project for greenbuilding compliance purposes, unless exempted by the Planning Director as impractical for compliance. Group staff members are attending regional BIG meetings, green building seminars and workshops, and Group members are looking toward obtaining additional training in LEED™ and GPR™ in conjunction with the rollout of the mandatory programs.

**Use of Green Building Checklists**
On October 11, 2007, the zoning ordinance changes regarding sustainability became effective, allowing staff to require checklists to be submitted with ARB applications and providing more "teeth" in the ARB's sustainability finding. Green building checklists are also now being submitted with other planning entitlement applications, including single family residential individual review applications for two story homes. Green building checklists have not been required or provided with Building Permit application materials to date. Green building checklists are provided at the Development Center kiosk and the Development Center website provides a link to USGBC and BIG web sites. The City is funding an "ask-the-expert" program for applicants who wish to consult with knowledgeable green building professionals on materials, checklist completion, BIG certification or other green building matters. All LEED™ and GPR™ checklists include points available for energy efficiency and LEED™ checklists include points for retention of substantial portions of an existing building.
Incentives to Increase Green Building
The focus group members noted one of the best incentives for green building is recognition. The ARB design awards, which are presented every five years, present an opportunity for recognition of built projects and one of the criteria is innovative approach to sustainability. The Green Building Working Group is looking at various possibilities for incentives, considering programs of other cities such as Austin, Seattle, Boulder and Anaheim. Financial incentives for exceeding minimum required GPR™ points are under consideration; specifically, the use of Utilities funds earmarked for improved energy efficiency in Palo Alto and for training and education. Rebates associated with a dollar amount per point exceeded are being considered, and this concept is supported by the ARB. The program would be designed to offset costs associated with review of the checklists and verification by a third party green point rater (for residential buildings). Other topics being studied by the group include incentives for innovative stormwater management solutions, including use of cisterns, green roofs and permeable pavers. Expedited permits, a tool used by other cities as an incentive for green building, is not as relevant an incentive for green building in Palo Alto, which uses an outside plan check system to expedite building permit review.

DISCUSSION
Staff proposes to implement the mandatory green building program through adoption of a zoning ordinance amendment (Attachment A) to create a new Chapter 18.44 (Green Building Regulations) of the Zoning Ordinance. Council adoption of the attached tables A and B by resolution in conjunction with a zoning ordinance would allow flexibility for periodic amendments by resolution rather than by legislative ordinance changes. The following discussion outlines the organization and key provisions of the proposed ordinance and resolution.

Ordinance Sections
The proposed ordinance contains the following sections:
18.44.010: Purpose
18.44.020: Applicability
18.44.030: Definitions
18.44.040: Standards for Compliance
18.44.050: Incentives for Compliance
18.44.060: Administrative Procedures
18.44.070: Hardship and Infeasibility Exemption
18.44.080: Appeals

Ordinance Applicability and Definitions
The Applicability section would exempt projects that have planning and/or building permits on file at the effective date of the ordinance. The Applicability section refers to “Covered projects”, which are set forth in the definitions section and in Tables A and B. The categories in this term are outlined specifically by thresholds and valuations set forth in the Tables adopted by Resolution. Preliminary ARB review applications would not be exempt, however.
The proposed Ordinance contains definitions of the following terms as they are relevant to this chapter: Applicant, Commercial (nonresidential) new construction, Compliance official, Compliance threshold, Covered project, Good faith effort, Green building, Green building project checklist, Green building rating system, GreenPoint Rated™, GPR™ verification, LEED™, LEED equivalent, LEED/USGBC verification, Mixed use, Multi-family residential, Renovation, Residential new construction, Self-verification, Single-family or two-family residential, and Square footage. “New construction” is defined generally as new floor area, while “renovations” include interior improvements that involve only negligible new floor area. The definition of “renovation” includes a clause that allows the Chief Building Official to exclude from valuation retrofits for seismic stability and accessibility, and for green-building specific features such as a cool-roof and/or photo-voltaic panels, so that such projects alone would not trigger the green building thresholds set forth in the Tables.

Standards for Compliance
This section of the proposed ordinance refers to tables adopted by the proposed resolution (Attachment B). The resolution and Tables set forth proposed timing, thresholds, green building levels, and verification requirements for both non-residential projects (Table A) and residential projects (Table B). The Tables were presented in draft form to local stakeholders and amended further after internal and outreach meetings.

Table A
In Table A for non-residential construction, four LEED™ checklists are referenced and thresholds are proposed as follows:

- A LEED™ Silver level rating (33 points out of a total of 69 available points) is proposed for buildings of 5,000 square feet or more, consistent with the City’s adopted policy for public facilities. LEED “equivalent” verification at that level would be required, except for projects at or in excess of 25,000 square feet.
- The 25,000 square foot threshold would require verification by the USGBC for construction at or above that threshold.
- New construction of less than 5,000 square feet would also require pro-rated points, based on the size of the project, but not less than 17 LEED™ points, with LEED “equivalent” verification.
- The table also addresses renovations, such that major renovations (based on size and valuation) would be required to attain the LEED™ Certified level with LEED “equivalent” verification.
- New construction less than 500 square feet and renovation less than $100,000 of valuation would be exempt from the green building requirements.
- The table also addresses mixed use projects, which may use LEED™ or a combination of LEED™ and GPR™, as determined by the Planning Director.

The Green Building Working Group and focus groups discussed the expense and timing of certification (and re-certification for LEED™ Existing Building verification) through USGBC, and the fact that a certain percentage of verification of a building’s green points would occur after final inspection and occupancy, at which time “commissioning” by qualified experts is
required to test the building’s energy performance. The proposed “LEED equivalent verification” would allow for verification by a LEED™ Accredited Professional (AP) certifying that each LEED™ checklist point listed was verified to meet the requirements to achieve that point, but not requiring subsequent “commissioning” due to the time and expense involved. This verification differs from USGBC certification which is also done by a LEED™ AP to the level of USGBC standards and results in LEED™ certification of the project by USGBC.

**Table B**

Table B for residential construction begins with a minimum of 70 GPR™ points required for the following:

- New multi-family (three or more units) construction,
- New single-family construction of 1,250 square feet or more, and
- Additions and renovations of single family homes where the valuation of the improvements are equal to or greater than $350,000.

Verification would be provided by a third-party, certified Green Point Rater under the auspices of Build It Green for all of the above.

Table B also includes the following:

- A graduated scale standard for larger homes having a threshold of 2,550 square feet of floor area (including basement area), with an increase in the number of points as the home size is increased up to a maximum requirement of 150 GPR™ points (though more GPR™ points can be voluntarily implemented).
- Projects having a valuation equal to or greater than $75,000 and less than $350,000 would require “self-verification.”
- Projects having a valuation less than $75,000 would be exempt from green building requirements.
- A reference to Mixed Use projects identical to that outlined in Table A.

The difference between Green Point Rated and self-verification is that, rather than a certified Green Point Rater under the auspices of Build It Green, the project architect or other qualified green building professional could verify that the project meets standards and has attained the compliance threshold as indicated for the Covered Project type as set forth in the Ordinance in the Standards of Compliance section.

**Incentives**

This ordinance section would allow for adoption of incentives programs by Council via Resolution or Ordinance. No specific incentives are proposed at this time, however.

**Administrative Procedures**

This ordinance section allows the Planning Director to establish compliance rules and procedures, and establishes the types of procedures including the timing and content of documentation to be submitted with permit applications, along with building inspection and compliance regulations.

The Interim Compliance Effort section allows for a gradual transition into compliance for an
initial two-year processing after the ordinance becomes effective. Applicable projects processed during the first two years of the ordinance would be considered compliant with regulations if 75% of the required green points are achieved prior to final building inspection, and 90% of the minimum green points are achieved within one year of the final inspection. If less than 75% of the minimum points are not achieved prior to final building inspection, inspection would be withheld unless an exemption is granted.

**Hardship and Infeasibility Exemption**
This ordinance section provides for exemptions from the green building requirements, and outlines the process for review of exemption requests, and would provide the Director discretion to determine the maximum feasible number of credits reasonably achievable for the project. For any covered project for which an exemption is requested and Architectural Review is required by the ARB, the ARB would recommend to the Director regarding the exemption along with its recommendation on the project. The City Council would grant or deny the exemption, based on the criteria set forth in the section, for any project requiring Council approval.

Exemptions may be requested by the applicant for hardship or infeasibility at the time of application submittal, where the applicant would indicate the maximum number of feasible credits anticipated and hardship circumstances. Such circumstances could include: (1) a conflict with the compatibility of the green building rating system with other City goals, such as those requiring historic preservation; (2) a conflict with the compatibility of the green building rating system and the California Building Standards Code; (3) a conflict with the compatibility of the green building rating system and the City’s Zoning Ordinance and/or Architectural Review criteria; (4) the green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; and/or (5) there is a lack of commercially available green building materials and technologies to comply with the green building rating system.

**Appeals**
This ordinance section allows for appeal to the City Council of exemptions and other green building determinations, and refers to the existing Zoning Code Chapter 18.77 with regards to the process for appeal to City Council.

**Architectural Review Board Input**
On March 6, 2008, the ARB held a public hearing regarding the proposed tables and hardship and feasibility section of the draft ordinance. On April 3, 2008, staff provided an update to the ARB, and on April 17, 2008, the ARB will conduct a public hearing and provide a recommendation to the City Council on the attached documents. The ARB’s annotated comments of March 6, 2008 are attached to this report (Attachment C). The highlights of the ARB recommendations include that the residential minimum points be increased in 2008 to 70 points from the 50 points proposed previously, that key staff receive training to become LEED™ accredited and Green Point Raters, that zoning incentives include parking, that major renovation be included with new construction in Table A, and that the City might consider allowing an applicant to opt for LEED™ certified level via USGBC certification process instead of Silver level verification by accredited professional. The ARB also noted their support for the larger house “disincentive” and inclusion of basement area.
California Energy Code
The City has contacted an expert in the field of local energy code modification to assist the City in preparing a study and proposal for submittal to the State of California Energy Commission. The changes anticipated in the new CEC may increase the amount of energy efficiency required for construction up to approximately 15% above Title 24. A local amendment can go further to increase energy efficiency. In the meantime, the attached zoning ordinance sets forth a minimum number of green building checklist points without requiring energy efficiency beyond the existing, enforceable energy code.

Building Reuse and Preservation
The National Trust for Historic Preservation is currently working with the USGBC to revise the existing LEED™ rating system. Currently the LEED™ system assigns a maximum of 3 points for retaining 75% of a structure and the GPR™ checklist provides no points, though an extensive number of points is available for the deconstruction and the reuse or recycling of materials. It is recognized by staff and supported by statistics that retention of existing buildings is often the “greenest” choice for projects, and Comprehensive Plan policies support adaptive reuse of existing buildings as well. Incentives for reuse are more directly addressed in terms of tax and other measures. If a building is retained, the green building checklists are generally not applicable.

Attachment D to this report includes a summary of a meeting held in Berkeley on March 27, 2008, sponsored by the Berkeley Architectural Heritage Association, on the role of historic preservation in sustainability and greenbuilding. Three city staff members (the City’s historic preservation planner, a current planner and an engineer from Public Works Engineering Division) attended the meeting, and the current planner prepared the attached meeting summary.

Attachment E is an article distributed at the meeting on anticipated changes to LEED™ that would increase credits available for retaining existing buildings. The article notes that the anticipated new LEED™ 3.0 version, which would have credits weighted according to Life Cycle Analysis Indicators, will be available to the public May 1, 2008 and likely go into effect in January 2009, though the reuse and preservation provisions may not be developed for an additional year. Life Cycle Analysis efforts are supported by the City’s sustainability policy.

POLICY IMPLICATIONS
The proposed ordinance and resolution are consistent with the City’s sustainability policy, green building policy for City facilities (which also sets a LEED™ Silver level for buildings over 5,000 square feet), and with Comprehensive Plan policies regarding protection of energy and water resources and natural resources.

ENVIRONMENTAL REVIEW
The adoption of the proposed ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15308 of the CEQA Guidelines.
CONCLUSION
Supplemental documentation and discussion is provided to the Commission with the Study Session materials. Staff believes the ordinance and implementing resolution and tables provide a significant initial step in providing for green building requirements for all new development and major remodels.

The ordinance anticipates a gradual implementation system and staff will focus on tracking the program’s success and issues during the first year. Staff anticipates revisiting the tables after the first year of implementation, in mid-2009. The ordinance allows for an initial two-year processing after the ordinance becomes effective, for a gradual transition into compliance for the first years of ordinance implementation.

Staff members will be pursuing Green Point Rater and LEED training in 2008 and developing approaches to the use of green building consultants to assist applicants and staff at the earliest opportunities in the planning and building processes.

ATTACHMENTS
Attachment A: Draft Zoning Ordinance, Palo Alto Municipal Code Chapter 18.44
Attachment B: Resolution
• Exhibit A: Table A, Green Building Standards (Nonresidential Construction and Renovation)
• Exhibit B: Table B, Green Building Standards (Residential Construction and Renovation)
Attachment C: Annotated Comments of Architectural Review Board, March 6, 2008
Attachment D: Summary of Berkeley Architectural Heritage Assn. Meeting, March 27, 2008
Attachment E: Article from Preservation Nation, March 24, 2008

PREPARED BY: Amy French, Manager of Current Planning

DEPARTMENT/DIVISION HEAD APPROVAL: Curtis Williams, Assistant Director
PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO: PLANNING AND TRANSPORTATION COMMISSION
FROM: Amy French
Planning Manager

DEPARTMENT: Planning and Community Environment
AGENDA DATE: April 9, 2008

SUBJECT: Planning and Transportation Commission Study Session on Proposed Green Building Criteria for Private Development

RECOMMENDATION:
No action is requested or can be taken on this item. A draft green building ordinance and public hearing is scheduled on the regular agenda for this evening.

BACKGROUND:
On March 12, 2008, the Planning and Transportation Commission conducted a study session to review staff’s proposal for green building criteria for private development. The presentation included some background on the City’s sustainability and green building efforts and milestones, planned outreach, an overview of green building checklists, and an outline of a proposed amendment to the Zoning Ordinance to incorporate criteria for green building.

The Commission, prior to and at the study session, asked some questions that staff was not able to answer at the time, and a couple of public members spoke to issues about basement dewatering in the context of green building. The discussion below addresses these several issues. The Commission staff report is enclosed as Attachment A, and the responses to Commissioner questions are enclosed as Attachments B and C. Further discussion of the specific proposed green building criteria is most appropriate during the public hearing on the Commission’s regular agenda.

DISCUSSION:
The key questions and issues raised by the Commission and the public related to: 1) the number of home demolitions occurring in recent years, 2) the costs of LEED certification, 3) property tax impacts of recent new construction, 4) examples of green building ordinances from other cities,
and 5) basements, including dewatering, the amount of groundwater discharged, the amount of concrete used, and impacts on trees.

**Home Demolitions**
In calendar years 2006 and 2007, the City approved demolitions of 85 and 78 homes, respectively. Demolitions of garages or accessory structures are not included in those totals. Staff only recently began tracking the size of demolished homes. From July 2007 – March 2008, the average size of 53 homes to be demolished was 1,756 square feet.

**Costs of LEED Certification**
The costs of LEED certification include initial fees and subsequent commissioning and other documentation costs to support the rating. The costs vary significantly depending on the size of the project, the level of rating requested, and even the checklist components incorporated into the design. Overall, the costs of projects that might be subject to LEED certification requirements in Palo Alto could range from $5,000 to $100,000 or more. Staff was not able to estimate the comparison of those costs with architect fees for a project, but those would obviously be quite variable as well.

**Property Tax Impacts of New Construction**
A question was posed regarding the potential property tax impacts of the approximately $300 million of construction valuation receiving permits during fiscal year 2006-2007. Since taxes are typically 1% of valuation, the property tax associated with the development is estimated at $3 million. The City of Palo Alto receives between 8 and 9% of that property tax, which would amount to $240,000-$270,000 per year. The actual (net) benefit to the City would depend on the prior valuation of improvements on the site, including if and when they had last been reassessed since Proposition 13 in 1978.

**Green Building Ordinances from Other Cities**
Staff has collected green building ordinances from a number of other jurisdictions. Three of the more representative, with somewhat diverse approaches, are from the City of Albany (Attachment D), City of Rohnert Park (Attachment E), and the City of West Hollywood (Attachment F). All rely primarily on LEED™ and GreenPoint Rated™ rating systems, though West Hollywood has customized the ratings somewhat for that city.

**Basements**
The Commission and the public asked several questions about basements, including a) groundwater discharged, b) the effects of dewatering on groundwater and potential toxic plumes, c) the amount of concrete used, and d) impacts on trees.

The Public Works Department has, in the past few years, revised its basement policy (Attachment G) to prohibit dewatering from basements after construction. Dewatering from basements during construction is still allowed, but with substantial review and restrictions, and only upon the issuance of a permit from Public Works. Public Works reviews the dewatering plans for basements where dewatering is proposed (approximately 50% of basements don’t require dewatering during construction), and requires that the water be discharged directly to the storm drain system to minimize impacts on neighbors. The Department is concerned about the capacity of the storm drain
system in some locations, and may in the future update the policy to further limit discharges. The amount of discharge varies widely, from negligible amounts to a worst case of millions of gallons over a 6-month period of continual construction dewatering.

During the Zoning Ordinance Update, staff commissioned EIP Associates to study the impacts of extensive basement construction on groundwater (Attachment H). The study concluded that the impacts of basement construction were negligible on the groundwater system and on the groundwater regime on neighboring sites. The groundwater being diverted is from a shallow, “perched,” non-potable water table that is not connected to the larger aquifer that contributes to the area’s drinking water supply. Public Works has followed up with the U.S. Geological Survey (USGS) and the Santa Clara Valley Water District, who report that the impact on the aquifers is negligible, and that the discharge of water from a site generally recharges the groundwater elsewhere. City staff and staff of the District are also not aware of any case where the groundwater pumping for basement dewatering has resulted in withdrawal of toxic wastes from a subsurface plume. Public Works checks dewatering sites against know plume maps and requires testing of the discharge water for contaminants where appropriate, prior to issuance of a permit. The Regional Water Quality Control Board would be involved with any sort of request to dewater near contaminated ground water.

Staff (Building and Public Works) occasionally receives complaints about basements, mostly related to hoses in the gutter, pump noise, or settlement when excavation occurs close to a property line. Hoses are allowed per the dewatering permit and noise and settlement issues are generally resolved by reducing the noise and/or properly shoring the basement construction. Staff is not aware of any situations where settlement has occurred due to groundwater withdrawals and the USGS reports that subsidence is negligible during the relatively short duration of construction dewatering.

Building staff estimates that a 1,500 square foot basement, with 8-inch walls and a 14-inch slab, would entail the need for about 100 cubic yards (200 tons) of concrete. And finally, tree impacts are addressed in project review by the Planning Arborist to be sure that basement excavation is not adversely impacting trees on a neighboring property or on the subject site. The localized drawdown of the water table during dewatering does not impact trees as their roots do not typically extend to that depth.

Staff believes that the use of basements deserves continued scrutiny, and Public Works is currently reviewing many of these issues to report to Council and to consider whether basement policy revisions are appropriate. Most of these issues can be addressed by technical means, other than the volume of dewatering during construction and the amount of concrete used. Planning has included provision in the green building criteria that larger homes (including basement floor area) must achieve a greater number of green point credits than smaller homes to help compensate for these resource impacts. Other approaches would require extensive discussion as to when or whether to continue to allow basements, a discussion that would require substantial time and community input. In recent ordinance discussions, this issue was broached but was not pursued.

CONCLUSION:
The information outlined above is intended to provide a context for the Commission’s discussion on the green building ordinance proposed on the regular agenda of tonight’s meeting.
ATTACHMENTS:
Attachment A: March 12, 2008 Planning and Transportation Commission Staff Report w/attachs
Attachment B: March 12, 2008 Responses to Commissioner Keller’s Questions
Attachment C: March 12, 2008 Responses to Chair Holman’s Questions
Attachment D: City of Albany Green Building Ordinance
Attachment E: City of Rohnert Park Green Building Ordinance
Attachment F: City of West Hollywood Green Building Ordinance
Attachment G: Public Works Department Basement Exterior Drainage Policy
Attachment H: EIP Associates’ Technical Memorandum re: Basements and Groundwater Impacts, 2004

PREPARED BY: Amy French, Manager, Current Planning

DEPARTMENT/DIVISION HEAD APPROVAL: Curtis Williams, Assistant Director
Historic Resources Board
Meeting of April 16, 2008
Item # 4

Joint HRB-City Council Meeting Topics

Documents Relating to Historic Preservation’s Benefits
For Global Warming and Sustainability Issues

Prepared by Staff
Preservation's Essential Role in Addressing Climate Change
The construction, operation and demolition of buildings accounts for 48% the United States' greenhouse gas emissions. But reusing and retrofitting our existing buildings can reduce these emissions dramatically. In fact, our existing buildings are one of our greatest renewable resources.

Through our Sustainability Initiative, the National Trust for Historic Preservation is focusing the nation's attention on the importance of reusing existing buildings and reinvesting in older and historic communities as critical elements in combating climate change. Americans already embrace as common sense the need to recycle aluminum cans, glass and newspapers. We advocate applying that same common sense to our built environment.

We don't discount the value of new, green construction - in fact many green technologies can and should be applied to existing buildings to improve performance. But new construction - no matter how green - still uses energy and other natural resources and generates construction waste that clogs landfills.

Through its research, the National Trust's Sustainability Initiative is demonstrating that conservation and improvement of our existing built resources are environmentally logical and economically viable elements in combating climate change. See the reverse of this sheet for the facts.

Sustainable Stewardship of our Buildings and Communities - Guiding Principles:
1. Reuse existing buildings: Use what you have. The continued use of our existing buildings reduces the amount of demolition and construction waste deposited in landfills, lessens unnecessary demand for energy and other natural resources and conserves embodied energy (the amount of energy originally expended to create extant structures).
2. Reinvest in our older and historic communities: Older and historic communities tend to be centrally located, dense, walkable, and are often mass-transit accessible - qualities celebrated and promoted by Smart Growth advocates. Reinvestment in existing communities also preserves the energy embedded in infrastructure, such as roads, water and sewer lines.
3. Retrofit our existing building stock: Many historic and older buildings are remarkably energy efficient because of their site sensitivity, quality of construction, and use of passive heating and cooling, while other buildings require improvements to reduce their environmental footprint. Historic buildings can go green without compromising historic character.

Our Commitment
Focus on Local, State and Federal Policy: The National Trust for Historic Preservation will work with several cities to develop model policies that encourage preservation as sustainable development. This work will include refining building, energy and zoning codes, as well as developing model language for comprehensive plans and climate change action plans. We will also work to expand the availability of historic tax credits at the state and federal level, encourage other financial incentives for building reuse and community revitalization and support energy policy that improves energy efficiency in older buildings.

Empower Preservation Practitioners: The National Trust will provide our network of practitioners with the tools they need to incorporate green building practices into their preservation work. This will include development and dissemination of best practices and other guidance for greening older and historic buildings.

For more details about the Sustainability Initiative, contact Patrice Frey, Director of Sustainability Research, at 202-588-6255 or patrice_frey@nhtp.org.

Learn more at www.preservationnation.org/green/
THE FACTS: WHY OUR EXISTING BUILDINGS AND NEIGHBORHOODS MATTER

The Costs of Building Construction and Demolition

- The United States is responsible for 22% of the world’s greenhouse gas emissions, though we have only 5% of the world’s population. In the United States, building construction and operations account for 48% of greenhouse gas emissions.

- It takes a lot of energy to construct a building - for example, building a 50,000 square foot commercial building requires the same amount of energy needed to drive a car 20,000 miles a year for 730 years.

- We are much too inclined to think of our buildings as disposable, rather than a renewable resource. A 2004 report from the Brookings Institution projects that by 2030 we will have demolished and replaced 82 billion square feet of our current building stock. Since it is estimated that there are about 300 billion square feet of space in the United States today, that means we anticipate demolishing nearly 1/3 of our building stock in the next 20-25 years.

- It will take as much energy to demolish and reconstruct 82 billion square feet of space (as predicted by the Brookings study) as it would to power the entire state of California - the 10th largest economy in the world with a population of about 36 million people - for 10 years.

- If we were to rehab even 10% of this 82 billion square feet, we would save enough energy to power the state of New York for well over a year.

- Construction debris accounts for 25% of the waste in the municipal waste stream each year. Demolishing 82 billion square feet of space will create enough debris to fill 2500 NFL stadiums.

Energy Efficiency of Historic and Older Buildings

It is often assumed that older and historic buildings are “energy hogs” and that it is more environmentally friendly to demolish these buildings and construct new energy efficient buildings than to preserve these existing buildings. However, recent work indicates otherwise.

- Recent calculations indicate that it takes about 65 years for an energy efficient new building to save the amount of energy lost in demolishing an existing building.

- Far from being energy hogs, some historic buildings are as energy efficient - or more so - than buildings constructed in later decades. Data from the U.S. Energy Information Agency finds that buildings constructed before 1920 are actually more energy-efficient than those built at any time afterwards - except for those built after 2000.

- In 1999, the General Services Administration examined its building inventory and found that utility costs for historic buildings were 27% less than for more modern buildings.

- Not all historic and older buildings are as sustainable as they should be - indeed, many are not. But an increasing number of case studies demonstrate that historic buildings can go green. The National Trust Lincoln Cottage Visitors Education Center in Washington D.C. is just one such example. LEED certification is anticipated for this rehabilitation project in spring 2008.

Learn more at www.preservationnation.org/green/
Thank you, Jon, and good evening, everyone. I’m delighted to be in Berkeley, and particularly honored to have an opportunity to speak in this marvelous building. You may recall that in 2006, the National Trust and American Express sponsored a program called Partners in Preservation, which asked people in the Bay Area to vote for their favorite historic site. Out of 25 candidates, this church was the top vote-getter – and as a result, the Friends of First Church received a grant of $118,000 to complete a seismic upgrade of the Sunday School facility.

Thousands of people, including some of you, I’m sure – took part in that program, and we got the same overwhelming response from the public when we repeated it in the Chicago area last year. It’s a great indication that people recognize the importance of saving the places that tell the story of America in brick and stone and wood.

That leads me to the subject of my remarks this evening. You won’t be surprised to learn that I intend to talk about historic preservation. What may be a surprise is that I intend to argue that preservation can – and should – play an essential role in fighting what may be the greatest crisis of our times: climate change.

I’ll begin with a reminder of what historic preservation is all about. When you strip away the rhetoric, preservation is simply having the good sense to hold on to things that are well designed, that link us with our past in a meaningful way, and that have plenty of good use left in them.

Preservation in America has embraced that philosophy for more than 150 years now. It began when a woman named Ann Pamela Cunningham launched a national crusade in the 1850s to save George Washington’s home, Mount Vernon, from demolition. For most of the next century, preservation focused on saving and restoring iconic buildings as patriotic shrines.

Around the middle of the twentieth century, "economic benefit" became preservation’s new watchword. The concept of adaptive reuse came into prominence. The National Trust’s Main Street program was created to restore economic vitality to deteriorated downtowns by emphasizing the historical and architectural features that set them apart from the typical suburban strip mall. Tax incentives were developed to encourage owners to renovate and reuse older buildings instead of demolishing them. It was all about dollars and cents.
This trend led inevitably to an emphasis on preservation's role in supporting and enhancing social values. Today, we understand that maintaining tangible contact with our past strengthens the sense of stability and continuity that is essential in a healthy society, so we make the preservation of familiar landmarks a key component in the revitalization of neighborhoods and communities that are attractive and livable. It's all about bringing us together, encouraging us to recognize the shared heritage that defines and unites us as a nation and a people.

These shifts in focus over the past century-and-a-half show that preservation is a dynamic, vibrant movement. Some things haven't changed: We're still saving iconic buildings, ranging from 18th-century Spanish missions here in California to Philip Johnson's Glass House in Connecticut. Our work is still rooted in a respect for history. But today, more than ever before, it is as much concerned with building the future as with holding on to the past.

This concern with the future is at the core of the new phase that preservation is entering right now: As growing numbers of people are worried about climate change, the degradation of the environment, and our relentless consumption of energy and irreplaceable natural resources, it is increasingly apparent that preservation has an essential role to play in any effort to deal with the environmental crisis that looms over us. Because it necessarily involves the conservation of energy and natural resources, historic preservation has always been the greenest of the building arts. Now it's time to make sure everyone knows it.

* * *

The watchword is "sustainability."

Up to now, our approach to life on this planet has been based on the assumption that "there's plenty more where that came from." With our environment in crisis, we have to face the fact that there may not be "plenty more" of anything – except trouble. Today we're challenged to find a way of living that will ensure the longevity and health of our environmental, economic, and social resources.

The UN Intergovernmental Panel on Climate Change released a deeply sobering report a couple of months ago. It states bluntly that "warming of the climate system is unequivocal" and is the result of human activities.

The United States is a big part of the problem. We have only 5% of the world's population, but we're responsible for 22% of the world's greenhouse gas emissions, which are the leading cause of climate change. Discussions on this topic usually focus on the need to reduce auto emissions. But according to the EPA, transportation – cars, trucks, trains, airplanes – accounts for just 27% of America's greenhouse gas emissions, while 48% – almost twice as much – is produced by the construction and operation of buildings. If you remember nothing else I say, remember this: Nearly half of the greenhouse gases we send into the atmosphere comes from our buildings. With that fact in mind, it's clear that any solution to climate change must address the need to reduce emissions by being wiser about how we design and use our buildings.

I'm not so naive as to believe that preservation represents the way out of this crisis. But I do believe that historic preservation can be – and must be – a key component of any effort to promote sustainable development. Indeed, preservation is sustainability.
The concept of preservation as "the ultimate recycling" is something that many people in the preservation community have believed and talked about for many years. Back in 1980, before the word "sustainability" came into widespread use, the National Trust issued a Preservation Week poster that featured an old building in the shape of a gas can – a reminder that reusing an existing building, instead of demolishing it and replacing it with a new one, is one good way to conserve energy.

Much has changed since that poster appeared almost 28 years ago. The stakes have gotten much higher. Climate forecasts, meteorological reports, population growth projections, rising energy costs, dwindling reserves of water and fossil fuels, even the daily news headlines – they all warn us that we can't wait any longer for "somebody" to figure out what to do. The "somebody" we need is us, and the need is clearly urgent.

The challenge is to help people understand that preservation, by its very nature, is sustainability. To address that challenge, I want to share my views on preservation's essential role in fostering development that is environmentally, as well as economically, sustainable.

The key phrase is "sustainable stewardship."

The retention and reuse of older buildings is an effective tool for the responsible, sustainable stewardship of our environmental resources – including those that have already been expended. I'm talking about what's called "embodied energy."

Here's the concept in a nutshell: Buildings are vast repositories of energy. It takes energy to manufacture or extract building materials, more energy to transport them to a construction site, still more energy to assemble them into a building. All of that energy is embodied in the finished structure – and if the structure is demolished and landfilled, the energy locked up in it is totally wasted. What's more, the process of demolition itself uses more energy – and, of course, the construction of a new building in its place uses more yet.

Let me give you some numbers that will translate that concept into reality.

According to a formula produced for the Advisory Council on Historic Preservation, about 80 billion BTUs of energy are embodied in a typical 50,000-square-foot commercial building. That's the equivalent of 640,000 gallons of gasoline. If you tear the building down, all of that embodied energy is wasted.

What's more, demolishing that same 50,000-square-foot building would create nearly 4,000 tons of waste. That's enough debris to fill 26 railroad boxcars – a train nearly a quarter of a mile long, headed for a landfill that is already almost full.

Once the old building is gone, putting up a new one in its place takes more energy, of course, and it also uses more natural resources and releases new pollutants and greenhouse gases into our environment. It is estimated that constructing a 50,000-square-foot commercial building releases about the same amount of carbon into the atmosphere as driving a car 2.8 million miles.

One more point: You might think that all the energy used in demolishing an older building and replacing it is offset by the increased energy efficiency of the new building – but that's simply not true. Recent research
even encouraged – the development of new suburbs while leaving existing communities behind. As a result, an epidemic of sprawl ravages the countryside, devouring open space and demanding new infrastructure. Look at almost any city in the country, and you’ll see new houses springing up in rural areas that are underserved by roads and public services – while in the urban core, disinvestment has left viable housing stock abandoned in areas where infrastructure is already in place, already paid for.

It makes no sense for us to recycle newsprint and bottles and aluminum cans while we’re throwing away entire buildings, or even entire neighborhoods. This pattern of development is fiscally irresponsible, environmentally disastrous, and ultimately unsustainable. To replace it, we need federal policy that directs growth to existing communities. You’ll note I said “federal policy.” Land-use planning has traditionally been a function of state and local government, but it’s an indisputable fact that where the federal government chooses to spend its money – our money – has a huge impact on local planning and development. We need federal policy that stops rewarding unsustainable development and enhances the viability and livability of the communities we already have.

We have a choice: We can do nothing for a while longer – until the realities of climate change, the disappearance of irreplaceable resources, and soaring energy costs force us to take action. Or we can take steps now to develop a smart, sustainable development ethic and the policies that will support it.

Among other things, we need incentives to encourage reuse and energy upgrades in older buildings. In the past ten years alone, historic tax-credit incentives have sparked the rehab of more than 217 million square feet of commercial and residential space – and saved huge amounts of energy in the process. We must insure the continued availability of these tax credits, and expand their use in older buildings that are not necessarily historic but still re usable. Equally important, we must provide similar incentives that will help private homeowners use green technology in maintaining and renovating their homes.

These federal actions should be complemented by steps at the state and local levels. Twenty-nine states have now enacted their own state tax credits to promote the reuse of historic buildings, and we need to see them adopted in more states – including California. At the local level, we need building codes that allow flexibility and innovation in making existing buildings more energy-efficient.

Finally, we need to improve green-building rating systems to ensure that they recognize the importance of building reuse. Under the current LEED standards, for example, a new building can be certified "green" even if it’s constructed outside densely populated areas; this kind of development amounts to "green sprawl," which is contrary to every principle of sustainability. Also, under the current LEED rating system, reusing 75% of an existing building core and shell is assigned the same value as merely using environmentally-friendly carpet.

The National Trust is working with the U.S. Green Building Council, which has been very receptive to our suggestions on ways to improve these and other points. I’m optimistic that by year’s end we will have made real progress toward a new LEED rating system that reflects the environmental benefits of "smart" locations and building reuse.

These public-policy steps are critically important, but we shouldn’t wait for government to act. That’s why the National Trust has launched its own Sustainability Initiative.
As the keystone of this new initiative, we'll establish the National Trust Green Lab in Seattle, the hub of the region that leads the nation in green thinking. This office will collaborate with selected cities to develop and implement zoning ordinances, building codes and other plans that support the reuse and retrofit of existing buildings. We've already established a partnership with Seattle in this effort, and we're talking with San Francisco about being involved as well.

The Green Lab will also identify and support demonstration projects that show how historic buildings can "go green," and will forge partnerships with universities, green groups and others to ensure that the concept of recycling buildings is incorporated into broader academic and environmental agendas.

On the national level, our Sustainability Initiative will advocate the adoption of policies at the federal, state and local levels that encourage and provide incentives for reinvestment in existing communities and reuse of existing buildings. We'll work to refute some common misconceptions about energy efficiency in older buildings, and we'll make our website a "best practices" resource for how to reduce energy consumption and use green technology in the rehab of older structures.

We'll also take steps to integrate environmentally sound practices in the operation of historic sites across the country. Last month in Washington, the National Trust opened President Lincoln's Cottage to the public. Just a few yards away from the Cottage; the Visitors Education Center is housed in a renovated historic building that is fully LEED-certified – a good example of how green practices and products can be employed in older structures without compromising their historic integrity.

I believe this Sustainability Initiative is one of the most exciting and important we've ever undertaken, and we're eager to get started.

***

Historic preservation has always sustained America. By protecting and enhancing the buildings, communities and landscapes that tell America's story, preservation allows us to maintain tangible contact with the places where our identity as a nation was established and our character as a people was shaped. By helping us understand the process that made us who we are, preservation gives us the confidence to become who we can be.

Over the years, as the focus of our work has evolved, we've demonstrated that preservation is good for the pocketbook as well as the soul. Now, in the face of unprecedented climate change, we're prepared to demonstrate that preservation is an essential tool for sustaining the environmental viability of the planet as well as the quality of life for ourselves and our children.

The National Trust for Historic Preservation has long played a leadership role in the responsible stewardship of America's past. Now we're ready and eager to play a similar role in the sustainable stewardship of America's future.

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The National Trust for Historic Preservation is a non-profit membership organization bringing people together to protect, enhance and enjoy the places that matter to them. By saving the places where great moments from history – and the important moments of everyday life – took place, the National Trust for Historic Preservation helps revitalize neighborhoods and communities, spark economic development and promote environmental sustainability. With headquarters in Washington, DC, nine regional and field offices, 29 historic sites, and partner organizations in all 50 states, the National Trust for Historic Preservation provides leadership, education, advocacy and resources to a national network of people, organizations and local communities committed to saving places, connecting us to our history and collectively shaping the future of America’s stories. For more information visit www.PreservationNation.org.

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How Historic Preservation Can Help the Environment

We can’t build our way out of our environmental problems, but we can – and must – make better, wiser use of what we’ve already built. That’s what sustainability is all about.

We’re challenged to find a way of living that will ensure the longevity and health of our environmental, economic, and social resources. Addressing that challenge is the goal of the National Trust’s Sustainability Initiative, which aims to help people better understand preservation’s value in fostering development that is environmentally, economically and socially sustainable.

Environmental Sustainability

Historic preservation is an effective tool for valuing and protecting our environmental resources, including those that have already been expended as well as those not yet used. Because it encourages us to reuse sound older buildings instead of abandoning or demolishing them, and to revitalize existing neighborhoods instead of building sprawling new subdivisions, preservation is “recycling” on a grand scale.

Economic Sustainability

An economic system is not sustainable unless it respects the limits of the ecosystems on which it depends. By advocating wise stewardship of existing resources and judicious development and use of new ones, historic preservation advances this goal. In addition, preservation supports economic sustainability by encouraging reinvestment in existing communities and local economic bases.

Social Sustainability

Historic preservation protects and celebrates the social and cultural resources that define and unite us as Americans, and ensures that they will survive to enrich our communities and our lives for generations to come.

The environmental, economic and social benefits of preservation can be further enhanced by improving the energy efficiency of historic buildings. More and more projects are demonstrating that older buildings can “go green” – and our Sustainability Initiative, especially through this website, will serve as a “best practices” resource for employing green technology in the reuse and rehabilitation of historic structures.
Facts about Preservation and Sustainability

Why Our Existing Buildings and Neighborhoods Matter

The Costs of Building Construction and Demolition

The United States is responsible for 22% of the world's greenhouse gas emissions, though we have only 5% of the world's population. In the United States, building construction and operations account for 48% of Greenhouse gas emissions.

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We are much too inclined to think of our buildings as disposable, rather than a renewable resource. A 2004 report from the Brookings Institution projects that by 2030 we will have demolished and replaced 82 billion square feet of our current building stock. Since it is estimated that there are about 300 billion square feet of space in the United States today, that means we anticipate demolishing nearly 1/3 of our building stock in the next 20-25 years.

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Cottage Visitors Education Center in Washington D.C. is just one such example. LEED certification is anticipated for this rehabilitation project in spring 2008.
Our Position on Sustainability

Historic preservation can—and should—be an important component of any effort to promote sustainable development. The conservation and improvement of our existing built resources, including re-use of historic and older buildings, greening the existing building stock, and reinvestment in older and historic communities, is crucial to combating climate change.

Preservation’s Essential Role in Addressing Climate Change

The construction, operation and demolition of buildings accounts for 48% the United States’ greenhouse gas emissions. But reusing and retrofitting our existing buildings can reduce these emissions dramatically. In fact, our existing buildings are one of our greatest renewable resources.

Through our Sustainability Initiative, the National Trust for Historic Preservation is focusing the nation’s attention on the importance of reusing existing buildings and reinvesting in older and historic communities as critical elements in combating climate change. Americans already embrace as common sense the need to recycle aluminum cans, glass and newspapers. We advocate applying that same common sense to our built environment.

We don’t discount the value of new, green construction - in fact many green technologies can and should be applied to existing buildings to improve performance. But new construction - no matter how green - still uses energy and other natural resources and generates construction waste that clogs landfills.

Through its research, the National Trust’s Sustainability Initiative is demonstrating that conservation and improvement of our existing built resources are environmentally logical and economically viable elements in combating climate change. See the reverse of this sheet for the facts

Sustainable Stewardship of our Buildings and Communities - Guiding Principles:
Reuse existing buildings: Use what you have. The continued use of our existing buildings reduces the amount of demolition and construction waste deposited in landfills, lessens unnecessary demand for energy and other natural resources and conserves embodied energy (the amount of energy originally expended to create extant structures).
Reinvest in our older and historic communities: Older and historic communities tend to be centrally located, dense, walkable, and are often mass-transit accessible - qualities celebrated and promoted by Smart Growth advocates. Reinvestment in existing communities also preserves the energy embedded in infrastructure, such as roads, water, and sewer lines.
Retrofit our existing building stock: Many historic and older buildings are remarkably energy efficient because of their site sensitivity, quality of construction, and use of passive heating and cooling, while other buildings require improvements to reduce their environmental footprint. Historic buildings can go green without compromising historic character.
Our Commitment

Focus on Local, State and Federal Policy: The National Trust for Historic Preservation will work with several cities to develop model policies that encourage preservation as sustainable development. This work will include refining building, energy and zoning codes, as well as developing model language for comprehensive plans and climate change action plans. We will also work to expand the availability of historic tax credits at the state and federal level, encourage other financial incentives for building reuse and community revitalization and support energy policy that improves energy efficiency in older buildings.

Empower Preservation Practitioners: The National Trust will provide our network of practitioners with the tools they need to incorporate green building practices into their preservation work. This will include development and dissemination of best practices and other guidance for greening older and historic buildings.
New Version of LEED to Incorporate Better Metrics for Historic & Existing Buildings

by Barbara Campagna on March 24th, 2008

Sustainable Preservation Coalition

The National Trust for Historic Preservation created the Sustainable Preservation Coalition two years ago in order to impact further development of the LEED (Leadership in Energy & Environmental Design) Building Rating Systems. We partnered with several national organizations who were developing separate sustainability agendas including the AIA, APT International, the National Park Service, General Services Administration and the National Conference of State Historic Preservation Officers. We realized we could make a bigger impact integrating historic preservation and green building values by working together.

Our first goal was to meet with the U.S. Green Building Council, the developer of LEED, and open up a dialogue to discuss improvements to their products which would better reflect the importance of existing buildings to sustainable stewardship of our planet and its limited resources. While LEED does much to encourage more sustainable development, and historic buildings can achieve the highest LEED rating, we believed it could certainly do better because the current version of LEED (LEED 2.2):

1. Overlooks the impact of projects on cultural value;
2. Does not effectively consider the performance, longer service lives and embodied energy of historic materials and assemblies;
3. And is overly focused on current or future technologies, neglecting how past experience helps to determine sustainable performance.

Our meeting with the President of USGBC (Rick Fedrizzi) and the Director of LEED Technical Development (Brendan Owens) was quite successful, ending with Rick inviting us to help them prepare preservation metrics for the revised versions of LEED. Over the past year, our coalition has been meeting with USGBC and are delighted to announce that soon LEED 3.0 will be unveiled.

The LEED Revisions

At the Traditional Building Conference in Boston on March 14th, Brendan Owens of USGBC, Carl Elefante (Principal at Quinn Evans Architects in Washington, DC and Co-Chair of the APT Technical Committee on Sustainable Preservation) and I presented a panel entitled “LEED & Preservation: It Works!” We presented the following information:

1. USGBC has determined that they are going to launch an interim version of LEED this year called LEED 3.0. There are so many changes that need to be made, they decided they would implement some changes this year and then work on the really complicated ones (social/preservation/cultural metrics) next year. This also gives their membership time to ease into the transition and makes some much-needed changes immediately.
2. LEED 3.0 will go out for public comment May 1st and be adopted by the membership at GreenBuild in November in Boston. It will in essence go into effect January 1st, 2009.

3. What is LEED 3.0? LEED 3.0 will adopt the new system where the credits are weighted according to Life Cycle Analysis Indicators. (This is really, really important for existing buildings and what we’ve been promoting). The LEED rating system is increasing from a total of 69 points to 100 points. In many cases now in the new version, the points related to existing buildings will be much higher and more effectively addressed in the new weighting system.

4. In addition, there will be an “interim compliance route” in LEED 3.0 which existing buildings can choose that specifically focuses on the Durability of materials and assemblies in existing buildings in the Materials & Resources Category (where many of the targeted existing buildings points are). This does not exist in LEED 2.0.

5. The amount of points a building will now get will be different for every building depending on its materials, their durability, etc. But in many cases it may mean more points for existing buildings, but more importantly, the inherent durability and embodied energy will be much better represented, where it currently is not addressed at all.

6. Immediately after LEED 3.0/2009 goes out for public comment, we are going to start working on LEED 3.0/2010 with USGBC which will change the structure of LEED even more. Here is where we will apply a new overlay of cultural/social/preservation metrics in addition to the durability metric which will already have been implemented with LEED 3.0. This is the really complicated stuff that hasn’t been done before. BRE out of Europe has done it a little, but USGBC is committed with our help to figure this out and get it implemented for 2010. In addition, they are looking to filling the gaps they’ve identified with our help and others, and will probably be adding new credits as well.
TO: Palo Alto City Council Members

RE: May 12th Hearing: Green Building Standards For Non-Residential Projects

FROM: Jim Baer, Premier Properties

DATE: May 6, 2008

At the outset let me state: I favor adoption of a LEED Silver Standard for commercial buildings with high verification standards.

As project manager for imminent construction of the Palo Alto Weekly’s building of 10,000 square feet at 450 Cambridge Avenue, I have become familiar with the certification of, and compliance with, the LEED Silver and Gold Standard for Core & Shell, along with the requirements for a tenant subsequently occupying the building. This LEED effort has not been delegated beyond my direct responsibility, including requirements for each LEED point opportunity and its documentation. My familiarity is limited to office buildings of less than 25,000 square feet. Residential projects, larger buildings, or buildings with other than office uses, may have different issues.

1. **LEED Silver Standard.**

   Recommendation: Adopt a LEED Silver Standard; evaluate the Gold Standard in 36 months.

   a. LEED Silver Standard requirements for an Existing Building are easy. This may lead to a misconception that Silver Standard requirements for a new building, or substantial renovation, are also easy. This is incorrect. LEED standards for Existing Buildings do not require significant investment in energy-reducing equipment or expensive building features. Instead, LEED for an Existing Building accepts the existing condition of the
building and establishes point opportunities that are earned largely through behavioral changes such as waste stream management. This approach is similar to ABAG's Green Building Guidelines. While achieving a Silver Standard for an Existing Building may not seem as if it is a sufficient "statement" for Palo Alto's environmental leadership, it is a fine accomplishment for a construction project.

b. LEED Silver Standard requirements for a New Building, or for substantial renovations, are rigorous and require careful planning and significant investment. In contrast to Existing Building standards, the Silver Standard for construction requires careful planning and significant investment in energy reducing equipment and building features. The Increased costs necessary for LEED Silver compliance for the 450 Cambridge Avenue building will be Thirty Dollars ($30.00) per square foot, or Three Hundred Thousand Dollars ($300,000). See Attachment A.

c. For New Core and Shell, the eight points necessary to achieve a Gold Standard (34), rather than a Silver Standard (28), may not be feasible. These eight points may not be achievable for a small office building. This is a matter of infeasibility rather than cost.

Please endure these few examples:

*For office buildings, there are no purveyors of re-used materials.

*Suppliers of steel, aluminum and glass cannot yet determine the recycled content and regional source of their materials, thereby precluding achievement of several points.

*A steel or concrete building shell cannot certify its lumber, since wood is not being used.

*A building in the Stanford Research Park, or along East or West Bayshore, cannot achieve connectivity points because it is not within 500 yards of dense housing (RM-15), commercial services or qualifying public transportation.

*A building cannot achieve points that require higher FAR and more intensive development than Palo Alto zoning would allow.

*A building without onsite parking cannot achieve any of the points related to parking preferences.

*A building without contamination cannot achieve a toxic clean-up point.
If many points are unavailable, then an applicant must comply with nearly all of the remaining points within its control in order to achieve a Silver Standard. A Gold Standard may not be achievable. The greatest obstacle is that a small office building may not be able to earn sufficient points under Energy and Atmosphere Credit 1 (EAc1).

d. Only enough EAc1 Credits can be satisfied for a Silver Standard, but not a Gold Standard. EAc1 is the energy reducing credit for which LEED now requires a minimum of two points and allows a maximum of eight points. To earn two EAc1 points, a project must exceed California’s rigorous Title 24 measurement by fourteen percent (14%), with eight points requiring thirty-five percent (35%) improvement over Title 24. It is important to understand that Title 24 was amended January 1, 2007 such that Title 24 compliance, today, has reduced energy use by 15% over Base Year 2005. Exceeding Title 24 by fourteen percent (14%) cost the 450 Cambridge Avenue project about Two Hundred Sixty Thousand Dollars ($260,000) of its total Three Hundred Thousand Dollars ($300,000) LEED cost.

A small office building has a high ratio of exterior walls, glazing and roof to indoor space. This ratio increases cooling and heating demand, reduces effectiveness of exterior wall and glazing insulation, and limits the area available for PV panels. Accordingly, a small office building is unlikely to achieve more than three or four points under EAc1 – even at a very high cost - making it impossible to achieve Gold Standard.

e. Evaluate the Gold Standard in 36 Months.
Allow the construction industry and emerging clean technologies the necessary time to catch up with the environmental spirit. Evaluate the Gold Standard in 36 months for implementation in 48 months.

II. Compliance and Certification.

Recommendation: Direct Staff to impose rigorous standards for verification by any LEED accredited architect who provides verification to the City. Evaluate USGBC LEED certification in 36 months.

This may be the most important feature of the Green Building Standards Ordinance, Verifying a LEED point is like a breathalizer test. If one blows greater than 0.08 blood alcohol you are intoxicated and cannot be the designated driver - even if one controlled his or her drinking with a good faith effort. Without standards that require precise compliance with the LEED point sought, the

a. The standard for a “LEED accredited professional” is inadequate. LEED accreditation is not limited to architects and engineers. Accreditation is granted for completing an exam based on LEED categories and completion of
on-line forms. LEED accreditation does not require the technical ability or expertise necessary to verify whether the engineering standard for a LEED point has been achieved. Some of us have "slow" cousins who could become LEED accredited at a first exam.

b. The most important technical points should be verified only by an accredited LEED architect who has written verification from the general contractor, project architect, civil engineer, MEP engineer, Title 24 consultant and commission agent.

LEED certification requires precise documentation supported by calculations for many points. The small sampling that follows illustrates how a LEED accredited architect would not be qualified to verify compliance without confirmation from one or more engineering professionals:

*Storm Water Management **SSc 5.1 & 5.2**: Civil engineer.

*Light Pollution Reduction **SSc 8**: Architect or Electrical Engineer.

*Landscape water reduction **WEc 1.1 & 1.2**: Architect or Landscape Architect.


*Energy Reduction Better than Title 24 **EAc1**: Commissioning Agent, MEP engineer, Title 24 consultant.

*Enhanced Commissioning, Refrigerant, Monitoring & Verification **EAc 3, 4, 5.1 & 5.2**: Commissioning Agent, MEP, Title 24 consultant.

III. **Hardship Review**

**Recommendation:** The Hardship Exemption should be determined by the Director without ARB review. An appeal to City Council should be allowed only for an aggrieved applicant.

a. **Under current City Ordinances, staff members determine all construction standards and exemptions.** Staff members determine exceptions for handicap accessibility and flood plain requirements. Staff members determine whether a change in occupancy, or the level of investment in a renovation, requires that the construction project must satisfy all current fire and building codes. Every day staff members interpret the California Building Code, California Historic Building Code, National Fire Code, and Public Works and Utility Department Standards, among many more construction issues.
b. **Staff members are better qualified to determine Hardship Exemptions for Green Building Standards than would a member of the ARB or City Council.** Just as a LEED accredited professional would be unable to verify certain technical LEED matters, policy makers would be unqualified to evaluate technical LEED issues and hardships. A process that creates ARB review, and possible City Council final determination, suggests that either policy makers would be better qualified than its professional staff to evaluate LEED technical matters. I don’t think so.

c. **Requiring ARB review and appeal to City Council would create a political, rather than legal or engineering, basis for evaluating a hardship exemption.** This structure could create a nightmarish political environment with extended meetings for ARB and Council. How many LEED hardship agenda items would you expect over 36 months?

d. **The Green Building Standards should be technical, not political.** By politicizing the Hardship Exemption process, the City may create an environment that encourages litigation for violation of quasi-judicial determinations or unfair application of the hardship standards. The review approach creates problems and does not provide any better outcome than would review by professional staff alone.

e. **Staff members understand the Council’s emphasis on compliance with Green Building Standards.** Council actions and discussions well-inform senior staff members that the Green Building Standards Ordinance is to be rigorously applied. The staff will not grant Hardship Exemptions without harsh analysis of an applicant’s request for relief from the Ordinance requirements.

IV. **Covered Properties.**

**Recommendations:**

a. **“Covered Projects” should have a lower threshold for renovations over 2,500 square feet, and over $250,000 of hard costs for LEED-accredited architect letter.** These renovations should not have to constitute 50% the building area. Most buildings in Downtown Palo Alto, and the California Avenue District, are between 5,000 and 10,000 square feet. Many retail and office renovations are for 2,500 square feet or less.

b. **Staff, alone, without ARB review, should determine whether Core and Shell standards can be substituted for New Construction standards, or whether Existing Building standards can be substituted for Commercial Interior standards.**
(i) These are detailed construction determinations that should be negotiated by staff;
(ii) ARB has neither the expertise nor the temperament to make these determinations;
(iii) choosing the appropriate LEED standard is technical, not political;
(iv) ARB agendas are full;
(v) the policy favoring a streamlined process is abrogated without any improved outcome; and
(vi) this will exacerbate applicant-ARB and staff-ARB tensions that are challenging, even today.

c. Any project that has not yet received ARB recommendation for approval, either to the Director or to the City Council, as of May 12, 2008 should be subject to this Ordinance.

(i) Palo Alto's policy has excluded from construction changes only a project that has submitted for a building permit, not merely an ARB application;
(ii) Changes establishing Green Building Standards are comparable to modifications to the Uniform Building Code, Title 24 (handicap access), or other constructions standards, including Palo Alto's fire, building, public works and utilities ordinances that have been applied to any project that has not yet submitted for a building permit, not merely an ARB application;
(iii) Impact fees have been assessed against a project that has not yet received a building permit, not merely an ARB application;
(iv) Although City policy has excluded from a zoning change any applicant that had submitted an ARB application, such an exclusion has been based on a property owner's reliance on existing zoning when planning its intensity of development;
(v) Unlike Zoning Ordinance changes, Green Building Standard changes do not diminish the intensity of development available to an applicant;
(vi) LEED point opportunities remain available for a project that has submitted an ARB application without requiring significant re-design.
## Attachment A
### 450 Cambridge
#### LEED Silver Costs

1. **U.S. Green Building Council**
   - Registration Fee: $450
   - Design & Construction Review: $1,750
   - Pre-Certification: $2,500
   - Total: $4,700

2. **Architecture & Engineering**
   - Architect: $5,000
   - Civil Engineer: $5,000
   - Title 24 Review: $10,000
   - LEED Architect: $20,000
   - Commissioning Agent: $10,000
   - Total: $50,000

3. **Hard Costs**
   - Site Work Drainage: $10,000
   - Roofing: $10,000
   - HVAC: $75,000
   - Electrical: $75,000
   - Insulation/Glazing: $50,000
   - Plumbing: $5,000
   - General Contractor: $15,000
   - Total: $240,000

**TOTAL**: $294,700 ($30 psf)

### Building Costs
- Building: 14,000 sf
- Covered Parking: 4,500 sf
- Office: 9,500 sf

Costs are determined based on LEED Silver Standards in Excess of those imposed by City of Palo Alto Standards.