

CITY OF PITTSBURG
Redevelopment Agency Minutes
May 7, 2007

Chair Ben Johnson called the meeting of the Redevelopment Agency to order at 7:32 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California after having convened into Closed Session at 6:00 P.M. for Conference with Legal Counsel – Anticipated Litigation pursuant to Section 54956.9 (b) of the Government Code regarding four cases; and Conference with Labor Negotiators pursuant to Section 54957.6 regarding Police Officers Association, Police Managers Group, Teamsters, AFSCME (Miscellaneous A), AFSCME (Miscellaneous/Professional/Confidential).

Chair Johnson advised that no reportable action had taken place in Closed Session.

MEMBERS PRESENT: Casey, Evola, Kee, Parent, Johnson

MEMBERS ABSENT: None

STAFF PRESENT

Executive Director, Marc Grisham
Assistant Executive Director, Matt Rodriguez
Legal Counsel, Ruthann Ziegler
City Clerk, Alice Evenson
Director of Pittsburg Power Company, Garrett Evans
Director of Engineering and Building, Joe Sbranti
Director of Economic Development, Brad Nail
Director of Redevelopment, Randy Starbuck
Director of Public Works, John Fuller
Director of Recreation, Paul Flores
Director of Planning, Melissa Ayres
Director of Finance, Marie Simons
Chief of Police, Aaron Baker

PUBLIC HEARING

Member Evola recused himself from the next item based on his financial interest. He left the dais and the Council Chambers at this time.

Mayor Johnson CONVENED JOINTLY the CITY COUNCIL and the REDEVELOPMENT AGENCY to consider the following.

1. **RESOLUTION 07-1195** Approval of a Disposition and Development Agreement
Combined w/CC 07-10769 By and Between the Redevelopment Agency of the City of Pittsburg and Discovery Builders, Inc. and Making Certain Findings Herewith

Redevelopment Director Randy Starbuck stated that the Redevelopment Agency of the City of Pittsburg and Discovery Builders, Inc., a California corporation, had negotiated terms for a Disposition and Development Agreement (DDA) for the development of three single-family homes on a vacant 15,000-square-foot parcel of land at 60 Cornwall Street, property previously occupied by a 14-unit apartment complex previously owned by Shelter, Inc. run as an affordable housing project. He stated that the Agency had acquired the property and had the building demolished. The DDA would sell the property to Discovery Homes which would build three detached single family residences on the property.

With respect to fiscal impact, Mr. Starbuck advised that the Agency would be paid \$375,000 for the property, its fair market appraised value. There were some issues related to potential changes in zoning which had been accounted for in the appraisal. Those matters of zoning were also on the current agenda for Council consideration.

Mr. Starbuck recommended that the City Council and Agency Board conduct a public hearing and approve the DDA.

Mayor Johnson opened the public hearing for Redevelopment Agency Resolution 07-1195 and City Council Resolution 07-10769.

LOUIS PARSONS, Concord, representing Discovery Builders, agreed to the provisions of the DDA and looked forward to working with the City on the project.

Mayor Johnson closed the public hearing for Redevelopment Agency Resolution 07-1195 and City Council Resolution 07-10769.

On motion by Member Kee, seconded by Vice Chair Casey to adopt Redevelopment Agency Resolution 07-1195, carried by the following vote:

Ayes: Casey, Kee, Parent, Johnson
Noes: None
Absent:Evola [recused]

On motion by Councilmember Kee, seconded by Vice Mayor Casey to adopt City Council Resolution 07-10769, carried by the following vote:

Ayes: Casey, Kee, Parent, Johnson
Noes: None
Absent:Evola [recused]

Councilmember Evola rejoined the Council at this time.

2. **RESOLUTION 07-1196** Authorize the Executive Director to Execute an Amended and Restated Lease Agreement By and Between John Phair dba EJ Phair Brewing Company and the Redevelopment Agency of the City of Pittsburg
Combined w/CC 07-10776

On September 5, 2006, the Agency Board approved the acquisition of 190 East Third Street (APN 085-108-010) for the purpose of making a portion of the property available to John Phair dba EJ Phair Brewing Company. On November 27, 2006, the Agency and EJ Phair entered into the original lease agreement for lease of the premises, commencing as of December 1, 2006. Staff noticed a public hearing for the amended lease for May 7, 2007. Staff and EJ Phair are still negotiating the lease and request the public hearing be continued until June 4, 2007.

Director of Pittsburg Power Company Garrett Evans advised that staff had noticed the amended and restated lease agreement approximately one month ago although negotiating points were not yet complete and a continuance to the June 4, 2007 meeting was recommended after the opening of the public hearing to consider any testimony at this time. He added that rather than just a tasting room for the brewery, a full scale restaurant expansion had been proposed in the Old Town area of the City.

Mayor Johnson opened the public hearing for Redevelopment Agency Resolution 07-1196 and City Council Resolution 07-10776. There was no one to speak to the items at this time.

Mayor Johnson continued the public hearing to the June 4, 2007 meeting.

3. **RESOLUTION 07-1197** Clarification of the Mirant Power Generation Plant
Combined w/CC 07-10777 Generation Area
Combined w/CC 07-10778

Mr. Evans stated that the City and Agency had been working cooperatively with Contra Costa County pursuant to the Mirant Power Generation Plant Annexation Area. The first agreement is an Allocation of Tax Revenues for the Annexation Area and the second agreement is for the construction of two replacement fire stations for Stations 84 and 85 and a Fire Prevention Bureau.

Mr. Evans explained that the Tax Sharing Agreement was based on the 1980 Master Property Tax Transfer Agreement between Contra Costa County and the City of Pittsburg. The City of Pittsburg would receive an increased share of the County's property tax revenues pursuant to the previously agreed upon formula. The base tax the County currently received for the 22 parcels would be divided to where the City would receive 25.205 percent of that base tax while the County would retain 74.795 percent. Above that increment share, the City would receive 50.41 percent while the County would retain 49.59 percent.

Mr. Evans clarified that in 2006 the assessed value for those 22 parcels was approximately \$189 million. The City's 25.205 percent share would represent \$83,000. He also noted that the goal was not from a revenue standpoint but related to land use control.

With respect to the Fire Station Agreement between the Agency and the County, Mr. Evans explained that the City had to authorize the Agency to enter into that agreement.

As to the fiscal impact, Mr. Evans stated that two new fire stations would be replaced.

Fire Station 84 in Old Town on Sixth Street would move to 1903 Railroad Avenue, and Fire Station 85 at 2555 Harbor Street near Small World Park would relocate to 2331 Loveridge Road where a Fire Prevention Bureau would also be located. By fronting up to \$10 million for the construction of those facilities, Mr. Evans stated that was well within the budget put together by the County and the County would convey to the City the land near Small World Park, to be incorporated into that park area. An arrangement would also allow the fees imposed by the County to be raised to generate more revenue to compensate the Agency's \$10 million cost. An item would return to the Council in the near future to consider that fee increase.

Mr. Evans recommended that the public hearing be opened, that testimony be taken, that the hearing be closed and that the Council and Agency Board approve the resolutions authorizing the Executive Director/City Manager to take all actions necessary to carry out said resolutions.

As to what the County would do with Station 84 in response to the Mayor, Mr. Evans stated that no type of reuse had yet been identified for that station.

Mayor Johnson opened the public hearing for Redevelopment Agency Resolution 07-1197 and City Council Resolutions 07-10777 and 07-10778. There was no one to speak to the items. Mayor Johnson closed the public hearing for Redevelopment Agency Resolution 07-1197 and City Council Resolutions 07-10777 and 07-10778

On motion by Member Evola, seconded by Vice Chair Casey and carried unanimously to adopt Resolution Agency Resolution 07-1197.

On motion by Councilmember Evola, seconded by Vice Mayor Casey and carried unanimously to adopt City Council Resolution 07-10777.

On motion by Councilmember Evola, seconded by Vice Mayor Casey and carried unanimously to adopt City Council Resolution 07-10778.

CONFLICT OF INTEREST DECLARATION

Member Evola identified a conflict with a source of income from his employer with respect to Item i. on the Consent Calendar. His vote on the Consent Calendar therefore did not apply to Item i.

COMBINED REDEVELOPMENT AGENCY, PITTSBURG POWER COMPANY AND CITY COUNCIL CONSENT CALENDAR

CONSENT CALENDAR

On motion by Member Parent, seconded by Member Kee and carried unanimously to adopt the Consent Calendar, as follows:

- a. **MINUTES** Dated: April 16, 2007

Approved minutes dated April 16, 2007.

- b. **CLAIMS** #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez

Denied claims #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez

- c. **RESOLUTION 07-1198** Adopting an Updated List of On-Call Environmental Consultants

Adopted Resolution 07-1198.

- d. **RESOLUTION 07-10781** Directing the Engineer of Work to Prepare and File the Annual Report for Oakhills Landscaping and Lighting Assessment District 1988-02, Oakhills (FY 2007-08)

Adopted Resolution 07-10781.

- e. **RESOLUTION 07-10782** Acceptance of Contract with Ferreira Services, Inc. to Upgrade the City Hall Heating, Ventilation and Air Conditioning Control System as Complete

Adopted Resolution 07-10782.

- f. **RESOLUTION 07-10783** Allocating Funding and Awarding Contract 2006-09, City Park Soccer Field Project to Cleary Brothers, Inc. of Danville, California for Construction of a Soccer Field at City Park

Adopted Resolution 07-10783.

- g. **RESOLUTION 07-10784** Authorize Increase in Public Works Maintenance Service Supply Purchase Contracts

Adopted Resolution 07-10784.

- h. **RESOLUTION 07-10785** Adoption of Updated City Standards

Adopted Resolution 07-10785.

- i. **RESOLUTION 07-10786** Acceptance of Public Improvements Within Subdivision 8519, San Marco Unit 6, for Continuous Maintenance

Adopted Resolution 07-10786.

ADJOURNMENT

The meeting of the Redevelopment Agency adjourned at 7:48 P.M. to the next meeting set for April 16, 2007.

Respectfully submitted,

Alice E. Evenson, Secretary

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CITY OF PITTSBURG
Pittsburg Power Company Minutes
May 7, 2007

Chair Ben Johnson called the meeting of the Pittsburg Power Company to order at 9:28 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California after having convened into Closed Session at 6:00 P.M. for Conference with Legal Counsel – Anticipated Litigation pursuant to Section 54956.9 (b) of the Government Code regarding four cases; and Conference with Labor Negotiators pursuant to Section 54957.6 regarding Police Officers Association, Police Managers Group, Teamsters, AFSCME (Miscellaneous A), AFSCME (Miscellaneous/Professional/Confidential).

Chair Johnson advised that no reportable action had taken place in Closed Session.

MEMBERS PRESENT: Casey, Evola, Kee, Parent, Johnson

MEMBERS ABSENT: None

STAFF PRESENT

- Executive Director, Marc Grisham
- Assistant Executive Director, Matt Rodriguez
- City Attorney, Ruthann Ziegler
- City Clerk, Alice Evenson
- Director of Pittsburg Power Company, Garrett Evans
- Director of Engineering and Building, Joe Sbranti
- Director of Economic Development, Brad Nail
- Director of Redevelopment, Randy Starbuck
- Director of Public Works, John Fuller
- Director of Recreation, Paul Flores
- Director of Planning, Melissa Ayres
- Director of Finance, Marie Simons
- Chief of Police, Aaron Baker

In Joint Session with the City Council and the Redevelopment Agency, the Pittsburg Power Company considered the Combined Consent Calendar.

CONFLICT OF INTEREST DECLARATION

Member Evola identified a conflict with a source of income from his employer with respect to Item i. on the Consent Calendar. His vote on the Consent Calendar therefore did not apply to Item i.

COMBINED REDEVELOPMENT AGENCY, PITTSBURG POWER COMPANY AND CITY COUNCIL CONSENT CALENDAR

CONSENT CALENDAR

On motion by Member Parent, seconded by Member Kee and carried unanimously to adopt the Consent Calendar, as follows:

- a. **MINUTES** Dated: April 16, 2007

Approved minutes dated April 16, 2007.
- b. **CLAIMS** #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez

Denied claims #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez
- c. **RESOLUTION 07-1198** Adopting an Updated List of On-Call Environmental Consultants

Adopted Resolution 07-1198.
- d. **RESOLUTION 07-10781** Directing the Engineer of Work to Prepare and File the Annual Report for Oakhills Landscaping and Lighting Assessment District 1988-02, Oakhills (FY 2007-08)

Adopted Resolution 07-10781.
- e. **RESOLUTION 07-10782** Acceptance of Contract with Ferreira Services, Inc. to Upgrade the City Hall Heating, Ventilation and Air Conditioning Control System as Complete

Adopted Resolution 07-10782.
- f. **RESOLUTION 07-10783** Allocating Funding and Awarding Contract 2006-09, City Park Soccer Field Project to Cleary Brothers, Inc. of Danville, California for Construction of a Soccer Field at City Park

Adopted Resolution 07-10783.
- g. **RESOLUTION 07-10784** Authorize Increase in Public Works Maintenance Service Supply Purchase Contracts

Adopted Resolution 07-10784.
- h. **RESOLUTION 07-10785** Adoption of Updated City Standards

Adopted Resolution 07-10785.

- i. **RESOLUTION 07-10786** Acceptance of Public Improvements Within Subdivision 8519, San Marco Unit 6, for Continuous Maintenance

Adopted Resolution 07-10786.

ADJOURNMENT

The meeting of the Pittsburg Power Company adjourned at 9:28 P.M.

Respectfully submitted,

Alice E. Evenson, Secretary

als

CITY OF PITTSBURG
City Council Minutes
May 7, 2007

Mayor Ben Johnson called the meeting of the City Council to order at 7:49 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California after having convened into Closed Session at 6:00 P.M. for Conference with Legal Counsel – Anticipated Litigation pursuant to Section 54956.9 (b) of the Government Code regarding four cases; and Conference with Labor Negotiators pursuant to Section 54957.6 regarding Police Officers Association, Police Managers Group, Teamsters, AFSCME (Miscellaneous A), AFSCME (Miscellaneous/Professional/Confidential).

Mayor Johnson advised that no reportable action had taken place in Closed Session.

MEMBERS PRESENT: Casey, Evola, Kee, Parent, Johnson

MEMBERS ABSENT: None

STAFF PRESENT

- City Manager, Marc Grisham
- Assistant City Manager, Matt Rodriguez
- City Attorney, Ruthann Ziegler
- City Clerk, Alice Evenson
- Director of Pittsburg Power Company, Garrett Evans
- Director of Engineering and Building, Joe Sbranti
- Director of Economic Development, Brad Nail
- Director of Redevelopment, Randy Starbuck
- Director of Public Works, John Fuller
- Director of Recreation, Paul Flores
- Director of Planning, Melissa Ayres
- Director of Finance, Marie Simons
- Chief of Police, Aaron Baker

Mayor Johnson considered the following general City Council items at 7:00 P.M. prior to pursuing the Redevelopment Agency agenda.

PLEDGE OF ALLEGIANCE

Gloria Magleby led the Pledge of Allegiance.

PRESENTATION

1. Pittsburg Library 40th Anniversary

MARIAN PATRIDGE, Pittsburg Branch Librarian identified the special programs to

run from May 14 through May 19 in honor of the 40th Anniversary of the Pittsburg Library. She advised that the groundbreaking for the Pittsburg Library had occurred on June 22, 1966, and construction had been completed in April 1967, with dedication on May 20, 1967. She presented a DVD of the visual history of the groundbreaking from archival photographs taken from the ground breaking, construction and dedication of the Pittsburg Library.

Ms. Partridge took this opportunity to recognize the many groups that had helped the Library in its first 40 years from the Kiwanis, Soroptimists, Pittsburg's Women's Community League, Pittsburg Women's Club, Pittsburg Chamber of Commerce, Pittsburg Historical Society, Moose Lodge, the Pittsburg Unified School District, the Friends of the Pittsburg Library and many individuals and volunteers, along with help from the City Council, the City of Pittsburg and its Recreation Department, among others.

COUNCILMEMBER REPORTS/REMARKS

Councilmember Kee reported that he and Mayor Johnson had recently returned from a trip to Sister City Shimonoseki, Japan where he stated he had been graciously treated by their hosts. He had also attended the opening of the Farmer's Market. He announced that Friday, May 11 would be the Second Annual Pittsburg Youth Golf Tournament. He noted that approximately \$50,000 had been raised last year to help children in Pittsburg through various programs and he looked forward to another successful year for that event.

Councilmember Parent took this opportunity to thank staff for arranging for a second Hillside Development Standards Workshop which had served to answer a number of questions from the public. She reported that the Pittsburg Community Theatre was presenting the musical "The Quilters." She commended the Adult Education Art Show which had been well received in the community, she stated that she and Councilmember Kee had participated in the groundbreaking of the Faith Worship Center at the corner of Garcia and Harbor Street, and stated that the Pittsburg Women's Community League fundraiser for the benefit of the Ferris Wheel could net \$2,000 for the benefit of that project.

Councilmember Parent also reported that she and the City Manager had participated in a workshop sponsored by Contra Costa CISCO at St. Peter Martyr Church offering an opportunity for members of the community to voice concerns about issues. She added that Stand! Against Domestic Violence had held Denim Day at City Hall. She thanked the Public Works Department and the City Clerk, who had been honored by the event, for her support of efforts to let people know that domestic violence was unacceptable. She thanked the City employees who had worn denim that day and who had attended the luncheon.

Councilmember Parent advised that she and the Mayor had attended a breakfast with a group from the Delta Realty Board to keep that Board up-to-date on the City's activities. She stated that the City Manager had been a model in a fashion show put on by

the non-profit group, Positive Edge that donated clothes to people reentering the work force. Councilmember Parent further identified her attendance at the California Association of Sanitary Agency Convocation in Napa, which organization was lobbying in coordination with the Delta Diablo Sanitation District (DDSD) to get recycled water, and working on other legislation related to standards for clean water and cleaning water.

Councilmember Parent added that she had attended the opening of the Farmer's Market. She stated that the Eddie Hart All in One Foundation was sponsoring two functions related to track activities for children between ages 8 and 13 in the community during the Month of May. The Eddie Hart All in One Foundation was working with the High School Track Club and trials in conjunction with the Hershey Company through sponsorship with the City to qualify young people to participate in track competitions.

Councilmember Parent also reported that the DDSD was making refunds for sewer taxes that had been paid twice in the California Seasons subdivisions. She reported that 60 percent of those currently residing in that subdivision had already been paid. She stated that the DDSD was not only paying back the duplicate taxes but repaying the interest on those funds. Extra efforts were being taken to refund all fees to those who paid but no longer lived in that subdivision.

Mayor Johnson highlighted his trip to Sister City Shimonoseki, Japan and advised that there would be a presentation at the meeting of May 21 related to that trip. Mayor Johnson reported that he had also attended the opening of the Farmer's Market at its new location on Railroad Avenue, the Cinco de Mayo festivities, and the opening day ceremonies at Small World Park. He took this opportunity to thank the Police Chief for the police services provided at the Small World Park event.

CITY MANAGER REPORTS/REMARKS

City Manager Marc Grisham had nothing to report, although he advised that Timi Tumbaga, the Old Town Coordinator did have a report.

Timi Tumbaga, Pittsburg, stated that the opening ceremonies for the Farmer's Market was a fabulous event with a large turnout of vendors and patrons and where everyone had seemed to be pleased with the new location. She reported that the theme of the upcoming Farmer's Market on Saturday was wine tasting, which would set up the Farmer's Market on May 19 for Art di Strada "art in the streets;" an art and wine event that would include a painting competition. She stated that there would be a Cultures of Old Town event on that same day to celebrate National Asian Heritage Month.

Mayor Johnson advised that to avoid time considering individual votes on Consent Calendar items, anyone wishing to speak to Consent Calendar items would be allowed to do so during the Citizens Remarks portion of the meeting. He advised that if anyone wished to comment on a Consent Calendar item, speaker cards should be submitted at this time. He stated that non-agenda items would be heard first, followed by Consent Calendar items.

CITIZEN REMARKS

BRUCE OHLSON, Pittsburg, commented that as a member of the Pittsburg Planning Commission he was aware that the North Park Plaza shopping center was expanding. He stated that plans had been approved for that expansion at the Planning Commission's most recent meeting. He noted that the developer had agreed at that time that the North Park connector, the main access road to the shopping center, had become a de facto City arterial street. He commented that he had pressed hard for the construction of improvements along the street as part of the expansion to City arterial street standards. He noted that the developer had resisted doing that but had indicated a willingness to make any changes required by the expansion of Highway 4, which would begin in the spring of 2008.

Mr. Ohlson stated therefore that the City had the opportunity to work with Caltrans and the Contra Costa Transportation Authority (CCTA) to assure a design that was continuous along the frontage of the shopping center that would satisfy all concerned. He urged the Council to direct staff to pursue the project, particularly since the street was one of only four surface streets connecting Central County and East County through Pittsburg. He identified those streets as Buchanan Road, Leland Road, California Avenue-North Park Boulevard, and the Pittsburg-Antioch Highway.

Mayor Johnson noted his understanding that the street was a private street owned by several different parties.

JIMMY DORSEY, Pittsburg, the Neighborhood Watch captain at Marina Heights, reported problems with Direct TV related to double billing of residents, billing for non-service, inappropriate billing, the elimination of Comcast, and the inability of residents to be allowed a resolution of those issues. He requested to be able to return to the Council with the Neighborhood Watch Team to discuss those issues.

Mayor Johnson adjourned to the Redevelopment Agency agenda at 7:32 P.M. and reconvened as the City Council at 7:49 P.M.

PUBLIC HEARING

1. **RESOLUTION 07-10769** Approval of a Disposition and Development Agreement
Combined w/RDA 07-1195 By and Between the Redevelopment Agency of the City of Pittsburg and Discovery Builders, Inc. and Making Certain Findings Herewith

City Manager Marc Grisham stated that the Redevelopment Agency of the City of Pittsburg and Discovery Builders, Inc., a California corporation, had negotiated terms for a Disposition and Development Agreement (DDA) for the development of three single-family homes on a vacant 15,000-square-foot parcel of land at 60 Cornwall Street in the City of Pittsburg.

In Joint Session with the Redevelopment Agency, the City Council took the following action.

On motion by Councilmember Kee, seconded by Vice Mayor Casey to adopt City Council Resolution 07-10769, carried by the following vote:

Ayes: Casey, Kee, Parent, Johnson
Noes: None
Absent: Evola [recused]

2. **RESOLUTION 07-10776** Authorize the Executive Director to Execute an Amended and Restated Lease Agreement By and Between John Phair dba EJ Phair Brewing Company and the Redevelopment Agency of the City of Pittsburg
Combined w/RDA 07-1196

On September 5, 2006, the Agency Board approved the acquisition of 190 East Third Street (APN 085-108-010) for the purpose of making a portion of the property available to John Phair dba EJ Phair Brewing Company. On November 27, 2006, the Agency and EJ Phair entered into the original lease agreement for lease of the premises, commencing as of December 1, 2006. Staff noticed a public hearing for the amended lease for May 7, 2007. Staff and EJ Phair are still negotiating the lease and request the public hearing be continued until June 4, 2007.

In Joint Session with the Redevelopment Agency, Mayor Johnson continued the public hearing to the June 4, 2007 meeting.

3. **RESOLUTION 07-10777** Clarification of the Mirant Power Generation Plant
Combined w/RDA 07-1197 Generation Area
Combined w/CC 07-10778
- 4 **RESOLUTION 07-10778** Clarification of the Mirant Power Generation Plant
Combined w/RDA 07-1197 Generation Area
Combined w/CC 07-10777

City Manager Marc Grisham stated that the City and Agency had been working cooperatively with Contra Costa County pursuant to the Mirant Power Generation Plant Annexation Area. The first agreement is an Allocation of Tax Revenues for the Annexation Area and the second agreement is for the construction of two replacement fire stations for Stations 84 and 85 and a Fire Prevention Bureau.

In Joint Session with the Redevelopment Agency, the City Council took the following action.

On motion by Councilmember Evola, seconded by Vice Mayor Casey and carried unanimously to adopt City Council Resolution 07-10777.

On motion by Councilmember Evola, seconded by Vice Mayor Casey and carried unanimously to adopt City Council Resolution 07-10778.

5. **RESOLUTION 07-10779** City-initiated General Plan Amendments in Conjunction With the Phase II Zoning Code Update

A City-initiated proposal to amend the Land Use, Downtown, Open Space & Youth & Recreation, Health & Safety, and Housing Elements of the General Plan in order to reflect existing conditions and support private reinvestment in established neighborhoods throughout the City. Other amendments proposed to be made to the General Plan would expand the boundaries of the *Mixed Use* land use designation to include additional sites along West Tenth Street and West Leland Road, in order to encourage mixed use development and neighborhood-serving commercial nodes in those areas of the City. On March 27, 2007, the Planning Commission held a public hearing and then adopted Resolution No. 9698 recommending adoption of the proposed General Plan amendments.

City Manager Grisham emphasized the time, effort, public comment and public involvement in the process for both the General Plan Amendments and the following Zoning Code Update, both of which had been reviewed and approved by the Planning Commission.

Planning Director Melissa Ayres further delineated the eight amendments to the General Plan including amendments in the West Tenth Street area to remove proposed parks over existing single-family homes as well as changes to land use designations of medium and high density in that area to create a Mixed Use corridor fronting West Tenth Street. There were also amendments to the Renova property at Third and Harbor Streets to expand that area for downtown commercial and to convert land designated high density residential to medium density residential. There was also an amendment to the north side of East Santa Fe Street where a designation would allow high density development.

Further, amendments were also proposed to the three lots on Cornwall Street where three single family lots would be brought into compliance with the General Plan with a low density residential designation. A proposal would also amend the land use designation on a vacant parcel east of the Pittsburg/Bay Point BART Station to a Mixed Use designation, and amendments to delete Tables 1 and 2 in the Downtown Element of the General Plan which had been placeholders. Other amendments included the elimination of the reference in the General Plan to a potential Pittsburg Fault, which had been found not to exist, and changes to policies in the General Plan to limit multi-family development to a minimum of 30 units.

Ms. Ayres also highlighted the many workshops that had been held, including two specific workshops with the property owners who owned the land in question for the General Plan Amendments.

Under State Law, Ms. Ayres stated that the Council could amend each element of the General Plan a maximum of four times in one year. Three elements had been amended one time this year. In amending the General Plan, the Council must make a

finding that the amendments were in the public interest.

There was no direct fiscal impact associated with the proposed amendments to the General Plan.

Ms. Ayres recommended that the public hearing be opened but that the resolution not be adopted until the next meeting of the Council on May 21, 2007 given that the City was awaiting confirmation from the State Housing and Community Development Department (HCD) that the amendments proposed that might affect the Housing Element were consistent with HCD's rules and which would not require specific amendment to the Housing Element.

Mayor Johnson opened the public hearing for Resolution 07-10779.

LOUIS PARSONS, Discovery Builders, expressed his gratitude to City staff for taking the time to meet with him to address his concerns related to both Resolution 07-10779 and Ordinance 07-1284.

CHRIS NELSON, San Rafael, submitted a card with comments but did not wish to speak. "Renova wishes to thank and recognize Dana Hoggatt and Melissa Ayres for their support on the GPA for the former Johns Manville site."

Mayor Johnson continued the public hearing to the May 21, 2007 meeting.

6. **ORDINANCE 07-1284** Comprehensive Zoning Code Update, Phase II

A City-initiated proposal to amend Pittsburg Municipal Code (PMC) Title 18 (Zoning Ordinance), in order to implement the goals, policies, programs and land use designations in the General Plan. This proposal includes both extensive Zoning Ordinance text changes and Zoning Map changes as deemed necessary to make them consistent with the General Plan. On March 27, 2007, the Planning Commission held a public hearing and then adopted Resolution No. 9699 recommending adoption of the proposed Zoning Ordinance amendments.

Ms. Ayres explained that a comprehensive General Plan had been adopted in 2001 and the Zoning Code had not been brought fully into compliance with that General Plan. A four-phase Zoning Study update had been initiated in March 2004. The first phase had been completed in 2006, primarily related to Housing Elements and State law policies.

Phase II related to updating the use districts for residential, commercial and industrial and establishing a new Zoning Map to bring the Zoning Ordinance into compliance with the General Plan and was currently under consideration.

Ms. Ayres stated that numerous workshops had been held with both property owners and business owners with extensive mailing lists. Two public hearings had been held. Modifications had been made based on the comments received from both the public

and the Planning Commission.

Ms. Ayres advised that five additional changes were recommended at this time. Those changes were identified as a rezoning from Open Space to RS-10 for property at 100 Avila Road, an overlay zone to allow a reduction of minimum lots to 2,200 square feet and increase the building height for the Renova property at Third and Harbor Streets, Zoning Map revisions to show Council adopted ordinances for overlay zones, a breakdown of the Downtown Pedestrian District to CP-1 and CP-2 districts, with a CP-2 designation for the Renova property, and the timing of exterior rehabilitation of privately owned buildings into conformance with the Old Town Guidelines in the Old Town Commercial Core.

A member of Redevelopment Agency staff spoke in support of the project given the Agency's investment in Old Town, including the Vidrio Project, the Old Town Design Guidelines, the CP District, the Streetscape Master Plan, and other projects in which the Agency was involved. She emphasized the holistic approach being taken to improve Old Town.

In response to the Mayor, Ms. Ayres explained that the Zoning Map was different from a General Plan map and that each functioned separately. She advised that enlarged copies of the Zoning Map would be available for sale at the front counter at City Hall and would be available on the City's website. Further, that software would be used to create a GIS layer of zoning codes that would be dropped into the Engineering Department GIS system to allow it to be more accessible.

There was no direct fiscal impact associated with amendments. It was recommended that the City Council move to introduce and waive further reading of the proposed ordinance amending Title 18 of Pittsburg Municipal Code for Phase II of the Zoning Code Update.

Mayor Johnson closed the public hearing for Ordinance 07-1284. There was no one to speak to the item. Mayor Johnson closed the public hearing for Ordinance 07-1284.

Councilmember Kee questioned how the design standards would be applied to a multi-tenant building in the event the criteria was to apply to only one tenant, to which Ms. Ayres explained that would depend on whether or not the tenant space was unique to the building. The trigger would be a change of tenant even if in the same business when many façade improvements would be minor in nature, such as the use of awnings, upgraded signs, potted plants at the edges or a trellis on a blank wall.

While Councilmember Kee understood the intent to maintain buildings and to conduct upgrades, where necessary, he urged caution with who would be responsible for those upgrades and he urged consideration of both sides of the issue.

In response to Councilmember Parent, Ms. Ayres clarified that the permits would be triggered when zoning permit approval was required, which involved new construction or a building permit for tenant improvements for instance.

As to what would occur if only a sign was needed in response to the Mayor, Associate Planner Dana Hoggatt stated that the requirement to conduct upgrades to the façade of the building would only apply if the building itself was non-conforming. Where there was a conforming building according to the Design Guidelines, the applicant would have to apply for a business license that would be processed through the Planning Department. Any interior improvements or remodeling would require permits to be processed through the Building Division. No Planning Department approval would be required in that case other than verification under the Business License review that the business was permitted in the zone in which it was located.

As to whether there were any existing buildings considered to be compliant with the current Design Guidelines in response to Councilmember Kee, Ms. Ayres stated that an inventory of all properties would be conducted to identify which buildings would be triggered by the proposal and which would not. She stated that there was also an issue of substantial compliance.

Mr. Grisham used the two bank buildings in Old Town as examples where there would be little change to the façade given the historic nature of those buildings within the district.

Councilmember Kee supported the staff recommendation although he remained concerned with the potential for expensive façade improvements or utility systems. If burdensome on the building owner, he suggested that the proposal would not be effective. He supported a close monitoring of the situation.

On motion by Councilmember Parent, seconded by Vice Mayor Casey and carried unanimously to introduce Ordinance 07-1284 by title only and waive first reading, to include the recommended amendments introduced by staff this date.

7. **RESOLUTION 07-10780** Denying an Appeal, Adopting a Negative Declaration and Approving Design Review Application No. 05-283 (Dow Chemical Company MEI Project)

The City Council is requested to take action on an appeal filed by Tanya A. Gulesserian of Adams Broadwell Joseph & Cardozo, on behalf of local/regional trade unions, regarding Planning Commission Resolution No. 9693 approving Design Review Application No. 05-283.

Dow Chemical Company planned to add equipment to an existing three to five story tall steel lattice frame rack system within an existing Methyl Ester Intermediate (MEI) production plant located at 901 Loveridge Road, IG (General Industrial District); APN 073-220-028.

Ms. Ayres explained that the basis for the appeal was the suggestion that an Environmental Impact Report (EIR) should have been prepared for the project. She reported that the Planning Commission had adopted a Negative Declaration and had

approved a Design Review application for the proposed Dow MEI Project on March 27, 2007, subject to conditions. The appellant had filed an appeal on April 6, 2007. The City's environmental consultants and City Attorney staff had prepared a response for those comments, attached as an exhibit to the resolution and also provided to the appellant.

Ms. Ayres stated that the California Environmental Quality Act (CEQA) documentation was adequate for the project. She recommended that the appeal be denied and that the Council reapprove the Design Review application originally approved by the Planning Commission. She identified three additional documents provided to the Council as exhibits to the consideration of the item, including a cross-reference table annotated letter of the appellant to show the Response to Comments correspondence to the appellant's letter; a letter from Dow Chemical dated May 7, 2007 clarifying additional information about the project; and a packet of information from the Zoning Administrator, Resolution 78 and Resolution 80 and related staff report documents approving a new pre-fabricated guard house, visitor shack and new security fencing that Dow requested in its efforts to address Homeland Security issues, which helped address one of the concerns raised by the appellant in the appeal.

There was no fiscal impact associated with the project. It was recommended that the Council adopt the resolution denying the appeal, adopting the Negative Declaration, and approving Design Review Application No. 05-283.

Mayor Johnson opened the public hearing for Resolution 07-10780.

TANYA GULESSERIAN, South San Francisco, an Attorney with Adams Broadwell Joseph & Cardozo, the Appellant, representing the Contra Costa Building and Construction Trades Council, and representing O.C. Walker, a member of Laborers Local 324 and Les Trapps a member of the Cement Masons Local 300, emphasized the importance of sustainable development and noted the finite opportunities for new development. As such, she believed it was critical that any projects approved by the City provide maximum economic and employment benefits to the local community while minimizing the environmental and public health risks. She stated that the proposed Dow expansion proposal did not meet that criteria.

Ms. Gulesserian stated that the record showed that the project could result in significant impacts triggering the preparation of an EIR. She reported that she had consulted with air quality and public health expert Dr. Phyllis Fox to evaluate the data in the record.

Ms. Gulesserian commented that she had been alarmed to learn that the project could result in potentially significant impacts and that unidentified project components could involve impacts that had not yet been evaluated by the City. She asked the City Council to uphold the appeal and require preparation of a Draft EIR circulated for public review.

Ms. Gulesserian stated that the legal standard for a court reviewing the Negative Declaration was not in dispute. She stated that CEQA mandated the preparation of an EIR whenever there was a fair argument based on substantial evidence in the record that a project may have a significant environmental impact. She added that as a matter of law

substantial evidence included expert opinion based on facts. If there was a legitimate disagreement between experts, an EIR would be required.

Identifying three legal problems with the Negative Declaration, as prepared, that made the document illegal requiring an EIR, Ms. Gulesserian cited an inadequate project description, failure to conduct a proper cumulative impact analysis, and the improper reliance solely on the Bay Area Air Quality Management District's (BAAQMD's) significance thresholds.

Ms. Gulesserian stated that she had received responses to her comments submitted in March on May 4, which responses had not been available to the Planning Commission or to the public until that time. She objected to such a short period of time to review a significant amount of new information. She also noted her understanding that Dow Chemical had submitted something this date that had provided additional information and which she had no opportunity to review.

Even taking into account new information reviewed as of May 4, Ms. Gulesserian stated that the Negative Declaration failed to adequately describe the project. She described the Negative Declaration as legally defective by failing to do so. She suggested that the project description had been shifting and evasive and she suggested that there was a significant difference with how much the project had proposed to expand in size, a fundamental violation of CEQA.

Ms. Gulesserian added that other inadequacies in the project description had been set forth in the appeal. She referenced numerous instances of missing information regarding hazardous waste streams, ammonia handling and how the product was being shipped to England, along with the resultant emissions and impacts. She added that the Negative Declaration also failed to properly evaluate cumulative impacts in that while the Negative Declaration stated the correct CEQA standard, it did not conduct the analysis properly, it failed to look at accidental releases of ammonia and the Risk Management Plan did not analyze the proposed project.

For the project specific impacts, Ms. Gulesserian stated that an EIR was required because substantial evidence in the record supported a fair argument that the project may result in significant ozone particulate matter, ammonia risk of upset and greenhouse gas impacts that must be analyzed in an EIR and mitigated to a less than significant level.

With respect to the improper reliance on the BAAQMD's significance thresholds, Ms. Gulesserian stated that case law was clear that where there was evidence of a significant impact, the City could not solely rely on a significance threshold. Even if a project fell below a significance threshold, she stated that an EIR would be required if there was a fair argument that the project could have an impact.

Given those potential impacts and reiterating the details of her appeal letter, Ms. Gulesserian stated that the City was legally required to prepare an EIR in this case. She urged the Council to uphold her appeal and require the preparation of an EIR.

DR. PHYLLIS FOX, Berkeley, the appellant, stated that she had reviewed the record in this case. An environmental engineer with nearly 40 years of experience and working on CEQA projects since the beginning of the statute in the 1970's, as well as a licensed engineer in five states, she stated that she had reviewed well over 1,000 CEQA documents.

Referring to air quality impacts and risk of upset impacts from transporting and using ammonia, Dr. Fox stated that the project would increase emissions of PM-10, particulate matter with a diameter less than 10 microns. She stated that the Initial Study in this case had stated that the project would increase PM-10 emissions. In spite of that, she suggested that the actual emissions were significantly under estimated because they excluded a number of sources of emissions including those during construction, from generating increases in steam to support the project, from increasing electricity production to support the project, and excluding the fact that the trucks or trains used to transport the material from the site would go long distances.

Dr. Fox stated that the increase in PM-10 emissions was important because the area in the vicinity of the project currently violated ambient air quality standards, which would mean that the increase in emissions would result in a potentially significant impact which under CEQA would require the preparation of an EIR. She also stated that the project would increase the emissions of PM-2.5, which was only 2.5 microns in diameter and which was more hazardous than PM-10. She stated that the Environmental Protection Agency (EPA) had designated PM-2.5 as a no-threshold pollutant where no level would be safe. As such, PM-2.5 emissions would trigger the preparation of an EIR.

Dr. Fox stated that the Initial Study had not evaluated PM-2.5 impacts at all and the air in the vicinity of the project currently violated ambient air quality standards of PM-2.5. She stated that the project would increase PM-2.5 which originated from sources such as exhaust from truck and train emissions, the generation of electricity and the generation of steam. She added that there was no analysis of PM-2.5 in the Initial Study.

JOE KRKOSKA, Clayton, the Site Leader for the Pittsburg Operations of Dow Chemical Company, speaking to the MEI plant, expressed his appreciation to the amount of effort the Planning Department, its consultants and other staff had devoted to the analysis and thorough review of the project.

Mr. Krkoska stated that the proposed project demonstrated Dow's continued commitment to advance the Pittsburg location and its economic viability, and the project embodied Dow's commitment to being a responsible manufacturing neighbor in Pittsburg by using state-of-the-art process technology. As a result, he stated that the project would reduce current air emissions even as production increased.

Mr. Krkoska explained that MEI was an intermediate material used to produce a crop protection product registered under the trade name STARANE®, which had been used for the treatment of problem weeds in farm crops since its launch throughout Europe in 1984. It was registered in over 56 countries around the world for the protection of over 20 different

crops.

Mr. Krkoska stated that the proposed project was highly integrated in the existing operation and reused a majority of the existing facilities and would not increase the plant's footprint. The project incorporated a sound environmentally-friendly design and had been evaluated by a neutral third party hired by the City which had determined that no significant environmental impact would result from the project. He stated that a wide range of potential impacts had been evaluated, including emissions, potential chemical exposures, aesthetics, and transportation issues during both construction and steady state operations.

Mr. Krkoska added that the project would result in no new risk or upset of accidental release in any of the materials used in manufacturing. All operations would be within permits and regulatory requirements that were reviewed and approved by many State agencies and conducted in accordance with Dow's approved Risk Management Plan and approved Accidental Release Response Plan.

Mr. Krkoska explained that all transport would be in accordance with Department of Transportation requirements. No new power generation capacity would be necessary for the project. The project had been carefully evaluated by Dow and the City of Pittsburg and would be safe for employees and neighbors, just as the existing MEI plant had been for well over a decade and the site had since 1939. He characterized the project as an integral part of the Dow site given the chemistry and technology integration that was essential for the site's viability to compete globally.

Mr. Krkoska requested the City's approval of the project to allow Dow to move on to the construction phase.

Mr. Krkoska took this opportunity to introduce the Dow employees, Community Advisory Panel members and a number of contractor employees representing over 450 full time jobs on the Dow site who were currently in the audience.

ZACHARY WALTON, Dow Legal Counsel, advised that the testimony raised by the appellants did not raise anything new. He stated that voluminous documents had been submitted and the City had prepared significant responses to those documents.

Mr. Walton stated that the emissions from the plant as a result of the project would be reduced. With respect to PM-10 and PM-2.5 emissions, he stated that as a result of the operations of the expansion there would be, on average, less than one additional truck per day. In response to the statement that PM-2.5 had not been discussed in the documents presented, he stated that the Response to Comments had discussed PM-2.5 in great detail.

Mr. Walton added that the issue of greenhouse gases had also been discussed in the Initial Study and in the Response to Comments document. He also referenced the statement that the mere fact that having an expert declaration would require an EIR was incorrect. He stated that an analysis had to be supported by fact and it needed to be

accurate. He stated that the appellants' analysis was not accurate and was not supported by fact.

Ms. Gulesserian commented that she had done her best to review the Response to Comments provided on May 4 and had faxed a letter to the Council this date with her responses. She wanted to make sure that her letter was in the record and she provided extra copies of the document at this time.

City Attorney Ruthann Ziegler recognized the referenced letter as being part of the record at this time.

REBUTTAL:

Dr. Fox noted the reference that the project would reduce emissions as production increased, which she stated was not correct in that the revised emission table in the Response to Comments in Appendix A of the staff report dated May 7, 2007 showed increases in emissions. She stated that the increases were small and that the emissions would increase even more than disclosed if all of the sources of emissions were included. She stated that the calculations did not include all of the sources as previously noted, did not include indirect emissions from electricity generation or steam production and did not address the fact that many of the products were traveling thousands of miles. She stated that the calculations had been based on 70 miles.

With respect to new power operation, Dr. Fox noted the comment that none was required and that existing power production was adequate. She stated that was not how a CEQA analysis was conducted. She stated that a CEQA analysis would have to be done relative to the existing baseline, which was the electricity used at the project in 2000. In order for the project to work, she stated that power production would have to be increased somewhere.

Speaking to the comment that the project would only increase truck traffic by one truck a day, Dr. Fox stated that if averaging out truck trips over an annual basis it would be one trip per day although there was nothing in the project description or the proposed conditions that would require that only one truck trip per day would occur.

Dr. Fox noted the comment that there were detailed analyses of PM-2.5 and greenhouse gas emissions. She strongly disagreed that was the case. She stated that the original Initial Study did not include any analysis whatsoever of PM-2.5 emissions. While the Response to Comments talked about it in a generic way, she stated it did not quantify PM-2.5 emissions and did not conduct any ambient air quality impact analysis to evaluate the significance. She stated that PM-2.5 emissions would increase and PM-2.5 was a zero threshold pollutant and was therefore significant.

Speaking to greenhouse gases in the case of the subject project, Dr. Fox described those gases as Co² and stated that most of the greenhouse gas emissions would come from transportation; trucks and railcars. She stated that the Response to Comments calculated Co² emissions although there were no calculations at all in the Initial Study

submitted for public review and there had been no public review. Based on her preliminary review, she suggested they had been grossly underestimated because a truck length of 70 miles only had been considered when products from the facility would be traveling thousands of miles to England, Louisiana, Michigan or other distant spots.

Dr. Fox added that the increase in Co² emissions from the project would be a significant impact because the California Legislature had decreed that greenhouse gas emissions shall be reduced to 1990 levels. As such, she stated that the project would move away from that goal by increasing Co² emissions.

With respect to ammonia risk of upset, Dr. Fox stated that the project required ammonia as a feed stock. The project would double the amount of ammonia imported to the site and handled and stored at the site. The ammonia would come in by tanker trucks. She stated that the issue was accidental releases if there was an accident at the plant site or during transportation. She added that the Initial Study and the Response to Comments contained no analysis in the first instance and an unsupported analysis in the second instance.

As to on-site accidental releases of ammonia, Dr. Fox stated it relied on an earlier Risk Management Plan that did not include the two-fold increase in ammonia emissions from the project, and that analysis had indicated that impacts would be significant within 211 feet of the release point but failed to find that as a significant impact since it argued that members of the public would not be within 211 feet of the release point. She stated that workers would be within that area and the amount of release and resulting ambient concentrations were high enough to cause adverse impacts to those workers.

Dr. Fox also suggested that if there was an accident while the ammonia was being transported, the impacts could be significant to those living within the transportation corridor. She stated that the Initial Study had included an analysis of transportation risk although it was wholly unsupported and it was from a draft done by another consultant other than the consultant who had prepared the Initial Study. She added that none of the assumptions had been disclosed; only the results. Based on her experience, Dr. Fox suggested that the increase of ammonia transport due to the project would be a significant impact and had not been analyzed in a reasonable way in the Initial Study and the Response to Comments.

GREG FEERE, Antioch, speaking on behalf of the Contra Costa Building and Construction Trades Council which comprised 30 construction trades with a membership of 30,000, commented that Dr. Fox was the best in the industry and was accurate 100 percent of the time. He commented that there was usually a 30-day public comment period for comments while the subject project had only a 10-day comment period and appeared to be on the fast track.

Mr. Feere noted his understanding that The New Mecca Restaurant in Old Town was being required to produce a complete EIR, while Dow Chemical producing a pesticide additive only required a Negative Declaration.

Mr. Feere disagreed with the statement from Dow Chemical's representatives that the project would bring a positive economic return to the community. He urged the Council to follow CEQA laws and regulations and require Dow Chemical Company to prepare a complete EIR as The New Mecca was being required to do.

BOB ANDREW, Vice President of Eichley Engineers, San Ramon, supported the staff recommendation for Dow's MEI project. As an engineering professional, he stated that he had worked for the facility and Dow's employees. He stated that Dow was well established as an industrial leader in the design, construction, and safety in operating facilities of the subject kind. He stated that Icclee Engineers had over 30 employees working at Dow in various capacities and some had been working at Dow for over 20 years. He had confidence that Icclee employees were working in a safe and professional environment. Mr. Andrew referenced Dow's corporate philosophy of zero incidents, injuries, illnesses, accidents and zero environmental harm. He had no doubt that Dow would execute the MEI project as it had on all previous projects in accomplishing that vision. He urged the Council to support the project's Negative Declaration.

Mayor Johnson closed the public hearing for Resolution 07-10780.

DOUG COVER, Project Manager with Environmental Science Associates, which had worked with City staff and Legal Counsel to prepare the Negative Declaration and Response to Comments, addressed some of the concerns, misinformation and incorrect conclusions that had been drawn. He referred to the statement related to PM-10 emissions from truck transportation and that transportation had been considered for a 70-mile distance only as opposed to thousands of miles. He stated that the Bay Area was non-attainment for PM-10 and truck traffic had been included within the entire Bay Area and the contribution it would have to Bay Area emissions. He commented that including emissions in Utah or England would have no effect on Bay Area concentrations.

With respect to greenhouse gas emissions, Mr. Cover stated that AB 32 set out broad goals for the State to achieve emissions reductions. It did not establish project by project goals and did not require individual projects to achieve a 20 percent reduction. Those regulations would be forthcoming over the next two to three years. He suggested it could be argued that a project that might produce greenhouse gas emissions in the Bay Area but reduce greenhouse gas emissions compared with producing the product at other places where the regulations may not be as strict could result in a net reduction.

For ammonia risk of upset, Mr. Cover noted the confusion of the doubling of the use of ammonia versus the doubling of the storage of ammonia. He stated that the Risk Management Plan for the plant had been evaluated. The plan had evaluated what would be a worst case release of ammonia based on the amount of storage of ammonia at the plant, which amount of storage would not change with the project. There would be additional deliveries to provide the usage at a higher rate, although the worst case release scenario would not change and the project would have no effect on the risk from storage of ammonia on the site.

City Attorney Ziegler also spoke to some of the comments. With respect to the inadequacy of the project description with a reference to size, hazardous waste stream, shipping the product and emissions, she asked Mr. Cover if he could address those issues.

Mr. Cover stated that the Response to Comments document that had been prepared specifically addressed that point and the appellants' comments. He noted that some of the staff summary descriptions at the current meeting and at the Planning Commission meeting had been condensed from what was in the Negative Declaration, although the project description and the Negative Declaration was complete and had not changed since it was printed. He stated it was that project that had been analyzed. He therefore had no concerns with any discrepancy between the information that had been submitted to the Planning Commission and the information submitted to the City Council.

Speaking to PM-2.5, Mr. Cover stated that was relatively new in terms of standards with a new federal standard recently adopted. He stated that the Response to Comments had taken the conservative approach and had made the assumption that all of the particulate matter PM-10 that was emitted was also PM-2.5, which was typically between 50 and 90 percent of the PM-10. He stated that the Bay Area currently did not have a significance threshold for PM-2.5. He noted that the South Coast Air Quality Management District did. Comparing the project emissions to that threshold, he stated that the project emissions were a tiny percentage of that significance threshold.

Ms. Ziegler also referenced the statement that the Negative Declaration had chosen only specific cumulative impacts to analyze. She asked Mr. Cover to comment on that statement.

While he respected the opinion that had been offered, Mr. Cover stated it was his assessment that the cumulative impact analysis considered all of the impacts that needed to be addressed in that analysis. Cumulative traffic impacts had been addressed in the traffic section. Cumulative air quality had been thoroughly addressed in the mandatory findings section. Mr. Cover stated there was no need to address cumulative impacts in areas where there were no possibility for a cumulative impact. He stated that a table of all of the past, present and reasonably anticipated future projects that would occur in the general area had been evaluated along with the types of impacts that could occur from those projects. If those projects did not contribute to the noise environment, there would be no need to look at the cumulative impact of the subject project on noise since the project itself had no significant impact on noise.

Councilmember Kee referenced the comments that the product could be shipped great distances. With that in mind, he asked how far out the City had to consider the potential impacts.

Mr. Cover explained that CEQA was a California statute and the City would be obligated to look at the impacts in the State of California. He added that each individual resource area had to define the study area based on where there might be a potential impact. For air quality, it was acceptable to look at the air basin in which the project was

located. For cultural resources, he stated it made sense to look at the very specific site in the context of the cultural history of that site.

In response to Councilmember Kee, Ms. Ayres stated that the project Notice of Intent to adopt a Negative Declaration had been posted in the County and had been made available for public comment for 20 days, as required by CEQA. With respect to the statement that The New Mecca project would require the preparation of an EIR, she stated there was no project per se for The New Mecca project. She stated that the first thing that would be done would be the preparation of an Initial Study which would advise whether or not a Negative Declaration, a Mitigated Negative Declaration or an Environmental Impact Report would be required.

Ms. Ayres suggested that an EIR might be required for The New Mecca project because there were buildings on that block which were contributing buildings under the Historic Resources General Plan designation. If the project did not alter those buildings, an EIR might not be required. That determination had yet to be made.

Councilmember Parent referred to the April 30, 2007 report and Response to Comments and noted the appellants' comments related to improperly omitted particulate matter from cooling towers. She noted among the responses a statement that the data and calculations concerning PM-10 emissions had been redacted from the public copy of the application because it contained trade secrets. She asked Mr. Cover if that information had been made available to him for his analysis.

Mr. Cover affirmed that was the case and stated that all that information had been provided to allow his evaluation. Based on that information, Mr. Cover stated that the magnitude of PM-10 emissions from the cooling tower would be truly small and had not been addressed in the Negative Declaration, although that information had been added in the Response to Comments to acknowledge that fact.

When asked by Councilmember Parent if it was permissible in the statute to redact material that was available to the City's experts but was not otherwise available elsewhere, Ms. Ziegler stated in this situation that was acceptable. She stated that both the Public Records Act and CEQA recognized that in certain circumstances an applicant may have trade secrets. If the applicant identified certain documents as trade secrets they were to be kept confidential. While there was information made available to the consultant, that information would be redacted and would not be part of the public record.

Councilmember Parent verified that the same would apply to PM-10 and PM-2.5 alike. She verified with Mr. Cover that the assumption had been made that all particulates were PM-2.5 to identify how minor those emissions were.

Kit Faubion from the City Attorney's Office, recognized the three documents that had been presented to the Council on the dais. She wanted to make sure that all three documents had been incorporated into the record. Those documents included the annotations to the Response to Comments, the staff reports on the safety improvements

that Dow had recently made, and the letter from Dow Chemical with comments on some of the draft responses.

Ms. Faubion spoke to the fair argument standard for the project and stated that standard had a low threshold in that CEQA had a strong preference for EIRs. She stated that not every project was required to have an EIR. The fact that an expert commented did not automatically mean that project would have to have an EIR. She stated that the Negative Declaration circulated for public review acknowledged that fact. Each discussion in the Negative Declaration had been phrased and evaluated in the context of the fair argument. She added that the fair argument depended on substantial evidence that there might be an impact but that evidence still needed to be substantial.

Ms. Faubion explained that in the Response to Comments, there were a number of times where the commenter in some cases was relying on assumptions that the responses showed were inaccurate. She stated that the responses were very clear to identify those inaccuracies and to continue the analysis and information. That information was substantial evidence on the part of the City not only supporting the conclusions of the Negative Declaration, but having the effect of relegating a lot of the information in the comments to less than substantial evidence, or simply incorrect.

Ms. Faubion added that the baseline for analyzing the project was the existing conditions on the ground, which included the existing structure that was not proposed to be changed. The footprint, the height and the breadth would not change. The structure had open bays and material and equipment would go into those open bays. The operation also existed. There would be no new operation.

Ms. Faubion emphasized that the existing operations had been ongoing for a long time. She added that not only was there an existing structure and existing operations but an existing regulatory structure. All the operations were heavily regulated because of the nature of the facility and the nature of the operation with State, local and federal regulations.

Ms. Faubion also explained that the public review period was as long as it was supposed to be. The City had prepared extensive Response to Comments. CEQA did not require responses at all for a Negative Declaration and the City had gone to lengths to provide written information on all of the responses that had been provided in both the main letter and in the attachments to the comment letter to evaluate all comments raised. She stated that the letter from Adams Broadwell Joseph & Cardozo was the only comment letter received.

Ms. Ziegler clarified that another item included in the public record at this time was Resolution 078, which spoke to some findings by the Zoning Administrator as well as the May 1, 2007 memo from the Planning Director to the Zoning Administrator related to Resolution No. 080 and a January 3, 2007 letter from Dow Chemical Company to Chris Barton of the City.

Mayor Johnson stated that he had been gone for a week and had no opportunity to read the entire package. He asked if there would be a problem continuing the item to allow him an opportunity to completely review the material.

Councilmember Evola stated with respect to cumulative impacts that the adequacy needed to be thorough. He therefore supported a motion to continue the item.

On motion by Councilmember Evola, seconded by Mayor Johnson to continue Resolution 07-10780, an appeal, to the City Council meeting of May 21, 2007, carried by the following vote:

Ayes: Evola, Kee, Parent, Johnson
Noes: Casey
Absent:None

CONFLICT OF INTEREST DECLARATION

Member Evola identified a conflict with a source of income from his employer with respect to Item i. on the Consent Calendar. His vote on the Consent Calendar therefore did not apply to Item i.

COMBINED REDEVELOPMENT AGENCY, PITTSBURG POWER COMPANY AND CITY COUNCIL CONSENT CALENDAR

CONSENT CALENDAR

On motion by Councilmember Parent, seconded by Councilmember Kee and carried unanimously to adopt the Consent Calendar, as follows:

a. **MINUTES** Dated: April 16, 2007

Approved minutes dated April 16, 2007.

b. **CLAIMS** #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez

Denied claims #1759 Marie Propps/Lisa T's Pampered Pets; #1760 Paul Orlando; #1762 Ernie S. Gomez

c. **RESOLUTION 07-1198** Adopting an Updated List of On-Call Environmental Consultants

Adopted Resolution 07-1198.

d. **RESOLUTION 07-10781** Directing the Engineer of Work to Prepare and File the Annual Report for Oakhills Landscaping and Lighting

Assessment District 1988-02, Oakhills (FY 2007-08)

Adopted Resolution 07-10781.

- e. **RESOLUTION 07-10782** Acceptance of Contract with Ferreira Services, Inc. to Upgrade the City Hall Heating, Ventilation and Air Conditioning Control System as Complete

Adopted Resolution 07-10782.

- f. **RESOLUTION 07-10783** Allocating Funding and Awarding Contract 2006-09, City Park Soccer Field Project to Cleary Brothers, Inc. of Danville, California for Construction of a Soccer Field at City Park

Adopted Resolution 07-10783.

- g. **RESOLUTION 07-10784** Authorize Increase in Public Works Maintenance Service Supply Purchase Contracts

Adopted Resolution 07-10784.

- h. **RESOLUTION 07-10785** Adoption of Updated City Standards

Adopted Resolution 07-10785.

- i. **RESOLUTION 07-10786** Acceptance of Public Improvements Within Subdivision 8519, San Marco Unit 6, for Continuous Maintenance

Adopted Resolution 07-10786.

ADJOURNMENT

The City Council adjourned at 9:29 P.M. to May 21, 2007.

Respectfully submitted,

Alice E. Evenson, City Clerk

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