CITY COUNCIL
SPECIAL AND REGULAR MEETING AGENDA

Tuesday, April 1, 2014
6:00 P.M.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

6:00 P.M. CLOSED SESSION (1st floor Council Conference Room, Administration Building)

Public Comment on these items will be taken prior to adjourning to Closed Session

CL1. Closed Session pursuant to Government Code Section §54957 to conference with labor negotiators regarding labor negotiations with the Police Officers Association (POA) and Service Employees International Union (SEIU)

Attendees: Alex McIntyre, City Manager, Starla Jerome-Robinson, Assistant City Manager, Bill McClure, City Attorney, Gina Donnelly, Human Resources Director, Drew Corbett, Finance Director, and Charles Sakai, Labor Attorney

7:00 P.M. REGULAR SESSION

ROLL CALL – Carlton, Cline, Keith, Ohtaki, Mueller

PLEDGE OF ALLEGIANCE

REPORT FROM CLOSED SESSION

ANNOUNCEMENTS

SS. STUDY SESSION

SS1. Review and possibly provide direction on the requested abandonment of the Burgess Drive reserved right-of-way for the SRI International Campus Modernization Project (*Staff report #14-056*)

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation for National Library Week (April 13-19, 2014)

A2. Presentation of Commendation to Menlo-Atherton High School Robotics Team

A3. Quarterly update from Trustee of the Mosquito and Vector Control District

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

B1. Parks & Recreation Commission quarterly report on the status of their 2 Year Work Plan

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

Under "Public Comment #1", the public may address the Council on any subject not listed on the agenda and items listed under the Consent Calendar. Each speaker may address the Council once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Council cannot act on items not listed on the agenda and, therefore, the Council cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. CONSENT CALENDAR

D1. Authorize the Police Department to purchase radio console equipment for $133,000 from a sole-source (Avtec) and enter into an agreement with Telecommunications Engineering Associated to install replacement radio console equipment, in an amount not to exceed $48,000 pursuant to approved Capital Improvement Program project (*Staff report #14-049*)

D2. Adopt a resolution supporting Senate Bill (SB) 1014 (Jackson) Home-Generated Pharmaceutical Waste Collection and Disposal Act and authorizing the Mayor to sign a letter of support (*Staff report #14-054*)

D3. Approve a comment letter to the Metropolitan Transportation Commission on the Dumbarton Rail Corridor Project (*Staff report #14-052*)

D4. Authorize the Public Works Director to accept the work performed by Nor Cal Concrete for the 2012-2013 Citywide Sidewalk Repair Project (*Staff report #14-051*)

D5. Authorize the City Manager to approve expenditures of up to $124,000 for labor and employee relations consulting services to the Law Office of Renne, Sloan, Holtzman, and Sakai (*Staff report #14-050*)

D6. Accept minutes for the Council meeting of March 18, 2014 (*Attachment*)

E. PUBLIC HEARINGS

E1. Consider the Planning Commission recommendation to approve the Housing Element of the General Plan and associated Housing Element Implementation Zoning Ordinance Amendments, and Environmental Review (*Staff report #14-053*)

F. REGULAR BUSINESS

F1. 2013 Annual Report on the Status and Progress in Implementing the City's Housing Element (2007-2014) of the General Plan (*Staff report #14-058*)

F2. Approve by resolution a Memorandum of Agreement regarding funding to share in the cost of an animal care shelter on Airport Boulevard in San Mateo to serve Menlo Park and other local municipalities (*Staff report #14-055*)

F3. Approve a comment letter on the Draft Environmental Impact Report for the Peninsula Corridor Electrification Project (*Staff report #14-057*)

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

J1. Proposed Ballot Initiative Review Subcommittee Report

K. PUBLIC COMMENT #2 (Limited to 30 minutes)

Under "Public Comment #2", the public if unable to address the Council on non-agenda items during Public Comment #1, may do so at this time. Each person is limited to three minutes. Please clearly state your name and address or jurisdiction in which you live.

L. ADJOURNMENT

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at http://www.menlopark.org and can receive e-mail notification of agenda and staff report postings by subscribing to the "Home Delivery" service on the City's homepage. Agendas and staff reports may also be obtained by contacting the City Clerk at (650) 330-6620. Copies of the entire packet are available at the library for viewing and copying. (Posted: 03/27/2014)

At every Regular Meeting of the City Council, in addition to the Public Comment period where the public shall have the right to address the City Council on the Consent Calendar and any matters of public interest not listed on the agenda, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Mayor, either before or during the Council's consideration of the item.
At every Special Meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Mayor, either before or during consideration of the item.

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the Office of the City Clerk, Menlo Park City Hall, 701 Laurel Street, Menlo Park, CA 94025 during regular business hours. Members of the public may send communications to members of the City Council via the City Council's e-mail address at city.council@menlopark.org. These communications are public records and can be viewed by any one by clicking on the following link: http://ccin.menlopark.org

City Council meetings are televised live on Government Access Television Cable TV Channel 26. Meetings are re-broadcast on Channel 26 on Thursdays and Saturdays at 11:00 a.m. A DVD of each meeting is available for check out at the Menlo Park Library. Live and archived video stream of Council meetings can be accessed at http://menlopark.granicus.com/ViewPublisher.php?view_id=2UU.

Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at (650) 330-6620.

THIS PAGE INTENTIONALLY LEFT BLANK

COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-056

Agenda Item #: SS-1

STUDY SESSION: **Review and Possibly Provide Direction on the Requested Abandonment of the Burgess Drive Reserved Right-Of-Way for the SRI International Campus Modernization Project**

RECOMMENDATION

Staff is currently proceeding with review of SRI International's (SRI) proposed Campus Modernization Project, specifically the preparation of the Draft Environmental Impact Report (EIR). The Council's direction on a key element of the project, the possible abandonment of the Burgess Drive reserved right-of-way (ROW), is critical to the preparation of the DEIR.

The study session is an opportunity for the Council to receive an update on the status of the project and confirm the following assumptions under consideration for the Draft EIR preparation related to the Burgess Drive reserved ROW:

- The Draft EIR will not study motorized nor non-motorized access of the Burgess Drive reserved ROW, thereby eliminating the ability to include access along the ROW as a part of the project or mitigation for the project and allowing for the potential to abandon or reduce the reserved ROW as part of future project negotiations and approvals;
- The Draft EIR will study a possible Class 1 Bicycle pathway in the proximity of Ravenswood Avenue, allowing for the potential of incorporating such a pathway as part of the project negotiations and approvals; and
- The timing of any potential long-term City acceptance of the pending offer of the Burgess Drive ROW dedication would be negotiated with SRI as part of the overall project review process.

BACKGROUND

SRI seeks to redevelop its existing research campus located at 333 Ravenswood Avenue. The project site is approximately 63.2 acres in size, and generally bound by Laurel Street to the west, Ravenswood Avenue to the north, Middlefield Road to the east and the Burgess Drive ROW to the south (with El Camino Real considered to be running in the north-south direction). Proposed redevelopment of the site includes the following key elements:

- General Plan Amendment and Zoning Ordinance Amendment to create a Research Campus Land Use Designation and Research Campus Zoning District.
- Building replacement with no net new square footage beyond the existing approximately 1,380,332 square feet;
- Increased employee count from the existing employee count to a maximum of 3,000 employees, which is an overall reduction from the maximum employee limit set by the current Conditional Development Permit (CDP);
- Increased on-site landscaping;
- Continued implementation of the Transportation Demand Management (TDM) program;
- Reconfigured site access to more efficiently circulate vehicles from the surrounding public streets and within the Project site;
- Reduced on-site parking, while still meeting the existing and projected demand; and
- Development Agreement for vested rights to construct the project in phases in exchange for overall benefits to the City and adequate development controls.

The applicant's project description and project plans, along with previous staff reports, are available for review on the City-maintained project page accessible through the following link:

http://www.menlopark.org/projects/comdev_sri.htm

Redevelopment of the campus is anticipated to be completed incrementally over an approximate 25-year timeframe, which would allow the campus to remain operational for the duration of the site redevelopment. The land use entitlement process for the project is not anticipated to be complete until 2015, but critical elements of the project are being discussed at this time to allow the City Council to provide direction to staff and the applicant. The City Council approved the EIR scope and contract with ICF International at its meeting of June 11, 2013. Subsequently, the Notice of Preparation (NOP) for the EIR was issued for public review and comment on July 30, 2013. During the NOP comment period, the Planning Commission held an EIR scoping session and a study session on the project at its meeting of August 19, 2013. Subsequently, at its meeting of August 27, 2013, the City Council approved the public outreach and development agreement negotiation process for the project, which included review of the requested Burgess Drive reserved ROW abandonment by the Bicycle and Transportation Commissions. At its meeting of January 14, 2014, the City Council appointed Mayor Pro Tem Carlton and Council Member Keith to the Council Subcommittee on the project related to the Development Agreement. An updated version of the Council approved process is included in Attachment A.

As mentioned previously, one such critical project element for the applicant is the requested abandonment of the reserved ROW for the extension of Burgess Drive to the eastern terminus of the project site near Middlefield Road. Burgess Drive currently terminates adjacent to the City Corporation Yard and an emergency vehicle access point at the southwest corner of the SRI Campus. The extension of Burgess Drive along

the southern end of the SRI Campus was previously shown in the City's 1974 General Plan (formerly known as the Comprehensive Plan). The 1975 Conditional Development Permit approval for the SRI Campus included a requirement that SRI make an offer of dedication for the City to extend Burgess Drive. A Parcel Map recorded in 1979 shows this dedication, which is 30 feet in width when adjacent to the USGS campus, and 60 feet in width when fully contained on the SRI Campus. (The City does not appear to have any reserved ROW on the USGS campus, but does have a water main easement of 15 feet in width in the subject area). The dedication of the reserved ROW is illustrated on the project location map, included in Attachment B.

In the late 1980s and early 1990s, the City began the process of updating its General Plan, which initially included the extension of Burgess Drive from Laurel Street to Middlefield Road, across the SRI and USGS campuses. However, through the review process, the City Council eliminated the extension of Burgess Drive. Ultimately, the 1994 update of the General Plan did not include the extension of Burgess Drive, but SRI's offer of dedication remains in place.

ANALYSIS

SRI's project proposal includes the abandonment of the Burgess Drive reserved ROW to reflect the current General Plan, to ensure that campus security and operations are not critically impacted, and due to the presence of approximately 17 heritage trees within the reserved right-of-way. SRI's original letter describing the basis for the requested abandonment is included as Attachment D. In summary, the applicant states that the following three key issues necessitate the request:

1. Security: Compliance with complex and varying requirements of SRI's clients requires detailed security planning, which starts with a secure campus perimeter. Under current and reasonably foreseeable future conditions, SRI could not meet its security requirements were it to provide public access through the campus.

2. Physical Site Constraints: Fencing off the reserved ROW portion of the campus would physically divide the campus, and as a result, would present safety risks to bicycles and pedestrians (when heavy equipment, cars, trucks and emergency vehicles would need to cross the pedestrian and bicycle access way), compromise facility safety and security, increase travel time between office and research buildings and isolate researchers. In addition, bicycle and pedestrian access across the Burgess Drive reserved ROW would bring the public closer to the on-site hazardous materials facility (identified as Building W).

3. Project Objectives: One of the key objectives of SRI's campus design planning is to configure campus facilities to encourage researchers to share ideas with one another, and to improve employee pedestrian and bicycle travel between campus buildings and other gathering spots. Dividing the campus with a fenced public access corridor would hinder SRI's ability to promote multi-disciplinary research and to improve the working environment for SRI employees.

In accordance with the Council approved Public Outreach and Development Agreement Negotiation Process, the Transportation Commission reviewed the project proposal at its October 9, 2013 meeting. SRI's letter explaining the basis for the requested abandonment of the reserved ROW was provided as part of the Commission's meeting packet. The Commission expressed concerns regarding the proposed abandonment and acted to continue the item to a second meeting. The Commission further directed that broad noticing be done prior to the next meeting. Details of the noticing that was done at the request of the Commission is described in the Public Notice section of the report.

Following the October 9 Transportation Commission meeting, SRI reassessed the viability of constructing a bicycle and pedestrian path through the site, utilizing the Burgess Drive reserved ROW. For reference, a possible future non-motorized access using a portion of the Burgess Drive reserved ROW is shown in Attachment E. SRI provided an updated letter explaining the abandonment request in more detail, including responses to comments from the Transportation Commission (Attachment F). In the letter, SRI explains that the abandonment is being requested as part of the larger set of approvals being reviewed by City staff and that will ultimately be acted upon by the City Council. The updated letter provides more analysis of the security concerns related to a pathway (motorized or non-motorized) through the campus, specifically with regard to concerns related to compliance with federal security requirements. In addition, SRI states that campus operations could be negatively affected by a double fenced pathway through the site, explaining that the "tab" area (or area to the south of the reserved ROW) contains the cogeneration plant and that researchers, equipment, trucks, and vehicles frequently enter the "tab" area from the main campus throughout each day. In addition, SRI explains that the current design for the campus and recent investments in the "tab" area were influenced by the removal of the Burgess Drive extension from the General Plan.

As part of its updated information, SRI also provided a conceptual bicycle and pedestrian path from Laurel Street to Ringwood Avenue (Attachment G), which could be located along Ravenswood Avenue outside the perimeter fencing, shown on Attachment B for reference. The applicant is offering that the proposed conceptual Class 1 pathway be studied in the EIR as a variant of the project to allow for the pathway to be considered as part of the Development Agreement negotiation process in lieu of a future pathway through the reserved ROW. As of right now, the alternate Class 1 pathway is not part of the project. Staff has conducted a preliminary evaluation of the proposed alternate Class 1 pathway and determined that the pathway could be a viable alternative in concept. One key benefit of this option is that it allows bicyclists and pedestrians to avoid the Middlefield Road and Ravenswood Avenue intersection. In addition, the proposed path would link with Ringwood Avenue, which is directly connected to the bicycle and pedestrian bridge over U.S. Highway 101. One tradeoff of this option is the potential impact to approximately 30 heritage trees. Staff would need to review the pathway in more detail and work with the applicant on the particular design and location of the pathway through the project review process.

Given the expressed desire of SRI to abandon the Burgess Drive reserved ROW and the existing policy direction from the 1994 General Plan, which does not identify the extension of Burgess Drive through the SRI campus, staff believes that utilizing the ROW for motorized or non-motorized access at this time is not appropriate. However, staff recognizes that in the future, the extension of the Burgess Drive ROW, either in its current width or a reduced width, could be beneficial for east-west connectivity through this portion of the City.

Since the applicant states that even non-motorized travel through the campus raises security concerns and is in conflict with existing development on site, staff believes that one option that could be considered is that dedication of the reserved ROW not be accepted until a future time when access through this portion of the campus would not impact the operation of the SRI Campus, including not compromising the secured campus and existing on-site structures. The elimination of impact to SRI Campus operations could be the result of the evolution of the Campus, including modification or removal of existing structures, changes to security requirements, subdivision of the Campus, which would result in this portion of the Campus not being within the secured perimeter, or a change in ownership of the Campus and/or the affected parcels (the Campus currently includes five parcels, which would be reconfigured as part of the current land use entitlement process). Attachment B identifies the Burgess Drive reserved ROW influence area, which includes the "tab" area and a portion of the site to the north of the reserved ROW. The factors for determining when the offer of dedication might be acted upon by the City would be determined through the Development Agreement negotiation process.

Bicycle and Transportation Commission Review

The Bicycle Commission reviewed the applicant's request to abandon the Burgess Drive reserved ROW at its meeting of December 9, 2013. The Bicycle Commission also reviewed the possible alternative bicycle and pedestrian pathway and voted unanimously *"to encourage continued exploration of the development by SRI of a bike path along the Ravenswood corridor in exchange for the relinquishment of the Burgess Drive Reserved Right-of-Way to SRI."*

Subsequently, the project went before the Transportation Commission for a second time at its regular meeting of December 11, 2013. City staff provided the Transportation Commission with the Bicycle Commission's recommendation through staff's presentation. The Transportation Commission discussed the project and voted *"to encourage the development by SRI of an alternate pathway along Ravenswood Avenue designed with maximum benefit and access to pedestrians and bicyclists, and maintain the reserved Burgess Drive Right-of-Way with triggers for City acceptance of the offer in the long term that are agreeable to SRI as negotiated through the development agreement process."* The motion passed, 4-1-0-2, with Commissioner Meyer dissenting and Commissioners Hodges and Shiu absent.

Correspondence

Staff has received one piece of correspondence on this topic since the mailing of the notice for the April 1, 2014 City Council meeting. The correspondence from Juan Walterspiel, included as Attachment H, expresses concerns with cutting through a bicycle and pedestrian path and expresses a preference for a bridge.

Conclusion

Unless directed otherwise, staff does not intend to study any access through the Burgess Drive reserved ROW as part of the EIR process. In addition, unless otherwise directed, staff intends to study the possible Ravenswood Avenue Class 1 bicycle pathway as a variant to the project through the EIR to enable the pathway to be incorporated, if desired, as part of the Development Agreement negotiation process. If directed by the City Council, staff would negotiate a future dedication of the Burgess ROW through the overall review process, specifically the Development Agreement. As shown in Attachment A, the proposed timeframe for addressing the policy issues related to an abandonment of the Burgess Drive reserved ROW or further delaying the offer of dedication would occur as part of Item #15, which is tentatively project for early 2015.

IMPACT ON CITY RESOURCES

The project sponsor is required to pay planning permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. The Project Sponsor is also required to bear the cost of the associated environmental review and fiscal analysis. For the environmental review and fiscal analysis, the Project Sponsor deposits money with the City and the City pays the consultants.

POLICY ISSUES

The applicant is requesting General Plan and Zoning Ordinance amendments, as well as a rezoning of the project site. At future public meetings, the City Council will consider whether the requested General Plan and Zoning Ordinance amendments and associated rezoning are appropriate for this project site and for the City in totality. In addition, the City Council would need to consider the potential significant and unavoidable environmental impacts and the appropriate level of public benefit associated with the requested Development Agreement.

ENVIRONMENTAL REVIEW

Study sessions do not result in an action, and as such are not subject to the requirements of CEQA. Project review would include preparation of an EIR.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the City has prepared a project

page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_sri.htm. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated. Public notification also consisted of notification by mail of owners and occupants within 1,320 feet of the boundary of the existing site for the December 2013 meetings of the Bicycle Commission and Transportation Commission and the April 1, 2014 meeting of the City Council.

ATTACHMENTS

A. Public Outreach and Development Agreement Negotiation Process Handout (Updated)
B. Location Map
C. Proposed Site Plan
D. Applicant's Basis for Request to Abandon Reserved ROW for Burgess Drive Extension
E. Conceptual Plan for Potential Future Non-Motorized Public Access (Bike Path through ROW reserve)
F. Applicant's response to Transportation Commission meeting of October 9th, dated November 20, 2013
G. Conceptual Class 1 Bicycle and Pedestrian Path, dated received November 26, 2013
H. Email correspondence from Juan Walterspiel, dated March 23, 2014

Report prepared by:
Kyle Perata
Associate Planner

Report reviewed by:
Justin Murphy
Development Services Manager

Jesse Quirion
Transportation Manager

THIS PAGE INTENTIONALLY LEFT BLANK

Updated Public Outreach and Development Agreement Negotiation Process
SRI Campus Modernization Project

No.	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
MILESTONE (A): SRI submits preliminary application to commence environmental review on November 29, 2012				
1.	**City Council** study session	April 2013	Council agenda published Web site project page updated & email bulletin sent	4/2/13
2.	**City Council** authorization for City Manager to enter into consultant contracts for environmental review and fiscal impact analysis and review of draft public outreach and development agreement negotiation process	Prior to environmental review and fiscal impact analysis kick-off	Council agenda published Web site project page updated & email bulletin sent	6/11/13
MILESTONE (B): Notice of Preparation issued for public review on July 30, 2013				
3.	**Planning Commission** EIR scoping session and study session	During Notice of Preparation comment period	Planning Commission agenda published Web site project page updated & email bulletin sent Mailed notice to all property owners and occupants within ¼ mile radius	8/19/13
4.	**City Council** information item regarding proposed changes to the draft Public Outreach and Development Agreement Negotiation Process	During Notice of Preparation comment period	Council agenda published Web site project page updated & email bulletin sent	8/27/13

Updated Public Outreach and Development Agreement Negotiation Process

SRI Campus Modernization Project

No.	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
5.	**Bicycle Commission Meeting** to provide an opportunity for the Bicycle Commission and public to learn more about the requested abandonment of reserved right-of-way	During the time period when the City is preparing the environmental review and fiscal analysis	Postcard mailing to all property owners and occupants within ¼ mile radius Bicycle Commission agenda posted Web site project page updated & email bulletin sent	~~10/14/13~~ 12/9/13
6.	**Transportation Commission Meeting** to provide an opportunity for the Bicycle Commission and public to learn more about the requested abandonment of reserved right-of-way	During the time period when the City is preparing the environmental review and fiscal analysis	Postcard mailing to all property owners and occupants within ¼ mile radius for 12/11/13 meeting Transportation Commission agenda posted Web site project page updated & email bulletin sent	10/9/13 12/11/13
~~7~~8.	**City Council** review of the requested abandonment of reserved right-of-way	During the time period when the City is preparing the environmental review and fiscal analysis	Postcard mailing to all property owners and occupants within ¼ mile radius for 12/11/13 meeting Council agenda published Web site project page updated & email bulletin sent	~~11/12/13~~ 4/1/14

Updated Public Outreach and Development Agreement Negotiation Process

SRI Campus Modernization Project

No.	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
~~8~~7.	**City Council** appointment of a Council subcommittee	Approximately one month prior to release of Draft EIR and Draft FIA	Council agenda published Web site project page updated & email bulletin sent	~~Early 2014~~ 1/14/14
MILESTONE (C): Draft Environmental Impact Report (EIR) and Draft Fiscal Impact Analysis (FIA) issued for public review in ~~Mid 2014~~Late 2014				
9.	**Public Outreach Meeting** to inform the community about the proposed project and the documents available for review *(Note: Meeting is open to the public and may be attended by any or all Council Members or Commissioners)*	Prior to deadline for Draft EIR comments. (Meeting is not intended to receive comments, but to let people know how they can submit comments)	Postcard mailing to all property owners and occupants within ¼ mile radius Web site project page updated & email bulletin sent Email sent to all appointed commissioners	~~Mid 2014~~ Late 2014
10.	**Environmental Quality Commission Meeting** to review the Draft EIR summary, Greenhouse Gas Emissions chapter, the requested heritage tree removals, and to provide individual written comments	During Draft EIR review period	Environmental Quality Commission agenda posted Web site project page updated & email bulletin sent	~~Mid 2014~~ Early 2015
11.	**Transportation Commission Meeting** to review the Draft EIR summary and the Transportation chapter, and to provide individual written comments	During Draft EIR review period	Transportation Commission agenda posted Web site project page updated & email bulletin sent	~~Mid 2014~~ Early 2015

Updated Public Outreach and Development Agreement Negotiation Process

SRI Campus Modernization Project

No.	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
12.	**Planning Commission** public hearing regarding the Draft EIR and study session item to discuss Draft FIA and the project *(Outcome: Receive public comments on the Draft EIR – all comments will be responded to in the Final EIR)* *(Outcome: Commission reviews and comments on project proposal)*	After release of the Draft EIR and Draft FIA – towards the end of the 45-day review period for Draft EIR	Planning Commission agenda posted Public Hearing Notice published and mailed to project distribution area Web site project page updated & email bulletin sent	~~Mid 2014~~ Early 2015
13.	**City Council** study session to learn more about the project and identify any other information that is needed to ultimately make a decision on the project	After the close of the Draft EIR comment period	Council agenda published Web site project page updated & email bulletin sent	~~Mid 2014~~ Early 2015
14.	**City Council** regular item to consider feedback from the Commissions, discuss environmental impacts and mitigations, public benefit, fiscal impacts, development program and provide direction or parameters to guide development agreement negotiations	Approximately 2 weeks after the Council Study Session	Council agenda published Web site project page updated & email bulletin sent	~~Mid 2014~~ Early 2015
MILESTONE (D): Prepare Final EIR, Final FIA and negotiate a draft Development Agreement term sheet				
MILESTONE (E): Publish Final EIR and Final FIA for public review ~~in the end of 2014~~ and advertise through public notice in newspaper and email bulletin				
15.	**City Council** regular item to review business terms of development agreement and consider Notice of Intent to Abandon the Burgess Drive reserved right-of-way	~~Late 2014~~Approximately the same time as the release of the Final EIR	Council agenda published Web site project page updated & email bulletin sent	~~Late 2014~~ Early 2015
MILESTONE (F): Mail notice advertising future meeting dates				

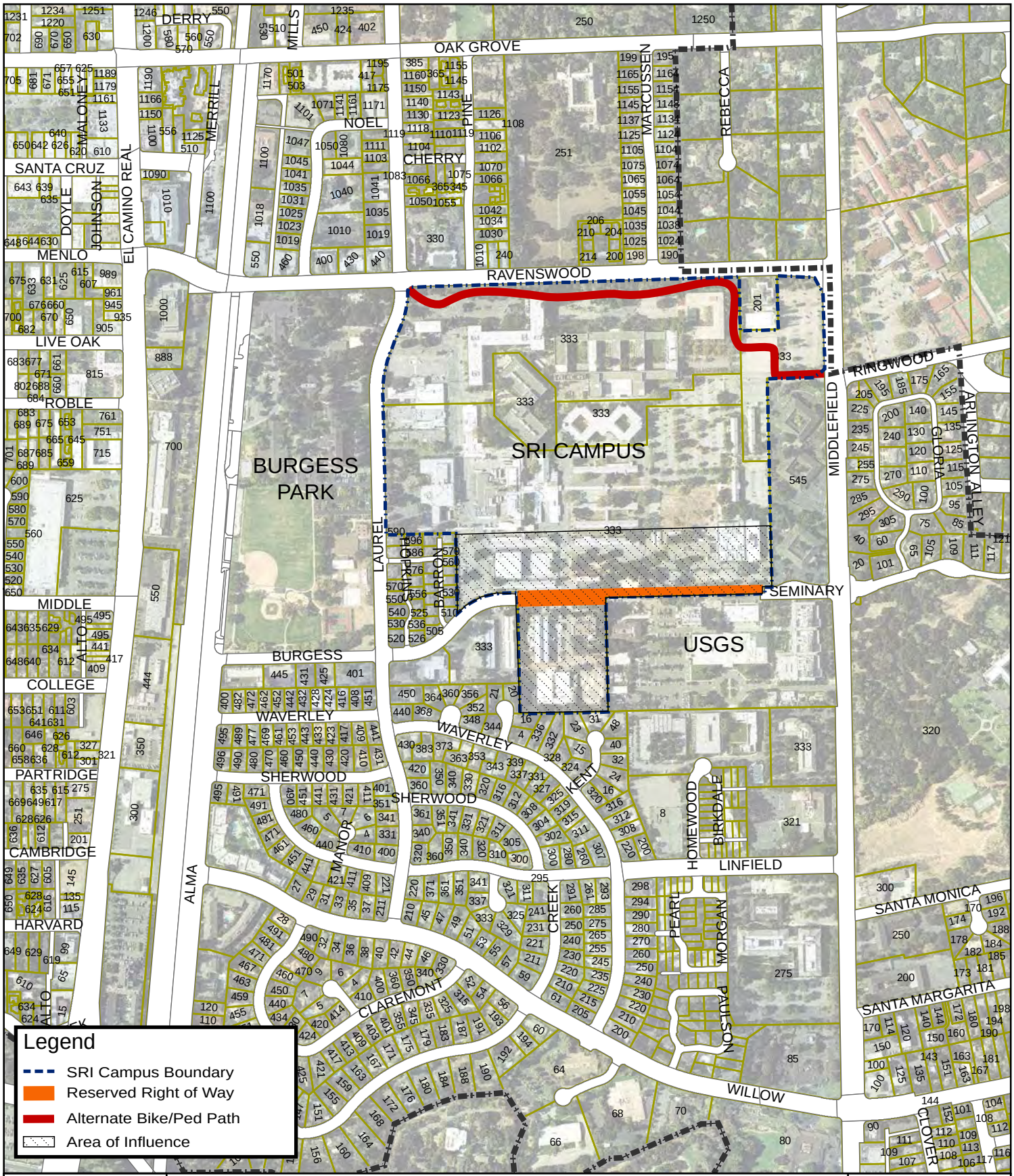
Updated Public Outreach and Development Agreement Negotiation Process

SRI Campus Modernization Project

No.	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
16.	**Planning Commission** public hearing for recommendation on Final EIR, Final FIA, ~~and~~ requested land use entitlements and associated agreements, and General Plan consistency finding for Burgess Drive reserved right-of-way abandonment, if applicable	Approximately 3 weeks after Council review of the business terms of the Development Agreement. Public comment on the Final EIR and Final FIA should be submitted before the Commission meeting in order for the comments to be considered prior to the Commission's recommendation.	Planning Commission agenda published Public Hearing Notice published and mailed to project distribution area Web site project page updated & email bulletin sent	~~Late 2014/Early~~ Mid 2015
17.	**City Council** public hearing for review of Final EIR, Final FIA, ~~and~~ requested land use entitlements and agreements, and Burgess Drive reserved right-of-way abandonment request if applicable	Approximately 3 weeks after Planning Commission recommendation	Council agenda published Public Hearing Notice published and mailed to project distribution area Web site project page updated & email bulletin sent	~~Late 2014/Early~~ Mid 2015
18.	**City Council** second reading of the Development Agreement and Rezoning Ordinances (consent item)	Next available Council meeting after first reading	Council agenda published Web site project page updated & email bulletin sent	~~Late 2014/Early~~ Mid 2015

Note: all dates tentative and subject to revision - 4/1/14 version

THIS PAGE INTENTIONALLY LEFT BLANK



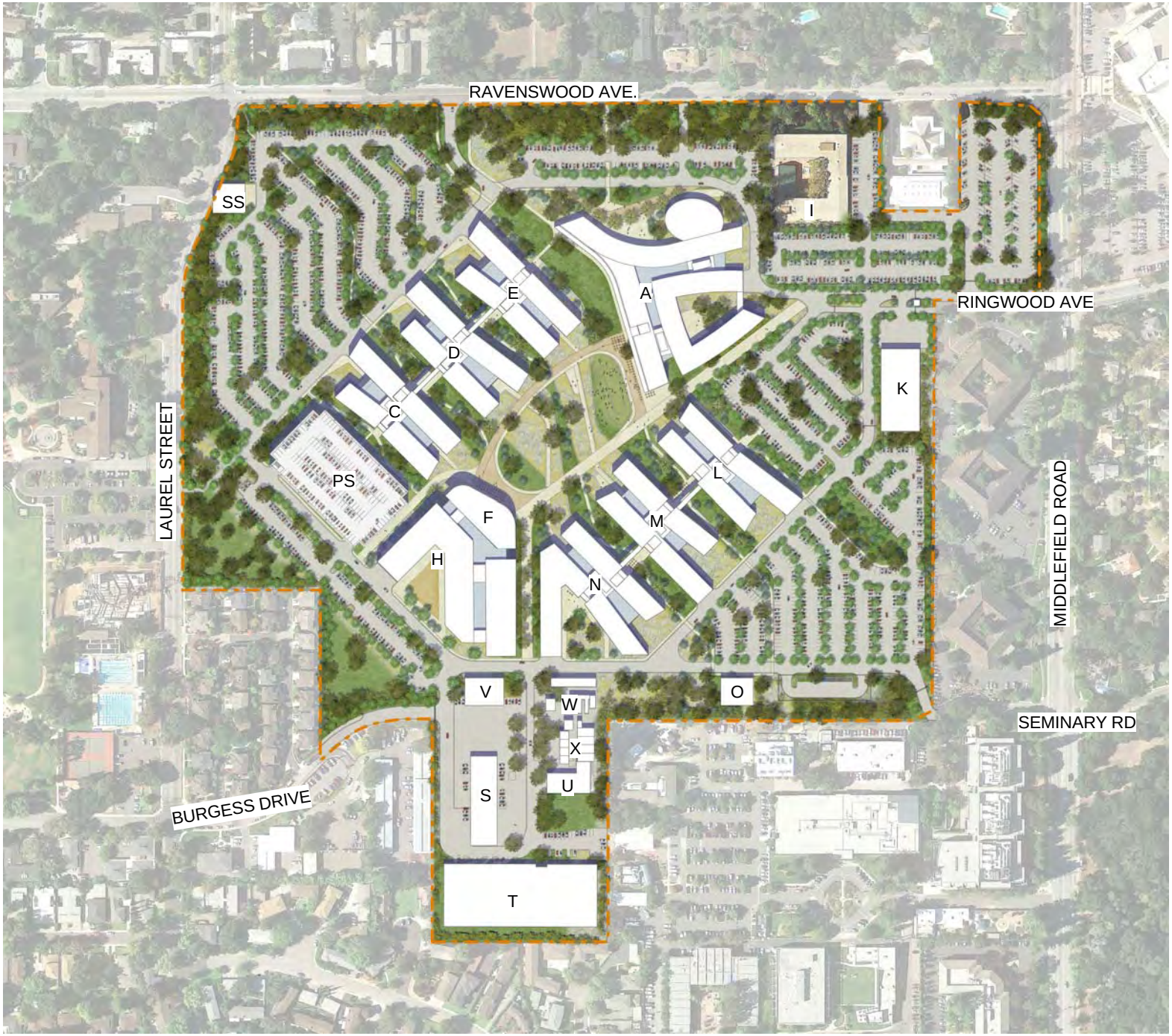
CITY OF MENLO PARK

LOCATION MAP

333 RAVENSWOOD AVE

DRAWN: KTP CHECKED: KTP DATE: 4/01/14 SCALE: 1" = 600' SHEET: 1

THIS PAGE INTENTIONALLY LEFT BLANK



SRI International

Project
SRI International Campus Modernization Project

Location
333 Ravenswood Ave.,
Menlo Park, CA 94025

Prepared for
SRI International

Contract No: 11.04012.02

HOK
One Bush St, Suite 200
San Francisco, CA 94104 USA
t +1 415 243 0555 f +1 415 882 7763

In Association with

FEHR & PEERS
Transportation Consultants
100 Pringle Ave, Suite 600
Walnut Creek, CA 94596

BKF
Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065

exp
US Service Incorporated
451 Montgomery Street
San Francisco, CA 94104

N

Professional Seals

No.	Issue Description	YYYY-MM-DD

No.	Revision Description	YYYY-MM-DD

Drawn by Author Reviewed by Checker

Project No 11.04012.02

Sheet Title:

LANDSCAPE PLAN PROPOSED

Original drawing is 36 x 24 Do not scale contents of this drawing

Sheet Number

C4.10-X

THIS PAGE INTENTIONALLY LEFT BLANK

Basis for Request to Abandon Reserved Right-of-Way for Burgess Drive Extension

In 1979 SRI offered to dedicate right-of-way (ROW) to extend Burgess Drive across SRI's campus as a required condition of approval of the Conditional Development Permit then in effect. At the time, this ROW was shown in the City's General Plan. A 1994 update by the City to its General Plan eliminated the City's planned extension of Burgess Drive, but SRI's offer of dedication remains in place.

Multiple changes to security and safety regulations have occurred since 1979, most significantly in the case of security requirements since September 11, 2001. These requirements, coupled with physical constraints and some key objectives of the Campus Modernization Project, form the basis for SRI's request for abandonment of the reserved ROW.

Post 9/11 Security Requirements

For several decades, the SRI campus was open to the public by way of multiple pedestrian gates that were unguarded and unlocked during business hours. SRI staff entered the campus at multiple access points, and visitors often passed through the campus as a shortcut to other destinations.

After September 11, 2001, security requirements changed dramatically. Heightened awareness by SRI and new requirements imposed by government agencies and private contractors caused SRI to change its security practices. Similar to its peer companies, SRI now secures its perimeter, allowing visitor access at only two points. A security officer staffs each of the two visitor access points, and all campus visitors must wear identification badges and be escorted by an authorized individual.

SRI, like many other organizations, employs a layered security system to prevent unauthorized access to information and materials. This layered security approach starts with the described perimeter controls and continues within the campus. Additional controls limit access to individual buildings and in some cases to floors and rooms within buildings.

Approximately one quarter to one third of SRI's clients now require that research performed on their behalf must be conducted on a secure campus. Many contracts require both facility clearance and individual clearance. For certain types of intellectual property controlled by the federal government, SRI must ensure that information is not shared with foreign nationals. Compliance with the complex and varying requirements of SRI's clients requires detailed security planning that starts with a secure campus perimeter.

Under current and reasonably foreseeable future conditions, SRI could not meet its security requirements were it to provide public access through the campus.

Physical Site Constraints

To address security concerns, it has been suggested that it might be possible to fence a corridor through the campus, along the Burgess Drive ROW, for use by pedestrians and bicyclists. Such fences would need to be guarded at both sides of the corridor and would need gates large enough to enable heavy equipment, cars, trucks, emergency vehicles, bicycles, and pedestrians to pass through to the adjoining portions of the campus. SRI has investigated such an option and considers it to be infeasible.

A fenced access corridor along the ROW would divide most of the campus buildings from the buildings and infrastructure located to the south of the ROW, on the tab portion of the campus. Forklifts, heavy equipment, cars, and delivery trucks would need to cross the fenced public ROW frequently throughout the day. SRI employees working in office and research Buildings S and T regularly travel between the tab area and the other office and research buildings, cafeteria, and amenity buildings on the larger portion of the campus. Other campus researchers regularly travel to the offices and research facilities in Buildings S and T. In addition, confidential documents and data, as well as other research materials that are subject to strict security requirements, are transported between Buildings S and T, and to and from the remainder of the campus. A public access corridor would present safety risks to bicyclists and pedestrians, compromise facility safety and security, increase travel time between office and research buildings, and isolate researchers.

A public access corridor along the Burgess Drive ROW also would be inconsistent with environmental health and safety measures designed to protect the public from risk. Any research facility that uses hazardous materials, even in relatively small quantities, must operate a hazardous materials management facility for proper receipt, storage and transportation of materials and waste. SRI operates a state-of-the-art management facility and complies with numerous federal, state, and local laws to ensure the safety of its employees and the surrounding community. One requirement for this type of facility is that it be located away from residences and other sensitive receptors. The SRI facility is located at Building W, which is far from public access points and roadways, and also is distant from residences. The closest offsite uses are the City's corporation yard and the USGS campus, which are considered to be a compatible neighboring use. Pedestrian and bicycle access along the Burgess Drive ROW would bring people close to Building W, which is directly adjacent to the ROW.

Finally, the Burgess Drive ROW that is located along the property border between SRI and USGS contains 17 heritage oaks, most if not all of which would have to be removed to accommodate a fenced pedestrian and bicycle corridor. All of these trees would be preserved under the proposed Campus Modernization Project.

Project Objectives

SRI is embarking upon its Campus Modernization Project to accomplish key campus planning objectives. Public access along the Burgess Drive ROW would conflict with several of those objectives.

One of the drivers of SRI's campus design planning has been configuration of campus facilities to encourage researchers to share ideas with one another, and to improve pedestrian and bicycle travel between campus buildings and other gathering spots. Dividing the campus with a fenced public access corridor would hinder SRI in its ability to promote world-leading multidisciplinary research and to improve the working environment for SRI employees.

SRI also needs to modernize the campus safety and security features. Public access through the campus, even if fenced, increases security and safety risks.

SRI seeks to improve campus bicycle and pedestrian pathways, as well as internal vehicular circulation, to minimize traffic congestion on surrounding streets. While a fenced corridor would provide some bicycle and pedestrian benefits, it also would make it more difficult for employees to traverse the campus by foot or bicycle. In addition, the corridor would conflict with proposed vehicular access from Seminary Drive to a new internal road designed to encourage drivers to minimize travel on public streets by circumnavigating the campus by way of an internal loop road.

A public access corridor through the campus would reduce the flexibility to respond to future changes in research needs, and it would undermine SRI's efforts to promote orderly campus renewal and enhance campus economic vitality and fiscal health. For all of these reasons, SRI asks that the City abandon the reserved ROW.

THIS PAGE INTENTIONALLY LEFT BLANK

SRI - Bike path through ROW reserve

SCALE 1:50

THIS PAGE INTENTIONALLY LEFT BLANK

November 20, 2013

Mr. Kyle Perata
Associate Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Ref: SRI request for abandonment of reserved right of way (ROW) for Burgess Drive extension

Dear Mr. Perata:

As a follow-up to the discussion by the Transportation Commission on October 9, 2013, SRI has revisited its request that the City abandon the right of way for potential future extension of Burgess Drive. After careful consideration, our request for abandonment of the reserved Burgess Drive ROW remains; however, we have worked closely with our design team to suggest an alternative to City staff's initial proposal to replace the Burgess Drive ROW with a pedestrian/bicycle ROW in the same location.

Rather than reserving a pedestrian/bicycle ROW that may never be built, our design team has identified a new route for a Class 1 pedestrian/bicycle path that would extend from Laurel Street to Middlefield Road, on the Ravenswood Avenue side of the SRI campus. There is room on this side of the campus for a meandering tree-lined pathway that would be outside of SRI's security fence, yet separated from the roadway. Most important, the path could be constructed as part of the Campus Modernization Project rather than reserved for possible dedication at an unknown future date. We believe this design is an improvement over our original Project plans, and we look forward to receiving your Commission's feedback on it.

Request to Abandon the Burgess Drive ROW

We detailed the reasons behind our request that the City abandon the reserved ROW in our previous communication, which is contained in the Menlo Park Staff Memorandum dated October 9, 2013 as Attachment B. A copy of that position statement is attached. In this letter, we attempt to answer some questions that arose during the Transportation Commission meeting:

- ***Timing.*** SRI does not seek City approval of the ROW abandonment before the City considers the Environmental Impact Report for the Campus Modernization Project and all of the accompanying approval documents. This item is before the Transportation Commission for early, informal feedback. We are not asking the City to give up the ROW in advance of considering the comprehensive set of Project approvals, which we anticipate will include additional community benefits negotiated in a Development Agreement.

- ***Security Needs.*** SRI's research buildings are enclosed by a security fence today, and will need to be enclosed in the future. SRI could not comply with federally mandated security

requirements if it allowed the public to enter the research campus. Security requirements have tightened since September 11. When SRI offered to dedicate the reserved ROW in 1979, those security requirements did not exist.

- ***Practical Considerations.*** Some have asked whether SRI could meet its security requirements by double-fencing a corridor along the ROW. Physically, this is possible. As a practical matter, a double-fenced ROW would make SRI's use of the tab area (Buildings S, T and U) very difficult. SRI has no plans to sell the tab area. To the contrary, Buildings S and T are the most recently improved research buildings on the SRI campus and Building U is the cogeneration plant for the entire campus. Throughout each day, equipment, trucks, cars and researchers cross back and forth through the ROW to access Buildings S, T, and U. These buildings are integrated into the fabric of the SRI campus; there is no separate access to the tab area. Severing this area would present a substantial hardship to SRI.

- ***Status of Plans to Extend Burgess Drive.*** We understand the City does not plan to extend Burgess Drive, and it is not clear that such an extension would be feasible. While these facts do not form the basis for our request, they do explain why SRI invested in improvements to the buildings on the tab area, and why SRI drew up its Campus Modernization Project without an improved ROW across the tab area.

    - Our immediate neighbors have been opposed to traffic on Burgess Drive. At their request, Burgess Drive is not used for vehicular access to SRI today, and it is not planned to be used for vehicular access to SRI in the future. Only emergency vehicles can enter SRI at Burgess Drive.

    - The City has not indicated a desire to extend Burgess Drive. Even though SRI offered to dedicate the ROW thirty four years ago, the City has not accepted the ROW. In 1994, the City removed the previously planned extension of Burgess Drive from its General Plan.

    - It may not be possible to extend Burgess Drive. Our title records indicate that the City did not secure a ROW for extension of Burgess Drive over the land owned by the United States Geological Survey. While there is a 60' reserved ROW across the tab portion of SRI, the ROW drops to 30' along the SRI/USGS border. There does not appear to be a corresponding 30' ROW on the USGS side of the border. By contrast, the City accepted the ROW for ingress/egress over the driveway between USGS and the McCandless property, and USGS conveyed a public access easement over its portion of the driveway.

Proposal to Construct a Class 1 Pedestrian/Bicycle Path Near Ravenswood

During the course of the discussions at the Transportation Commission meeting, SRI heard that rather than abandon the current reserved ROW, it might be desirable to shift it to a location along Ravenswood Avenue to accommodate bicycle and pedestrian traffic traveling from Laurel Street to Middlefield Road. To respond to this suggestion, SRI commissioned its architect to develop a

concept drawing for a Class 1 bicycle/pedestrian path along that route and outside of the secure perimeter of our research campus. The concept drawing is attached. As mentioned at the outset of this letter, we look forward to hearing the Commission's informal, preliminary feedback on this proposal.

* * * *

In sum, SRI has applied for City abandonment of the Burgess Drive ROW as part of the comprehensive package of approvals that will be evaluated in the EIR for the Campus Modernization Project. Based on the Transportation Commission's comments, SRI's design team designed a Class 1 pedestrian/bicycle path that can be constructed near Ravenswood as part of the Project, and that would replace the reserved ROW.

We suggest that the City incorporate the Class 1 pathway into a project alternative to be studied in the EIR for our Campus Modernization Project. This would enable the City to consider approval of the pathway at the completion of environmental review, along with other features identified during the public review process that will reduce Project impacts and provide community benefits.

Sincerely,

Thomas T. Little
Corporate Director,
Support Operations

Attachments
Basis for Request to Abandon Reserved ROW for Burgess Drive Extension
Concept drawing—Class 1 Bicycle/PedestrianPath

THIS PAGE INTENTIONALLY LEFT BLANK

PRESERVED HERITAGE TREE

HERITAGE TREE ARBORIST RECOMMENDED REMOVAL

PROPOSED REMOVAL HERITAGE TREE

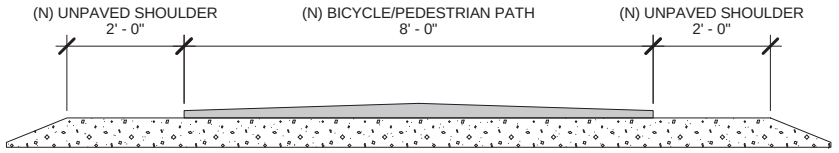
PROPOSED TRANSPLATED HERITAGE TREE

NEW 6' SIDEWALK

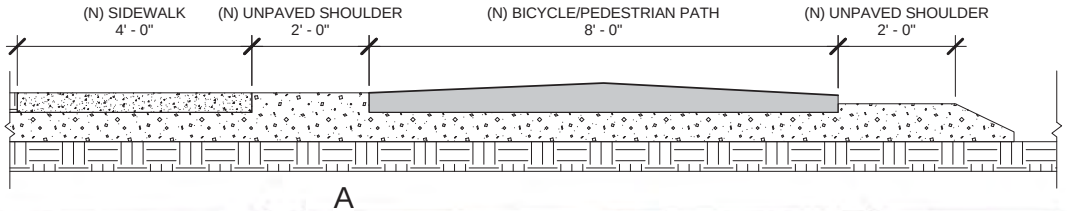
NEW 3' PLANTING STRIP

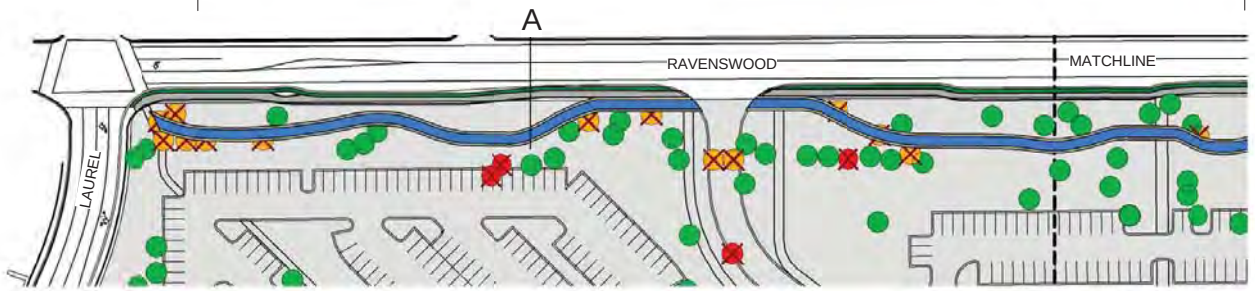
NEW 8' CLASS 1 BICYCLE/ PEDESTRIAN PATH

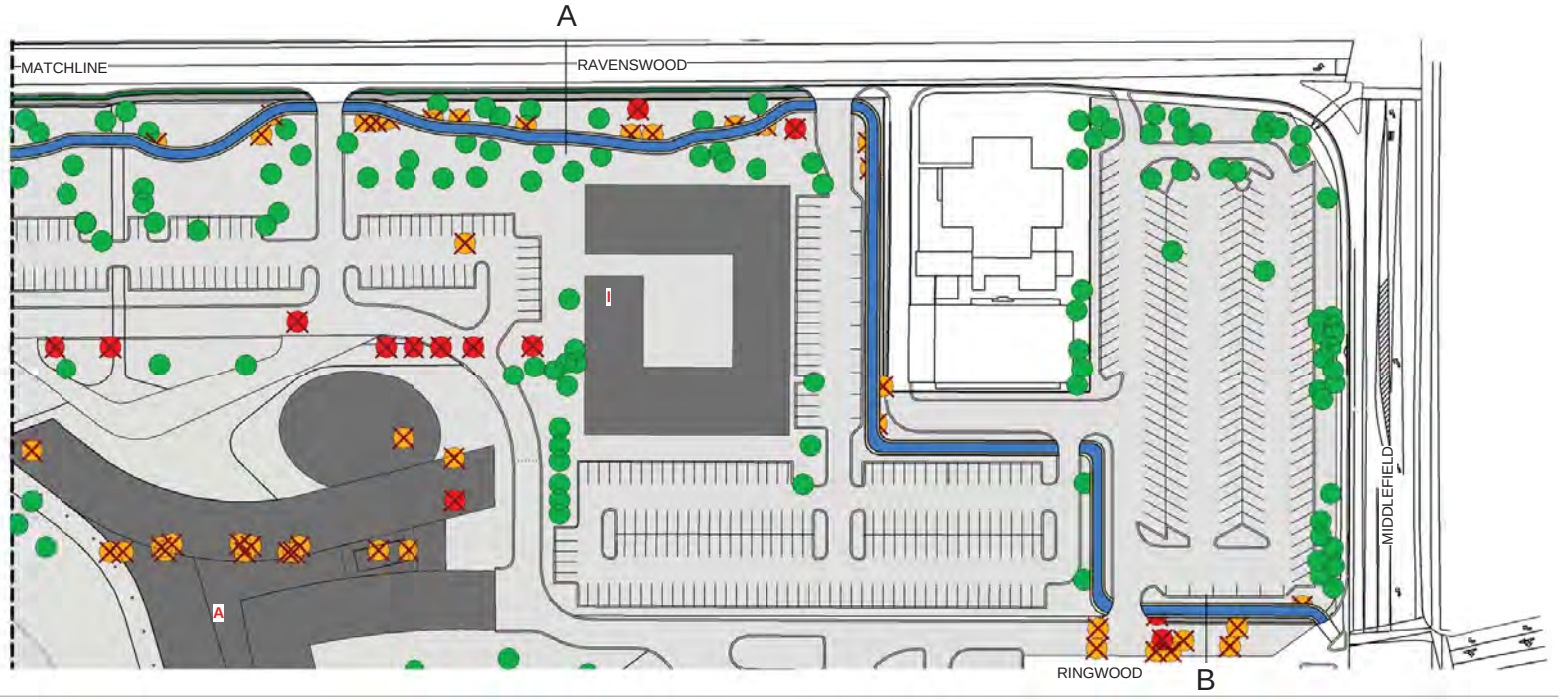
SECTION A - CLASS 1 BICYCLE/ PEDESTRIAN PATH



SECTION B - SIDEWALK & BIKEWAY COMBINED







SRI International

Project
SRI International Campus Modernization Project

Location
333 Ravenswood Ave.,
Menlo Park, CA 94025

Prepared for
SRI International

Contract No 11.04012.02

HOK
One Bush St, Suite 200
San Francisco, CA 94104 USA
t +1 415 243 0555 f +1 415 882 7763

In Association with

FEHR & PEERS
Transportation Consultants
100 Pringle Ave, Suite 600
Walnut Creek, CA 94596

BKF
Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065

exp
US Services Incorporated
451 Montgomery Street
San Francisco, CA 94104

Professional Seals

No.	Issue Description	YYYY-MM-DD

No.	Issue Description	YYYY-MM-DD

Drawn by Author Reviewed by Checker

Project No 11.04012.02

Sheet Title:
EXHIBIT - CLASS 1 BICYCLE-PEDESTRIAN PATH

Sheet Number:
C2.18

THIS PAGE INTENTIONALLY LEFT BLANK

_____

From: WADBC@aol.com [WADBC@aol.com]
Sent: Sunday, March 23, 2014 2:06 PM
To: Perata, Kyle T
Subject: Opprosition to SRI taking right of way

Dear Kyle,

I oppose to SRI cutting through a convenient bicycle path and safe walk way for our children.

It will degrade our neighborhood. SRI has enough money to build a "secure" bridge over it other countries can record people going in and out of SRI anyway - so the bridge will not add much information to them and they can sweep the area.

Juan N.Walterspiel MD, FIDSA, FAAP
Bay Area, Northern CA
WADBC@aol.com
(650) 575 9369 cell

Chance Favors The Prepared Mind

THIS PAGE INTENTIONALLY LEFT BLANK

POLICE DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-049

Agenda Item #: D-1

CONSENT CALENDAR: **Authorize the Police Department to Purchase Radio Console Equipment for $133,000 from a Sole-Source (Avtec) and Enter into an Agreement with Telecommunications Engineering Associated to Install Replacement Radio Console Equipment, in an Amount not to Exceed $48,000 Pursuant to Approved Capital Improvement Program Project**

RECOMMENDATION

Staff recommends that the City Council authorize the Police Department to purchase radio console equipment for $133,000 from a sole-source (Avtec) and enter into an agreement with Telecommunications Engineering Associated to install replacement radio console equipment, in an amount not to exceed $48,000 pursuant to approved Capital Improvement Program project.

BACKGROUND

In December of 2010, the Police Department reviewed the current status of the police radio infrastructure with Telecommunications Engineering Associated (TEA). TEA is currently the vendor who maintains all of the radio equipment, not only for Menlo Park, but also for all of the other police and fire agencies in San Mateo County. A review of the equipment revealed that some of it is outdated and overdue for replacement. In addition, there is an issue of poor quality radio transmissions when officers are working in the Belle Haven neighborhood or East Palo Alto. TEA prepared a Radio Infrastructure Replacement Schedule that addresses what equipment needed to be replaced and when, in order to maintain critical radio communications between dispatchers and officers in the field.

Several portions of this upgrade and replacement have been completed in previous years. In late 2013, the entire 911 system was replaced and upgraded to the “Next Generation 911” system, using State funding. This upgrade included a complete replacement of all consoles and furniture in the dispatch center. Part of the overall project included replacing the outdated radio consoles which are no longer compatible with the new dispatch center configuration, once the 911 project was completed. The current radio consoles have reached their end of life cycle, and locating parts to repair them are becoming problematic due to their age.

A 5 year CIP was submitted and approved with $395,000 approved for equipment replacement/enhancement during FY 13/14. A portion of this amount was to be used for the radio Console replacement and the remaining amount is to be used for an upcoming antenna project.

ANALYSIS

TEA has installed and maintained the radio equipment for Menlo Park for the last 21 years. They are familiar with the equipment and the integration of it with the rest of the public safety agencies within the County of San Mateo. TEA has vast experience in providing advanced systems for public safety environments, having done so for every police and fire agency in the County. They have an impeccable record of managing projects, on time and within budget. It is crucial that the radio system be maintained during normal operations while new equipment is being installed. TEA is the radio repair and installation service used by all public safety agencies within the County of San Mateo. Due to the critical nature of the equipment installation and replacement of it, and TEA's familiarity with the system and how it integrates with the County-wide system, they are a sole source provider.

TEA has also recommended that the radio consoles be purchased from Avtec, as it is the best product available for Public Safety agencies within San Mateo County, and most agencies have indicated that they have already or plan to purchase from Avtec. Staff has conducted collaborative research with other police departments in San Mateo County and determined that the radio console products made by Avtec, Inc. are ideally suited to what we desire to accomplish on a regional basis. Avtec is uniquely qualified to provide a system that will work over the existing LawNet communications network that links the police departments in San Mateo County together. This radio system will better assist in any future regionalization of dispatch services. Based on this information, staff recommends that this be a sole source purchase from Avtec.

IMPACT ON CITY RESOURCES

The budget for the radio console replacement is as follows:

Radio console and equipment:	$120,338.71
Sales tax (not included in quote):	$ 10,830.48
TEA installation services:	$ 35,497.50
TEA contingency:	$ 12,000.00
System monitors:	$ 1,854.96
Total Budget:	**$180,521.65**

There are sufficient funds in the General Fund Capital Improvement Program to pay for this project.

POLICY ISSUES

This recommendation does not represent any change to existing City policy.

ENVIRONMENTAL REVIEW

Not Applicable

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

A. Quote for Avtec Radio Consoles and Equipment
B. Quote for TEA Installation
C. Quote for Monitors for Radio Consoles

Report prepared by:
Dave Bertini
Police Commander

THIS PAGE INTENTIONALLY LEFT BLANK

Avtec, Inc.
100 Innovation Place
Lexington, SC 29072
(800) 545-3034 V
(803) 892-3715 F
www.avtecinc.com

GSA Quotation
Contract Number GS-35F-0183U

Name:	**David Bertin**	**Quote Number:**	**2013-2159E**
Company:	**Menlo Park, CA Police Department**	**Quote Date**	**3/6/2014**
Address:	**701 Laurel Street**	**Quote Expiration:**	**7/4/2014**
City, State, Zip:	**Menlo Park, CA 94025**	**Prepared by:**	**D. Bremson**
Phone:		**Approval Code:**	**KS100613-1**
Email:	dcbertini@menlopark.org	**Mfg. Rep:**	**N/A**
Project Name:	**Menlo Park Police Department**	**Note:**	**Some GSA Pricing pending approval**

GSA Avtec Equipment and Spare parts

SIN	Item	Qty	Model Number	Description	GSA Price Each	GSA Extended Price
				Console (Operator) Position Hardware/Software		
132-8	1	5	T1-SCOUT-PLUS	Tier 1 Scout Plus Console Package. Includes Scout Media Workstation Plus, dual speakers, and serial cable. Includes Scout Standard Runtime, CPS, NENA Headset Interface, and Conventional DMR seat licenses. Windows 7 PC, Monitor, and other Plus series accessories not included. Installation outside of North America requires a cable localization package, Model Number ACCPLUS-CLP-XX. One each required per console position.	$ 10,973.82	$ 54,869.08
132-8	2	5	ACC-CPU-WIN7X64	PC mini tower for PC Console Position, MS Windows 7 Professional 64 bit OS.	$ 997.62	$ 4,988.10
132-8	3	5	ACCPLUS-SPK-SING	Single Speaker Kit, Scout Media Workstation Plus.	$ 400.96	$ 2,004.79
132-8	4	10	ACCPLUS-JKB-SING	Headset/handset jack box (single jack), Scout Media Workstation Plus.	$ 429.60	$ 4,295.97
132-8	5	5	ACCPLUS-FSW-SING	Single PTT footswitch, Scout Media Workstation Plus.	$ 114.56	$ 572.80
				Console Equipment Subtotal		**$ 66,730.73**
				Gateways and Endpoint Hardware/Software		
132-33	6	1	SFW-VPG-L1	Redundant VPGate Software License for a maximum of 40 endpoints; up to 20 may be "B" Licenses, Version 1.x. Includes CPS software license.	$ 15,269.79	$ 15,269.79
132-8	7	2	ACC-CPU-RM-WIN7X64	Industrial 1U Computer with Windows including Solid State hard drive and Windows7 Professional 64 bit OS. Rack mount for Cabinets. Requires DISP-XXXX for monitor, keyboard, etc.	$ 4,463.04	$ 8,926.07
132-8	8	10	OUTPOST-2R	Radio Controller, VoIP, 2 Ports, 12VDC input	$ 2,095.48	$ 20,954.79
132-8	9	1	PKG-IO-VPGATE	Input-Output Package for Scout and DSPatchNET, includes one 24-input and one 24-output rack mount panel, power supply, and cabling.	$ 3,817.69	$ 3,817.69
132-8	10	2	ACC-NETWK-24P	24-Port Managed Ethernet Switch	$ 1,904.55	$ 3,809.09
				Gateway and Endpoint Equipment Subtotal		**$ 52,777.42**
				Racking Equipment		
132-8	11	1	ACC-MTG-2U-RR	Kit to mount two (2) each ACC-CPU-VPG-WIN7 or -XP in 19" Relay Rack. 2U high.	$ 358.00	$ 358.00
132-8	12	3	OUTPOST-RACKMT-SHELF	3U Rack mount shelf (holds 1-4 Outposts)	$ 157.52	$ 472.56
				Racking Equipment Subtotal		**$ 830.55**
				GSA Equipment Total		**$ 120,338.71**
				Open Market Items		
				Open Market Items Subtotal		**$ -**
				ScoutCare Software and Hardware Maintenance	**Year 1 ScoutCare included in Product Pricing**	
	13	1	ScoutCare-T1	Annual Software Maintenance and Technical support.	$ 8,730.70	$ -
	14	1	ScoutCare-Hardware	Annual Hardware Maintenance, optional for future years	$ 5,518.79	$ -
				Multi-year ScoutCare Discount at time of purchase		
	15	0	SCOUTCARE-T1-POS	Discount for up to 4 additional years of ScoutCare when paid at time of purchase.	$ (1,164.09)	$ -
				Extended Maintenance & Support Subtotal:		**$ -**
				Shipping, Handling, and Insurance		
	16	1		Shipping, Handling, Insurance - FOB Destination		No Charge
				Total System Price, without Services		**$ 120,338.71**

GSA Quotation
Contract Number GS-35F-0183U

Avtec, Inc.
100 Innovation Place
Lexington, SC 29072
(800) 545-3034 V
(803) 892-3715 F
www.avtecinc.com

SIN	Item	Qty	Model Number	Description	GSA Price Each	GSA Extended Price
				Professional Services and Expenses		
132-12	17	0	SVC-CSLT-PE	Professional services, includes product support, staging, implementation, configuration and trouble-shooting	$ 1,008.12	$ -
				Professional Services Subtotal		**$ -**
	18	0		ESTIMATE - Rental Car*	$ -	$ -
	19	0		ESTIMATE - Per diem*	$ -	$ -
	20	0		ESTIMATE - Airfare*	$ -	$ -
				Expenses Subtotal		**$ -**
				Professional Services and Expenses Subtotal		**$ -**

Note: Project Engineering days include travel days.

Grand Total $ 120,338.71

All items without SIN number are considered Open Market items.

Important! See Below for Notes, Assumptions, Terms and Conditions.

This quotation is offered:

Check One
- ☐ For Budgetary purposes only
- ☑ Formal offer of sale, valid only under the terms of General Services Administration (GSA) Contract # GS-35F-0183U

Statement of Work (SOW)

Check One
- ☐ This quotation is an attachment to a SOW
- ☑ This quotation is for products only and constitutes the entire SOW

Notes & Assumptions

1. The proposed configuration is based on Avtec's understanding of the requirements provided by Telecommunication Engineering Associates and Menlo Park Police Department. Commercially reasonable efforts have been made to determine desired functionality and configuration requirements.
2. Change orders will be processed for additional out-of-scope material and labor, or other required deviations from quotation.
3. Avtec expects that Customer/TEA will procure, configure, install, terminate and test all Network cable and infrastructure to support the Scout installation.
4. This is an equipment only proposal. Customer and TEA agree TEA will provide all staging, configuration and installation services. No Avtec Professional Services have been included as part of this submittal.
5. Proposal does not include 12VDC power supplies for Outpost units as power is to be supplied by TEA.
6. This system has been configured for IP recording via VPGate. In the event Analog recording is utilized, additional Outposts will be required. Avtec VPGate works with VoIP logging recorders from Eventide Inc., EXACOM, Inc., HigherGround, Inc., Voice Print International, Inc. (VPI), Verint, and NICE/Cybertech.
7. Extended Technical Support and Maintenance is quoted for current configuration. Any changes to configuration or expansion of the system will result in a change to annual costs.
8. Avtec reserves the right to correct mathematical or other errors in the quotation.
9. All quotations are subject to awarded GSA terms and conditions which supersede any conflicting terms. Prices are exclusive of sales/use taxes.

Telecommunications Engineering Associates

1160 Industrial Road, #15
San Carlos, CA 94070

Telephone: 650-596-1100
Facsimile: 650-367-7240
http://www.tcomeng.com/

QUOTATION

Menlo Park Police Department
701 Laurel Street
Menlo Park, CA 94025
Attn:

Quote#:	20142002	*Prepared on:*	03/12/14
		Valid until:	12/31/14
Terms: Net 30 days		*Prepared by:*	GGY/DDJ
FOB: San Carlos, CA		*Sales tax rate:*	9.00%

Item	*Price Each*	*Quantity*	*Price Total*	*	*Sales Tax*
Install 5-position Avtec radio console system. Remove old console and operator positions. Equipment not specified below to be provided by the City					
Materials:					
12VDC redundant power system for Outposts	$5,400.00	1	$5,400.00	*	$486.00
4-wire conference bridge with spares for CCC	$3,475.00	1	$3,475.00	*	$312.75
Misc wire and installation supplies	$330.00	1	$330.00	*	$29.70
48 port patch panel w/ Cat-5e cable and jacks	$825.00	1	$825.00	*	$74.25
Outpost I/O adapters DB25-RJ45	$10.00	20	$200.00	*	$18.00
Barix Instreamer audio encoder	$395.00	1	$395.00	*	$35.55
Services:					
Systems engineer/project manager	$155.00	26	$4,030.00		
Operator position cabling and installation	$125.00	48	$6,000.00		
Software setup, configuration & optimization	$125.00	42	$5,250.00		
VPGate & Outpost(s) installation	$125.00	36	$4,500.00		
Aux I/O interfacing	$125.00	16	$2,000.00		
Logging recorder Interface & optimization	$125.00	8	$1,000.00		
Removal of old Zetron radio console system and cabling	$125.00	8	$1,000.00		

Subject to the terms of the TEA Billing & Fee Policy dated November 12, 2011

Sub-Total:	$34,405.00
Sales Tax:	$967.50
Shipping & Handling:	$125.00
TOTAL:	**$35,497.50**

This is a fixed-fee, lump-sum quotation.

Sales tax applies to shipping and handling charge.

THIS PAGE INTENTIONALLY LEFT BLANK

CDW·G

CDWG.com | 800.594.4239

SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
1BFKL4Q	12031421	3/13/2014

BILL TO:
SANDY PIMENTEL
701 LAUREL ST

Accounts Payable
MENLO PARK , CA 94025-3452

Customer Phone #650.330.6658

SHIP TO:
CITY OF MENLO PARK
Attention To: ATTN:SANDY PIMENTEL
701 LAUREL ST

MENLO PARK , CA 94025
Contact: SANDY
PIMENTEL 650.330.6658

Customer P.O. # MIS

ACCOUNT MANAGER	SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
KENNY STOLLER 877.246.8092	FEDEX Ground		

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
5	2948747	VIEWSONIC 24IN LED MULTI-TOUCH Mfg#: TD2420 Contract: National IPA Technology Solutions 130733	319.27	1,596.35
5	1016677	TRIPP 15FT SVGA VGA RGB COAX HD15 Mfg#: P502-015 Contract: National IPA Technology Solutions 130733	17.42	87.10
5	654810	RECYCLING FEE 15" TO LESS THAN 35" Contract: Standard Pricing Fee Applied to Item: 2948747	4.00	20.00

----------SPECIAL INSTRUCTIONS----------
Beginning of customer text: Dispatch Touch Screens for Radio System
End of customer text.

SUBTOTAL	1,703.45
FREIGHT	0.00
TAX	151.51

US Currency

TOTAL 1,854.96

Please remit payment to:
CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

CDW Government
230 North Milwaukee Ave.
Vernon Hills, IL 60061

Fax: 847.968.1552

THIS PAGE INTENTIONALLY LEFT BLANK

PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-054

Agenda Item #: D-2

CONSENT CALENDAR: **Adopt a Resolution Supporting Senate Bill (SB) 1014 (Jackson) Home-Generated Pharmaceutical Waste Collection and Disposal Act and Authorizing the Mayor to Sign a Letter of Support**

RECOMMENDATION

Staff recommends that the City Council adopt a resolution supporting SB 1014 (Jackson) - Home-Generated Pharmaceutical Waste Collection and Disposal Act and authorize the Mayor to sign a letter of support.

BACKGROUND

In an effort to manage the clear societal and environmental impacts of unused medications, SB 1014 would require producers of pharmaceuticals to create, finance, and manage a collection system for California consumers to safely and conveniently take-back unwanted pharmaceuticals. The bill is proposing a system structured after an existing program in Canada which the industry has efficiently operated for 15 years.

ANALYSIS

For many years now, municipal governments have been responsible for providing local collection of pharmaceuticals that typically don't meet public convenience and demand for safe disposal. In addition, setting up, maintaining, and marketing collection stations draw on resources from other vital government functions, and fails to realize the efficiency that would come from a statewide program. Local governments also do not profit from the sale of pharmaceuticals, and rate and tax payers bear the financial burden of managing this waste.

The City hosts a prescription drug take-back station where residents can bring their expired and unwanted medication to Little House at Nealon Park. Under this bill, the convenience for Menlo Park residents would be expanded as drop off locations could be placed in more convenient locations, such as pharmacies.

SB 1014 (Jackson) will also help to prevent environmental pollution. The improper disposal of medications whether flushed down the toilet or disposed of into the trash, can eventually pollute water resources and environment. Many water treatment

facilities are not equipped to handle the removal of the myriad of prescription drugs. Therefore, any medications which are flushed down the toilet can eventually make their way into the San Francisco Bay.

Many cities have already submitted letters of support, such as Palo Alto, San Jose, Napa County, Santa Clara County, and Marin County. The regional manager for the League of California Cities has indicated that due to the extensive amount of legislative bills up for review the League has not yet taken a position on this matter.

IMPACT ON CITY RESOURCES

There is no fiscal expense as a result of this action.

POLICY ISSUES

Supporting this bill does not conflict with any existing city policies.

ENVIRONMENTAL REVIEW

Not required.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

A. SB 1014 Fact Sheet
B. Letter of Support
C. Resolution

Report prepared by:
Rebecca Fotu
Environmental Program Manager

Senate Bill 1014

Safe and Convenient Medication Disposal
Senator Hannah-Beth Jackson

Bill Summary

In an effort to manage the clear societal and environmental impacts of unused medications, SB 1014 would require producers of pharmaceuticals, as defined, to create, finance and manage a collection system for California consumers to safely and conveniently take-back unwanted pharmaceuticals - a system structured after an existing program in Canada which the industry has efficiently operated for 15 years.

Background

In response to the growing problems of prescription drug abuse, accidental poisonings, and the detection of pharmaceutical products in California waters, local governments throughout the state have struggled to establish safe and convenient medication take-back programs. The public demand and need for such programs has been tremendous - even limited programs have collected hundreds of pounds of drugs. Law enforcement, federal agencies, public health and environmental professionals agree that take-back programs are the safest way to dispose of unused medicines.

Establishing these disposal programs on a city by city (or county) basis is haphazard, inefficient and expensive for local ratepayers. It also means that not all consumers have access to take-back locations, perpetuating a lack of harmonized messaging to the public about safe drug disposal.

To address these issues, Alameda County was the first jurisdiction in the country to pass an ordinance requiring drug manufacturers to develop, implement, and finance a convenient drug take-back program for residents. Despite operating similar programs in Canada and other countries, three pharmaceutical associations responded by suing Alameda County. The County prevailed at the trial court level and the case is now being considered by the Ninth Circuit Court of Appeals. King County Washington adopted a similar ordinance in July 2013 and was then sued by the same associations.

The Problem(s)

The simple truth is that drugs – both prescription and over the counter – present significant problems at the end of their useful life. Consumers do indeed have leftover drugs in their homes which tend to be stockpiled, flushed, or thrown in the garbage. Unfortunately, the lack of an end-of-life management plan results in significant problems for California:

Prescription Drug Abuse – Prescription drug abuse has skyrocketed in recent years,[1] as have hospitalizations and deaths from overdoses.[2] In fact, opioid pain relievers were involved in more drug poisoning deaths than other drugs, including heroin and cocaine[3]. One of the four top recommendations of the National Strategy on Preventing Prescription Drug Abuse is to have a safe and convenient method of disposal for prescription drugs, over the counter drugs, and veterinary medicines that we have in our homes. The lack of take-back locations forces consumers to choose less than desirable options according to the EPA's letter dated 9/26/2012[4], including home storage, flushing medications down the toilet or throwing them in the garbage.

Environmental Impacts – Pharmaceutical products enter our waters by excretion, consumer disposal of unused medications down the toilet or drain, or wastewater siphoned from landfills and discharged into the environment. Numerous studies in California have found detectible levels of pharmaceuticals, including

[1] California State Task Force on Prescription Drug Misuse. (2009, March 30). Summary Report and Recommendations on Prescription Drugs: Misuse, Abuse and Dependency. Retrieved from State of California Alcohol and Drug Programs: www.adp.ca.gov/director/pdf/Prescription_Drug_Task_Force.pdf

[2] O'Callaghan, T. (2010, April 6). More people hospitalized for prescription drug overdose. Retrieved from Time: http://healthland.time.com/2010/04/06/more-people-hospitalized-for-prescription-drug-overdose/#ixzz2fkIm3CMT

[3] Centers for Disease Control and Prevention Fact Sheet on Drug Poisoning Deaths: http://www.cdc.gov/nchs/data/factsheets/factsheet_drug_poisoning.htm

[4] EPA Letter dated 9/26/2012 outlining disposal options and best practices: http://www.epa.gov/osw/hazard/generation/pharmaceuticals/pharms-take-back-disposal.pdf

synthetic birth control, antibiotics, mood stabilizers, and analgesics in San Francisco Bay, as well as both surface and groundwater drinking water sources.[5] The environmental impacts on aquatic species are very real even at trace levels, including reproductive failure, behavioral changes that impair their ability to survive, and bioaccumulation and interference with the food chain.[6] While the potential impacts on humans exposed through drinking water or by eating contaminated fish are not well studied, scientists are concerned with unknowns such as low dose exposures over long periods of time, effects on vulnerable populations such as infants, and cumulative impacts of drug mixtures. Since wastewater treatment cannot remove these chemicals completely and is cost prohibitive, stopping their entry into our water at the source is one important step in protecting our precious water resources.

Cost to Local Governments – For too long, municipal governments have cobbled together local collection options that fail to meet public demand for safe take-back, draw resources from other vital government functions, create a patchwork of regulations, and fail to realize the efficiency that would come from a statewide program. Some counties don't offer drug take-back sites because they lack the budget - and even those that do have programs are limited. Alameda County, for example, has 28 drop-off locations, but estimates it needs at least 60 locations to meet public demand.

Solution

SB 1014 springboards off of the good work already being done by pharmaceutical companies in Canada and Europe. It is a business-friendly approach that allows manufacturers to design the program in whatever way is most cost effective, with minimal oversight from state regulators. The success of this stewardship model is evidenced by public surveys in Canada demonstrating the strong public awareness and participation in the program[7], the volumes of collected medications, and the fact that 95% of the pharmacies voluntarily host collection bins.

This bill would require pharmaceutical manufacturers to submit a stewardship plan to CalRecycle for approval on how they will design and operate the take-back program to meet the standards in the legislation. Manufacturers would then implement the program and report to CalRecycle annually on progress. The stewardship plan would be updated every three years.

Co-Sponsors

Alameda County
City and County of San Francisco
California Alliance of Retired Americans (CARA)
California Product Stewardship Council (CPSC)
Clean Water Action (CWA)

Contacts

Linda Barr, Office of	Jason Schmelzer	Nicole Wordelman
Senator Hannah-Beth Jackson	Shaw/Yoder/Antwih, Inc.	Platinum Advisors
916-651-4019	916-446-4656	916-718-8886
linda.barr@sen.ca.gov	Jason@shawyoderantwih.com	naw@platinumadvisors.com

[5] Kolpin, Dana et al. (2002) Pharmaceuticals, hormones and other organic wastewater contaminants in U.S. Streams, 99-2000: A National Reconnaissance, Environmental Science and Technology, v. 36:1202-1211. Donn, Je, Martha Mendoza, Justin Pritchard, AP Investigation: Pharmaceuticals Found in Drinking Water, http://hosted.ap.org/specials/interactives/pharmawater_site/day1_04.html. Fram, Miranda S. and Kenneth Belitz (2011) Occurrence and concentrations of pharmaceutical compounds in groundwater used for public drinking-water supply in California, Science of the Total Environment, v. 409: 3409-3417. Guo, Y.Carrie et al. (2010) Source, Fate, and Transport of Endocrine Disruptors, Pharmaceuticals, and Personal Care Products in Drinking Water Sources in California, The National Water Research Institute. Harrold, K.H. et al. (2009). Pharmaceutical Concentrations in Wastewater Treatment Plant Influent and Effluent and Surface Waters of Lower South San Francisco Bay. SFEI Contribution 549, San Francisco Estuary Institute, Oakland, CA.

[6] Barber, Larry B. et al. (2011) Effects of biologically-active chemical mixtures on fish in a wastewater-impacted urban stream, Science of the Total Environment, v. 409: 4720-4728. Brodin T. (2013), Dilute concentrations of a psychiatric drug alter behavior of fish from natural populations, Science, v. 339: 814-15.

[7] British Columbia med program public survey results from 2010: http://www.healthsteward.ca/sites/default/files/PCPSA%202010%20Annual%20Report.pdf

CITY OF MENLO PARK

Office of the Mayor

April 1, 2014

Senator Hanna-Beth Jackson
State Capitol, Room 5080
Sacramento, CA 95814
Sent by Fax: (916) 324-7544

SUBJECT: SENATE BILL 1014 (JACKSON) – SAFE MEDICATIONMANAGEMENT - SUPPORT

Dear Senator Jackson:

The City of Menlo Park strongly supports Senate Bill (SB)1014 (Jackson), which asks producers of pharmaceuticals, as defined, to create, finance and manage a collection system for California consumers to safely and conveniently dispose of expired and unwanted pharmaceuticals —a system structured after the existing program in Canada which the industry has efficiently operated for 15 years.

The City hosts one prescription drug take-back location where residents can bring their expired and unwanted medication. However, more convenient locations are needed in order to encourage proper disposal that protects water quality. In addition, the city spends resources on marketing and maintaining the program, passing these costs onto rate and tax payers.

The Problem:

Prescription drug abuse has skyrocketed in recent years,[1] as have hospitalizations for drug overdoses.[2] One of the four top recommendations of the National Strategy on Preventing Prescription Drug Abuse is to have a safe and convenient method of disposal for prescription, over the counter drugs and vet medicines we have in our homes. In addition, the lack of safe and convenient disposal options ensures that consumers choose less than desirable options including home storage, flushing medications down the toilet or throwing them in the garbage.

For too long, municipal governments have cobbled together local collection options that fail to meet public demand for safe disposal, draw resources from other vital government functions, creates a patchwork of regulations and fails to realize the efficiency that would come from a statewide program.

[1] California State Task Force on Prescription Drug Misuse. (2009, March 30). Summary Report and Recommendations on Prescription Drugs: Misuse, Abuse and Dependency. Retrieved from State of California Alcohol and Drug Programs: www.adp.ca.gov/director/pdf/Prescription_Drug_Task_Force.pdf
[2] O'Callaghan, T. (2010, April 6). More people hospitalized for prescription drug overdose. Retrieved from Time: http://healthland.time.com/2010/04/06/more-people-hospitalized-for-prescription-drug-overdose/#ixzz2fkIm3CMT

701 Laurel Street - Menlo Park, CA 94025
Phone: (650) 330-6740 - Fax: (650) 327-5497

The Solution:

SB 1014 springboards off of the good work already being done by pharmaceutical companies in Canada and Europe. SB 1014 is a free-market approach that allows manufacturers to design the program in whatever way is most cost effective – with minimal oversight from state regulators. We know that this program will work because of the public surveys in Canada demonstrating the public awareness and use of the program, the volumes collected and the fact that 96% of the pharmacies host collection bins.

SB 1014 is the right solution to this pressing problem because it creates a privately managed and financed system to allow consumers to properly and conveniently dispose of their unwanted pharmaceuticals.

For these reasons, the City of Menlo Park supports SB 1014.

Sincerely,

Ray Mueller
Mayor

Copy to: Senator Jerry Hill, fax (916) 651-4913
Senator Leland Y. Yee, fax (650) 340-1661
Assembly Member Kevin Mullin, fax (650) 341-4676

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK SUPPORTING SB 1014 (JACKSON) – HOME-GENERATED PHARMACEUTICAL WASTE COLLECTION AND DISPOSAL ACT AND AUTHORIZING THE MAYOR TO SIGN A LETTER OF SUPPORT

WHEREAS, SB 1014 requires producers of pharmaceuticals to create, finance, and manage a collection system for California consumers to safely and conveniently dispose of expired and unwanted pharmaceuticals; and

WHEREAS, municipal governments have been responsible for providing local collection options that are often inconvenient, are done at the expense of rate and tax payers, and draw on resources from other vital government functions; and

WHEREAS, local governments do not profit from the sale of pharmaceuticals and tax payers should not continue to bear the financial burden of managing the collection and proper disposal of items; and

WHEREAS, SB 1014 will help prevent environmental pollution as the improper disposal of medications, whether flushed down the toilet or disposed of into the trash, can eventually pollute our water resources and environment.

NOW, THEREFORE, BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore do hereby adopt a resolution supporting SB 1014 (Jackson) – Home-Generated Pharmaceutical Waste Collection and Disposal Act and authorize the Mayor to sign and distribute a letter of support.

I, Pamela Aguilar, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the first day of April, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this first day of April, 2014.

_____

Pamela Aguilar
City Clerk

THIS PAGE INTENTIONALLY LEFT BLANK

PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-052

Agenda Item #: D-3

CONSENT CALENDAR: Approve a Comment Letter to the Metropolitan Transportation Commission on the Dumbarton Rail Corridor Project

RECOMMENDATION

Staff recommends that the City Council approve a comment letter to the Metropolitan Transportation Commission (MTC) on the Dumbarton Rail Corridor (DRC) Project.

BACKGROUND

The purpose of the Dumbarton Rail Corridor (DRC) Project is to extend commuter rail service across the southern portion of the San Francisco Bay between the Peninsula and East Bay, roughly following the alignment of the Dumbarton Bridge and State Route 84. When operational, the service would provide links between Caltrain, Altamont Express (ACE), Amtrak's Capitol Corridor, and BART, as well as AC Transit and Samtrans bus services.

In 2012, the San Mateo County Transportation Authority (TA) was preparing an Administrative Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the DRC, with an anticipated Final EIS/EIR to be certified in spring 2013. While the ADEIS/EIR was completed, the DRC funding plan was deficient; thus, the TA and the Federal Transit Authority decided not to pursue public review or certification of the EIS/EIR and place the project on hold indefinitely until the project partners can secure an adequate funding plan.

Since regional funds were reserved for the DRC, MTC requested that the project stakeholders develop an implementation plan to identify how those unallocated funds ($34.7 million in Regional Measure (RM) 2 funds) should be expended. The TA and Alameda County Transportation Commission (ACTC) prepared a list of alternative projects that were presented to the Dumbarton Policy Advisory Board, the TA Citizens Advisory Committee (CAC) and the TA Board of Directors for review before forwarding the recommendations to MTC.

The TA worked with the City, as well as East Palo Alto and Redwood City to develop the list of proposed projects. City of Menlo Park staff provided feedback to the TA on a

preliminary list of projects to serve the Dumbarton Corridor, recommending prioritization of the following:

1. Purchasing replacement bus fleet for the Dumbarton Express Bus Service
2. Improving pedestrian and bicycle connections in East Palo Alto and Menlo Park
3. Developing (study and construction) a Menlo Park Transit Center to serve the existing Dumbarton Express Bus Service and future rail
4. Supporting Menlo Park/East Palo Alto Caltrain Shuttle Routes
5. Installing Transit Signal Prioritization at 98 Intersections in San Mateo and Alameda Counties
6. Expanding Dumbarton Express Bus Service to Redwood Shores
7. Developing the Existing Rail Right-of-Way to Rail Spur Line (Redwood City to East Palo Alto)
8. Installing High Occupancy Vehicle (HOV) Lane on SR-84 (Bayfront Expressway)

The alternative projects recommended by the TA to MTC were prioritized into two categories. Priority 1 projects included replacement of the existing Dumbarton Express bus fleet, study of potential Dumbarton Express bus service enhancements and transit signal enhancements to reduce Dumbarton Express bus travel times. Priority 2 projects would evaluate adding transit centers in Newark and Menlo Park to serve the existing bus and future DRC service (see Attachment A)

In 2004, voters passed Regional Measure 2 (RM2), which raised bridge tolls on the seven State-owned toll bridges in the Bay Area by $1.00. This extra dollar funds various transportation projects that reduce congestion or improves travel in the bridge corridors.

ANALYSIS

MTC staff recommendation for the reallocation of RM2 funds, however, included the following projects:

- Replacement of the existing Dumbarton Express bus fleet - $14.8M
- Caltrain Electrification - $20M

In addition, $91M in RM2 funds reserved for the DRC project were previously loaned to Alameda County for construction of the BART Warm Springs Extension, which required repayment of the loan in the future to preserve funds for the DRC. The most recent recommendation, however, eliminates ACTC's repayment of the $91M loan and dedicates the funds to the BART extension.

While there is a need to reallocate the currently unused RM2 funds to projects that are likely to be constructed and provide congestion relief benefits as quickly as possible, forgiving ACTC's loan will reduce the likelihood that the DRC will achieve an adequate funding plan in the future. The City has seen increases in congestion along the DRC (Bayfront Expressway; Willow Road; University Avenue; Marsh Road), and implementation of the DRC project would provide a needed transportation option along

this route. To provide feedback to MTC on the proposed reallocation and loan forgiveness of the RM2 funds, staff has prepared a draft comment letter on the proposed resolution (see Attachment B).

IMPACT ON CITY RESOURCES

The DRC Project has no direct commitments of City resources. The project has, however, implications for City resources, since although design and construction of the project through Menlo Park would be borne by Caltrain and Alameda County Transit Authority (AC Transit), Menlo Park would incur staff costs in coordinating the planning, design and construction activities of the project.

POLICY ISSUES

Comments contained in the draft letter are consistent with prior actions taken by the City on DRC within Menlo Park.

ENVIRONMENTAL REVIEW

No environmental review is required for submission of a comment letter on the DRC project.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

A. San Mateo County Transportation Authority Staff Report – Review Projects for DRC RM2 Funds, November 7, 2013
B. Draft letter to MTC commenting on the DRC Project

Report prepared by:
Nicole Nagaya, P.E.
Senior Transportation Engineer

THIS PAGE INTENTIONALLY LEFT BLANK

AGENDA ITEM # 11 (a)
NOVEMBER 7, 2013

SAN MATEO COUNTY TRANSPORTATION AUTHORITY
STAFF REPORT

TO: Transportation Authority

THROUGH: Michael J. Scanlon
Executive Director

FROM: April Chan
Executive Officer, Planning & Development

SUBJECT: **REVIEW PROJECTS FOR DUMBARTON CORRIDOR RM2 FUNDS**

ACTION

No action is required at this time. Staff plans to review with the Board at the November 7, 2013 Transportation Authority (TA) Board meeting the list of projects included as Attachment A for Dumbarton Corridor Regional Measure 2 (RM2) funding consideration.

SIGNIFICANCE

As reported at the October 3, 2013 meeting, staff received a letter from the Metropolitan Transportation Commission (MTC) inquiring on the status of the Dumbarton Corridor Rail Project. The MTC letter indicates $34.7 million in RM2 capital funds for the Dumbarton Corridor remain unallocated, and MTC requested an implementation plan on how the project would proceed.

A lack of funds sufficient to advance the Dumbarton Corridor Rail Project has resulted in it being placed on hold until the project partners can secure a more complete funding plan in the future. In response, staff has been working with various project partners, including Alameda County Transportation Commission and the cities of Redwood City, Menlo Park and East Palo Alto, to prepare a list of other potential projects that would provide benefits to the Dumbarton Corridor and can be implemented in the near-term. The list of projects was to be submitted to the Dumbarton Policy Advisory Committee (PAC) for input.

The PAC was scheduled to meet on October 25, 2013. Only five members were present at the meeting, while seven members are needed for a quorum. Though not able to take official action, the five board members present discussed and recommended the projects shown in Attachment A to be funded with RM2 funds previously planned for the Dumbarton Corridor Rail Project. Because the list of projects exceeded the $34.7 million of RM2 funds available, projects were prioritized first to support existing Dumbarton Bus service and then to support possible service enhancements, such as transit centers that would support near-term bus transit service and future rail service. Remaining projects exceeding the amount of RM2 funds available were not prioritized;

however, the project partners believe these projects should also be submitted to the MTC because they are beneficial for the Dumbarton Corridor.

Staff is currently discussing with MTC staff regarding the list of projects, and will provide status of the on-going discussion at the next meeting.

BUDGET IMPACT
There is no impact to the budget.

BACKGROUND
Staff reported at the October 3, 2013 meeting that while all elements of the Administrative Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Dumbarton Corridor Rail Project are now complete, the funding plan for the project is deficient. The Federal Transit Administration (FTA) has indicated that if reasonable funding sources cannot be included in the Administrative Draft EIS/EIR to fully fund the project, it is unlikely the FTA would issue a Record of Decision for the project.

Prepared by: April Chan, Executive Officer, Planning & Development 650-508-6228

Attachment A
Dumbarton Rail Corridor - Proposed RM2 Projects

Project	Description	Benefits	Order of Magnitude Cost ($ Millions)
Priority #1			
1. Purchase buses to replace aged DB Express fleet	16 suburban buses with GPS, WiFi, Clipper Card readers and Dumbarton Express branding; $622,000 each (per MTC bus pricelist).	Improved system identity, capacity and comfort for riders, potential for increased ridership.	$9.95
2. Dumbarton Express transbay service enhancements	First a service enhancement study would be prepared to develop a capital and operating plan for DB Express improvements. Then the plan would be implemented which would involve both capital and operational improvements.	Provides new areas of transbay transit coverage from the East Bay, potential for significant new ridership.	Study - $300,000 Capital Improvements - TBD
3. Transit Preferential Treatments for DB Express Service	Transit Signal Priorities (TSP) at intersections (98 intersections - East Bay and West Bay).	Improves transit travel speeds and reliability; increases ridership; reduces operations costs; transbay travel benefit.	$3.0 - $5.0 - ($30k - $50k per intersection)
Priority #2			
1. Menlo Park Transit Center	Develop a bus transit center near the Bayfront Expressway for the DB Express and local shuttle. The city has identified a possible location site near the Menlo Park Post Office at Bohannon Drive near Marsh Road. A second site was identified in the DRC studies near Willow Road. Both sites are in the DRC right-of-way.	Better access to transit for Menlo Park residents/employees, increased ridership.	$5.0 - $8.0 No right-of-way required - First step would be planning and environmental studies (about $350K)
2. Newark Express Bus Station and Pedestrian Overcrossing	Construction of the Newark Rail Station for use as an express bus station/park and ride lot. The station would include a 550 space parking lot, access roads, bus bays and a passenger platform. It could be served by AC transit, the Dumbarton Express Bus system, as well as private employer busses and shuttles. The station could also be used by special event trains to the 49ers Stadium or other events. The property owner has expressed interest in selling or leasing the land. The project would include construction of a Bike/Pedestrian Bridge over the rail line connecting the Dumbarton TOD with Wildlife refuge, Dumbarton Bridge Bike Lane and Coyote Hills Regional Park.	Additional park and ride capacity for transit users and improved transit system access. Opportunity to build ridership for eventual rail service. Strong potential for cross bay employer shuttle service- Facebook, Google, etc.	$9.73
3. Fremont Centerville Station Improvements	This project would upgrade the existing short asphalt concrete train station passenger platform at the southern side of the Centerville Station to concrete and extend the platform to approximately 700' to improve passenger access and convenience and allow modification of the train crossing signals so the crossing gates no longer block Fremont Boulevard the entire time a train is in the station.	These station improvements were to be constructed as part of the DRC Project in order to improve passenger access and convenience and provide additional boarding space. By constructing them now they will provide these same improvements for the existing and future ACE, Capitol Corridor and Amtrak passengers.	$1.0
West Bay Projects - (not in any priority order)			
1. Dedicated Menlo Park/East Palo Alto Caltrain Shuttle	Expand existing shuttle services	Links Caltrain to major employers in Menlo Park and serves residents in Menlo Park and East Palo Alto. Increases ridership; partial service already exists.	Existing service is contracted. The expanded service would likely cost an additional $100k-$200k per year. Since this is not capital money, another funding source many be appropriate.

Attachment A
Dumbarton Rail Corridor - Proposed RM2 Projects

Project	Description	Benefits	Order of Magnitude Cost ($ Millions)
2. Eastbound HOV shoulder lane between Willow Road and Dumbarton Bridge	Priority DB bridge access from west bay for buses and carpools. Required shoulder widening, and may require new right-of-way.	Improves transit travel speeds and reliability; increases ridership.	$10.0 - $15.0
3. Improve pedestrian and bicycle connections in East Palo Alto and Menlo Park. Also adds connections between Menlo Park and Redwood City; specific projects include: • Adding bike lanes on Haven Avenue between East Bayshore in Redwood City to the Bay Trail at Bayfront Park, consistent with the Countywide Bicycle Plan • Supplementing the Bay Trail Gap closure project that MidPeninsula Open Space is pursuing • Adding sidewalk between Hamilton Avenue and Bayfront Expressway on the southeast side of Willow Road • Extending Bay Trail on northwest side of Bayfront Expressway between University Avenue and Dumbarton Bridge path so that bicyclists may avoid crossing at the signalized intersection of Bayfront/University	Provide better linkages to Dumbarton Bridge and Bay Trail bike/ped network	Increases mobility and reduces auto use. Better access to transit; increases ridership.	$8.0 - $10.0 for all projects. Can be implemented individually
4. Menlo Park/East Palo Alto Caltrain Extension	Create a Caltrain service to Menlo Park and East Palo Alto via the DB Branch Line.	Improves access from areas served by Caltrain, increased ridership.	$80 - $85 (Segments A & A1 from DRC cost estimate plus one new train)
5. Sequoia Caltrain Station Ped/Bike undercrossing	Provide an underpass to improve access to the station and increase ridership for future DRC service	Improves station access, increases ridership.	$7 - 15
6. Blomquist Road Extension (from Blomquist Road to E. Bayshore, across Redwood Creek) in Redwood City	This project would support the operation of DB Express bus service to Redwood Shores. Buses would minimize travel delay by avoiding the 101/84 interchange and by staying off of 101 until Whipple Road.	Improves accessibility of the east bayshore area; increases ridership.	$15 million (city has $4.5 million available)
East Bay Projects - (not in any priority order)			
1. Union City Decoto Road Complete Street and Railroad Xing Signal Coordination	This project will provide complete street improvements to Decoto Road from Mission Blvd to the city limits with Fremont. Improvements include: grinding existing pavement (all travel lanes and bike lanes) and overlaying with new AC; restriping the roadway and bike lanes; upgrading existing bike signage, transit stop signage and BART directional signage; providing Bay friendly landscape and rain gardens along with irrigation to both sides of the street and median within existing ROW; incorporating clean street elements to aid in the reduction of storm water pollutions including full trash capture devices and pervious pavers; upgrades to sidewalks with decorative pavement and pervious pavers to aid in the treatment of storm water runoff; provide street furniture, trash receptacles, decorative streetlights to increase walkability and aid in the removal of trash; upgrade existing transit bus stops and shelters; provide a pedestrian barrier to prevent jaywalking; add a mid block pedestrian activated protected crosswalk; add enhanced crosswalks at the signalized intersections; underground overhead utilities. In addition this project includes an advance warning railroad signal preemption system to connect the traffic signals on Decoto Road with the railroad crossing to reduce the potential of a vehicle being on the tracks when a train is approaching.	Improved access and safety for all modes of transportation to connect to the Union City BART Multi Modal Station, including connection to Dumbarton Express and ultimately Dumbarton Rail. Helps to alleviate a safety concern of a vehicle being on the railroad tracks when a train is approaching. Since the BART Station is served by Dumbarton Express and will ultimately connect to Dumbarton Rail, the ability to provide a safe and efficient complete street for the Citizens of Union City and southern Alameda County to access the BART Station is critical to aid in getting more people to take advantage of these modes of transportation instead of using their vehicles to get to the Peninsula.	$6.0

Attachment A
Dumbarton Rail Corridor - Proposed RM2 Projects

Project	Description	Benefits	Order of Magnitude Cost ($ Millions)
2. Security/Fueling upgrades for Dumbarton Express Bus located at Union City Corp Yard	The Dumbarton Express Buses are fueled and parked in the Union City corporation yard. This project provides upgrades to the underground fueling system and provides a video surveillance system of the Bus Storage yard at the City's corporation yard.	Dumbarton Buses provides commuter bus services between East and West Bays. Improved security and fueling station.	$0.1
3. Fremont Safety Improvements at UPRR/Street Crossings, including Raised Medians, Four Quadrant Railroad Gates, Improved Sidewalks and Lighting, Etc.	This project will provide safety improvements at the UPRR crossings of Fremont Boulevard, Maple Street, Dusterberry Way and Blacow Road west of the Centerville Train Station. Four-quadrant gates will be installed at the Fremont and Maple crossings which will prevent vehicles form driving around crossing arms. At the Dusterberry and Blacow crossings a median will be installed to accomplish the same restriction on vehicles driving around the gates. All crossings will have minor roadway and sidewalk improvements associated with the crossing improvements.	Each of these four grade crossings is on the Centerville UPRR line that was going to be used by the Dumbarton Rail Corridor trains. More importantly, this same line is used by all Capitol Corridor and ACE trains and most freight trains in Fremont. It is easily the most heavily used track in Fremont. Once the safety improvements are completed, the City could implement quiet zones at these crossings, which would likely have been one of the environmental mitigation measures called for in the DRC environmental document.	$3.2
4. Fremont Rail Spur Relocation to open access to Warm Springs BART Station (stand alone portion of west side access structure project, below)	The City's highest priority project is providing access from the west side of the Warm Springs BART station to the 109 acre UPRR parcel west of the station. This parcel is currently being sold by UPRR to a developer for transit oriented jobs and residential development consistent with the City's Warm Springs Community Plan. However, for TOD to be built, there must be access to the station. Currently, the entire eastern frontage of the 109 acre parcel is a UPRR spur track that completely blocks access to the west side of the BART station. In order to provide BART access to this parcel and many other properties west of the station, this spur track, which is critical to the operation of UPRR's Warm Springs Yard, must be relocated.	WSX used $91 million of DRC RM2 funding for a portion of its current construction funding. Therefore, using additional DRC RM2 funding for this new element of WSX is a consistent use of RM2 funding.	$2.07
5. Fremont Blvd. Streetscape, pedestrian and bicycle improvements in Centerville PDA	This project would provide streetscape and complete street elements to Fremont Blvd. and improve safety and access to the Centerville Train Station with ACE, Capitol Corridor and possible future DRC service. Improvements proposed include installing new continuous bike lanes, bulb-outs at intersections to improve pedestrian safety, striping lane configurations to provide traffic calming, providing on-street parking, installing accommodations for future bus transit and constructing enhanced landscaping in the new median and sidewalks. These bike and pedestrian access improvements would benefit all the patrons using the Centerville station including ACE, Capitol Corridor and Amtrak riders and also be consistent with the goals of the Centerville PDA.	These bike and pedestrian access improvements would benefit all the patrons using the Centerville station including ACE, Capitol Corridor and Amtrak riders and also be consistent with the goals of the Centerville PDA.	$7.4

Attachment A
Dumbarton Rail Corridor - Proposed RM2 Projects

Project	Description	Benefits	Order of Magnitude Cost ($ Millions)
6. Fremont Final Design Phase of BART Warm Springs Station West Side Access Structure	The project scope includes: 1) A wide, visually appealing access bridge; 2) Elevators, escalators and stairs to transition from the bridge to ground level; 3) An attractive station entrance plaza with passenger drop off, bicycle lockers and benches; and 4) Possible relocation and/or raising of the PG&E transmission towers adjacent to the UPRR tracks.	1) Provides key east/west connectivity for pedestrians and bicycles over the UPRR and BART tracks through the station concourse; 2) Connects BART patrons to the planned pedestrian and bicycle network west of the station to maximize transit ridership; 3) Provides the catalyst for development of the large vacant and underutilized properties west of the station (and the sale of the large UPRR property) for TOD; 4) Maximizes use of new BART station by more than tripling the areas accessible to the station; 5) Utilizes existing BART system capacity by placing employment at the southern end of the east bay; and 6) by increasing transit use the project will lead to reduced vehicle miles traveled, reduce times and congestion on adjacent roadways, and as a result reduce greenhouse gas emissions.	$4.50
7. Dumbarton Express - 22 Automatic Passenger Counters	The project is intended to procure and install 22 automatic passenger counters (APCs) on existing Dumbarton Express and AC Transit vehicles (nine and thirteen respectively). The APCs will be used to gather detailed ridership and operations data on Express Bus South services, including the Dumbarton Express Lines DB/DB1 and AC Transit Line U. APC data can be used to assess the performance of these services in a detailed, systematic manner, and can be used as the basis for making adjustments.	Improved monitoring of ridership to assist with service planning and operations enhancement	$0.15
8. Alameda County Transit Center Feasibility Study	The project will systematically investigate, identify, and evaluate possible new park & ride locations in Alameda County to accommodate new Express Bus South service or expanded existing Express Bus services. It will also perform a parallel study of expanding existing park & ride facilities in southern Alameda County that would serve new Express Bus South services or expanded existing Express Bus South services.	Enhanced access to regional express bus and local transit services	$0.15

CITY OF MENLO PARK

Office of the Mayor

April 1, 2014

Metropolitan Transportation Commission (MTC)
Programming and Allocations Committee
Joseph P. Bort MetroCenter
Lawrence D. Dahms Auditorium
101 Eighth Street Oakland, California 94607

Subject: City of Menlo Park Comments on Proposed Reallocation of Regional Measure 2 (RM2) Funds

Dear Chair Glover and Committee Members,

The City of Menlo Park would like to provide comments on the MTC's proposed amendments for Regional Measure 2 (RM2) funds to be discussed at the April 9, 2014 Programming and Allocations Committee, specifically in regard to the funds reserved for the Dumbarton Rail Corridor (DRC). The City of Menlo Park does not support the proposed forgiveness of ACTC's $91 million loan to finance the BART Warm Springs Extension, although we recognize a need to reallocate the currently unused RM2 funds to projects that are likely to be constructed and provide congestion relief benefits as quickly as possible.

The City provided recommendations to the San Mateo County Transportation Authority in 2013 for projects that would serve residents and commuters along the DRC, focusing projects that would support and expand continued bus service in the corridor and, ultimately, future rail. These projects were not included in MTC's proposed RM2 amendments.

The City has seen increases in congestion along the DRC (Bayfront Expressway; Willow Road; University Avenue; Marsh Road), and implementation of the DRC project would provide a needed transportation option along this route.

RM2 funds were, by definition, to be used to finance congestion relief projects in the bridge corridors, with the DRC project identified in the original legislation approved by voters in 2004. Forgiving ACTC's loan for the future BART Warm Springs Extension will make future funding of the DRC challenging, meaning limited options for transit improvements to the DRC would be realized in the near- or long-term. While the BART Warm Springs Extension is also identified in the original RM2 project list, it does not serve the Dumbarton Bridge corridor.

701 Laurel Street - Menlo Park, CA 94025
Phone: (650) 330-6740 - Fax: (650) 327-5497

Forgiveness of the loan will not provide needed improvements for trans-bay travel in the East and South Bays and Peninsula.

The City of Menlo Park looks forward to continuing to partner with MTC to develop needed transportation options to best serve the region.

Sincerely,

Ray Mueller
Mayor

Cc: Members of Menlo Park City Council
City Manager
Public Works Director

701 Laurel Street - Menlo Park, CA 94025
Phone: (650) 330-6740 - Fax: (650) 327-5497

PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-051

Agenda Item #: D-4

CONSENT CALENDAR: **Authorize the Public Works Director to Accept the Work Performed by Nor Cal Concrete for the 2012-2013 Citywide Sidewalk Repair Project**

RECOMMENDATION

Authorize the Public Works Director to Accept the Work performed by Nor Cal Concrete for the 2012-2013 Citywide Sidewalk Repair Project.

BACKGROUND

On July 16, 2013, the City Council awarded a contract for the 2012-2013 Citywide Sidewalk Repair Project to Nor Cal Concrete. The project consisted of removal and replacement of curbs, gutters and sidewalks that were damaged or uplifted by City tree root intrusions. This repair work help eliminate tripping hazards, drainage problems, and nuisance for property owners and residents. There were about 50 sidewalk locations repaired as part of this project, reconstruction of 600 linear feet of five-foot wide asphalt concrete sidewalk on the 2100 block of Sand Hill Road, and various ADA ramps were installed at Willow/Gilbert and Santa Cruz/San Mateo intersections.

ANALYSIS

The work for the 2012-2013 Citywide Sidewalk Repair Project has been completed in accordance with the plans and specifications. A Notice of Completion will be filed accordingly. The project was completed within the approved project budget.

Contractor: Nor Cal Concrete
P.O. Box 521
Suisun, CA 94585

IMPACT ON CITY RESOURCES

Construction Contract Budget

Construction contract	$ 232,844
Contingency	46,568
Total Construction Budget	**$ 279,412**

Construction Expenditures

Construction Contract	$ 232,844
Change Orders	38,529
Total Project Cost	**$ 271,373**

The remaining balance of $8,039 will be credited to the project balance. The above expenditures are only costs associated with the construction contract with Nor Cal Concrete.

POLICY ISSUES

There are no policy issues associated with this action. The one-year construction warranty period starts upon City's acceptance.

ENVIRONMENTAL REVIEW

The project is categorically exempt under Class I of the current State of California Environmental Quality Act Guidelines, which allows minor alterations and replacement of existing facilities.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

None

Report prepared by:
Rene Punsalan
Associate Civil Engineer

Fernando Bravo
Engineering Services Manger

ADMINISTRATIVE SERVICES DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-050

Agenda Item #: D-5

CONSENT CALENDAR: **Authorize the City Manager to Approve Expenditures of Up to $124,000 for Labor and Employee Relations Consulting Services to the Law Office of Renne, Sloan, Holtzman, and Sakai**

RECOMMENDATION

Staff recommends Council authorize the City Manager to approve expenditures of up to $124,000 to the law office of Renne, Sloan, Holtzman, and Sakai, who has been providing labor and employee relations consulting services.

BACKGROUND

Pursuant to the Public Input and Outreach Regarding Labor Negotiations policy approved by the City Council March 1, 2011, staff has, and continues to, engage the services of a labor attorney to participate in formal labor negotiations with bargaining units representing City employees.

In fiscal year 2013-14, four separate Memoranda of Understanding (MOU's) were up for renegotiation between the City and the respective bargaining units. To date, the City has reached successor MOU's with two of the four bargaining units and is continuing negotiations with the remaining two, and is reentering negotiations with one of the two units that reached agreement.

ANALYSIS

To increase efficiency and cohesiveness throughout the negotiation process of multiple successor MOU's, the City has utilized the services of Charles Sakai of Renne, Sloan, Holtzman and Sakai, to assist in the current round of negotiations. Mr. Sakai has been assisting the City with labor relations since 2004 and continues to be a valued consult to the City in all areas of labor relations.

In addition to labor relations, there have been a significant number of complex employee relations matters that have required the use of outside resources to complete the City's due diligence both promptly and thoroughly. Those outside resources were provided by multiple vendors, including Renne, Sloan, Holtzman and Sakai.

City expenditures for the employee and labor relations services provided by Renne, Sloan, Holtzman and Sakai are set to exceed the City Manager's expenditure authority of $50,000. In order to maintain the continuity of a single labor consultant in ongoing negotiations, staff is recommending that the Council authorize the City Manager to authorize expenditures up to $124,000 for the remainder of this fiscal year as needed to address ongoing labor negotiations assistance and potential employee relations matters that may arise during the remainder of the fiscal year. In anticipation of ongoing negotiation efforts, staff also recommends Council authorize the City Manager to exceed the $50,000 expenditure limit for legal services in fiscal year 2014-15, as long as total expenditures stay within budgeted amounts.

IMPACT ON CITY RESOURCES

There is no direct budgetary impact by authorizing the City Manager to approve further expenditures. The actual costs incurred to date for labor negotiations are well within the funds appropriated in the operating budget. Costs associated with employee relations matters are funded through a variety of departmental sources within the operating budget. Any action approved on this item does not include additional funding or resources for employee and labor relations services.

POLICY ISSUES

This recommendation is in support of Council Policy CC 11-0001, Public Input and Outreach Regarding Labor Negotiations.

ENVIRONMENTAL REVIEW

No Environmental review is required.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

None

Report prepared by:
Gina Donnelly
Human Resources Director

CITY COUNCIL
SPECIAL AND REGULAR MEETING
DRAFT MINUTES

Tuesday, March 18, 2014
5:45 P.M.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

5:45 P.M. CLOSED SESSION (1st floor Council Conference Room, Administration Building)

Mayor Mueller called the Closed Session to order at 5:50 p.m. with all members present.

There was no public comment.

CL1. Closed Session pursuant to Government Code Section §54957 to conference with labor negotiators regarding labor negotiations with the Police Officers Association (POA) and Service Employees International Union (SEIU)

Attendees: Alex McIntyre, City Manager, Starla Jerome-Robinson, Assistant City Manager, Bill McClure, City Attorney, Gina Donnelly, Human Resources Director, Drew Corbett, Finance Director, and Charles Sakai, Labor Attorney

7:00 P.M. REGULAR SESSION

Mayor Mueller called the meeting to order at 7:03 p.m. with all members present.

Mayor Mueller led the pledge of allegiance.

SS. STUDY SESSION

SS1. Discuss implementing a Property Assessed Clean Energy (PACE) Financing Program (*Staff report #14-047*) (*presentation*)

Environmental Programs Manager Rebecca Fotu made a presentation. John Law, Director for Municipal Development for HERO (at Renovate America), was present to answer the commission's questions.

Environmental Quality Commissioner Kirsten Kuntz-Duriseti spoke in support of implementing the PACE program. Jim Law responded to questions from Council.

There was consensus among Council to support the implementation of a PACE program.

REPORT FROM CLOSED SESSION

There was no report from the Closed Session held earlier this evening.

ANNOUNCEMENTS

The City is currently recruiting for multiple seats on the Environmental Quality, Housing, Library, Planning and Parks & Recreation Commissions. Applications are available online or from the City Clerk, and are due April 14th.

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation declaring March as American Red Cross Month (*Attachment*)

Mayor Mueller presented the proclamation to Steve Taffee of the Bay Area Chapter.

A2. Presentation of commendations to the Boys and Girls Club Youth of the Year Award and Leadership Class participants

Mayor Mueller presented commendations to Stacie Foreman and Dudley Rider. A proclamation was also presented to Executive Director Peter Fortenbaugh (*Attachment*).

Mr. Fortenbaugh and the recipients thanked the Mayor and the Council for the recognition.

A3. Presentation by the California State Coastal Conservancy regarding the South Bay Salt Pond Restoration Project (*presentation*)

Engineering Services Manager Fernando Bravo introduced the item. A presentation was made by John Bourgeois, Executive Project Manager.

Mr. Bourgeois stated that he would like to formalize a partnership with the City through a Memorandum of Understanding.

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

B1. Environmental Quality Commission quarterly report on the status of their 2-Year Work Plan

Chair Chris DeCardy gave a status report regarding trees, greenhouse gas emissions, the General Plan and San Francisquito Creek

B2. Consider applicants for appointment to fill three citizen vacancies on the Finance and Audit Committee (*Staff report #14-042*)

ACTION: Councilmember Ohtaki nominated Leslied Denend, Mayor Pro Tem Carlton nominated Aimee Campbell, Councilmember Keith nominated Laura Phelps, Councilmember Cline nominated Anne Craib and Mayor Mueller nominated Stu Soffer.

ACTION: With a majority of votes, the Council made the following appointments

- Anne Craib (Cline, Mueller, Keith) for a 2-year term expiring April 2016
- Leslie Denend (Cline, Ohtaki, Mueller, Carlton) to a 3-year term expiring April 2017
- Laura Phelps (Cline, Ohtaki, Carlton, Keith) to a 2-year term expiring April 2016

C. PUBLIC COMMENT #1

There was no public comment.

D. CONSENT CALENDAR

D1. Authorize the City Manager to exceed his purchase authority and approve the purchase of a mobile stage from APEX Stages for an amount not to exceed $75,000 (*Staff report #14-041*)

D2. Approve an amendment to the Below Market Rate For-Sale Agreement for the 389 El Camino Real Project (*Staff report #14-043*)

D3. Award of a four-year contract to Badawi and Associates in the amount of $176,446 for annual financial auditing services (*Staff report #14-045*)

D4. Approve the letter in support of Senate Bill 1345 (Water Legislation) (*Staff report #14-046*)

D5. Accept minutes for the Council meetings of February 25, 2014 and March 4, 2014 (*Attachment*)

ACTION: Motion and second (Cline/Keith) to approve all the items on the Consent Calendar passes unanimously.

E. PUBLIC HEARINGS – None

F. REGULAR BUSINESS

At this time, Mayor Mueller called Item F2 out of order.

F2. Provide general direction on the 5-year Capital Improvement Plan including capital and other projects to be included in the City Manager's proposed 2014-15 Budget (*Staff report #14-044*) (*presentation*)

A staff presentation was made by Public Works Director Chip Taylor.

Public Comment:

- David Silverman spoke in support of the current location of the dog park at Nealon Park
- Susan Silverman spoke in support of the current location of the dog park at Nealon Park
- Kathy Schoendorf spoke in support of the current location of the dog park at Nealon Park
- Mary Kuechler spoke in support of the current location of the dog park at Nealon Park
- Amy Poon spoke in support of the current location of the dog park at Nealon Park
- Janet Storz spoke in support of the current location of the dog park at Nealon Park
- Alex Gould spoke in support of the current location of the dog park at Nealon Park
- Larry Marks spoke in support of the current location of the dog park at Nealon Park

Staff stated that the goal of including Nealon Park in the CIP is to determine the best possible configuration for the dog park and the best possible configuration for the sports field at Nealon Park and to include the public in the process. This item will not be reviewed until 2017, no decisions or changes regarding the park will be made at this point.

At 9:10 p.m., Council tabled Item F2.

F1. Approve an appropriation of $150,000 and authorize the City Manager to execute agreements, not to exceed a total of $150,000, with consultants to provide professional analyses of the potential impacts related to the proposed ballot initiative which would amend the Menlo Park El Camino Real/Downtown Specific Plan (*Staff report #14-048*) (*presentation*)

At 9:12 p.m. City Attorney McClure exited the Council chambers due to a conflict of interest in that his office building is located within a portion of the area that is the subject of the proposed ballot initiative.

A staff presentation was made by Economic Development Manager Jim Cogan.

Public Comment:

- George Fisher spoke against authorizing professional analyses and stated that members of the public requested similar studies in the past
- Steve Schmidt spoke in favor of authorizing an unbiased analysis
- John Kadvany spoke in favor of authorizing the analyses and focusing on development patterns and strategic issues

Staff responded to Council questions regarding transportation issues, open space and architectural control. Council discussion ensued regarding the need for a thorough and unbiased analysis, Council input regarding the scopes of work, cost and timeframe.

ACTION: Motion and second (Cline/Ohtaki) to approve an appropriation of $150,000 and authorize the City Manager to execute agreements, not to exceed a total of $150,000, with consultants to provide professional analyses of the potential impacts related to the proposed ballot initiative which would amend the Menlo Park El Camino Real/Downtown Specific Plan

with a friendly amendment to appoint Mayor Mueller and Councilmember Cline to a Council subcommittee to review the Scopes of Work passes unanimously.

At 10:12 p.m. City Attorney McClure returned to the Council chambers and Council continued discussion on **Item F2, Provide general direction on the 5-year Capital Improvement Plan including capital and other projects to be included in the City Manager's proposed 2014-15 Budget.**

Staff responded to Council questions and discussion ensued. Staff will include the projects funded during fiscal year 2014-2015 as part of the budget approval process.

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

Mayor Pro Tem Carlton reported on the Human Trafficking Law Enforcement protocol and the press conference hosted by Congresswoman Jackie Speier.

K. PUBLIC COMMENT #2

- Omar Chatty spoke regarding BART and Bay Saves Lives

L. ADJOURNMENT at 11:03 p.m.

Pamela Aguilar
City Clerk

COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-053

Agenda Item #: E-1

PUBLIC HEARING: **Consider the Planning Commission Recommendation to Approve the Housing Element of the General Plan and Associated Housing Element Implementation Zoning Ordinance Amendments, and Environmental Review**

RECOMMENDATION

The Planning Commission and staff recommend that the City Council:

Environmental Review

1. Adopt a Resolution of the City Council of the City of Menlo Park, Adopting the Negative Declaration for the Housing Element Update and Associated Zoning Ordinance Amendments (Attachment A)

General Plan Amendment

2. Adopt a Resolution of the City Council of the City of Menlo Park, Updating the Housing Element for the 2015-2023 Planning Period (Attachment B)

Zoning Ordinance Amendments

3. Introduce an Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Add the Emergency Shelter for the Homeless Overlay and a Definition of Emergency Shelter (Attachment C)

4. Introduce an Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Modify and Add Definitions Related to Transitional and Supportive Housing and Residential Care Facilities (Attachment D)

5. Introduce an Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Add Provisions for Reasonable Accommodations (Attachment E)

6. Introduce an Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Modify Requirements Related to Secondary Dwelling Units (Attachment F)

7. Introduce an Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Modify Requirements Related to Accessory Buildings and Accessory Structures (Attachment G)

If the Council votes to approve the resolutions associated with the adoption of the Negative Declaration and Housing Element (2015-2023), the resolutions would become effective immediately. If the Council votes to introduce the proposed zoning ordinance amendments on April 1, 2014, then the second reading/adoption of these ordinances is tentatively scheduled to occur on April 29, 2014. The ordinances would go into effect 30 days thereafter.

BACKGROUND

The Housing Element is one of seven State-mandated elements of the City's General Plan. Housing Element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing Elements are required to be updated on a schedule set by the State to account for changes in the local housing market and to meet regional housing needs. The City's existing Housing Element was adopted by the City Council in May 2013 for the planning period through 2014. The next Housing Element cycle is for the planning period 2015-2023, and for jurisdictions in the Association of Bay Area Governments (ABAG) region, the 2015-2023 Housing Element is required to be adopted by January 31, 2015. A jurisdiction that adopts its Housing Element on time will not have to adopt another housing element for eight years, instead of four years.

The City of Menlo Park's regional housing need allocation (RHNA) for the 2015-2023 planning period is 655 units, with the breakdown by income level as follows:

Income Level	Percentage of Median Household Income*	Housing Unit Allocation
Very Low	Less than 50%	233
Low	50-80%	129
Moderate	80% -120%	143
Above Moderate	Above 120%	150
Total		**655**

*The 2013 median household income for a family of four in San Mateo County as used for Menlo Park is $103,000.

Summary of Housing Element Process

In June 2013, the City Council authorized a work plan to update the Housing Element for the 2015-2023 planning period and to implement several programs from the City's adopted Housing Element, including 1) the creation of an emergency shelter for the

homeless overlay to address the City's unmet shelter needs for compliance with Senate Bill 2 (SB 2), 2) zoning for transitional and supportive housing for compliance with SB 2, 3) establishing procedures for reasonable accommodation for persons with disabilities, and 4) modifying the secondary dwelling unit ordinance to encourage the development of such units, which can increase the number of affordable units and mix of housing stock in the City.

The City has conducted an extensive process assisted by the Housing Element Steering Committee, which is comprised of two members each from the City Council (Council Members Cline and Ohtaki), Planning Commission (Commissioners Ferrick and Strehl) and Housing Commission (Commissioner Cadigan and Chair Clark). Between August 2013 and February 2014, the Steering Committee conducted four meetings to provide feedback on the components of the Housing Element update, implementation programs (Zoning Ordinance amendments), and the overall process. During the same time period, City staff conducted a broad public outreach effort, including organizing a workshop in September 2013, producing a newsletter, sending multiple letters/notices to property owners potentially affected by the proposed Emergency Shelter for the Homeless Overlay, publishing newspaper ads and notices, and emailing bulletins to subscribers of the project webpage. Most recently, the City sent direct mailers, including a citywide postcard to all property owners and occupants of the City about the proposed Housing Element update and Zoning Ordinance amendments related to the implementation programs, a notice to all single-family residential property owners and occupants about the potential modifications to the secondary dwelling unit and accessory buildings and accessory structures ordinances, and a notice to all property owners and occupants and those within a 300-foot radius of the proposed Emergency Shelter for the Homeless Overlay.

In addition, in November and December 2013, the Housing Commission, Planning Commission and City Council each conducted a meeting on the Housing Element. The purpose of those meetings was to present the Preliminary Draft Housing Element and the working drafts of the proposed Zoning Ordinance amendments and to provide members of the public, Commissioners, and Council Members with an opportunity to provide feedback prior to conducting formal hearings on the items. The comments on the Preliminary Draft Housing Element were incorporated into the preparation of the Draft Housing Element, which was submitted to the State Department of Housing and Community Development (HCD) in December 2013 for a 60-day review period. Supplemental revisions to the Draft Housing Element were also approved by the City Council in January and February 2014 to address comments received by HCD. In mid-February 2014, HCD issued a letter to the City indicating that the City's Housing Element will comply with State Housing Element law if the document is adopted soon and submitted to HCD for formal review. However, compliance and certification are contingent upon completing several key items by specified dates, including establishment of an emergency shelter for the homeless overlay by May 21, 2014.

Furthermore, the Planning Commission conducted study sessions on January 27, 2014 and February 10, 2014 to provide feedback on the potential changes to the secondary

dwelling unit and accessory buildings and structure ordinances. The comments were shared with the Housing Element Steering Committee at its February 27, 2014 meeting for further guidance prior to preparation of the final draft ordinances.

On March 5, 2014, the Housing Commission reviewed the Housing Element and associated implementing ordinances. The Commission voted 3-1 to recommend adoption of the Housing Element and ordinances, with the understanding that enhancements may be made to strengthen language pertaining to housing for persons with developmental disabilities, and additional refinements to the documents may be made through the remaining steps of the process. The Commissioner who dissented raised broader issues, expressing concerns about the potential impacts additional housing would have on local schools and other resources such as water.

Planning Commission Recommendation

On March 10, 2014, the Planning Commission conducted a public hearing to consider and recommend to the City Council on the Housing Element and the associated Zoning Ordinance amendments. After receiving public comment and Commission discussion, a series of recommendations on the Housing Element, Zoning Ordinance amendments and environmental document were made. The draft minutes of the meeting are included as Attachment H. Overall, the Commission recommended the adoption of the Housing Element and its associated components. The votes and the proposed modifications are noted in the recommendations below.

Environmental Review

The Planning Commission recommended that the City Council make the findings to adopt the Negative Declaration, as submitted; (M/S Riggs/Strehl), 7-0.

Housing Element

The Planning Commission recommended that the City Council adopt the Final Draft Housing Element with added language to 1) document the preliminary emergency shelter for the homeless overlay areas in the public outreach section, 2) evaluate the accessory building conversion process and the appropriateness of an amnesty program thereafter in program H4.F, and 3) address comments regarding housing for the developmentally disabled; (M/S Onken/Riggs), 7-0.

Zoning Ordinance Amendments

A. Emergency Shelter for the Homeless Overlay: The Planning Commission recommended that the City Council adopt the Emergency Shelter for the Homeless Overlay, as submitted; (M/S Ferrick/Strehl), 7-0.

B. Transitional and Supportive Housing and Residential Care Facilities: The Planning Commission recommended that the City Council adopt the

amendments pertaining to transitional and supportive housing and residential care facilities, as submitted; (M/S Ferrick/Strehl), 7-0.

C. Reasonable Accommodation: The Planning Commission recommended that the City Council adopt the amendment to establish procedures for reasonable accommodation, as submitted; (M/S Ferrick/Strehl), 7-0.

D. Secondary Dwelling Units: The Planning Commission recommended that the City Council adopt the amendments to the secondary dwelling unit ordinance and sections of the Zoning Ordinance pertaining to secondary dwelling units, with the following modifications; (M/S Ferrick/Strehl), 7-0. Where an action does not include a vote, the Planning Commission approved the modification by unanimous consent.

   a. Lot size: Reduce the minimum lot size to 5,000 square feet; (M/S Riggs/Kadvany), 7-0
   b. Minimum yards: Clarify the minimum interior side and rear yard for property adjacent to an alley is five feet.
   c. Unit size: Increase the allowable square footage to 700 square feet for units that comply with disabled access requirements for kitchens, bathrooms and path of travel associated with the building; (M/S Ferrick/Eiref), 7-0.
   d. Daylight plane and Wall height: Establish a new daylight plane at a three foot setback at a height requirement of nine feet, six inches with a slope inwards of 45 degrees. The maximum wall height would be eliminated; (M/S Onken/Ferrick), 6-0-1, with Commissioner Eiref abstaining,
   e. Parking:
      i. Clarify how tandem parking may be arranged and how covered and uncovered parking spaces are regulated.
      ii. Reduce the minimum parking stall size for secondary dwelling units
         1. Uncovered – 8 feet by 17 feet
         2. Covered – 9 feet by 20 feet
   f. Tenancy:
      i. Clarify that a property owner does not have to live at either the main dwelling unit or secondary dwelling unit so long as both units are not occupied as dwellings.
      ii. Establish a registration process for a homeowner to temporarily allow both the main and secondary dwelling unit on a property to be occupied by persons other than the property owners. A property owner may register annually for up to four years, and thereafter requires a use permit; (M/S Bressler/Strehl), 7-0.
      iii. Use permit process for modifications to tenancy on a permanent basis.
   g. Conversion process for accessory buildings: Create process to allow conversion of accessory buildings into secondary dwelling units; (M/S Kadvany/Eiref), 7-0.

E. Accessory Buildings and Structures: The Planning Commission recommended that the City Council adopt the amendments to the accessory buildings and accessory structures ordinance and sections of the Zoning Ordinance pertaining to accessory buildings and structures, with the following modifications to the accessory structure ordinance and definition; (M/S Ferrick/Strehl), 7-0:

   a. Definition: Establish separate definitions for accessory buildings and accessory structures, including a differentiation between "living space" and non-living space. A building with four or more plumbing fixtures would be defined and regulated as "living space"; (M/S Strehl/Riggs; 7-0)
   b. Minimum yards: Distinguish setbacks differently between accessory structures and accessory buildings and to establish setback requirements for accessory buildings with "living space."
   c. Daylight plane and Wall height: Establish a new daylight plane at a three foot setback at a height of nine feet, six inches with a slope inwards of 45 degrees. The wall height would be eliminated.
   d. Separation between buildings: Eliminate the 10-foot separation between dwelling unit and accessory structure requirement, but maintain for separation between dwelling unit and accessory buildings.
   e. Parking: All entrances to covered parking, regardless of attached or detached, to maintain a 20-foot setback from the property line it faces, except for covered parking facing an alley; (M/S Rigs/Onken), 7-0.

Staff is recommending further refinements to the lot size and tenancy regulations, which are discussed below in the Secondary Dwelling Units section of the Analysis.

ANALYSIS

All of the previous staff reports, materials presented at the various meetings, the Final Draft Housing Element, Draft Zoning Ordinance Amendments, and Initial Study and Negative Declaration are available on the project webpage at http://www.menlopark.org/athome.

This staff report provides a general summary of the items for consideration and highlights the modifications to the Housing Element and the Zoning Ordinance amendments since the City Council reviewed the proposed Housing Element revisions at its January 28 and February 11, 2014 meetings and the draft Zoning Ordinance amendments at its December 17, 2013 meeting. The purpose of the April 1 City Council meeting is to review and take action on the Negative Declaration, Housing Element and associated Zoning Ordinance amendments. Subsequent to the Council's review of these items, the Council may make a single motion for all of the items or make multiple motions. If the latter occurs, the City Council should motion and vote in the order identified in the Recommendation section above. The Council will be considering the adoption of two resolutions and the introduction of five ordinances.

Housing Element

The City's current Housing Element (2007-2014) was adopted by the City Council in May 2013 and certified by HCD in June 2013. The City's RHNA for the new planning period is 655 dwelling units. Unlike the recent Housing Element cycle, the 2015-2023 update does not include any rezonings for higher density housing. The City plans to meet its RHNA figures through a combination of existing net new construction, build out of existing zoning capacity, and implementation of housing policies and programs identified in the Housing Element. The RHNA table on page 111 of the Final Draft Housing Element has been updated since the Draft Housing Element to reflect recent information regarding the total number of affordable and overall dwelling units and the mix of affordable units at the St. Anton project on Haven Avenue. The table continues to demonstrate that the City can meet this need through units that are in the pipeline and through existing available land zoned for higher density residential uses.

The proposed Final Draft Housing Element (2015-2023) carries forward a majority of the goals and policies of the adopted Housing Element. More substantive changes have been made to the implementation programs, and include updates on the timing of implementation, deletion of programs that have been implemented, edits for consistency and clarity, and modifications to programs to better align with goals and policies. Sections that may be of particular interest to the City Council are the draft Housing Element Goals, Policies and Implementing Programs (pages 25-53) and summary of adequate sites to address the RHNA for the 2015-2023 planning period (page 111). The proposed Final Draft Housing Element (2015-2023) incorporates the revisions approved by the Council earlier this year to address comments provided by HCD. In addition, the Final Draft Housing Element has been updated to reflect new demographic data that became available at the beginning of the year, but does not change the analysis provided in the document.

Since the release of the Final Draft Housing Element and the Planning Commission meeting on March 10, 2014, staff has identified additional minor refinements for internal consistency and clarity within the document, and has proposed edits to address recommendations made by the Planning Commission regarding 1) the minimum lot size for secondary dwelling units in Program H4.E, 2) consideration of an amnesty program for secondary dwelling units in Program H4.F, and 3) providing reference to the other four sites considered for the Emergency Shelter for the Homeless Overlay. In addition, a definition of special needs, which includes persons with disabilities, is proposed to be added for clarity, the coordination with the Golden Gate Regional Center is proposed to be added to Program H3.G, and the data tables regarding persons with developmental disabilities are proposed to be modified to include information specific to Menlo Park, in response to comments received at the Housing Commission and Planning Commission meetings regarding housing for persons with special needs. The objectives for Programs H4.E and H4.F have been refined, and for consistency between the programs and the RHNA table, the RHNA table has also been updated to reflect the targeted objectives for both new secondary dwelling units and secondary dwelling units through the conversion process. All of the above proposed revisions are included in the Final

Draft Housing Element Revisions, which is included as Attachment I. Staff recommends that the proposed Revisions be approved and incorporated into the Final Housing Element for consideration by HCD.

Implementation of Housing Element Programs – Zoning Ordinance Amendments

Emergency Shelter for the Homeless Overlay Zone

Effective January 1, 2008, SB 2 requires every California city and county to engage in a detailed analysis of emergency shelters and transitional and supportive housing in their Housing Element and to adopt zoning for these facilities. Within one year of adoption of the Housing Element, a City must amend zoning to allow an emergency shelter for the homeless in at least one zone without a conditional use permit or any other discretionary process. The adoption of the Emergency Shelter for the Homeless Overlay by May 21, 2014 is consistent with Program H3.A of the adopted Housing Element and Final Draft Housing Element, and is critical to the certification of the 2015-2023 Housing Element. The definition of an emergency shelter is as follows:

> **Emergency Shelter:** Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. (Health and Safety Code Section 50801(e))

Every other year, San Mateo County along with many other stakeholders, conducts a homeless count. The most recent counts were conducted in January 2013, and the City's requirement is to provide zoning to accommodate 16 beds to address homeless needs in the community. The proposed Emergency Shelter for the Homeless Overlay would 1) comply with state law, 2) allow up to a maximum of 16 beds in totality throughout the City as a permitted use, 3) establish mandatory written and objective performance standards, and 4) require all shelters to be reviewed through a compliance review process.

The Housing Element Steering Committee identified five potential areas for the emergency shelter for the homeless overlay zone for community consideration. The sites were primarily selected for their proximity to transit, capacity to accommodate a facility, and the types of nearby uses and suitability for this use. Following the Housing Element Steering Committee's recommended prioritization of the sites, the Planning Commission and City Council also provided comments at their respective November 2013 and December 2013 meetings on the topic. The direction from the City Council was to pursue the Veterans Affairs Campus area for the overlay area. A map of the overlay area is included as Attachment J. Attachment C is a draft of the proposed emergency shelter for the homeless overlay Zoning Ordinance amendment.

At the March 10, 2014 Planning Commission meeting, two residents within the overlay area expressed concerns about the proposed overlay location given its proximity to schools and a park, but also recognized that the Veterans Affairs Campus itself may be

a practical site. Staff also received five pieces of correspondence, which were either included in the Planning Commission staff report or distributed at the meeting, raising concerns about the proposed overlay location and one letter in support of the proposed overlay location. In selecting an area for the overlay, the City must balance and weigh multiple factors, including viability of the land use, proximity to other services, such as transit, and potential impacts to surrounding uses. Given the 16-bed maximum limit without a use permit, the multi-family residential properties surrounding the VA Campus are seen as viable opportunities for a conversion of an existing property into a shelter, while retaining the look and characteristics of its surroundings. It is important to note that the City is not required to build a shelter, but is required to provide the zoning to allow a shelter to locate in the overlay area without discretionary review. The emergency shelter for the homeless overlay does not replace or modify any standards of the underlying zoning district of a property, but the overlay would permit a homeless shelter (up to 16 beds in totality in the City) by right. At this time, there are no proposals to develop a homeless shelter within the proposed overlay area. The Planning Commission and staff continue to recommend the proposed emergency shelter for the homeless overlay ordinance and the VA Campus and nearby properties for the overlay area.

Transitional and Supportive Housing and Residential Care Facilities

Housing Element Program H3.B (Zone for Transitional and Supportive Housing) is also required for compliance with SB 2 and for certification of the Housing Element update. To comply with SB 2, the Housing Element must demonstrate that transitional and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. The definitions of transitional and supportive housing are as follows:

> **Transitional housing**. "Transitional housing" means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six (6) months from the beginning of the assistance.
>
> **Supportive housing.** "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Consistent with the City Council's previous action to address comments by HCD about residential care facilities in the Final Draft Housing Element, the proposed Zoning Ordinance amendment for transitional and supportive housing has been broadened to include residential care facilities for compliance with State law. Similar to transitional and supportive housing, residential care facilities of six or fewer persons must also be permitted as a residential use and subject to those restrictions that apply to other

residential uses in the same zone. The proposed amendment includes two definitions pertaining to residential care facilities (small and large), which are the same, except for the number of persons served in a facility. A small residential care facility would serve six or fewer persons and a large would provide for seven or more persons at the facility. The small residential care facilities would be defined as a dwelling while a large residential facility would be regulated more akin to a convalescent home. The definition of residential care facility (small) is as follows.

> **Residential care facility, small**. "Small residential care facility" means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by six (6) or fewer persons.

The proposed Zoning Ordinance amendment (Attachment D) would modify the definition of "dwelling" to include transitional and supportive housing and small residential care facilities, modify the definition of "convalescent home" to include large residential care facilities, and add the definitions of the various uses for clarity in implementation. The proposed amendment is necessary for compliance with State law, important for the certification of the 2015-2023 Housing Element by HCD, and recommended for adoption by both the Planning Commission and staff.

Reasonable Accommodation

A series of federal and state laws (Federal Fair Housing Amendments Act of 1988, California's Fair Employment and Housing Act, and the State's Housing Element law) have been enacted to prohibit policies that act as a barrier to individuals with disabilities who are seeking housing. Program H3.C Adopt Procedures for Reasonable Accommodation is the establishment of procedures for reasonable accommodation for individuals with disabilities to ensure equal access to housing. Implementation of this program is also critical for certification of the Housing Element.

Attachment E includes the reasonable accommodation ordinance for review and action. The draft Zoning Ordinance amendment identifies the process and the necessary findings to grant the request. Unless the request requires another land use approval, the Community Development Director is the granting authority, with the Planning Commission acting upon appeals. A fundamental characteristic of a reasonable accommodation procedure is the establishment of appropriate findings that reflect the intent of fair housing statutes. The findings for reasonable accommodation, therefore, are different than findings related to a typical zoning variance because the focus of the review is the need of the individual with disabilities to overcome barriers to housing, not on the physical constraints or unique characteristics of the lot. An example of reasonable accommodation request would be an encroachment into a setback for a ramp access into the dwelling. The Planning Commission and staff recommend the adoption of the proposed reasonable accommodation Zoning Ordinance amendment.

Secondary Dwelling Units

The proposed modifications to the secondary dwelling unit ordinance is derived from the adopted Program H4.F (Undertake a Secondary Dwelling Unit Amnesty Program), the proposed H.4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process) and the repurposed H4.F (Establish a Process and Standards to Allow the Conversion of Accessory Buildings and Structures to a Secondary Dwelling Unit). To implement these programs, the approach would be two-pronged; including modifications to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish how the building could be used. The proposed changes to the accessory buildings and accessory structures ordinance is described in more detail below in the Accessory Buildings and Accessory Structures section.

Since the City Council's December 2013 preliminary review of the draft Zoning Ordinance amendments, the Planning Commission conducted a focused study session in late January and early February 2014 on the potential changes to the secondary dwelling unit and accessory buildings and structures ordinances, and the Steering Committee also conducted a meeting in late February 2014 to provide additional guidance on this topic in particular. Key outcomes from these meetings were 1) an increase in the unit size to 700 square feet for units that comply with disabled access requirements, 2) the establishment of a new daylight plane requirement and elimination of wall height, 3) the establishment of a registration process on a temporary basis for property owners unable to comply with the tenancy requirement and 4) allowance for a nonconforming setback to be rebuilt as part of the conversion process of a legally built and constructed accessory building into a secondary dwelling unit.

At the Planning Commission meeting on March 10, 2014, the Planning Commission made further refinements to the proposed modifications, including 1) further reducing the minimum lot size eligible for a secondary dwelling unit without a use permit from the previously proposed 5,750 square feet to 5,000 square feet, 2) clarifications to the tenancy requirements, and 3) reduction in parking stall dimensions associated with secondary dwelling units. Staff is recommending additional refinements to items 1 and 2, and believes no changes are needed for item 3 as the existing ordinance meets the intent of the changes.

Lot Size

The Planning Commission supported a further reduction in the minimum lot size from the previously proposed 5,750 square feet (current regulation is 6,000 square feet) to 5,000 square feet in an effort to increase the number of the lots eligible for a secondary dwelling unit without a use permit. While the Commission recognized the potential challenges smaller lots may have in accommodating a secondary dwelling unit, the Commission expressed that the opportunity should be given. The proposed

5,000 square foot lot size is also the equivalent threshold for the minimum lot size before a use permit is required to determine the floor area limit on most single-family residential zoned lots. The one exception is the R-1-U (LM – Lorelei Manor) zoning district, where the minimum lot size area is 4,900 square feet. Therefore, staff is recommending that the minimum lot size continue to be 5,000 square feet or 4,900 square feet if located within the R-1-U (LM) zoning district. A map of all the single-family zoned lots in the City by lot size is included as Attachment K.

Tenancy

The Planning Commission also recommended additional flexibility and clarity to the tenancy requirement. The Planning Commission recommended that the registration process be reviewed annually for up to a maximum of four years, and a use permit would be required thereafter. The Commission's support for the timeframe was not unanimous, as some Commissioners expressed concern that rental of the main dwelling and secondary dwelling unit for a long period of time would be more akin to R-2 zoning, and not a single-family residential neighborhood. Taking those concerns into consideration, staff is recommending additional language in the ordinance that would require a property owner to have occupied the subject property for a minimum of two years of the previous five years from the date of the registration application as criteria for eligibility. The years of residency is the same used for federal tax exemptions when a dwelling is deemed a primary residence. The requirement hopefully addresses concerns about absentee landlords and those seeking property solely as rental units for investment purposes. The annual registration application would be reviewed by the Community Development Director. Supporting documentation, including property management information and a parking plan, would need to be provided along with the request and reason for the absence from the property. The City Council may wish to provide comments on whether additional criteria should be considered as part of the registration process. The intent would be to approve the renewal application, so long as the appropriate documents are filed and no complaints have been received.

Parking Space Dimensions

Finally, the Planning Commission recommended modifications to the parking space dimensions for parking associated with a secondary dwelling unit. The proposed revision would change the uncovered space dimensions to 8 feet by 17 feet where the current standard is 8.5 feet by 16.5 feet, with a recommended 18-inch overhang, effectively creating an 18-foot depth. The proposed change for a covered space would result in a 9 foot by 20 foot space, where 10 feet by 20 feet is the current standard. For secondary dwelling units, one space, covered or uncovered, is required. Most secondary dwelling units meet the parking requirement through an uncovered parking space. The secondary dwelling unit parking space can typically be met through a tandem arrangement within the driveway for the main residence with no or little modifications. Staff believes that the existing uncovered parking space dimensions and the various locations where a parking space for a secondary

dwelling unit can be met provide the intended flexibility the Planning Commission was trying to achieve, and therefore suggests no changes. However, staff will be reviewing the City's Parking Stall and Driveway Design Guidelines as part of Program H4.P and can also consider whether additional modifications are appropriate.

New to the secondary dwelling unit ordinance is the proposed establishment of a conversion process for legally built and constructed accessory buildings, per Housing Element implementation Program H4.F. The purpose of the program is to try to increase the housing stock by counting buildings that may effectively function like secondary dwelling units, but do not meet the minimum yard requirements. The program has been established with a one year limit, but the implementation program considers an evaluation to determine whether to continue to pursue, modify, or end the conversion process. At that time, if the City Council wishes to extend the program, a Zoning Ordinance amendment would be required. The process would require Planning Commission review and a recommendation, followed by a City Council public hearing to introduce the ordinance amendment and a second Council meeting to adopt the ordinance. The ordinance would then take 30 days to go into effect. Following this standard procedure, the City would need to start the Zoning Ordinance amendment process approximately four months prior to the sunset date. An alternative approach to extending the sunset clause would be to include a provision in Section 16.79.045 of the proposed Zoning Ordinance amendment to allow the City Council to adopt a resolution at a public meeting, but without a public hearing before the Planning Commission and City Council. The revised section of the proposed ordinance would be as follows:

16.79.045

(4) This section 16.97.045 shall sunset in its entirety and no longer be effective one (1) year from May 30, 2014 (effective date of ordinance) for any administrative permit application not received by said date. The City Council, by resolution, may extend the effective date without further public hearings by the Planning Commission and City Council.

The proposed modifications to the secondary dwelling unit development standards, with staff's recommended additions, are summarized in Attachment L and for reference, a comparison table of existing development standards between secondary dwelling units and accessory buildings/structures is included as Attachment M. Attachment F includes the draft ordinance, showing new text from the existing ordinance in underline and deleted text from the existing ordinance in ~~strikeout~~ format.

Accessory Buildings and Accessory Structures

The proposed modifications to the secondary dwelling unit ordinance are coupled with proposed modifications to the accessory buildings and structures ordinance. Attachment G includes the proposed modifications to the accessory building and structure section of the Zoning Ordinance (Section 16.68.030). The proposed Zoning Ordinance amendment is intended to 1) more clearly define accessory buildings and

accessory structures, 2) establish development regulations more aligned with the use of the building or structure, 3) resolve internal inconsistencies in how accessory buildings and structures is used in the Zoning Ordinance, and 4) reformat the section for ease of use. The proposed amendments to the accessory buildings and structures section would also require minor edits in other sections of the Zoning Ordinance for consistency. The changes are noted in the draft Ordinance.

Of particular note, the proposed amendment includes establishing separate definitions for accessory buildings and accessory structures. Furthermore, the definition of accessory building would include differentiation between "living space" and non-living space, whereby a building with four or more plumbing fixtures would be regulated as "living space." The Planning Commission recommended four fixtures to allow an accessory building to be able to include a full bath (sink, toilet, and shower), but any additional fixture such as a bar sink, would deem the building as "living space." If a building is deemed to have "living space", that portion of the building would need to meet increased minimum side and rear yard standards, similar to those of a secondary dwelling unit. However, to provide greater flexibility, the proposed Zoning Ordinance amendment would distinguish setbacks differently between accessory structures and accessory buildings, allowing accessory structures to no longer be required to be located on the rear of the lot so long as the front and side setback requirements are met. In addition, the current requirement for a 10-foot separation between accessory building and structures and dwelling unit would no longer be applicable to accessory structures, which would allow for greater flexibility and practicality for the placement of such structures on a lot.

For consistency between attached and detached garages, the proposed Zoning Ordinance amendment would require all entrances to covered parking (garage or carport) to maintain a 20-foot setback from the property line it faces. This is to help ensure that vehicles parking in a driveway would not obstruct a sidewalk and/or street. The one exception, as recommended by the Planning Commission at its March 10, 2014 meeting, would be a garage entrance facing an alley. Given the limited volume of cars and overall use of an alley, the Planning Commission believed that the existing setback requirement of five feet is appropriate.

Lastly, the proposed ordinance would establish a new daylight plane requirement and eliminate the nine-foot wall height requirement. The proposed change is intended to provide greater flexibility in design and clarity in application, allowing the wall height to vary as a building increases its setbacks. The proposed change is similar to the proposed modifications to secondary dwelling units. The overall height of 14 feet would remain unchanged.

Correspondence

Since the December 12, 2013 City Council meeting, several pieces of correspondence have been received regarding the Housing Element update and implementation programs. The correspondence generally pertains to one of three categories, including

1) the proposed Emergency Shelter for the Homeless Overlay zone, 2) the proposed modifications to the secondary dwelling unit and accessory building/structure ordinances, and 3) best practices for affordable housing policies and programs as identified by a coalition of concerned community groups (Housing Leadership Council of San Mateo County, San Francisco Organizing Project/Peninsula Interfaith Action and Greenbelt Alliance). These correspondences were attached to the March 10, 2014 Planning Commission staff report and is available for viewing on the project webpage or at the Community Development Department. One piece of correspondence was received after the printing of the staff report and prior to the March 10, 2014 Planning Commission meeting. This item was distributed for consideration at the meeting.

Since the March 10, 2014 Planning Commission meeting, staff has received one piece of correspondence, which raises concerns about the proposed changes to the tenancy requirement. The correspondence is included as Attachment N. In Ms. Holliday's email, she states that the relaxation of the tenancy requirement to allow two rental units is a de facto path to a zoning change from R-1 to R-2, and the timeframe and option for permanent modification to the tenancy requirement are too liberal. To limit landlord manipulation, she suggests that a requirement be added that the property owner must reside at the property at the time of application or submit an affidavit of intent to occupy the property, if the property is under construction. She recommends that a specific set of parameters be established, including the provision for property management. Staff believes that the newly added eligibility criteria, as described above, requiring a minimum tenancy of two years of the prior five years to the application, and the submittal of property management information and a parking plan at the time of application would help minimize potential impacts to the neighborhood and address Ms. Holliday's concerns.

IMPACT ON CITY RESOURCES

The proposed Housing Element update and implementation does not include any rezonings for higher density housing. The City can meet its share of housing through a combination of units under construction, units in the pipeline, and existing zoning. There are no proposed land use changes from what was previously considered as part of the Fiscal Impact Analysis (FIA) prepared for the current Housing Element in 2013.

As part of Implementation Program H4.F, staff will be bringing forward potential fee reductions and/or waivers as an incentive and mechanism to reduce the barriers to providing secondary dwelling units. In addition, staff will be considering the appropriate fees, as described in the proposed Zoning Ordinance amendments, for the following: 1) compliance review process for the emergency shelter for the homeless, 2) reasonable accommodation, and 3) tenancy registration. The setting of the fees for these items is a policy discussion for the City Council to determine whether to pursue full cost recovery or not. The price of the fees are not part of the formal Zoning Ordinance amendments, but staff will be presenting the City Council with options for potential fee reductions or waivers as part of the review of the Master Fee Schedule, tentatively scheduled for the April 29 City Council meeting.

POLICY ISSUES

The adoption of the Housing Element of the General Plan for certification by HCD is required by State law. The adoption of the emergency shelter for the homeless overlay and the zoning for transitional and supportive housing and residential care facilities would also bring the City into compliance with State law. If the City adopts the Housing Element in a timely manner, the City would not have to adopt another housing element for eight years, instead of four. The Housing Element provides a plan for the City to address local housing needs and contribute its share of housing in the region.

ENVIRONMENTAL REVIEW

The 2015-2023 Housing Element update and the Zoning Ordinance amendments associated with the implementation programs are subject to the California Environmental Quality Act (CEQA). A Negative Declaration, which was prepared on the basis of an initial study for the proposal was circulated for a 30-day review period. The comment review period ended on March 14, 2014.

The initial study analyzed a number of topics, including aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use, mineral resources, noise, population and housing, public service, recreation, transportation/traffic, and utilities and service systems. The initial study consists of a depiction of the existing environmental setting, the proposed project description, followed by a description of potential various environmental effects that may result from the proposed project. The initial study determined that the proposed project would not have a significant effect on the environment and therefore, a Negative Declaration was prepared.

Staff received one comment letter from the California Public Utilities Commission after the close of the review period. Attachment O includes the comment letter along with a memo responding to the letter. The memo also provides an analysis to address the Planning Commission's recommendation to reduce the minimum lot size for a secondary dwelling unit to 5,000 square feet without a use permit, and specific changes to the Initial Study/Negative Declaration to reflect those changes. The memo demonstrates that the proposed changes do not constitute a substantial revision per CEQA Guidelines 15073.5. A substantial revision means: 1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added to reduce the insignificance or 2) new mitigations are required. The proposed changes do not affect any conclusions or significance determinations provided in the Initial Study/Negative Declaration and no recirculation is warranted.

MEETING PROCESS AND SUMMARY

Staff recommends that the City Council conduct the April 1, 2014 meeting as follows:

1. Staff overview presentation
2. Council clarification questions
3. Public comment
4. Council questions and discussion on items (in order the Council deems appropriate)
5. Council action on items (in order outlined in the Recommendation section above)

PUBLIC NOTICE

Public notification consisted of publishing a notice in the local newspaper, a postcard mailed to all single-family residential property owners and occupants in the City and an additional notice to all property owners and occupants located within a 300-foot radius of the proposed Emergency Shelter for the Homeless Overlay. In addition, the City has prepared a project page for the proposal, which is available at the following address: http://www.menlopark.org/athome. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated and meetings are scheduled. Two postcards were previously sent Citywide informing people of the Housing Element Implementation and Update meeting schedule and encouraging them to subscribe to the project page.

ATTACHMENTS

A. Draft Resolution pertaining to the Environmental Review (Initial Study and Negative Declaration provided under separate cover)
B. Draft Resolution pertaining to the Housing Element Update (Final Draft Housing Element provided under separate cover)
C. Draft Ordinance pertaining to the Emergency Shelter for the Homeless Overlay
D. Draft Ordinance pertaining to Transitional and Supportive Housing and Residential Care Facilities
E. Draft Ordinance pertaining to Reasonable Accommodation
F. Draft Ordinance pertaining to Secondary Dwelling Units
G. Draft Ordinance pertaining to Accessory Buildings and Structures
H. Draft Excerpt Minutes of the Planning Commission Meeting of March 10, 2014
I. Final Draft Housing Element Revisions
J. Emergency Shelter for the Homeless Overlay Map
K. Single-Family Zoned Lots 5,000 Square Feet or Greater Map

L. Summary Table of Existing and Proposed Development Standards for Secondary Dwelling Units
M. Comparison Table of Existing Development Regulations Between Secondary Dwelling Units and Accessory Buildings/Structures
N. Correspondence
   - Jeannette Holliday, dated March 19, 2014
O. Memorandum from Placeworks (formerly The Planning Center), dated March 20, 2014 regarding response to comments and revisions to the Initial Study/Negative Declaration

AVAILABLE FOR REVIEW AT CITY OFFICES AND ON THE PROJECT WEB PAGE

- Adopted Housing Element for the 2007-2014 Planning Period
- Housing Element Steering Committee Meeting #1 Summary
- Housing Element Steering Committee Meeting #2 Summary
- Housing Element Steering Committee Meeting #3 Summary
- Housing Element Steering Committee Meeting #4 Summary
- Workshop Materials
- Draft Housing Element, dated December 12, 2013
- Revisions to the Draft Housing Element, City Council staff report dated January 28, 2104
- Supplemental Revisions the Draft Housing Element, City Council staff report dated February 11, 2014
- Planning Commission Staff Report, dated March 10, 2014
- Frequently Asked Questions – Housing Element Requirements for Addressing Homelessness
- State Department of Housing and Community Development (HCD) document on Senate Bill 2 (SB 2)

Report prepared by:
Deanna Chow
Senior Planner

Report reviewed by:
Justin Murphy
Development Services Manager

AGENDA ITEM E-1

The following are revised attachments to item E-1 – Housing Element Public Hearing.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADOPTING A NEGATIVE DECLARATION FOR THE HOUSING ELEMENT UPDATE AND ASSOCIATED ZONING ORDINANCE AMENDMENTS

WHEREAS, the City of Menlo Park ("City") is updating its current 2007-2014 Housing Element for the 2015-2023 planning period and amending its Zoning Ordinance to implement existing Housing Element programs, including allowing for special-needs housing (i.e. transitional and supportive housing, and reasonable accommodations) and emergency shelters ("Project"); and

WHEREAS, an Initial Study and Negative Declaration (collectively "Negative Declaration") were prepared based on substantial evidence analyzing the potential environmental impacts of the Project; and

WHEREAS, the Negative Declaration was released for public comment beginning February 13, 2014 and ending March 14, 2014; and

WHEREAS, the Planning Commission held duly a noticed public hearing on March 10, 2014 to review and consider the Negative Declaration and the Project, at which all interested persons had the opportunity to appear and comment, and the Planning Commission voted affirmatively to recommend adoption of the Negative Declaration; and

WHEREAS, the City Council held a duly noticed public hearing on April 1, 2014 to review and consider the Negative Declaration and the Project, including the Memorandum by Placeworks dated March 20, 2014, which provides response to comments and specific text changes to the Initial Study/Negative Declaration related to secondary dwelling units for which none of the changes constitute a substantial revision per California Environmental Quality Act Guidelines Section 15073.5, at which all interested persons had the opportunity to appear and comment; and

WHEREAS, the Negative Declaration, public comments, and all other materials which constitute the record of proceedings upon which the City Council's decision is based are on file with the City Clerk; and

WHEREAS, the City Council finds that the Negative Declaration is complete and adequate pursuant to the California Environmental Quality Act, and that the City Council has considered and reviewed all information contained in it; and

WHEREAS, the City Council finds on the basis of the whole record before it that there is no substantial evidence that the Project will have a significant effect on the environment and that the Negative Declaration reflects the City's independent judgment and analysis.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park hereby adopts the Negative Declaration for the Project.

I, Pamela Aguilar, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the 1st day of April, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHERE OF, I have hereunto set my hand and affixed the Official Seal of said City on this 1st day of April, 2014.

Pamela Aguilar
City Clerk

ATTACHMENT B

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK UPDATING THE HOUSING ELEMENT FOR THE 2015-2023 PLANNING PERIOD

WHEREAS, the City of Menlo Park ("City") is required by State Law to update its Housing Element in compliance with Government Code Section 65580 *et seq.* to guide the City's housing efforts through the 2015-2023 Regional Housing Needs Allocation ("RHNA") planning period; and

WHEREAS, the City scheduled a series of public meetings relative to the Housing Element update between June 2013 and December 2013, including duly noticed public meetings of the Steering Committee, Housing Commission, Planning Commission and City Council, and a community workshop; and

WHEREAS, on December 20, 2013, the City submitted its draft Housing Element to the State Department of Housing and Community Development ("HCD"), which started the official 60-day review period by the State; and

WHEREAS, in response to comments received by HCD, revisions were made to the draft Housing Element ("Final Draft Housing Element"); and

WHEREAS, in response to comments made by the Planning Commission and members of the public on March 10, 2014, to reflect updated data, and for internal document consistency, Revisions were prepared and will be incorporated into to the draft Housing Element ("Final Draft Housing Element"); and

WHEREAS, an Initial Study and Negative Declaration regarding the Housing Element update was prepared in compliance with the California Environmental Quality Act; and

WHEREAS, on February 27, 2014, the Steering Committee, and on March 5, 2014, the Housing Commission held public meetings regarding the Final Draft Housing Element, at which all interested persons had the opportunity to appear and comment; and

WHEREAS, on March 10, 2014, the Planning Commission held a duly noticed public hearing on the Final Draft Housing Element, at which all interested persons had the opportunity to appear and comment and the Planning Commission voted to recommend the Final Draft Housing Element to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on April 1, 2014 to review the Final Draft Housing Element, at which all interested persons had the opportunity appear and comment.

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the City Council of the City Menlo Park as follows:

1. The Housing Element is in compliance with Government Code Section 65580 *et* seq.
2. The Housing Element programs and policies are intended to guide the City's housing efforts through the current planning period (2015-2023).
3. The Housing Element update for the 2015-2023 planning period is hereby adopted and incorporated in its entirety and replaces the existing Housing Element in the City's General Plan.

I, Pamela Aguilar, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the 1st day of April, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this 1st day of April, 2014.

Pamela Aguilar
City Clerk

ATTACHMENT C

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 16.99 [EMERGENCY SHELTER FOR THE HOMELESS OVERLAY] AND AMENDING CHAPTER 16.04 [DEFINITIONS] TO TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

a. The City desires to add Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning] to fulfill implementing program H3.A in the City's current 2007-2014 Housing Element, and for compliance with Senate Bill 2, which requires every California City and County to regulate for these facilities by identifying where an emergency shelter to meet the City's unmet need is allowed without a discretionary action, and to amend Chapter 16.04 [Definitions] for clarity and consistent implementation of Chapter 16.99.

b. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

c. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

d. After due consideration of the proposed addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.99 [Emergency Shelter for the Homeless Overlay] is hereby added to Title 16 [Zoning] to read as follows:

Chapter 16.99

EMERGENCY SHELTER FOR THE HOMELESS OVERLAY

Sections:

16.99.010 Purpose and goals. The purposes of this Chapter are to ensure the development of emergency shelters for the homeless do not adversely impact adjacent parcels or the surrounding neighborhood, and to ensure they are developed in a manner which protects the health, safety, and general welfare of the nearby residents and businesses, while providing housing for the homeless of the community. Further the goal of this Chapter is to create a local approach to housing for the homeless, which includes veterans who, as of the date of the adoption of this ordinance, make up approximately 25 percent of the homeless population in San Mateo County and who may be served by the U.S. Department of Veterans Affairs located in Menlo Park.

16.99.020 Applicability. This Chapter shall apply only to emergency shelters for the homeless and only to the following properties, listed by the San Mateo County Assessor's Parcel Number (APN) as of the date of the adoption of this ordinance: 062470050, 062285320, 062285210, 062285300, 062065050, 062065070, 062285200, 062285220, 062064080, 113910999, 062065060, 062065010, 062064110, 062065030, 062064090, 062064100, 062064140, 062064130, 062490999, 062064120, 062065020, 062490020, 062490010, 113910010, 113910030, and 113910020. Any use other than an emergency homeless shelter shall be regulated by the underlying zoning district.

16.99.030 Permitted uses. The only permitted use in the Emergency Shelter for the Homeless Overlay is a facility housing the homeless with 16 or fewer beds, which shall serve no more than 16 homeless persons at one time. The cumulative number of beds allowed through this Chapter shall be no more than 16 beds, except as authorized by a use permit.

16.99.040 Conditional uses. Conditional uses allowed in the Emergency Shelter for the Homeless Overlay, subject to obtaining a use permit, are as follows:

(1) Single facility housing the homeless with more than 16 beds;

(2) Facility housing the homeless that would increase the cumulative total number of beds allowed through this Chapter above 16.

16.99.050 Development regulations. The emergency shelter for the homeless shall conform to all development regulations of the zoning district in which it is located, except for the off-street parking requirement. A modification to a development regulation of the underlying zoning district may be permitted subject to approval of a use permit by the Planning Commission.

(1) Off-street parking. All required parking spaces and access thereto shall conform to the City parking standards. Parking shall be provided per the requirements and shall not be located in any required yard abutting a street or R district. The Community Development Director may also reduce the parking requirement if the shelter can demonstrate a lower need.

Type	**Parking Spaces**	
Vehicular*	Per employee or volunteer on duty when the shelter is open to clients	1 space
	Per family	1 space
	Per non-family bed	0.25 space
Bicycle	Per bed	0.2 space
*A 10 percent reduction in the overall parking requirement is permitted if the facility is located within one-half mile of a rail station or one-quarter mile of a bus stop that serves at least four buses per hour during the weekday peak periods in the morning (7-9 a.m.) and afternoon (4-6 p.m.).		

16.99.060 Performance standards. The shelter for the homeless shall conform to all performance standards. A modification to a performance standard may be permitted subject to approval of a use permit.

(1) **Waiting and Client Intake Areas.** Shelters shall provide 10 square feet of on-site, interior waiting and client intake space per bed. In addition, one office or cubicle shall be provided per 10 beds, with at least one office or up to 25 percent of the offices designed for client privacy. Waiting and intake areas may be used for other purposes as needed during operations of the shelter.

(2) **Facility Requirements.** Each facility shall include a written management plan that uses best practices to address homeless needs (e.g. Quality Assurance Standards developed by the San Mateo County HOPE Quality Improvement Project) and shall include, at a minimum, the following:

(a) **On-site management:** On-site personnel are required during hours of operation when clients are present. The provider shall have a written

management plan that includes procedures for screening residents to ensure compatibility with services provided at the facility.

(b) **Hours of operation:** Facilities shall establish and maintain set hours for client intake and discharge. The hours of operation shall be consistent with the services provided and be clearly posted.

(c) **Services**: Facilities shall provide overnight accommodation and meals for clients. Staffing and services or transportation to such services shall be provided to assist clients to obtain permanent shelter and income. Such services shall be available at no cost to all clients of the facility.

(d) **Kitchen:** Each facility shall provide a common kitchen and dining room adequate for the number of clients served on a daily basis.

(e) **Sanitation:** Each facility shall provide showers adequate for the number of clients served on a daily basis.

(f) **Storage:** Each facility shall provide secure areas for personal property adequate for the number of clients served on a daily basis.

(g) **Other amenities:** Other amenities may be required that are consistent with the State's provision for emergency housing, as recommended by the Police Department prior to Compliance Review approval.

(h) **Coordination:** The Shelter Operator shall establish a liaison staff to coordinate with City, Police, School District officials, local businesses, and residents on issues related to the operation of the facility.

(3) **Exterior Lighting.** Adequate external lighting shall be provided for security purposes. The lighting shall be sufficient to provide illumination and clear visibility to all outdoor areas, with minimal spillover on adjacent properties. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of an intensity compatible with the neighborhood.

(4) **Security.** On-site security shall be provided during the hours of operation when clients are present.

16.99.070 Compliance review procedures. Each facility proposed under the Emergency Shelter for the Homeless Overlay requires review for compliance with Section 16.099.050 (development regulations) and Section 16.99.060 (performance standards) prior to occupancy of the facility, where a use permit is not required.

(1) **Application.** Requests for compliance review shall be made in writing by the owner of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the City. The application shall be accompanied by a fee, set by the City Council, plans, and a project description explaining the details of the proposal.

(2) **Noticing.** A notice shall be mailed to all property owners and building occupants within 300 feet of the exterior boundary of the property involved, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City. The notice

shall include a description of the proposal, methods for providing comments, and date and time of a public meeting.

(3) **Public meeting.** Prior to making a determination of compliance, the Planning Commission shall conduct a study session. The review by the Planning Commission shall be advisory and non-binding and shall be limited to the proposal relative to the development regulations and performance standards.

(4) **Compliance determination.** The Community Development Director or designee shall make a determination of compliance in writing after reviewing the application materials and considering any comments received. The determination of the Community Development Director is final and not subject to appeal.

SECTION 3: Section 16.04.299 [Emergency shelter] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] for clarity and consistency in implementation of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] as follows:

Section 16.04.299 Emergency shelter. "Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. (Health and Safety Code Section 50801(e))

SECTION 4: A Negative Declaration was prepared that considered the environmental impacts of the adoption of an emergency shelter for the homeless overlay for the identified area and determined that any potential environmental impacts were less than significant.

SECTION 5: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____
Ray Mueller
Mayor

ATTEST:

_____
Pamela Aguilar
City Clerk

ATTACHMENT D

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING AND ADDING DEFINITIONS IN CHAPTER 16.04 [DEFINITIONS] OF TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

a. The City desires to amend and add definitions in Chapter 16.04 [Definitions] of Title 16 [Zoning] to fulfill implementing program H3.B in the City's current 2007-2014 Housing Element, which includes amending zones to specifically allow residential care facilities and transitional and supportive housing as required by State Law.

b. State Law requires transitional and supportive housing to be considered a residential use subject to only those restrictions that apply to other residential dwellings of the same type in the same zone. Similarly, small residential care facilities must be permitted as a residential use.

c. The Planning Commission held duly a noticed public hearing on March 10, 2014 to review and consider the proposed amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

d. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

e. After due consideration of the proposed amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Section 16.04.220 [Convalescent Home] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended to include large residential care facilities and other comparable licensed care facilities and to read as follows:

16.04.220 Convalescent home. "Convalescent home" means a large residential care facility or any structure occupied or intended to be occupied, for

compensation, by persons recovering from injury or illness, or suffering from the infirmities of old age, and any comparable licensed care facility.

SECTION 3: Section 16.04.240 [Dwelling] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended to comply with State Law regarding residential care facilities and transitional and supportive housing and to read as follows:

16.04.240 Dwelling. "Dwelling" means a building or a portion thereof designed and used exclusively for residential occupancy, including one family, two family dwellings and multiple family dwellings, small residential care facility, transitional and supportive housing, but not including hotels, motels or boardinghouses.

SECTION 4: Section 16.04.554 [Residential Care Facility, Large] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to differentiate between small residential care facilities, which are permitted uses and regulated more similarly to residential uses, and large residential care facilities, which are not subject to the same allowances under State law and may be subject to different regulations and to read as follows:

16.04.554 Residential care facility, large. "Large residential care facility" means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by seven (7) or more persons.

SECTION 5: Section 16.04.555 [Residential Care Facility, Small] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to differentiate between small residential care facilities, which are permitted uses and regulated more similarly to residential uses, and large residential care facilities, which are not subject to the same allowances under State law and may be subject to different regulations and to read as follows:

16.04.555 Residential care facility, small. "Small residential care facility" means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by six (6) or fewer persons.

SECTION 6: Section 16.04.662 [Supportive Housing] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to comply with State Law and demonstrate that supportive housing is permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone and to read as follows:

16.04.662 Supportive housing. "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked

to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

SECTION 7: Section 16.04.665 [Transitional Housing] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to comply with State Law and demonstrate that transitional housing is permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone and to read as follows:

16.04.665 Transitional housing. "Transitional housing" means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six (6) months from the beginning of the assistance.

SECTION 8: A Negative Declaration was prepared that considered the environmental impacts of the changes necessary to bring the City's Zoning Ordinance into compliance with State Law relative to residential care facilities and transitional and supportive housing and determined that any potential environmental impacts were less than significant.

SECTION 9: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Ray Mueller
Mayor

ATTEST:

_____
Pamela Aguilar
City Clerk

ATTACHMENT E

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 16.83 [REASONABLE ACCOMMODATION] TO TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

a. The City desires to add Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning] to fulfill implementing program H3.C in the City's current 2007-2014 Housing Element, which includes adopting an ordinance to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing.

b. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

c. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

d. After due consideration of the proposed addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.83 [Reasonable Accommodation] is hereby added to Title 16 [Zoning] to read as follows:

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

Chapter 16.83

REASONABLE ACCOMMODATION

Sections:

16.83.010. Purpose

The purpose of this Chapter is to provide a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations, policies and procedures, and to establish relevant criteria to be used when considering such requests.

16.83.020. Applicability

In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing- related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of his or her choice. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Chapter applies only to those persons who are defined as disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.

16.83.030. Application requirements

(1) A request for reasonable accommodation shall be filed on the application form provided by the Community Development Department. If necessary to ensure accessibility, the applicant may request an alternative format. The applicant may be the person with the disability or his or her representative. The application shall be accompanied by a fee, set by the City Council, and be signed by the owner of the property and shall provide the following information:

   (a) Applicant's name and contact information;
   (b) Property address;
   (c) Current use of the property;
   (d) Basis for the claim that the individual is considered disabled under Fair Housing Laws;

(e) The zoning code provision, regulation or policy from which reasonable accommodation is being requested;
(f) Explanation why the reasonable accommodation is necessary to make the specific property accessible to the individual; and
(g) Plans showing the details of the proposal.

(2) If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval under this Title (including but not limited to a conditional use permit, architectural control, variance, or zoning amendment), the application for reasonable accommodation shall be submitted and reviewed at the same time as the related applications.

16.83.040. Review authority

(1) If an application under this Chapter is filed without any accompanying application for another approval, permit or entitlement under this Title, the Community Development Director shall make a written determination within 45 days and either grant, grant with modifications or deny a request for reasonable accommodation.

(2) If an application under this Chapter is filed with an application for another approval, permit or entitlement under this Title, it shall be heard and acted upon at the same time and in the same manner as such other application, and shall be subject to all of the same procedures.

16.83.050. Findings and decision

(1) Any decision on an application under this Chapter shall be supported by written findings addressing the criteria set forth in this subsection. An application under this Chapter for a reasonable accommodation shall be granted if all of the following findings are made:

(a) The housing, which is the subject of the request, will be used by an individual disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
(b) The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
(c) The requested reasonable accommodation would not impose an undue financial or administrative burden on the City.
(d) The requested reasonable accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
(e) The requested reasonable accommodation would not adversely impact surrounding properties or uses.
(f) There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the City's applicable rules, standards and practices.

(2) In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection (A) above.

16.83.060. Appeal determination

Any decision of the Community Development Director or designee may be appealed by the applicant to the Planning Commission. The appeal shall be made in writing and filed with the Community Development Director within 15 days following the final decision. The appeal shall be accompanied by a fee, as set by the City Council, and shall clearly state the reasons for the appeal. Where the request for accommodation is in conjunction with an application for another approval, permit or entitlement under this Title, the appeal procedures for such other approval, permit or entitlement shall control.

16.83.070. Rescission of grants of reasonable accommodation

Any approval or conditional approval of an application under this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances.

SECTION 3: A Negative Declaration was prepared that considered the environmental impacts of the adoption of procedures for reasonable accommodation for individuals with disabilities and determined that any potential environmental impacts were less than significant.

SECTION 4: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Ray Mueller
Mayor

ATTEST:

_____
Pamela Aguilar
City Clerk

THIS PAGE INTENTIONALLY LEFT BLANK

ATTACHMENT F

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 16.79 [SECONDARY DWELLING UNITS], CHAPTER 16.04 [DEFINITIONS], CHAPTER 16.10 [R-E RESIDENTIAL ESTATE DISTRICT], CHAPTER 16.12 [R-E-S RESIDENTIAL ESTATE SUBURBAN DISTRICT], CHAPTER 16.14 [R-1-S SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT], CHAPTER 16.15 [R-1-S (FG) SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT (FELTON GABLES)], CHAPTER 16.16 [R-1-U SINGLE FAMILY URBAN RESIDENTIAL DISTRICT], AND CHAPTER 16.17 [R-1-U (LM) SINGLE FAMILY URBAN RESIDENTIAL DISTRICT (LORELEI MANOR)] TO TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

a. The City desires to amend Chapter 16.79 [Secondary Dwelling Units] to provide the ability to create additional housing throughout the City to accommodate varying housing needs.

b. The City desires to amend Chapter 16.04 [Definitions] for the purpose of clarifying what is meant by cooking provisions in the definition of secondary dwelling units.

c. The City desires to amend Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor) to enumerate a secondary dwelling unit as a permitted use, subject to meeting certain criteria, and to remove secondary dwelling units as a conditional use in all single-family zoning districts for consistency with the requirements of Chapter 16.79 [Secondary Dwelling Units].

d. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate

Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

e. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

f. After due consideration of the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.79 [Secondary Dwelling Units] is hereby amended to Title 16 [Zoning] to read as follows:

Chapter 16.79

SECONDARY DWELLING UNITS

Sections:

16.79.010 Purpose.
The purpose of this chapter is to set forth criteria and regulations to control the development of secondary dwelling units within the single-family residential zoning districts.

16.79.020 Permitted use.
A secondary dwelling unit developed within the main dwelling or structurally attached to the main dwelling as defined in Section 16.04.145 Buildings, structurally attached, or a secondary dwelling unit detached from the main dwelling, are permitted in a single-family residential zoning district, subject to the provisions set forth in Section 16.79.040.

16.79.030 Conditional use.
A secondary dwelling unit that is either attached or detached and requesting modification to the development regulations, except for items (~~1~~ 2) density~~,~~ and (~~2~~ 3) subdivision, ~~and (10) tenancy,~~ as established in Chapter 16.79.040.

16.79.040 Development regulations.
Development regulations for a secondary dwelling unit are as follows:

(1) Minimum lot area: ~~6,000~~ 5,000 square feet, except for properties located in the R-1-U (LM) zoning district shall have a minimum lot area of 4,900 square feet;

(2) Density: No more than one (1) secondary dwelling unit may be allowed on any one (1) lot;

(3) Subdivision: A lot having a secondary dwelling unit may not be subdivided in a manner that would allow for the main dwelling and secondary dwelling unit to be located on separate lots that does not meet the minimum lot area, width and/or depth ~~or that would result in a lot of less than 7,000 square feet of area or less width and/or depth than~~ required by the single-family zoning district in which the lot is located;

(4) Minimum yards:

(a) Structurally attached secondary dwelling units: Secondary dwelling units developed within the main dwelling or structurally attached to the main dwelling as defined in Section 16.04.145 Buildings, structurally attached, shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located;

(b) Detached secondary dwelling units: Detached secondary dwelling units shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located, with the exception that the minimum rear yard is 10 feet. Furthermore, the interior side and rear yards may be reduced to five (5) feet, subject to written approval of the owner(s) of the

contiguous property abutting the portion of the encroaching structure. If the contiguous interior side or rear property line is an alley, the minimum setback is five (5) feet. The provision of 16.62.020 (1) shall not apply to a detached secondary dwelling unit.

(5) Unit size:

(a) The ~~habitable~~ square footage of all levels of the secondary dwelling unit shall not exceed 640 square feet, except buildings complying with all aspects of the disabled access requirements for kitchens, bathrooms, and accessible routes established in the California Building Code for adaptable residential dwelling units shall have a maximum square footage of 700 square feet;

(b) Secondary dwelling units shall be limited to studio or one-bedroom units and one bathroom.

(6) Height: ~~The maximum wall height of a detached secondary dwelling unit is nine (9) feet and~~ Tthe maximum total height is 17 feet. ~~unless the secondary dwelling unit is located in a flood zone. When a secondary dwelling unit is located in a flood zone, the maximum wall height can be increased proportionally to the minimum amount needed to meet the flood zone requirements for habitable structures as determined by the Building Official. The total height of the structure shall be maintained at 17 feet.~~

(7) Daylight Plane: A daylight plane shall begin at a horizontal line 9 feet, 6 inches above the grade at 3 feet from the side property lines and shall slope inwards at a 45 degree angle. There are no permitted intrusions into the daylight plane.

(~~7~~ 8) Parking: One (1) ~~covered or uncovered~~ off-street parking space that may be provided in the following configurations and areas in addition to the areas allowed for the main dwelling:

(a) In tandem, meaning one car located directly behind another car, including a single-car driveway leading to two required parking spaces for the main dwelling;

(b) Within required interior side yards;

(c) Within required front yards if no more than 500 square feet of the required front yard is paved for motor vehicle use (inclusive of the main residence driveway and parking areas) and a minimum setback of 18 inches from the side property lines is maintained.

The required off-street parking can be provided in either a covered or uncovered space, but all covered parking shall comply with the setback requirements of the main dwelling, if the parking is attached, or the accessory building regulations, if the parking is detached.

(~~8~~ 9) Consistency: All secondary dwelling units shall comply with all applicable development regulations for the single-family zoning district in which the lot is located and building code requirements set forth in Title 12 Building

and Construction of the Municipal Code unless otherwise provided for in this section;

(~~9~~10) Aesthetics: The secondary dwelling unit shall have colors, materials, textures and architecture similar to the main dwelling.

(~~10~~11) Tenancy: Either the main dwelling or the secondary dwelling unit shall be occupied by the property owner when both units are occupied as dwellings units. If a property owner does not occupy one of the dwelling units, the property owner may apply for a non-tenancy status for a term of one (1) year through a registration process established by the Community Development Director. To be eligible for the registration process, a property owner must have lived at the subject property for a minimum of two (2) years of the previous five (5) years from the date of application. The property owner may renew the registration annually, not to exceed four (4) years in total, subject to the review and approval of the Community Development Director, pursuant to criteria established by the Community Development Director. The application for the registration and renewal(s) shall be accompanied by a fee, set by the City Council. A use permit is required for non-tenancy status longer than four (4) years or for waiver of the requirement that the owner reside in the unit for not less than two (2) of the previous five (5) years prior to the date of application.

16.79.045 Conversion of accessory buildings.

(1) An accessory building may be eligible to convert into a secondary dwelling unit, subject to meeting criteria as outlined in Section 16.79.045 (2) and approval of an administrative permit per Chapter 16.82.

(2) Eligibility: The following criteria must be met in order to be eligible for the conversion of an accessory building:

(a) The accessory building must have received building permits and commenced construction prior to May 30, 2014 (insert effective date of ordinance). Other supporting documentation to show the building was legally built may be substituted for a building permit subject to review by the Community Development Director.

(b) The property owner shall have one (1) year from May 30, 2014 (effective date of ordinance) to submit a complete administrative permit application, including all applicable fees and plans, to qualify for the conversion process.

(c) The accessory building must be able to be upgraded to meet the Building Code requirements based on the change of occupancy at the time of the conversion.

(d) The accessory building must meet all of the development regulations of Section 16.79.040, with the exception of minimum yards, which shall be established in the administrative permit.

(3) All or any portion of an accessory building that meets the eligibility criteria as provided in this Section 16.79.045 may be demolished and reconstructed to meet the Building Code requirements based on the change of occupancy at the time of conversion. The secondary dwelling unit that replaces the accessory building may retain the setbacks and the footprint of the legally constructed accessory building. The existing setbacks and footprint of the accessory building must be evidenced by valid building permits or other supporting documentation subject to review by the Community Development Director. Nothing in this Section shall be deemed to authorize the expansion of the footprint or reduction of the setbacks beyond that evidenced by a valid building permit or other supporting documentation subject to review by the Community Development Director or to allow the continuation of any other nonconformity.

(4) This section 16.97.045 shall sunset in its entirety and no longer be effective one (1) year from May 30, 2014 (effective date of ordinance) for any administrative permit application not received by said date.

16.79.050 Mitigation Monitoring.
All second unit development shall comply, at a minimum, with the Mitigation Monitoring and Report Program (MMRP) established through Resolution No. 6149 associated with the Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments Environmental Assessment prepared for the Housing Element adopted on May 21, 2013.

SECTION 3: Section 16.04.295 [Dwelling unit, secondary] is hereby amended to Chapter 16.04 [Definitions] of Title 16 [Zoning] for clarity and consistency in implementation of Chapter 16.79 [Secondary Dwelling Units] as follows:

16.04.295 Dwelling unit, secondary. A "secondary dwelling unit" means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation independent of the main dwelling existing on the residential lot. For purposes of a secondary dwelling unit, permanent provisions for eating and cooking include the following: 1) permanent range, 2) counters, 3) refrigerator, and 4) sink.

SECTION 4: Section 16.10.010 Permitted uses of Chapter 16.10 [R-E Residential Estate District] of Title 16 [Zoning] is hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.10.010 Permitted uses. The following uses are permitted in the R-E district:
(1) Single family dwellings;
(2) Secondary dwelling units in accordance with Chapter 16.79;
(~~2~~3) Accessory buildings.

16.10.020 Conditional uses. Conditional uses allowed in the R-E district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

(1) Public utilities in accordance with Chapter 16.76;

~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~

(~~3~~2) Private schools and churches in accordance with Chapter 16.78;

(~~4~~3) Child day care centers in accordance with Chapter 16.78;

(~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 5: Section 16.12.010 Permitted uses of Chapter 16.12 [R-E-S Residential Estate Suburban District] of Title 16 [Zoning] is hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.12.010 Permitted uses. The following uses are permitted in the R-E-S district:

(1) Single family dwellings;

(2) Secondary dwelling unit in accordance with Chapter 16.79;

(~~2~~3) Accessory buildings.

16.12.020 Conditional uses. Conditional uses allowed in the R-E-S district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

(1) Public utilities in accordance with Chapter 16.76;

~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~

(~~3~~2) Private schools and churches in accordance with Chapter 16.78;

(~~4~~3) Child day care centers in accordance with Chapter 16.78;

(~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 6: Section 16.14.010 Permitted uses of Chapter 16.14 [R-1-S Single Family Suburban Residential District] of Title 16 [Zoning] is hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.14.010 Permitted uses. The following uses are permitted in the R-1-S district:

(1) Single family dwellings;

(2) Secondary dwelling unit in accordance with Chapter 16.79;

(~~2~~3) Accessory buildings.

16.14.020 Conditional uses. Conditional uses allowed in the R-1-S district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

(1) Public utilities in accordance with Chapter 16.76;

~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~

(~~3~~2) Private schools and churches in accordance with Chapter 16.78;

(43) Child day care centers in accordance with Chapter 16.78;
(54) Home occupations in accordance with Section 16.04.340.

SECTION 7: Section 16.15.010 Permitted uses of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)] of Title 16 [Zoning] is hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.15.010 Permitted uses. The following uses are permitted in the R-1-S (FG) district:
(1) Single family dwellings;
(2) Secondary dwelling unit in accordance with Chapter 16.79;
(23) Accessory buildings.

16.15.020 Conditional uses. Conditional uses allowed in the R-1-S (FG) district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:
(1) Public utilities in accordance with Chapter 16.76;
~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~
(32) Private schools and churches in accordance with Chapter 16.78;
(43) Child day care centers in accordance with Chapter 16.78;
(54) Home occupations in accordance with Section 16.04.340.

SECTION 8: Section 16.16.010 Permitted uses of Chapter 16.16 [R-1-U Single Family Urban Residential] of Title 16 [Zoning] is hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.16.010 Permitted uses. The following uses are permitted in the R-1-U district:
(1) Single family dwellings;
(2) Secondary dwelling unit in accordance with Chapter 16.79;
(23) Accessory buildings.

16.16.020 Conditional uses. Conditional uses allowed in the R-1-U district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:
(1) Public utilities in accordance with Chapter 16.76;
~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~
(32) Private schools and churches in accordance with Chapter 16.78;
(43) Child day care centers in accordance with Chapter 16.78;
(54) Home occupations in accordance with Section 16.04.340.

SECTION 9: Section 16.17.010 Permitted uses of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)] of Title 16 [Zoning] is hereby amended to add

secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.17.010 Permitted uses. The following uses are permitted in the R-1-U (LM) district:

(1) Single family dwellings;
(2) Secondary dwelling unit in accordance with Chapter 16.79;
(~~2~~3) Accessory buildings.

16.17.020 Conditional uses. Conditional uses allowed in the R-1-U (LM) district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

(1) Public utilities in accordance with Chapter 16.76;
~~(2) Secondary dwelling units in accordance with Chapter 16.79;~~
(~~3~~2) Private schools and churches in accordance with Chapter 16.78;
(4~~3~~) Child day care centers in accordance with Chapter 16.78;
(~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 10: A Negative Declaration was prepared that considered the environmental impacts of the adoption of the proposed modifications to the secondary dwelling unit ordinance and associated consistency amendments for the identified area and determined that any potential environmental impacts were less than significant.

SECTION 11: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 12: This Ordinance shall become effective 30 days after the date of its adoption, and is applicable to any building permit application received after the date of adoption of this Ordinance. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Ray Mueller
Mayor

ATTEST:

_____
Pamela Aguilar
City Clerk

ATTACHMENT G

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 16.68 [BUILDINGS], CHAPTER 16.04 [DEFINITIONS], CHAPTER 16.10 [R-E RESIDENTIAL ESTATE DISTRICT], CHAPTER 16.12 [R-E-S RESIDENTIAL ESTATE SUBURBAN DISTRICT], CHAPTER 16.14 [R-1-S SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT], CHAPTER 16.15 [R-1-S (FG) SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT (FELTON GABLES)], CHAPTER 16.16 [R-1-U SINGLE FAMILY URBAN RESIDENTIAL DISTRICT], CHAPTER 16.17 [R-1-U (LM) SINGLE FAMILY URBAN RESIDENTIAL (LORELEI MANOR)], CHAPTER 16.18 [R-2 LOW DENSITY RESIDENTIAL DISTRICT], CHAPTER 16.20 [R-3 APARTMENT DISTRICT], CHAPTER 16.22 [R-4 HIGH DENSITY RESIDENTIAL DISTRICT], CHAPTER 16.23 [R-4-S HIGH DENSITY RESIDENTIAL, SPECIAL DISTRICT], CHAPTER 16.24 [R-3-A GARDEN APARTMENT DISTRICT], CHAPTER 16.26 [R-3-C APARTMENT-OFFICE DISTRICT], CHAPTER 16.28 [R-L-U RETIREMENT LIVING UNIT DISTRICT], CHAPTER 16.48 [OSC OPEN SPACE AND CONSERVATION DISTRICT], CHAPTER 16.50 [FP FLOOD PLAIN DISTRICT], CHAPTER 16.67 DAYLIGHT PLANES, AND CHAPTER 16.72 [OFF-STREET PARKING] TO TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

a. The City desires to amend Section 16.68.030 Accessory buildings and/or structures of Chapter 16.68 [Buildings] to more clearly differentiate accessory buildings from secondary dwelling units and accessory buildings from accessory structures, and amend related sections pertaining to daylight planes and off-street parking.

b. The Planning Commission held duly a noticed public hearing on March 10, 2014 to review and consider the proposed amendments to Chapter 16.68 [Buildings], 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)],

Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 High Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

c. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the proposed amendments to Chapter 16.68 [Buildings] 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 HIGH Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

d. After due consideration of the proposed amendments to Chapter 16.68 [Buildings] 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 HIGH Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Section 16.68.030 Accessory buildings and/or structures of Chapter 16.68 [Buildings] of Title 16 [Zoning] is hereby amended to read as follows:

Chapter 16.68

BUILDINGS

Sections:

16.68.030 Accessory buildings and~~/or~~ structures.

~~(a) Accessory buildings and/or structures may be constructed with, or subsequent to the construction of the main building. Where an accessory building and/or structure is attached to the main building, it shall be made structurally a part of the main building, and shall comply in all respects with the requirements of this chapter which are applicable to the main building; provided, however, that garage or carport entrances on a dwelling or dwellings, fronting on any lot line shall be located not less than twenty feet from such line. Unless so attached, an accessory building and/or structure in an R district other than R-4-S shall be located on the rear one-half of the lot and at least ten feet from any dwelling building existing or under construction on the same lot, or any adjacent lot. In the R-4-S district, an accessory building may encroach into the front half of the lot, but the accessory building shall maintain a minimum setback for 50 feet from the front property line unless a use permit is obtained therefor from the planning commission. Such accessory building shall not be located within five feet of any alley; or within thirty-six inches of any property line. In the case of a corner lot, an accessory building may not project beyond the setback required on the adjacent lot. Overall height of an accessory building and/or structure shall not exceed fourteen feet; wall height shall not exceed nine feet.~~

~~(b) The total combined gross square footage of all the accessory buildings and structures on a lot shall not exceed twenty-five percent of the gross square footage of the main building on such lot or seven hundred square feet, whichever is greater. Accessory buildings exceeding these requirements may be allowed, provided a use permit is obtained therefor from the planning commission and recordation of declaration of conditions and covenants relative to the use of the building and/or structure.~~

(1) **Purpose.** The purpose of this section is to set forth regulations to control the development of accessory buildings and accessory structures to ensure their orderly development and compatibility of such uses with surrounding uses and properties, and to minimize impacts associated with such buildings and structures, which are purely ancillary and/or ornamental to the main building or use of the site.

(2) **Requirements generally.** Unless otherwise provided for in a specific zoning district, requirements for accessory buildings and accessory structures in all zoning districts shall be stated in this section; except in non-residential zoning districts, accessory structures not meeting the development regulations may be permitted through approval of a use permit, architectural control, or other discretionary process as part of the project development, or through the approval of the Community Development Director provided the proposed accessory structure is consistent with the use of the site, is compatible with the site and surrounding land uses, and does not add gross floor area.

(3) **Development Regulations**. Development regulations for accessory buildings (living and non-living space) and accessory structures are as follows:

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

Accessory Buildings and Accessory Structures		
Size	Building	The square footage of all levels of an accessory building shall not exceed 25 percent of the square footage of all levels of the main building or 700 square feet, whichever is greater. The size may be increased subject to a use permit and recordation of a condition and covenant relative to the use of the building.
	Structure	
Minimum Yard (Front)	Building	An accessory building shall be located on the rear half of the lot, except in the R-4-S zoning district where the minimum front setback is 50 feet. A use permit may be requested to modify the front setback, with a minimum front setback requirement equal to the zoning district requirement for which the building is located.
	Structure	Minimum setback established for the main dwelling as established by the zoning district in which it is located.
Minimum Yard (Side, Interior)	Building; Non-Living Space	Minimum 3 feet; 5 feet if abutting an alley
	Building; Living Space	Minimum setback established for the main dwelling as established by the zoning district in which it is located. The minimum setback may be decreased subject to a use permit and recordation of a condition and covenant relative to the use of the building.
	Structure	Front half of lot: Minimum setback established for the main dwelling as established by the zoning district in which it is located. Rear half of lot: Minimum 3 feet; 5 feet if abutting an alley
Minimum Yard (Side, Corner)	Building	Setback of adjacent lot
	Structure	Setback of adjacent lot
Minimum Yard (Rear)	Building; Non-Living Space	Minimum 3 feet; 5 feet if abutting an alley
	Building; Living Space	Minimum 10 feet; 5 feet if abutting an alley. The minimum setback may be decreased subject to a use permit and recordation of a condition and covenant relative to the use of the building.
	Structure	Minimum 3 feet, 5 feet if abutting an alley
Separation Between Buildings	Building	Minimum 10 feet from any dwelling on lot or adjacent lot
	Structure	None
Height	Building	Overall height – 14 feet See also Daylight Plane
	Structure	
Daylight Plane	Building	A daylight plane shall begin at a horizontal line 9 feet, 6 inches above the grade at three feet from the side property lines and shall slope inwards at a 45 degree angle. There are no permitted intrusions into the daylight plane.
	Structure	

SECTION 3: Section 16.04.110 [Building and/or structure, accessory] hereby amends Chapter 16.04 [Definitions] of Title 16 [Zoning] as follows:

16.04.110 Building ~~and/or structure~~, accessory. "Accessory building ~~and/or structure~~" means a subordinate detached building ~~and/or structure~~, the use of which is incidental to that of the main building or buildings and/or the use of the land on the same lot or building site, and shall not include any building providing an area for cooking or permanent sleeping quarters.~~; but not including any building used for living or sleeping quarters.~~ For the purpose of accessory buildings, an area containing three or more plumbing fixtures, regardless of the intended use of the space, shall be regulated as 'living space' in the accessory building. Water supplied to washing machines and water heaters are not considered plumbing fixtures for the purposes of this section. In no case shall the 'living space', as defined by this section for the purpose of minimum yard requirements, be used as a dwelling unit. An accessory building that was legally permitted and constructed with four (4) or more plumbing fixtures prior to May 30, 2014 (insert effective date of ordinance) shall not be subject to the limitations set forth in Section 16.68.030 pertaining to minimum yard requirements. The addition of plumbing fixtures would be subject to the minimum yard requirements.

SECTION 4: Section 16.04.664 [Structure, accessory] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] as follows:

16.04.~~110~~665 ~~Building and/or s~~Structure, accessory.
"Accessory ~~building and/or~~ structure" means a separate and subordinate ~~building and/or~~ structure, which is open in nature and the use of which is incidental to that of the main building or buildings and/or use of the land on the same lot or building site.~~; but not including any building used for living or sleeping quarters.~~ Examples of such structures include, but are not limited to arbors, trellises, play structures, built-in barbeques, outdoor fireplaces, and water features. Fences and walls seven feet or less in height are not considered accessory structures and are regulated by Chapter 16.64. Unenclosed ground mounted mechanical equipment are not considered accessory structures.

SECTION 5: Section 16.10.010 Permitted uses of Chapter 16.10 [R-E Residential Estate District] of Title 16 [Zoning] is hereby amended as follows:

16.10.010 Permitted uses. The following uses are permitted in the R-E district:
(1) Single family dwellings;
(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 6: Section 16.12.010 Permitted uses of Chapter 16.12 [R-E-S Residential Estate Suburban District] of Title 16 [Zoning] is hereby amended as follows:

16.12.010 Permitted uses. The following uses are permitted in the R-E district:
(1) Single family dwellings;
(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 7: Section 16.14.010 Permitted uses of Chapter 16.14 [R-1-S Single Family Suburban Residential District] of Title 16 [Zoning] is hereby amended] as follows:

16.14.010 Permitted uses. The following uses are permitted in the R-1-S district:
(1) Single family dwellings;
(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 8: Section 16.15.010 Permitted uses of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)] of Title 16 [Zoning] is hereby amended as follows:

16.15.010 Permitted uses. The following uses are permitted in the R-1-S (FG) district:
1) Single family dwellings;
(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 9: Section 16.16.010 Permitted uses of Chapter 16.16 [R-1-U Single Family Urban Residential District] of Title 16 [Zoning] is hereby amended as follows:

16.16.010 Permitted uses. The following uses are permitted in the R-1-U district:
1) Single family dwellings;
(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 10: Section 16.17.010 Permitted uses of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor) District] of Title 16 [Zoning] is hereby amended as follows:

16.17.010 Permitted uses. The following uses are permitted in the R-1-U (LM) district:
1) Single family dwellings;

(2) Secondary dwelling units;
(~~2~~3) Accessory buildings;
(4) Accessory structures.

SECTION 11: Section 16.18.010 Permitted uses of Chapter 16.18 [R-2 Low Density Apartment District] of Title 16 [Zoning] is hereby amended as follows:

16.18.010 Permitted uses. The following uses are permitted in the R-2 district:
(1) Single-family dwellings;
(2) Duplexes and projects of three or more dwelling units;
(3) Accessory buildings~~.~~;
(4) Accessory structures.

SECTION 12: Section 16.20.010 Permitted uses of Chapter 16.20 [R-3 Apartment District] of Title 16 [Zoning] is hereby amended as follows:

16.20.010 Permitted uses.
The following uses are permitted in the R-3 (Apartment) district:
(1) Single-family dwellings;
(2) Duplexes;
(3) Three or more units on lots 10,000 square feet or more;
(4) Accessory buildings~~.~~;
(5) Accessory structures.

SECTION 13: Section 16.22.010 Permitted uses of Chapter 16.22 [R-4 High Density Residential District] of Title 16 [Zoning] is hereby amended as follows:

16.22.020 Permitted Uses. The following uses are permitted in the R-4 District:
(1) Single-family dwellings;
(2) Duplexes;
(3) Accessory buildings;
(4) Accessory structures.

SECTION 14: Section 16.23.020 Permitted uses of Chapter 16.23 [R-4-S High Density Residential, Special District] of Title 16 [Zoning] is hereby amended as follows:

16.10.010 Permitted uses. ~~The only permitted use in the R-4-S zoning district is multiple dwellings.~~ The following uses are permitted in the R-4-S district:
(1) Multiple dwellings;
(2) Accessory Buildings;
(3) Accessory Structures.

SECTION 15: Section 16.28.010 Permitted uses of Chapter 16.28 [R-L-U Retirement Living Units District] of Title 16 [Zoning] is hereby amended as follows:

16.28.010 Permitted uses. ~~There are no permitted uses in the R-L-U district.~~ The only permitted use in the R-L-U zoning district is accessory structures.

SECTION 16: Section 16.48.030 Permitted uses of Chapter 16.48 [OSC Open Space and Conservation District] of Title 16 [Zoning] is hereby amended as follows:

16.48.030 Permitted uses. ~~There are no permitted uses in the OSC district.~~ The only permitted use in the OSC zoning district is accessory structures.

SECTION 17: Section 16.50.030 Permitted uses of Chapter 16.50 [FP Flood Plain District] of Title 16 [Zoning] is hereby amended as follows:

16.50.010 Permitted uses. The following uses are permitted in the FP district:

(1) Agricultural uses;
(2) Accessory buildings;
(3) Accessory structures;
(~~3~~4) Extraction of chemicals from sea water;
(4~~5~~) Dredging.

SECTION 18: Chapter 16.67 [Daylight Planes] of Title 16 [Zoning] is hereby amended as follows:

16.67.010 Daylight planes in R-E, R-E-S and R-2 zoning districts. Daylight planes for the main dwelling unit are established for each lot as follows:

(A) Daylight plane: A daylight plane shall begin at a horizontal line at a certain distance directly above each side setback line of each lot and shall slope inwards at a 45 degree angle. The distance between the side setback line and the horizontal line directly above it shall be 19 feet, 6 inches above the grade of the side setback line. For an addition to an existing structure, such distance shall be the higher of:
    (1) 19 feet, 6 inches above the grade of the side setback line; or
    (2) 18 feet above the underside of the actual first floor, measured at the side wall, or 20 feet, 6 inches above the grade of the sidewall, whichever is lower.

16.67.020 Daylight planes in R-1-S and R-1-U zoning districts. Daylight planes for the main dwelling unit are established for each lot as follows:

(A) Daylight plane: A daylight plane shall begin at a horizontal line at a certain distance directly above each side setback line of each lot and shall slope inwards at a 45 degree angle. The distance between the side setback line and the horizontal line directly above it shall be as follows:
    (1) Single-story development: 12 feet, 6 inches above the grade of the side setback line;
    (2) Development of two or more stories: 19 feet, 6 inches above the grade of the side setback line. For an addition to an existing structure, such distance shall be the higher of:

(a) 19 feet, 6 inches above the grade of the side setback line; or
(b) 18 feet above the underside of the actual first floor, measured at the side wall, or 20 feet, 6 inches above the grade of the side wall, whichever is lower.

SECTION 19: Section 16.15.020(3) Development regulations, Daylight plane of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential (Felton Gables) District] of Title 16 [Zoning] is hereby amended as follows:

16.15.020 Development regulations. Development regulations in the R-1-S (FG) district shall be the same as those in the R-1-S district except for the following:

(1) Daylight plane: A daylight plane for the main dwelling unit shall begin at each side property line, shall extend directly upwards above the natural grade of each side property line for a distance of 20 feet minus the width of the adjacent required yard, and shall then slope inwards towards the interior of the lot at a 34-degree angle. As used in this section, the natural grade of a side property line is the average grade of the highest and lowest points of the natural grade of the lot at the side property line. No portion of the structure shall intrude beyond the daylight plane except for dormers and gables as provided below and chimneys, vents, antennae, flues, and solar collectors.

Gables and dormers may intrude into the daylight plane of a lot that is 10,000 square feet or less. The permitted intrusion shall decrease on an even gradient from 10 feet in the case of a 5 foot required side setback to no permitted intrusion in the case of an 8 foot required side setback. Thus the permitted intrusion will be 6 feet, 8 inches in the case of a 6 foot required side setback, 5 feet in the case of a 6.5 foot required side setback, and 3 feet, 4 inches in the case of a 7 foot required side setback. Calculations of the permitted intrusion shall include fractional computations when necessary to maintain the even gradient. Gables and dormers may intrude into the daylight plane on one side of a lot only. The gable or dormer must not extend beyond a triangle described as follows:

(a) The base of the triangle is the line formed by the intersection of the building wall with the daylight plane;
(b) The aggregate length of the bases of all triangles intruding into a daylight plane shall not exceed 30 feet; and
(c) The triangle must be entirely within the maximum building height.

SECTION 20: Section 16.17.030(11) Development regulations, Daylight plane of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor) District] of Title 16 [Zoning] is hereby amended as follows:

16.17.030 Development regulations. Development regulations in the R-1-U (LM) district are as follows:

(1) Daylight Plane: A daylight plane for the main dwelling unit shall begin a minimum of 5 feet from the side property line and extend directly upwards from the grade of the property for a distance of 15 feet, 6 inches (vertical plane), and then slope inwards towards the interior of the lot at a 45-degree angle. The vertical plane may be extended to a maximum height of 19 feet, 6 inches above grade subject to written approval of the owner(s) of contiguous property abutting the extended vertical plane or a use permit in accordance with Chapter 16.82. No portion of the structure shall intrude beyond the daylight plane except for dormers and gables as provided below and chimneys, vents, flues and eave overhangs. Solar collectors and antennae may intrude subject to written approval of the owner(s) of contiguous property abutting the intrusion or a use permit in accordance with Chapter 16.82;

Gables and dormers may intrude into the daylight plane. The permitted intrusion shall decrease on an even gradient from 10 feet in the case of a 5 foot required above ground side yard to no permitted intrusion at an 8 foot required above ground side yard. Calculation of the permitted intrusion shall include fractional computation when necessary to maintain the even gradient. The intrusion shall be measured along the uppermost horizontal roofline of the gable or dormer. The gable or dormer intrusion must not extend beyond a triangle in the plane of the building face described as follows:

(a) The base of the triangle is the line formed by the intersection of the building wall with the daylight plane;
(b) The aggregate length of the bases of all triangles intruding into the daylight planes must not exceed 30 feet, of which no more than 12 feet may occur at an interior side yard;
(c) The triangle is limited to a maximum peak height of 24 feet above grade;

SECTION 21: Section 16.72.020 R district uses of Chapter 16.72 [Off-street Parking] of Title 16 [Zoning] is hereby amended as follows:

Section 16.72.020 R district uses. R district parking uses are as follows:

(1) Dwellings: Two spaces per unit, not in any required front or side yard, at least one of which shall be in a garage or carport, unless otherwise specified. When required parking is provided in a detached garage or carport, the parking space may be located in the interior side yard, but not closer than three feet from the property line. Any garage or carport entrance fronting on any lot line, except an alley, shall be a minimum of 20 feet from such line. For alleys, the minimum setback for an entrance facing an alley is five feet.

SECTION 22: A Negative Declaration was prepared that considered the environmental impacts of the adoption of the proposed modifications to the accessory building and/or structure ordinance and associated consistency amendments for the identified area and determined that any potential environmental impacts were less than significant.

SECTION 23: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 24: This Ordinance shall become effective 30 days after the date of its adoption, and is applicable to any building permit application received after the date of adoption of this Ordinance. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Ray Mueller
Mayor

ATTEST:

_____
Pamela Aguilar
City Clerk

PLANNING COMMISSION MINUTES

Regular Meeting
February 10, 2014 at 7:00 p.m.
City Council Chambers
701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:01 p.m.

ROLL CALL – Bressler, Eiref (Vice Chair), Ferrick, Kadvany (Chair), Onken, Riggs (Absent), Strehl

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Jean Lin, Associate Planner; Justin Murphy, Development Services Manager; Kyle Perata, Associate Planner; Corinna Sandmeier, Contract Planner; Thomas Rogers, Senior Planner

A. REPORTS AND ANNOUNCEMENTS

A1. Update on Pending Planning Items
a. Housing Element – City Council – January 28 and February 11, 2014

Senior Planner Rogers said the City Council authorized the City Manager to submit revisions to the draft Housing Element at the January 28 meeting. He said at the City Council's February 11 meeting they would consider approval of supplemental revisions to the draft Housing Element.

b. General Plan – City Council – February 11 and 25, 2014

Senior Planner Rogers said the City Council at their February 11 and 25 meetings would consider the scope of work for the General Plan update and the consultant selection process.

Senior Planner Rogers noted that he had an email discussion with Commissioners Eiref and Kadvany about a planning case for 712 Partridge Avenue in 2013 for which a neighbor had concerns about trees, and the Commission had required a tree protection plan. He said since then, the neighbor reported to the City that during recent construction the tree plan was not being adhered to. He said the City Arborist and Building and Planning Divisions coordinated on making sure the plans reflected the existing conditions and considered revisions to the tree protection plan to insure protection of the redwood tree.

Chair Kadvany asked how criteria for secondary dwelling units would fit within the draft Housing Element. Senior Planner Rogers said he thought that would be folded into the draft Housing Element and that some of those items would at some point require action to amend ordinances.

Commissioner Bressler said there was concern in the community that the proposed secondary dwelling unit criteria and regulations would be too restrictive and expensive. He asked as this was needed to satisfy the Housing Element whether it would be possible later to soften some of the impediments to getting secondary dwelling units built once the Housing Element was in place. Senior Planner Rogers said regarding secondary dwelling units and the Housing Element updates that the intent was to encourage the secondary dwelling units. He said one example was decreasing the minimum lot square footage requirement from 7,000 to 6,000. He said the current proposed revisions would lower that to 5,750 square feet. Commissioner

Bressler said the revisions for the criteria for secondary dwelling units seemed rushed and he was concerned the City would lessen the opportunity for secondary dwelling units. He asked if that happened whether the City would be able to correct that. Senior Planner Rogers said tomorrow night the Council would look at minor text amendments to the draft Housing Element and anything that arose under the Housing Element item on this agenda would go to the Council at a later date.

Commissioner Strehl said she also agreed the Housing Element and the criteria for secondary dwelling units were being rushed. She said she had expressed her concern about that to staff and the Commission Chair. She said this item would be considered late in the evening, and she thought the Commission would not be able to give the subject its due attention, and that the public might not be able to stay to hear the discussion.

B. PUBLIC COMMENTS

There were none.

C. CONSENT

C1. Approval of minutes from the January 13, 2014 Planning Commission meeting

Chair Kadvany said he had comments on item C2 and wanted to pull that from the consent calendar.

Chair Kadvany noted that some emails with several corrections to the January 13, 2014 from Commissioners had been received.

Commission Action: M/S Consensus to approve the January 13, 2014 Planning Commission meeting minutes with corrections as submitted by email.

- Page 15, between 2nd and 3rd full paragraph: Insert "for" between the words "called" and "the"
- Page 19, 5th paragraph, last sentence: Replace "o" with "of" between the words "behalf" and "Kepler's Books"

Action carried 6-0 with Commissioner Riggs absent.

C2. Confirmation of the Summary of the Planning Commission Comments and Recommendations for the General Plan Update Scope of Work

Chair Kadvany said the summary was detailed but he did not think things were prioritized in any fashion. Senior Planner Rogers said the Commission could make clarifications and adjustments to the summary. He said if they needed Development Services Manager Murphy's input he would be at this meeting later this evening so they could move the item until later on the agenda.

Commissioner Bressler said a topic, people mover systems, that the Commission had discussed at length, and which was important to him, was only one line in the summary: He said he recalled the Commission crafted a motion and voted. He said they needed to look at the transcript and bring this item back for consideration.

Chair Kadvany said the City Council would be considering the General Plan update scope of work at their meeting the next evening. He said the Commissioners individually might need to craft something so the summary indicated what the Commission meant. He suggested the item be tabled until later when Development Services Manager Murphy was present. Item was heard between items E1 and F1.

D. PUBLIC HEARING

D1. Use Permit/Casey Cramer/228 Princeton Road: Request for a use permit to demolish an existing single-story, single-family residence and construct a new two-story, single-family residence on a substandard lot with regard to lot width in the R-1-U (Single-Family Urban) zoning district.

Staff Comment: Contract Planner Sandmeier said an additional email of support for the project had been received from Ms. Ann Sason, 204 Princeton Road.

Public Comment: No one was present to speak. Senior Planner Rogers noted the applicant had been asked to attend.

Chair Kadvany closed the public hearing.

Commission Comment: Commissioner Eiref said he thought this proposed design would fit well within the neighborhood. He moved to approve as recommended in the staff report. Commissioner Bressler seconded the motion.

Chair Kadvany said he too thought the proposed design would fit well with the neighborhood. He said he liked the single car garage in front and suggested screening might be needed for any cars that parked perpendicularly.

Commissioner Onken confirmed with staff that there were no issues raised by neighbors or staff regarding the proposed project. He said he could support the project.

Chair Kadvany noting the arrival of people determined there were speakers for the project. Chair Kadvany reopened the public hearing.

Public Comment: Mr. Tim Chappelle, project architect, apologized for being late and that he thought the meeting started at 7:30 p.m. He said the proposed design was for a house and a two-story mass with an L-shape one-story mass for the garage to allow natural light for the courtyard. He said the materials were natural with the intent of bringing the home into the fabric of the community. He said they had communicated with all of the neighbors on all sides throughout the design process, coordinating window placement for privacy and allowing natural light.

Chair Kadvany noted the massing of the second story was to one side and asked if they had considered centering the second story. Mr. Chappelle said the neighbor's property on the side where the second story was placed had a long driveway that would serve as a buffer for the two story. He said the two-story mass was narrow and if it was centered it would impact the shared outdoor space.

Commissioner Ferrick noted the driveway and the unusual way the uncovered parking space would be accessed. Mr. Chappelle said the walled area had a dual purpose where a car could

be parked or the area could be used as a patio when entertaining company. Commissioner Ferrick asked if the perforated areas on the driveway were meant to indicate permeable drainage. Mr. Chappelle said the idea was to break up the hard scape in the front through a change in materials.

Chair Kadvany closed the public hearing.

Commission Action: M/S Eiref/Bressler to make the findings and approve the use permit as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following ***standard*** conditions:
    a. Development of the project shall be substantially in conformance with the plans prepared by Arcanum Architecture, Inc., consisting of 11 plan sheets, dated received January 28, 2014, and approved by the Planning Commission on February 10, 2014, except as modified by the conditions contained herein, subject to review and approval by the Planning Division.
    b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
    c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
    d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
    e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
    f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
    g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.

Motion carried 6-0 with Commissioner Riggs absent.

D2. <u>Conditional Development Permit Amendment/Bob Linder/350 Sharon Park Drive</u>: Request for a Conditional Development Permit (CDP) amendment for a project at an existing multi-building apartment complex located in the R-3-A-X (Garden Apartment, Conditional Development) zoning district. The project would include the demolition of the existing recreation building, the construction of a new recreation building and a new leasing office and associated parking area, façade improvements to all of the existing apartment buildings, and landscaping modifications. The proposed modifications would result in an increase in the maximum building coverage of up to 40 percent at the subject site, which would exceed the current maximum of 30 percent, set by the existing CDP. The proposed amendment to the existing CDP (which covers multiple sites in the vicinity) would apply only to the subject site, and would not alter the development standards for any of the other properties within the CDP. As part of the proposal, up to 42 heritage size trees throughout the approximately 15.6-acre site are proposed for removal, which represents a reduction from the 62 heritage tree removals previously proposed. The Environmental Quality Commission reviewed the proposed heritage tree removals at its meeting on December 18, 2013. ***Continued from the meeting of November 4, 2013 and originally rescheduled and noticed for the meeting of January 27, 2014.***

Staff Comment: Planner Perata said a materials and color board was being distributed to the Commission, and had been presented to them previously at the November 4, 2013 meeting. He said three pieces of correspondence opposing the project, received after the printing of the staff report, had been forwarded to the Planning Commissioners. He said copies were available on the table at the back of the room for the public.

Questions of Staff: Chair Kadvany said the only signage he saw for the leasing office was a small sign on the west side of the building, and asked if that was all the signage that was being proposed. Planner Perata said sheet SG-1.0 in the plan set identified the signs and their locations and details.

Chair Kadvany said most of the windows in the residential units seemed to be slider windows. Planner Perata said that none of the windows as proposed would have grids. Chair Kadvany confirmed with staff that the recreation building and leasing office would have divided light windows. He asked if those would be true divided lights. Planner Perata said that detail could be confirmed with the applicant.

Chair Kadvany said the Environmental Quality Commission (EQC) had recommended a certain base line number for heritage trees. He said the Planning report seemed to follow the recommendations made by the EQC but did not specifically state it was their recommendations.

Public Comment: Mr. Bob Linder, BRE Properties, said he wanted to make an update statement. He said previously they met in November 2013 on the proposed project and since then BRE has entered into an agreement with Essex Realty Trust of Palo Alto. He said there was a merger agreement on the table, and the deal was expected to close in either the first or second quarter of this year. He said there had been comments to wait on improvements until this merger was done but his understanding was that any approvals by the Planning Commission and City Council would run with the land.

In response to a question from Chair Kadvany, Mr. Linder said they and their competitors try to create a lot of volume in the interior of their leasing buildings, and usually there is an 18 to 20 foot ceiling height creating a grand entry space. Chair Kadvany said that the new proposed building would replace a large area of open landscape and although one story, the greater height impacted the aesthetics of the corner like a two-story building would. Mr. Linder said the overall massing matched the current height of the buildings adjacent to it. He said the footprint was 2,000 square feet. Chair Kadvany asked about the windows in the recreation center and the leasing office. Mr. Linder said they would not be true divided light windows. He said the dividers would be in the interior of the dual paned windows.

Commissioner Onken said it appeared the leasing office intruded into the front setback. Planner Perata said the project was developed through a Conditional Development Permit (CDP) with overarching regulations in addition to the Zoning Ordinance. He said the setbacks were defined as part of the development plan approvals and that the setback as shown was the setback of that plan. Commissioner Onken asked what the parallel line to the road and crossing the corner of the leasing office was as it seemed to indicate the leasing office was nonconforming, and noted page A0.1B. Mr. Linder said it was the roof eave line showing over the setback line but the footprint of the building was behind the setback line.

Dr. Uzi Bar Gadda, Menlo Park, said the CDP amendment was requesting a 40 percent cap on building coverage but this site should have stayed at 30 percent cap on building coverage but it was at 38.75 percent. He said the project should not be allowed as there were 15.6 acres of buildings including some model apartments, a leasing office that could be expanded, and an improved clubhouse. He said there were other options besides this proposal and the goal should be to protect healthy heritage trees as well as all the almost heritage healthy trees and not to create a commercial frontage that would sacrifice the trees. He said there were many existing internal building alternatives possible, noting another complex in the area that had improved its site using existing buildings and in which the model apartment were located in the apartment building and not in a separate building. He said signage to the existing leasing office could be improved rather removing 10 healthy long-term heritage trees for the proposed new leasing office. He said he attended the EQC meeting and thought the applicant could work harder to meet the recommendations of that Commission. He said there were trees identified by the City Arborist as impinging on buildings and/or hazardous. He said those needed improvement, and the owner had recently been limbing and trimming those trees. He said he recommended the Planning Commission accept the EQC recommendations and deny the CDP amendment. He said the deal with Essex Realty was more of an acquisition rather than a merger as the dominating partner was Essex Realty. He said there was no need to rush on this project as BRE would be absorbed by the larger entity.

Ms. Amy Poon said she had attended the EQC meeting and they had been unanimous on their recommendations, which she thought were very well thought out. She said the report to the Planning Commission seemed to indicate that BRE was not able to meet those recommendations but wanted the amended CDP anyway. She said BRE had indicated they would plant replacement trees but because those would only be two to five year old trees they would not be protected by the Heritage Tree Ordinance. She said if the Planning Commission approved the CDP amendment that they include the EQC recommendations as conditions of approval. She said she also agreed with the last speaker to wait to see what the new property owner would do with the property.

Mr. Siegfried Schoenf said rather than expanding building coverage to 40 percent he thought the focus should be returning the site to the 30 percent building coverage it should have been

as part of the CDP. He asked if the increase happened what that meant to the overall neighborhood as those residents have valuable properties and pay current tax rates to the City and the school district, and whether they too should be allowed to increase to a building coverage as proposed to be amended for this site in the CDP. He said the applicant had indicated they could not comply with the EQC recommendations as that might cause them to be non-compliant with ADA requirements as they needed to have a section of the walkway accessible. He said that made sense for the leasing office but the reality of the apartment complex was that hardly any of those were ADA compliant. He said they should wait and see what the plans of the new owner for the property would be.

Ms. Aruni Nanayakkara said she had spoken to the Commission before about this project. She said she agreed with all of the comments made already by speakers. She said the question was asked if the exception regarding building coverage was for the entire area under the existing CDP but her understanding was that it would only apply to Sharon Green, the project proposal. She indicated that might lead to others asking for similar dispensation. She thought it would be fair to ask this project to decrease its building coverage to that allowed by the original CDP. She said her other concern was that the EQC voted unanimously on two recommendations for this project, neither of which were included in the new proposal. She said if the applicant could not comply with the EQC's recommendations, she thought the applicant should return to the EQC regarding the portion of the project related to heritage trees. She asked the Commission to do its due diligence.

Mr. Dennis Hanley said he agreed with the prior speakers and the EQC. He said his question with Essex Realty coming in was whether ADA compliance could be part of the permit process. He said there was no accessibility meeting ADA standards at the project facility including walkways to the parking lot and buildings.

Ms. Carole Clarke said the applicant's planned trash pickup did not address the unsightliness of the bins, which had been located on the street and would continue on the street, or the noise, noting that the noise associated with the trash pickup was an ongoing, big problem. She said it was noisy when the big bins were brought out to the pickup area, it was very noisy when the trash was picked up, and it was very noisy when the bins were taken back into the facility. She said she would like to know if there was something the applicant could do to address the other issues and the noise concerns. She said the proposal submitted to the Planning Commission was an improvement over the original one but it still did not address the noise and the unsightliness of the bins associated with trash pickup.

Chair Kadvany closed the public hearing.

Commission Comment: Commissioner Onken said he thought with the amount of the expected construction cost that ADA upgrades would be required as part of the building permit application. He said it was not clear at this stage what accessibility measures were being taken.

Planner Perata said he had spoken with a City Building official previously about his question. He said his understanding was that given the age of the development it was exempt from the ADA requirements of the California building code. He said he could not address the new construction but there were no accessibility requirements for the existing developed buildings because of the upgrade.

Commissioner Ferrick asked staff to address the applicant's response to the EQC recommendations. Planner Perata said the report indicated the applicant looked at some

alternative designs for the leasing office and determined those were infeasible due to some issues with the layout. He said the applicant might clarify how many trees could be preserved if there was a different design for the leasing office. He said regarding the second EQC recommendation, the Planning staff report stated the applicant looked at replacing the tree removals with heritage sized trees and determined there would be long term health and growth issues as larger trees tended to not adapt as well as smaller trees to a new planting area. He said also there was the feasibility of the cost difference between the different sized trees and disruption to the site because of excavation and cranes needed to plant such large trees. Commissioner Ferrick asked about protection of the smaller sized trees before they reached heritage tree size. Planner Perata said the project did not specifically address that but the applicant said they were willing to have a five-year monitoring plan which the EQC recommended in terms of maintaining a baseline number of heritage trees. He said that did not specifically address the non-heritage replacement trees but over time those would grow to heritage size. Commissioner Ferrick asked why there had not been a discussion with the EQC about the infeasibility of heritage size tree replacements. Planner Perata said he had been at the meeting and he thought the applicant had indicated they would consider the feasibility of the recommendation at a later time but he wanted to defer to the applicant as to what transpired.

Commissioner Ferrick asked if staff has worked on the trash pickup issues with the applicant. Planner Perata said they have and as part of the re-submittal there was a modified trash pickup plan described in the staff report. He said they were looking at relocating trash pickup from the street to onsite locations. He said there were currently three locations for trash pickup and two of those would be moved onsite and one pickup would remain on Eastridge Street, which was a smaller neighborhood street.

Commissioner Ferrick asked why the applicant did not have to return to the EQC to explain why they could not accomplish that body's recommendations. Planner Perata said the EQC in this instance like the Planning Commission was a recommending body and ultimately it was the City Council that would review and take action on the project proposal. He said the EQC made recommendations to the applicant, staff and applicant have reviewed those recommendations, and the applicant was making a counter recommendation to those recommendations for the Planning Commission's consideration.

Commissioner Eiref asked what the rationale was for increasing the building coverage to 40%. Planner Perata said currently the site was at 38.75% coverage and the improvements proposed would amount to 39.52% building coverage. He said the applicant was requesting a small increase over that for future flexibility as building coverage in the City included such things as trellises and arbors. Commissioner Eiref asked if this would set a precedent for other properties in the area. Planner Perata said the CDP could be used to modify all development standards except density and floor area ratio (FAR). He said each project was evaluated on the merits of the project itself and would need City Council review and action. Commissioner Eiref asked about other developments in the area done under a CDP. Planner Perata said that most of the developments in the Sharon Heights area were done under a CDP. Commissioner Eiref asked what the most optimal size was for a tree to root and grow in good health. Planner Perata said he would defer to the applicant's arborist.

Commissioner Strehl asked if the applicant would be given an opportunity to speak again and answer Commission questions. Chair Kadvany recognized Mr. Linder to speak.

Mr. Linder said they took the EQC recommendations seriously. He said the essence of those recommendations was establishing a baseline number of heritage trees on site. He said they

had not agreed to the recommendations at the EQC meeting but had responded they would consider the recommendations made. He said both the overall cost of getting large heritage trees and excavating big holes and the overall health of those trees when planted made that recommendation infeasible. He said Essex Realty had looked at their plans and were on board with them currently. He said he understood neighbors' concerns about the number of trees proposed for removal, but the total number of trees onsite currently was 459 and at the plan completion there would be 665 trees, which was a 44% increase over what was there now. He said 31 of the 42 heritage trees requested for removal were because of bad health or structural reasons. He said when they were informed of these hazardous trees by the arborist it was imperative that they take action because of the liability concerns. He said the majority of the heritage trees to be removed were non-native. He said he thought the number of replacement trees exceeding those removed should be taken under consideration.

Commissioner Ferrick asked about the size and type of replacement and new trees proposed for planting. Mr. Linder said the City's Heritage Tree Ordinance required replacement trees to be 15-gallons. He said all of the trees proposed for planting would be a minimum 24-inch box up to a 84-inch box Oak that would be planted on the corner in front of the new leasing office. He said rather than the required 1-to-1 replacement required by the Ordinance, their proposal was a 3.7-to-1 replacement.

Chair Kadvany asked how the new parking area was counted. Planner Perata said the new parking area next to the new leasing office would not be considered building coverage. He said the existing parking structures if considered today would be building coverage. Chair Kadvany said it was indicated the new leasing office would be 2,500 square feet but the total increment of building coverage was 5,100 square feet. Mr. Linder said that would be to allow flexibility for arbors and such things so they would not need to come back to the Council to amend the CDP. Chair Kadvany said rounding up to 40% was an additional 3,300 square feet, and the first increment was from approximately 263,000 square feet to 268,000 square feet. Planner Perata said in addition to the leasing office building there were other site improvements that would increase building coverage. He said as part of the recreation center construction he believed the footprint was a bit larger and there would be a trellised area adjacent to it. He said trellis areas counted toward building coverage. He said also as part of the improvements there would be covered areas next to the bocce courts and gazebo areas added.

Commissioner Strehl confirmed with staff that the CDP if approved would run with the land in perpetuity and not be owned but the current property owner.

Chair Kadvany said he understood what the EQC proposed and he would not like the Planning Commission to do something different from what they proposed but he saw the difficulty in preserving a large heritage tree by relocating it. He said he thought the replacement ratio was good and the original number of trees proposed for removal had been reduced. He said it appeared there was a second arborist's opinion. Planner Perata said there were two arborists involved. He said the City's consulting arborist who re-reviewed the reassessment and the project arborist who did the reevaluation. Chair Kadvany said he walked the site and looked at the trees marked for removal and he could see for at least 90% of them that to his untrained eye looked like trees that were in trouble. He said he did not think there should be a concern that new trees planted would be removed as he did not think residents would let that happen. He said the most noticeable change would be the new leasing building and the driveway.

Commissioner Onken said he reviewed the trees onsite. He said the rest of the plan for upgrading and face-lifting buildings was very welcome. He said the trees onsite seemed like

they had been well-intentioned originally but now were overgrown and somewhat past their prime. He said essentially the question was whether a leasing office was wanted or the large trees. He said he was not completely convinced of the public benefit of the leasing office when weighed against the loss of those large trees.

Commissioner Eiref said he walked around the site and thought it was a tired-looking apartment complex. He said some residents would lose three to four redwood trees on the edge of their patios and he hoped the revitalization plan would provide some coverage for residents who had trees before. He said it seemed like the proposal was moving in the right direction and he was pleased that so many more trees would be added to the site. He said there had been health concerns raised previously by tenants and they had requested new windows before construction began. He said it did not appear that would happen, and asked why.

Mr. Linder said they looked at replacing all of the windows at one time. He said that the type of windows they would use had to be done before the siding and stucco were put on the exterior of the buildings. He said they proposed to do one building at a time with the building being tenant-less, and doing the interior work including installation of fire sprinklers. He said before doing the exterior work of each building they would replace all the windows in that building. He said three months before work would begin they would meet with all the tenants.

Commissioner Eiref said he had no stance on the leasing office.

Chair Kadvany asked if a tenant was near the end of the lease and wanted to renew whether they could stay during construction. Mr. Linder said it would be case by case and that the tenant might want to move into another building that had already been renovated or they might want to stay in their own unit.

Commissioner Strehl asked how many heritage trees would be removed because of the leasing office. Mr. Linder said eight. Commissioner Strehl confirmed that they would plant one very large tree in that area as a replacement. She asked why they were putting the leasing office in that location. Mr. Linder said it was for visibility. He said signage might solve some of that but also the office needed to be more efficient than how it was laid out previously in the ‘60s.

Commissioner Strehl said she also walked the site and was happy to see the number of trees that would now be retained. She said a general refresh of the whole site would be a benefit to all of that area. She asked if the removal of the eight heritage trees for the leasing office was all construction related or if there were other reasons. Mr. Linder said they looked at saving and relocating the heritage plum trees but excavating was one negative factor and boxing them for a period of time before replanting had a high rate of failure and the cost to do that was in the tens of thousands.

Commissioner Ferrick asked about the proposed plan for phasing. Mr. Linder said each phase would be four to six months except the leasing office would take somewhat longer than that. He said that the proposed heritage tree removals would occur during the different phases and not all at once. He said the first phase would be the fire loop and 11 heritage trees would be removed. He said there were six phases overall and for the remaining phases six to eight trees would be removed during each phase. He said replanting would occur as the phase turned to the next phase. Commissioner Ferrick asked if they could incorporate some ADA upgrades although not legally required because of the age of the buildings. Mr. Linder said they looked at that; he said a comment was made that trees were being removed for ADA but that was inaccurate. He said it would be terribly difficult to make the older buildings ADA compliant.

Chair Kadvany asked if the units would remain as rentals. Planner Perata said all of the units at this time were rentals and there was no condominium map. He said someone could apply to convert to condominium in the future which would have Planning Commission and City Council review and approval.

Commissioner Strehl asked about the window replacements. Mr. Linder said when a tenant moved out they would make the interior improvements and the windows would be replaced before the exterior work was done. Commissioner Strehl said she had not walked the entire site but wondered if they would make all the pathways ADA accessible or as much as possible. Mr. Linder said he could not commit to ADA improvements right now but they would look at certain circumstances where there might be one or two buildings they could perhaps enhance and make compliant but he could not guarantee that.

Chair Kadvany said he wanted to clarify the area of the leasing office and parking area noting after that work some units would look toward the parking area rather than a landscaped area as currently. Mr. Linder said there would many more trees planted than what was there currently for Building P. Chair Kadvany said however instead of rolling landscape those tenants in that building would see parking.

Chair Kadvany noted he had received two additional speaker slips, and he would open the public hearing for those two speakers. He called on Mr. Arthur Sipor. Mr. Sipor did not speak.

Ms. Lauri Battista said she was present on behalf of Ms. Aruni Chun who has made great efforts to save the heritage trees in Menlo Park. She said the City needed to consider doing business differently. She named a book by John Mackey, CEO of Whole Foods, called “Conscious Capitalism,” that specifically addressed the need for business to take into consideration all of its stakeholders not just the shareholders. She said the cry from the community about this project was related to trees and trees were what made Menlo Park desirable and provided good air quality. She suggested the applicant adjust their plans and work with the landscape. She asked that the applicant consider how long it would take for the heritage trees being replaced to grow to where they were, noting some have grown for 150 years.

Chair Kadvany closed the public hearing.

Commission Comment: Commissioner Ferrick said she appreciated their tree replacement ratio and the proposed size of those trees. She said she questioned however the need for the expanded leasing office as there was an already maxed out FAR on the site. She asked how the goal of the leasing office might be achieved in some other way in a different location that would not impact the healthy heritage trees.

Chair Kadvany said he thought the parking area proposed for construction would impact the landscape area and was suboptimal in his opinion.

Commissioner Bressler said the residents wanted trees and the amenities with an expanded leasing office. He said whatever was proposed for the site should be supported by the residents.

Recognized by the Chair, Mr. Linder said that most of the speakers at tonight’s meeting did not live at the apartment complex. He said the recreation facility and expanded gym were amenities that were required in today’s apartment communities. He said since the EQC meeting they

looked at three different alternatives for the leasing office. He said two trees would be saved through those alternatives but a great deal more grading would be needed, including retaining walls and switchbacks, which were not optimal. He said another issue was the drive through the parking area mentioned by Chair Kadvany. He said as proposed it was two way but with the alternatives it became one way with a pinch point.

Responding to a question from Commissioner Bressler, Mr. Linder said the occupancy rate was at 96%. Commissioner Bressler asked why improvements were needed as that was a high occupancy rate. Mr. Linder said the complex was very dated. Commissioner Bressler said the addition of amenities was to support lease amount increases. Mr. Linder said the turn rate also had to be considered and they have had people rent for a few months and then leave for another apartment complex with better amenities.

Commissioner Onken said that with high occupancy rates it was unclear what the need for a new, more visible, leasing office was. Mr. Linder said currently the leasing office shared space with maintenance and the fitness club, and there was no room to take deliveries for tenants. Commissioner Onken said it sounded like the leasing office was intended to support concierge services for the tenants.

Chair Kadvany asked what was between the leasing office and Building N. Mr. Linder said that was a garden area they would be planting.

Commissioner Ferrick said pages H1, H2, and H3 described the phases of construction but it did not specify that this was the order in which the construction phases would occur. Mr. Linder showed page A1.1 that described the order of the phases.

Commissioner Onken said he appreciated the residents' concerns about trees. He said the project would cause the loss of heritage trees around the perimeter which would then be replaced at a higher ratio than what was required. He said he did not think the species of trees proposed for removal were overly significant to their Tree City quality and some of the trees such as the Stone Pines were dangerous growing against some of the existing buildings. He said he was happy with the general tone of the site. He said questions about ownership were not relevant to what the Commission's task was in reviewing this project proposal. He said this was a single-use permit, with a single plan and a single package of proposals that had nothing to do with who might own the property. He said the number of trees to be planted had swayed him to accept the leasing office and that the improvements to the rest of the site were substantial.

Commissioner Bressler said an analogy would be a home that was being rented out and the owner requested a variance so the home could be built to the same FAR as others. He said the Commission would not approve a variance and this project was making the same request.

Chair Kadvany did not understand the need for a monumental one-story building for the leasing office but it was an attractive building. He said the improvements to the other buildings were absolutely necessary. He said his complaint was the new parking area. He said the applicant had responded to the concerns about the trees.

Commissioner Ferrick said that she would not want to lose housing units.

Commissioner Eiref said the area has a shopping center, businesses and housing. He said there are beautiful trees along Sand Hill Road. He said the quid quo pro might be the high ratio of tree replacement.

Chair Kadvany asked about the building coverage increase to 40% as that equaled more square feet than the leasing office square footage. Planner Perata said the elements that could be built with the additional square footage would require architectural control but would not need the Council to amend the CDP.

Commissioner Ferrick asked about Below Market Rate housing, and if that could be tied as a requirement for increasing building coverage to 40%. Senior Planner Rogers said the CDP process allows for a holistic review of an overall project and deliberately gives flexibility from different development standards to achieve some creativity for an overall structure that makes more sense than a strict adherence to every rule. He said in this case that the Commission was reviewing and would go to the Council for approval or not, the considerations should not be whether the applicant was asking for something they shouldn't, or that they were trying to get away with something, or that they need to provide something back to the City. He said the overall question was did the project fit right as a whole. He said there were other Districts such as the new R-4-S that have a 40% building coverage. He said this was not a variance where a hardship had to be determined.

Commissioner Bressler said he was not necessarily a fan of restricted rent amounts, but he thought with this proposed work the rents at the complex would increase greatly, and that would affect people. He said there was a constituency that wanted to stay in this complex as it was. He said there seemed to be a great disconnect between the company running this property and the tenants, and now the property was being acquired by another company. He said as a Commissioner he would be the one to force a reconnection and that was what this was about and not whether the project fit. He said he would vote no on the project.

Commissioner Eiref said it seemed that the discrepancy in building coverage had something to do with submerged parking lots or even a change in how the City calculates that over the last 30 to 40 years, and he thought that should be clarified. Planner Perata said staff was unsure how the project got to 38.75% building coverage but it might have been how covered parking structures were counted in 1965 or 1970. He said based on how building coverage was counted now resulted in the 38.75%.

Chair Ferrick said it sounded like the Commission could not ask for anything as a condition, but on page 2 of the staff report, it stated: "for the Planning Commission's reference, the X (Conditional Development) district is a combining district that combines special regulations or conditions with one of the Zoning Ordinance's established zoning districts." She said that sounded different from what Senior Planner Rogers had explained to her. Senior Planner Rogers said every project carried conditions but regarding the applicability of a condition, the City Attorney has generally said there needed to be a nexus between what was being requested, what impacts there might be, and the intent of the condition. He said in this instance there didn't appear to be an immediate connection between increasing building coverage and requiring affordable housing. Commissioner Ferrick said the connection was that with the improvement of the property and additional amenities that more than likely that would increase the rent significantly, and if not the BMR program perhaps there should be some type of rent control for the existing tenants.

Chair Kadvany said he had previously asked about comparable sized apartment complexes in the City and this project was one of the largest. He said if people wanted to initiate something related to rent control they had time to do so but he did not think this was the right venue for that. Commissioner Ferrick said as a recommending body they could add communication about something that concerned them. She said her concern was that rent increases because of the proposed improvements would impact current tenants. Commissioner Strehl said she thought they could make a recommendation to the City Council that this was an issue of concern but she did not know if they could be prescriptive about how that was dealt with as it was unclear whether that was within their jurisdiction.

Chair Kadvany said he would move to recommend to the City Council to make the finding and adopt resolutions approving the CDP amendment and the heritage tree removal permit, and express concern about the potential of significantly increased rents for tenants.

In response to Chair Kadvany, Planner Perata said he thought the rent increase concern could be passed along to the City Council as a statement of concerns along with the recommendation to approve.

Commissioner Eiref said he thought the rents were already very high at the complex. Mr. Linder said he did not have all the market surveys for the surrounding communities but said their company was not as competitive as they would like to be. He said their rents range from $2,700 up to $5,200 a month, with the latter being for a three bedroom unit.

Commissioner Strehl noted that the complex had 96% occupancy.

Commissioner Bressler said he was not a proponent of rent control. He said the issue he saw was they were giving the applicant extra square footage, allowing trees to be removed, and it was not to the benefit of the current tenants but only for the benefit of the property owners. He said there had not been a process of give and take.

Commissioner Strehl said there was benefit from the proposed project to the current residents in that they would have improvements including window replacement. Commissioner Bressler said there was no dispute about that but he was referring to the leasing office and recreation center.

Commissioner Strehl seconded the motion made by Chair Kadvany.

Commissioner Ferrick said she was still concerned with the significantly higher building coverage as more building could occur resulting in the loss of more open space. She said this was a good overall update to the site, but she lamented the 11 healthy heritage trees that would be removed. She said she appreciated the greater ratio of replacement trees than what was required and the effort to replace with good sized trees. She said she was not convinced that the leasing office needed to be the size or at the location proposed. She suggested there might be some other accessory building that could be the leasing office. She said while the increase in building coverage was not meant to be precedent setting she thought it necessarily would be.

Chair Kadvany said there seemed to be some feeling on the Commission that perhaps the leasing office was not needed or should be accommodate elsewhere.

Commissioner Strehl said the comment by the applicant that the leasing office would serve as a concierge office for the tenants resonated with her. She said she was not sure having the

leasing office in one of the model apartments could accommodate that service. She said essentially there were tradeoffs with the project.

Commissioner Ferrick said in general there was a lot she liked about the project but there were a few sticking points. She said she agreed there was a tradeoff in balance.

Commissioner Onken said he would like to call the question.

Commission Action: M/S Kadvany/Strehl to recommend to the City Council:

1. Adopt a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current CEQA Guidelines.

2. Adopt a Resolution approving the Conditional Development Permit amendment for the increase in building coverage at the subject site, in conjunction with the construction of a new leasing office and recreation center building and related site improvements, subject to the requirements of the Conditional Development Permit. (Attachment D)

3. Adopt a Resolution approving the heritage tree removal permits. (Attachment M)

- The Planning Commission is concerned that the proposed improvements could increase the rental rates for the existing tenants at the site.

Motion carried 5-1 with Commissioner Bressler opposed and Commissioner Riggs absent.

Chair Kadvany encouraged the members of the public to continue presenting their concerns and possible resolutions to the City Council as well as to the property owners and future property owners.

Commissioner Ferrick said she reluctantly supported the proposal but she was not comfortable with taking down healthy heritage trees for a leasing office that seemed additive on an already maxed out site. She said it was clear there had been relationship breakdowns between the residents and the property managers, and hoped that relationships would be worked on in the future.

E. REGULAR BUSINESS

E1. **Architectural Control/Rob Fischer/1090 El Camino Real:** Request for architectural control to allow exterior modifications to an existing two-story commercial building in conjunction with a restaurant use in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The proposed exterior modifications would include removing an existing arbor in the plaza shared with Menlo Center (1010 El Camino Real), relocating the main entry from the El Camino Real frontage to the Santa Cruz Avenue frontage, installing a new canopy at the main entry, adding a new exterior staircase on the Santa Cruz Avenue frontage within the shell of the existing building, and constructing a new rooftop deck at the rear of the existing building. The rooftop deck would include an elevator penthouse, stair enclosure, and a canopy shade structure. The proposed restaurant would include outdoor seating on the ground floor in the plaza, as well as on the rooftop deck. The gross floor area for the building would not increase as part of the project.

Staff Comment: Planner Lin said staff had received two additional pieces of correspondence. She said the first was an email from Ms. Eileen Leeman, a resident on Oak Grove, expressing concern with expanding the dining area to three stories with the addition of a roof top deck, and a preference for two stories of dining area for the restaurant. She said the second was an email from Ms. Lenore Hennen, Merrill Street, expressing concern with noise associated with rooftop deck dining area until 2 a.m. and requesting that the rooftop deck use be limited to no later than 10 p.m.

Questions of Staff: Chair Kadvany asked about the wide window of operation for the facility noting it was from 7 a.m. to 2 a.m. Planner Lin said the applicant could further elaborate but her understanding was that the time period requested was to allow some flexibility in their operations.

Commissioner Eiref asked if there was a precedent for other restaurants in Menlo Park to operate until 2 a.m. Planner Lin said there were none to her knowledge but there were no bans on restaurants operating until 2 a.m. and there were precedents of late night dining in other nearby cities.

Commissioner Eiref said there had been challenges about the prior establishment, BBC, and asked if there was context on that. Planner Lin said the previous operator for the restaurant from what she gleaned from the files had not operated the restaurant in the most compatible way possible with the neighborhood. She said also there had been an assault in the restaurant and some issues with compliance with their liquor license. She said the property owner was the same but the restaurant would be under a new operator. Senior Planner Rogers said some of the events related to the prior operator were clustered around evenings when live entertainment was offered. He said there was approval for some band nights which flowed over into DJ and Karaoke nights. He said to the extent there were fights those were clustered around live entertainment nights which created more of a bar atmosphere. He said an area of distinction between the prior operations and this proposal was that there was no live entertainment being proposed. He said an application for live entertainment could be made in the future and would require an administrative permit with required noticing the same as a use permit. He said an administrative permit could be appealed to the Planning Commission.

Public Comment: Mr. Cass Calder Smith, CCS Architecture, said he had designed a number of restaurants for Mr. Rob Fischer, the applicant. He said they were changing the exterior of the building very little and treating the building as a City treasure. He said the entry from El Camino Real never worked well so they would move the entrance to the Santa Cruz Avenue side, which would be safer and more practical, and allow for valet service. He said inside there would be a main dining area in the front, an open kitchen, a dining area in the rear, outdoor dining, dining on the mezzanine, and to increase the outdoor dining a rooftop deck away from El Camino Real.

Commissioner Eiref asked if there was a way to screen noise from the roof deck and if it would be a bar or dining. Mr. Smith said it was dining with a bar and food service capability. He said there was a wall where the elevator and stair were on the Santa Cruz Avenue side and the two open sides were toward El Camino Real. He said the area would have a canvas roof which would help to contain noise.

Chair Kadvany asked about the external staircase and security gate. Mr. Smith showed the main entry to the restaurant and a vestibule for receiving and an exit. He said there would be

an elevator and stairwell. He said if the vestibule became an attractive nuisance they would request later to have a roll down security door.

Commissioner Strehl said the exterior stairway went to the roof, and asked if that was the only way to get to the roof. Mr. Smith said there were two other ways. He said from indoors on an elevator or a stairway. Commissioner Strehl asked why the exterior stairway was needed. Mr. Smith said that was to provide a clear way to get from the top to the bottom of the building.

Mr. Rob Fischer, applicant, said regarding the window for operations of 7 a.m. to 2 a.m. that the first year they would offer brunch, lunch and dinner with a possibility of maybe breakfast but that was not definite at this moment. He said at 7 a.m. employees would be in the restaurant cleaning and cooking. He said at his restaurant Gravity in Palo Alto they served dinner until midnight and until 1 a.m. on Friday and Saturday. He said the company was solid and they would not put up with what went on at the BBC previously. He said they were offering Menlo Park a quality restaurant that would provide fun for the residents and a place residents would be proud to bring their family and guests.

Chair Kadvany asked about the parking, noting underground parking at Menlo Center, and also his expectation that this restaurant would be busier than the BBC had been. Mr. Fischer said they have 175 shared spaces with Borrone's and Kepler's but those businesses would tend to be tapering off when their restaurant use would increase for dinner. He noted Caltrain proximity and that there was some on street parking. He said he felt comfortable with the amount of parking.

Commissioner Strehl asked if the bar would operate until 2 a.m. Mr. Fischer said the ABC code allows alcoholic beverages until 2 a.m. but after 2 a.m. there could be no drinks on tables. Commissioner Strehl asked what they did at their other similar businesses. Mr. Fischer said if business on a Monday night was slow they might close at 10:30 p.m. He said their business was centered on dining. He said at Reposado in Palo Alto if they have no dinner patrons after 10 p.m. they might close at 11 p.m. He said they had no interest in live music or dancing, and that theirs was a food operation.

Chair Kadvany asked the applicant to talk about the operation of the rooftop. Mr. Fischer said he expected this space would be used for events and rented but otherwise it would be open. He said they would serve light dishes as the main menu would not be doable because of the distance from the main kitchen.

Ms. Fran Dehn, Chamber of Commerce, said many were familiar with the restaurants that Mr. Fischer has turned around, and she wanted to thank Mr. Fischer for selecting Menlo Park and a landmark for revitalization. She said the Specific Plan clearly delineated the community's desire for downtown vibrancy and night life. She said Mr. Fischer and the BBC's property owner would become partners in realizing the community's goal. She said the building at 1090 El Camino Real was a gem and the applicant's plan would bring it back to an active and positive environment versus its current passive nature. She said on behalf of the Menlo Park Historical Association she wanted to thank staff and the applicant for the information on the history of 1090 El Camino Real.

Mr. Ron Adachi, Greenheart Land Company, noted a nearby development his company was involved in, and expressed his group's support for this project. He said that Mr. Fischer was a solid, reputable restaurant operator and as Ms. Dehn said, this project would support the Specific Plan goals.

Mr. Robertson “Clay” Jones said he was a 16-year resident of Menlo Park and had long memories of the BBC. He said it was a special building and a hallmark. He gave kudos to the project team for keeping the look and feel of the building and putting in a high class restaurant there. He said he has visited the other restaurants operated by Mr. Fischer and they were spectacularly run. He said he strongly supported approval of the project.

Mr. Ray Mueller, Menlo Park City Council Mayor, noted he was speaking as an individual. He said the last time he was at the Planning Commission was when the Commission was considering food trucks, and part of the rationale for the Commission’s approval had been a desire to have vitality in that space. He said now the Commission was considering a fabulous brick and mortar restaurant on property that was the flagship of Menlo Park. He said he supported the project and it was a great opportunity for the City.

Mr. Peter Ohtaki, Menlo Park City Council member and former Mayor, noted he was speaking as an individual. He said he very much supported this project. He said the strategic location of 1090 El Camino Real could not continue to stay vacant. He said it was difficult to develop as they wanted to preserve the historical building and exterior but the interior needed a huge update. He said he went to the BBC a few years ago and it looked the same as it had in the 1980s when he used to go there. He said they needed more restaurants downtown and that by creating a critical mass especially with a restaurant that in itself becomes a destination restaurant that would help create something like Laurel Street in San Carlos with destination restaurants and walkability to restaurants and alternatives. He said if parking did become an issue in the underground garage that there were potential solutions.

Chair Kadvany closed the public hearing.

Commission Comment: Commissioner Onken said he thought the new entrance on Santa Cruz Avenue would be beneficial as that was currently dominated by McDonald’s. He said regarding the outdoor and activities noise concerns that he did not think noise from the rooftop terrace would be any greater than that generated from outdoor tables. He said he was very supportive of the project.

Commissioner Ferrick moved to make the findings and approve as recommended in the staff report. She said she was pleased with the proposal’s use of the landmark building. She said the Station Area was going to be vitalized and she was happy to make the motion to approve. Commissioner Onken seconded the motion.

Commissioner Bressler said this was the first retail application for this area that he could recall that did not have other retailers opposing.

Commissioner Eiref said part of the visioning for the Specific Plan was the vitalization of what was designated as the Station Area. He said this proposal supported that vision.

Chair Kadvany said he agreed with other Commissioner comments and he agreed with Mr. Ohtaki’s observation that this could become a destination restaurant noting the design and the scale of the project. He said this was a great project and would set the bar for future projects in the El Camino Real area.

Commission Action: M/S Ferrick/Onken to approve as recommended in the staff report as follows.

1. Make findings with regard to the California Environmental Quality Act (CEQA) that the proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program EIR, which was certified on June 5, 2012. Specifically, make findings that:

    a. The project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current CEQA Guidelines.

    b. Relevant mitigation measures have been incorporated into the project through the Mitigation Monitoring and Reporting Program (Attachment E), which is approved as part of this finding.

2. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:

    a. The general appearance of the structure is in keeping with the character of the neighborhood.

    b. The development will not be detrimental to the harmonious and orderly growth of the City.

    c. The development will not impair the desirability of investment or occupation in the neighborhood.

    d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.

    e. The development is consistent with the El Camino Real/Downtown Specific Plan. The exterior changes would comply with relevant design standards and guidelines. In particular, standards and guidelines relating to the building entry and architectural projections would be addressed.

3. Approve the use permit and architectural control subject to the following ***standard*** conditions:

    a. Development of the project shall be substantially in conformance with the plans prepared by CCS Architecture, consisting of 30 plan sheets, dated received February 4, 2014, and approved by the Planning Commission on February 10, 2014, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.

    b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, Recology, and utility companies' regulations that are directly applicable to the project.

    c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.

d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.

e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.

f. Prior to commencing any construction activities in the public right-of-way or public easements, including, but not limited to, installation of the proposed canopy over the public sidewalk, the applicant shall obtain an encroachment permit for review and approval of the Engineering Division.

4. Approve the use permit subject to the following ***project-specific*** conditions:

a. Future proposals for roll-down doors or other security features for the vestibule areas for stairs #2 and #3 shall be considered based on a demonstrated need for additional security, and may be submitted for review and approval of the Planning Division. Roll-down doors shall be considered in conjunction with the proposed business hours.

b. All outdoor noise amplification must meet required noise levels at any residential property line in accordance with the Noise Ordinance.

c. Any citation or notification of violation by the California Department of Alcoholic Beverage Control or other agency having responsibility to assure public health and safety for the sale of alcoholic beverages will be grounds for considering revocation of the use permit.

d. Concurrent with the complete submittal of a building permit, the applicant shall submit a deed restriction for review and approval by the Planning Division and City Attorney that indicates the entirety of the existing basement shall be non-usable, non-occupiable space, and that conversion of this space into usable or occupiable space would be subject to review and discretionary approval, and may require the elimination of gross floor area elsewhere on the property. The applicant shall submit documentation of recordation with the San Mateo County Recorder's Office to the Building Division prior to issuance of a building permit.

Motion carried 6-0 with Commissioner Riggs absent.

Chair Kadvany noted the arrival of Development Services Manager Murphy and that the Commission had tabled Item C.2 Confirmation of the Summary of the Planning Commission Comments and Recommendations for the General Plan Update Scope of Work to discuss with Mr. Murphy.

C2. Confirmation of the Summary of the Planning Commission Comments and Recommendations for the General Plan Update Scope of Work

Commissioner Bressler said he recalled much more specific language on the recommendation to look at a people mover system and even that there might have been a motion about it. Development Services Manager Murphy said he did not recall a motion but if the Commission wanted to consider the topic again they could.

Commissioner Bressler said the idea was that the General Plan would mandate that we look into improving east-west connectivity without using cars. He said a people mover system should be mentioned. He said east-west connectivity in the Specific Plan has not been addressed well at all. He said he did not think the summary of comments captured the importance of that.

Commissioner Onken said the focus of the list was the east-west connectivity and the Commission had talked about that as a general theme throughout the General Plan and especially in the Circulation Element.

Commissioner Strehl said they had discussed residential design guidelines and in the summary it indicated the Commission would look at those in the context of substandard lots. She said her point was if they were going to have residential design guidelines then they should have them apply to all residential lots. She said it seemed the City set a different bar for substandard lots than for larger lots. She asked where it was that the City could start looking at how substandard lots were treated and what the definition of a substandard lot was. She said that City Councils in the past had defined substandard lots and she thought that this might need to be reviewed again.

Commissioner Eiref said he agreed with supporting ways to address east-west connectivity but was not sure about a people-mover system. He said a Commission had expressed concern with building homes near the Bay because of flood threat but he thought it was a great place to build homes as long as they were built to protect against flooding impacts. He said he had brought up residential design guidelines. He said he thought that was something that needed to be represented in the comments on the General Plan and in the balance of what they wanted to get done with the General Plan overall. He said it was mentioned somewhat in the relationship of impacts and benefits. He said with the Specific Plan they had gotten caught up with challenging perspectives as to what the benefits were from development proposals. He said they should learn from that process and make the tradeoffs explicit as to either economic or some clear, tangible and measurable benefit more so than they had in the Specific Plan. He asked of the bullet points summarizing their comments whether it would made sense to prioritize three or four of those topics.

Commissioner Onken said he thought prioritizing would take a lengthy discussion but that it was appropriate to add to the list and if there was something that needed striking out to do so.

Chair Kadvany said he thought it might be possible to prioritize. He said extending the scope of residential design guidelines citywide was something to be emphasized noting they had talked extensively about that and yet it was limited separately as an element which seemed to diminish its force. He said to clarify that the second to last bullet to seek out opportunities for pilot projects for testing during the General Plan update was rather than waiting for the General Plan completion.

Development Services Manager Murphy said he needed Commission collective comments rather than individual Commissioner comments on the proposed scope of work for the General Plan update. He said if they wanted individual Commission comments listed that could be transcribed by February 25 but not for the meeting tomorrow night.

Commissioner Eiref said that he thought prioritizing three or four collective comments would serve informing the scope of work for the General Plan update.

Chair Kadvany asked about east-west connectivity and new technology.

Commissioner Ferrick said she agreed with that topic and highlighting three top items, but she did not agree with residential design guidelines as she thought that would be impossible. Chair Kadvany said it depended on how they were formulated and that they did not have to be prescriptive but recommended and educational. Commissioner Strehl said why she supported

residential design guidelines was that the Commission often cited residential design guidelines to applicants but the City did not have guidelines. She said they were needed to create an even playing field for the applicants as to what the Commission's and City Council's expectations were, otherwise it seemed like an uneven decision making process. Commissioner Ferrick said she agreed that it was incumbent upon the Commission to not act as though they have residential design guidelines when in fact they don't and that it was untrue there were certain design styles to be adhered to.

Commissioner Eiref proposed going down the list and taking a quick vote, and if things did not have majority vote to cite those separately lower down the list

Chair Kadvany cited the first item on the list.

- Include the Lorelei Manor and Suburban Park neighborhoods in the targeted outreach similar to the Belle Haven neighborhood.

Commissioner Strehl asked if that item was referring to the M-2. Development Services Manager Murphy said that was in the context of the M2. He said the two basic things were circulation update which was citywide and land use change which was the M2. He said those were the two basic things the Council was contemplating. Commissioner Strehl said some of the listed items would be specific to the M2. Commissioner Ferrick said they had only discussed this topic very briefly and it confused her when she saw it as the first bullet. She suggested listing bullet points in the context of M2 or circulation.

Chair Kadvany said he rejected narrowing the list to three priorities as there were a number of things framed as the M2 development and he was somewhat frustrated as to what would be the scope of work for the General Plan Update. Commissioner Ferrick said she agreed but the first bullet point did not seem to have a reference and needed more context. Commissioner Eiref said similarly the last bullet point: "Pursue new ways to reach out and communicate with people, especially those that do not attend traditional meetings." could be listed with the first bullet point in context.

- Articulate the City's vision for the use of the Dumbarton Rail Corridor.

Commissioner Eiref suggested this might be related to east-west connectivity. Commissioners Strehl and Ferrick thought it was more applicable to the M2. Commissioner Eiref suggested voting on items.

- Clarify the term "Complete Streets", clarify whether it is already embodied in the existing General Plan, and clarify whether it is a given for inclusion as part of the Update.

Chair Kadvany said what was absent in the bullet point for "Complete Streets" was there was a complete disconnect between when residents thought complete streets meant and what staff meant. He said that might be a scoping issue as there might need to be extra meetings as it was a means to get money from the state and it would also affect people's neighborhoods.

Development Services Manager Murphy said the list presented was the general order of things discussed at the Planning Commission meeting and if someone repeated something he tried to include that. He said if they wanted to wordsmith he needed them to give him the exact words they wanted to change. He said one thing he was hearing from the Commission that might be a

complete disconnect from where the Council was at and the list was the residential design guidelines. He said the other things listed had to be worked out through the process. He said they needed as a matter of course to make sure that everyone understood what "Complete Streets" means. He said the rest of the items listed were great ideas and it was a matter of residential design guidelines that was a potential disconnect with the scoping of work. He said regarding Commissioner Bressler's comment that there had been a motion made about the people mover system and east-west connectivity that specific motion was made when the Commission was discussing the CIP and that was transmitted to the City Council. He said the Commission could spend more time on this item for the Council meeting of February 25 but for tomorrow night if there was one thing they wanted to message perhaps that was residential design guidelines.

Chair Kadvany said regarding residential design guidelines they might communicate that the Commission held a study session on that and from that wanted to pursue guidelines as not a necessarily rigid, highly prescriptive framework but from the perspective of education, communication, understanding neighborhood context, and using elements of guidelines used by other cities.

Commissioner Ferrick said that was dealing with the process and she thought how it was listed in this summary was done well. She said it reads: "but at a minimum the Commission agreed to continue work by the Commission subcommittee as identified at the August 19, 2013 meeting." She said that was essentially what the Chair was now articulating as to what the subcommittee would or could do. She said otherwise the topic was presented well and there were differing opinions as to whether they should be included in the General Plan update. Chair Kadvany said that it sounded lukewarm, and they should decide whether this could be continued within the General Plan update. Commissioner Bressler said he thought unless there was something like the Lorelei Manor guidelines which was a consensus of the property owners in that neighborhood that residential design guidelines would not work as the Commission would still make vague decisions. He thought it might work for neighborhoods to get together and determine their destiny but as one shrink-wrapped thing for the whole city that would add to confusion. Chair Kadvany said that was a reason for having staff time and Commission time to figure out what Commissioner Bressler was saying. Commissioner Bressler said then he would support it. Commissioner Eiref said having the message was important for the City Council to hear whether it was included in the General Plan update or not.

Development Services Manager Murphy said if staff time and resources were to be spent on residential design guidelines then other work needed to be removed. Chair Kadvany asked if that was within the scope of work for the General Plan. Development Services Manager Murphy said there or elsewhere. Chair Kadvany said the Council would look at everything and scope the work and cost, and he did not think it was fair for the Commission to have to make that decision. Commissioner Ferrick said she thought that what was listed already included what the Chair and staff were saying and that was a desire from some Commissioners but not a majority of Commissioners to have residential design guidelines worked into the scope of work. Chair Kadvany suggested they vote on whether they wanted it included in the scope of work or not.

Commissioner Onken moved that they accept the draft summary of Commission comments from the January 27 meeting on the scope of work for the General Plan update with added stress on the need in the circulation element of the General Plan for every opportunity to enhance east-west connectivity and that the vision be made for research and time allotted to look at residential design guidelines. Chair Kadvany seconded the motion.

Commissioner Ferrick said she would vote no as she did not agree with half of the motion.

Commission Action: M/S Onken/Kadvany to accept the draft summary of Commission comment from the January 27 meeting on the scope of work for the General Plan update with added stress on the need in the circulation element of the General Plan for every opportunity to enhance east-west connectivity and that the vision be made for research and time allotted to look at residential design guidelines.

Motion carried 5-1 with Commissioner Ferrick opposing and Commissioner Riggs absent.

Chair Kadvany said he did not understand staff's comment about tradeoffs as the decision of scope of work would be made by the City Council with the consultant. Development Services Manager Murphy said there was a paragraph in the staff report to the City Council stating: "Staff would recommend that the RFP include consideration of an optional element. Although not part of the short term focus, consideration should be given to the potential creation of a Community Character Element as a policy document to incorporate community issues such as aesthetics, residential design guidelines, potential historic resources, various type of frontage improvements (i.e., sidewalks vs. parking strips), street tree canopies, overhead utility lines, neighborhood serving retail, etc. The character would be examined on a neighborhood-by-neighborhood basis to understand existing conditions and trends." He said the important issue was the broadest community input process which might have associated time and financial resources needed that might impact inclusion in the scope of work.

F. STUDY SESSION

F1. **Housing Element/City of Menlo Park:** Study Session to review, discuss and comment on the proposed draft Zoning Ordinance amendments to Chapter 16.79 (Secondary Dwelling Unit) pertaining to secondary dwelling unit development standards, including reducing the minimum lot size eligible for a secondary dwelling unit (without a use permit) to 5,750 square feet to encourage the creation of more units and reducing the setback requirement for an existing and permitted accessory structure to allow for conversions of accessory structures to secondary dwelling units when specific criteria are met. In addition, amendments to Section 16.68.030 (Accessory Buildings and/or Structures) are also proposed. The modifications include establishing new setbacks for an accessory structure, dependent upon the use of the structure and to add a limit on the number of plumbing fixtures in a structure to distinguish use of an accessory structure from a secondary dwelling unit. Both amendments could also include language and formatting modifications for clarification and consistency purposes. ***Continued from the meeting of January 27.*** **Staff report and presentation** ***from the meeting of January 27.***

Chair Kadvany said the Commission at the January 27 meeting had started its discussion of this item and he recalled that Commissioner Bressler raised a point about the complexity of the criteria and whether or not that would dissuade people from converting or building secondary dwelling units. He said Commissioners Ferrick and Riggs had raised points of what would be allowed and what would not. He said Commissioner Riggs talked particularly about working on a larger cottage size for a large acreage site. He said Commissioner Ferrick raised a question about the requirement for owner occupancy of one of the units.

Staff Comment: Senior Planner Chow said the study session was an opportunity for the Commission to provide feedback on potential modifications to both the existing secondary

dwelling unit ordinance as well as on the existing accessory building and accessory structure ordinance. She said the intent of the potential modifications was to more clearly define how an accessory building might be used and that was potentially making a differentiation between habitable and non-habitable structures to establish regulations consistent with the use of a building. She said they talked about discouraging the use of accessory buildings as secondary dwelling units in terms of limiting the size or types of plumbing fixtures allowed in an accessory building, and lastly to encourage the development of secondary dwelling units from the starting point so those units would truly be secondary dwelling units and not potentially converted ones in the future.

Commissioner Strehl asked if staff was reporting on this to the Council at their meeting the following night. Senior Planner Chow said regarding the Housing Element Update and the Housing Element Implementation that there were two components to what staff would bring to the Commission for review and recommendations, and then ultimately for Council's action, which would be in the March/April timeframe. She said the first part was the Housing Element Update for the next planning period of 2015 to 2023 and that was to meet the technical requirements of State law. She said the second part was the Housing Element Implementation and that was to implement programs identified in the Housing Element. She said specifically they were looking at implementing the program for secondary dwelling units by potentially modifying the regulations for secondary dwelling units in such a way to provide the flexibility to increase the number of secondary dwelling units. She said secondly what had been called the amnesty program through the Steering Committee process had evolved into an initial step to look at ways to allow for a conversion of a legally permitted accessory building into a secondary dwelling unit. She said along with these two ordinance amendments there were the ordinance amendments discussed in November and that was the overlay zoning district for emergency shelter, transitional and supportive housing and residential care facilities, and an ordinance for reasonable accommodations. She said the three latter items were required for state law compliance and the certification process. She said for accessory buildings and secondary dwelling units that these would be positive to implement but did not have to be on the same track as the others programs just mentioned.

Senior Planner Chow said the item on tomorrow night's City Council agenda was supplemental revisions to the Housing Element Update. She said that was the document item the Commission reviewed in November 2013 and then went to the Council in December 2013, and then to the state Housing Commission Department (HCD) for a 60-day review period. She said they received comments back from HCD on things the City might want to strengthen for consistency with state law. She said staff drafted revisions to respond to the HCD preliminary comments and that was reviewed by the Council on January 28. She said they presented those to HCD and they responded back with additional comments. She said staff thought if they could address those in a timely manner which was tomorrow's City Council meeting consideration of supplemental revisions to the Housing Element so those could get sent to HCD before they issued their final letter.

Commissioner Ferrick said the restriction that a property owner had to live in one of the units when there was a secondary dwelling unit bothered her. She said a property owner could take a job elsewhere and want to keep the local home and secondary dwelling unit, and prefer to have those occupied. Senior Planner Chow said the owner occupancy was one requirement that was not modified through revisions and they discussed at the last meeting that not having the owner onsite to monitor use would create the character of a multi-family housing unit. Commissioner Ferrick said that seemed restrictive to her. Commissioner Strehl said she agreed that it seemed unnecessarily restrictive, and it should be changed. Chair Kadvany said one of

his neighbors was concerned that such property would not be managed well if the property owner did not live onsite.

Senior Planner Chow said for the record that staff had received three pieces of correspondence since the last report. She said the first one was from Ms. Patti Fry who commented on plumbing fixtures being allowed in accessory buildings and that those could easily become dwelling units and a comment regarding daylight plane to set it at seven feet at the property line. She said in the presentation there was consideration to do away wall height and establish a daylight plane at the property line with a nine-foot height at a 45 degree angle. She said the second correspondence was from Ms. Elizabeth Houck and she was questioning the setbacks and suggested that for secondary dwelling units those should be established at the Zoning Code regulations. She said the last correspondence was from Mr. Phillip Barr, who commented that additional time was needed to review the proposed modifications, and the potential modifications could include items for size, building size, height limits, setbacks and that there should be an exploration of potential pilot projects working with partners to develop secondary dwelling units.

Senior Planner Chow said staff wanted to confirm whether they were on the right track with the intent of the ordinances and were looking for specific feedback in regard to the plumbing fixture limitations in terms of size and type in accessory building and conversion process for legally built accessory buildings to secondary dwelling units.

Commissioner Bressler said he felt like they were being led down a very narrow path. He said he would like to take a little bit of control in this process and to vote on the restriction of owner occupancy for one of the units. He said he did not think there should be a requirement for a property owner to live in the main or secondary dwelling unit, and that was a message he would like to send. Commissioner Strehl said if that was a motion she would second it. Commissioner Ferrick said her point of view was that of equity and that there were arbitrary rules that created situations where tenants or renters were second class citizens, and she thought this was elitist, and automatically considering a person who owns rental property as a slumlord. She said if there was a problem with a building whether it was an owner or a tenant that should be dealt with in a different way and not to create rules that required the owner is the tenant of one of the units on a property.

Chair Kadvany said in principal he agreed but it should be taken in concert with everything that was in the proposed modifications such as the size and setbacks.

Commissioner Bressler said he thought they were being led down a narrow path and they could make a big deal and open everything up for discussion which he thought some wanted or they could identify a few things to address now or they could do both. He said this was something they thought they could agree on.

Commissioner Eiref said the spirit was to encourage many more secondary dwelling units, and he would like them to specifically identify what in these modifications would actually encourage more secondary dwelling units. He said they should also identify things that discourage the building of secondary dwelling units.

Chair Kadvany said a neighbor had expressed she supported secondary dwelling units but if a property owner just built a slapdash unit and then did not live there that caused her concern. He said to represent her concern he would vote against the motion.

Commission Action: M/S Bressler/Strehl to delete the 'tenancy' regulation, which currently requires that the property owner occupy either the main dwelling unit or secondary dwelling unit.

Motion carried 5-1 with Chair Kadvany opposed and Commissioner Riggs absent.

Commissioner Bressler said a perceived barrier was that it was expensive to go through the City process. Commissioner Strehl said there was some legitimacy to that comment. She said a neighbor, Mr. Tom Jackson, built a secondary dwelling unit but it took him a long time to go through the City process, and that was an added cost that should not be overlooked. Commissioner Bressler asked if there was a way to quantify cost. Planner Chow said the City's fees would range to a few thousand dollars for a building permit, the sanitary district would have connection fees, and there were potential school impact and fire district fees. Commissioner Bressler said he did not know if the City wanted to subsidize this but the cost was a deterrent.

Chair Kadvany said an office or recreation space was being classified as habitable and would fall under a different set of guidelines. He said he thought those type of uses should be included as accessory buildings. He said he thought the fear that a home office would be rented as living space was a bias. He said this would make it harder to build accessory buildings. He said now those could be built three feet into the setback. Senior Planner Chow said current ordinance for accessory buildings and accessory structures were not treated differently and the setback requirement could be up to three feet for a side setback interior and three feet from the rear. She said potential modifications would be to create new definitions for accessory buildings and accessory structures and potentially creating separate development regulations for accessory structures. She said if you had a trellis that you wanted as an entry feature to your yard there was currently a requirement that it had to be in the rear yard. She said for accessory buildings there was the potential to differentiate between those that were habitable and have living spaces but not permanent for sleeping as for a secondary dwelling unit. She said that might include a garage or greenhouse that does not have heating or cooling. She said part of the discussion was differentiating between the two types of accessory buildings.

Chair Kadvany said the regulations for accessory buildings should remain as existing as he thought the modifications proposed to the ordinance were too restrictive. He asked about the size of accessory buildings with the proposed modifications. Senior Planner Chow said the existing maximum size for a secondary dwelling unit was 640 square feet and accessory building/structure was 700 square feet or 25% of the square footage of the main dwelling so with a 5,000 square foot house the accessory building could be 1,250 square feet. She said the modifications proposed would not lower the square footage except potentially in the conversion process from an accessory building to a secondary dwelling unit. Chair Kadvany said he would prefer office and recreation use to be kept on the accessory building side and not habitable. Senior Planner Chow said those uses currently were under accessory building regulations.

Development Services Manager Murphy asked if the Commission saw plumbing fixtures as integral or independent of accessory buildings. He said that when they see an office with a sink, toilet, shower, an extra sink and a bonus room being permitted as an accessory building that what they wanted to do was to encourage people investing money in their property to apply for a secondary dwelling unit permit from the get go or do something smaller that was truly to the function of an office and not end up functioning as a secondary dwelling unit.

Commissioner Onken said a good starting point was that three plumbing fixtures would be considered habitable. Senior Planner Chow said staff was still trying to define what was

habitable but they could make the amount of plumbing fixtures as a limitation overall for all accessory buildings whether it was habitable or not. She asked if they saw linking plumbing fixtures to habitability or having separate terms for habitable living space and if for all accessory buildings there should be a limit on the number of plumbing fixtures.

Commissioner Onken said Woodside has a limitation on the number of kitchens on a lot. He said plumbing fixture count was a perfect limitation. Commissioner Ferrick asked if kitchens should be the link to living or habitable space with how the housing element counted kitchens. She said for counting housing units for the state that was calculated based on the number of kitchens. Development Services Manager Murphy said for something to count for a secondary dwelling unit it needed a kitchen and they needed to define what constituted a kitchen. He said that might be one step beyond where they were now right now. He said to have proper sanitation and a kitchen facility more than three plumbing fixtures would be needed.

Chair Kadvany asked if the definitions would only be used for building permits or afterwards for code violations. Development Services Manager Murphy said there were existing definitions for accessory buildings that they were not to be used for living or sleeping quarters. He said they were trying to clarify that definition as it related to accessory buildings compared to secondary dwelling units. He said they were trying to be clear about situations where someone was sleeping in a building and what that really means. He said once definitions were on the books it was definitely for purposes of reviewing permits and code enforcement.

Discussion on the number of plumbing fixtures ensued. (Microphone was not on for some of the discussion and the transcriber could not hear what was said.) At the conclusion of the discussion, Senior Planner Chow clarified with the Commission that their unanimous consent was to define “living” space as a building with three or more plumbing fixtures.

Chair Kadvany asked if accessory buildings had different profiles than secondary dwelling units. Senior Planner Chow said in terms of wall height both have the nine foot wall maximum but a secondary dwelling unit has a provision to increase wall height if it was located in a flood zone and proportionately to the amount to meet the flood plane requirements. She said the maximum overall height in a secondary dwelling unit was 17 feet and for accessory buildings it was 14 feet. She said a potential modification described for accessory buildings and structures was to eliminate the concept of wall height and use a daylight plane concept similar to what was implemented for primary structures. She said the daylight plane would be brought down to a nine foot height at a 45 degree angle at the setback. She said by moving to a four foot setback there could be a wall height of 10 feet. She said accessory buildings could have three by three setbacks but setbacks for secondary dwelling units followed the same side setbacks as the primary house with a 10 foot rear setback. She asked if the Commission supported the change to wall height through implementation of a daylight plane at the setback or if as proposed by Ms. Fry at the property line at a lower wall height. She said the seven foot at the property line proposed by Ms. Fry would equal a 10 foot wall at the three foot setback. Chair Kadvany said that did not sound like what was intended.

Commissioner Onken said he was against any opportunity to lose a setback and he did not support taking a measurement at the property line. He said he liked the daylight plane concept rather than the fixed wall height. Senior Planner Chow said it would provide flexibility that would account for structures built in flood zones.

There was unanimous consent to use a daylight plane concept in lieu of wall height for accessory buildings/structures and secondary dwelling units. The maximum heights for accessory buildings/structures and secondary dwelling units would not change.

Chair Kadvany asked about the concept of limitation on dormers and whether that was when those would face neighbors. Senior Planner Chow said the question was whether there should be a maximum of the dormer size to the length of the wall. She said it was building on the concept in the single-family residential district where there could be dormer encroachments into the daylight plane. She said the question was whether a dormer if it would break up the massing of the wall could be some percentage of the wall. Commissioner Onken said as these would be single-story buildings the only reason for a dormer would be architectural fancy and nothing for a need of windows to room. He said he would err on the conservative side and allow no encroachment into the daylight plane. Senior Planner Chow said there appeared to be consensus. Chair Kadvany said there was acclamation.

Commissioner Bressler said he understood that you could not exceed FAR square footage or lot coverage with an accessory building or secondary dwelling unit and asked if that was something they wanted to revisit. He said there was a limit on lot size and this was an impediment to the building of secondary dwelling units. He asked if they wanted to intensify Menlo Park with big buildings or allow property owners to build in their backyard. He said it could double the number of secondary dwelling units. Chair Kadvany said he did not think that would fly to open up FAR. Commissioner Bressler said he thought his approach was more egalitarian.

Commissioner Onken said a member of the public had phoned him that day about secondary dwelling unit rules applying to attached structures. He said the caller asked why he could not build a second story over his garage and have that as a secondary dwelling unit. He asked where in the ordinance a secondary dwelling unit on top of a garage rather than in the backyard would be covered. Senior Planner Chow said if the structure was attached the primary structure regulations were what dictated the regulations for a secondary dwelling unit. She said it had to be independently accessible with its own sanitation facilities and cooking facility, and living area. She said attached or detached a secondary dwelling unit was possible to be permitted. Commissioner Onken suggested that might be better communicated to the community.

Commissioner Strehl noted the size limit for a secondary dwelling unit of 640 square feet and that for an accessory building of 700 square feet or 25% of the square footage of the main residence, and asked about people building an accessory dwelling unit to 700 square feet and then converting it to a secondary dwelling unit. She asked why they could not allow a secondary dwelling unit to be 700 square feet. Senior Planner Chow said another response would be to put more size restriction on an accessory building to make a secondary dwelling unit more attractive to build.

Commissioner Bressler said this discussion was something that should have been conducted at an earlier hour and he thought the public needed to be part of the discussion. He said their study session started at 10:30 p.m. and it was about something that affected everyone in the City, and there was no one from the public here.

Commissioner Ferrick said the Housing Element Steering Committee meeting was scheduled in a couple of weeks. She asked if that was another opportunity for the public to talk about secondary dwelling units or were there other topics proposed for the agenda. Senior Planner Chow said the meeting date was tentative and she was waiting for this feedback and feedback

tomorrow night from the Council on the proposed revisions to the Housing Element documents, comments they might receive back from HCD, and the availability of the Steering Committee.

Senior Planner Chow said the conversion of legally permitted accessory buildings to secondary dwelling unit was part of the implementation program of the Housing Element, and that there had to be an effective date before which that might be possible. She asked if there should be a limitation of size as part of the conversion and was three foot setback acceptable. She said they also had to consider the process whether it would be discretionary or administrative.

Commissioner Onken said he would move to approve number 2 to allow the conversion of legally constructed accessory buildings into secondary dwelling units, subject to administrative approval by the Community Development Director for a period of one year from the effective date of the ordinance. Commissioner Bressler seconded the motion.

(There was discussion that was not audible as microphone was not on.)

Commission Action: M/S Onken/Bressler to allow the conversion of legally constructed accessory buildings into secondary dwelling units, subject to administrative approval by the Community Development Director, for a period of one year from the effective date of the ordinance. .

Motion carried 6-0 with Commissioner Riggs absent.

G. INFORMATION ITEMS

G1. Update on the R-4-S Zoning District Compliance Review and Application of State Density Bonus Law for the Anton Menlo Development at 3639 Haven Avenue.

Senior Planner Chow said the Commission conducted a study session on October 7, 2013 as part of the R-4-S (High Density Residential, Special) compliance review process for a 393-unit, multi-family residential development with 38 low income units as part of the density bonus law application. She said since then after working the numbers the applicant would reduce the below market rate units to the very low income and the amount of units to 22.

Development Services Manager Murphy said the component about density bonus law was that it's state law and was based on a pretty straight formula with a relationship for very low income units and a different relationship for low income units. He said those calculations were based on state law and the City had no control over those.

Commissioner Onken said on other sites in Haven there was a hazardous environmental soils report circulating that prohibited residential dwelling in the area. He asked how this project was able to overcome this. Senior Planner Chow said the report did not apply to this property and the property Commissioner Onken was referring to was also rezoned as part of the R-4-S housing overlay. She said that owner was seeking removal of the deed restriction and to do the cleanup of the site necessary to allow for future development.

H. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 11:52 p.m.

Staff Liaison: Thomas Rogers, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on March 10, 2014

REVISIONS

City of Menlo Park FINAL DRAFT Housing Element (Dated February 2014)
Prepared for the April 1, 2014 Menlo Park City Council Meeting

Note: Text shown in underline reflects proposed changes from the Final Draft Housing Element.

Acknowledgments
Include two new Housing Commissioners and update the Chair and Vice Chair, as follows: Sally Cadigan, Lucy Calder, Carolyn Clarke (Chair), Julianna Dodick (Vice Chair), Michele Tate.

Page 12
Add the following definition for "Special Needs Housing" (insert after "Senior Housing") for clarity and consistency in application with State law:

"**Special Needs Housing:** Defined by California housing element law (65583(a)(6)) as populations with special needs that must be addressed in a housing element — these include the needs of homeless people, seniors, people who are living with disabilities, persons with developmental disabilities, large families and female-headed households."

Page 16
Add mention of other areas considered for the Emergency Shelter for the Homeless Overlay in the first paragraph under "How the Public Involvement Was Considered in the Draft Housing Element," per the Planning Commission's March 10, 2014 recommendation, as follows:

"**How the Public Involvement Was Considered in the Draft Housing Element**
Modifications and directions as a result of the community involvement process have resulted in revisions to the City's secondary dwelling unit program to reduce the minimum lot size and changes to the City's secondary dwelling unit amnesty program to refocus on accessory buildings and uses. Other community comments have helped to identify areas for possible location(s) for the emergency shelter for the homeless overlay zone and performance standards required of shelters. Five areas were considered for the homeless overlay zone — (Area A) an area along Haven Avenue; (Area B) the VA site and surrounding areas; (Area C) St. Patrick's Seminary; (Area D) the

area north of the train station and east of El Camino Real in downtown; and (Area E) the area south of Menlo Avenue and west of El Camino Real. Based on guidance from the Housing Element Steering Committee, which considered community comments over a number of meetings, Area B, as modified, was selected as the most suitable location for the homeless overlay. A summary of community workshop comments and all meeting comments are available on the City's website."

Page 41

Modify Program H3.G to add coordination with the Golden Gate Regional Center to more effectively implement the program, as follows:

H3.G **Develop Incentives for Special Needs Housing.** Initiate a Zoning Ordinance amendment, including review of the R-L-U (Retirement Living Units) Zoning District, to ensure it is consistent with Housing Element policies and fair housing laws, and to develop density bonus and other incentives for needed senior housing, senior care facilities and other special needs housing for persons living with disabilities in the community, including people with developmental disabilities. Emphasis will also be placed on ways to facilitate the development of housing for seniors with very low, low and moderate incomes. Below are specifics:

a. The regulations should address the changing needs of seniors over time, including units for independent living and assisted living as well as skilled nursing facilities.
b. The City will continue to allow the development and expansion of housing opportunities for seniors and special needs persons through techniques such as smaller unit sizes, parking reduction and common dining facilities when units are sponsored by a non-profit organization or when developed under the Retirement Living Unit (RLU) District provisions of the Zoning Ordinance.
c. The City will coordinate with the Golden Gate Regional Center to ensure that the needs of the developmentally disabled are considered as part of the program.

Responsibility:	City Commissions; Planning Division; City Manager; City Attorney; City Council; Golden Gate Regional Center
Financing:	General Fund; other sources
Objectives:	Amend the Zoning Ordinance to provide opportunities for housing and adequate support services for seniors and people living with disabilities.
Timeframe:	Consider as part of the City's General Plan Update (2014-2017)

Page 47

Modify Program H4.E per the Planning Commission's March 10, 2014 recommendation, as follows:

H4.E **Modify Secondary Dwelling Unit Development Standards and Permit Process.** Continue to encourage secondary dwelling units, and modify the City's current regulations to

reduce the minimum lot size ~~to 5,750 square feet~~, and consider allowances for larger secondary dwelling units, flexibility in height limits, reduced fees (possible reduction in both Planning/Building fees and impact fees as a result of the small size of the units), flexibility in how parking is provided on site and a greater City role in publicizing and providing guidance for the approval of secondary dwelling units as part of the General Plan update. Specifics would be developed as part of program implementation.

Responsibility:	City Commissions; Planning Division; City Attorney; City Manager; City Council
Financing:	General Fund
Objectives:	Amend the Zoning Ordinance to reduce the minimum lot size to create greater opportunities for new second units to be built. Achieve Housing Element target for new second units (40 new secondary dwelling units between 2015-2023, with 5 per year) — 18 very low, 18 low and 4 moderate income second units.
Timeframe:	2014; ongoing thereafter

Page 48

Modify Program H4.F (and modify the Housing Element Program Summary table on page 57 accordingly) per the Planning Commission's March 10, 2014 recommendation, as follows:

H4.F **Establish a Process and Standards to Allow the Conversion of Accessory Buildings and Structures to a Secondary Dwelling Unit.** Allow converted accessory buildings/structures that do not comply with the current secondary dwelling unit ordinance to be reviewed through a new process that establishes an allowance for one or more exceptions from the secondary dwelling unit development regulations. Modify the existing development regulations of accessory buildings/structures to more clearly distinguish how accessory buildings/structures can be used (such as modifying the regulations to prohibit living areas without main dwelling unit setbacks and/or the number of plumbing fixtures) and consider reduction or waiver of fees. Reevaluate the effectiveness of this program in producing secondary dwelling units and consider other options, such as a secondary dwelling unit amnesty program, after one year from adoption of the ordinance.

Responsibility:	Planning Division; Building Division; City Manager; City Attorney; City Council; Fire District; Department of Public Works (Menlo Park Municipal Water District); California Water Service; O'Connor Tract Coop Water District; West Bay Sanitary District
Financing:	General Fund
Objectives:	Adopt procedures and requirements to allow conversion of accessory structures and buildings (15 new secondary dwelling units — 6 very low income, 6 low income and 3 moderate income units).
Timeframe:	2014; review the effectiveness of the ordinance in 2015

Page 56

Modify Program H3.G in the table to include Golden Gate Regional Center ("OA") as a Responsible Department or Agency for consistency with modifications to Program H3.G.

Page 75

Modify the table on Household Growth at the top of page 75 to reflect updated data, as follows:

Household Growth						
	Number			Percent Change		
	Menlo Park	County	State	Menlo Park	County	State
1990	11,881	242,348	10,381,206	-	-	-
2000	12,387	254,104	11,502,870	4%	5%	10%
2010	12,347	257,837	12,577,498	0%	4%	9%
2020 (Projected)	13,070	277,200	-	6%	8%	-
2030 (Projected)	13,790	296,280	-	6%	7%	-
2040 (Projected)	14,520	315,100	-	5%	6%	-

Source: Association of Bay Area Governments, Projections 2013; US Census SF1 1990-2010 for the Menlo Park City Limits

Page 93

Modify the first paragraph discussion under "People with Developmental Disabilities" to provide additional background regarding laws pertaining to persons with disabilities, as follows:

"**People with Developmental Disabilities**

The Olmstead decision of the U.S. Supreme Court (1999) requires that meaningful opportunities be created for individuals with developmental disabilities to reside, work and receive support services in the most integrated settings. HUD has also issued guidance (most recently in 2013) to encourage actions to achieve implementation of the Olmstead decision. In 2010, SB 812 was signed into law requiring local housing elements to include an analysis of the special housing needs of people with developmental disabilities. Additionally, SB 812 requires that individuals with disabilities receive public services in the least restrictive, most integrated setting appropriate to their needs. The information below has been provided by the Golden Gate Regional Center (GGRC), which covers the San Francisco Bay Area."

Page 92

Replace the "Living Arrangements of People with Disabilities" table with the following table, which provides updated data regarding persons with disabilities in the City of Menlo Park, as follows:

Living Arrangements of People with Disabilities in Menlo Park		
	Number	**Percent**
Lives with	Menlo Park	Menlo Park
Parents/Legal Guardian	133	86%
Own Home	17	11%
Licensed Group Homes	1	1%
Licensed Health Care Facility	1	1%
Foster-Type Care	1	1%
Total:	153	100%

Source: Golden Gate Regional Center, February 2014
Note: Counts based on zip code and may include areas outside of jurisdictional borders.

Page 94

Replace the two tables with the three tables below, which provide updated data regarding persons with disabilities in the City of Menlo Park and San Mateo County, as follows:

Age of People with Development Disabilities in Menlo Park		
Age Range	**Number**	**Percent**
0-3	33	22%
4-14	54	35%
15-29	30	20%
30-44	20	13%
45-59	10	6%
60-74	5	3%
75-89	1	1%
Total	153	100%

Source: Golden Gate Regional Center, February 2014

Living Arrangements of People with Disabilities in Menlo Park		
	Number	**Percent**
Lives with	Menlo Park	Menlo Park
Parents/Legal Guardian	133	86%
Own Home	17	11%
Licensed Group Homes	1	1%
Licensed Health Care Facility	1	1%
Foster-Type Care	1	1%
Total:	153	100%

Source: Golden Gate Regional Center, February 2014
Note: Counts based on zip code and may include areas outside of jurisdictional borders.

Living Arrangements of People with Developmental Disabilities in Menlo Park and San Mateo County

	Home of Parent or Guardian	Own Home	Licensed Group Home	Licensed Health Care Facility	Foster-Type Care	Homeless	*Subtotal of Autism Only*	Total Number for All Diagnoses
Menlo Park								
0-3	33	0	0	0	0	0	**	33
4-14	54	0	0	0	0	0	*18*	54
15-29	27	2	0	0	0	0	*6*	30
30-44	12	8	0	0	0	0	*1*	20
45-59	6	3	1	1	1	0	*1*	10
60-74	1	3	0	0	0	0	*0*	5
75-89	0	1	0	0	0	0	*0*	1
90-104	0	0	0	0	0	0	*0*	0
Grand Total	133	17	1	1	1	0	*26*	153
San Mateo County								
0-3	609	0	0	0	11	0	**	620
4-14	930	0	11	0	1	1	*329*	943
15-29	908	47	113	17	13	2	*212*	1,100
30-44	294	103	135	35	12	0	*34*	579
45-59	156	109	245	71	11	1	*52*	593
60-74	35	53	122	91	6	0	*10*	307
75-89	3	5	20	17	0	0	*0*	45
90-104	0	0	4	1	0	0	*0*	5
Grand Total	2,935	317	650	232	54	4	*637*	4,192

**No diagnosis yet

Source: Golden Gate Regional Center, February 2014
Note: Counts based on zip code and may include areas outside of jurisdiction borders.

Page 111
Modify the RHNA table at the top of page 111 for consistency with Program H4.F, as follows:

City of Menlo Park's Ability to Address Its Regional Housing Needs Allocation (RHNA) for the 2015-2023 Planning Period

	Units Built/Approved (in the Pipeline) and Units Provided Through Housing Element Programs or Existing Zoning					
Category	**Very Low Income**	**Low Income**	**Lower Income SUBTOTAL***	**Moderate Income**	**Above Moderate Income**	**Total**
2015-2023 RHNA	**233**	**129**	**362**	**143**	**150**	**655**
Units in the Pipeline as of December 2013**						
3639 Haven Avenue (Anton Menlo)	22	15	37	100	257	394
605 Willow Road (Willow Housing - VA/CORE)	59	0	59	0	1	60
Scattered Site Units Pre-2012 Zoning	0	0	0	0	11	11
New Second Units	3	3	6	1	0	7
Subtotal	84	18	102	101	269	472
Residual 2015-2023 RHNA (subtracting units in the pipeline)	**149**	**111**	**260**	**42**	**-119**	**183**
New Units Potential Under the 2015-2023 Housing Element						
El Camino Real/Downtown Specific Plan Zoning	n/a	n/a	200	230	250	680
New Housing on Infill Sites Around Downtown	0	0	0	50	20	70
New Second Units	18	18	36	4	0	40
Conversions to Second Units	6	6	12	3	0	15
High Density Opportunity Sites***	n/a	n/a	433	0	0	433
Scattered Site Units Pre-2012 Zoning	0	0	0	83	106	189
Subtotal	24	24	681	370	376	1,427
Remaining Adjusted 2015-2023 RHNA			**-421**	**-328**	**-495**	**-1,244**

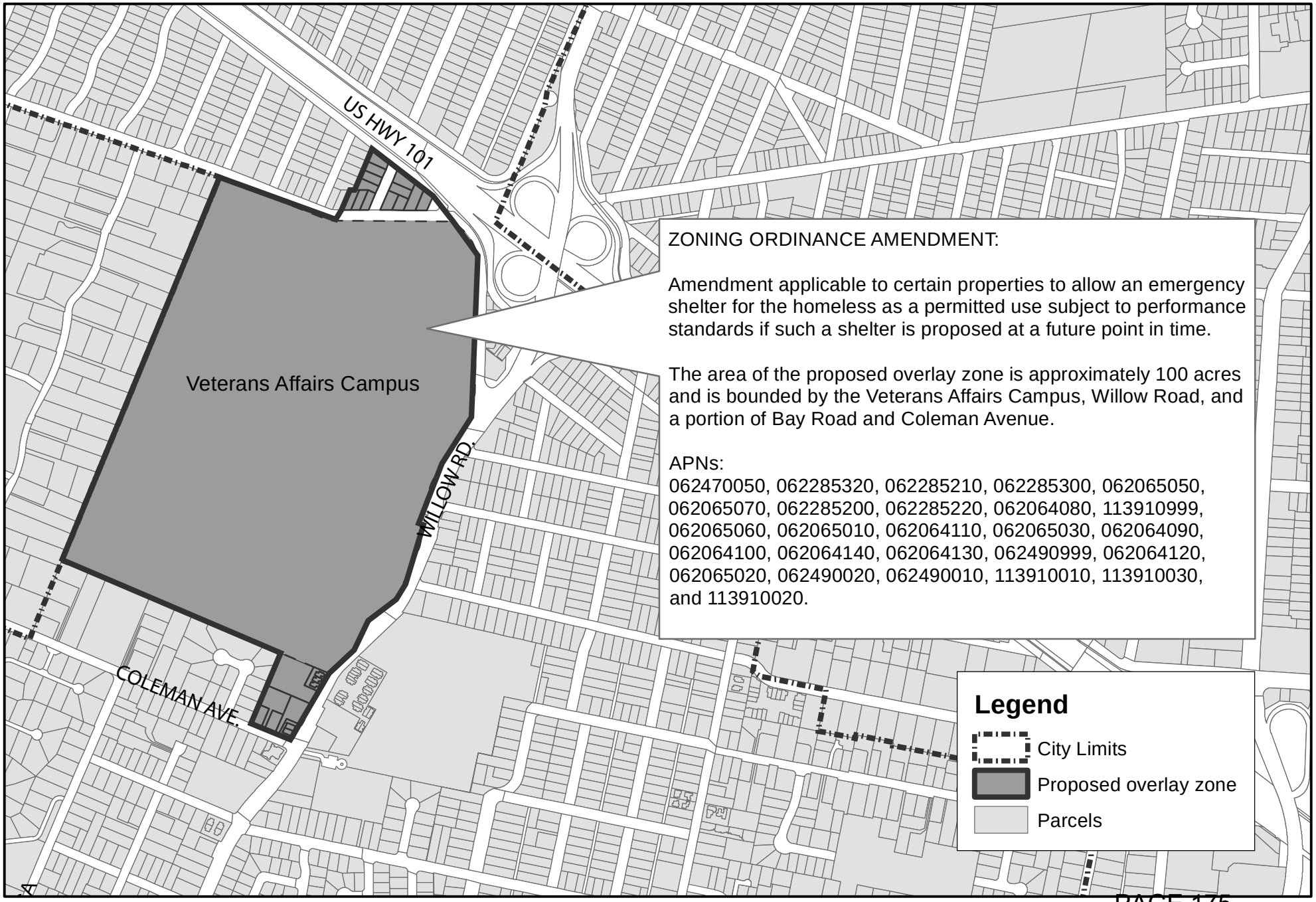
*The "Lower Income SUBTOTAL" adds together the very low and low income units required under RHNA
**"Units in the Pipeline" include units built or approved (permits issued or entitlements completed) with estimated project affordability
***Includes the following sites: both of MidPen's Gateway Apartments sites, Hamilton Avenue and Haven Avenue R-4-S sites
****Moderate income units can be considered affordable for Above Moderate Income households
*****Lower income units can be considered affordable for Moderate Income households

Appendix A
Modify the format of Appendix A, Tables 5 and 6, to add new columns for clarity in reporting. The type of modifications could include the following, 1) structure type, 2) deed restricted vs. non-deed restricted units, and 2) subtotal of units by calendar year.

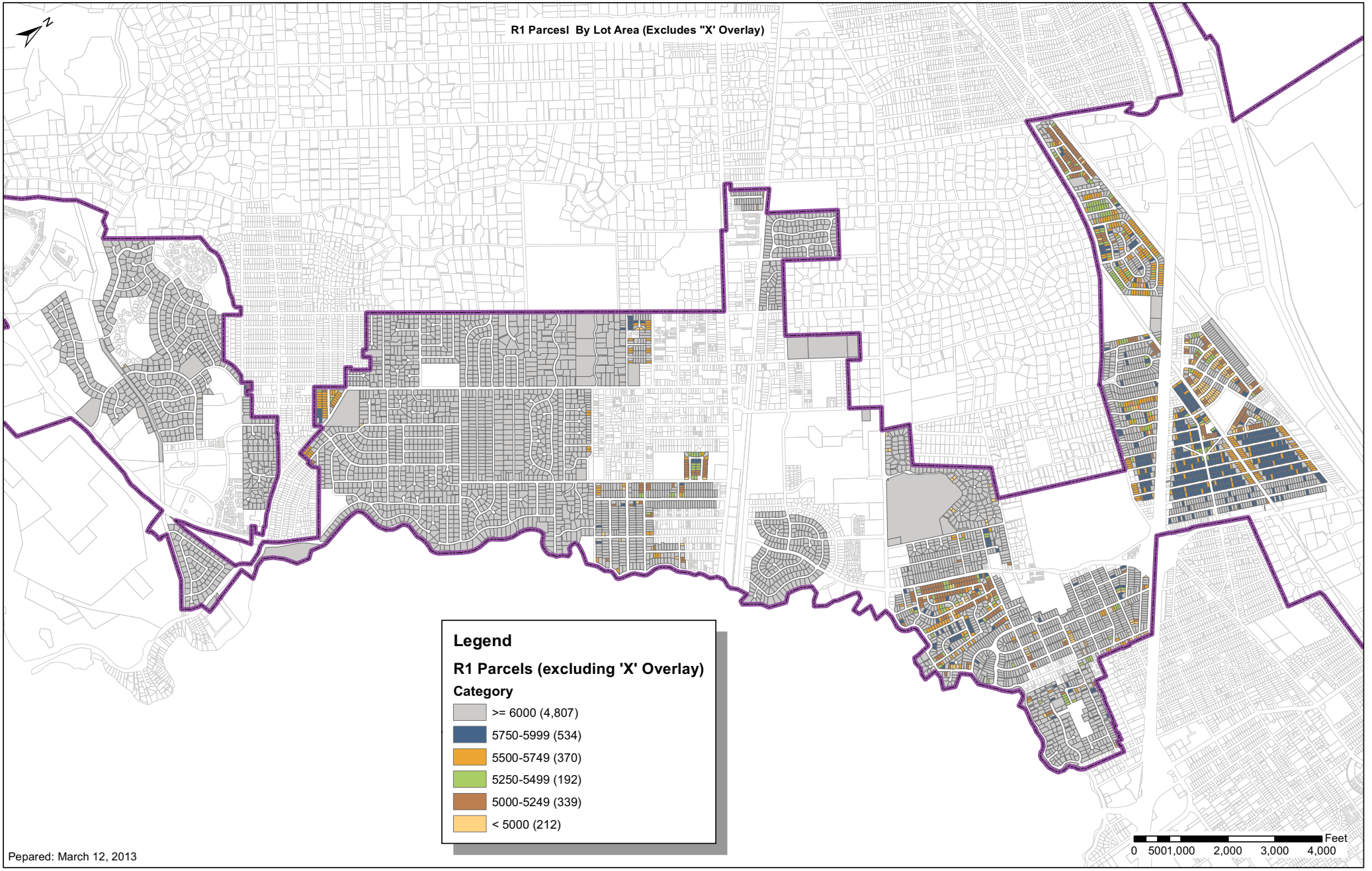
Appendix B
Global revision to modify “2014-2022” to “2015-2023” for consistency with the planning period of the Housing Element.

THIS PAGE INTENTIONALLY LEFT BLANK

CITY OF MENLO PARK



THIS PAGE INTENTIONALLY LEFT BLANK


R1 Parcesl By Lot Area (Excludes "X' Overlay)
Legend
R1 Parcels (excluding 'X' Overlay)
Category
>= 6000 (4,807)
5750-5999 (534)
5500-5749 (370)
5250-5499 (192)
5000-5249 (339)
< 5000 (212)
Feet
0 5001,000 2,000 3,000 4,000
Pepared: March 12, 2013

THIS PAGE INTENTIONALLY LEFT BLANK

Summary Table of Existing and Proposed Development Standards for Secondary Dwelling Units

Development Standard	Existing	Proposed
Minimum Lot Size	6,000 sf	5,000 sf or 4,900 sf for property in the R-1-U(LM) zoning district
Minimum Yards (Setbacks)	Minimum setback of main structure, which varies by zoning district, except 10 feet for the rear; neighbor approval allowed for a reduction to 5 feet for interior side and rear yard; use permit allowed for further modifications	No change; except clarify that if interior side or rear property line is contiguous with alley, minimum setback is 5 feet
Maximum Unit Size	640 sf	No change, except 1) increase size up to 700 sf for buildings complying with disabled access requirements
Maximum Height	9-foot wall height; 17-foot overall height; flexibility in wall height for properties in flood zone	Establish new daylight plane and eliminate wall height requirement; no change to overall height
Daylight Plane	Daylight plane of zoning district	Establish at 3-foot from the side property lines; 9 feet, 6 inches vertical line and slope inwards at 45 degree angle
Parking	1 covered or uncovered in a variety of options	Clarifications on tandem parking configurations and location of covered parking
Tenancy	Either the main dwelling unit or secondary dwelling unit must be occupied by the property owner	1) Clarifies that property owner does not have to live in a unit if both units are not occupied as dwellings, 2) establishes a registration process, which would be reviewed annually up to four years, to temporarily allow both units to be occupied by other persons than the property owner; to be eligible for registration, property owners must have lived at the subject site at least two of the five years prior to the registration application, and 3) allows the tenancy requirement to be modified through a use permit, including the eligibility criteria

THIS PAGE INTENTIONALLY LEFT BLANK

Single-Family Zoning District Summary

		R-E	R-E-S	R-1-S & R-1-S (FG)	R-1-U	R-1-U (LM)
Minimum Lot Area		20,000 sf	15,000 sf	10,000 sf	7,000 sf	4,900 sf (before 6/1/06) 7,000 sf (after 6/1/06)
Minimum Lot Width/Depth		110 ft./130 ft.	100 ft./100 ft.	80 ft./100 ft.	65 ft./100 ft.	40 ft./75 ft.
Main Dwelling Unit						
Minimum Yard	**Front**	20 ft.				
	Rear	20 ft.				
	Side, Interior	30 ft. total; minimum 10 ft. on one side	25 ft. total; min. 10 ft. on one side	10 ft	10% lot width; min. 5 ft., max. 10 ft.	5 ft.; 3 ft. with neighbor approval or use permit
	Side, Corner	min. 15		12 ft		
Height		Lots >20,000 sf – 30 ft. Lots < 20,000 sf – 28 f				One-story – 20 ft. Two-stories – 28 ft.
Detached Secondary Dwelling Units						
Minimum Yard	**Front**	20 ft.				
	Rear*	10 ft.				
	Side, Interior*	30 ft. total; minimum 10 ft. on one side	25 ft. total; min. 10 ft. on one side	10 ft.	10% lot width; min. 5 ft., max. 10 ft.	5 ft.; 3 ft. with neighbor approval or use permit
	Side, Corner	min. 15 ft.		12 ft.		
Height		9 ft. wall height; 14 ft. total height; allowance for increased wall height if located in a flood zone, subject to review and approval of the Building Official				
Detached Accessory Buildings/Structures						
Minimum Yard	**Front**	Varies (must be on rear half of lot)				
	Rear	3 ft. (5 ft. from an alley)				
	Side, Interior	3 ft. (5 ft. from an alley)				
	Side, Corner	Varies; cannot project beyond setback required on adjacent lot				
Height		9 ft. wall height; 17 ft. total height				

* Interior side and rear yards may be reduced to 5 feet, subject to written approval of the owner(s) of the contiguous property abutting the portion of the encroaching structure.

Single-Family Zoning District Summary

		R-E	R-E-S	R-1-S & R-1-S (FG)	R-1-U	R-1-U (LM)
Floor Area Limit (FAL)	**Lots less than 5,000 sf**	The FAL will be determined by the Planning Commission through the review of a use permit.				
	Lots Between 5,000-7,000 sf	2,800 sf				
	Lots greater than 7,000 sf	For all single-family districts except R-1-S (FG) = 2,800 square feet + 25% (lot area - 7,000 square feet) For R-1-S(FG) = 2,800 square feet + 20% (lot area - 7,000 square feet)				
Unit Size	**Secondary Dwelling Unit**	640 sf**				
	Accessory Building/ Structure	700 square feet or 25 percent of the gross square footage of the main building (whichever is greater)**				

**Additional square footage may be granted, subject to approval of a use permit by the Planning Commission.

Existing Definitions

16.04.110 Building and/or structure, accessory. "Accessory building and/or structure" means a subordinate building and/or structure, the use of which is incidental to that of the main building or buildings on the same lot or building site; but not including any building used for living or sleeping quarters.

16.04.270 Dwelling, single family. "Single family dwelling" means a building, containing not more than one kitchen, designed for, or used to house not more than one family, including all necessary employees of such family.

16.04.295 Dwelling unit, secondary. A “secondary dwelling unit” means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking and sanitation independent of the main dwelling existing on the residential lot.

16.04.314 Floor area limit. "Floor area limit" means the maximum permitted floor area for a property within the single-family residential or R-2 zoning districts. For the purpose of determining the floor area limit, neither the panhandle extension of a panhandle lot, nor a private driveway or access easement across another lot to a panhandle lot, shall be included as part of the panhandle or other lot.

Malathong, Vanh

From: Jeannette Holliday <crzyjenn@pacbell.net>
Sent: Wednesday, March 19, 2014 2:37 PM
To: Chow, Deanna M
Subject: proposed revision of tenancy requirement for secondary dwelling units

Deanna Chow, Planning Commission and City Council:

Your proposal to relax the property owner tenancy requirement for parcels containing (or proposing) secondary dwellings, while perhaps well intended, creates a whole new set of problems, most disturbingly (and perhaps illegally) a de facto path to a zoning change from R-1 to R-2 on a spot basis and without going through the normal channel a zoning change of that dimension requires.

To prevent landlord manipulation that is not in the best interest of the surrounding properties there should first be a requirement that the property owner reside on the property at the time of the permit application or submit an affidavit of intent to occupy the property immediately upon completion of any proposed construction. The property at 856 College Ave, for instance, has never been occupied by the current owner of 23 years and he has previously stated (even before the currently proposed modification of the tenancy requirement) that he does not intend to occupy it. He has prevaricated before and I am sure he will have no difficulty doing so again, to come up with a reason why he should be allowed to not occupy but rather rent both dwellings.

Which brings up the second point. I can understand that there may be some compelling circumstances why a property owner might be unable to occupy one of the dwellings but nevertheless need to cover his mortgage payment for a brief period of time. The operative phrases here are "compelling reason" and "brief period of time". While "compelling circumstances" will vary, a blanket allowance of one year with the provision to extend that period three times is way too liberal and opens the door to obvious potential abuse. And as a victim in the past of a very bad "absentee landlord" situation I can tell you there MUST be provision for property management in absence of a readily available property owner Moreover, the provision to allow a permanent change of the tenancy requirement is over the top. As stated before, this amounts to an illegal zoning change and this provision should be stricken. The tenancy requirement and any temporary suspension for "compelling cause" attaches to the property owner, not to the property.

I have been a resident of Menlo Park for many years and I am sorry to say I have had to watch the city run rough shod repeatedly over the interests and preferences of those of us who have made up this community. I realize things must always change and often for compelling (if not always good) reasons. If you insist (which you will) on relaxing a perfectly good mechanism for retaining neighborhood values please take a careful look at ALL the potential consequences of the changes you are proposing here and design a specific set of parameters that will prevent the degradation of our communities.

Jeannette Holliday
864 College Ave
Menlo Park

THIS PAGE INTENTIONALLY LEFT BLANK

PLACEWORKS

MEMORANDUM

DATE March 21, 2014

To Deanna Chow

FROM Terri McCracken

RE Response to Comments Memo

The following memo addresses comments received on the proposed project and the Initial Study/Negative Declaration (IS/MND) prepared for the Housing Element (2015-2023) and Zoning Ordinance amendments for implantation of Housing Element programs, and describes revisions to the IS/ND to be included in the staff report for the City Council's consideration of Project approval.

During the 30-day public review period (February 13, 2014 – March 14, 2014) no comment letters were received by the general public or other interested groups or reviewing agencies. However, at the Planning Commission Hearing held on March 10, 2014, the Planning Commission requested additional revisions to the proposed amendments to Chapter 16.79 (Secondary Dwelling Units) of Title 16 (Zoning) of the City's Municipal Code. Additionally, one comment letter was received following the close of the review period from the California Public Utilities Commission (CPUC) on March 19, 2014 regarding safe planning practices at active railroad tracks in Menlo Park. This comment letter is included as Attachment A to this memorandum.

The following provides a response to the comments from the Planning Commission and the CPUC, and the specific changes to the text of the IS/ND that were made in response to the comments. In each case, the revised page and location on the page is identified, followed by the textual revision. As shown below, none of the changes constitute a substantial revision per California Environmental Quality Act (CEQA) Guidelines Section 15073.5[1] and do not affect any conclusions or significance determinations provided in the IS/ND and no recirculation is warranted.

RESPONSE TO COMMENTS

Comments from Planning Commission, March 10, 2014

As discussed above, the Planning Commission requested additional revisions to Chapter 16.79 of the Municipal Code to what was considered in the IS/ND. As shown on page 10 of the IS/ND, the

[1] Per Section 15073.5 of the CEQA Guidelines, a substantial revision means: (1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added to reduce to insignificance or (2) new mitigations are required.

proposed Project includes a two-pronged modification approach to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings/structures (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish how, and where an accessory building or structure could be used. Amendments to Chapter 16.79 include modifications to the development regulations, including setbacks, wall and overall height, floor area, daylight plane, parking, and a reduction in the minimum lot area threshold (from 6,000 to 5,750 square feet) for when a use permit is required for a secondary dwelling unit. Amendments to Chapter 16.68 include modifications to the existing development regulations of accessory buildings/structures to more clearly distinguish how accessory buildings/structures can be used (such as modifying the regulations to prohibit living areas without main dwelling unit setbacks and/or the number of plumbing fixtures) and consider reduction or waiver of fees.

The Planning Commission requested revisions to further reduce the minimum lot size for a secondary dwelling unit (without a use permit) as part of the proposed Zoning Ordinance amendment regarding secondary dwelling units. The following provides a discussion of the potential environmental impacts associated with implementing the reduced lot size.

Response to Planning Commission Comments

Under existing conditions, 4,807 lots are allowed to have secondary dwelling units, subject to meeting specific criteria, without a use permit. By reducing the minimum lot size from 6,000 to 5,750 square feet, as described in the IS/ND, 534 additional lots would potentially qualify for a second unit for a total of 5,341 total potentially qualifying lots in Menlo Park. By further reducing the minimum lot size to 5,000 square feet, 901 additional lots would potentially qualify for a second unit, resulting in a total of 6,242 lots potentially qualifying lots in the City. Following the Planning Commission's recommendation, staff recognized that the minimum lot size for the R-1-U (LM) zoning district is 4,900 square feet. To meet the Planning Commission's intent of including all lots where the floor area limit is established without a use permit, the minimum lot size is proposed to be reduced to 4,900 square feet for the R-1-U(LM) zoning district only. Therefore, given the R-1-U (LM) zoning district has a minimum lot size of 4,900 square feet, four additional lots would also be eligible for a second unit. Therefore, under the proposed Project a total of 6,246 lots in Menlo Park could potentially qualify for a secondary dwelling unit when a use permit is required, which represents an increase of 1,439 lots throughout all the single-family residential zoning districts.

Although the smaller lots (i.e. 5,000 square feet compared to 6,000 square feet) could be eligible for secondary dwelling units, the smaller lots face greater practical challenges/constraints; consequently, the probability that all of the identified smaller lots would realistically be able to accommodate a second unit is considered to be low.

As discussed on page 6 of the IS/ND, the City of Menlo Park adopted its Housing Element through the 2014 planning period and the Environmental Assessment[2] for the City of Menlo Park Housing Element Update, General Plan Consistency Update, and associated Zoning Ordinance amendments on May 21, 2013. The current Housing Element (2007-2014) and its Environmental Assessment anticipated and directly stipulated the proposed amendments to the Zoning Ordinance. While the reduction in lot minimum lot size for secondary dwelling units from 5,750 to 5,000 square feet combined with the four lots between 4,900 and 5,000 square feet in the Lorelei Manor neighborhood represents 905 additional lots, the 2013 Environmental Assessment considered the development of up to 300 new secondary dwelling units, regardless of lot size, throughout all of the single-family residential zoning districts. The 2013 Environmental Assessment reflects a 22 year buildout horizon from 2013 to 2035. Under this scenario approximately 13 new secondary dwelling units could be developed per year.[3] This represents the development of more than twice as many secondary dwelling units a year than the City issued permits for in 2013.[4]

Therefore, given the potential development constraints on the smaller lots combined with the fact that the reduced lot size does not result in any new development potential[5] beyond what was considered in the 2013 Environmental Assessment, the City's history of issuing permits for secondary dwelling units, and that some second units may result from the conversion of existing accessory buildings, this revision to the minimum lot size for secondary dwelling units would therefore neither cause new impacts in regard to the environmental topics addressed in the IS/ND nor would it exacerbate any existing impacts.

Accordingly, while this revision provides greater flexibility to permit more secondary dwelling units, and further supports Housing Element Program H4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process), no new significant environmental impacts beyond what were considered in the IS/ND would occur as a result of reducing the minimum lot size for secondary dwelling units to 5,000 square feet, or a minimum lot size of 4,900 square feet for the R-1-U(LM) zoning district.

---

[2] California Government Code Section 65759(a)(2) provides that when a city is ordered by a court to bring its General Plan, which includes the Housing Element, into compliance, the City shall prepare an environmental assessment, the content of which shall substantially conform to the required content of a Draft Environmental Impact Report (EIR).

[3] 300 secondary dwelling units divided by 22 years equals 13.6 secondary dwelling units per year.

[4] In 2013, the City issued permits for six new secondary dwelling units and a total of six permits between the years of 2006 to 2012.

[5] No new development potential refers to the fact that no land is being redesignated in any area from one use to another (i.e. commercial to residential) and that the 2013 Environmental Assessment considered all single-family residential zoned lots potentially eligible for a secondary dwelling unit.

Comment Letter from the California Public Utilities Commission, March 19, 2014

This comment letter describes the jurisdiction of the CPUC with respect to highway-rail crossings in California and acknowledges the CPUC's Rail Crossings Engineering Section (RCES) has reviewed the IS/ND for the proposed Project. The comment does not address the adequacy of the IS/ND; however, the comment notes the City includes active railroad tracks. As such, the RCES recommends that the City add language to the Housing Element Update so that any future development adjacent to or near the railroad right-of-way (ROW) is planned with the safety of the rail corridor in mind. The RCES requests the City consider the pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act (ADA). RCES recommends the Housing Element consider the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes, and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

Response to CPUC Comment Letter

Future development projects under the proposed Project will be required to comply with all relevant regulations regarding railroad and grade crossing safety, including:

- California Public Utilities Commission regulations regarding grade crossings and grade crossing safety (Public Utilities Code General Provisions, Division 1, Part 1, Chapter 6)
- Requirements for railroad operators to maintain appropriate fencing along their right-of-way (Public Utilities Code General Provisions, Division 4, Chapter 1, Article 6)

The proposed Project would not introduce any new locations for at-grade crossings of streets and active railroad tracks. Compliance with these existing regulations will ensure safety associated with railroad operations in the Study Area, and would not require additional General Plan policies or mitigation measures. The comment is acknowledged and will be forwarded to the decision-making bodies as part of the IS/ND for their consideration in reviewing the Project.

REVISIONS TO THE INITIAL STUDY/NEGATIVE DECLARATION

This section presents specific changes to the IS/ND that are being made in response to comments made by the Planning Commission, as well as staff-directed changes including typographical corrections and clarifications. As discussed above, none of the revisions to the IS/ND warrant recirculation per CEQA Guidelines Section 15073.5. The City recognizes that any text changes are part of the IS/ND that it will consider for approval.

The following revisions are organized by sections in the IS/ND and the revised page and in each case, the location on the page is presented followed by the textual, tabular, or graphical revision. Underline text represents language that has been added to the EIR; text with strikethrough has been deleted from the EIR.

Section D. Project Description, Sub-section Zoning Ordinance Amendment (Housing Element Implementation)

The last sentence in the fourth bullet on page 10 of the IS/ND is hereby amended as follows:

- Secondary Dwelling Units and Accessory Buildings/Structures: The proposed approach would include modifications to Chapter 16.79 (Secondary Dwelling Units) and Chapter 16.68 (Accessory Buildings and/or Structures) and would be two-pronged; including modifications to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings/ structures (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish how and where an accessory building or structure could be used. The proposed Project could result in modifications to the development regulations, including size to accommodate design for accessible standards, setbacks, wall and overall height, floor area, daylight plane, ~~and~~ parking, and tenancy. Additionally, a reduction in the minimum lot area threshold (from 6,000 ~~square feet~~ to ~~5,750~~ 5,000 square feet, or 4,900 square feet for the R-1-U(LM) zoning district) for when a use permit is required for a secondary dwelling unit would be included in the Zoning Ordinance amendment.

The first sentence in the third main bullet on page 11 of the IS/ND is hereby amended as follows:

- Program H4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process): Continue to encourage secondary dwelling units, and modify the City's current regulations to reduce the minimum lot size to ~~5,750~~ 5,000 square feet, with the exception that the R-1-U (LM) district shall have a minimum lot size of 4,900 square feet, and consider allowances for larger secondary dwelling units, flexibility in height limits, reduced fees (possible reduction in both Planning/Building fees and impact fees as a result of the small size of the units), flexibility in how parking is provided on site and a greater City role in publicizing and providing guidance for the approval of secondary dwelling units as part of the General Plan update. Specifics would be developed as part of program implementation.

The second sentence in the second paragraph on page 13 of the IS/ND is hereby amended as follows:

> The proposed Zoning Ordinance Amendment would also include a change to the development standards for secondary dwelling units within the single-family residential zoning districts. Under the proposed Project the current minimum lot area of 6,000 square feet would be reduced to ~~5,750~~ 5,000 square feet, with the exception that the R-1-U (LM) district shall have a minimum lot size of 4,900 square feet, which would increase the total number of secondary units that could be built without a use permit.

ATTACHMENTS

Attachment A: Comment Letter on the City of Menlo Park Housing Element Update (2015-2023) and Zoning Ordinance Amendments (Housing Element Implementation) Initial Study/Negative Declaration

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET, SUITE 500
LOS ANGELES, CA 90013
(213) 576-7083

March 19, 2014

Deanna Chow
City of Menlo Park
701 Laurel Street
Menlo Park, California 94025

Dear Deanna:

SUBJECT: SCH 2014022040 Menlo Park Housing Element Update - DND

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the draft *Negative Declaration (DND)* for the proposed City of Menlo Park (City) Housing Element Update Project.

The project area includes active railroad tracks. RCES recommends that the City add language to the Housing Element Update so that any future development adjacent to or near the railroad right-of-way (ROW) is planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes, and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.

Sincerely,

Ken Chiang, P.E.
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

C: State Clearinghouse

THIS PAGE INTENTIONALLY LEFT BLANK

COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-058

Agenda Item #: F-1

REGULAR BUSINESS: **2013 Annual Report on the Status and Progress in Implementing the City's Housing Element (2007-2014) of the General Plan**

RECOMMENDATION

Staff recommends that the City Council accept the 2013 Annual Report (Attachment A) and authorize its transmittal to the California Governor's Office of Planning and Research (OPR) and the California Department of Housing and Community Development (HCD) pursuant to Section 65400 of the California Government Code.

BACKGROUND

Government Code 65400 requires each governing body to prepare an annual report on the status and progress in implanting the jurisdiction's housing element of the general plan using forms and definitions adopted by HCD. Housing Element Annual Reports are due April 1 of each year for the calendar year immediately preceding the April 1 reporting deadline. This year the preparation of the 2013 Annual Report coincides with the Housing Element update for the next planning period. In future years, the Annual Report will be presented to the City Council for review in advance of the April 1 deadline. Staff intends to prepare the Annual Report in January, review it with the Housing Commission and Planning Commission in February, and then present it to the City Council in March of each year.

ANALYSIS

The Housing Element Annual Report includes the following:

- Information on the types of housing units that were issued building permits;
- Information on the City's progress in meeting its regional housing needs allocation (RHNA); and
- Progress report on implementation of Housing Element programs.

IMPACT ON CITY RESOURCES

Other than staff time to prepare the Housing Element Annual Report, there are no impacts on City resources.

POLICY ISSUES

The submittal of the Housing Element Annual Report is required by State law.

ENVIRONMENTAL REVIEW

The submittal of the Housing Element Annual Report is not a project under the California Environmental Quality Act (CEQA).

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the City has prepared a project page for the proposal, which is available at the following address: http://www.menlopark.org/athome. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated and meetings are scheduled.

ATTACHMENTS

A. Housing Element Annual Report

AVAILABLE FOR REVIEW AT CITY OFFICES AND ON THE PROJECT WEB PAGE

Adopted Housing Element for the 2007-2014 Planning Period

Report prepared by:
Justin Murphy
Development Services Manager

Report reviewed by:
Arlinda Heineck
Community Development Director

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

Table A

Annual Building Activity Report Summary - New Construction
Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information									Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
389 El Camino Real	SF & 2-4	O	0	3	0	19	22	22	NA	DB/INC	0
60 Willow Rd.	SU	R									
308 Sherwood Way	SU	R									
1040 Henderson Ave.	SU	R									
127 Elliott Dr.	SU	R									
374 O'Connor St.	SU	R									
288 San Luis Dr.	SU	R									
SU Subtotal	SU	R	3	3	0	0	6	6	NA	NA	6
(9) Total of **Moderate and Above Moderate** from Table A3 ► ►					0	23	23	23			
(10) Total by income Table A/A3 ► ►			3	6		42	51	51			
(11) Total **Extremely Low-Income** Units*			0								

* Note: These fields are voluntary

Second Unit (SU) affordability is consistent with the Housing Element assumptions and based on a survey of San Mateo County jurisdictions.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program it its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity				0	
(2) Preservation of Units At-Risk				0	
(3) Acquisition of Units				0	
(5) Total Units by Income	0	0	0	0	

* Note: This field is voluntary

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for **Moderate**	0	0	0	0	0	0	0
No. of Units Permitted for **Above Moderate**	7	10	6	0	0	23	23

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

Table B

Regional Housing Needs Allocation Progress

Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.			2007	2008	2009	2010	2011	2012	2013			Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9		
Very Low	Deed Restricted	226	0	0	0	0	0	0	0				220
	Non-deed restricted		2	0	0	1	0	0	3			6	
Low	Deed Restricted	163	0	0	0	0	0	0	3			3	154
	Non-deed restricted		1	1	0	0	0	*1*	3			6	
Moderate	Deed Restricted	192	19	3	0	1	1	0	0			24	168
	Non-deed restricted		0	0	0	0	0	0	0				
Above Moderate		412	68	35	3	20	3	8	42			179	233
Total RHNA by COG. Enter allocation number:		993	90	39	3	22	4	9	51			218	775
Total Units ► ► ►													
Remaining Need for RHNA Period ► ► ► ► ►													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)	**Housing Programs Progress Report - Government Code Section 65583.** Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	**Objective**	**Timeframe in H.E.**	**Status of Program Implementation**
H1.A Establish City Staff Work Priorities for Implementing Housing Element Programs	Establish priorities for implementing Housing Element Programs	Annually	Superseded by work updating the Housing Element for the 2015-2023 planning period. This will be done annually as part of the annual Housing Element review.
H1.B Review the Housing Element Annually	Review and monitoring of Housing Element implementation; submit Annual Report to HCD	Annually	Undertaken in March-April 2014 using forms provided by HCD.
H1.C Publicize Fair Housing Laws and Respond to Discrimination Complaints	Obtain and distribute materials (see Program 1H.D)	Ongoing	Materials available at the counter at City Hall.
H1.D Provide Information on Housing Programs	Obtain and distribute materials at public locations	Annual	Materials available at the counter at City Hall and on the City's Web site.
H1.E Undertake Community Outreach When Implementing Housing Element Programs	Conduct public outreach and distribute materials (see Programs H1.C and H1.D)	Consistent with program timelines	Superseded by the outreach activities undertaken in updating the Housing Element for the 2015-2023 planning period.
H1.F Work with the San Mateo County Department of Housing	Coordinate with County efforts to maintain and support affordable housing	Ongoing	Coordination has occurred as part of the countywide 21 Elements process, coordination with the Department of Housing and other jurisdictions on a countywide nexus study and coordination in implementing Housing Element programs.
H1.G Adopt an Anti-Discrimination Ordinance	Undertake Municipal Code amendment	2014 — undertake during the 2014-2022 planning period	No activity to date. Program is included in the 2015-2023 Housing Element.
H1.H Utilize the City's Below Market Rate (BMR) Housing Fund	Accumulate and distribute funds for affordable housing	Ongoing	When the Redevelopment Agency and redevelopment funding for housing programs was eliminated by the State of California in 2012, the City continued to fund some programs through its General Fund. In addition, the City issued a Notice of Funding Availability (NOFA) for availability for approximately $3.2 million in Below Market Rate housing funds to support the acquisition, rehabilitation or new construction of housing that will provide long-term affordability. The funding is intended to fill the financing gap between the projected total development costs and other available funding sources.
H1.I Work with Non-Profits on Housing	Maintain a working relationship with non-profit housing sponsors	Ongoing	Focus has been on Mid-Pen's Gateway Apartments. The City has continued to undertake outreach to non-profits throughout the 2015-2023 Housing Element update. Annual funding provided to HIP, CID and HEART.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

H1.J Update the Housing Element	Maintain consistency with Housing Element law	In progress for the 2014-2022 planning period. Anticipated to be completed by Spring/ Summer 2014.	Update for the 2015-2023 planning period anticipated to be completed by April 2014.
H1.K Address Rent Conflicts	Resolve rent conflicts as they arise	Ongoing	No activity to date. Program is included in the 2015-2023 Housing Element.
H1.L Adopt Priority Procedures for Water and Sewer Service to Affordable Housing Developments	Comply with Government Code Section 65589.7	In progress; targeting completion in 2013	Program completed in February 2014.
H1.M Lobby for Changes to State Housing Element Requirements	Work with other San Mateo County jurisdictions and lobby for changes to State Housing Element law (coordinate with Program H1.B)	Ongoing	Met with State Representative and other jurisdictions and provided input on proposed legislation. Program is included in the 2015-2023 Housing Element.
H2.A Adopt Ordinance for “At Risk” Units	Protect existing subsidized rental housing (coordinate with Program H1.G)	2016 — undertake during the 2014-2022 planning period	There are no "at risk" affordable units in Menlo Park at the current time. No activity to date. Program is included in the 2015-2023 Housing Element.
H2.B Implement Energy Loan Programs and Improvements	Provide loans for 25 homes from 2007-2014	Ongoing — undertake during the 2014-2022 planning period (25 homes)	70 households particpated in a City-promoted PG&E program, which offers washing machine replacement rebates as an incentive to conserve energy and water.
H2.C Amend the Zoning Ordinance to Protect Existing Housing	Protect existing rental housing	Consider as part of the City's General Plan Update (2014-2015)	No activity to date. Program is included in the 2015-2023 Housing Element.
H2.D Assist in Implementing Housing Rehabilitation Programs	Provide loans to rehabilitate very low and low income housing (20 loans from 2007-2014)	Ongoing — undertake during the 2014-2022 planning period (10 homes)	Application submitted to County CDBG funding for 2014-15; notification expected in May 2014. Program is included in the 2015-2023 Housing Element.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

H3.A Zone for Emergency Shelter for the Homeless	Amend the Zoning Ordinance	In progress; anticipated to be competed in Spring/ Summer 2014	Draft ordinance identifies the location of the overlay to allow an emergency shelter for the homeless for up to 16 beds as a use by right and includes standards consistent with State law as established in SB2. Anticipated to be adopted in April 2014.
H3.B Zone for Transitional and Supportive Housing	Amend the Zoning Ordinance	In progress; anticipated to be competed in Spring/ Summer 2014	Draft ordinance updates the definitions of transitional and supportive housing to be consistent with State law and adds transitional, supportive housing and small (6 or fewer) residential care facilities as part of the definition of a “dwelling” in the Zoning Ordinance so these uses are treated the same way as other residential uses as required by State law under SB2. Anticipated to be adopted in April 2014.
H3.C Adopt Procedures for Reasonable Accommodation	Amend the Zoning Ordinance and/or modify administrative procedures; create handout	In progress; anticipated to be competed in Spring/ Summer 2014	Draft ordinance establishes procedures, criteria and findings for enabling individuals with disabilities to make improvements and overcome barriers to their housing. Anticipated to be adopted in April 2014.
H3.D Encourage Rental Housing Assistance Programs	Provide rental assistance to 235 extremely low and very low income Menlo Park residents annually	Ongoing assistance to 235 extremely low and very low income households per year	There are 235 households provided rental assistance in Menlo Park through Section 8 and other programs.
H3.E Investigate Possible Multi-Jurisdictional Emergency Shelter	Construction of homeless facility (if feasible)	Longer term program as the opportunity arises	No activity to date. Program is included in the 2015-2023 Housing Element.
H3.F Assist in Providing Housing for Persons Living with Disabilities	Provision of housing and services for disabled persons	Ongoing	Annual funding provided to CID and HIP. Program is included in the 2015-2023 Housing Element.
H3.G Develop Incentives for Special Needs Housing	Amend the Zoning Ordinance to provide opportunities for housing and adequate support services for seniors and people living with disabilities	2014	No activity to date. Program is included in the 2015-2023 Housing Element.
H3.H Continue Support for Countywide Homeless Programs	Support housing and services for the homeless and at-risk persons and families	Ongoing	The City has continued to support HEART and has participated in countywide activities to address homeless needs.
H4.A Modify Development Standards to Encourage Infill Housing	Amend the Zoning Ordinance to encourage smaller units and infill housing.	Completed June, 2013	Adopted.
H4.B Modify R-2 Zoning to Maximize Unit Potential	Amend the Zoning Ordinance to maximize dwelling unit potential in R-2 zone	Consider as part of General Plan Update	Issues and strategies to be reviewed as part of the General Plan Update (2015-2017).

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

H4.C Adopt Standards for an "Affordable Housing Overlay Zone"	Amend the Zoning Ordinance to provide flexibility and incentives for affordable housing	Completed June, 2013	Adopted.
H4.D Implement Inclusionary Housing Regulations and Adopt Standards to Implement State Density Bonus Law	Amend the Zoning Ordinance to require affordable housing in market rate developments and to implement State Density Bonus law incentives	State Density Bonus Law completed June, 2013.	Adopted. Review of inclusionary zoning regulations in progress.
H4.E Modify Second Dwelling Unit Development Standards and Permit Process	Amend the Zoning Ordinance to create incentives for second units (10 new second units — 3 very low, 4 low and 3 moderate income units)	Completed June, 2013	Concurrent with the adoption of the 2007-2014 Housing Element in May 2013, the City of Menlo Park adopted a Zoning Ordinance amendment for modifications to the Secondary Dwelling Unit Ordinance in recognition that secondary dwelling units can be a valuable source of affordable units because they often house family members at low or no cost, and many are limited in size and therefore, have lower rents. Besides making the City's ordinance compliant with State law by allowing, the Zoning Ordinance amendment included a number of revisions to provide greater flexibility in the development regulations to encourage more development of secondary dwelling units. The modifications included the following: Reduction in the minimum lot size eligible for a second unit without a use permit; Standardization of the maximum unit size rather than it being dependent on a percentage of the lot size; Allowance for increased wall height if the property is located in the flood zone, without additional discretionary review of a variance; Allowance for decreased interior side and rear setbacks with neighbor approval; Allowance for secondary dwelling unit parking space to be located in tandem and in the front setback; and Ability to request a use permit for modifications to any of the standards. As part of the Housing Element for the 2015-2023 Housing Element, however, the City of Menlo Park is proposing to continue this program to further explore opportunities for additional revisions to the Secondary Dwelling Unit Ordinance. In April 2014, the City Council will be reviewing a Zoning Ordinance amendment for modifications that would 1) further reduce the minimum lot size for a secondary dwelling unit without a use permit, 2) increase the maximum unit size for units that comply with accessibility requirements, 3) establish a new daylight plane requirement in lieu of the wall height requirement, and 4) provide flexibility in the tenancy requirement. The City will also considering whether to offer a fee reduction or waiver as another mechanism to reduce potential financial barriers, and incentive to the development secondary dwelling units.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

H4.F Undertake a Second Unit Amnesty Program	Adopt procedures and implement a second unit amnesty program (10 very low, 15 low and 10 moderate income units)	In progress; anticipated to be competed in Spring/ Summer 2014	As part of the City's Housing Element update process for the next planning period, the Amnesty Program was repurposed to a new program, in recognition by the Housing Element Steering Committee that the establishment of an amnesty program presented more challenges than potential positive results. Program H4.F has been repurposed to establish a process and standard to allow potential conversion of accessory buildings into secondary dwelling units. The proposed ordinance, which will be considered in April 2014, would allow legally permitted accessory buildings that do not meet the setback requirements for a secondary dwelling unit to be converted to a secondary dwelling unit through an administrative permit process.
H4.G Implement First-Time Homebuyer Program	Provide loans for 40 units assisted	BMR funds are no longer available for this program.	Delete. The City is referring first time homebuyers to HEART and Union Bank for down payment assistance. Include as part of Programs H1.C and H1.D to obtain and distribute information (check annually on the status of the program).
H4.H Work with Non-Profits and Property Owners on High Potential Housing Opportunity Sites	Develop incentives and procedures to encourage affordable housing	Ongoing	The City has been working with Mid-Pen housing on their Gateway Apartments project, the affordable housing arm of CORE Housing for a 60 unit low income development at the Veterans Affairs facility, and St. Anton Partners to include deed restricted affordable units in a new 394-unit rental development on Haven Avenue.
H4.I Create Multi-Family and Residential Mixed Use Design Guidelines	Establish design guidelines for multi-family and mixed use housing developments	Consider as part of General Plan Update	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.J Consider Surplus City Land for Housing	Identify opportunities for housing as they arise	Consider as part of General Plan Update	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.K Work with the Fire District	Undertake local amendments to the State Fire Code	In progress; anticipated to be competed in early 2014	Program implementation in progress and expected to be completed in 2014.
H4.L Coordinate with School Districts to Link Housing with School District Planning Activities	Coordinate and consider school districts long-range planning, resources and capacity in planning for housing	Ongoing	Continued coordination on new residential development (unit type, timing, etc.) and implications for enrollment growth and facility planning with various school districts. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.M Review the Subdivision Ordinance	Modify the Subdivision Ordinance as needed	Consider as part of General Plan Update	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.N Create Opportunities for Mixed Use Development	Conduct study to determine appropriate locations for housing in commercial zones	Consider as part of General Plan Update	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

H4.O Implement Actions in Support of High Potential Housing Opportunity Sites	Undertake Zoning Ordinance amendments to enable the construction of affordable housing to achieve the City's RHNA	Completed June, 2013	Actions completed, including rezonings.
H4.P Review Transportation Impact Analysis Guidelines	Modify Transportation Impact Analysis (TIA) guidelines	Consider as part the General Plan Update.	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.Q Update Parking Stall and Driveway Design Guidelines	Modify Parking Stall and Driveway Design Guidelines	In progress; anticipated to be competed in 2014	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.R Achieve Long-Term Viability of Affordable Housing	Coordination with project sponsors in tenant selection, project maintenance and management, and neighborhood outreach	Ongoing as projects are proposed	No activity to date. Program is included in the 2015-2023 Housing Element.
H4.S Review Overnight Parking Requirements for the R-4-S Zoning District	Review and modify night parking prohibitions in the R-4-S zone.	In progress; anticipated to be competed in 2014	Program implementation in progress and expected to be completed in 2015.
H4.T Explore Creation of a Transportation Management Association	Focus on the Haven Avenue/Bayfront Expressway area to coordinate grants, shuttles and other transportation.	Consider as part the General Plan Update.	No activity to date. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).
H4.U Explore Pedestrian and Bicycle Improvements	Coordinate with Redwood City and explore improvements over Highway 101 between Marsh Road and 5th Avenue.	Consider as part the General Plan Update.	City awaiting response to grant application for bicycle improvements on Haven Avenue associated with recently rezoned property. Program is included in the 2015-2023 Housing Element and will be reviewed as part of the General Plan Update (2015-2017).

General Comments:

The City's 2007-2014 Housing Element was adopted in May of 2013. The focus on implementation of the 2007-2014 Housing Element was to rezone adequate sites for housing and to create regulatory incentives for housing consistent with State law. As a result, the City accomplished the following in June 2013, immediately following adoption of the 2007-2014 Housing Element:

a. Adoption of an Affordable Housing Overlay (AHO) Zone. The Affordable Housing Overlay zone establishes affordable housing percentage requirements for a project to qualify for a density bonus and other incentives. In addition, the AHO establishes objective design standards for Community Development Director level approval. Specific incentives include:
(1) Density Bonus — a density bonus between 36.5 percent and 60 percent above the base unit density of the property.
(2) Floor Area Ratio — a minimum increase in FAR in proportion to the density bonus for the property.
(3) Stories/Height — allowances for either four (48 feet) or five (60 feet) story projects allowed depending on the density bonus.
(4) Parking — reduced vehicular and bicycle parking standards and allowances for uncovered and tandem parking for the affordable units.
(5) Lot Coverage, Setbacks, Open Space and Maximum Façade Height — flexibility in requirements to accommodate the increased density in the development.
(6) Fee Waivers — waiver of processing fees for projects that provide at least 50 percent of the units for low income households or 20 percent of the units for very low income households.
(7) Reduced Fees — reduction in other fees in the amount that corresponds to the increase in allowable density.

b. Adoption of High Density Residential, Special (R-4-S) Zone. The new R-4-S zoning was adopted to facilitate the development of multi-family housing and housing affordable to lower-income households. The sites rezoned allow primarily residential uses with possible ancillary commercial uses, and a minimum of 30 units per acre. In addition, objective and advisory design standards are included in the Zoning Ordinance for projects proposed under this zoning.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Menlo Park

Reporting Period 1/1/2013 - 12/31/2013

c. Rezoning. The City Council approved the following rezoning to assure adequate sites for a variety of housing: (1) 1200 and 1300 blocks of Willow Road rezoned to R-4-S (AHO); (2) the 600, 700 and 800 blocks of Hamilton Avenue rezoned to R-4-S; and (3) the 3600 block of Haven Avenue rezoned to R-4-S (AHO). The Affordable Housing Overlay Zone has also been applied to housing opportunity sites in the El Camino Real/Downtown Specific Plan area as a tool to achieve the public benefit densities for affordable housing.

d. Adoption of Zoning Consistent with State Density Bonus Law. The City Council amended the Zoning Ordinance to be consistent with State Density Bonus Law requirements.

e. Adoption of Modifications to the R-3 (Apartment) Zoning District. The City Council amended the Zoning Ordinance to create opportunities for higher density housing in infill locations around the El Camino Real/Downtown Specific Plan area in proximity to where services and transit are available.

f. Implementation of the Recently Adopted El Camino Real/Downtown Specific Plan. The recently adopted El Camino Real/Downtown Specific Plan contains opportunities for 680 units to be built. Based on current zoning, densities of over 30 units per acre are permitted on the majority of the sites. There is also the opportunity for a significant number of affordable units to be built. The Affordable Housing Overlay Zone has been applied to the entire Specific Plan area and is a tool to achieve the public benefit densities for affordable housing.

The City has continued to implement programs intended to address housing needs in the community and to comply with State law requirements. As part of the 2015-2023 Housing Element update process, the City has also undertaken a process to develop zoning for emergency shelter for the homeless, transitional and supportive housing, reasonable accommodation procedures and the establishment of a process and standards to allow the conversion of accessory buildings and structures to a secondary dwelling unit.

OFFICE OF THE CITY MANAGER

Council Meeting Date: April 1, 2014
Staff Report #: 14-055

Agenda Item #: F-2

REGULAR BUSINESS: **Approve by Resolution a Memorandum of Agreement Regarding Funding to Share in the Cost of an Animal Care Shelter on Airport Boulevard in San Mateo to Serve Menlo Park and Other Local Municipalities**

RECOMMENDATION

Staff recommends that the City Council approve by resolution a Memorandum of Agreement with the County of San Mateo to fund construction costs for a new animal care shelter in San Mateo.

BACKGROUND

All cities in San Mateo County, including Menlo Park, currently contract out their individual responsibility to provide local animal control field and sheltering services to the County of San Mateo. This is done via an animal control services agreement, typically for a term of three to five years at a time. Menlo Park last adopted a contract extension on May 21, 2011, and extended its service commitment to June 30, 2015.

For the past 62 years, the County of San Mateo has in turn contracted with the Peninsula Humane Society (PHS) to provide the service which covers all twenty cities and all unincorporated areas of the County. This shared services model, centralized through the County as the lead agency, allows for the costs of these services to be allocated based on each jurisdiction's proportionate usage.

Animal control services are currently provided by PHS in a 45,000 square foot building located at 12 Airport Boulevard in San Mateo. The building is owned by PHS and sits on land owned by the County, which is leased to PHS at a nominal rate. In 2011, PHS moved its charitable functions, such as animal adoption, from the Airport Boulevard shelter location to its new, recently constructed 57,000 square foot building on Rollins Road in Burlingame. The animal control functions – those tasks for which the County contracts – remain at the Airport Boulevard shelter. Those functions include: receiving and housing stray animals; serving as the location for the public when looking for lost pets or surrendering unwanted animals; sheltering animals; spay/neuter clinic; and vaccination clinic. Licensing, micro-chipping, veterinary care and animal behavior work are performed at both locations.

The County has determined that the existing shelter is, at a minimum, in need of significant repairs. Under the terms of the current agreement, starting in FY2012-2013 all jurisdictions agreed to share in the cost of necessary maintenance and repairs to the Airport Boulevard shelter up to $50,000 per year. PHS leadership has stated that it will be reluctant to renew the agreement with the County (and therefore member cities) when it expires in 2015, if the new agreement does not include a plan to address the current condition of the Airport Boulevard shelter.

ANALYSIS

The San Mateo County Department of Public Works conducted inspections of the Airport Boulevard shelter in 2009 and 2011. Because of the nature of the comprehensive repairs that would be required to bring the facility up to current animal control facility standards, it was determined that the building was functionally obsolete, and that substantial renovation of the existing facility is not a viable option.

Assessment of Shelter Alternatives

The County considered a number of alternatives for addressing the requirements for a shelter. First, they considered major renovations to the existing facility as discussed above. Then they considered replacing the existing shelter with a prefabricated modular building, which was not considered durable enough to serve as the needed long term solution. They also considered re-commissioning existing public or private buildings at alternative locations. Finally, they considered building a new shelter at an alternative County-owned site or at sites not currently owned by the County. The County reviewed 17 available County-owned and commercial properties that might be appropriate for a new animal care shelter.

In considering such factors as neighborhood and fiscal impacts (including both building and land acquisition costs), it was determined that a rebuild of the existing facility on the current site was the best alternative in that the existing site provides the least amount of impact on existing neighborhoods where animal control shelters may be met with moderate to strong opposition, and that the costs of other proposed sites far exceeded the cost to rebuild at the current location, even when accounting for the challenges anticipated in rebuilding at the current property which is next to and on bay-fill.

Approach to Shelter Construction

The San Mateo County Public Works Department received square footage requirements from PHS for each function that would be contained in a new animal care shelter. Based on this information and current trends in construction costs of similar facilities, it is estimated that the cost of construction will be between $15.1 million and $20.2 million to build a 33,500 square foot (25% smaller) animal care shelter at the current Airport Boulevard location. According to the construction timeline provided by the County, work would begin in July 2014 and be completed within 12-18 months. The current shelter would remain open during construction and all transition costs are included in the construction estimates.

The County is willing to manage the construction and advance the funding for construction of the new shelter at the Airport Boulevard location if each city enters into a cost participation agreement to pay a portion of the costs through a 30-year interest-free lease of the shelter. The cost participation memorandum of agreement is included as Attachment A.

Construction Cost Sharing Model

The lease amount will be recalculated each year over the term of the lease using a combination of shelter usage averaged over a three year period (weighted at 80%), and population (weighted at 20%). The basis of this allocation is to attribute the larger share of the costs (80%) upon the recent level of shelter services used by each jurisdiction, and a smaller portion (20%) based upon "potential" use based on population. The City Managers in San Mateo County have reviewed this allocation methodology and concur that this provides a reasonable basis upon which costs for the new facility should be allocated. Based on Menlo Park's current use of shelter services and current population, approval of this agreement will result in an annual estimated cost for Menlo Park of $23,728 to $31,769, depending upon the final cost of construction (see Attachment B). This cost would be in addition to the City's current annual cost for animal control services.

Alternatives

The City could choose not to participate in the memorandum of agreement for cost participation in the construction of the new animal care shelter, but this would likely preclude the City from participating in the countywide shared services model for animal control services. If this were to occur, the City would need to develop and have implemented its own means of providing animal control services independently when the current animal control services agreement expires on June 30, 2015.

IMPACT ON CITY RESOURCES

The City's proposed allocation for animal control services in the upcoming FY2014-2015 budget is $260,029, which covers the mandated animal control field and sheltering services and includes only minor facility repairs. It does not include a cost for facilities replacement. The estimated additional annual cost allocation for the City of Menlo Park under this memorandum of agreement for annual lease payments to cover the cost of constructing a new shelter is in the range of $23,728 to $31,769 depending on the ultimate total cost of construction. The lease payments would begin once the new shelter receives its certificate of occupancy, projected to be in mid to late 2015 (likely starting in FY2015-2016), and continue for a term of 30 years.

POLICY ISSUES

Approval of this agreement would preserve the City's ability to continue its existing participation in the San Mateo County shared services model for providing animal control services.

ENVIRONMENTAL REVIEW

The County of San Mateo is the lead agency in terms of evaluating potential environmental impacts and the City will have an opportunity to comment at the time the County determines what environmental review process is appropriate.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

A. Memorandum of Agreement
B. Proposed Construction Cost Allocation
C. Resolution approving and authorizing the execution of Memorandum of Agreement

Report prepared by:
Clay J. Curtin
Assistant to the City Manager

MEMORANDUM OF AGREEMENT

REGARDING FUNDING FOR CONSTRUCTION OF AN ANIMAL CARE SHELTER ON AIRPORT BOULEVARD IN SAN MATEO, CALIFORNIA, AMONG THE CITIES OF ATHERTON, BELMONT, BRISBANE, BURLINGAME, COLMA, DALY CITY, EAST PALO ALTO, FOSTER CITY, HALF MOON BAY, HILLSBOROUGH, MENLO PARK, MILLBRAE, PACIFICA, PORTOLA VALLEY, REDWOOD CITY, SAN BRUNO, SAN CARLOS, SAN MATEO, SOUTH SAN FRANCISCO, AND WOODSIDE AND THE COUNTY OF SAN MATEO

THIS MEMORANDUM OF AGREEMENT, dated for reference as of _____, 2013 (the "Agreement"), is by and among the COUNTY OF SAN MATEO (the "County"), and the cities of ATHERTON, BELMONT, BRISBANE, BURLINGAME, COLMA, DALY CITY, EAST PALO ALTO, FOSTER CITY, HALF MOON BAY, HILLSBOROUGH, MENLO PARK, MILLBRAE, PACIFICA, PORTOLA VALLEY, REDWOOD CITY, SAN BRUNO, SAN CARLOS, SAN MATEO, SOUTH SAN FRANCISCO, AND WOODSIDE (each, a "City," and collectively, the "Cities," and, together with the County, the "Parties").

RECITALS

The County and the Cities are parties to an Agreement for Animal Control Services dated as of April 26, 2011, pursuant to which the County provides animal control services in the unincorporated area of the County, as well as in the jurisdictional boundaries of the twenty Cities within the County, listed above, each of which is a party to the Agreement for Animal Control Services.

As set forth in the Agreement for Animal Control Services, the Peninsula Humane Society & SPCA ("PHS") presently serves as the County Contractor for the provision of certain animal control services to the County and the Cities. These services and the terms of PHS' performance of them are contained in an Animal Control Services Agreement between the County and PHS dated as of April 26, 2011.

In conjunction with and pursuant to the Animal Control Services Agreement, the County has leased to the PHS the land at 12 Airport Boulevard, in San Mateo, California, on which an Animal Care Shelter facility owned and operated by PHS is presently located.

The Parties agree that, owing to the obsolescence of the existing Animal Care Shelter facility, it is now necessary to construct a new facility and the Parties enter into this Agreement to set forth

the allocation of, and process for payment of, the construction cost for the new Animal Care Shelter facility among the Parties.

NOW, THEREFORE, the Parties agree as follows:

1. Construction Cost Allocation Methodology: The Parties agree that construction costs for the new Animal Care Shelter facility shall be allocated among the Parties based on the formula set forth in Exhibit A to this Agreement, which is incorporated herein by reference. This formula reflects each Party's actual use of the existing Animal Care Shelter facility in 2009, 2010, and 2011 as a percentage of all Parties' total use of the facility, as well as each Party's total population as of 2010, as a percentage of the County's total population as of that date. The formula is weighted 80% to a City's average facility use over the three years preceding the year in question and 20% to population. The Parties agree that each year, the County shall recalculate three year average facility usage for each City and that Exhibit A (and each Party's prospective Lease Payment obligations, as described in Section 3 of this Agreement) shall be amended to reflect such recalculations. The Parties further agree that the County shall, upon request of a City, promptly provide the requesting City with copies of the data and documents used to calculate each City's facilities usage.

2. County Advancing Construction Costs: The Parties agree that the County shall advance, on an interest free basis, all funds required to pay the construction costs for the new Animal Care Shelter facility. For purposes of this Agreement, "construction costs" include all expenses for architectural and inspector services, project management service, environmental review, planning and building fees and costs, and actual contractor construction services. The Parties understand and agree that construction costs for the Animal Care Shelter facility are anticipated at this time to be twenty million two hundred thousand dollars ($20,200,000). The Parties will be provided with further information regarding the construction costs for the Animal Care Shelter facility within a reasonable period of time after such information becomes available or prior to the Certificate of Occupancy being issued. The Parties agree that if the County receives information indicating that the construction costs for the Animal Care Shelter facility will exceed $20,200,000 by 10% or more, the County shall provide notice to each City of the revised estimated construction costs within a reasonable period of time before such additional construction costs are incurred. The Parties further agree that the County shall, upon request of a City, promptly confer with such City or Cities regarding the additional construction costs and any means by which such additional construction costs may be minimized.

3. Parties' Payment of Proportional Share of Construction Costs: Each Party agrees that, during the term of this Agreement for as long as the new Animal Care Shelter facility is occupied and used for animal care shelter purposes, the Party shall pay the County an annual Lease Payment beginning on the first July 1st after a certificate of occupancy is issued for the new Animal Care Shelter facility, and on each subsequent July 1st for the next twenty nine years thereafter. Each

Party's Lease Payment shall be equal to the Party's proportional share of the construction cost of the new Animal Care Shelter facility amortized on a straight line basis over thirty years, as set forth in Exhibit A to this Agreement, as Exhibit A may be amended from time to time as provided in Section 1 of this Agreement. Each Party's obligation to make a Lease Payment shall remain in place only for so long as the Party is a signatory to the Agreement for Animal Control Services, or any successor agreement addressing materially the same subject matter. In the event that a Party terminates its participation in this Agreement pursuant to Section 4 of this Agreement, the County shall, upon receiving notice of that Party's termination, recalculate the remaining Parties' Lease Payment obligations pursuant to the Construction Cost Allocation Methodology set forth in Section 1 of this Agreement. The County shall promptly provide all remaining Parties with notice of their recalculated Lease Payment obligations. Each remaining Party shall thereafter have the option to either (a) pay the recalculated increased annual Lease Payments during the remaining term of the Agreement; or (b) request that the County allow the remaining Party a period of up to 5 years after the end of the thirty year period set forth in this Section 3 of the Agreement to pay the County the remaining Party's additional allocated share of construction costs for the Animal Care Facility attributable to the departure of the terminating Party.

4. Term and Termination: Except as set forth above, this Agreement shall be effective for the period from _____, 2014 until each Party has made the last payment required under Section 3 of this Agreement. Except as set forth in Section 3 of the Agreement (i.e., by terminating participation in the Agreement for Animal Control Services), no Party may terminate this Agreement during its term. A Party terminating its participation in this Agreement shall do so effective as of December 31 of a year during the term of this Agreement and shall provide each other Party to this Agreement with at least one full year's prior written notice of the Party's intent to terminate its participation in the Agreement.

5. Amendments/Entire Agreement: Amendments to this Agreement must be in writing and approved by the governing body of each Party. This is the entire agreement among the parties with respect to the construction of the new Animal Care Shelter facility and it supersedes any prior written or oral agreements with respect to the subject.

6. Hold Harmless: Each City shall hold harmless, indemnify, and defend County, its officers, employees, and agents from and against any and all claims, suits, or actions of every kind brought for or on account of injuries to or death of any person or damage to any property of any kind whatsoever and to whomsoever belonging which arise out of the performance or nonperformance of City's covenants and obligations under this Agreement and which result from the actively negligent or wrongful acts of City or its officers, employees, or agents.

County shall hold harmless, indemnify, and defend each City, its officers, employees, and agents from and against any and all claims, suits, or actions of every kind brought for or on account of

injuries to or death of any person or damage to any property of any kind whatsoever and to whomsoever belonging which arise out of the performance or nonperformance of County's covenants and obligations under this Agreement and which result from the actively negligent or wrongful acts of County or its officers, employees, or agents.

This provision requiring County to hold harmless, indemnify, and defend each City shall expressly not apply to claims, losses, liabilities, or damages arising from actions or omissions, negligent or otherwise, of PHS or any other independent contractor providing animal control-related services pursuant to a contract with the County. Claims related to the planning and/or construction of the new Animal Care Shelter facility are not claims, losses, liabilities, or damages related to "animal control-related services" within the meaning of this Agreement.

In the event of concurrent negligence of the County, its officers, or employees, and any City, its officers and employees, then the liability for any and all claims for injuries or damages to persons and/or property or any other loss or cost which arises out of the terms, conditions, covenants or responsibilities of this Agreement shall be apportioned in any dispute or litigation according to the California theory of comparative negligence.

7. Assignability: Except as otherwise expressly provided for herein, no Party shall assign any of its obligations or rights hereunder without the consent of all other Parties.

8. Notices: Any notices required to be given pursuant to this Agreement shall be given in writing and shall be mailed to all Parties to the Agreement, as follows:

To City:

To County:

IN WITNESS WHEREOF, the Board of Supervisors of the COUNTY OF SAN MATEO has authorized and directed the President of the Board of Supervisors to execute this Agreement for and on behalf of the County, and the Cities of ATHERTON, BELMONT, BRISBANE, BURLINGAME, COLMA, DALY CITY, EAST PALO ALTO, FOSTER CITY, HALF MOON BAY, HILLSBOROUGH, MENLO PARK, MILLBRAE, PACIFICA, PORTOLA VALLEY, REDWOOD CITY, SAN BRUNO, SAN CARLOS, SAN MATEO, SOUTH SAN FRANCISCO, AND WOODSIDE have caused this Agreement to be subscribed by each of their duly authorized officers and attested by their Clerks.

Dated: _____

_____

Clerk of the Board

COUNTY OF SAN MATEO

_____

Dated: _____

_____

Town Clerk

TOWN OF ATHERTON

_____

By:

Dated: _____

_____

City Clerk

CITY OF BELMONT

_____

By:

Dated: _____

_____

City Clerk

CITY OF BRISBANE

_____

By:

Dated: _____

_____

City Clerk

CITY OF BURLINGAME

_____

By:

Dated: _____

_____

Town Clerk

TOWN OF COLMA

_____

By:

Dated: _____

_____

City Clerk

CITY OF DALY CITY

_____

By:

Dated: _____

_____

City Clerk

CITY OF EAST PALO ALTO

_____

By:

Dated: _____

_____

City Clerk

CITY OF FOSTER CITY

_____

By:

Dated: _____

_____

City Clerk

CITY OF HALF MOON BAY

_____

By:

Dated: _____

_____

Town Clerk

TOWN OF HILLSBOROUGH

_____

By:

Dated: _____

_____

City Clerk

CITY OF MENLO PARK

_____

By:

Dated: _____

_____

City Clerk

CITY OF MILLBRAE

_____

By:

Dated: _____

_____

City Clerk

CITY OF PACIFICA

_____

By:

Dated: _____

_____

Town Clerk

TOWN OF PORTOLA VALLEY

_____

By:

Dated: _____

_____

City Clerk

CITY OF REDWOOD CITY

_____

By:

Dated: _____

_____

City Clerk

CITY OF SAN BRUNO

_____

By:

Dated: _____

_____

City Clerk

CITY OF SAN CARLOS

_____

By:

Dated: _____

_____

City Clerk

CITY OF SAN MATEO

_____

By:

Dated: _____

_____

City Clerk

CITY OF SOUTH SAN FRANCISCO

_____

By:

Dated: _____

_____

City Clerk

TOWN OF WOODSIDE

_____

By:

Methodology = Based on an 3-yr avg of shelter use (80%) and % of population (20%)

ANIMAL CONTROL COSTS
PROPOSED COST DISTRIBUTION - ESTIMATED LEASE AMOUNTS TO RECOUP CONSTRUCTION COSTS

CITY	Shelter Use	Shelter Use	Shelter Use				$15,100,000	$20,200,000
	CALENDAR YEAR							
	Yr 1 2009 Actual	Yr 2 2010 Actual	Yr 3 2011 Actual	3 YR AVG OF SHELTER USE	POPULATION	% of Total Pop	EST ANNUAL LEASE AMT	EST ANNUAL LEASE AMT
Atherton	1.12%	1.00%	0.36%	0.83%	6,914	1.0%	$4,297	$5,749
Belmont	3.26%	3.54%	2.65%	3.15%	25,835	3.6%	$16,304	$21,811
Brisbane	0.99%	0.99%	0.71%	0.90%	4,282	0.6%	$4,211	$5,633
Burlingame	3.51%	3.48%	3.20%	3.40%	28,806	4.0%	$17,713	$23,696
Colma	0.61%	0.98%	0.60%	0.73%	1,792	0.2%	$3,191	$4,268
Daly City	8.52%	9.57%	10.16%	9.42%	101,123	14.1%	$52,087	$69,679
East Palo Alto	6.61%	6.75%	8.44%	7.27%	28,155	3.9%	$33,205	$44,420
Foster City	2.82%	2.39%	1.93%	2.38%	30,567	4.3%	$13,866	$18,550
Half Moon Bay	5.21%	5.04%	2.47%	4.24%	11,324	1.6%	$18,660	$24,962
Hillsborough	1.59%	1.29%	1.14%	1.34%	10,825	1.5%	$6,912	$9,247
Menlo Park	4.90%	4.95%	4.50%	4.78%	32,026	4.5%	$23,748	$31,769
Millbrae	1.90%	1.99%	1.98%	1.96%	21,532	3.0%	$10,896	$14,576
Pacifica	5.72%	6.38%	4.78%	5.63%	37,234	5.2%	$27,874	$37,288
Portola Valley	0.90%	0.76%	0.16%	0.61%	4,353	0.6%	$3,053	$4,084
Redwood City	12.91%	13.24%	13.25%	13.13%	76,815	10.7%	$63,647	$85,143
San Bruno	5.23%	5.19%	6.86%	5.76%	41,114	5.7%	$28,954	$38,734
San Carlos	3.35%	3.45%	3.00%	3.27%	28,406	4.0%	$17,134	$22,921
San Mateo	15.82%	14.67%	17.84%	16.11%	97,207	13.5%	$78,490	$105,000
S. San Francisco	9.08%	9.34%	11.99%	10.14%	63,632	8.9%	$49,733	$66,530
Woodside	4.41%	1.27%	1.07%	2.25%	5,287	0.7%	$9,801	$13,111
County	1.57%	3.73%	2.92%	2.74%	61,222	8.5%	$19,611	$26,235
Total	100.00%	100.00%	100.00%	100.00%	718,451	100.0%	$503,387	$673,405

THIS PAGE INTENTIONALLY LEFT BLANK

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING AND AUTHORIZING EXECUTION OF A MEMORANDUM OF AGREEMENT REGARDING FUNDING FOR CONSTRUCTION OF AN ANIMAL CARE SHELTER ON AIRPORT BOULEVARD IN SAN MATEO, CALIFORNIA

WHEREAS, since 1952, the County of San Mateo has contracted with the Peninsula Humane Society for animal control services and all 20 cities in the county in turn contract with the County for said services; and

WHEREAS, the 20 cities and the County of San Mateo (which agencies are hereinafter collectively called the "Agencies") are party to an Animal Control Services Agreement; and

WHEREAS, the Animal Control Services Agreement does not include funding for shelter replacement; and

WHEREAS, it has been determined that the current shelter on County-owned land on Airport Boulevard in San Mateo is functionally obsolete and it is necessary to construct a new shelter in this location; and

WHEREAS, the County of San Mateo has agreed to manage and advance the funding for the estimated $15.1 million to $20.2 million construction project through a 30-year interest-free lease if the participating Agencies agree to a cost-sharing agreement; and

WHEREAS, the City of Menlo Park's estimated annual lease cost share is $23,748 to $31,769, payment of which will begin once the shelter receives a certificate of occupancy and will continue for a term of 30 years.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve the Memorandum of Agreement Regarding Funding for Construction of an Animal Care Shelter on Airport Boulevard in San Mateo, California, Among the Cities of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside and the County of San Mateo attached hereto as Exhibit "A" and incorporated herein by this reference, and the Mayor and City Clerk are hereby authorized to execute said agreement and to attest to such execution, respectively, for and on behalf of the City of Menlo Park.

I, Pamela Aguilar, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a meeting by said Council on this first day of April, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this first day of April, 2014.

Pamela Aguilar
City Clerk

PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 1, 2014
Staff Report #: 14-057

Agenda Item #: F-3

REGULAR BUSINESS: **Approve a Comment Letter on the Draft Environmental Impact Report for the Peninsula Corridor Electrification Project**

RECOMMENDATION

Staff recommends that the City Council approve a comment letter on the Draft Environmental Impact Report (DEIR) for the Peninsula Corridor Electrification Project.

BACKGROUND

The Peninsula Joint Powers Board (JPB) currently runs commuter rail service (Caltrain) along the peninsula. The current system utilizes traditional diesel locomotives to run the trains. To improve efficiency and reduce their reliance on fossil fuels, Caltrain has proposed a modification to electrify the corridor and run Electric Multiple Units (EMU) for the system. EMUs consist of self-propelled carriages that are powered by electricity. The electrification would include overhead catenary power lines that would provide power to the EMUs.

Caltrain originally released a draft EIR for the Electrification Project in 2004. Since the project was never constructed and the EIR was over eight years old and included some outdated information, Caltrain decided to complete a new EIR for the project. The City Council authorized submission of comments on the Notice of Preparation (NOP) on March 5, 2013 (Attachment A). The NOP is the first step in the EIR process which allows the public the opportunity to provide input on concerns that should be addressed as part of the EIR.

Caltrain currently plans to complete the Electrification Project by 2019 and has funds from numerous sources including Proposition 1A, Caltrain, the San Mateo County Transportation Authority (Measure A), and the Metropolitan Transportation Commission Regional Measure 2 (Bridge Toll).

ANALYSIS

The DEIR evaluates the Electrification Project, including poles, overhead power lines, and transformers needed to electrify the line between San Francisco and just south of Tamien Station in San Jose. With electrification, trains in the system will be able to start

and stop faster, allowing for increased train frequency (114 trains proposed, increased from 92 trains existing). While the DEIR includes a prototypical schedule for analysis purposes that shows increased service to the Menlo Park station, the DEIR is clear that the schedule is not finalized and is subject to change in the future.

Staff has provided a draft letter as Attachment B that indicates the items that Menlo Park would specifically request to be addressed in the Final EIR. The letter comments on concerns on several items including, but not limited to: coordination and consistency with High Speed Rail (HSR), traffic, trees, visual impacts, noise, coordination with other local projects and safety. The City Council Rail Subcommittee reviewed and agreed to the topics included in the letter.

Once approved by Council, the final comment letter from the City of Menlo Park's Mayor will be sent to Caltrain for inclusion in the public record for the EIR.

IMPACT ON CITY RESOURCES

The Electrification Project has no direct commitments of City resources. The project has, however, implications for City resources:

1) As currently planned, construction would be partially funded by bonds paid off by direct draw-downs on the State general fund. Since cities, counties, schools, and many special districts, as well as many aspects of State government, compete for State funding when resources are limited, this funding mechanism could place the Electrification Project in competition for a share of the funding that Menlo Park receives.
2) Although design and construction of the project through Menlo Park would be borne by Caltrain, Menlo Park would incur staff costs in coordinating the planning, design and construction activities of the project. For example, review of the DEIR alone required approximately 40 hours of staff time unexpectedly, which impacts the delivery of other ongoing projects in the City.

POLICY ISSUES

Comments contained in the draft letter are consistent with prior actions taken by the City on Rail within Menlo Park and the California High Speed Rail Project.

ENVIRONMENTAL REVIEW

No environmental review is required for submission of a comment letter on the Draft EIR.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

A. March 5, 2013 Staff Report and Draft Letter to Caltrain Commenting on the NOP for the Electrification EIR
B. Draft Letter to Caltrain Commenting on the Draft EIR for Electrification
C. Visual Simulations of Proposed Electrification Project

Report prepared by:
Nicole Nagaya, P.E.
Senior Transportation Engineer

THIS PAGE INTENTIONALLY LEFT BLANK

PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2013
Staff Report #: 13-032

Agenda Item #: F-4

REGULAR BUSINESS: Approve a Comment Letter on the Notice of Preparation of an Environmental Impact Report for the Peninsula Corridor Electrification Project

RECOMMENDATION

Staff recommends that the City Council approve a comment letter on the Notice of Preparation for an Environmental Impact Report (EIR) for the Peninsula Corridor Electrification Project

BACKGROUND

The Peninsula Joint Powers Board (Caltrain) currently runs commuter rail service along the peninsula. The current system utilizes traditional diesel locomotives to run the trains. In order to improve efficiency and reduce their reliance on fossil fuels, Caltrain has proposed a modification to electrify the corridor and run Electric Multiple Units (EMU) for the system. EMUs consist of self-propelled carriages that are powered by electricity. The electrification would include overhead catenary power lines that would provide power to the EMUs.

Caltrain originally released a draft EIR for the Electrification Project in 2004. Since, the project was never constructed and the EIR was over eight years old and included some outdated information, Caltrain decided to complete a new EIR for the project. The Notice of Preparation is the first step in the EIR process and allows the public the opportunity to provide input on concerns that should be addressed as part of the EIR.

Caltrain currently plans to complete the project by 2019 and has funds from numerous sources include Proposition 1A, Caltrain, and the San Mateo County Transportation Authority (Measure A).

ANALYSIS

The EIR will evaluate the electrification project, which includes poles, overhead power lines, and transformers throughout the corridor. The EIR will determine if the project has impacts on the environment and provide feasible mitigation measures for those impacts.

Staff has provided a draft letter as Attachment A that indicates the items that Menlo Park would specifically request be included in the EIR. The letter comments on concerns on several items including, but not limited to, trees, visual impacts, noise, grade separations, traffic impacts and safety. The letter also indicates that the electrification project should also consider High Speed Rail along the corridor in a

blended fashion utilizing only two tracks in Menlo Park or underground. The rail subcommittee reviewed and agreed to the topics included in the letter.

Since the electrified system will start and stop faster, the letter also requests additional stops for the Menlo Park Station. The additional stops should not interfere with the time for trains to travel along the corridor due to the efficiency of the EMUs.

Once approved by Council the final comment letter from City of Menlo Park's Mayor will be sent to Caltrain for inclusion in the public record for the EIR. The City will still have an opportunity to comment on the Draft EIR when it is released, likely later this year.

IMPACT ON CITY RESOURCES

The Electrification Project has no direct commitments of City resources. The project has, however implications for City resources:

1) As currently planned, construction would be partially funded by bonds paid off by direct draw-downs on the State general fund. Since cities, counties, schools, and many special districts, as well as many aspects of State government, compete for State funding when resources are limited, this funding mechanism could place the Electrification Project in competition for a share of the funding that Menlo Park receives.
2) Although design and construction of the project through Menlo Park would be Caltrains project's costs, Menlo Park would incur staff costs in coordinating the planning, design, and construction activities of the project.

POLICY ISSUES

Comments contained in the draft letter are consistent with prior actions taken by the City on Rail within Menlo Park and California High Speed Rail Project.

Signature on File
Charles Taylor,
Public Works Director

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS:

A. Draft letter to Caltrain commenting on the NOP for the Electrification EIR

Public Works Department

March 5, 2013

Peninsula Corridor Joint Powers Board (Caltrain)
Attn: Stacy Cocke, Senior Planner
1250 San Carlos Avenue.
P.O. Box 3006
San Carlos, CA 94070-1306

Subject: City of Menlo Park Comments on the Notice of Preparation (NOP) for the Peninsula Corridor Electrification Project Environmental Impact Report (EIR)

Dear Ms. Cocke.

The City of Menlo Park has continued concerns about Caltrain and High Speed Rail (HSR) sharing the tracks along the Peninsula. The electrification of the corridor is a first step toward the future of Caltrain, but also the blended approach with HSR. The EIR for the electrification project needs to reflect the probability of the future use of the rail line with HSR and how all the components fit together.

The EIR should provide sufficient information to fully evaluate and reach a conclusion regarding the electrification of the corridor and its impacts and mitigation measures on Menlo Park. Caltrain should make all efforts to analyze alternates in order to avoid significant adverse impacts to the Peninsula area from electrification and the affects of a blended HSR.

The City is only interested in a two-track blended system in Menlo Park within the existing Caltrain right-of-way or the system in an underground configuration. The City is not interested in

1. Any system, which is on an elevated structure, and
2. Any system which would allow expansion to four-tracks for any phase of the project unless in an underground configuration.

The City of Menlo Park expects that each of the following items are clearly and fully studied, addressed and mitigated in the EIR:

701 Laurel Street - Menlo Park, CA 94025
Phone: (650) 330-6740 - Fax: (650) 327-5497

1. Traffic Analysis – The NOP for the electrification project indicates that there will be one additional train per hour per direction for a total of six trains during the peak hour in each direction. The additional trains will cause more gate downtime along the roadways intersection the tracks. The affect of the project needs to be fully analyzed and mitigated. The mitigation should not include the closure of any crossings, as a crossing closure would affect the public's ability to move through the community and create its own significant impacts. All roadways that would be affected by additional traffic delay need to be analyzed including any roadways that may experience additional traffic due to delay and rerouting.

2. Ridership Estimates – Ridership is the foundation for rail infrastructure planning which drives key decisions and system costs. It is critically important for determining the appropriate level of service for the system and the overall revenue associated with the system. The EIR should include new information regarding ridership along the corridor including HSR. The City of Menlo Park recommends a new demand model be developed by an independent group.

3. Blended System – The EIR should include an analysis of the blended system of Caltrain and HSR. The system should only include two tracks within Menlo Park unless in an underground configuration. The "blended" approach meets the goals of Caltrain and HSR, while minimizing the impacts to Menlo Park's downtown area and to the overall character of the community. The City is also firmly opposed to Caltrain transferring any real estate interest or lead agency status to the HSR Authority.

4. Grade Separation – It is unclear if grade separations will be necessary to mitigate the any impacts of the Electrification project. If grade separations are proposed, then a detailed analysis of the potential impacts at each roadway crossing needs to be included. Grade separations on the Caltrain mainline will create impacts due to the constrained nature of the development in Menlo Park. One likely alternative for grade separation would include raising the tracks. This particular alternative has another unique issue of creating a "wall effect" within the community and dividing the City. As stated earlier Menlo Park is strongly opposed to raising the tracks and only supports a two track system or an underground system. Menlo Park would be willing to discuss a grade separation at Ravenswood, but the City would need to maintain full authority over the design.

5. Historic Structure(s) – The City of Menlo Park Caltrain station has been listed on the National Register of Historic Places since 1974. The impacts to the existing train station need to be analyzed in the EIR. The EIR should clearly analyze the impacts to this structure along with any other historic structures that may be impacted by the project and provide mitigation measures to address any impacts.

6. Aesthetics –The appearance of overhead electric power supply for the trains, including the wires, supporting poles, mast arms and insulations, is a matter of significant concern. The poles should be the least intrusive types of poles and the design should

be aesthetically pleasing. The EIR needs to analyze the impacts associated with electrification of the system for all vertical and horizontal alignments. If the system becomes completely electrified, the EIR should consider the relative impacts of diesel vs. Hybrid vs. all electric engines for freight trains running on the corridor.

7. Trees – The poles and wires will affect numerous trees along the corridor. Care should be taken to avoid as many trees as possible for the project. The EIR should indicate all trees that will need to be removed, their species, health, size and why the design cannot be modified to allow the tree to remain. If any trees are proposed to be removed, a full replacement schedule should be provided with locations, species, size and number of replacement trees.

8. View Corridors – The poles and wires will have an effect on the view corridors in many areas of the City. The beautiful natural surroundings in the area add to the vibrancy of the community. These views are important to the overall look and feel of the community. A full analysis of these impacts and mitigations measures needs to be included.

9. Noise and vibration mitigation – The EIR needs to include a noise and vibration analysis. The additional noise and vibration caused by the project needs to be clearly stated and addressed. Any noise and/or vibration impacts need to be mitigated as part of the project. Such measures should be included as integral components of the project. These measures should not create other impacts such as construction of a sound wall that might divide the City and adversely affect the residential character of the community.

10. Freight – Menlo Park is concerned about the current and increased freight traffic using the Caltrain mainline and its impact on residents and traffic in the area. Freight traffic and its impacts on the community should be clearly analyzed and mitigated as part of the EIR. The potential increase in freight is not only related to Caltrain, but a function of the HSR project due to amenities proposed as part of these projects.

11. Property Impacts – The EIR needs to analyze the impacts to any properties that may be affected by the project. The impacts due to the project such as noise, vibration, and aesthetics will have wide reach and affect many properties adjacent to and further from the system. The specific distance should be based on the increased impacts and how far they may reach and could vary based on terrain and the specifics of the area.

12. Construction Impacts – The construction of the project would create many impacts within the City of Menlo Park. The construction may cause traffic diversion, construction noise, etc. The affect of the construction on residents and businesses needs to be clearly analyzed, both physical and financial. Many businesses cannot remain closed for extended periods and be viable. The affect on the businesses could create an economic impact on the City that needs to be clearly addressed in the EIR.

13. Existing Crossings – The current pedestrian, bicycle and vehicular crossing of the current Caltrain tracks are essential for the movement of people and goods. Caltrain

needs to commit to maintaining all of the current crossings completely open with no closures. At a minimum, the crossings need to continue to operate with the same level and types of traffic as they do today. Beyond the current crossings, Caltrain should resolve to increase connectivity across the railroad tracks with better crossings, and more pedestrian and bicycle crossings.

14. Safety – The safety of the electric wires and poles needs to be thoroughly analyzed and mitigated in the EIR. Also, the safety of adjacent and nearby neighbors and how the wires may affect the safety in the yards. Also, any changes in property rights and regulations for adjacent and nearby property owners due to the wires and poles such as the affect on current swimming poles, prohibition on new swimming pools or further yard setbacks for construction. Also, will the electrification components increase safety concerns with relation to a disaster such as an earthquake. These issues need to be addressed in the EIR.

15. Caltrain Service Levels – The project is intended to provide a better level of service for Caltrain. The project should address what type of increased service will be provided including an increase in service for the Menlo Park Caltrain station. The community will likely have impacts associated with the project and with the increase in the number of trains and the ability for the electrified trains to start and stop more quickly, increased service needs to be provided.

Finally, the City of Menlo Park would reiterate the concerns raised above and the fact that this information is necessary to make an informed decision on the project. The City expects to have these items addressed as part of the EIR for the project and looks forward to a continued discussion with Caltrain. The City will continue to participate in the EIR process to review any impacts and proposed mitigation measures within Menlo Park.

Sincerely,

Peter Ohtaki
Mayor

Cc: Members of the City Council
City Manager
City Attorney
Assistant City Manager
Public Works Director

CITY OF MENLO PARK

Office of the Mayor

April 1, 2014

Peninsula Corridor Joint Powers Board (Caltrain)
Attn: Stacy Cocke, Senior Planner
1250 San Carlos Avenue.
P.O. Box 3006
San Carlos, CA 94070-1306

Subject: City of Menlo Park Comments on the Peninsula Corridor Electrification Project Environmental Impact Report (EIR)

Dear Ms. Cocke,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the proposed Peninsula Corridor Electrification Project (PCEP). The City of Menlo Park recognizes Caltrain service provides a benefit to regional travel, and wishes to cooperate with JPB in improving the quality and efficiency of Caltrain service and operations. However, it must also be recognized that Menlo Park is adversely impacted by some of the characteristics of Caltrain operations, and as such, any significant change in Caltrain operations is a matter of considerable public concern.

The City has continued concerns about Caltrain and High Speed Rail (HSR) sharing the tracks along the Peninsula. The electrification of the corridor is a first step toward the future of Caltrain, but also the blended approach with HSR. The City is only interested in a two-track blended system in Menlo Park within the existing Caltrain right-of-way or the system in an underground configuration. The City is not supportive of:

1. Any system, which is on an elevated structure, and
2. Any system which would allow track expansion for any phase of the project unless in an underground configuration.

After carefully considering the DEIR, we believe there are a number of concerns that must be addressed, as outlined in the Attachment. The City of Menlo Park expects that each of the identified items are clearly and fully studied, addressed and mitigated in the Final EIR.

Finally, the City of Menlo Park would reiterate the concerns raised above and the fact that this information is necessary to make an informed decision on the

701 Laurel Street - Menlo Park, CA 94025
Phone: (650) 330-6740 - Fax: (650) 327-5497

project. The City expects to have these items addressed as part of the Final EIR for the project and looks forward to a continued discussion with Caltrain.

Sincerely,

Ray Mueller
Mayor

Att: Comments on the Draft PCEP EIR

Cc: Members of the City Council
City Manager
City Attorney
Assistant City Manager
Public Works Director

1. Transportation Analysis – The DEIR indicates that with the PCEP, Caltrain will operate 114 trains daily, increased from 92 trains daily under existing conditions. There will be one additional train per hour per direction for a total of six trains during the peak hour in each direction. The additional trains cause more gate downtime along the roadways intersection the tracks, as evidenced by the increased delay experienced at the seven study intersections analyzed within Menlo Park. The following comments are submitted for the transportation chapter and appendices of the DEIR:

    a) The analysis and significance criteria employed do not reflect the requirements of the City's Transportation Impact Analysis (TIA) Guidelines (see Attachment A) and needs to be revised to include all potentially impacted roadway segments and intersections (e.g., on adjacent roadway segments and intersections on Encinal Avenue, Laurel Street, Glenwood Avenue, Oak Grove Avenue).
    b) The study analysis methodology also does not comply with the City's methods (Vistro software package, See attached Transportation Impact Analysis Guidelines). The resulting level of service results reported in the DEIR do not match the actual service levels at several of the study intersections. The analysis should be revised to more accurately reflect current operating conditions, which are worse than reported during peak hours.
    c) The DEIR discloses significant impacts to two intersections in Menlo Park, El Camino Real/Glenwood Avenue (#55) and El Camino Real/Oak Grove Avenue (#56); however, properly following the City's significance criteria would result in additional impacts that are not currently disclosed.
    d) The recommended mitigation measures proposed for the impacted intersections (El Camino Real/Glenwood Avenue (#55) and El Camino Real/Oak Grove Avenue (#56)) do not fully mitigate the impacts of the PCEP and would, in fact, cause secondary impacts to the Ravenswood Avenue/Laurel Street intersection (#61). This is unacceptable. The City has proposed other mitigation measures at both impacted intersections in prior project approvals that need to be considered as mitigation measures to eliminate these intersection impacts.
    e) The increased delay and traffic congestion resulting from the PCEP will cause traffic diversion and cut-through along many streets within Menlo Park, which need to be studied and addressed in the Final EIR.
    f) The ability of pedestrians and bicyclists to easily and safely access the Caltrain station for Menlo Park residents needs to be analyzed and improved. Current analysis and mitigation focuses on the San Francisco (4^{th}/King) station, however, in other sections of the transportation chapter and appendices, it is noted that Menlo Park has a high mode of walk and bicycle access to the station. With anticipated increases in ridership, in 2040 especially, walking and bicycling infrastructure and safety need to be studied and addressed in the Final EIR.

2. Ridership Estimates – Ridership is the foundation for rail infrastructure planning which drives key decisions and system costs. The DEIR includes station-level ridership estimates developed through an extensive modeling and post-processing process. However, ridership at the Menlo Park Station is shown to decrease between existing (2013) conditions and 2020 with Project conditions, which is counterintuitive and

unlikely: in 2012, the City adopted the El Camino Real/Downtown Specific Plan which provides for transit-oriented land uses focused around the Menlo Park Station; the City and major employers are incentivizing transit use through Transportation Demand Management programs; the PCEP proposes an increase of 30 trains per day at the Menlo Park station, making transit travel more convenient and attractive; the Menlo Park station has the 10th highest ridership in the Caltrain system currently; and, the models do not appear to accurately account for the high proportion of walk and bicycle mode of access, as well as the frequent public and private shuttle service provided to and from the station. These ridership estimates need to be updated to more accurately account for anticipated ridership levels at the Menlo Park station in the Final EIR.

3. Blended System – The DEIR includes an analysis of the blended system of Caltrain and HSR in the Cumulative scenario (section 4.1). While the "blended" approach meets the goals of Caltrain and HSR, while minimizing the impacts to Menlo Park's downtown area and to the overall character of the community, the DEIR includes a summary of proposed blended system improvements, including one of four passing track alternatives, the Middle 3 Track, that identifies the need for a third passing track in Menlo Park (see page 4-22). The City of Menlo Park does not support this alternative. The City is also firmly opposed to Caltrain transferring any real estate interest or lead agency status to the HSR Authority.

4. Coordination with Other Projects – The DEIR does not propose grade separations as mitigation measures to reduce or eliminate the impacts of the PCEP, however Menlo Park is pursuing funding via the San Mateo County Transportation Authority to study a grade separation at Ravenswood. Depending on the analysis for item number 1 above, a grade separation may be necessary to mitigate the traffic impacts of the project. The poles for the overhead wire system should be placed such that future grade separation of Ravenswood Avenue can be accommodated without relocation or additional cost to the system. Additionally, the City is developing plans for a pedestrian-bicycle undercrossing of the Caltrain tracks near Middle Avenue between Ravenswood Avenue and Alma Street. The poles should also be placed to accommodate this future project without relocation or additional costs.

5. Historic Structure(s) – The City of Menlo Park Caltrain station has been listed on the National Register of Historic Places since 1974. The impacts to the existing train station were analyzed in the DEIR, and determined to be significant. Mitigation measure CUL-1d describes the required measures to mitigate this impact, including restricting placement of side poles within 40-feet of the station on the west side of the Caltrain right-of-way, for within 100-feet of the station parallel to the tracks. To provide consistent aesthetics, center pole/two-track cantilevers or two-track cantilevers from east side of platform should be used, at a minimum, between Ravenswood Avenue and Oak Grove Avenue, encompassing the entire length of the Menlo Park station. Addtionally, please include reference to the City's General Plan Policy I-H-11, "Buildings, objects, and sites of historic and/or cultural significance should be preserved."

6. Aesthetics –The appearance of overhead electric power supply for the trains, including the wires, supporting poles, mast arms and insulations, is a matter of significant concern. The poles should be the least intrusive types of poles and the design should be aesthetically pleasing. While the DEIR indicates several types of systems that Caltrain may consider for the overhead pole and wire system, no detailed information is provided on potential alternatives that may be used to reduce or eliminate impacts on aesthetics (and related issues of trees, property impacts, and view corridors). This detailed alternatives evaluation is needed to properly disclose the impacts with each system. The City expects additional information to be provided in the Final EIR to meet these needs; as well as to participate in the process to review the alternatives considered during Caltrain's Final Design process, and have final approval authority to recommend which alternative is most appropriate for Menlo Park.

7. Trees – The DEIR describes that 188 trees will be removed and 441 trees will be pruned within the City boundaries to accommodate the overhead poles and wires, and needed electrical clearances. In addition to the well-known environmental, social and economic benefits provided by trees, these 629 trees (or 2.3 acres of canopy coverage) create a visual screen, dampen the sound, and reduce air particulates adjacent to the tracks. The removal and heavy pruning of these trees would severely impact the urban forest and the people who live and work near the Project Area. Of the 19 jurisdictions surveyed, the urban forest in Menlo Park has the greatest species diversity. These 629 trees are growing on private property, public space and the Caltrain ROW and provide a wildlife corridor which connects the riparian area of the San Francisquito creek to other green spaces along the peninsula.

   To preserve the City's canopy coverage, the width of the Project Area should be reduced to prevent tree removals and heavy pruning. Alternative pole designs, including the engineering of center poles should be explored to reduce the footprint of the Project Area in Menlo Park's urban forest. Sixty-two percent of the impacted trees are Heritage Trees and 87% of the trees proposed for removal are in fair-good condition and require proper protection. All trees within the Project Area and staging areas should be protected during construction following the City's Tree Protection Specification. These 629 trees enhance the quality of life for people that work and live in Menlo Park, every effort should be made to protect this portion of the City's urban forest.

   The DEIR and associated appendices provide trees inventory information, including tree location by latitude/longitude, distance from the rail line, health, species, etc. However, the tabular format of the tree removal and pruning data limits the ability of all reviewing agencies and the public from understanding how the aesthetics and view corridors would be modified from existing conditions with implementation of the proposed PCEP. The City requests that visual depiction of the information (tree location, species, health, size, impacts of project) be included in the Final EIR. If any trees are proposed to be removed, a full replacement schedule should be provided, for approval by the City, with locations, species, size and number of replacement trees.

8. View Corridors – The DEIR addresses view corridors only along scenic roadways and from high elevations outside of the Caltrain corridor. However, the overhead poles and wires will have an effect on the view corridors in many areas of the City, as well as other jurisdictions along the corridor. The beautiful natural surroundings in the area add to the vibrancy of the community. These views are important to the overall look and feel of the community. A full analysis of these impacts and mitigations measures needs to be included.

9. Noise and vibration mitigation – The noise and vibration analysis included in the DEIR describes that the decrease in noise associated with migrating from diesel trains to electric trains will effectively "wash out" any additional train horn noise anticipated from the increased service frequency. The City disagrees with this analysis. Train horn noise is much more impactful and far-reaching to the community, and the impacts associated with the additional 22 trains per day need to be properly disclosed. The reduction in the tree canopy (see comment 7) will further exacerbate the impacts of the train horns for existing and proposed train service. DEIR does not propose any noise mitigation measures that will improve this exacerbated condition.

   Adequate mitigation measures need to be included as integral components of the project to eliminate the impacts from train horn noise increases. One potential mitigation measure that should be considered is the implementation of measures necessary to designate the corridor as a "Quiet Zone". The City would support Caltrain in the installation of safety improvements, as part of the project, needed to establish such a zone to eliminate, and even improve, the effect of train horn noise on the local community. (See Attachment B - Federal Rail Administration Part 222, which describes quiet zones)

10. Freight – Menlo Park continues to be concerned about the current and increased freight traffic using the Caltrain mainline and its impact on residents and traffic in the area. While no increased freight traffic is proposed in the DEIR under the PCEP, pages 3.14-64 and 3.14-65 describe potential restrictions on freight traffic to between midnight and 5 a.m. (compared to 8 p.m. to 5 a.m. at present) to comply with the expected FRA waiver. The impacts of this change need to be analyzed and mitigated as part of the EIR.

11. Property Impacts – The DEIR describes right-of-way impacts to 47 commercial properties within the project area, and notes that some of these are located within Menlo Park. The specific properties and uses in Menlo Park that may be affected by the PCEP need to be disclosed in the Final EIR. Individual property owners should also be noticed of the impacts before the Final EIR is released.

12. Construction Impacts – The construction of the project would create many impacts within the City of Menlo Park. The DEIR describes a construction access point at the Alma set out track, milepost 29.6, which is located along Alma Street between Burgess Drive and Willow Road. The construction will cause increased traffic to the primarily residential neighborhood, as well as traffic diversion, construction noise, etc. The effect

of the construction on residents and businesses needs to be clearly analyzed, both physical and financial. Many businesses cannot remain closed for extended periods and be viable. The effect on the businesses could create an economic impact on the City that needs to be clearly addressed in the Final EIR. Other access points for the project need to be analyzed in order to select the least impactful site. Also, any other impacts of construction need to be analyzed and mitigated for the project including, but not limited to, noise, dust, etc.

13. Safety – The safety of the electric wires and poles was not addressed in the DEIR, although the City raised the following concerns during the NOP. The safety of electric wires and poles needs to be addressed in the EIR. What happens when "hot wires" fall down due to some kind of incident (storm winds, motorist collision with support, etc.)? How quickly does the power get shut off? How frequently do such incidents happen in areas like the Boston to Washington corridor where such systems are operational? The wires should be grounded to improve safety. The safety of adjacent and nearby neighbors and how the wires may affect the safety in the yards needs to be addressed. Also, any changes in property rights and regulations for adjacent and nearby property owners due to the wires and poles such as the effect on current swimming pools, prohibition on new swimming pools or further yard setbacks for construction. Also, will the electrification components increase safety concerns with relation to a disaster such as an earthquake. These topics need to be addressed and mitigated in the Final EIR.

14. Caltrain Service Levels – The project is intended to provide a better level of service for Caltrain. The DEIR includes a prototypical schedule for analysis purposes that indicates 30 additional trains would service the Menlo Park Station on a typical weekday. However, the DEIR clearly states that the proposed service levels are not guaranteed; thus, the City has no reassurance whether the community benefit of increased service would outweigh the resulting adverse impacts to noise, trees, aesthetics, properties, or traffic. A minimum level of guaranteed service needs to be identified in the Final EIR.

15. Editorial Comments -

    a) Pg. 3.1-5 Goal 1.210 is incorrectly attributed to Menlo Park. Please see the City's General Plan, Part I for relevant goals and policies.

    b) Pg. 3.1-7 Garfield Elementary and Holbrook-Palmer Park are not located in the City of Menlo Park.

    c) Transportation Analysis, Appendix F – Table 2-7, Menlo Park ECR/Downtown Specific Plan was adopted in June 2012. Table 2-8, General Plan, adopted 1994 (amendments to the Housing and associated Elements were adopted in 2013), Update to begin 2014. Table is missing reference to Menlo Park's El Camino Corridor Study (initiated 2013), which is in progress.

THIS PAGE INTENTIONALLY LEFT BLANK

Transportation Impact Analysis Guidelines

The following projects would generally be exempt from the requirements of the Transportation Impact Analysis Guidelines unless their geographic location or type of use prompt such study (subject to the City's discretion):

- **Residential projects under five units**
- **Commercial projects where the total new or added square footage is 10,000 square feet or less**
- **Other projects that are determined to be exempt or categorically exempt under CEQA**

All other projects involving a change of use and/or new construction will be required to submit a Transportation Impact Analysis performed by a qualified consultant selected by the City and paid for by the project applicant.

The Transportation Impact Analysis shall include the following:

I. Executive Summary

II. Introduction

A. Project Description
B. Study Scope

III. Existing Conditions – Conditions should be described based upon information found in the most recent Circulation System Assessment (CSA) document when applicable. The CSA existing traffic counts and information should be used as existing conditions.

A. Description of existing street system serving the site (Number of lanes, classification, etc.)
B. CSA existing traffic volumes – ADT's and AM & PM peak hours (Figure to be included in report)
C. CSA existing levels of service – AM & PM (Table to be included in report)
D. Public transit (Service providers to the area)
E. On and off-street parking conditions/availability
F. Pedestrian and bicycling conditions in the project area

IV. Cumulative Analysis – Near Term conditions without project should be discussed using the most recent CSA near term traffic counts and information. Project traffic should then be added to the CSA near term traffic counts. If the project build-out is beyond the CSA near term data, future conditions should be projected to the first year of assumed project occupancy. A supplemental list of planned and or/approved projects will be provided to the consultants for inclusion in the analysis process. For large projects of regional magnitude (projects generating 100 or more trips during peak hours), the consultants will analyze the impacts of the project for a span of ten years from the existing conditions.

A. Description of new or planned changes to the street system serving the site including changes in on-street parking

B. Near term volumes – ADT's and AM & PM peak hours

1. List project trip generation rates
2. Discuss trip distribution
3. Discuss impact of project traffic on intersections in the project vicinity

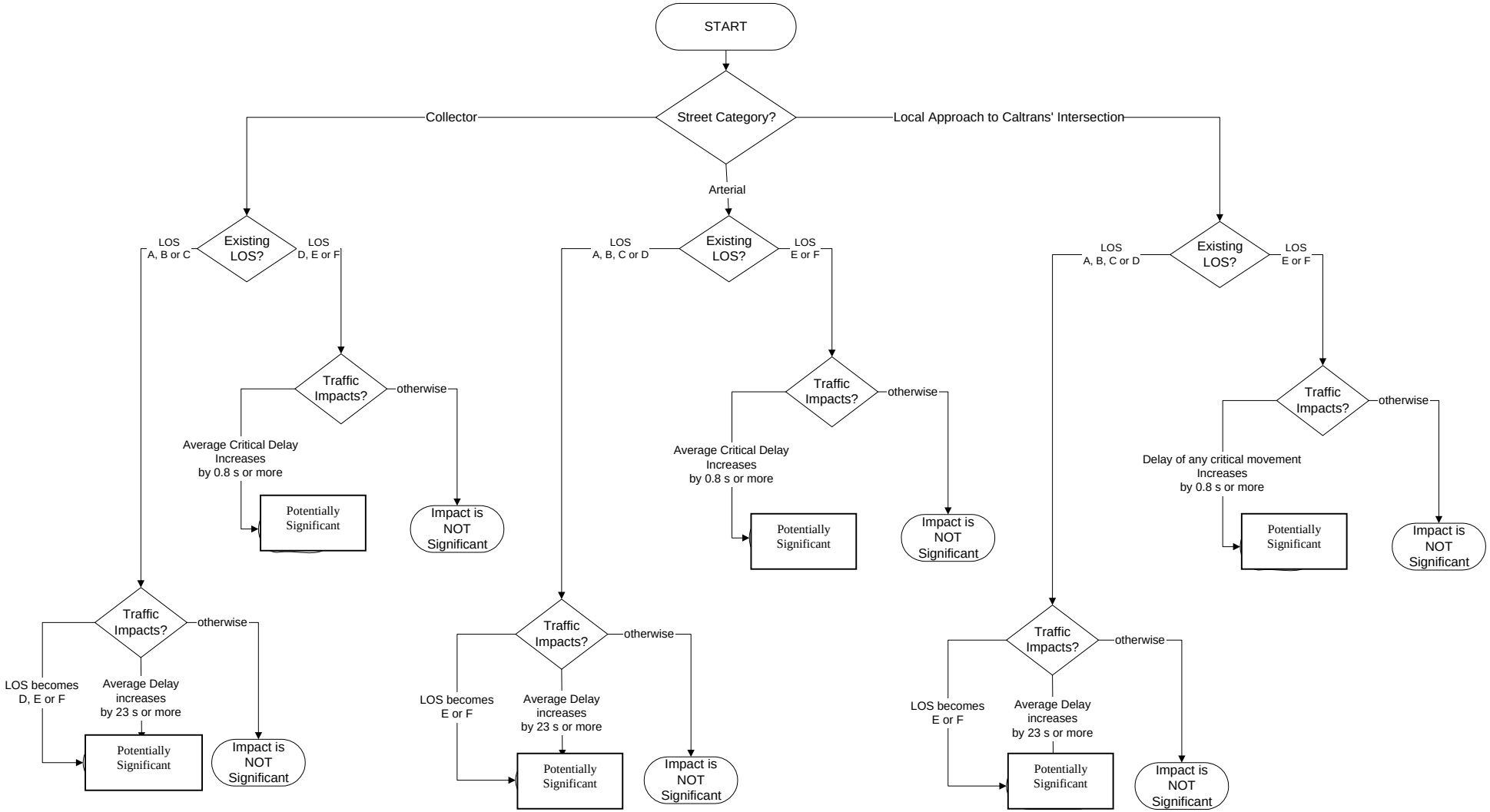
C. Near term levels of service – AM & PM for both near term and near term plus project analysis. Table to be included in report. Also a comparison table of existing conditions including a column showing the difference in seconds of delay between existing, near term conditions and near term conditions with project and percent of increase.

V. Analysis

A. Discuss impacts of CSA near term conditions and CSA near term conditions with project

1. A Project is considered to have a potentially "significant" traffic impact if the addition of project traffic causes an intersection on a collector street operating at LOS "A" through "C" to operate at an unacceptable level (LOS "D", "E" or "F") or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first. A potential "significant" traffic impact shall also include a project that causes an intersection on arterial streets or local approaches to State controlled signalized intersections operating at LOS "A" through "D" to operate at an unacceptable level (LOS "E" or "F") or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first.

2. A project is also considered to have a potentially "significant" traffic impact if the addition of project traffic causes an increase of more than 0.8 seconds of average delay to vehicles on all critical movements for intersections operating at a near term LOS "D" through "F" for collector streets and at a near term LOS "E" or "F" for arterial streets. For local approaches to State controlled signalized intersections, a project is considered to have a potentially "significant" impact if the addition of project traffic causes an increase of more than 0.8 seconds of delay to vehicles on the most critical movements for intersections operating at a near term LOS "E" or "F".


START
Street Category?
Collector
Arterial
Local Approach to Caltrans' Intersection
Existing LOS?
LOS A, B or C
LOS D, E or F
LOS A, B, C or D
LOS E or F
Traffic Impacts?
otherwise
Average Critical Delay Increases by 0.8 s or more
Delay of any critical movement Increases by 0.8 s or more
Potentially Significant
Impact is NOT Significant
LOS becomes D, E or F
LOS becomes E or F
Average Delay increases by 23 s or more

B. In certain circumstances as determined by the Transportation Manager, analysis may be necessary for impacts on minor arterial, collector and local streets. If any of the thresholds listed below are exceeded, the analysis should make a recommendation as to whether the traffic impact is considered potentially "significant".

   1. On minor arterial streets, a traffic impact may be considered potentially significant if the existing Average Daily Traffic Volume (ADT) is: (1) greater than 18,000 (90% of capacity), and there is a net increase of 100 trips or more in ADT due to project related traffic; (2) the ADT is greater than 10,000 (50% of capacity) but less than 18,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 18,000 or more; or (3) the ADT is less than 10,000, and the project related traffic increases the ADT by 25%.

   2. On collector streets, a traffic impact may be considered potentially significant if the existing Daily Traffic Volume (ADT) is: (1) greater than 9,000 (90% of capacity), and there is a net increase of 50 trips or more in ADT due to project related traffic; (2) the ADT is greater than 5,000 (50% of capacity) but less than 9,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 9,000 or more; or (3) the ADT is less than 5,000, and the project related traffic increases the ADT by 25%.

   3. On local streets, a traffic impact may be considered potentially significant if the existing Daily Traffic Volume (ADT) is: (1) greater than 1,350 (90% of capacity), and there is a net increase of 25 trips or more in ADT due to project related traffic; (2) the ADT is greater than 750 (50% of capacity) but less than 1,350, and the project related traffic increases the ADT by 12.5% or the ADT becomes 1,350; or (3) the ADT is less than 750, and the project related traffic increases the ADT by 25%.

C. Discuss project site circulation and access and identify any deficiencies.

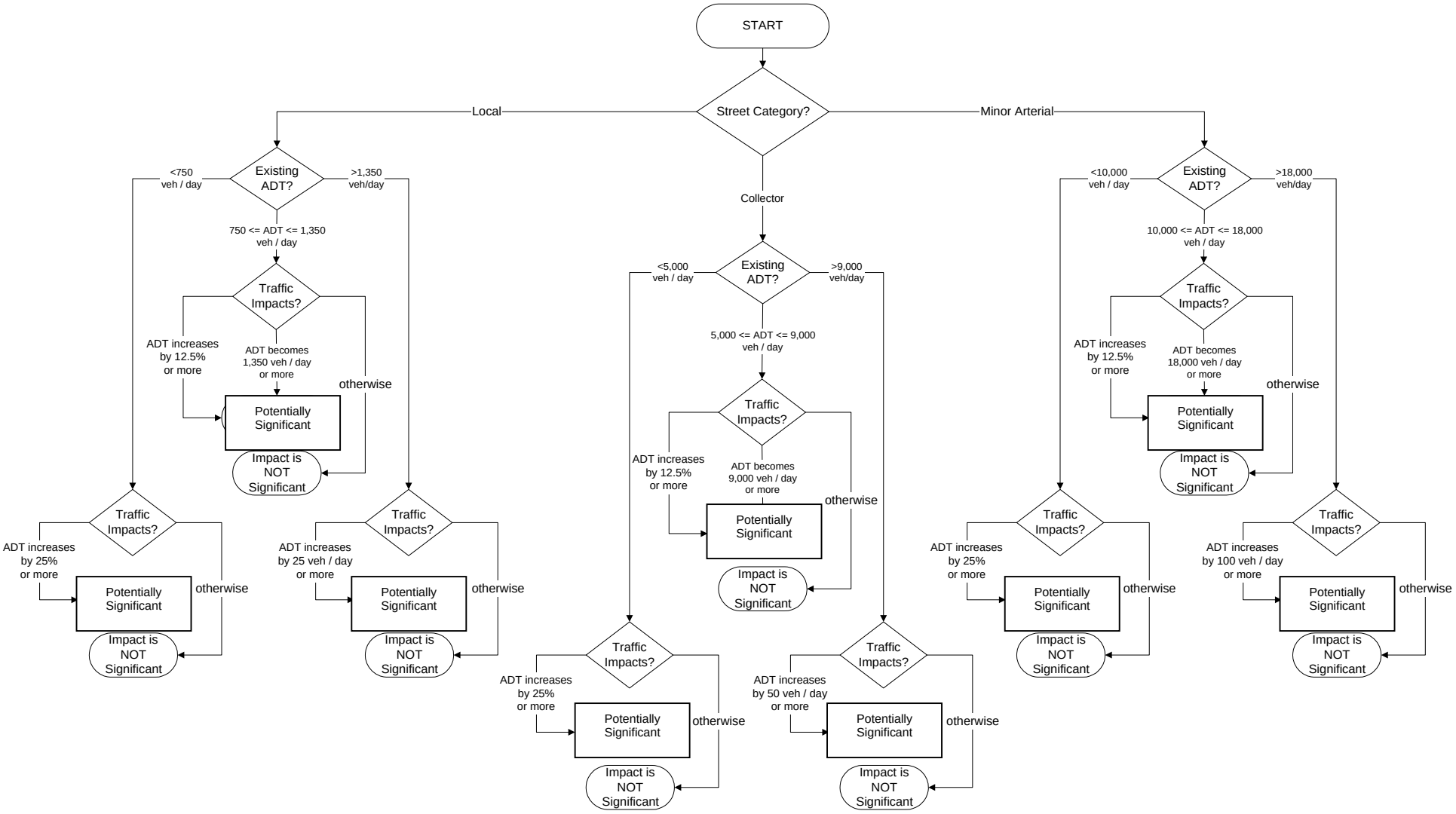
D. Discuss compliance of project site parking with adopted City code including loading and disabled spaces. If a shared parking arrangement is proposed, an analysis of the adequacy of this aspect shall be provided. Discuss any off-site parking impacts (such as neighborhood parking intrusion) of the project.

E. Analyze project in relation to relevant policies of the Circulation Element of the General Plan.

F. Analyze potential cut-through traffic generated by the project impacting other City neighborhoods.

G. Pedestrian conditions and bicycle access, including safety issues, should be discussed.

Significance Criteria for Street segments



H. Analyze project using the requirements outlined in the San Mateo County Congestion Management Plan Land Use Analysis Program guidelines, if applicable.

VI. Mitigation

A. Discuss specific mitigation measures in detail to address significant impacts, which may occur as a result of the addition of project traffic (provide table comparing before and after mitigation). Analysis shall focus on mitigating significant impacts to a non-significant level, but must also identify measures, which would reduce adverse, although not significant, impacts. All feasible and reasonable mitigation requirements that could reduce adverse impacts of the project should be identified, whether or not there are significant impacts caused by the project. The goal of mitigation should be such that there are no net adverse impacts on the circulation network. Mitigation measures may include roadway improvements, operational changes, Transportation Demand Management or Transportation Systems Management measures, or changes in the project. If roadway or other operational measures would not achieve this objective, the consultant shall identify a reduction in the project size, which would with other measures, reduce impacts below the significant level. All mitigation measures must first be discussed with the City Transportation Division before they are included in the report.

B. Discuss possible mitigation measures to address future traffic conditions with the project. All feasible and reasonable mitigation measures that would reduce such impacts, whether at the significant level or below shall be identified. Mitigation measures should be designed to address the project's share of impacts. Measures that should be jointly required of the project and any other on-going related projects in a related geographical area should also be identified, as applicable.

C. Discuss possible mitigation measures to address any site circulation or access deficiencies.

D. Discuss possible mitigation measures to address any parking deficiencies.

E. Discuss possible mitigation measures to address any impacts on pedestrian amenities, bicycle access, safety and bus/shuttle service.

VII. Alternatives

A. In the event any potentially significant impacts are identified in the Transportation Impact Analysis, alternatives to the proposed project shall be evaluated or considered to determine what the impacts of an alternative project or use might be. The alternatives to be considered shall be determined in consultation with the Director of Community Development and the Transportation Manager.

VIII. Summary and Conclusions

A. Assess level of significance of all identified impacts after mitigation.

Upon receipt by the City of a Transportation Impact Analysis indicating that a project may have potentially significant traffic impacts, the applicant shall have the option of proceeding directly with the preparation of an EIR in accordance with the City's procedures for preparation of an EIR, or requesting a determination by the City Council as to whether a negative declaration, mitigated negative declaration or an EIR is most appropriate for the project.

NOTES:

1. The Highway Capacity Manual Special Report 209 (HCM), latest version shall be used for intersection analysis. The consultant shall use the Citywide TRAFFIX model with the HCM analysis.

2. The most recent Circulation System Assessment (CSA) shall be used for all information regarding existing and near term conditions.

3. Traffic counts that may be required beyond the counts contained in the CSA document shall be less than 6 months old.

4. The consultant shall submit proposed assumptions to the Transportation Manager for review and approval prior to commencement of the Analysis relating to the following:

    1. trip rates
    2. trip distribution
    3. trip assignment
    4. study intersections
    5. roadways to be analyzed

4. The consultant shall submit all traffic count sheets to the City's Transportation Division.

5. Figures of existing and any proposed intersection configurations should be provided in the appendix.

6. Trip generation rates from Institute of Transportation Engineer's (ITE) publication, "TRIP Generation", latest version should be used.

7. Street widening and on-street parking removal are mitigation measures which may be technically feasible, but which are generally considered undesirable. If such measures appear potentially appropriate to the consultant, they should consult the Transportation Division in preparing the impact analysis and mitigation recommendations. If such measures are to be proposed, alternate mitigation measures, which would be equally effective, should also be identified.

8. Existing uses at the site, which would be removed as part of the project, may be deducted from the calculation of the project traffic based on their traffic distribution patterns.

9. Refer to the San Mateo County Congestion Management Program (CMP) Land Use Impact Analysis Program guidelines for performing CMP analysis.

THIS PAGE INTENTIONALLY LEFT BLANK

Federal Register

Thursday,
August 17, 2006

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 222 and 229

Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 17]

RIN 2130–AB73

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of FRA's April 27, 2005 final rule that required that the locomotive horn be sounded while trains approach and enter public highway-rail grade crossings. This document amends and clarifies the final rule, in response to petitions for reconsideration and associated letters in support that have been submitted by interested parties, including the railroad industry, rail unions, and a manufacturer of traffic channelization devices.

DATES: The effective date is September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

1. Background

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103–440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator under 49 CFR 1.49) to issue regulations that require the use of locomotive horns at public grade crossings, but gives the Secretary the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the comment period on May 26, 2000, approximately 3,000 comments had been filed with this agency regarding the NPRM and the associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Due to the substantial and wide-ranging public interest in the NPRM, FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, Congressmen, and Senators provided testimony. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings were held in the greater Chicago area); Berea, Ohio; South Bend, Indiana; Salem, Massachusetts; and Madison, Wisconsin) at which more than 350 people testified.

On December 18, 2003, FRA published an Interim Final Rule in the **Federal Register** (68 FR 70586). Even though FRA could have proceeded directly to the final rule stage, FRA chose to issue an interim final rule in order to give the public an opportunity to comment on changes that had been made to the rule. FRA also held a public hearing in Washington, DC on February 4, 2004. By the close of the extended comment period, over 1,400 comments had been filed with the agency regarding the Interim Final Rule. As is FRA's practice, FRA held the public docket open for late-filed comments and considered them to the extent possible. In order to avoid imposing inconsistent regulatory standards for quiet zone creation and establishment, FRA extended the effective date of the Interim Final Rule on November 22, 2004 (69 FR 67858) and on March 18, 2005 (70 FR 13117) so that the Interim Final Rule would not take effect before the final rule was issued.

On April 27, 2005, FRA published a Final Rule in the **Federal Register** (70 FR 21844). After the final rule was published, FRA received petitions for reconsideration and associated letters in support from the Association of American Railroads, Mr. James Adams of Placentia, California, GE Transportation-Rail, United Transportation Union, Brotherhood of Locomotive Engineers and Trainmen, BNSF Railway Company and Qwick Kurb, Inc. In addition, the Association of American Railroads submitted a petition for Emergency Order, which was subsequently denied.

2. Statutory Mandate

On November 2, 1994, Congress passed Public Law 103–440 (''Act'') which added section 20153 to title 49 of the United States Code (''title 49''). Subsections (I) and (j) were added on October 9, 1996 when section 20153 was amended by Public Law 104–264. The Act requires the use of locomotive horns at public highway-rail grade crossings, but gives FRA the authority to make reasonable exceptions.

FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Final Rule) complied with the statutory mandate contained within section 20153 of title 49. As required by section 20153(b) of title 49, the final rule requires locomotive horn sounding by trains that approach and enter public highway-rail grade crossings. (See rule § 222.21.) However, as allowed by 49 U.S.C. 20153(c), the final rule contains exceptions for certain categories of rail operations and highway-rail grade crossings.

Section 222.33 of the rule provides that a railroad operating over a public highway-rail grade crossing may, at its discretion, choose not to sound the locomotive horn if the locomotive speed is 15 miles per hour or less and the train crew or appropriately equipped flaggers provide warning to motorists. FRA has determined that these limited types of rail operations do not present a significant risk of loss of life or serious personal injury.

Locomotive horn sounding is also not required within highway-rail grade crossing corridors that are equipped with supplementary safety measures (SSMs) at each public highway-rail grade crossing. In addition, locomotive horn sounding is not required within highway-rail grade crossing corridors that have a Quiet Zone Risk Index at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns. These highway-rail grade crossing corridors have been deemed, by the Administrator, to constitute categories of highway-rail grade crossings that do not present a significant risk with respect to loss of life or serious personal injury or that fully compensate for the absence of the warning provided by the locomotive horn. Therefore, communities with highway-rail grade crossing corridors that meet either of these standards may silence the locomotive horn within the crossing corridor, if all other applicable quiet zone requirements have been met. (See § 222.39.)

Section 20153(i) of title 49 requires FRA to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings.'' FRA has complied with this requirement in several ways. Until December 24, 2005, the final rule

allowed communities to establish Pre-Rule Quiet Zones, if the Quiet Zone Risk Index was at, or below, two times the Nationwide Significant Risk Threshold and there were no relevant collisions within the quiet zone since April 27, 2000. (See § 222.41.) It should also be noted that the final rule allows communities to establish Pre-Rule Quiet Zones, if SSMs have been implemented at every public grade crossing within the quiet zone or if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold.) Additionally, the rule allows Pre-Rule Quiet Zone communities to take additional time (up to eight years from the effective date of the final rule) within which to implement safety improvements that will bring them into compliance with the requirements of the rule. This ''grace period'' has been included in the rule in order to comply with 49 U.S.C. 20153(i)(2), which requires FRA to provide ''a reasonable amount of time for [pre-existing whistle ban] communities to install SSMs''.

Section 20153 of title 49 prohibits FRA from entertaining single-party petitions for waiver from the regulatory requirements issued under the authority of 49 U.S.C. 20153, unless FRA determines that this prohibition against single-party waiver petitions ''* * * is not likely to contribute significantly to public safety.'' Therefore, § 222.15 of the final rule, which governs the process for obtaining a waiver from the requirements of 49 CFR Part 222, requires joint filing of waiver petitions by the railroad and public authority, unless the Associate Administrator makes the determination that joint submission of an individual waiver petition would not be likely to significantly contribute to public safety.

Section 222.55 of the final rule addresses the manner in which new SSMs and ASMs are demonstrated and approved for use. Paragraph (c) of this section, which reflects the requirements contained within 49 U.S.C. 20153(e), specifically provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease sounding the locomotive horn at the crossing(s) to demonstrate proposed new SSMs and ASMs that have been subject to prior testing and evaluation.

Section 20153(f) of title 49 explicitly gives discretion to the Secretary as to whether private highway-rail grade crossings, pedestrian crossings, and crossings utilized primarily by nonmotorized and other special vehicles should be subject this regulation. FRA has decided to refrain from exercising jurisdiction over crossings utilized primarily by nonmotorized and other special vehicles in this final rule. FRA has, however, exercised its jurisdiction, in a limited manner, over private and pedestrian grade crossings. Under the final rule amendments issued today, the sounding of locomotive audible warning devices at private and pedestrian crossings will be governed by this rule, if State law requires the sounding of locomotive audible warning devices at these crossings. (§§ 222.25 and 222.27) However, routine locomotive horn sounding is prohibited at private and pedestrian grade crossings located within quiet zones, even if other locomotive audible warning devices must be sounded at these crossings per State and local law.

Section 222.7 of the rule contains a concise statement of the rule's impact with respect to 49 U.S.C. 20106 (national uniformity of regulation). This statement of the rule's effect on State and local law, which was required by 49 U.S.C. 20153(h), provides that the rule, when effective, will preempt State and local laws that govern locomotive horn use at public highway-rail grade crossings. Under the final rule amendments issued today, State and local laws that require the sounding of locomotive audible warning devices at public, private and pedestrian grade crossings will be preempted to the limited extent described in §§ 222.21(e), 222.25 and 222.27 of the rule. However, as stated in § 222.7(b), this rule does not preempt State and local laws governing the sounding of locomotive audible warning devices at Chicago Region highway-rail grade crossings where railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

Lastly, the final rule also complied with the statutory one-year delay requirement. Section 20153(j) of title 49 prohibits any regulations issued under its authority from becoming effective before the 365th day following the date of publication of the final rule. On December 18, 2003, FRA published an Interim Final Rule on the Use of Locomotive Horns at Highway-rail Grade Crossings, which had the same force and effect as a final rule. After reviewing approximately 1,400 comments on the interim final rule, FRA issued a final rule that granted additional relief to States and local communities and became effective on June 24, 2005. The final rule has therefore complied with 49 U.S.C. 20153(j) because more than the required 365 days elapsed between issuance of the interim final rule on December 18, 2003 and the effective date of the rule on June 24, 2005.

3. Emergency Order 15

Emergency Order 15, issued in 1991, requires the Florida East Coast Railway Company to sound locomotive horns at all public grade crossings. The Emergency Order preempted State and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Emergency Order did, however, permit the establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Emergency Order are similar, but are not identical, to the supplementary safety measures contained in FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings (70 FR 21844).

FRA has not yet rescinded Emergency Order 15. Therefore, FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings does not apply to public highway-rail grade crossings within the State of Florida that are currently subject to Emergency Order 15. On April 15, 2005, a public conference was held in Florida, at which FRA solicited comments on the appropriate excess risk estimate that should be applied to public highway-rail grade crossings that are currently subject to Emergency Order 15. While FRA intends to specifically address this issue in the near future, comments that have been received on this issue are still under consideration at this time.

4. Rule Changes

This brief overview of the major amendments that have been made to the Final Rule is provided for the reader's convenience. Because this section merely provides an overview, it should not be relied upon for a comprehensive discussion of all final rule amendments. Indeed, this full document should be read together with the previous documents issued in the proceeding. Inasmuch as the Final Rule, Interim Final Rule and Notice of Proposed Rulemaking contained extensive discussion of both the background of the issues involved in this rulemaking and the rationale behind decisions relating to those issues, FRA emphasizes that these amendments should be read in conjunction with the Final Rule, Interim Final Rule and Notice of Proposed Rulemaking. Unless the positions and rationale expressed in those documents have explicitly changed in the subsequent rulemaking documents, the reader should understand that those

positions and rationale remain those of FRA.

Summary of Changes to the Final Rule

- These amendments extend the compliance date of the time-based locomotive horn sounding requirements until December 15, 2006. (*See* § 222.21(b) for more information.)
- A ''good faith'' exception has been incorporated into the time-based locomotive horn sounding requirements for locomotive engineers who are unable to precisely estimate their time of arrival at upcoming grade crossings. (*See* § 222.21(b)(2) for more information.)
- An exception has been added to the 15-second minimum locomotive horn sounding requirement for locomotives and trains that re-initiate movement after having stopped in close proximity to a public highway-rail grade crossing. (*See* § 222.21(d) for more information.)
- These amendments expand the scope of the time-based locomotive horn sounding requirements to cover the sounding of any locomotive audible warning device (*i.e.*, locomotive bells) at public highway-rail grade crossings. (*See* § 222.21(e) for more information.)
- If State law requires the sounding of locomotive audible warning devices at private and/or pedestrian crossings, these amendments will require railroads to sound the locomotive audible warning device in a time-based manner. (*See* §§ 222.25 and 222.27 for more information.)
- An exception has been added to the locomotive horn sounding requirements for locomotives equipped with defective horns that are being moved for repair. (*See* § 222.21(b)(2) for more information.)
- The notification requirements for Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones have been streamlined by expanding the scope of the Notice of Intent requirement and removing the Notice of Detailed Plan requirement. (*See* § 222.43 for more information.)
- These amendments extend the compliance date for the sound level testing of new locomotives until September 18, 2006. (*See* § 229.129(b) for more information.)
- These amendments provide clarification that locomotives used in rapid transit operations on the general railroad system are exempt from the locomotive horn sound level and testing requirements contained in 49 CFR 229.129. (*See* § 229.129 for more information.)

Section-by-Section Analysis

Section 222.1 What is the purpose of this regulation?

This section has not been revised.

Section 222.3 What areas does this regulation cover?

This section has not been revised.

Section 222.5 What railroads does this regulation apply to?

This section has not been revised.

Section 222.7 What is this regulation's effect on State and local laws and ordinances?

In its petition for reconsideration, the Association of American Railroads (AAR) noted that the Final Rule does not specifically address the preemptive effect of the Final Rule on State and local laws that effectively prohibit and/or restrict the sounding of locomotive horns for testing purposes. Asserting that the Final Rule should preempt such State and local laws, the AAR requested confirmation of FRA's position on this issue.

FRA does not intend to preempt State and local noise ordinances that may have the effect of restricting the time period during which the locomotive horn may be sounded at locations other than grade crossings. FRA was directed to issue regulations that govern the sounding of locomotive horns at public highway-rail grade crossings, provided the interests of communities with pre-existing restrictions on locomotive horn sounding were taken into consideration. Given the nature of this statutory directive, FRA is reluctant to disturb longstanding State and local noise ordinances that may restrict locomotive horn sounding at locations other than grade crossing locations without additional information on the adverse impact of these ordinances on the ability of locomotive manufacturers and railroads to conduct locomotive horn testing in accordance with § 229.129 of this part.

Paragraph (b) of this section has been revised to reflect FRA's intent to refrain from preempting any State law, rule, regulation, or order governing the sounding of locomotive audible warning devices, including the locomotive horn, at any highway-rail grade crossing described in § 222.3(c) of this part. Without this revision, FRA might have inadvertently preempted State law by requiring the sounding of the locomotive bell, at the highway-rail grade crossings described in § 222.3(c) of this part, in accordance with this part.

Paragraphs (c), (d), and (e) of this section have not been revised.

Section 222.9 Definitions

FRA is making a minor revision to the definition of ''*channelization device*'' in the Final Rule. FRA revised this definition in the Final Rule to prohibit the use of surface-mounted tubular markers and vertical panels within quiet zones as SSMs, where the surface-mounted tubular markers or vertical panels are not used in conjunction with a raised longitudinal channelizer. FRA did not, however, intend to prohibit the use of surface-mounted tubular markers or vertical panels, in conjunction with a raised longitudinal channelizer. FRA recognizes that the use of surface-mounted tubular markers and vertical panels, in conjunction with a raised longitudinal channelizer, can effectively reduce quiet zone risk.

FRA is also correcting an inadvertent error in the preamble discussion of the definition of ''*channelization device*'' in the Final Rule. In that discussion, FRA stated that ''it would be highly advisable to use raised longitudinal channelizers that are at least four inches high.'' (See 70 FR 21854.) However, in its petition for reconsideration, Qwick Kurb, Inc. (''Qwick Kurb'') noted that FRA partially relied upon the results of state-sponsored tests on the efficacy of Qwick Kurb installations, which consist of three and one-half inch high longitudinal channelizers with vertical elliptical markers attached, when determining that Qwick Kurb installations had an effectiveness rating of at least .75. Qwick Kurb also noted that Qwick Kurb installations were successfully tested by the Federal Highway Administration (FHWA) under FHWA's NCHRP 350 criteria as a crashworthy traffic control device.

FRA notes that the regulatory text itself does not require use of raised longitudinal channelizers that are at least four inches high. Indeed, FRA never intended to discourage the use of raised longitudinal channelizers that are at least three and one-half inches high. Even though Qwick Kurb subsequently withdrew its objection to the preamble discussion of the definition of ''*channelization device*'' in the Final Rule, FRA recognizes that there may be some communities that have already purchased and installed raised longitudinal channelizers that are three and one-half inches in height. Therefore, FRA is clarifying that raised longitudinal channelizers of at least three and one-half inches in height, when affixed with vertical panels or tubular delineators, constitute acceptable channelization devices for

purposes of this part. Lastly, FRA is removing all references to specific MUTCD sections from the definition of ''*channelization device*'', in recognition of the somewhat transitory nature of MUTCD section citations.

A definition of ''*locomotive audible warning device*'' has been added to the Final Rule, in recognition of the expanded scope of the Final Rule with respect to the sounding of locomotive audible warning devices , as opposed to just locomotive horns, at public, private and pedestrian grade crossings.

The definition of ''*locomotive horn*'' has been revised by adding a specific reference to locomotive horns used in rapid transit operations.

The definition of ''*MUTCD*'' has been revised to correct an inadvertent typographical error.

The definition of ''*New Partial Quiet Zone*'' has been revised to correct an inadvertent typographical error.

The definition of ''*pedestrian grade crossing*'' has been revised in order to clarify that the requirements for pedestrian crossings contained within this part only apply to pedestrian grade crossings. Nonetheless, despite the limited scope of these requirements, the terms ''*pedestrian crossing*'' and ''*pedestrian grade crossing*'' have been used interchangeably for purposes of this part.

The definition of ''*private highway-rail grade crossing*'' has been revised to correct an inadvertent typographical error.

Even though the definition of ''*Pre-Rule Quiet Zone*'' has not been revised, FRA is providing further clarification on the definition of this term. While reviewing Notices of Quiet Zone Continuation that have been submitted by public authorities seeking to continue locomotive horn restrictions in Pre-Rule Quiet Zones, it has come to FRA's attention that disagreements have arisen between public authorities and railroads on whether local ordinances that seem to prohibit locomotive horn sounding at certain highway-rail grade crossings have, in fact, been ''*enforced or observed*''. In these situations, the public authority and railroad must determine whether locomotive horns were routinely sounded at the grade crossings in question on October 9, 1996 and December 18, 2003, despite locomotive horn sounding restrictions that were ostensibly imposed by State or local law. Railroad timetables that reflect locomotive horn sounding practices on October 9, 1996 and December 18, 2003 will provide dispositive proof on this issue.

Even though the definition of ''*quiet zone*'' has not been revised, FRA is providing further clarification on the definition of this term. A quiet zone may only contain consecutive public highway-rail grade crossings located on a segment of a rail line. Therefore, a public authority may find it necessary to establish more than one quiet zone within the boundaries of a local community. For example, if there are two railroad tracks running through a local community that are not adjacent to each other and which do not share grade crossing warning system devices, a community that wishes to silence the locomotive horn at grade crossings along both tracks must create separate quiet zones for each railroad track or right-of-way. Also, if there is both a main line track and an industrial spur track within town limits, a community that wishes to silence the locomotive horn at grade crossings located on both tracks must create separate quiet zones for the main line track and the industrial spur track, unless the main line track and the industrial spur track share grade crossing warning system devices.

Section 222.11 What are the penalties for failure to comply with this regulation?

This section has not been revised.

Section 222.13 Who is responsible for compliance?

This section has not been revised.

Section 222.15 How does one obtain a waiver of a provision of this regulation?

This section has not been revised.

Section 222.17 How can a State agency become a recognized State agency?

This section has not been revised.

Section 222.21 When must a locomotive horn be used?

This section has been revised in order to address the movement of locomotives with inoperative horns, extend the compliance date of paragraph (b) of this section by 120 days, provide a good-faith exception for locomotive engineers who sound the locomotive horn for more than 20 seconds when approaching public crossings, address the sounding of locomotive audible warning devices at public highway-rail grade crossings when required by State and local law and provide a limited exception to the minimum audible warning requirement for trains and locomotives that have stopped in close proximity to a public highway-rail grade crossing.

Paragraph (a) of this section requires locomotive engineers to initiate locomotive horn sounding, in accordance with paragraph (b) of this section, and to continue sounding the locomotive horn until the lead locomotive blocks access to the crossing from all roadway approaches. FRA received a petition for reconsideration on this issue from James Adams, a resident of Placentia, California, who suggested that FRA require the locomotive engineer to sound only those locomotive horns which point in the direction of locomotive travel, in order to reduce unnecessary horn noise impacts from the sounding of locomotive horns that are pointed against the direction of travel. Most locomotive horns, particularly in freight service, are designed to provide warning in both directions of travel; and the engineer has no ability to select warning only in the forward direction. FRA will, however, continue research into more selective and effective means of providing audible warnings and may make further proposals in subsequent proceedings.

Minor typographical revisions have been made in paragraph (a) of this section. Paragraph (b) of this section has been revised to provide an exception to the locomotive horn sounding requirements for locomotive engineers who discover that the locomotive horn on the lead locomotive has failed enroute. Should this situation occur, the locomotive must be moved for repair in accordance with § 229.9 of this chapter. In addition, any movement of the locomotive with the inoperative horn over highway-rail grade crossings must be made in accordance with all applicable railroad operating rules.

Paragraph (b) of this section has also been revised in response to petitions for reconsideration that were submitted by the AAR and the BNSF Railway Company (BNSF), as well as letters that were submitted by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), which were submitted in support of certain provisions contained within the AAR's petition for reconsideration.

In the AAR's petition for reconsideration, the AAR asserted that the current compliance date for the locomotive horn sounding requirements set forth in this paragraph would require a rapid transition from State law. The AAR asserted that such a transition would not be in the public interest, as locomotive engineers would be required to comply with time-based audible warning requirements without the benefit of training and/or properly placed whistle posts. Therefore, the AAR requested that FRA postpone the

compliance date of these requirements for one year.

FRA notes that railroads have been aware of the time-based audible warning requirements of this section for some time, as FRA's Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, which was published on December 18, 2003, contained a 15–20 second audible warning requirement. While FRA is aware of the fact that the AAR objected to the 15–20 second audible warning requirement in its comments on the Interim Final Rule, the 15–20 second audible warning requirement contained within the Final Rule should not have been a complete surprise to the railroad industry. Nonetheless, in the interest of railroad safety, FRA has added paragraph (b)(1) to this section, which delays the compliance date of the time-based audible warning requirement by 120 days from the date of publication of this Notice in order to give railroads additional time within which to adjust whistle posts and/or issue appropriate instructions to train crews. In the interim, railroads must either comply with the locomotive horn sounding requirements that were in effect immediately prior to June 24, 2005 (i.e., State law or, in the absence of State law, railroad operating rules) or this section.

The AAR, BNSF, BLET, and UTU also indicated significant concerns that situations may arise in which engineers are unable to precisely estimate the point at which sounding of the horn should be initiated in order to meet the 15–20 second criterion of the final rule. The AAR, BLET and UTU suggest that a good faith exception be employed where circumstances make it difficult to estimate the time of arrival, citing concerns about liability. This could include cases where whistle boards are placed irregularly (confounding an engineer's attempt to begin a ''countdown'' at a fixed point), where weather conditions make identification of landmarks difficult, where the train is accelerating or braking on approach to the crossing, and under other circumstances.

In sum, AAR's petition appeared to focus on short and long audible warnings, while the BLET and the UTU expressed concern with respect to exceeding the 20-second audible warning requirement. On the other hand, BNSF expressed concern with the time-based nature of the locomotive horn sounding requirement and requested that the locomotive horn continue to be sounded from a fixed point of reference, such as a whistle post.

FRA appreciates these concerns. FRA is also cognizant that previously existing State law requirements, and requirements of railroad operating rules have required distance-based use of the horn for many years, with attendant liability for non-compliance where collisions occur. However, FRA believes that adjustment to a time-based approach can, and should be readily accomplished, since locomotive engineers are required to be familiar with their territory and are accustomed to meeting these kinds of challenges. The time-based approach will allow the railroads to provide effective warning without incurring the animus of local communities associated with sounding the horn for a full quarter-mile when trains are operated a low speed. The time-based approach incorporates the strategy used by the locomotive engineer who ''took mercy'' on the community by exercising discretion, when operating a slow-moving train, to delay the onset of horn sounding at grade crossings.

FRA believes that it is important that sufficient warning be provided to the motorist who needs time to recognize the audible signal, understand its message, initiate a reaction, and take appropriate action when approaching the crossing. Other standards for other active warning at highway-rail crossings call for at least 20 seconds of advance warning (*see* 49 CFR 234.225), and it is typical for basic signal arrangements to provide 30 seconds' warning or more. At crossings equipped with active warning devices, the locomotive horn generally provides a last-minute, additional warning to the motorist of the impending arrival of a train. Thus, it appears quite necessary and appropriate to retain the minimum 15-second warning requirement, given the need for uniformity and the wide range of conditions on the roadway approach to highway-rail crossings (including road speeds as high as 55 miles per hour).

Nevertheless, FRA agrees that employees should err on the side of safety when there is any uncertainty. In a case where situational awareness is partially compromised, an employee should not hesitate to begin a horn sounding sequence because of fear that excessive warning might be provided. Accordingly, former paragraph (b)(1), which has been renumbered as paragraph (b)(2) of this section, has been amended to state explicitly that exceeding the maximum warning time up to a limit of 25 seconds will not constitute a violation of this section if the action is taken in good faith. This is intended to affirm the action of an employee who errs on the side of safety in a particular instance, and not to condone the actions of an engineer who willfully disregards the 20-second limitation for normal operations. FRA will also utilize enforcement discretion for cases in excess of 25 seconds where unusual circumstances provide a justification.

Former paragraph (b)(2), which has been renumbered as paragraph (b)(3) of this section, has also been revised in order to correct a typographical error. Trains, locomotive consists (two or more locomotives traveling together without any train cars attached), and individual locomotives traveling at speeds in excess of 60 mph are prohibited from providing an advance warning more than one-quarter mile in advance of public grade crossings, even if this means that high-speed trains, locomotive consists, and individual locomotives cannot provide an advance warning of at least 15 seconds in duration.

Paragraph (c) of this section has not been revised.

Paragraph (d) has been added to this section to address locomotive horn sounding when a train, locomotive consist, or individual locomotive has stopped in close proximity to a public highway-rail grade crossing. Trains and locomotives may stop in close proximity to public grade crossings during switching and/or commuter rail operations, especially when passenger stations are located in close proximity to public highway-rail grade crossings. In light of the low train speed associated with initiating train or locomotive movement from a complete stop, as well as FRA's intent to minimize local noise impacts where feasible, paragraph (d) will allow the locomotive engineer to sound the locomotive horn for less than 15 seconds before entering a public highway-rail grade crossing, when initiating movement from a complete stop in the close proximity of a public highway-rail grade crossing. Even though passenger stations located adjacent to public highway-rail grade crossings were the impetus for this revision, FRA notes that this limited exception may apply in other situations where trains have stopped in close proximity to public highway-rail grade crossings.

FRA is refraining from providing an exact distance that would constitute ''close proximity'' as the length of time that it will take for a train to reach the crossing will vary greatly depending on the type and weight of the train. If a train is stopped at a location such that it will take less than fifteen seconds for it to occupy the crossing, it is deemed to be in close proximity.

Paragraph (e) has also been added to this section, in response to a petition for reconsideration submitted by the AAR, in which the AAR requested that 49 CFR Part 222 be revised to preempt State laws that govern the sounding of all locomotive audible warning devices at public highway-rail grade crossings. Without such preemption, the AAR asserted that railroads would be required to initiate locomotive bell sounding at a location specified by State law, which may be inconsistent with the time-based locomotive horn sounding requirement set forth in this section.

FRA is not exercising complete preemption of State laws on the sounding of locomotive audible warning devices at public highway-rail grade crossings. Complete preemption of State laws on this issue could inadvertently remove the valuable warning currently provided by locomotive audible warning devices other than the locomotive horn because the Final Rule does not require the sounding of locomotive audible warning devices, other than the locomotive horn, at public highway-rail grade crossings.

FRA has, however, added this section to ensure that a consistent locomotive audible warning will be provided at public highway-rail grade crossings. Therefore, if State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device must be sounded in accordance with paragraphs (b) and (d) of this section. By exercising preemption in this limited manner, FRA hopes to alleviate any potential confusion on the part of the locomotive engineer who might otherwise have been forced to comply with distance-based locomotive bell sounding requirements, as well as time-based locomotive horn sounding requirements, at the same public highway-rail grade crossing.

Section 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

Paragraph (a) of this section has not been revised.

Paragraph (b) of this section has been revised to correct an inadvertent omission from the list of situations in which locomotive horn use at quiet zone crossings would be permissible. In the Final Rule, FRA stated that locomotive horn use would be permitted at a quiet zone crossing equipped with a wayside horn, in the event of a wayside horn malfunction. Similarly, the Final Rule states that locomotive horn use would be permitted at a quiet zone crossing when active grade crossing warning devices installed at the grade crossing are malfunctioning or out of service. As indicated by this list of potential scenarios, FRA has always intended to permit railroads to sound the locomotive horn at a quiet zone crossing whenever engineering improvements installed at the grade crossing become non-compliant. Therefore, FRA has added paragraph (b)(4) to this section to clarify that railroads are not required to comply with the general prohibition against routine locomotive horn sounding at a quiet zone crossing, when an SSM, modified SSM or engineering SSM installed at the quiet zone crossing fails to comply with the requirements set forth in appendix A of this part or the conditions contained within the Associate Administrator's decision to approve the quiet zone in accordance with section 222.39(b) of this part. The railroad should, however, attempt to contact the person responsible for monitoring quiet zone compliance with this part (as designated in the Notice of Quiet Zone Establishment), in order to inform the public authority of the non-compliant condition of the quiet zone crossing.

Paragraph (c) of this section has not been revised.

Section 222.25 How does this rule affect private highway-rail grade crossings?

This section has been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR expressed support for FRA's decision to refrain from requiring locomotive horn sounding at every private highway-rail grade crossing. However, noting that some States require the sounding of a locomotive horn or the ringing of the locomotive bell at private highway-rail grade crossings, the AAR requested that FRA amend 49 CFR Part 222 by adding an explicit statement of FRA's intent to preempt State law, to the extent that State law requires the sounding of a locomotive audible warning device for a period of time or in a pattern different from the locomotive horn sounding requirements set forth in § 222.21 of this part. After considering this request, as well as the potential for confusion that may result from requiring the locomotive engineer to provide a different audible warning at public highway-rail grade crossings than at private highway-rail grade crossings, FRA revised this section. Thus, if State law requires the sounding of locomotive audible warning devices at private highway-rail grade crossings, the locomotive audible warning device must be sounded in accordance with the locomotive horn sounding requirements set forth in § 222.21 of this part as of December 15, 2006. However, in recognition of the fact that some locomotive audible warning devices (such as the locomotive bell) cannot be sounded in accordance with the locomotive horn sounding pattern required by § 222.21(a) of this part (*i.e.*, two long blasts, one short blast, and one long blast), locomotive audible warning devices other than the locomotive horn need only be sounded in accordance with the time-based locomotive horn sounding requirements set forth in §§ 222.21(b) and (d) of this part.

Paragraph (a) of this section has also been revised, in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR asserted that the permissive language in this provision could mislead public authorities into thinking that they are not required to address private highway-rail grade crossings when establishing their quiet zones. After considering this assertion, FRA noted that public authorities located in States that do not require locomotive horn sounding at private highway-rail grade crossings might erroneously assume that it will not be necessary to include and/or improve private highway-rail grade crossings located within the boundaries of their quiet zone. Therefore, FRA revised this paragraph in order to clarify that all private highway-rail grade crossings located within the boundaries of a quiet zone must be treated in accordance with this part.

Paragraph (b)(1) of this section has been revised to clarify that all private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and then equipped or treated in accordance with the diagnostic team recommendations, if the private highway-rail grade crossings allow access to the public or provide access to active industrial or commercial sites. Paragraph (b)(2) of this section has not been revised.

Paragraph (c) of this section has also been revised to clarify that crossbucks and ''STOP'' signs must be installed at each approach to private highway-rail grade crossings that are located within quiet zones.

Section 222.27 How does this rule affect pedestrian grade crossings?

This section has been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR expressed

support for FRA's decision to refrain from requiring locomotive horn sounding at pedestrian grade crossings. However, after asserting that some States may require the sounding of a locomotive audible warning device at pedestrian grade crossings, the AAR requested that FRA amend 49 CFR Part 222 by adding an explicit statement of FRA's intent to preempt State law, to the extent that State law requires the sounding of a locomotive audible warning device for a period of time or in a pattern different from the locomotive horn sounding requirements set forth in § 222.21 of this part. After considering this request, as well as the potential for confusion that may result from requiring the locomotive engineer to provide a different audible warning at public highway-rail grade crossings than at pedestrian grade crossings, FRA revised this section. Therefore, if State law requires the sounding of a locomotive audible warning device at pedestrian grade crossings, the locomotive audible warning device must be sounded in accordance with the locomotive horn sounding requirements set forth in § 222.21 of this part as of December 15, 2006. However, in recognition of the fact that some locomotive audible warning devices (such as the locomotive bell) cannot be sounded in accordance with the locomotive horn sounding pattern required by § 222.21(a) of this part (*i.e.*, two long blasts, one short blast, and one long blast), locomotive audible warning devices other than the locomotive horn need only be sounded in accordance with the time-based locomotive horn sounding requirements set forth in §§ 222.21(b) and (d) of this part.

Paragraph (a) of this section has also been revised, in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR expressed concern that the permissive language contained in paragraph (a) of this section could mislead public authorities into thinking that they are not required to address pedestrian crossings when establishing their quiet zones. After considering this assertion, FRA noted that public authorities located in States that do not require locomotive horn sounding at pedestrian grade crossings might erroneously assume that it will not be necessary to include and/or improve pedestrian grade crossings located within the boundaries of their quiet zone. Therefore, FRA revised this paragraph in order to clarify that all pedestrian grade crossings located within the boundaries of a quiet zone must be treated in accordance with this part.

Paragraph (b) of this section has been revised to clarify that all pedestrian grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and then equipped or treated in accordance with the diagnostic team recommendations, if the pedestrian grade crossings allow access to the public or provide access to active industrial or commercial sites.

A minor typographical edit has been made to paragraph (c) of this section.

Paragraph (d) of this section has also been revised in response to the AAR petition for reconsideration. In its petition for reconsideration, the AAR asserted that paragraph (d) of this section requires the installation of signs at pedestrian crossings that could potentially be misleading. In light of the fact that partial quiet zones may be established in States that do not require locomotive horn sounding at pedestrian grade crossings, the AAR expressed concern that pedestrians encountering time-specific warning signs when the partial quiet zone is not in effect might assume that the locomotive horn will be sounded by approaching trains. After considering this issue, FRA agreed that the Final Rule's warning sign requirement could be misleading to pedestrians. Therefore, in order to minimize confusion, paragraphs (d)(2) and (d)(4) of this section have been revised to give public authorities the flexibility to install warning signs which advise pedestrians that train horns will not be sounded, but do not list the hours within which the partial quiet zone will be in effect. Thus, if State law does not require locomotive horn sounding at pedestrian grade crossings, signs that indicate that horns are not sounded would be appropriate. However, if State law requires locomotive horn sounding during non-quiet zone hours, then signs indicating that horns are not sounded between stated hours of the partial quiet zone would be appropriate. Paragraph (d) of this section has also been revised to clarify that advance warning signs must be installed on each approach to pedestrian grade crossings located within quiet zones.

Section 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

This section has not been revised.

Section 222.35 What are the minimum requirements for quiet zones?

Minor typographical revisions have been made throughout this section.

Paragraph (a)(1)(iii) has been added to this section to address the configuration of multiple New Quiet Zones and New Partial Quiet Zones along the same rail line within a single political jurisdiction. Even though FRA has refrained from establishing a minimum distance between neighboring quiet zones, there must be at least one public highway-rail grade crossing between New Quiet Zones and New Partial Quiet Zones located on the same rail line within a single political jurisdiction unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone. While it is perfectly acceptable for a community to create two quiet zones (each at least one-half mile long) with a segment between them at which horns will sound, multiple New Quiet Zones and New Partial Quiet Zones cannot be established on the same rail line within the boundaries of a single political jurisdiction unless they are separated by at least one public highway-rail grade crossing.

By establishing a single New Quiet Zone or New Partial Quiet Zone to incorporate all public highway-rail grade crossings at which routine locomotive horn sounding will be restricted or prohibited, the administrative burden associated with quiet zone establishment will be lessened. In addition, FRA perceives no safety-related rationale for dividing a multiple-crossing New Quiet Zone or New Partial Quiet Zone along a single rail line into fragmented quiet zones. Therefore, unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone, New Quiet Zones and New Partial Quiet Zones created along the same rail line within a single political jurisdiction must be separated by at least one public highway-rail grade crossing.

Paragraph (a)(2)(ii) of this section has been revised to correct an inadvertent restriction on the number of Pre-Rule Quiet Zones that can be combined. Under the revised language in paragraph (a)(2)(ii) of this section, public authorities can combine more than two adjacent Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones.

Paragraph (a)(3) of this section, which states that grade crossings on a segment of rail line that travels through more than one political jurisdiction may be included within a single quiet zone, has been revised. This paragraph has been revised in order to clarify that pedestrian crossings, located on the same segment of rail line as public highway-rail grade crossings, may also be included in multi-jurisdictional quiet zones.

Paragraph (b) of this section has not been revised.

Paragraph (c) of this section has been revised in response to the AAR's petition for reconsideration. In its petition for reconsideration, the AAR asserted that paragraph (c) of this section requires the installation of signs at private highway-rail grade crossings that could potentially be misleading. In light of the fact that partial quiet zones may be established in States that do not require locomotive horn sounding at private highway-rail grade crossings, the AAR expressed concern that motorists encountering time-specific warning signs when the partial quiet zone is not in effect might assume that the locomotive horn will be sounded by approaching trains. After considering this issue, FRA agreed that the Final Rule's warning sign requirement could be misleading to motorists. Therefore, in order to minimize confusion, paragraphs (c)(2) and (c)(4) of this section have been revised to give public authorities the flexibility to install warning signs which advise motorists that train horns will not be sounded, but do not list the hours within which the partial quiet zone will be in effect. Thus, if State law does not require locomotive horn sounding at private highway-rail grade crossings, signs that indicate that horns are not sounded would be appropriate. However, if State law requires locomotive horn sounding during non-quiet zone hours, then signs indicating that horns are not sounded between stated hours of the partial quiet zone would be appropriate. These warning signs must be installed on each approach to public and private highway-rail grade crossings.

Paragraph (c)(5) has been added to this section to clarify that FRA does not intend to require public authorities to install advance warning signs at highway-rail grade crossings that are equipped with wayside horns that conform to the requirements set forth in § 222.59 and Appendix E of this part, but are located within a quiet zone.

Paragraph (d) of this section has not been revised. Minor typographical edits have, however, been made in paragraphs (e), (f), and (g) of this section.

Section 222.37 Who may establish a quiet zone?

Paragraph (a) of this section addresses the situation that may occur if a proposed quiet zone includes public highway-rail grade crossings that are under the authority and control of more than one public authority. This scenario could occur if the proposed quiet zone contains county roads and State highways that intersect the railroad tracks at adjacent crossings. This scenario could also occur if the railroad tracks or the roadway run along the border between two neighboring communities.

When faced with this scenario, paragraph (a) of this section states that both public authorities must agree to establishment of the quiet zone and must jointly, or by delegation, take such actions as are required to comply with this part. Therefore, if two neighboring communities are interested in quiet zone creation, the communities might want to consider working together to create a multi-jurisdictional quiet zone. If the neighboring communities are not, however, interested in creating a single, multi-jurisdictional quiet zone, any shared highway-rail grade crossing (*i.e.*, a highway-rail grade crossing that contains a roadway that runs along the border of the neighboring communities) can only be attributed to one quiet zone. Otherwise, the risk reduction credit associated with any safety improvements at the shared highway-rail grade crossing would be ''double-counted'', if claimed by adjacent quiet zones.

A minor typographical revision has been made to paragraph (a) of this section. However, paragraphs (b) and (c) of this section have not been revised.

Section 222.38 Can a quiet zone be created in the Chicago Region?

This section has not been revised.

Section 222.39 How is a quiet zone established?

Paragraph (a) of this section has not been revised.

Minor typographical revisions have been made to paragraph (b) of this section. In addition, paragraph (b) of this section has been revised in response to the AAR's petition for reconsideration. In its petition, the AAR asserted that it may be unclear, in certain circumstances, as to what constitutes a pedestrian crossing. Therefore, the AAR recommended that the Final Rule be revised to require public authorities to indicate, in their quiet zone applications and notification packages, where pedestrian crossings are located. The AAR reasoned that this revision would eliminate any confusion as to where crossing signs must be located, in accordance with § 222.27.

Even though public authorities are required to identify pedestrian crossings in their quiet zone notification packages, in accordance with the requirements set forth in § 222.43, FRA notes that it had inadvertently failed to require public authorities to identify or provide information on pedestrian grade crossings in their quiet zone applications. Therefore, paragraph (b) of this section has been revised to require public authorities to submit Grade Crossing Inventory Forms for each pedestrian grade crossing located within a proposed quiet zone, as well as information concerning present safety measures and proposed improvements at these crossings. FRA also inadvertently failed to require public authorities to provide information on current and proposed safety improvements at private highway-rail grade crossings. Therefore, paragraph (b) of this section has been revised to require public authorities to submit information on present safety measures and proposed improvements at private highway-rail grade crossings located within the proposed quiet zone. With respect to public highway-rail grade crossings, paragraph (b) of this section has been revised to require public authorities to provide detailed information about all safety improvements, as opposed to just SSMs and ASMs, that have been proposed for implementation. In making these revisions, FRA hopes to obtain better information as to the overall level of safety within the proposed quiet zone.

Paragraph (b)(iv) of this section has been revised by inserting an explicit reference to the Notice of Intent requirement contained within § 222.43 of this part. (An inadvertent omission of the State agency responsible for highway and road safety has also been corrected.) The public authority is required to provide a Notice of Intent, in accordance with § 222.43 of this part, at least 60 days prior to the submission of its quiet zone application. All objections received from any railroad operating within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety in response to the Notice of Intent must then be addressed by the public authority in the quiet zone application, in accordance with paragraph (b)(iv) of this section.

Paragraph (b)(2) of this section addresses the inclusion of newly established public and private highway-rail grade crossings in quiet zones. Any proposed quiet zone that contains a newly established public highway-rail grade crossing must be established through public authority application, unless one or more SSMs will be implemented at every public highway-rail grade crossing within the proposed quiet zone in accordance with paragraph (a)(1) of this section. Quiet zones with newly established public highway-rail grade crossings cannot be established through comparison to

either the Nationwide Significant Risk Threshold or the Risk Index With Horns because the Quiet Zone Risk Index cannot be computed without historical vehicle and rail traffic counts for each public highway-rail grade crossing within the quiet zone.

A minor typographical revision has been made in paragraph (b)(3) of this section. However, paragraph (b)(4) of this section has not been revised. Paragraph (c) of this section has also not been revised.

Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

Minor typographical revisions have been made in paragraphs (a) and (b) of this section.

Paragraph (c) of this section has been revised in order to clarify the process that must be followed in order to continue existing locomotive horn sounding restrictions within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that will not be established by automatic approval. Paragraph (c)(1) has been added to this section to clarify that the public authority must provide a Notice of Quiet Zone Continuation, in accordance with § 222.43 of this part, in order to retain existing locomotive horn sounding restrictions until June 24, 2008. Paragraph (c)(2) of this section explains the process that must be followed, in order to continue existing locomotive horn sounding restrictions until June 24, 2010. Paragraph (c)(3) of this section explains the process that can be followed, in order to continue existing locomotive horn sounding restrictions until June 24, 2013, by providing a comprehensive State-wide implementation plan and funding commitment for the establishment of Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones.

Paragraph (c)(2) of this section has been revised to clarify the process for continuing existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption. As stated in paragraph (c)(2)(i)(A) of this section, the public authority must mail a Notice of Intent, in accordance with § 222.43 of this part, by February 24, 2008. The mailing of the Notice of Intent, which will provide a brief explanation of the public authority's plans for implementing improvements within the quiet zone, will trigger a 60-day comment period, within which affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety can provide comments on the proposed improvements. This Notice of Intent replaces the Notice of Detailed Plan, which was previously required by the Final Rule.

After the Notice of Intent has been mailed and the subsequent 60-day comment period has run, paragraph (c)(2)(i)(B) requires the public authority to file a detailed plan with the FRA Associate Administrator by June 24, 2008. The detailed plan must include a detailed explanation of each safety improvement that will be implemented at public, private, and pedestrian crossings within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, in order to comply with §§ 222.25, 222.27, 222.35 and 222.39 of this part. (The public authority may also choose to explain additional safety improvements that will be implemented within the quiet zone, but are not being relied upon to achieve compliance with this part.) The detailed plan must also include a timetable for the implementation of these safety improvements.

If the public authority plans to implement ASMs within the quiet zone, paragraph (c)(2)(ii) of this section (formerly paragraph (c)(4) of the Final Rule) advises the public authority to apply for FRA approval of the quiet zone by December 24, 2007, in order to ensure that FRA will have ample time within which to review the quiet zone application.

Providing a Notice of Intent and filing a detailed plan in accordance with paragraph (c)(2) of this section will, however, only postpone routine locomotive horn sounding at public highway-rail grade crossings until June 24, 2010, unless the public authority establishes a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in accordance with paragraph (c)(4) of this section. Paragraph (c)(2)(ii) in the Final Rule, which specifically addressed the establishment of Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones during the three-year period following June 24, 2005, has been removed. However, Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that have Quiet Zone Risk Indices that fall to a level at or below the Nationwide Significant Risk Threshold during this three-year period are now governed by paragraph (c)(4) of this section, which sets forth the procedure for establishing Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval.

Paragraph (c)(3) of this section explains the process that must be followed by an appropriate State agency, in order to continue existing locomotive horn sounding restrictions within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones for an additional three years (until June 24, 2013) through the filing of a comprehensive State-wide implementation plan and funding commitment. As stated in this paragraph, existing locomotive horn sounding restrictions may remain in place until June 24, 2013, if: a) a comprehensive State-wide implementation plan and funding commitment is filed by the appropriate State agency with the Associate Administrator by June 24, 2008; and b) safety improvements are initiated within at least one Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone in the State by June 24, 2009. The comprehensive State-wide implementation plan must include an explanation of the process that will be used to assist Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones to come into compliance with §§ 222.25, 222.27, 222.35 and 222.39 of this part, as well as a timetable for the implementation of necessary safety improvements. As of June 24, 2013, locomotive horn sounding will resume unless each public authority establishes a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zones, in accordance with paragraph (c)(4) of this section.

Paragraph (c)(4) of this section explains the process that must be followed in order to establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone. As stated in paragraph (c)(4) of this section, a public authority can establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone if: (a) The Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone complies with the Pre-Rule Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; (b) the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone complies with the quiet zone standards set forth in § 222.39 of this part; and (c) the public authority complies with all applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

The notification and filing requirements contained within this paragraph (c) and § 222.43 of this part may include: a) mailing the Notice of Intent, in accordance with § 222.43 of this part, if new SSMs or ASMs will be implemented within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone; b) filing a detailed plan with the Associate Administrator by June 24, 2008, in accordance with paragraph (c)(2) of this section, if the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will be established after that date; and c) providing a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part.

Paragraph (d) of this section has been revised in order to clarify the process that must be followed in order to convert a Pre-Rule Partial Quiet Zone into a 24-hour New Quiet Zone. While the final rule simply stated that the public authority must provide ''notification of the establishment of a New 24-hour Quiet Zone'', paragraph (d) of this section has been revised to clarify that the public authority is actually required to comply with all applicable notification and filing requirements contained within paragraph (c) of this section and § 222.43 of this part. These notification and filing requirements may include: (a) Mailing the Notice of Intent, in accordance with § 222.43 of this part; b) filing a detailed plan with the Associate Administrator by June 24, 2008, in accordance with paragraph (c)(2) of this section, if the Pre-Rule Partial Quiet Zone will be converted after that date; and c) providing a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part.

Section 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

This section has been revised in order to clarify the process that must be followed in order to continue existing locomotive horn sounding restrictions in Intermediate Quiet Zones and Intermediate Partial Quiet Zones until June 24, 2006. This section has also been revised in order to clarify the process that must be followed in order to convert an Intermediate Quiet Zone or Intermediate Partial Quiet Zone into a New Quiet Zone or New Partial Quiet Zone on or before June 24, 2006, in order to prevent the resumption of locomotive horn sounding on that date.

As stated in paragraph (a)(1) of this section, a public authority may continue existing locomotive horn restrictions until June 24, 2006 by providing a Notice of Quiet Zone Continuation in accordance with § 222.43 of this part. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone must, however, be converted into a New Quiet Zone or a New Partial Quiet Zone by June 24, 2006, in order to prevent the resumption of locomotive horn sounding on that date.

Paragraph (a)(2) of this section explains the process for converting an Intermediate Quiet Zone into a New Quiet Zone, or an Intermediate Partial Quiet Zone into a New Partial Quiet Zone, by June 24, 2006. Paragraph (b) of this section explains the process for converting an Intermediate Partial Quiet Zone into a 24-hour New Quiet Zone by June 24, 2006.

While most of the requirements for converting an Intermediate Quiet Zone or Intermediate Partial Quiet Zone remain unchanged, paragraph (a)(2) of this section explains that the public authority is required to: (a) Provide a Notice of Intent, in accordance with § 222.43 of this part; (b) bring the Intermediate Quiet Zone or Intermediate Partial Quiet Zone into compliance with the standards set forth in § 222.39 of this part; (c) bring the Intermediate Quiet Zone or Intermediate Partial Quiet Zone into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; and d) provide a Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, by June 3, 2006. It should be noted that the Notice of Intent should be mailed prior to April 3, 2006, in order to allow at least 60 days for the submission of comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety before the mailing of the Notice of Quiet Zone Establishment. (Please refer to § 222.43(b) for more information.) Even though these notification requirements were contained within § 222.43 of this part and were included in the Paperwork Reduction Act analysis that FRA performed on the Final Rule, FRA inadvertently omitted explicit reference to these requirements in this section of the Final Rule.

Paragraph (b) of this section has been revised in order to clarify the process that must be followed in order to convert an Intermediate Partial Quiet Zone into a 24-hour New Quiet Zone. (Please note that the requirements for converting an Intermediate Partial Quiet Zone into either a 24-hour New Quiet Zone or a New Partial Quiet Zone are identical.) While the Final Rule simply stated that the public authority is required to provide ''notification of New Quiet Zone establishment'', paragraph (b) of this section has been revised to clarify that the public authority is actually required to provide two different types of quiet zone notification—the Notice of Intent and the Notice of Quiet Zone Establishment. In order to facilitate conversion of the Intermediate Partial Quiet Zone before the end of the one-year grace period for existing locomotive horn sounding restrictions, paragraph (b) of this section has also been revised to include a deadline for the submission of the Notice of Quiet Zone Establishment, which mirrors the submission deadline contained within paragraph (a)(2) of this section.

Section 222.43 What notices and other information are required to create or continue a quiet zone?

Minor typographical revisions have been made throughout this section.

This section has also been revised by expanding the scope of the Notice of Intent requirement to include Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will need to implement SSMs or ASMs in order to qualify for quiet zone establishment under § 222.41 (c) or (d) of this part. The requirement to provide Notice of Detailed Plan, which was virtually identical to the Notice of Intent, has therefore been removed. Thus, Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that were previously required to provide a Notice of Detailed Plan are now required to provide a Notice of Intent on or before February 24, 2008.

As stated in paragraph (a)(1) of this section, a Notice of Intent must be provided by public authorities who wish to create a New Quiet Zone or New Partial Quiet Zone by public authority designation or application, in accordance with § 222.39(a) or (b) of this part. This includes public authorities who wish to convert Intermediate Quiet Zones and Intermediate Partial Quiet Zones into a New Quiet Zone or New Partial Quiet Zone. In addition, public authorities seeking to implement new SSMs or ASMs within Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are required to provide a Notice of Intent.

The Notice of Intent should be mailed early in the quiet zone development process, as the submission of the Notice of Intent triggers a 60-day comment period and provides State agencies and railroads with an opportunity to provide input on the quiet zone to the public authority. Therefore, paragraph (b)(1) was added to this section to reiterate that a sixty-day period must elapse between the mailing of the Notice of Intent and the mailing of the Notice of Quiet Zone Establishment, unless the public authority has obtained written comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section. This provision is very similar to language contained within paragraph (d)(1)(ii) of this section, which

addresses the timing of Notices of Quiet Zone Establishment.

With respect to Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by June 24, 2008, paragraph (b)(1)(ii) of this section reminds public authorities that the Notice of Intent, which provides a brief explanation of proposed quiet zone improvements, must be provided by February 24, 2008, in order to continue existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption.

As for the Notice of Quiet Zone Continuation, it should be noted that submission of the Notice of Quiet Zone Continuation was only necessary if the public authority wanted to continue pre-existing locomotive horn sounding restrictions after June 24, 2005. If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone was established under the authority of this part before the Final Rule took effect on June 24, 2005, the public authority was not required to provide prior Notice of Quiet Zone Continuation.

All Notices of Intent, Notices of Quiet Zone Continuation, and Notices of Quiet Zone Establishment that complied with § 222.43 of the Final Rule and were mailed on or before August 17, 2006, shall be deemed compliant with any revised notification requirements now contained in this section.

Section 222.45 When Is a Railroad Required to Cease Routine Sounding of Locomotive Horns at Crossings?

This section has been revised to clarify the required railroad response to a valid Notice of Quiet Zone Continuation or Establishment. Even though railroads have been required to refrain from, or cease, routine sounding of the locomotive horn at all public, private, and pedestrian crossings identified in a valid Notice of Quiet Zone Continuation or Establishment on the date specified in the Notice, reference to the Notice of Quiet Zone Continuation was inadvertently omitted from this section in the Final Rule. Pedestrian grade crossings were also inadvertently omitted from the description of grade crossings at which railroads are required to cease routine use of the locomotive horn.

Section 222.47 What periodic updates are required?

Minor typographical revisions have been made in this section.

Section 222.49 Who may file Grade Crossing Inventory Forms?

This section has not been revised.

Section 222.51 Under what conditions will quiet zone status be terminated?

This section has not been revised.

Section 222.53 What are the requirements for supplementary and alternative safety measures?

This section has not been revised.

Section 222.55 How are new supplementary or alternative safety measures approved?

This section has not been revised.

Section 222.57 Can parties seek review of the Associate Administrator's actions?

This section has not been revised.

Section 222.59 When May a Wayside Horn Be Used?

It has come to FRA's attention that there may be some confusion in the railroad industry as to whether the notification requirements contained within this section apply to existing wayside horn installations. As a result, we wish to clarify that railroads and/or public authorities who are responsible for wayside horns that became operational before June 24, 2005 and that meet the requirements set forth in this part are not required to submit notification of operational status, in accordance with paragraphs (b) and (c) of this section. Thus, all railroads operating over highway-rail grade crossings equipped with wayside horns that became operational before June 24, 2005 were required to cease routine sounding of the locomotive horn at those crossings on that date, even if notification of operational status was not provided in accordance with this section.

Appendix A to Part 222—Approved Supplementary Safety Measures

Sections (A)(1), (A)(3), (A)(4), and (A)(5) of this Appendix have not been revised. However, FRA has added a brief discussion of the effectiveness rate assigned to four-quadrant gate systems equipped with vehicle presence detection to Section (A)(2) of this Appendix.

As stated in the Note to section (A)(2) of the Appendix, the lower effectiveness rate assigned to four-quadrant gate systems equipped with presence detection does not mean that four-quadrant systems with presence detection are inherently less safe. The lower effectiveness rate merely reflects the fact that motorists who are intent on circumventing the grade crossing warning system can take advantage of presence detection by driving under the delayed exit gates to enter the grade crossing. However, the public authority must weigh this risk against site-specific risks, such as nearby highway intersections that may cause traffic to back up on the grade crossing, when determining which type of four-quadrant gate system should be installed at a specific highway-rail grade crossing. FRA therefore recommends the use of site-specific studies to determine the best application for each installation.

Sections (B) and (C) of this Appendix have not been revised.

Appendix B to Part 222—Alternative Safety Measures

Minor revisions have been made to section I.A. of this appendix, which contains a brief discussion of the requirements and effectiveness rates for modified SSMs. Specifically, section I.A.2 of this appendix has been revised in order to clarify that the public authority is required to provide estimates of the effectiveness of its modified SSMs, which can be based upon adjustments to the effectiveness levels provided in appendix A or actual field data derived from the crossing sites. These effectiveness rate estimates must be included in the quiet zone application, as set forth in § 222.39(b) of this part.

Sections (I)(B) and (I)(C) of this Appendix have not been revised. Sections II and III of this Appendix have also not been revised.

Appendix C to Part 222—Guide to Establishing Quiet Zones

This appendix has been revised to incorporate changes that have made been to the rule text.

Appendix D to Part 222—Determining Risk Levels

This appendix has not been revised.

Appendix E to Part 222—Requirements for Wayside Horns

This appendix has not been revised.

Appendix F to Part 222—Diagnostic Team Considerations

This appendix has not been revised.

Appendix G to Part 222—Schedule of Civil Penalties

This appendix has been revised to reflect the exception for fast-moving trains (trains operating at speeds in excess of 60 mph) from the 15-second minimum horn sounding requirement contained in § 222.21(b) of this part. As stated in § 222.21(b)(3) of this part, FRA will not issue civil penalties against railroads whose fast-moving trains fail to sound the locomotive horn at least 15

seconds prior to their arrival at public highway-rail grade crossings, if locomotive horn sounding was initiated one-quarter mile from the public highway-rail grade crossing.

This appendix has also been revised to reflect revisions that have been made to the audible warning requirement set forth in § 222.21(b) of this part. When dealing with situations in which the locomotive engineer provided an audible warning in excess of 20 seconds before public grade crossings, FRA will try to determine whether the locomotive engineer made a good faith attempt to comply with the 15–20 second audible warning requirement. However, if an audible warning in excess of 25 seconds was provided before a public highway-rail grade crossing and FRA determines that the locomotive engineer failed to make a good faith attempt to comply with the 15–20 second audible warning requirement set forth in § 222.21(b) of this part, FRA may issue an appropriate civil penalty.

Section 222.21(b)(3) of this part prohibits the initiation of locomotive horn sounding from a location more than one-quarter mile before a public highway-rail grade crossing. However, under the civil penalty schedule contained within Appendix G to the Final Rule, a $5,000 civil penalty could only have been assessed if locomotive horn sounding was routinely initiated from a location more than one-quarter mile before a public highway-rail grade crossing. FRA did not intend to restrict its enforcement activity to habitual violations of the locomotive horn sounding requirements contained within this part. Therefore, FRA is amending this appendix in order to clarify that civil penalties may be assessed against railroads for individual instances in which locomotive horn sounding was initiated from a location more than one-quarter mile before a public highway-rail grade crossing. However, the recommended standard civil penalty has been reduced from $5,000 to $1,000 and the recommended willful civil penalty has also been reduced from $7,500 to $2,000.

This appendix has also been revised to clarify that routine sounding of the locomotive horn at any grade crossing (i.e., public, private or pedestrian grade crossing) located within a quiet zone is prohibited.

Section 229.5 Definitions

The three definitions that are being added this section were included in the Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings. These definitions were, however, inadvertently removed upon issuance of the Final Rule on Locomotive Event Recorders (70 FR 37920).

Also, the definition of the term ''defective'' has been revised to reflect FRA's intent to limit application of this specific definition to § 229.129 of this part.

Section 229.129 Locomotive Horn

The title of this section has been changed to reflect the fact that the requirements contained within this section only pertain to one type of locomotive audible warning device—the locomotive horn. Therefore, all references to ''audible warning devices'' within this section have been replaced with the term ''locomotive horn'.

This section has also been revised in response to petitions for reconsideration that were submitted by GE Transportation Rail and the AAR. In its petition for reconsideration, GE Transportation Rail requested a 120-day extension of the compliance deadline set forth in paragraph (b)(1) of this section for the sound level testing of new locomotives. GE Transportation Rail asserted that, given the relatively short period of time since the issuance of FRA's Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings, it would be unable to complete sound level testing on its first batch of new locomotives prior to June 24, 2005 (the compliance deadline for sound level testing of new locomotives). As a result, GE Transportation Rail asserted that it would be forced to test every new locomotive, which would negatively impact its ability to meet delivery commitments made to its customers.

After considering the assertions made by GE Transportation Rail with respect to the practical limitations associated with testing new locomotive sound levels, in accordance with the test parameters set forth in § 229.129, FRA revised paragraph (b) to extend the compliance date of the new locomotive sound level testing requirements to September 18, 2006. In light of the delay incidental to the publication of these amendments, this revision will actually extend the compliance date of the testing requirements contained in this section by more than 120 days. Therefore, any locomotives built on or after September 18, 2006 must comply with the minimum and maximum locomotive horn sound level requirements set forth in paragraph (a) of this section. However, locomotives built before September 18, 2006 must be tested and brought into compliance with the minimum and maximum locomotive horn sound level requirements set forth in paragraph (a) of this section by June 24, 2010.

Paragraph (b)(3) of this section has been revised to clarify FRA's original intent to require the sound level testing of remanufactured locomotives, in accordance with this section. Even though the Final Rule required sound level testing of ''each locomotive when rebuilt, as determined pursuant to 49 CFR 232.5'', FRA has received comments noting that this provision is somewhat ambiguous and difficult to interpret. Since FRA had actually intended to apply the sound level testing requirements contained within this section to those locomotives that have been rebuilt or refurbished from a previously used or refurbished underframe (''deck'') and contain fewer than 25 percent of previously used components (weighted by the dollar value of the components), paragraph (b)(3) of this section has been revised to refer only to those locomotives that meet the definition of ''remanufactured locomotive'', as set forth in § 229.5 of this part. (Please refer to FRA's Final Rule on Locomotive Crashworthiness, which was published in the **Federal Register** on June 28, 2006 (71 FR 36888), for further discussion of the term ''remanufactured locomotive''.)

The AAR also submitted a petition for reconsideration that addressed a number of provisions contained within § 229.129 of this part. First, the AAR asserted that § 229.129 of this part was ambiguous as to what additional testing, if any, must be conducted when locomotive horns are replaced. If additional testing would be necessary, the AAR proposed that railroads be allowed to use the sampling scheme set forth in paragraph (b)(1) of this section to qualify replacement horns, with no additional testing necessary. However, if a replacement horn was not model qualified through acceptance sampling, the AAR proposed that railroads be required to test the replacement horn at the time of the next periodic inspection or by June 24, 2010, whichever is later.

FRA has not, however, revised this section to allow acceptance sampling of replacement horns. Given the level of variation that exists in the different types of locomotive/locomotive horn configurations, FRA is concerned that acceptance sampling would not ensure that the replacement horn, when installed on the locomotive, would generate an audible warning commensurate with the sound level parameters established by paragraph (a) of this section. FRA believes that locomotive horns should not be tested in isolation—the sound level must be tested after the horn has been installed

on the locomotive. FRA notes that there are a variety of factors that can influence locomotive horn sound levels, such as the placement, mounting, air pressure and actual condition of the locomotive horn. However, should railroads develop data from field testing to demonstrate that some form of acceptance sampling would be appropriate, FRA would be willing to reconsider its position on this issue.

Paragraph (b)(4) has been added to this section to require sound level testing of locomotives equipped with replacement horns, in accordance with paragraph (c) of this section. As stated in paragraph (b)(4) of this section, locomotives equipped with replacement horns must be tested unless: (a) The locomotive has already been individually tested or tested through acceptance sampling, in accordance with paragraphs (b)(1), (b)(2), or (b)(3) of this section; (b) the replacement horn is the same locomotive horn model as the locomotive horn that was replaced; and (c) the replacement horn was mounted in the same manner and location as the locomotive horn that was replaced. This sound level testing must be performed before the next two annual tests required by § 229.27 of this part are completed.

In its petition for reconsideration, the AAR also requested that railroads be allowed to use acceptance sampling to qualify the sound level output of existing locomotives. In support of this request, the AAR asserted that there is a great deal of standardization with respect to locomotive horn and locomotive models. However, FRA has not revised this section to allow acceptance sampling of the sound level output of existing locomotives, as the considerations that militate against acceptance sampling of replacement locomotive horns apply equally, if not more so, to the acceptance sampling of existing locomotives. FRA notes that there are many factors that can influence the sound level output of existing locomotives, including the actual condition of the locomotive horn, as well as the placement, mounting and air pressure of the locomotive horn. FRA may, however, reconsider this issue, should railroads develop data from field testing that demonstrates that some form of acceptance sampling would be appropriate.

Paragraph (c)(1) of this section has not been revised.

By e-mail dated September 20, 2005, the AAR submitted a request for modification of the locomotive horn testing requirements in paragraph (c)(2) of this section. In its e-mail, the AAR requested permission to use electronic calibrators, in addition to approved acoustic calibrators, to conduct compliance testing in accordance with this section. If such a change were made, the AAR asserted that railroads could use an acoustic calibrator during the initial setup of an ''environmental noise monitoring system'' and then store the results in an electronic calibrator which could, conceivably, have an accuracy of ± 0.1 dB.

FRA has not, however, revised paragraph (c)(2) of this section. Acoustical calibration has been incorporated into the recommended practice for monitoring aircraft noise in the vicinity of airports, unlike electronic calibration, which is mainly used to identify sound level measurement system failure. *See* SAE Aerospace Recommended Practice (ARP) 4721—Monitoring Aircraft Noise and Operations in the Vicinity of Airports and ISO/DIS 20906—Unattended Monitoring of Aircraft Sound in the Vicinity of Airports. Thus, while FRA will permit the use of environmental noise monitoring systems to conduct compliance testing under this section, FRA cannot permit electronic calibration of sound level measurement systems.

Apart from the correction of a typographical error in paragraph (c)(5), paragraphs (c)(3) through (c)(8) of this section have not been revised.

In its e-mail dated September 20, 2005, the AAR also requested that FRA relax the requirement in paragraph (c)(9) of this section that calibration be done before and after each compliance test. However, FRA would like to clarify that calibration is not required before and after each compliance test. Acoustical calibration must be performed, at a minimum, before and after each session of compliance tests within an 8-hour period, unless a physical change in the environment (such as a drop or rise in temperature, atmospheric pressure or wind) or damage to the instrument may cause changes in microphone response. Therefore, paragraph (c)(9) of this section has not been revised.

In its petition for reconsideration, the AAR asserted that the requirement to record air flow measurements when testing locomotive sound levels would not only be extremely burdensome, but would fail to provide any useful information. Noting that § 229.129 does not contain any regulatory requirement pertinent to air flow, the AAR stated that no regulatory purpose would be served by recording air flow measurements. In addition, the AAR asserted that railroads would need to employ extra personnel and/or utilize specialized equipment during locomotive sound level testing, for the sole purpose of reading the air flow meter.

After considering these assertions, FRA revised paragraph (c)(10) of this section by removing the requirement to retain written records of air flow measurements taken during locomotive sound level testing. FRA was persuaded that this requirement would impose an unnecessary burden on railroads and locomotive manufacturers.

Lastly, the AAR objected to the written signature requirement contained within paragraph (c)(10) of this section. Noting that the Interim Final Rule did not provide any rationale for requiring the signature of the person who performs the locomotive horn sound level test, the AAR expressed concern that railroads would be unable to use a fully automated test procedure under consideration which would record and send sound level test results to a database without any human intervention. Nonetheless, if signatures will be required, the AAR asserted that FRA will have to allow railroads to use electronic signatures, in accordance with the Government Paperwork Elimination Act.

While FRA recognizes the paperwork burdens associated with an additional recordkeeping requirement, FRA notes that the written signature of the person who performs the locomotive sound level test will provide accountability, should questions arise as to the quality of the test that was performed. However, FRA acknowledges that an electronic recordkeeping system could be designed to provide an equivalent level of accountability, while reducing associated paperwork burdens. Therefore, even though FRA has not revised paragraph (c)(10) of this section to remove the written signature requirements, FRA looks forward to the implementation of electronic recordkeeping in the near future, at which time FRA intends to review all of the recordkeeping requirements contained within 49 CFR Part 229.

Paragraph (d) of this section has not been revised. However, in light of the confusion generated by the preamble discussion of this section in the Final Rule, FRA would like to clarify the intent of this section.

Contrary to the discussion of this section in the preamble to the Final Rule, rapid transit operations that share track with general system railroads are not subject to this section. (This category of rapid transit operations includes ''light rail'' vehicles that are operated on general system track pursuant to an FRA-approved Temporal Separation Plan.) Thus, rapid transit

operations that share track with general system railroads need not file waiver petitions to obtain relief from the locomotive horn volume and testing requirements contained in this section.

It should, however, be noted that rapid transit operations that share track with general system railroads remain subject to the locomotive horn sounding requirements contained in 49 CFR Part 222, absent relief granted in the form of an FRA waiver. Thus, rapid transit operations that share track with general system railroads are required to sound the locomotive horn when approaching and entering public highway-rail grade crossings located outside quiet zones. However, these rapid transit operations need not comply with the minimum and maximum locomotive horn sound level requirements contained in this section, nor do they need to conduct locomotive horn testing in accordance with this section.

Rapid transit operations that operate within a common corridor with general system railroads and traverse shared public highway-rail grade crossings are also exempt from the requirements contained in this section. However, these rapid transit operations remain subject to the locomotive horn sounding requirements contained in 49 CFR Part 222, absent relief granted in the form of an FRA waiver.

Therefore, rapid transit operations that operate within a common corridor with general system railroads are required to sound the locomotive horn when approaching and entering public highway-rail grade crossings that are shared with general system railroads and located outside quiet zones. However, these rapid transit operations need not comply with the minimum and maximum locomotive horn sound level requirements contained in this section, nor do they need to conduct locomotive horn testing in accordance with this section.

Appendix B to Part 229—Schedule of Civil Penalties

This appendix has been revised to reflect changes that have been made to section 229.129 of this part, which clarify that the sound level and testing requirements contained within section 229.129 of this part only pertain to one type of locomotive audible warning device—the locomotive horn. In addition to other minor clarifying revisions, this appendix has also been revised by assigning a civil penalty recommendation to the failure of a railroad or locomotive manufacturer to complete and/or retain a proper locomotive horn sound level test record in accordance with section 229.129(c)(10) of this part.

5. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This revised Final Rule has been evaluated in accordance with existing policies and procedures and is considered to be significant under both Executive Order 12866 and DOT policies and procedures. FRA has prepared and placed in the docket a regulatory evaluation of the rule. Following is a summary of the findings.

FRA identified 1,598 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 372 potential New Quiet Zone crossings and 71 potential Intermediate Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this revised Final Rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. FRA also estimated the costs associated with the revised horn sound level testing requirements.

After the release of the Final Rule, FRA received petitions for reconsideration on various issues of concern to the railroads, railroad suppliers, and other affected entities. After careful consideration, FRA is revising the Final Rule to address some of the issues raised in the petitions for reconsideration. FRA is also taking the opportunity to clean up the rule by correcting a few inadvertent errors and omissions which are necessary for the rule to function as intended. These revisions to the Final Rule will result in approximately $184,873 in additional costs. These additional costs are reflected in the cost table below. For a complete discussion of the costs of the revisions, please see the *Economic and Regulatory Flexibility Analyses of the Revisions to the Final Rule.*

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Final Rule revisions using a 7 percent discount rate.

TOTAL TWENTY-YEAR COSTS (PV, 7%) [1]

Extension of Compliance Date for Sound Level Testing of New Locomotives	$34,203
Notice and Comment Requirements	$150,670
Total Twenty-Year Costs associated with implementation of the Final Rule revisions are estimated to total	*$184,873

[1] Present Value (PV) provides a way of converting future benefits and costs into equivalent dollars today so that benefit and cost streams that involve different time paths may be compared. The formula used to calculate these flows is: $1/(1+I)^t$ where ''I'' is the discount rate, and ''t'' is the year. Per guidance from the Office of Management and Budget, a discount rate of .07 is used in this analysis.

*(PV, 20 Years, 7%).

FRA extended the compliance deadline for the sound level testing of new locomotives at the request of a major locomotive manufacturer, who was not prepared to meet the original compliance deadline without major disruption. This extension of the compliance deadline has, however, resulted in $34,203 in additional costs. FRA believes that this small additional cost is justified by the benefit (not quantified) of avoiding either substantial non-compliance or disruptions to the manufacturing process.

The remaining additional costs are associated with the notice and comment provisions of the Final Rule. These provisions have been revised, in order to streamline the quiet zone notification process and facilitate communication between interested parties prior to the expenditure of significant funds for projects such as crossing safety improvements. Even though we do not have the information necessary to estimate the amount of ''waste'' which may be avoided through early disclosure of planned crossing safety improvements, FRA believes that this small increase in total cost will prevent additional cost outlays associated with potential problems arising from projects requiring a substantial investment for needed safety improvements.

The direct safety benefit of this revised Final Rule is the reduction in casualties that result from collisions between trains and highway users at

public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

Some of the unquantified benefits of this revised Final Rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Maximum horn sound level requirements will limit community disruption by not allowing horns to be sounded any louder than necessary to provide motorists with adequate warning of a train's approach. The benefit in noise reduction due to this change in maximum horn loudness is not readily quantifiable.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns do not have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost. In addition, under the Final Rule revisions, locomotive horns need not be sounded for a minimum of 15 seconds by trains that re-initiate movement from locations, such as passenger stations, that are in close proximity to public highway-rail grade crossings, provided certain specified conditions are met.

The Final Rule revisions will also facilitate railroad compliance with required time-based locomotive horn sounding. By extending the compliance deadline for time-based locomotive horn sounding, FRA will ensure that locomotive engineers have sufficient time to adapt to time-based locomotive horn sounding. In addition, by expanding the scope of these time-based audible warning requirements to cover audible warnings provided at public, private and pedestrian crossings, locomotive engineers will no longer be required to comply with potentially inconsistent State and Federal requirements governing locomotive-based audible warnings at grade crossings. Improved railroad compliance is not, however, readily quantifiable.

This analysis does not quantify the benefit of eliminating community disruption caused by the sounding of train horns, nor does it quantify costs from increased noise at crossings where horns will sound where they were previously silent. FRA is, however, confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Data available to FRA indicates that this rule may have minimal economic impact on a substantial number of small entities (railroads) and possibly a significant economic impact on a few small entities (government jurisdictions and small businesses). However, there is no indication that this rule will have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM or the Regulatory Flexibility Assessment that accompanied the Interim Final Rule. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Final Regulatory Flexibility Assessment (FRFA) on small entities that potentially can be affected by this revised Final Rule. The FRFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full FRFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted ''whistle bans'' that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish ''quiet zones'' where train horns would not be routinely sounded and have been awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this revised Final Rule will predominately be on the governmental jurisdictions of communities some of which are ''small governmental jurisdictions.'' As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates

that approximately 70 percent (i.e. 193 communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published a final policy which establishes ''small entity'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1–1, Class III railroads are those railroads who have annual operating revenues of $20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. FRA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted. Alternative options for complying with this rule include allowing the train whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include ''gates with median barriers'' which are estimated to cost between $13,000 and $15,000 for simple installations; upgrade two-quadrant gate systems to four-quadrant gate systems at an estimated cost of $100,000–$300,000 plus annual maintenance costs of $2,500–$3,000; and ''Photo enforcement'' which is estimated to cost $28,000–$65,500 per crossing, and have annual maintenance costs of $6,600–$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in appendix A or appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent or less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be a nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in these amendments to the final rule, which respond to petitions for reconsideration, have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and have been assigned OMB control no. 2130–0560. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

BILLING CODE 4910–06–P

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Tot. Annual Burden Cost
222.11 - Penalties	340 Public Authorities	5 false reports/rcd	2 hours	10 hours	$400
222.15 - Petitions for Waivers	340 Public Authorities	5 petitions	4 hours	20 hours	$800
222.17 - Applications To Be Recognized as a State Agency	68 State Agencies	7 applications	8 hours	56 hours	$3,416
222.39 - Establishment of Quiet Zones					
- Public Authority Application to FRA	340 Public Authorities	105 Applications	80 hours	8,400 hours	$512,400
- Diagnostic Team Reviews	340 Public Authorities	53 reviews	32 hours	1,696 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Form	340 Public Authorities	302 forms	1 hour	302 hours	$0 (Cost incl. RIA)
- 60-Day Comment Period: Copies of Quiet Zone Application	340 Public Authorities	630 copies	10 minutes	105 hours	$6,405
- Comments on Applications	715 Railroads/State Agencies	50 comments	2.5 hours	125 hours	$5,000
222.41 - Pre-Rule Quiet Zones Which Qualify For Automatic Approval - Notices/Notice Copies	262 communities/Pub. Auth.	247 notices + 1482 notifications	40 hours + 10 min.	10,127 hours	$0 (Cost incl. RIA)
- Certifications	262 communities/Pub. Auth.	262 certifications	5 minutes	22 hours	$0 (Cost incl. RIA)
- Updated Grade Crossing Inventory Forms	200 communities/Pub. Auth.	2,364 Forms	1 hour	2,364 hours	$0 (Cost incl. RIA)
- Pre-Rule Quiet Zones/Partial Quiet Zones That Will Not Be Established By Automatic Approval	200 Communities	200 notices + 1200 notifications	40 hours + 10 min.	8,200 hours	$0 (Cost incl. RIA)
- Certifications	200 Communities	200 certifications	5 minutes	17 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Communities	416 Forms	1 hour	416 hours	$0 (RIA)
- Detailed Grade Crossing Safety Plans	200 Communities/Pub. Auth.	100 plans	40 hours	4,000 hours	$244,000
- State-wide Implementation Plans	25 State Agencies	3 plans	120 hours	360 hours	$21,960
- Notification of Intent to Create a New Quiet Zone or Partial Quiet Zone (**New Requirement**)	200 Public Authorities	100 notices + 600 notifications	20 hours + 10 min.	2,100 hours	$128,100
- 60-Day Comment Period (**New Requirement**)	200 Railroads/State Agencies	70 comments	4 hours	280 hours	$17,080

222.42 - Intermediate Quiet Zones and Intermediate Partial Quiet Zones - Notices/Notifications	10 Communities/Pub. Auth.	10 notices + 60 notifications	40 hours + 10 min.	410 hours	$25,010
- Updated Grade Crossing Inventory Forms	10 Communities/Pub. Auth.	100 Forms	1 hour	100 hours	$6,100
- Certifications	10 Communities/Pub. Auth.	10 certifications	5 minutes	1 hour	$61
- Notice of Intent Regarding Establishment of New/Partial Quiet Zone **(New Requirement)**	10 Communities/Pub. Auth.	5 notices + 30 notifications	40 hours + 10 min.	205 hours	$12,505
- 60-Day Comment Period **(New Requirement)**	20 Railroads/State Agencies	5 comments	4 hours	20 hours	$1,220
- Notice of Intent: Conversion of Intermediate Partial Quiet Zone into 24-hour New Quiet Zone **(New Requirement)**	10 Public Authorities	5 notices+30 notif	40 hours + 10 min	205 hours	$12,505
- 60-Day Comment Period **(New Requirement)**	20 Railroads/State Agencies	5 comments	4 hours	20 hours	$1,220
222.43 - Notice and Other Information Required to Establish a Quiet Zone	216 Communities	216 notices + 648 notifications	40 hours + 10 min.	8,748 hours	$533,628
- Updated Grade Crossing Inventory Forms	216 Communities	376 Forms	1 hour	376 hours	$0 (Cost incl. RIA)
- 60-Day Comment Period on Notices of Intent	715 Railroads/State Agencies	108 comments	4 hours	432 hours	$17,280
- Notice of Intent to Continue Pre-Rule Quiet Zone or Partial Quiet Zone	Incl. in 222.41(c) and 222.42(a)(1)	Incl in 222.41c and 222.42(a)(1)	Incl. in 222.41(c) and 222.42(a)(1)	Incl.in 222.41(c) and 222.42(a)(1)	Incl.222.41(c) /222.42(a)(1)
- Updated Grade Crossing Inventory Forms and Certifications Continuing Quiet Zones	Incl in 222.41(c) and 222.42 (a)(2)	Inc. in 222.41(c) and 222.42(a)(1)	Incl. in 222.41(c) and 222.42(a)(1)	Incl in 222.41(c) and 222.42(a)(1)	Incl.222.41(c) /222.42(a)(1)
- Notice of Establishment of Quiet Zone	316 Communities/Pub. Auth.	72 notices + 432 notifications	40 hours + 10 min.	2,952 hours	$180,072 $0 (RIA)
- Updated Grade Crossing Inventory Forms	316 Communities	950 forms	1 hour	950 hours	$57,950
- Certifications Establishing Quiet Zones	216 Communities/Pub. Auth.	216 certifications	5 minutes	18 hours	$1,098
222.47 - Periodic Updates -Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	200 Public Authorities	100 Affirmations + 600 Copies	30 minutes + 2 min	70 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Public Authorities	500 Forms	1 hour	500 hours	$0 (Cost incl. RIA)
222.51 - Review of Quiet Zone Status - Public Authority Written Statements/Commitments	9 Public Authorities	2 statements	5 hours	10 hours	$610
- Review at FRA's Initiative - Comments	3 Public Authorities	20 comments	30 minutes	10 hours	$610
222.55 - Approval of New SSMs or ASMs - Letters	265 Interested Parties	1 letter	30 minutes	1 hour	$61
- Comments	265 Interested Parties	5 comments	30 minutes	3 hours	$183
- Demo of New SSM/ASM & Approval Application	265 Interested Parties	1 letter	30 minutes	1 hour	$61

222.47 - Periodic Updates					
-Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	200 Public Authorities	100 Affirmations + 600 Copies	30 minutes + 2 min	70 hours	$0 (Cost incl. RIA)
- Updated Crossing Inventory Forms	200 Public Authorities	500 Forms	1 hour	500 hours	$0 (Cost incl. RIA)
222.57 - Review of Assoc. Administrator's Actions	265 Public Authorities/Int. Parties	1 petition + 5 petition copies	1 hour + 2 min.	1 hour	$61
- Petition For Reconsideration by Pub. Authority	200 Public Authorities	1 petition + 6 petition copies	5 hours + 2 min.	5 hours	$305
-Additional Documents/Materials	200 Public Authorities	1 document	2 hours	2 hours	$122
- Request For Informal Hearing	200 Public Authorities	1 letter	30 minutes	1 hour	$61
222.59 - Use of Wayside Horns - Notice/Copies: Grade Crossings Located Inside Quiet Zone	200 Public Authorities	10 notices + 60 notice copies	2.5 hours + 10 min.	35 hours	$2,135
-Grade Crossings Located Outside Quiet Zone	200 Public Authorities	10 notices + 60 notice copies	2.5 hours + 10 min.	35 hours	$2,135
Appendix B: Non-Engineering ASMs					
- Records For Programmed Enforcement/Public Educ.	200 Public Authorities	10 records	500 hours	5,000 hours	$305,000
- Records For Photo Enforcement	200 Public Authorities	10 records	9 hours	90 hours	$5,490
229.129 - Audible Warning Devices - Testing Reports or Records	687 Railroads	7,743 records	1 hour	7,743 hours	$309,720
- Retests of Locomotive Horns - Records	687 Railroads	650 records	1 hour	650 hours	$26,000

BILLING CODE 4910–06–C

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in these amendments to the final rule between 30 and 60 days after publication of this document in the **Federal Register**.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA has obtained OMB control number 2130–0560 for the new information collection requirements resulting from the amendments to this rulemaking.

D. Environmental Impact

A Record of Decision has been prepared and is available in the public docket.

E. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a Federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. * * *''

FRA has complied with E.O. 13132 in issuing this rule. FRA consulted extensively with State and local officials prior to issuance of the NPRM, and we have taken very seriously the concerns and views expressed by State and local officials as expressed in written comments and testimony at the various public hearings throughout the country. FRA staff provided briefings to many State and local officials and organizations during the comment period to encourage full public participation in this rulemaking. As discussed earlier in this preamble, because of the great interest in this subject throughout various areas of the country, FRA was involved in an extensive outreach program to inform communities which presently have whistle bans of the effect of the Act and the regulatory process. Since the passage of the Act, FRA headquarters and regional staff have met with a large number of local officials. FRA also held a number of public meetings to discuss the issues and to receive information from the public. In addition to local citizens, both local and State officials attended and participated in the public

meetings. Additionally, FRA took the unusual step of establishing a public docket before formal initiation of rulemaking proceedings in order to enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over four million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the revised Final Rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws and ordinances, see § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis regarding ''Who may establish a quiet zone?'', States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of 49 U.S.C. 20153 indicates a clear Congressional preference that decision-makers be local authorities. This revised Final Rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. Through issuance of the Final Rule, FRA increased the role of States in creation of quiet zones and provided more opportunities for non-Federal parties, including States to have input in decisions made regarding creation and termination of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the section-by-section analyses of the Interim Final Rule, the Final Rule, and these Final Rule amendments, FRA asserts that the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Unfunded Mandates Reform Act section 201, 2 U.S.C. 1531 (1995). Section 202 of the Unfunded Mandates Reform Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation)[currently $120,700,000] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this revised Final Rule in accordance with Executive Order 13211 and has determined that this revised Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a

''significant energy action'' within the meaning of Executive Order 13211.

6. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety.

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

■ 1. Part 222 is revised to read as follows:

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

Subpart A—General

Subpart B—Use of Locomotive Horns

Subpart C—Exceptions to the Use of the Locomotive Horn

Silenced Horns at Individual Crossings

Silenced Horns at Groups of Crossings—Quiet Zones

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

Subpart A—General

§ 222.1 What is the purpose of this regulation?

The purpose of this part is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this part.

§ 222.3 What areas does this regulation cover?

(a) This part prescribes standards for sounding locomotive horns when locomotives approach and pass through public highway-rail grade crossings. This part also provides standards for the creation and maintenance of quiet zones within which locomotive horns need not be sounded.

(b) The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the intent of FRA that the remaining provisions shall continue in effect.

(c) This part does not apply to any Chicago Region highway-rail grade crossing where the railroad was excused from sounding the locomotive horn by the Illinois Commerce Commission, and where the railroad did not sound the horn, as of December 18, 2003.

§ 222.5 What railroads does this regulation apply to?

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Passenger railroads that operate only on track which is not part of the general railroad system of transportation and that operate at a maximum speed of 15 miles per hour over public highway-rail grade crossings; and

(c) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation. See 49 CFR part 209, appendix A for the definitive statement of the meaning of the preceding sentence.

§ 222.7 What is this regulation's effect on State and local laws and ordinances?

(a) Except as provided in paragraph (b) of this section, issuance of this part preempts any State law, rule, regulation, or order governing the sounding of the locomotive horn at public highway-rail grade crossings, in accordance with 49 U.S.C. 20106.

(b) This part does not preempt any State law, rule, regulation, or order governing the sounding of locomotive audible warning devices at any highway-rail grade crossing described in § 222.3(c) of this part.

(c) Except as provided in §§ 222.25 and 222.27, this part does not preempt any State law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings or pedestrian crossings.

(d) Inclusion of SSMs and ASMs in this part or approved subsequent to issuance of this part does not constitute federal preemption of State law regarding whether those measures may be used for traffic control. Individual

states may continue to determine whether specific SSMs or ASMs are appropriate traffic control measures for that State, consistent with Federal Highway Administration regulations and the MUTCD. However, except for the SSMs and ASMs implemented at highway-rail grade crossings described in § 222.3(c) of this part, inclusion of SSMs and ASMs in this part does constitute federal preemption of State law concerning the sounding of the locomotive horn in relation to the use of those measures.

(e) Issuance of this part does not constitute federal preemption of administrative procedures required under State law regarding the modification or installation of engineering improvements at highway-rail grade crossings.

§ 222.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alternative safety measures (ASM) means a safety system or procedure, other than an SSM, established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority and which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. Appendix B to this part lists such measures.

Associate Administrator means the Associate Administrator for Safety of the Federal Railroad Administration or the Associate Administrator's delegate.

Channelization device means a traffic separation system made up of a raised longitudinal channelizer, with vertical panels or tubular delineators, that is placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. ''Tubular markers'' and ''vertical panels'', as described in the MUTCD, are acceptable channelization devices for purposes of this part. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device.

Chicago Region means the following six counties in the State of Illinois: Cook, DuPage, Lake, Kane, McHenry and Will.

Crossing Corridor Risk Index means a number reflecting a measure of risk to the motoring public at public grade crossings along a rail corridor, calculated in accordance with the procedures in appendix D of this part, representing the average risk at each public crossing within the corridor. This risk level is determined by averaging among all public crossings within the corridor, the product of the number of predicted collisions per year and the predicted likelihood and severity of casualties resulting from those collisions at each public crossing within the corridor.

Diagnostic team as used in this part, means a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing.

Effectiveness rate means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in eliminating collision risk. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision.

FRA means the Federal Railroad Administration.

Grade Crossing Inventory Form means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov.*

Intermediate Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

Intermediate Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of December 18, 2003, but not as of October 9, 1996.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive audible warning device means a horn, whistle, siren, or bell affixed to a locomotive that is capable of producing an audible signal.

Locomotive horn means a locomotive air horn, steam whistle, or similar audible warning device (see 49 CFR 229.129) mounted on a locomotive or control cab car. The terms ''locomotive horn'', ''train whistle'', ''locomotive whistle'', and ''train horn'' are used interchangeably in the railroad industry. For purposes of this part, locomotive horns used in rapid transit operations must be suitable for street usage and/or designed in accordance with State law requirements.

Median means the portion of a divided highway separating the travel ways for traffic in opposite directions.

MUTCD means the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.

Nationwide Significant Risk Threshold means a number reflecting a measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in appendix D of this part.

Unless otherwise indicated, references in this part to the Nationwide Significant Risk Threshold reflect its level as last published by FRA in the **Federal Register**.

New Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m., but are routinely sounded during the remaining portion of the day, and which does not qualify as a Pre-Rule Partial Quiet Zone or an Intermediate Partial Quiet Zone.

New Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as either a Pre-Rule Quiet Zone or Intermediate Quiet Zone.

Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 40 miles per hour and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail grade crossings at which locomotive horns are not routinely sounded for a specified period of time during the evening and/or nighttime hours.

Pedestrian grade crossing means, for purposes of this part, a separate designed sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks. Sidewalk crossings contiguous with, or separate but adjacent to, public highway-rail grade crossings are presumed to be part of the public highway-rail grade crossing and are not considered pedestrian grade crossings.

Power-out indicator means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

Pre-existing Modified Supplementary Safety Measure (Pre-existing Modified SSM) means a safety system or procedure that is listed in appendix A to this Part, but is not fully compliant with the standards set forth therein, which was installed before December 18, 2003 by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. The calculation of risk reduction credit for pre-existing modified SSMs is addressed in appendix B of this part.

Pre-existing Supplementary Safety Measure (Pre-existing SSM) means a safety system or procedure established in accordance with this part before December 18, 2003 which was provided by the appropriate traffic control or law enforcement authority responsible for safety at the highway-rail grade crossing. These safety measures must fully comply with the SSM requirements set forth in appendix A of this part. The calculation of risk reduction credit for qualifying pre-existing SSMs is addressed in appendix A.

Pre-Rule Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns for a specified period of time during the evening and/or nighttime hours, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads for a specified period of time during the evening and/or nighttime hours, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Pre-Rule Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Private highway-rail grade crossing means, for purposes of this part, a highway-rail grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing.

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. If a public authority maintains the roadway on both sides of the crossing, the crossing is considered a public crossing for purposes of this part.

Quiet zone means a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings) and reduced risk due to implementation, if any, of SSMs and ASMs with the quiet zone. The calculation of the Quiet Zone Risk Index, which is explained in appendix D of this part, does not differ for partial quiet zones.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Recognized State agency means, for purposes of this part, a State agency, responsible for highway-rail grade crossing safety or highway and road safety, that has applied for and been approved by FRA as a participant in the quiet zone development process.

Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With respect to Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

Risk Index With Horns means a measure of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within a quiet zone. In Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones, the Risk Index With Horns is determined by adjusting the Crossing Corridor Risk Index to account for the decreased risk that would result if locomotive horns were routinely sounded at each public highway-rail grade crossing.

Supplementary safety measure (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Associate Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A of this part lists such SSMs.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least $550 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G of this part contains a schedule of civil penalty amounts used in connection with this part.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b) of this section, two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party, and explain why applying the requirement that a joint submission be made in that instance would not be likely to contribute significantly to public safety. If the Associate Administrator determines that applying the requirement for a jointly filed submission to that particular petition would not be likely to significantly contribute to public safety, the Associate Administrator shall waive the requirement for joint submission and accept the petition for consideration. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 222.17 How can a State agency become a recognized State agency?

(a) Any State agency responsible for highway-rail grade crossing safety and/or highway and road safety may become a recognized State agency by submitting an application to the Associate Administrator that contains:

(1) A detailed description of the proposed scope of involvement in the quiet zone development process;

(2) The name, address, and telephone number of the person(s) who may be contacted to discuss the State agency application; and

(3) A statement from State agency counsel which affirms that the State agency is authorized to undertake the responsibilities proposed in its application.

(b) The Associate Administrator will approve the application if, in the Associate Administrator's judgment, the proposed scope of State agency involvement will facilitate safe and effective quiet zone development. The Associate Administrator may include in any decision of approval such conditions as he/she deems necessary and appropriate.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b)(1) Railroads to which this part applies shall comply with all the requirements contained in this paragraph (b) beginning on December 15, 2006. On and after June 24, 2005, but prior to December 15, 2006, a railroad shall, at its option, comply with this section or shall sound the locomotive horn in the manner required by State law, or in the absence of State law, in the manner required by railroad operating rules in effect immediately prior to June 24, 2005.

(2) Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with section 229.9 of this chapter, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing. It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for whatever reason.

(3) Trains, locomotive consists and individual locomotives traveling at

speeds in excess of 60 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in § 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

(d) Trains, locomotive consists and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing, if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:

(1) The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered; or

(2) There are no conflicting highway movements approaching the public highway-rail grade crossing.

(e) Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with paragraphs (b) and (d) of this section.

§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death, or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of a quiet zone, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn in the following situations:

(1) When a wayside horn is malfunctioning;

(2) When active grade crossing warning devices have malfunctioned and use of the horn is required by one of the following sections of this chapter: §§ 234.105, 234.106, or 234.107;

(3) When grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system; or

(4) When SSMs, modified SSMs or engineering SSMs no longer comply with the requirements set forth in appendix A of this part or the conditions contained within the Associate Administrator's decision to approve the quiet zone in accordance with section 222.39(b) of this part.

(c) Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (e.g., to announce the approach of a train to roadway workers in accordance with a program adopted under part 214 of this chapter, or where required for other purposes under railroad operating rules).

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. However, where State law requires the sounding of a locomotive horn at private highway-rail grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part. Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at private highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with §§ 222.21(b) and (d) of this part.

(a) Private highway-rail grade crossings located within the boundaries of a quiet zone must be included in the quiet zone.

(b)(1) Private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones and allow access to the public, or which provide access to active industrial or commercial sites, must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team.

(2) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in the diagnostic team review of private highway-rail grade crossings.

(c)(1) At a minimum, each approach to every private highway-rail grade crossing within a New Quiet Zone or New Partial Quiet Zone shall be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

(2) At a minimum, each approach to every private highway-rail grade crossing within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall, by June 24, 2008, be marked by a crossbuck and a ''STOP'' sign, which are compliant with MUTCD standards unless otherwise prescribed by State law, and shall be equipped with advance warning signs in compliance with § 222.35(c) of this part.

§ 222.27 How does this rule affect pedestrian grade crossings?

This rule does not require the routine sounding of locomotive horns at pedestrian grade crossings. However, where State law requires the sounding of a locomotive horn at pedestrian grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part. Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at pedestrian grade crossings, that locomotive audible warning device shall be sounded in accordance with §§ 222.21(b) and (d) of this part.

(a) Pedestrian grade crossings located within the boundaries of a quiet zone must be included in the quiet zone.

(b) Pedestrian grade crossings that are located in New Quiet Zones or New Partial Quiet Zones must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team.

(c) The public authority shall provide the State agency responsible for grade crossing safety and all affected railroads an opportunity to participate in diagnostic team reviews of pedestrian grade crossings.

(d) *Advance warning signs.* (1) Each approach to every pedestrian grade crossing within a New Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each approach to every pedestrian grade crossing within a New Partial Quiet Zone shall be equipped with a sign that advises the pedestrian that train horns are not sounded at the crossing or that train horns are not

sounded at the crossing between the hours of 10 p.m. and 7 a.m., whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(3) Each approach to every pedestrian grade crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each approach to every pedestrian grade crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with a sign that advises the pedestrian that train horns are not sounded at the crossing or that train horns are not sounded at the crossing for a specified period of time, whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

Subpart C—Exceptions to the Use of the Locomotive Horn

§ 222.31 [Reserved]

Silenced Horns at Individual Crossings

§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

(a) A railroad operating over an individual public highway-rail crossing may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.

Silenced Horns at Groups of Crossings—Quiet Zones

§ 222.35 What are the minimum requirements for quiet zones?

The following requirements apply to quiet zones established in conformity with this part.

(a) *Minimum length.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, the minimum length of a New Quiet Zone or New Partial Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way.

(ii) The one-half mile minimum length requirement shall be waived for any New Quiet Zone or New Partial Quiet Zone that is added onto an existing quiet zone, provided there is no public highway-rail grade crossing at which locomotive horns are routinely sounded within one-half mile of the New Quiet Zone or New Partial Quiet Zone.

(iii) New Quiet Zones and New Partial Quiet Zones established along the same rail line within a single political jurisdiction shall be separated by at least one public highway-rail grade crossing, unless a New Quiet Zone or New Partial Quiet Zone is being added onto an existing quiet zone.

(2)(i) The length of a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone may continue unchanged from that which existed as of October 9, 1996.

(ii) With the exception of combining adjacent Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones, the addition of any public highway-rail grade crossing to a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone shall end the grandfathered status of that quiet zone and transform it into a New Quiet Zone or New Partial Quiet Zone that must comply with all requirements applicable to New Quiet Zones and New Partial Quiet Zones.

(iii) The deletion of any public highway-rail grade crossing from a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone status.

(3) A quiet zone may include grade crossings on a segment of rail line crossing more than one political jurisdiction.

(b) *Active grade crossing warning devices.* (1) Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(2) With the exception of public highway-rail grade crossings that will be temporarily closed in accordance with appendix A of this part, each public highway-rail grade crossing in a New Partial Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(3) Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones must retain, and may upgrade, the grade crossing safety warning system which existed as of December 18, 2003. Any upgrade involving the installation or renewal of an automatic warning device system shall include constant warning time devices, where reasonably practical, and power-out indicators. In no event may the grade crossing safety warning system, which existed as of December 18, 2003, be downgraded. Risk reduction resulting from upgrading to flashing lights or gates may be credited in calculating the Quiet Zone Risk Index.

(c) *Advance warning signs.* (1) Each highway approach to every public and private highway-rail grade crossing within a New Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(2) Each highway approach to every public and private highway-rail grade crossing within a New Partial Quiet Zone shall be equipped with an advance warning sign that advises the motorist that train horns are not sounded at the crossing or that train horns are not sounded at the crossing between the hours of 10 p.m. and 7 a.m., whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(3) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD.

(4) Each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Partial Quiet Zone shall be equipped by June 24, 2008 with an advance warning sign that advises the motorist that train horns are not sounded at the crossing or that train horns are not sounded at the crossing for a specified period of time, whichever is applicable. Such sign shall conform to the standards contained in the MUTCD.

(5) This paragraph (c) does not apply to public and private highway-rail grade crossings equipped with wayside horns that conform to the requirements set forth in § 222.59 and Appendix E of this part.

(d) *Bells.* (1) Each public highway-rail grade crossing in a New Quiet Zone or New Partial Quiet Zone that is subjected to pedestrian traffic and equipped with

one or more automatic bells shall retain those bells in working condition.

(2) Each public highway-rail grade crossing in a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone that is subjected to pedestrian traffic and equipped with one or more automatic bells shall retain those bells in working condition.

(e) All private highway-rail grade crossings within the quiet zone must be treated in accordance with this section and § 222.25 of this part.

(f) All pedestrian grade crossings within a quiet zone must be treated in accordance with § 222.27 of this part.

(g) All public highway-rail grade crossings within the quiet zone must be in compliance with the requirements of the MUTCD.

§ 222.37 Who may establish a quiet zone?

(a) A public authority may establish quiet zones that are consistent with the provisions of this part. If a proposed quiet zone includes public highway-rail grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part.

(b) A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

(c) A State agency may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA; however, any public authority eligible to establish a quiet zone under this part may do so.

§ 222.38 Can a quiet zone be created in the Chicago Region?

Public authorities that are eligible to establish quiet zones under this part may create New Quiet Zones or New Partial Quiet Zones in the Chicago Region, provided the New Quiet Zone or New Partial Quiet Zone does not include any highway-rail grade crossing described in § 222.3(c) of this part.

§ 222.39 How is a quiet zone established?

(a) *Public authority designation.* This paragraph (a) describes how a quiet zone may be designated by a public authority without the need for formal application to, and approval by, FRA. If a public authority complies with either paragraph (a)(1), (a)(2), or (a)(3) of this section, and complies with the information and notification provisions of § 222.43 of this part, a public authority may designate a quiet zone without the necessity for FRA review and approval.

(1) A quiet zone may be established by implementing, at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in appendix A of this part.

(2) A quiet zone may be established if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as follows:

(i) If the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold without being reduced by implementation of SSMs; or

(ii) If SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold.

(3) A quiet zone may be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at or below the Risk Index With Horns.

(b) *Public authority application to FRA.* (1) A public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a) of this section, but in which it is proposed that one or more safety measures be implemented. Such proposed quiet zone may include only ASMs, or a combination of ASMs and SSMs at various crossings within the quiet zone. Note that an engineering improvement which does not fully comply with the requirements for an SSM under appendix A of this part, is considered to be an ASM. The public authority's application must:

(i) Contain an accurate, complete and current Grade Crossing Inventory Form for each public, private and pedestrian grade crossing within the proposed quiet zone;

(ii) Contain sufficient detail concerning the present safety measures at each public, private and pedestrian grade crossing proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness;

(iii) Contain detailed information about diagnostic team reviews of any crossing within the proposed quiet zone, including a membership list and a list of recommendations made by the diagnostic team;

(iv) Contain a statement describing efforts taken by the public authority to address comments submitted by each railroad operating the public highway-rail grade crossings within the quiet zone, the State agency responsible for highway and road safety, and the State agency responsible for grade crossing safety in response to the Notice of Intent. This statement shall also list any objections to the proposed quiet zone that were raised by the railroad(s) and State agencies;

(v) Contain detailed information as to which safety improvements are proposed to be implemented at each public, private, or pedestrian grade crossing within the proposed quiet zone;

(vi) Contain a commitment to implement the proposed safety improvements within the proposed quiet zone; and

(vii) Demonstrate through data and analysis that the proposed implementation of these measures will reduce the Quiet Zone Risk Index to a level at, or below, either the Risk Index With Horns or the Nationwide Significant Risk Threshold.

(2) If the proposed quiet zone contains newly established public or private highway-rail grade crossings, the public authority's application for approval must also include five-year projected vehicle and rail traffic counts for each newly established grade crossing;

(3) *60-day comment period.* (i) The public authority application for FRA approval of the proposed quiet zone shall be provided, by certified mail, return receipt requested, to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, any party that receives a copy of the public authority application may submit comments on the public authority application to the Associate Administrator during the 60-day period after the date on which the public authority application was mailed.

(iii) If the public authority application for FRA approval contains written statements from each railroad operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety stating that the railroad, vehicular traffic authority and State agencies have waived their rights to provide comments on the public authority application, the 60-day comment period under paragraph (b)(3)(ii) of this section shall be waived.

(4)(i) After reviewing any comments submitted under paragraph (b)(3)(ii) of this section, the Associate Administrator will approve the quiet zone if, in the Associate Administrator's judgment, the public authority is in compliance with paragraphs (b)(1) and (b)(2) of this section and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index that is either:

(A) At or below the Risk Index With Horns or

(B) At or below the Nationwide Significant Risk Threshold.

(ii) The Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone, the Associate Administrator will describe, in the decision, the basis upon which the decision was made. Decisions issued by the Associate Administrator on quiet zone applications shall be provided to all parties listed in paragraph (b)(3)(i) of this section and may be reviewed as provided in §§ 222.57(b) and (d) of this part.

(c) Appendix C of this part contains guidance on how to create a quiet zone.

§ 222.41 How does this rule affect Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones?

(a) *Pre-Rule Quiet Zones that will be established by automatic approval.* (1) A Pre-Rule Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51, if the Pre-Rule Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 of this part (notice and information requirements) and:

(i) The Pre-Rule Quiet Zone has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part; or

(ii) The Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**; or

(iii) The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**, but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public highway-rail grade crossing within the quiet zone since April 27, 2000 or

(iv) The Quiet Zone Risk Index is at, or below, the Risk Index with Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(b) *Pre-Rule Partial Quiet Zones that will be established by automatic approval.* (1) A Pre-Rule Partial Quiet Zone may be established by automatic approval and remain in effect, subject to § 222.51, if the Pre-Rule Partial Quiet Zone is in compliance with §§ 222.35 (minimum requirements for quiet zones) and 222.43 of this part (notice and information requirements) and:

(i) The Pre-Rule Partial Quiet Zone has at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in appendix A of this part; or

(ii) The Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**; or

(iii) The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, as last published by FRA in the **Federal Register**, but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public highway-rail grade crossing within the quiet zone since April 27, 2000. With respect to Pre-Rule Partial Quiet Zones, collisions that occurred during the time period within which the locomotive horn was routinely sounded shall not be considered ''relevant collisions''; or

(iv) The Quiet Zone Risk Index is at, or below, the Risk Index with Horns.

(2) The public authority shall provide Notice of Quiet Zone Establishment, in accordance with § 222.43 of this part, no later than December 24, 2005.

(c) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones that will not be established by automatic approval.* (1) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone will not be established by automatic approval under paragraph (a) or (b) of this section, existing restrictions may, at the public authority's discretion, remain in place until June 24, 2008, if a Notice of Quiet Zone Continuation is provided in accordance with § 222.43 of this part.

(2)(i) Existing restrictions on the routine sounding of the locomotive horn may remain in place until June 24, 2010, if:

(A) Notice of Intent is mailed, in accordance with § 222.43 of this part, by February 24, 2008; and

(B) A detailed plan for quiet zone improvements is filed with the Associate Administrator by June 24, 2008. The detailed plan shall include a detailed explanation of, and timetable for, the safety improvements that will be implemented at each public, private and pedestrian grade crossing located within the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone which are necessary to comply with §§ 222.25, 222.27, 222.35 and 222.39 of this part.

(ii) In the event that the safety improvements planned for the quiet zone require approval of FRA under § 222.39(b) of this part, the public authority should apply for such approval prior to December 24, 2007, to ensure that FRA has ample time in which to review such application prior to the end of the extension period.

(3) Locomotive horn restrictions may continue for an additional three years beyond June 24, 2010, if:

(i) Prior to June 24, 2008, the appropriate State agency provides to the Associate Administrator: A comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones which, when implemented, would enable them to qualify as quiet zones under this part; and

(ii) Prior to June 24, 2009, either safety improvements are initiated at a portion of the crossings within the quiet zone, or the appropriate State agency has participated in quiet zone improvements in one or more Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones elsewhere within the State.

(4) A public authority may establish a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone upon compliance with:

(A) The Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone requirements contained within §§ 222.25, 222.27, and 222.35 of this part;

(B) The quiet zone standards set forth in § 222.39 of this part; and

(C) All applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

(d) *Pre-Rule Partial Quiet Zones that will be converted to 24-hour New Quiet Zones.* A Pre-Rule Partial Quiet Zone

may be converted into a 24-hour New Quiet Zone, if:

(1) The quiet zone is brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part;

(2) The quiet zone is brought into compliance with the quiet zone standards set forth in § 222.39 of this part; and

(3) The public authority complies with all applicable notification and filing requirements contained within this paragraph (c) and § 222.43 of this part.

§ 222.42 How does this rule affect Intermediate Quiet Zones and Intermediate Partial Quiet Zones?

(a)(1) Existing restrictions may, at the public authority's discretion, remain in place within the Intermediate Quiet Zone or Intermediate Partial Quiet Zone until June 24, 2006, if the public authority provides Notice of Quiet Zone Continuation, in accordance with § 222.43 of this part.

(2) A public authority may continue locomotive horn sounding restrictions beyond June 24, 2006 by establishing a New Quiet Zone or New Partial Quiet Zone. A public authority may establish a New Quiet Zone or New Partial Quiet Zone if:

(i) Notice of Intent is mailed, in accordance with § 222.43 of this part;

(ii) The quiet zone complies with the standards set forth in § 222.39 of this part;

(iii) The quiet zone complies with the New Quiet Zone standards set forth in §§ 222.25, 222.27, and 222.35 of this part;

(iv) Notice of Quiet Zone Establishment is mailed, in accordance with § 222.43 of this part, by June 3, 2006.

(b) *Conversion of Intermediate Partial Quiet Zones into 24-hour New Quiet Zones.* An Intermediate Partial Quiet Zone may be converted into a 24-hour New Quiet Zone if:

(1) Notice of Intent is mailed, in accordance with § 222.43 of this part;

(2) The quiet zone complies with the standards set forth in § 222.39 of this part;

(3) The quiet zone is brought into compliance with the New Quiet Zone requirements set forth in §§ 222.25, 222.27, and 222.35 of this part; and

(4) Notice of Quiet Zone Establishment is mailed, in accordance with § 222.43 of this part, by June 3, 2006.

§ 222.43 What notices and other information are required to create or continue a quiet zone?

(a)(1) The public authority shall provide written notice, by certified mail, return receipt requested, of its intent to create a New Quiet Zone or New Partial Quiet Zone under § 222.39 of this part or to implement new SSMs or ASMs within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41(c) or (d) of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; and the State agency responsible for grade crossing safety.

(2) The public authority shall provide written notification, by certified mail, return receipt requested, to continue a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone under § 222.41 of this part or to continue an Intermediate Quiet Zone or Intermediate Partial Quiet Zone under § 222.42 of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(3) The public authority shall provided written notice, by certified mail, return receipt requested, of the establishment of a quiet zone under § 222.39 or 222.41 of this part. Such notification shall be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private highway-rail grade crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator.

(b) *Notice of Intent.* (1) *Timing.* (i) The Notice of Intent shall be mailed at least 60 days before the mailing of the Notice of Quiet Zone Establishment, unless the public authority obtains written comments and/or ''no-comment'' statements from each railroad operating over public highway-rail grade crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(ii) The Notice of Intent shall be mailed no later than February 24, 2008 for all Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones governed by §§ 222.41(c) and (d) of this part, in order to continue existing locomotive horn sounding restrictions beyond June 24, 2008 without interruption.

(2) *Required Contents.* The Notice of Intent shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name, if applicable.

(ii) A statement of the time period within which restrictions would be imposed on the routine sounding of the locomotive horn (i.e., 24 hours or from 10 p.m. until 7 a.m.).

(iii) A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

(iv) The name and title of the person who will act as point of contact during the quiet zone development process and the manner in which that person can be contacted.

(v) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(1) of this section.

(3) *60-day comment period.* (i) A party that receives a copy of the public authority's Notice of Intent may submit information or comments about the proposed quiet zone to the public authority during the 60-day period after the date on which the Notice of Intent was mailed.

(ii) The 60-day comment period established under paragraph (b)(3)(i) of this section may terminate when the public authority obtains from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety:

(A) Written comments; or

(B) Written statements that the railroad and State agency do not have any comments on the Notice of Intent (''no-comment statements'').

(c) *Notice of Quiet Zone Continuation.* (1) *Timing.* (i) In order to prevent the resumption of locomotive horn sounding on June 24, 2005, the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part shall be served no later than June 3, 2005.

(ii) If the Notice of Quiet Zone Continuation under § 222.41 or 222.42 of this part is mailed after June 3, 2005, the Notice of Quiet Zone Continuation shall state on which date locomotive horn use at grade crossings within the quiet zone shall cease, but in no event shall that date be earlier than 21 days after the date of mailing.

(2) *Required Contents.* The Notice of Quiet Zone Continuation shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42 of this part.

(iii) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or nighttime hours only.)

(iv) An accurate and complete Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects conditions currently existing at the crossing.

(v) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(vi) A list of the names and addresses of each party that will receive notification in accordance with paragraph (a)(2) of this section.

(vii) A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

(d) *Notice of Quiet Zone Establishment.* (1) *Timing.* (i) The Notice of Quiet Zone Establishment shall provide the date upon which the quiet zone will be established, but in no event shall the date be earlier than 21 days after the date of mailing.

(ii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall not be mailed less than 60 days after the date on which the Notice of Intent was mailed, unless the Notice of Quiet Zone Establishment contains a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(2) *Required contents.* The Notice of Quiet Zone Establishment shall include the following:

(i) A list of each public, private, and pedestrian grade crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name, if applicable.

(ii) A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part.

(A) If the Notice contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv) of this part, it shall include a copy of the FRA Web page that contains the quiet zone data upon which the public authority is relying (*http://www.fra.dot.gov/us/content/1337*).

(B) If the Notice contains a specific reference to § 222.39(b) of this part, it shall include a copy of FRA's notification of approval.

(iii) If a diagnostic team review was required under § 222.25 or 222.27 of this part, the Notice shall include a statement affirming that the State agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice shall also include a list of recommendations made by the diagnostic team.

(iv) A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or from 10 p.m. until 7 a.m.).

(v) An accurate and complete Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

(vi) An accurate, complete and current Grade Crossing Inventory Form for each public, private, and pedestrian grade crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

(vii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, the Notice of Quiet Zone Establishment shall contain a written statement affirming that the Notice of Intent was provided in accordance with paragraph (a)(1) of this section. This statement shall also state the date on which the Notice of Intent was mailed.

(viii) If the public authority was required to provide a Notice of Intent, in accordance with paragraph (a)(1) of this section, and the Notice of Intent was mailed less than 60 days before the mailing of the Notice of Quiet Zone Establishment, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that written comments and/or ''no-comment'' statements have been received from each railroad operating over public highway-rail grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, in accordance with paragraph (b)(3)(ii) of this section.

(ix) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

(x) A list of the names and addresses of each party that shall be notified in accordance with paragraph (a)(3) of this section.

(xi) A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

§ 222.45 When is a railroad required to cease routine sounding of locomotive horns at crossings?

On the date specified in a Notice of Quiet Zone Continuation or Notice of Quiet Zone Establishment that complies with the requirements set forth in § 222.43 of this part, a railroad shall refrain from, or cease, routine sounding of the locomotive horn at all public, private and pedestrian grade crossings identified in the Notice.

§ 222.47 What periodic updates are required?

(a) *Quiet zones with SSMs at each public crossing.* This paragraph

addresses quiet zones established pursuant to §§ 222.39(a)(1), 222.41(a)(1)(i), and 222.41(b)(1)(i) (quiet zones with an SSM implemented at every public crossing within the quiet zone) of this part. Between 4½ and 5 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43 of this part, and between 4½ and 5 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of appendix A of this part. Copies of such affirmation must be provided by certified mail, return receipt requested, to the parties identified in § 222.43(a)(3) of this part; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone.

(b) *Quiet zones which do not have a supplementary safety measure at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b), §§ 222.41(a)(1)(ii), (a)(1)(iii), and (a)(1)(iv), and §§ 222.41(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) (quiet zones which do not have an SSM at every public crossing within the quiet zone) of this part. Between 2½ and 3 years after the date of the quiet zone establishment notice provided by the public authority under § 222.43 of this part, and between 2½ and 3 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part or the terms of the Quiet Zone approval. Copies of such notification must be provided to the parties identified in § 222.43(a)(3) of this part by certified mail, return receipt requested; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian grade crossing within the quiet zone.

§ 222.49 Who may file Grade Crossing Inventory Forms?

(a) Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with §§ 222.39, 222.43 and 222.47 of this part may be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad.

(b) Within 30 days after receipt of a written request of the public authority, the railroad owning the line of railroad that includes public or private highway rail grade crossings within the quiet zone or proposed quiet zone shall provide to the State and public authority sufficient current information regarding the grade crossing and the railroad's operations over the grade crossing to enable the State and public authority to complete the Grade Crossing Inventory Form.

§ 222.51 Under what conditions will quiet zone status be terminated?

(a) *New Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each quiet zone established pursuant to §§ 222.39(a)(2) and 222.39(b) of this part, and in comparison to the Nationwide Significant Risk Threshold. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will not conduct annual risk reviews for quiet zones established by having an SSM at every public crossing within the quiet zone or for quiet zones established by reducing the Quiet Zone Risk Index to the Risk Index With Horns.

(2) *Actions to be taken by public authority to retain quiet zone.* If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, the quiet zone will terminate six months from the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, unless the public authority takes the following actions:

(i) Within six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the crossings within the quiet zone; and

(ii) Within three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to the Risk Index With Horns, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (a)(2)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold. Failure to comply with paragraph (a)(2)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold.

(b) *Pre-Rule Quiet Zones—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each Pre-Rule Quiet Zone and Pre-Rule Partial Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(b)(1)(ii), and 222.41(b)(1)(iii) of this part. FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. FRA will also notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

(2) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(ii) and 222.41(b)(1)(ii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by the FRA remains at, or below, the Nationwide Significant Risk Threshold.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, then the quiet zone may continue as though it originally received automatic approval pursuant to § 222.41(a)(1)(iii) or 222.41(b)(1)(iii) of this part.

(iii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(3) *Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones authorized under §§ 222.41(a)(1)(iii) and 222.41(b)(1)(iii).* (i) If a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold, but below twice the Nationwide Significant Risk Threshold, and no relevant collisions had occurred within the five-year qualifying period, the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if a relevant collision occurred at a public grade crossing within the quiet zone during the preceding calendar year, the quiet zone will terminate six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index is at, or exceeds twice the Nationwide Significant Risk Threshold or that a relevant collision occurred at a crossing within the quiet zone, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(4) *Actions to be taken by the public authority to retain a quiet zone.*

(i) Within six months after the date of FRA notification, the public authority shall provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the public crossings within the quiet zone; and

(ii) Within three years of the date of FRA notification, the public authority shall complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or the Risk Index With Horns, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b) of this part, for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) of this part and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (b)(4)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA. Failure to comply with paragraph (b)(4)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

(c) *Review at FRA's initiative.* (1) The Associate Administrator may, at any time, review the status of any quiet zone.

(2) If the Associate Administrator makes any of the following preliminary determinations, the Associate Administrator will provide written notice to the public authority, all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety and will publish a notice of the determination in the **Federal Register:**

(i) Safety systems and measures implemented within the quiet zone do not fully compensate for the absence of the locomotive horn due to a substantial increase in risk;

(ii) Documentation relied upon to establish the quiet zone contains substantial errors that may have an adverse impact on public safety; or

(iii) Significant risk with respect to loss of life or serious personal injury exists within the quiet zone.

(3) After providing an opportunity for comment, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator will provide a copy of his/her decision to the public authority and all parties listed in paragraph (c)(2) of this section. The public authority may appeal the Associate Administrator's decision in accordance with § 222.57(c) of this part. Nothing in this section is intended to limit the Administrator's emergency authority under 49 U.S.C. 20104 and 49 CFR part 211.

(d) *Termination by the public authority.* (1) Any public authority that participated in the establishment of a quiet zone under the provisions of this part may, at any time, withdraw its quiet zone status.

(2) A public authority may withdraw its quiet zone status by providing written notice of termination, by certified mail, return receipt requested, to all railroads operating the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(3)(i) If the quiet zone that is being withdrawn was part of a multi-jurisdictional quiet zone, the remaining quiet zones may remain in effect, provided the public authorities responsible for the remaining quiet zones provide statements to the Associate Administrator certifying that the Quiet Zone Risk Index for each remaining quiet zone is at, or below, the Nationwide Significant Risk Threshold or the Risk Index With Horns. These statements shall be provided, no later than six months after the date on which the notice of quiet zone termination was mailed, to all parties listed in paragraph (d)(2) of this section.

(ii) If any remaining quiet zone has a Quiet Zone Risk Index in excess of the Nationwide Significant Risk Threshold and the Risk Index With Horns, the public authority responsible for the quiet zone shall submit a written commitment, to all parties listed in paragraph (d)(2) of this section, to reduce the Quiet Zone Risk Index to a level at or below the Nationwide Significant Risk Threshold or the Risk Index With Horns within three years. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to reduce the Quiet Zone Risk Index. This commitment statement shall be provided to all parties listed in

paragraph (d)(2) of this section no later than six months after the date on which the notice of quiet zone termination was mailed.

(iii) Failure to comply with paragraphs (d)(3)(i) and (d)(3)(ii) of this section shall result in the termination of the remaining quiet zone(s) six months after the date on which the notice of quiet zone termination was mailed by the withdrawing public authority in accordance with paragraph (d)(2) of this section.

(iv) Failure to complete implementation of SSMs and/or ASMs to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Index or the Risk Index With Horns, in accordance with the written commitment provided under paragraph (d)(3)(ii) of this section, shall result in the termination of quiet zone status three years after the date on which the written commitment was received by FRA.

(e) *Notification of termination.* (1) In the event that a quiet zone is terminated under the provisions of this section, it shall be the responsibility of the public authority to immediately provide written notification of the termination by certified mail, return receipt requested, to all railroads operating over public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator.

(2) Notwithstanding paragraph (e)(1) of this section, if a quiet zone is terminated under the provisions of this section, FRA shall also provide written notification to all parties listed in paragraph (e)(1) of this section.

(f) *Requirement to sound the locomotive horn.* Upon receipt of notification of quiet zone termination pursuant to paragraph (e) of this section, railroads shall, within seven days, and in accordance with the provisions of this part, sound the locomotive horn when approaching and passing through every public highway-rail grade crossing within the former quiet zone.

§ 222.53 What are the requirements for supplementary and alternative safety measures?

(a) Approved SSMs are listed in appendix A of this part. Approved SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix A of this part.

(b) Additional ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b) of this part are listed in appendix B of this part. Modified SSMs can qualify for quiet zone risk reduction credit in the manner specified in appendix B of this part.

(c) The following do not, individually or in combination, constitute SSMs or ASMs: Standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

§ 222.55 How are new supplementary or alternative safety measures approved?

(a) The Associate Administrator may add new SSMs and standards to appendix A of this part and new ASMs and standards to appendix B of this part when the Associate Administrator determines that such measures or standards are an effective substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(b) Interested parties may apply for approval from the Associate Administrator to demonstrate proposed new SSMs or ASMs to determine whether they are effective substitutes for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(c) The Associate Administrator may, after notice and opportunity for comment, order railroad carriers operating over a public highway-rail grade crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs, provided that such proposed new SSMs or ASMs have been subject to prior testing and evaluation. In issuing such order, the Associate Administrator may impose any conditions or limitations on such use of the proposed new SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(d) Upon completion of a demonstration of proposed new SSMs or ASMs, interested parties may apply to the Associate Administrator for their approval. Applications for approval shall be in writing and shall include the following:

(1) The name and address of the applicant;

(2) A description and design of the proposed new SSM or ASM;

(3) A description and results of the demonstration project in which the proposed SSMs or ASMs were tested;

(4) Estimated costs of the proposed new SSM or ASM; and

(5) Any other information deemed necessary.

(e) If the Associate Administrator is satisfied that the proposed safety measure fully compensates for the absence of the warning provided by the locomotive horn, the Associate Administrator will approve its use as an SSM to be used in the same manner as the measures listed in appendix A of this part, or the Associate Administrator may approve its use as an ASM to be used in the same manner as the measures listed in appendix B of this part. The Associate Administrator may impose any conditions or limitations on use of the SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(f) If the Associate Administrator approves a new SSM or ASM, the Associate Administrator will: Notify the applicant, if any; publish notice of such action in the **Federal Register**; and add the measure to the list of approved SSMs or ASMs.

(g) A public authority or other interested party may appeal to the Administrator from a decision by the Associate Administrator granting or denying an application for approval of a proposed SSM or ASM, or the conditions or limitations imposed on its use, in accordance with § 222.57 of this part.

§ 222.57 Can parties seek review of the Associate Administrator's actions?

(a) A public authority or other interested party may petition the Administrator for review of any decision by the Associate Administrator granting or denying an application for approval of a new SSM or ASM under § 222.55 of this part. The petition must be filed within 60 days of the decision to be reviewed, specify the grounds for the requested relief, and be served upon the following parties: All railroads ordered to temporarily cease sounding of the locomotive horn over public highway-rail grade crossings for the demonstration of the proposed new SSM or ASM , the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings affected by the new SSM/ASM demonstration, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. Unless the

Administrator specifically provides otherwise, and gives notice to the petitioner or publishes a notice in the **Federal Register**, the filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

(b) A public authority may request reconsideration of a decision by the Associate Administrator to deny an application by that authority for approval of a quiet zone, or to require additional safety measures, by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would not result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

(c) A public authority may request reconsideration of a decision by the Associate Administrator to terminate quiet zone status by filing a petition for reconsideration with the Associate Administrator. The petition must be filed within 60 days of the date of the decision, specify the grounds for the requested relief, and be served upon all parties listed in § 222.51(c)(2) of this part. Unless the Associate Administrator publishes a notice in the **Federal Register** that specifically stays the effectiveness of his/her decision, the filing of a petition under this paragraph will not stay the termination of quiet zone status. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final. A copy of this decision shall be served upon all parties listed in § 222.51(c)(2) of this part.

(d) A railroad may request reconsideration of a decision by the Associate Administrator to approve an application for approval of a proposed quiet zone under § 222.39(b) of this part by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for asserting that the Associate Administrator improperly exercised his/her judgment in finding that the proposed SSMs and ASMs would result in a Quiet Zone Risk Index that would be at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold. The petition shall be filed within 60 days of the date of the decision to be reconsidered, and be served upon all parties listed in § 222.39(b)(3) of this part. Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and to request an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision that will be administratively final.

§ 222.59 When may a wayside horn be used?

(a)(1) A wayside horn conforming to the requirements of appendix E of this part may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates.

(2) A wayside horn conforming to the requirements of appendix E of this part may be installed within a quiet zone. For purposes of calculating the length of a quiet zone, the presence of a wayside horn at a highway-grade crossing within a quiet zone shall be considered in the same manner as a grade crossing treated with an SSM. A grade crossing equipped with a wayside horn shall not be considered in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index.

(b) A public authority installing a wayside horn at a grade crossing within a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(c) A railroad or public authority installing a wayside horn at a grade crossing located outside a quiet zone shall provide written notice that a wayside horn is being installed to all railroads operating over the public highway-rail grade crossing, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossing, the State agency responsible for grade crossing safety, the State agency responsible for highway and road safety, and the Associate Administrator. This notice shall provide the date on which the wayside horn will be operational and identify the grade crossing at which the wayside horn shall be installed by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The railroad or public authority shall provide notification of the operational date at least 21 days in advance.

(d) A railroad operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. A railroad operating over a grade crossing that is equipped with a wayside horn and located outside of a quiet zone shall cease routine locomotive horn use at the grade crossing on the operational date specified in the notice required by paragraph (c) of this section.

Appendix A to Part 222—Approved Supplementary Safety Measures

A. Requirements and Effectiveness Rates for Supplementary Safety Measures

This section provides a list of approved supplementary safety measures (SSMs) that may be installed at highway-rail grade crossings within quiet zones for risk reduction credit. Each SSM has been assigned an effectiveness rate, which may be subject to adjustment as research and demonstration projects are completed and data is gathered and refined. Sections B and C govern the process through which risk reduction credit for pre-existing SSMs can be determined.

1. *Temporary Closure of a Public Highway-Rail Grade Crossing:* Close the crossing to

highway traffic during designated quiet periods. (This SSM can only be implemented within Partial Quiet Zones.)

Effectiveness: 1.0.

Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would therefore equal 1. However, analysis should take into consideration that traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular ''closure'' was accomplished by a grade separation.

Required:

a. The closure system must completely block highway traffic on all approach lanes to the crossing.

b. The closure system must completely block adjacent pedestrian crossings.

c. Public highway-rail grade crossings located within New Partial Quiet Zones shall be closed from 10 p.m. until 7 a.m. every day. Public highway-rail grade crossings located within Pre-Rule Partial Quiet Zones may only be closed during one period each 24 hours.

d. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

e. Daily activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad tracks. The public authority may provide for third party activation and deactivation; however, the public authority shall remain fully responsible for compliance with the requirements of this part.

f. The system must be tamper and vandal resistant to the same extent as other traffic control devices.

g. The closure system shall be equipped with a monitoring device that contains an indicator which is visible to the train crew prior to entering the crossing. The indicator shall illuminate whenever the closure device is deployed.

Recommended:

Signs for alternate highway traffic routes should be erected in accordance with MUTCD and State and local standards and should inform pedestrians and motorists that the streets are closed, the period for which they are closed, and that alternate routes must be used.

2. *Four-Quadrant Gate System:* Install gates at a crossing sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach.

Effectiveness:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with traffic of at least 60 feet (with or without presence detection): .92.

Note: The higher effectiveness rate for four-quadrant gates without presence detection does not mean that they are inherently safer than four-quadrant gates with presence detection. Four-quadrant gates with presence detection have been assigned a lower effectiveness rate because motorists may learn to delay the lowering of the exit gates by driving onto the opposing lane of traffic immediately after an opposing car has driven over the grade crossing. Since the presence detection will keep the exit gate raised, other motorists at the crossing who observe this scenario may also be tempted to take advantage of the raised exit gate by driving around the lowered entrance gates, thus increasing the potential for a crossing collision.

It should, however, be noted that there are site-specific circumstances (such as nearby highway intersections that could cause traffic to back up and stop on the grade crossing), under which the use of presence detection would be advisable. For this reason, the various effectiveness rates assigned to four-quadrant gate systems should not be the sole determining factor as to whether presence detection would be advisable. A site-specific study should be performed to determine the best application for each proposed installation. Please refer to paragraphs (f) and (g) for more information.

Required:

Four-quadrant gate systems shall conform to the standards for four-quadrant gates contained in the MUTCD and shall, in addition, comply with the following:

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

c. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements b and c apply only to New Quiet Zones or New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

Recommendations for new installations only:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPD should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

3. *Gates With Medians or Channelization Devices:* Install medians or channelization devices on both highway approaches to a public highway-rail grade crossing denying to the highway user the option of circumventing the approach lane gates by switching into the opposing (oncoming) traffic lane and driving around the lowered gates to cross the tracks.

Effectiveness:

Channelization devices—.75.

Non-traversable curbs with or without channelization devices— .80.

Required:

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated.

Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of ''no left turn'' signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority can not comply with the 60 feet or 100 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), ''Public authority application to FRA.'' Such arrangement may qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index. Similarly, if a public authority finds that it is feasible to only provide channelization on one approach to the crossing, it may also apply to FRA for approval under § 222.39(b). Such an arrangement may also qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

e. Crossing warning systems must be equipped with power-out indicators. Note: Requirements d and e apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. However, if existing automatic warning device systems in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones are renewed, or new automatic warning device systems are installed, power-out indicators and constant warning time devices are required, unless existing conditions at the crossing would prevent the proper operation of the constant warning devices.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. ''Break-away'' channelization devices must be frequently monitored to replace broken elements.

4. *One Way Street with Gate(s):* Gate(s) must be installed such that all approaching highway lanes to the public highway-rail grade crossing are completely blocked.

Effectiveness: .82.

Required:

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position must be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

d. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements c and d apply only to New Quiet Zones and New Partial Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones or Pre-Rule Partial Quiet Zones. If automatic warning systems are, however, installed or renewed in a Pre-Rule Quiet or Pre-Rule Partial Quiet Zone, power-out indicators and constant warning time devices shall be installed, unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

5. *Permanent Closure of a Public Highway-Rail Grade Crossing:* Permanently close the crossing to highway traffic.

Effectiveness: 1.0.

Required:

a. The closure system must completely block highway traffic from entering the grade crossing.

b. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

c. The closure system must be tamper and vandal resistant to the same extent as other traffic control devices.

d. Since traffic will be redistributed among adjacent crossings, the traffic counts for adjacent crossings shall be increased to reflect the diversion of traffic from the closed crossing.

B. Credit for Pre-Existing SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

3. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a qualifying, pre-existing SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the SSM effectiveness rate. (For example, the risk index for a crossing equipped with pre-existing channelization devices would be divided by .25.)

4. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

5. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

Appendix B to Part 222—Alternative Safety Measures

Introduction

A public authority seeking approval of a quiet zone under public authority application to FRA (§ 222.39(b)) may include ASMs listed in this appendix in its proposal. This appendix addresses three types of ASMs: Modified SSMs, Non-Engineering ASMs, and Engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. As provided in section I.B. of this appendix, public authorities can obtain risk reduction credit for pre-existing modified SSMs under the final rule. Non-engineering ASMs consist of programmed enforcement, public education and awareness, and photo enforcement programs that may be used to reduce risk within a quiet zone. Engineering ASMs consist of engineering improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at crossings.

I. Modified SSMs

A. Requirements and Effectiveness Rates for Modified SSMs

1. If there are unique circumstances pertaining to a specific crossing or number of

crossings which prevent SSMs from being fully compliant with all of the SSM requirements listed in appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified by the public authority, will be treated as an ASM under this appendix B, and not as a SSM under appendix A. After reviewing the estimated safety effect of the modified SSM and the proposed quiet zone, FRA will approve the proposed quiet zone if FRA finds that the Quiet Zone Risk Index will be reduced to a level at or below either the Risk Index With Horns or the Nationwide Significant Risk Threshold.

2. The public authority must provide estimates of effectiveness. These estimates may be based upon adjustments from the effectiveness levels provided in appendix A or from actual field data derived from the crossing sites. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from experience under the final rule.

3. If one or more of the requirements associated with an SSM as listed in appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s).

B. Credit for Pre-Existing Modified SSMs in New Quiet Zones and New Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

3. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

4. Add the current risk indices for the other public grade crossings located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the proposed quiet zone.

C. Credit for Pre-Existing Modified SSMs in Pre-Rule Quiet Zones and Pre-Rule Partial Quiet Zones

A community that has implemented a pre-existing modified SSM at a public grade crossing can receive risk reduction credit by inflating the Risk Index With Horns as follows:

1. Calculate the current risk index for the grade crossing that is equipped with a pre-existing modified SSM. (See appendix D. FRA's web-based Quiet Zone Calculator may be used to complete this calculation.)

2. Reduce the current risk index for the grade crossing to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at the crossing. The following list sets forth the estimated risk reduction for certain types of crossings:

a. Risk indices for passive crossings shall be reduced by 43%;

b. Risk indices for grade crossings equipped with automatic flashing lights shall be reduced by 27%; and

c. Risk indices for gated crossings shall be reduced by 40%.

3. Obtain FRA approval of the estimated effectiveness rate for the pre-existing modified SSM. Estimated effectiveness rates may be based upon adjustments from the SSM effectiveness rates provided in appendix A or actual field data derived from crossing sites.

4. Adjust the risk index by accounting for the increased risk that was avoided by implementing the pre-existing modified SSM at the public grade crossing. This adjustment can be made by dividing the risk index by one minus the FRA-approved modified SSM effectiveness rate.

5. Adjust the risk indices for the other crossings that are included in the Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone by reducing the current risk index to reflect the risk reduction that would have been achieved if the locomotive horn was routinely sounded at each crossing. Please refer to step two for the list of approved risk reduction percentages by crossing type.

6. Add the new risk indices for each crossing located within the proposed quiet zone and divide by the number of crossings. The resulting risk index will be the new Risk Index With Horns for the quiet zone.

II. Non-Engineering ASMs

A. The following non-engineering ASMs may be used in the creation of a Quiet Zone: (The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and dealing with an unacceptable effectiveness rate is provided in paragraph B.)

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness ASM.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A sustainable public education and awareness program must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the public education and awareness effort. This program shall be provided and supported primarily through local resources.

c. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

3. *Photo Enforcement:* This ASM entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Requirements:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law;

b. Sanction includes sufficient minimum fine (e.g., $100 for a first offense, ''points'' toward license suspension or revocation) to deter violations;

c. Means to reliably detect violations (e.g., loop detectors, video imaging technology);

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations,

as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement;

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns;

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

i. The public authority shall retain records pertaining to monitoring and sampling efforts at the grade crossing for a period of not less than five years. These records shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

B. The effectiveness of an ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rates for each crossing in the proposed quiet zone.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (e.g., inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: Sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The ASM should then be initiated for each crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for each crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Determine the effectiveness rate of the ASM for each crossing by multiplying the violation rate reduction by .78.

6. Using the effectiveness rates for each grade crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a level at, or below, the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the proposed quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

7. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If, after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate that was used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

8. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate is still greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the National Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

III. Engineering ASMs

A. Engineering improvements, other than modified SSMs, may be used in the creation of a Quiet Zone. These engineering improvements, which will be treated as ASMs under this appendix, may include improvements that address underlying geometric conditions, including sight distance, that are the source of increased risk at the crossing.

B. The effectiveness of an Engineering ASM will be determined as follows:

1. Establish the quarterly (three months) baseline violation rate for the crossing at which the Engineering ASM will be applied.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (e.g. inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: Sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as stated in this paragraph unless FRA authorizes another methodology.

2. The Engineering ASM should be initiated at the crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the Engineering ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for the crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Using the Engineering ASM effectiveness rate, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to a risk level at or below the Risk Index With Horns or the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

6. Violation rates must be monitored for the next two calendar quarters. Unless otherwise provided in FRA's notification of quiet zone approval, if the violation rate for these two calendar quarters does not exceed the violation rate that was used to determine the effectiveness rate that was approved by FRA, the public authority can cease violation rate monitoring.

7. In the event that the violation rate over either of the next two calendar quarters are greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for a third calendar quarter. However, if the third calendar quarter violation rate is also greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index exceeds the Risk Index With Horns and the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C to Part 222—Guide to Establishing Quiet Zones

Introduction

This Guide to Establishing Quiet Zones (Guide) is divided into five sections in order to address the variety of methods and conditions that affect the establishment of quiet zones under this rule.

Section I of the Guide provides an overview of the different ways in which a quiet zone may be established under this rule. This includes a brief discussion on the safety thresholds that must be attained in order for train horns to be silenced and the relative merits of each. It also includes the two general methods that may be used to reduce risk in the proposed quiet zone, and the different impacts that the methods have on the quiet zone implementation process. This section also discusses Partial (e.g. night time only quiet zones) and Intermediate Quiet Zones. An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003.

Section II of the Guide provides information on establishing New Quiet Zones. A New Quiet Zone is one at which train horns are currently being sounded at crossings. The Public Authority Designation and Public Authority Application to FRA methods will be discussed in depth.

Section III of the Guide provides information on establishing Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is one where train horns were not routinely sounded as of October 9, 1996 and December 18, 2003. The differences between New and Pre-Rule Quiet Zones will be explained. Public Authority Designation and Public Authority Application to FRA methods also apply to Pre-Rule Quiet Zones.

Section IV of the Guide deals with the required notifications that must be provided by public authorities when establishing both New and continuing Pre-Rule or Intermediate Quiet Zones.

Section V of the Guide provides examples of quiet zone implementation.

Section I—Overview

In order for a quiet zone to be qualified under this rule, it must be shown that the lack of the train horn does not present a significant risk with respect to loss of life or serious personal injury, or that the significant risk has been compensated for by other means. The rule provides four basic ways in which a quiet zone may be established. Creation of both New Quiet Zones and Pre-Rule Quiet Zones are based on the same general guidelines; however, there are a number of differences that will be noted in the discussion on Pre-Rule Quiet Zones.

A. Qualifying Conditions

(1) One of the following four conditions or scenarios must be met in order to show that the lack of the train horn does not present a significant risk, or that the significant risk has been compensated for by other means:

a. One or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone; or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without implementation of additional safety measures at any crossings in the quiet zone; or

c. Additional safety measures are implemented at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold; or

d. Additional safety measures are taken at selected crossings resulting in the Quiet Zone Risk Index being reduced to at least the level of the Risk Index With Horns (that is, the risk that would exist if train horns were sounded at every public crossing in the quiet zone).

(2) It is important to consider the implications of each approach before deciding which one to use. If a quiet zone is qualified based on reference to the Nationwide Significant Risk Threshold (i.e. the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold—see the second and third scenarios above), then an annual review will be done by FRA to determine if the Quiet Zone Risk Index remains equal to, or less than, the Nationwide Significant Risk Threshold. Since the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index may change from year to year, there is no guarantee that the quiet zone will remain qualified. The circumstances that cause the disqualification may not be subject to the control of the public authority. For example, an overall national improvement in safety at gated crossings may cause the Nationwide Significant Risk Threshold to fall. This may cause the Quiet Zone Risk Index to become greater than the Nationwide Significant Risk Threshold. If the quiet zone is no longer qualified, then the public authority will have to take additional measures, and may incur additional costs that might not have been budgeted, to once again lower the Quiet Zone Risk Index to at least the Nationwide Significant Risk Threshold in order to retain the quiet zone. Therefore, while the initial cost to implement a quiet zone under the second or third scenario may be lower than the other options, these scenarios also carry a degree of uncertainty about the quiet zone's continued existence.

(3) The use of the first or fourth scenarios reduces the risk level to at least the level that would exist if train horns were sounding in the quiet zone. These methods may have higher initial costs because more safety measures may be necessary in order to achieve the needed risk reduction. Despite the possibility of greater initial costs, there are several benefits to these methods. The installation of SSMs at every crossing will provide the greatest safety benefit of any of the methods that may be used to initiate a quiet zone. With both of these methods (first and fourth scenarios), the public authority will never need to be concerned about the Nationwide Significant Risk Threshold, annual reviews of the Quiet Zone Risk Index, or failing to be qualified because the Quiet Zone Risk Index is higher than the Nationwide Significant Risk Threshold. Public authorities are strongly encouraged to carefully consider both the pros and cons of all of the methods and to choose the method that will best meet the needs of its citizens by providing a safer and quieter community.

(4) For the purposes of this Guide, the term ''Risk Index with Horns'' is used to represent the level of risk that would exist if train horns were sounded at every public crossing in the proposed quiet zone. If a public authority decides that it would like to fully compensate for the lack of a train horn and not install SSMs at each public crossing in the quiet zone, it must reduce the Quiet Zone Risk Index to a level that is equal to, or less than, the Risk Index with Horns. The Risk Index with Horns is similar to the Nationwide Significant Risk Threshold in that both are targets that must be reached in order to establish a quiet zone under the rule. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Nationwide Significant Risk Threshold will be reviewed annually by FRA to determine if they still qualify under the rule to retain the quiet zone. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Risk Index with Horns will not be subject to annual reviews.

(5) The use of FRA's web-based Quiet Zone Calculator is recommended to aid in the decision making process (*http://www.fra.dot.gov/us/content/1337*). The Quiet Zone Calculator will allow the public authority to consider a variety of options in determining which SSMs make the most sense. It will also perform the necessary calculations used to determine the existing risk level and whether enough risk has been mitigated in order to create a quiet zone under this rule.

B. Risk Reduction Methods

FRA has established two general methods to reduce risk in order to have a quiet zone qualify under this rule. The method chosen impacts the manner in which the quiet zone is implemented.

1. *Public Authority Designation (SSMs)*—The Public Authority Designation method (§ 222.39(a)) involves the use of SSMs (see appendix A) at some or all crossings within the quiet zone. The use of only SSMs to reduce risk will allow a public authority to designate a quiet zone without approval from FRA. If the public authority installs SSMs at every crossing within the quiet zone, it need not demonstrate that they will reduce the risk sufficiently in order to qualify under the rule since FRA has already assessed the ability of

the SSMs to reduce risk. In other words, the Quiet Zone Calculator does not need to be used. However, if only SSMs are installed within the quiet zone, but not at every crossing, the public authority must calculate that sufficient risk reduction will be accomplished by the SSMs. Once the improvements are made, the public authority must make the required notifications (which includes a copy of the report generated by the Quiet Zone Calculator showing that the risk in the quiet zone has been sufficiently reduced), and the quiet zone may be implemented. FRA does not need to approve the plan as it has already assessed the ability of the SSMs to reduce risk.

2. *Public Authority Application to FRA (ASMs)*—The Public Authority Application to FRA method (§ 222.39(b)) involves the use ASMs (see appendix B). ASMs include modified SSMs that do not fully comply with the provisions found in appendix A (e.g., shorter than required traffic channelization devices), non-engineering ASMs (e.g., programmed law enforcement), and engineering ASMs (i.e., engineering improvements other than modified SSMs). If the use of ASMs (or a combination of ASMs and SSMs) is elected to reduce risk, then the public authority must provide a Notice of Intent and then apply to FRA for approval of the quiet zone. The application must contain sufficient data and analysis to confirm that the proposed ASMs do indeed provide the necessary risk reduction. FRA will review the application and will issue a formal approval if it determines that risk is reduced to a level that is necessary in order to comply with the rule. Once FRA approval has been received and the safety measures fully implemented, the public authority would then provide a Notice of Quiet Zone Establishment and the quiet zone may be implemented. The use of non-engineering ASMs will require continued monitoring and analysis throughout the existence of the quiet zone to ensure that risk continues to be reduced.

3. *Calculating Risk Reduction*—The following should be noted when calculating risk reductions in association with the establishment of a quiet zone. This information pertains to both New Quiet Zones and Pre-Rule Quiet Zones and to the Public Authority Designation and Public Authority Application to FRA methods.

Crossing closures: If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. The effectiveness of a closure is 1.0. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing. It should be noted that crossing closures that are already in existence are not considered in the risk calculations.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. A, B and D streets are equipped with flashing lights and gates. C Street is a passive crossbuck crossing with a traffic count of 400 vehicles per day. It is decided that C Street will be closed as part of the project. Compute the risk indices for all four streets. The calculation for C Street will utilize flashing lights and gates as the warning device. Calculate the Crossing Corridor Risk Index by averaging the risk indices for all four of the crossings. This value will also be the Risk Index with Horns since train horns are currently being sounded. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by increasing the traffic count for each crossing by 200. (Assume for this example that the public authority decided that the traffic from C Street would be equally divided between B and D streets.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by closing C Street.

Grade Separation: Grade separated crossings that were in existence before the creation of a quiet zone are not included in any of the calculations. However, any public crossings within the quiet zone that are proposed to be treated by grade separation should be treated in the same manner as crossing closures. Highway traffic that may be diverted from other crossings within the quiet zone to the new grade separated crossing should be considered when computing the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. C Street is a busy crossing with a traffic count of 25,000 vehicles per day. It is decided that C Street will be grade separated as part of the project and the existing at-grade crossing closed. Compute the risk indices for all four streets. Calculate the Crossing Corridor Risk Index, which will also be the Risk Index with Horns, by averaging the risk indices for all four of the crossings. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by decreasing the traffic count for each crossing by 1,200. (The public authority decided that 2,400 motorists will decide to use the grade separation at C Street in order to avoid possible delays caused by passing trains.) Increase the risk indices for A, B and D streets by 66.8% and divide the sum of the three remaining crossings by four. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by the grade separation at C Street.

Pre-Existing SSMs: Risk reduction credit may be taken by a public authority for a SSM that was previously implemented and is currently in place in the quiet zone. If an existing improvement meets the criteria for a SSM as provided in appendix A, the improvement is deemed a Pre-Existing SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. Crossing closures and grade separations that occurred prior to the implementation of the quiet zone are not Pre-Existing SSMs and do not receive any risk reduction credit.

Example 1—A proposed New Quiet Zone has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 10,000. To calculate the Risk Index With Horns for this crossing, you divide the risk index by difference between one and the effectiveness rate of the pre-existing SSM (10,000 ÷ (1–0.75) = 40,000). This value (40,000) would then be averaged in with the risk indices of the other crossings to determine the proposed quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index is increased by 66.8% to account for the additional risk attributed to the absence of the train horn (10,000 × 1.668 = 16,680). This value (16,680) is then averaged into the risk indices of the other crossings that have also been increased by 66.8%. The resulting average is the Quiet Zone Risk Index.

Example 2—A Pre-Rule Quiet Zone consisting of four crossings has one crossing that is equipped with flashing lights and gates and has medians 100 feet in length on both sides of the crossing. The medians conform to the requirements in appendix A and qualify as a Pre-Existing SSM. The risk index as calculated for the crossing is 20,000. To calculate the Risk Index With Horns for this crossing, first reduce the risk index by 40 percent to reflect the risk reduction that would be achieved if train horns were routinely sounded (20,000 × 0.6 = 12,000). Next, divide the resulting risk index by difference between one and the effectiveness rate of the pre-existing SSM (12,000 ÷ (1 − 0.75) = 48,000). This value (48,000) would then be averaged with the adjusted risk indices of the other crossings to determine the pre-rule quiet zone's Risk Index With Horns. To calculate the Quiet Zone Risk Index, the original risk index (20,000) is then averaged into the risk original indices of the other crossings. The resulting average is the Quiet Zone Risk Index.

Pre-Existing Modified SSMs: Risk reduction credit may be taken by a public authority for a modified SSM that was previously implemented and is currently in place in the quiet zone. Modified SSMs are Alternative Safety Measures which must be approved by FRA. If an existing improvement is approved by FRA as a modified SSM as provided in appendix B, the improvement is deemed a Pre-Existing Modified SSM. Risk reduction credit is obtained by inflating the Risk Index With Horns to show what the risk would have been at the crossing if the pre-existing SSM had not been implemented. The effectiveness rate of the modified SSM will be determined by FRA. The public authority may provide information to FRA to be used in determining the effectiveness rate of the modified SSM. Once an effectiveness rate has been determined, follow the procedure previously discussed for Pre-Existing SSMs to determine the risk values that will be used in the quiet zone calculations.

Wayside Horns: Crossings with wayside horn installations will be treated as a one for one substitute for the train horn and are not to be included when calculating the Crossing Corridor Risk Index, the Risk Index with Horns or the Quiet Zone Risk Index.

Example—A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights

and gates. It is decided that C Street will have a wayside horn installed. Compute the risk indices for A, B and D streets. Since C Street is being treated with a wayside horn, it is not included in the calculation of risk. Calculate the Crossing Corridor Risk Index by averaging the risk indices for A, B and D streets. This value is also the Risk Index with Horns. Increase the risk indices for A, B and D streets by 66.8% and average the results. This is the initial Quiet Zone Risk Index for the proposed quiet zone.

C. Partial Quiet Zones

A Partial Quiet Zone is a quiet zone in which locomotive horns are not routinely sounded at public crossings for a specified period of time each day. For example, a quiet zone during only the nighttime hours would be a partial quiet zone. Partial quiet zones may be either New or Pre-Rule and follow the same rules as 24 hour quiet zones. New Partial Quiet Zones must be in effect during the hours of 10 p.m. to 7 a.m. All New Partial Quiet Zones must comply with all of the requirements for New Quiet Zones. For example, all public grade crossings that are open during the time that horns are silenced must be equipped with flashing lights and gates that are equipped with constant warning time (where practical) and power out indicators. Risk is calculated in exactly the same manner as for New Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period, even though the train horn will only be silenced during the hours of 10 p.m. to 7 a.m.

A Pre-Rule Partial Quiet Zone is a partial quiet zone at which train horns were not sounding as of October 9, 1996 and on December 18, 2003. All of the regulations that pertain to Pre-Rule Quiet Zones also pertain to Pre-Rule Partial Quiet Zones. The Quiet Zone Risk Index is calculated for the entire 24-hour period for Pre-Rule Partial Quiet Zones, even though train horns are only silenced during the nighttime hours. Pre-Rule Partial Quiet Zones may qualify for automatic approval in the same manner as Pre-Rule Quiet Zones with one exception. If the Quiet Zone Risk Index is less than twice the National Significant Risk Threshold, and there have been no relevant collisions during the time period when train horns are silenced, then the Pre-Rule Partial Quiet Zone is automatically qualified. In other words, a relevant collision that occurred during the period of time that train horns were sounded will not disqualify a Pre-Rule Partial Quiet Zone that has a Quiet Zone Risk Index that is less than twice the National Significant Risk Index. Pre-Rule Partial Quiet Zones must provide the notification as required in § 222.43 in order to keep train horns silenced. A Pre-Rule Partial Quiet Zone may be converted to a 24 hour New Quiet Zone by complying with all of the New Quiet Zone regulations.

D. Intermediate Quiet Zones

An Intermediate Quiet Zone is one where horn restrictions were in place after October 9, 1996, but as of December 18, 2003 (the publication date of the Interim Final Rule). Intermediate Quiet Zones and Intermediate Partial Quiet Zones will be able to keep train horns silenced until June 24, 2006, provided notification is made per § 222.43. This will enable public authority to have additional time to make the improvement necessary to come into compliance with the rule. Intermediate Quiet Zones must conform to all the requirements for New Quiet Zones by June 24, 2006. Other than having the horn silenced for an additional year, Intermediate Quiet Zones are treated exactly like New Quiet Zones.

Section II—New Quiet Zones

FRA has established several approaches that may be taken in order to establish a New Quiet Zone under this rule. Please see the preceding discussions on ''Qualifying Conditions'' and ''Risk Reduction Methods'' to assist in the decision-making process on which approach to take. This following discussion provides the steps necessary to establish New Quiet Zones and includes both the Public Authority Designation and Public Authority Application to FRA methods. It must be remembered that in a New Quiet Zone all public crossings must be equipped with flashing lights and gates. The requirements are the same regardless of whether a 24-hour or partial quiet zone is being created.

A. Requirements for Both Public Authority Designation and Public Authority Application

The following steps are necessary when establishing a New Quiet Zone. This information pertains to both the Public Authority Designation and Public Authority Application to FRA methods.

1. The public authority must provide a written Notice of Intent (§ 222.43(a)(1) and § 222.43(b)) to the railroads that operate over the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The quiet zone cannot be created unless the Notice of Intent has been provided. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including railroads and State agencies in the inspections of the crossing will help ensure accurate Inventory information for the crossings. The railroad can provide information on whether the flashing lights and gates are equipped with constant warning time and power out indicators. Pedestrian crossings and private crossings with public access, industrial or commercial use that are within the quiet zone must have a diagnostic team review and be treated according to the team's recommendations. Railroads and the State agency responsible for grade crossing safety must be invited to the diagnostic team review. Note: Please see Section IV for details on the requirements of a Notice of Intent.

2. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also, determine any existing grade-separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street or highway name. If a crossing does not have a U.S. DOT Crossing Inventory number, then contact FRA's Office of Safety (202–493–6299) for assistance.

3. Ensure that the quiet zone will be at least one-half mile in length. (§ 222.35(a)(1)) If more than one New Quiet Zone or New Partial Quiet Zone will be created within a single political jurisdiction, ensure that each New Quiet Zone or New Partial Quiet Zone will be separated by at least one public highway-rail grade crossing. (§ 222.35(a)(1)(iii))

4. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing.

5. Every public crossing within the quiet zone must be equipped with active warning devices comprising both flashing lights and gates. The warning devices must be equipped with power out indicators. Constant warning time circuitry is also required unless existing conditions would prevent the proper operation of the constant warning time circuitry. FRA recommends that these automatic warning devices also be equipped with at least one bell to provide an audible warning to pedestrians. If the warning devices are already equipped with a bell (or bells), the bells may not be removed or deactivated. The plans for the quiet zone may be made assuming that flashing lights and gates are at all public crossings; however the quiet zone may not be implemented until all public crossings are actually equipped with the flashing lights and gates. (§§ 222.35(b)(1) and 222.35(b)(2))

6. Private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations. The public authority must invite the State agency responsible for grade crossing safety and all affected railroads to participate in the diagnostic review. (§§ 222.25(b) and (c))

7. Each highway approach to every public and private crossing must have an advance warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing, unless the public or private crossing is equipped with a wayside horn. (§ 222.35(c))

8. Each pedestrian crossing must be reviewed by a diagnostic team and equipped or treated in accordance with the recommendation of the diagnostic team. The public authority must invite the State agency responsible for grade crossing safety and all

affected railroads to participate in the diagnostic review. At a minimum, each approach to every pedestrian crossing must be equipped with a sign that conforms to the MUTCD and advises pedestrians that train horns are not sounded at the crossing. (§ 222.27)

B. New Quiet Zones—Public Authority Designation

Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b). In addition, one of the following conditions must be met in order for a public authority to designate a new quiet zone without FRA approval:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone (§ 222.39(a)(1)); or

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without SSMs installed at any crossings in the quiet zone (§ 222.39(a)(2)(i)); or

c. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold (§ 222.39(a)(2)(ii)); or

d. SSMs are installed at selected crossings, resulting in the Quiet Zone Risk Index being reduced to a level of risk that would exist if the horn were sounded at every crossing in the quiet zone (i.e., the Risk Index with Horns) (§ 222.39(a)(3)).

Steps necessary to establish a New Quiet Zone using the Public Authority Application to FRA method:

1. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the requirements for a public authority designation quiet zone will have been met. It is not necessary for the same SSM to be used at each crossing. However, before any improvements are implemented, the public authority must provide a Notice of Intent, which will trigger a 60-day comment period. During the 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may submit comments on the proposed quiet zone improvements to the public authority. Once the necessary improvements have been installed, Notice of Quiet Zone Establishment shall be provided and the quiet zone implemented in accordance with the rule. If SSMs are not installed at each public crossing, proceed on to Step 2 and use the risk reduction method.

2. To begin, calculate the risk index for each public crossing within the quiet zone (See appendix D. FRA's web-based Quiet Zone Calculator may be used to do this calculation). If flashing lights and gates have to be installed at any public crossings, calculate the risk indices for such crossings as if lights and gates were installed. (**Note:** Flashing lights and gates must be installed prior to initiation of the quiet zone.) If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index. Note: Private crossings and pedestrian crossings are not included when computing the risk for the proposed quiet zone.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are routinely being sounded for crossings in the proposed quiet zone, this value is also the Risk Index with Horns.

4. In order to calculate the initial Quiet Zone Risk Index, first adjust the risk index at each public crossing to account for the increased risk due to the absence of the train horn. The absence of the horn is reflected by an increased risk index of 66.8% at gated crossings. The initial Quiet Zone Risk Index is then calculated by averaging the increased risk index for each public crossing within the proposed quiet zone. At this point the Quiet Zone Risk Index will equal the Risk Index with Horns multiplied by 1.668.

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the public authority may decide to designate a quiet zone and provide the Notice of Intent, followed by the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the Public Authority so that appropriate measures can be taken. (See § 222.51(a)).

6. If the Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold, then select an appropriate SSM for a crossing. Reduce the inflated risk index calculated in Step 4 for that crossing by the effectiveness rate of the chosen SSM. (See appendix A for the effectiveness rates for the various SSMs). Recalculate the Quiet Zone Risk Index by averaging the revised inflated risk index with the inflated risk indices for the other public crossings. If this new Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, the quiet zone would qualify for public authority designation. If the Quiet Zone Risk Index is still higher than the Nationwide Significant Risk Threshold, treat another public crossing with an appropriate SSM and repeat the process until the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold. Once this result is obtained, the quiet zone will qualify for establishment by public authority designation. Early in the quiet zone development process, a Notice of Intent should be provided by the public authority, which will trigger a 60-day comment period. During this 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements described in the Notice of Intent. Once all the necessary safety improvements have been implemented, Notice of Quiet Zone Establishment must be provided. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (See § 222.51(a)).

7. If the public authority wishes to reduce the risk of the quiet zone to the level of risk that would exist if the horn were sounded at every crossing within the quiet zone, the public authority should calculate the initial Quiet Zone Risk Index as in Step 4. The objective is to now reduce the Quiet Zone Risk Index to the level of the Risk Index with Horns by adding SSMs at the crossings. The difference between the Quiet Zone Risk Index and the Risk Index with Horns is the amount of risk that will have to be reduced in order to fully compensate for lack of the train horn. The use of the Quiet Zone Calculator will aid in determining which SSMs may be used to reduce the risk sufficiently. Follow the procedure stated in Step 6, except that the Quiet Zone Risk Index must be equal to, or less than, the Risk Index with Horns instead of the Nationwide Significant Risk Threshold. Once this risk level is attained, the quiet zone will qualify for establishment by public authority designation. Early in the quiet zone development process, a Notice of Intent should be provided by the public authority, which will trigger a 60-day comment period. During this 60-day comment period, railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements described in the Notice of Intent. Once all the necessary safety improvements have been implemented, Notice of Quiet Zone Establishment must be provided. One important distinction with this option is that the public authority will never need to be concerned with the Nationwide Significant Risk Threshold or the Quiet Zone Risk Index. The rule's intent is to make the quiet zone as safe as if the train horns were sounding. If this is accomplished, the public authority may designate the crossings as a quiet zone and need not be concerned with possible fluctuations in the Nationwide Significant Risk Threshold or annual risk reviews.

C. New Quiet Zones—Public Authority Application to FRA

A public authority must apply to FRA for approval of a quiet zone under three conditions. First, if any of the SSMs selected for the quiet zone do not fully conform to the design standards set forth in appendix A. These are referred to as modified SSMs in appendix B. Second, when programmed law enforcement, public education and awareness programs, or photo enforcement is used to reduce risk in the quiet zone, these are referred to as non-engineering ASMs in appendix B. It should be remembered that non-engineering ASMs will require periodic monitoring as long as the quiet zone is in existence. Third, when engineering ASMs are used to reduce risk. Please see appendix B for detailed explanations of ASMs and the periodic monitoring of non-engineering ASMs.

The public authority is strongly encouraged to submit the application to FRA for review and comment before the appendix B treatments are initiated. This will enable FRA to provide comments on the proposed ASMs to help guide the application process. If non-engineering ASMs or engineering ASMs are proposed, the public authority also may wish to confirm with FRA that the methodology it plans to use to determine the effectiveness rates of the proposed ASMs is appropriate. A quiet zone that utilizes a combination of SSMs from appendix A and ASMs from appendix B must make a Public Authority Application to FRA. A complete and thoroughly documented application will help to expedite the approval process.

The following discussion is meant to provide guidance on the steps necessary to establish a new quiet zone using the Public Authority Application to FRA method. Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b).

1. Gather the information previously mentioned in the section on ''Requirements for both Public Authority Designation and Public Authority Application.''

2. Calculate the risk index for each public crossing as directed in Step 2—Public Authority Designation.

3. Calculate the Crossing Corridor Risk Index, which is also the Risk Index with Horns, as directed in Step 3—Public Authority Designation.

4. Calculate the initial Quiet Zone Risk Index as directed in Step 4—Public Authority Designation.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and SSMs. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. (Remember that the public authority may choose which level of risk reduction is the most appropriate for its community.) Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be based upon adjustments from the effectiveness rates provided in appendix A or from actual field data derived from the crossing sites. The application must provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph III B.

6. Once it has been determined through analysis that the Quiet Zone Risk Index will be reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority must provide a Notice of Intent. The mailing of the Notice of Intent will trigger a 60-day comment period, during which railroads operating within the proposed quiet zone and State agencies responsible for grade crossing, highway and road safety may provide comments on the proposed quiet zone improvements. After reviewing any comments received, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms for each public, private, and pedestrian grade crossing.

b. Detailed information on the safety improvements that are proposed to be implemented at public, private and pedestrian grade crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to address comments submitted by affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, including a list of any objections raised by the railroads or State agencies.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to: All railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is qualified by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (See § 222.51(a))

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section III—Pre-Rule Quiet Zones

Pre-Rule Quiet Zones are treated slightly differently from New Quiet Zones in the rule. This is a reflection of the statutory requirement to ''take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings. * * *'' (49 U.S.C. 20153(i)) It also recognizes the historical experience of train horns not being sounded at Pre-Rule Quiet Zones.

Overview

Pre-Rule Quiet Zones that are not established by automatic approval (see discussion that follows) must meet the same requirements as New Quiet Zones as provided in § 222.39. In other words, risk must be reduced through the use of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or to a risk level equal to, or less than, the Nationwide Significant Risk Threshold. There are four differences in the requirements between Pre-Rule Quiet Zones and New Quiet Zones that must be noted.

(1) First, since train horns have not been routinely sounded in the Pre-Rule Quiet Zone, it is not necessary to increase the risk indices of the public crossings to reflect the additional risk caused by the lack of a train horn. Since the train horn has already been silenced, the added risk caused by the lack of a horn is reflected in the actual collision history at the crossings. Collision history is an important part in the calculation of the severity risk indices. In other words, the Quiet Zone Risk Index is calculated by averaging the existing risk index for each public crossing without the need to increase the risk index by 66.8%. For Pre-Rule Quiet Zones, the Crossing Corridor Risk Index and the initial Quiet Zone Risk Index have the same value.

(2) Second, since train horns have been silenced at the crossings, it will be necessary to mathematically determine what the risk level would have been at the crossings if train horns had been routinely sounded. These revised risk levels then will be used to calculate the Risk Index with Horns. This calculation is necessary to determine how much risk must be eliminated in order to compensate for the lack of the train horn. This will allow the public authority to have the choice to reduce the risk to at least the level of the Nationwide Significant Risk Threshold or to fully compensate for the lack of the train horn.

To calculate the Risk Index with Horns, the first step is to divide the existing severity risk index for each crossing by the appropriate value as shown in Table 1. This process eliminates the risk that was caused by the absence of train horns. The table takes into account that the train horn has been found to produce different levels of effectiveness in preventing collisions depending on the type of warning device at the crossing. (Note: FRA's web-based Quiet Zone Calculator will perform this computation automatically for Pre-Rule Quiet Zones.) The Risk Index with Horns is the average of the revised risk

indices. The difference between the calculated Risk Index with Horns and the Quiet Zone Risk Index is the amount of risk that would have to be reduced in order to fully compensate for the lack of train horns.

TABLE 1.—RISK INDEX DIVISOR VALUES

	Passive	Flashing lights	Lights & gates
U.S	1.749	1.309	1.668

(3) The third difference is that credit is given for the risk reduction that is brought about through the upgrading of the warning devices at public crossings (§ 222.35(b)(3)). For New Quiet Zones, all crossings must be equipped with automatic warning devices consisting of flashing lights and gates. Crossings without gates must have gates installed. The severity risk index for that crossing is then calculated to establish the risk index that is used in the Risk Index with Horns. The Risk Index with Horns is then increased by 66.8% to adjust for the lack of the train horn. The adjusted figure is the initial Quiet Zone Risk Index. There is no credit received for the risk reduction that is attributable to warning device upgrades in New Quiet Zones.

For Pre-Rule Quiet Zones, the Risk Index with Horns is calculated from the initial risk indices which use the warning devices that are currently installed. If a public authority elects to upgrade an existing warning device as part of its quiet zone plan, the accident prediction value for that crossing will be re-calculated based on the upgraded warning device. (Once again, FRA's web-based Quiet Zone Calculator can do the actual computation.) The new accident prediction value is then used in the severity risk index formula to determine the risk index for the crossing. This adjusted risk index is then used to compute the new Quiet Zone Risk Index. This computation allows the risk reduction attributed to the warning device upgrades to be used in establishing a quiet zone.

(4) The fourth difference is that Pre-Rule Quiet Zones have different minimum requirements under § 222.35. A Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996 (§ 222.35(a)(2)). A Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing (§ 222.35(b)(3)). The existing crossing safety warning systems in place as of December 18, 2003 may be retained but cannot be downgraded. It also is not necessary for the automatic warning devices to be equipped with constant warning time devices or power out indicators; however, when the warning devices are upgraded, constant warning time and power out indicators will be required if reasonably practical (§ 222.35(b)(3)). Advance warning signs that notify the motorist that train horns are not sounded do not have to be installed on each approach to public, private, and pedestrian grade crossings within the quiet zone until June 24, 2008. (§§ 222.27(d) and 222.35(c)) Similarly, STOP signs and crossbucks do not have to be installed on each approach to private crossings within the quiet zone until June 24, 2008. (§ 222.25(c)).

A. Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones

The following is necessary when establishing a Pre-Rule Quiet Zone. This information pertains to Automatic Approval, the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public, private and pedestrian at-grade crossings that will be included within the quiet zone. Also determine any existing grade separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street name. If a crossing does not have a U.S. DOT crossing number, then contact FRA for assistance.

2. Document the length of the quiet zone. It is not necessary that the quiet zone be at least one-half mile in length. Pre-Rule Quiet Zones may be shorter than one-half mile. However, the addition of a new crossing that is not a part of an existing Pre-Rule Quiet Zone to a quiet zone nullifies its pre-rule status, and the resulting New Quiet Zone must be at least one-half mile. The deletion of a crossing from a Pre-Rule Quiet Zone (except through closure or grade separation) must result in a quiet zone that is at least one-half mile in length. It is the intent of the rule to allow adjacent Pre-Rule Quiet Zones to be combined into one large pre-rule quiet zone if the respective public authorities desire to do so. (§ 222.35(a)(2))

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public, private and pedestrian) within the quiet zone. An inspection of each crossing in the proposed quiet zone should be performed and the Grade Crossing Inventory Forms updated, as necessary, to reflect the current conditions at each crossing.

4. Pre-Rule Quiet Zones must retain, and may upgrade, the existing grade crossing safety warning systems. Unlike New Quiet Zones, it is not necessary that every public crossing within a Pre-Rule Quiet Zone be equipped with active warning devices comprising both flashing lights and gates. Existing warning devices need not be equipped with power out indicators and constant warning time circuitry. If warning devices are upgraded to flashing lights, or flashing lights and gates, the upgraded equipment must include, as is required for New Quiet Zones, power out indicators and constant warning time devices (if reasonably practical). (§ 222.35(b)(3))

5. By June 24, 2008, private crossings must have cross-bucks and ''STOP'' signs on both approaches to the crossing. (§ 222.25(c))

6. By June 24, 2008, each approach to a public, private, and pedestrian crossing must be equipped with an advance warning sign that conforms to the MUTCD and advises pedestrians and motorists that train horns are not sounded at the crossing. (§§ 222.27(d), 222.35(c))

7. It will be necessary for the public authority to provide a Notice of Quiet Zone Continuation in order to prevent the resumption of locomotive horn sounding when the rule becomes effective. A detailed discussion of the requirements of § 222.43(c) is provided in Section IV of this appendix. The Notice of Quiet Zone Continuation must be provided to the appropriate parties by all Pre-Rule Quiet Zones that have not established quiet zones by automatic approval. This should be done no later than June 3, 2005 to ensure that train horns will not start being sounded on June 24, 2005. A Pre-Rule Quiet Zone may provide a Notice of Quiet Zone Continuation before it has determined whether or not it qualifies for automatic approval. Once it has been determined that the Pre-Rule Quiet Zone will be established by automatic approval, the Public Authority must provide the Notice of Quiet Zone Establishment. This must be accomplished no later than December 24, 2005. If the Pre-Rule Quiet Zone will not be established by automatic approval, the Notice of Quiet Zone Continuation will enable the train horns to be silenced until June 24, 2008. (Please refer to § 222.41(c) for more information.)

B. Pre-Rule Quiet Zones—Automatic Approval

In order for a Pre-Rule Quiet Zone to be established under this rule (§ 222.41(a)), one of the following conditions must be met:

a. One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone;

b. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold;

c. The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years; or

d. The Quiet Zone Risk Index is equal to, or less than, the Risk Index With Horns.

Additionally, the Pre-Rule Quiet Zone must be in compliance with the minimum requirements for quiet zones (§ 222.35) and the notification requirements in § 222.43.

The following discussion is meant to provide guidance on the steps necessary to determine if a Pre-Rule Quiet Zone qualifies for automatic approval.

1. All of the items listed in *Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones* previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the quiet zone qualifies and the public authority may provide the Notice of Quiet Zone Establishment. If the Pre-Rule Quiet Zone does not qualify by this step, proceed on to the next step.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix

D.) Be sure that the risk index is calculated using the formula appropriate for the type of warning device that is actually installed at the crossing. Unlike New Quiet Zones, it is not necessary to calculate the risk index using flashing lights and gates as the warning device at every public crossing. (FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Quiet Zone Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. (Note: The initial Quiet Zone Risk Index and the Crossing Corridor Risk Index are the same for Pre-Rule Quiet Zones.)

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the quiet zone qualifies, and the public authority may provide the Notice of Quiet Zone Establishment. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is found to be above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)). If the Pre-Rule Quiet Zone is not established by this step, proceed on to the next step.

6. If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years, then the quiet zone qualifies for automatic approval. However, in order to qualify on this basis, the public authority must provide a Notice of Quiet Zone Establishment by December 24, 2005. (Note: A relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car.) With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above two times the Nationwide Significant Risk Threshold, or a relevant collision has occurred during the preceding year, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

If the Pre-Rule Quiet Zone is not established by automatic approval, continuation of the quiet zone may require implementation of SSMs or ASMs to reduce the Quiet Zone Risk Index for the quiet zone to a risk level equal to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or the Nationwide Significant Risk Threshold. This is the same methodology used to create New Quiet Zones with the exception of the four differences previously noted. A review of the previous discussion on the two methods used to establish quiet zones may prove helpful in determining which would be the most beneficial to use for a particular Pre-Rule Quiet Zone.

C. Pre-Rule Quiet Zones—Public Authority Designation

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Designation method.

1. The public authority must provide a Notice of Intent (§§ 222.43(a)(1) and 222.43(b)) to the railroads that operate within the proposed quiet zone, the State agency responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be mailed by February 24, 2008, in order to continue existing locomotive horn restrictions beyond June 24, 2008 without interruption. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The Notice of Intent must be provided, if new SSMs or ASMs will be implemented within the quiet zone. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Intent.

2. All of the items listed in ''Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone as in Step 3—Pre-Rule Quiet Zones—Automatic Approval.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide the risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of SSMs or by upgrading existing warning devices. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. This new risk index is then used to compute the new Quiet Zone Risk Index. (Remember that FRA's web-based Quiet Zone Calculator will be able to do the actual computations.) Once the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the quiet zone may be established by the Public Authority Designation method, and the public authority may provide the Notice of Quiet Zone Establishment once all the necessary improvements have been installed. If the quiet zone is established by reducing the Quiet Zone Risk Index to a risk level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone rises above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

7. If the Pre-Rule Quiet Zone will not be established before June 24, 2008, the public authority must file a detailed plan for quiet zone improvements with the Associate Administrator by June 24, 2008. By providing a Notice of Intent (see Step 1 above) and a detailed plan for quiet zone improvements, existing locomotive horn restrictions may continue until June 24, 2010. (If a comprehensive State-wide implementation plan and funding commitment are also provided and safety improvements are initiated within at least one Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone, existing locomotive horn restrictions may continue until June 24, 2013.) (See § 222.41(c) for more information.)

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

D. Pre-Rule Quiet Zones—Public Authority Application to FRA

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Application to FRA method.

1. The public authority must provide a Notice of Intent (§§ 222.43(a)(1) and 222.43(b)) to the railroads that operate within the proposed quiet zone, the State agency

responsible for highway and road safety and the State agency responsible for grade crossing safety. This notice must be mailed by February 24, 2008, in order to continue existing locomotive horn restrictions beyond June 24, 2008 without interruption. The purpose of this Notice of Intent is to provide an opportunity for the railroads and the State agencies to provide comments and recommendations to the public authority as it is planning the quiet zone. They will have 60 days to provide these comments to the public authority. The Notice of Intent must be provided, if new SSMs or ASMs will be implemented within the quiet zone. FRA encourages public authorities to provide the required Notice of Intent early in the quiet zone development process. The railroads and State agencies can provide an expertise that very well may not be present within the public authority. FRA believes that it will be very useful to include these organizations in the planning process. For example, including them in the inspections of the crossing will help ensure accurate Inventory information for the crossings. Note: Please see Section IV for details on the requirements of a Notice of Detailed Plan.

2. All of the items listed in ''Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones'' previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

3. Calculate the risk index for each public crossing within the quiet zone (See appendix D. FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

5. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide its risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

6. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and/or SSMs. Follow the procedure provided in Step 6—New Quiet Zones Public Authority Designation—until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. (Remember that FRA's web-based quiet zone risk calculator will be able to do the actual computations.) This new risk index is then used to compute the new Quiet Zone Risk Index. Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be based upon adjustments from the benchmark levels provided in appendix A or from actual field data derived from the crossing sites. The application must provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section II B.

c. Engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, section III B.

7. Once it has been determined through analysis that the Quiet Zone Risk Index will be reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, it should be remembered that the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at all crossings within the proposed quiet zone to enable the Associate Administrator to evaluate their effectiveness. This includes current and accurate crossing Inventory forms for each public, private and pedestrian grade crossing.

b. Detailed information on the safety improvements, including upgraded warning devices that are proposed to be implemented at public, private, and pedestrian grade crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. Statement of efforts taken to address comments submitted by affected railroads, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety, including a list of any objections raised by the railroads or State agencies.

e. A commitment to implement the proposed safety measures.

f. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to a level at, or below, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

g. A copy of the application must be provided to all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; the State agency responsible for grade crossing safety; and the Associate Administrator. (§ 222.39(b)(3))

8. Upon receiving written approval from FRA of the quiet zone application, the public authority may then provide the Notice of Quiet Zone Establishment and implement the quiet zone. If the quiet zone is established by reducing the Quiet Zone Risk Index to a level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (See § 222.51(b)).

Note: The provisions stated above for crossing closures, grade separations, wayside horns, pre-existing SSMs and pre-existing modified SSMs apply for Public Authority Application to FRA as well.

Section IV—Required Notifications

A. Introduction

The public authority is responsible for providing notification to parties that will be affected by the quiet zone. There are several different types of notifications and a public authority may have to make more than one notification during the entire process of complying with the regulation. The notification process is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones. It will also provide an opportunity for State agencies and affected railroads to provide input to the public authority during the development of quiet zones. Specific information is to be provided so that the crossings in the quiet zone can be identified. Providing the appropriate notification is important because once the rule becomes effective, railroads will be obligated to sound train horns when approaching all public crossings unless notified in accordance with the rule that a New Quiet Zone has been established or that a Pre-Rule or Intermediate Quiet Zone is being continued.

B. Notice of Intent—§ 222.43(b)

The purpose of the Notice of Intent is to provide notice to the railroads and State agencies that the public authority is planning on creating a New Quiet Zone or implementing new SSMs or ASMs within a Pre-Rule Quiet Zone. The Notice of Intent provides an opportunity for the railroad and the State agencies to give input to the public authority during the quiet zone development process. The State agencies and railroads will be given sixty days to provide information and comments to the public agency.

The Notice of Intent must be provided under the following circumstances:

1. A New Quiet Zone or New Partial Quiet Zone is under consideration.

2. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone that will be converted into a New Quiet Zone or New

Partial Quiet Zone. Please note that Notice of Intent must be mailed by April 3, 2006, in order prevent the resumption of locomotive horn sounding on June 24, 2006.

3. The implementation of SSMs or ASMs within a Pre-Rule Quiet Zone or Pre-Rule Partial Quiet Zone is under consideration. Please note that Notice of Intent must be mailed by February 24, 2008, in order to continue existing restrictions on locomotive horn sounding beyond June 24, 2008 without interruption. Each public authority that is creating a New Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating within the proposed quiet zone

2. State agency responsible for highway and road safety

3. State agency responsible for grade crossing safety

The Notice of Intent must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossings within the proposed quiet zone. The crossings are to be identified by both the U.S. DOT Crossing Inventory Number and the street or highway name.

2. A statement of the time period within which the restrictions would be in effect on the routine sounding of train horns (*i.e.,* 24 hours or from 10 p.m. to 7 a.m.).

3. A brief explanation of the public authority's tentative plans for implementing improvements within the proposed quiet zone.

4. The name and title of the person who will act as the point of contact during the quiet zone development process and how that person can be contacted.

5. A list of the names and addresses of each party that will receive a copy of the Notice of Intent.

The parties that receive the Notice of Intent will be able to submit information or comments to the public authority for 60 days. The public authority will not be able to establish the quiet zone during the 60 day comment period unless each railroad and State agency that receives the Notice of Intent provides either written comments to the public authority or a written statement waiving its right to provide comments on the Notice of Intent. The public authority must provide an affirmation in the Notice of Quiet Zone Establishment that each of the required parties was provided the Notice of Intent and the date it was mailed. If the quiet zone is being established within 60 days of the mailing of the Notice of Intent, the public authority also must affirm each of the parties have provided written comments or waived its right to provide comments on the Notice of Intent.

C. Notice of Quiet Zone Continuation—§ 222.43(c)

The purpose of the Notice of Quiet Zone Continuation is to provide a means for the public authority to formally advise affected parties that an existing quiet zone is being continued after the effective date of the rule. All Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zones must provide this Notice of Quiet Zone Continuation no later than June 3, 2005 to ensure that train horns are not sounded at public crossings when the rule becomes effective on June 24, 2005. This will enable railroads to properly comply with the requirements of the Final Rule.

Each public authority that is continuing an existing Pre-Rule, Pre-Rule Partial, Intermediate and Intermediate Partial Quiet Zone must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone;

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone;

3. The landowner having control over any private crossings within the quiet zone;

4. The State agency responsible for highway and road safety;

5. The State agency responsible for grade crossing safety; and

6. The Associate Administrator.

The Notice of Quiet Zone Continuation must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone continuation, citing as appropriate, § 222.41 or 222.42.

3. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or nighttime hours only.)

4. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects conditions currently existing at the crossing.

5. The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

6. A list of the names and addresses of each party that will receive the Notice of Quiet Zone Continuation.

7. A statement signed by the chief executive officer of each public authority participating in the continuation of the quiet zone, in which the chief executive officer certifies that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Public authorities should remember that this notice is required to ensure that train horns will remain silent. Even if a public authority has not been able to determine whether its Pre-Rule or Pre-Rule Partial Quiet Zone qualifies for automatic approval under the rule, it should issue a Notice of Quiet Zone Continuation to keep the train horns silent after the effective date of the rule.

E. Notice of Quiet Zone Establishment—§ 222.43(d)

The purpose of the Notice of Quiet Zone Establishment is to provide a means for the public authority to formally advise affected parties that a quiet zone is being established. Notice of Quiet Zone Establishment must be provided under the following circumstances:

1. A New Quiet Zone or New Partial Quiet Zone is being created.

2. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that qualifies for automatic approval under the rule is being established.

3. An Intermediate Quiet Zone or Intermediate Partial Quiet Zone that is creating a New Quiet Zone under the rule. Please note that Notice of Quiet Zone Establishment must be provided by June 3, 2006, in order to prevent the resumption of locomotive horn sounding on June 24, 2006.

4. A Pre-Rule Quiet Zone or a Pre-Rule Partial Quiet Zone that was not established by automatic approval and has since implemented improvements to establish a quiet zone in accordance to the rule.

Each public authority that is establishing a quiet zone under the above circumstances must provide written notice, by certified mail, return receipt requested, to the following:

1. All railroads operating over the public highway-rail grade crossings within the quiet zone;

2. The highway or traffic control or law enforcement authority having jurisdiction over vehicular traffic at grade crossings within the quiet zone;

3. The landowner having control over any private crossings within the quiet zone;

4. The State agency responsible for highway and road safety;

5. The State agency responsible for grade crossing safety; and

6. The Associate Administrator.

The Notice of Quiet Establishment must contain the following information:

1. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name.

2. A specific reference to the regulatory provision that provides the basis for quiet zone establishment, citing as appropriate, § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), 222.41(a)(1)(i), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(i), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv).

(a) If the Notice of Quiet Establishment contains a specific reference to § 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.41(a)(1)(ii), 222.41(a)(1)(iii), 222.41(a)(1)(iv), 222.41(b)(1)(ii), 222.41(b)(1)(iii), or 222.41(b)(1)(iv), it shall include a copy of the FRA web page that contains the quiet zone data upon which the public authority is relying.

(b) If the Notice of Quiet Establishment contains a specific reference to § 222.39(b), it shall include a copy of FRA's notification of approval.

3. If a diagnostic team review was required under § 222.25 (private crossings) or § 222.27 (pedestrian crossings), the Notice of Quiet Establishment shall include a statement affirming that the State agency responsible

for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review. The Notice of Quiet Establishment shall also include a list of recommendations made by the diagnostic team.

4. A statement of the time period within which restrictions on the routine sounding of the locomotive horn will be imposed (i.e., 24 hours or from 10 p.m. until 7 a.m.)

5. An accurate and complete Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects the conditions existing at the crossing before any new SSMs or ASMs were implemented.

6. An accurate, complete and current Grade Crossing Inventory Form for each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone that reflects SSMs and ASMs in place upon establishment of the quiet zone. SSMs and ASMs that cannot be fully described on the Inventory Form shall be separately described.

7. If the public authority was required to provide a Notice of Intent:

(a) The Notice of Quiet Zone Establishment shall contain a statement affirming that the Notice of Intent was provided in accordance with the rule. This statement shall also state the date on which the Notice of Intent was mailed.

(b) If the Notice of Quiet Zone Establishment will be mailed less than 60 days after the date on which the Notice of Intent was mailed, the Notice of Quiet Zone Establishment shall also contain a written statement affirming that comments and/or written waiver statements have been received from each railroad operating over public grade crossings within the proposed quiet zone, the State agency responsible for grade crossing safety, and the State agency responsible for highway and road safety.

8. The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted.

9. A list of the names and addresses of each party that is receiving a copy of the Notice of Quiet Establishment.

10. A statement signed by the chief executive officer of each public authority participating in the establishment of the quiet zone, in which the chief executive officer shall certify that the information submitted by the public authority is accurate and complete to the best of his/her knowledge and belief.

Section V—Examples of Quiet Zone Implementations

Example 1—New Quiet Zone

(a) A public authority wishes to create a New Quiet Zone over four public crossings. All of the crossings are equipped with flashing lights and gates, and the length of the quiet zone is 0.75 mile. There are no private crossings within the proposed zone.

(b) The tables that follow show the street name in the first column, and the existing risk index for each crossing with the horn sounding (''Crossing Risk Index w/ Horns'') in the second. The third column, ''Crossing Risk Index w/o Horns'', is the risk index for each crossing after it has been inflated by 66.8% to account for the lack of train horns. The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the inflated risk index for the crossing after being reduced by the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (''RIWH'') which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and the reductions in risk attributable to the installation of SSMs. For this example it is assumed that the Nationwide Significant Risk Threshold is 17,030. In order for the proposed quiet zone to qualify under the rule, the Quiet Zone Risk Index must be reduced to a level at, or below, the Nationwide Significant Risk Threshold (17,030) or the Risk Index with Horns.

(c) Table 2 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 11,250. The Quiet Zone Risk Index without any SSMs is 18,765.

TABLE 2

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0	25020
	RIWH	.....	.....	QZRI
	11250	.....	.....	18765

(d) The public authority decides to install traffic channelization devices at D Street. Reducing the risk at the crossing that has the highest severity risk index will provide the greatest reduction in risk. The effectiveness of traffic channelization devices is 0.75. Table 3 shows the changes in the proposed quiet zone corridor that would occur when traffic channelization devices are installed at D Street. The Quiet Zone Risk Index has been reduced to 14,073.75. This reduction in risk would qualify the quiet zone as the risk has been reduced lower than the Nationwide Significant Risk Threshold which is 17,030.

TABLE 3

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH	.....	.....	QZRI
	11250	.....	.....	14073.75

(e) The public authority realizes that reducing the Quiet Zone Risk Index to a level below the Nationwide Significant Risk Threshold will result in an annual re-calculation of the Quiet Zone Risk Index and comparison to the Nationwide Significant Risk Threshold. As the Quiet Zone Risk Index is close to the Nationwide Significant Risk Threshold (14,074 to 17,030), there is a reasonable chance that the Quiet Zone Risk Index may some day exceed the Nationwide Significant Risk Threshold. This would result in the quiet zone no longer being qualified and additional steps would have to be taken to keep the quiet zone. Therefore, the public authority decides to reduce the risk further by the use of traffic channelization devices at A Street. Table 4 shows the results of this change. The Quiet Zone Risk Index is now 10,320.75 which is less than the Risk Index with Horns of 11,250. The quiet zone now qualifies by fully compensating for the loss of train horns and will not have to undergo annual reviews of the Quiet Zone Risk Index.

TABLE 4

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0.75	5004
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH	.....	.....	QZRI
	11250	.....	.....	10320.75

Example 2—Pre-Rule Quiet Zone

(a) A public authority wishes to qualify a Pre-Rule Quiet Zone which did not meet the requirements for Automatic Approval because the Quiet Zone Risk Index is greater than twice the Nationwide Significant Risk Threshold. There are four public crossings in the Pre-Rule Quiet Zone. Three of the crossings are equipped with flashing lights and gates, and the fourth (Z Street) is passively signed with a STOP sign. The length of the quiet zone is 0.6 mile, and there are no private crossings within the proposed zone.

(b) The tables that follow are very similar to the tables in Example 1. The street name is shown in the first column, and the existing risk index for each crossing (''Crossing Risk Index w/o Horns'') in the second. This is a change from the first example because the risk is calculated without train horns sounding because of the existing ban on whistles. The third column, ''Crossing Risk Index w/ Horns'', is the risk index for each crossing after it has been adjusted to reflect what the risk would have been had train horns been sounding. This is mathematically done by dividing the existing risk index for the three gated crossing by 1.668. The risk at the passive crossing at Z Street is divided by 1.749. (See the above discussion in ''Pre-Rule Quiet Zones—Establishment Overview'' for more information.) The fourth column, ''SSM Eff'', is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, ''Crossing Risk Index w/o Horns Plus SSM'', is the risk index without horns for the crossing after being reduced for the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (RIWH), which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index (''QZRI''), which is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. Once again it is assumed that the Nationwide Significant Risk Threshold is 17,030. The Quiet Zone Risk Index must be reduced to either the Nationwide Significant Risk Threshold (17,030) or to the Risk Index with Horns in order to qualify under the rule.

(c) Table 5 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 18,705.83. The Quiet Zone Risk Index without any SSMs is 31,375. Since the Nationwide Significant Risk Threshold is less than the calculated Risk Index with Horns, the public authority's goal will be to reduce the risk to at least value of the Risk Index with Horns. This will qualify the Pre-Rule Quiet Zone under the rule.

TABLE 5

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0	42,000
Y	33,500	20,083.93	0	33,500
Z	15,000	8,576.33	0	15,000
	RIWH	.....	.....	QZRI
	18,705.83	.....	.....	31,375

(d) The Z Street crossing is scheduled to have flashing lights and gates installed as part of the state's highway-rail grade crossing safety improvement plan (Section 130). While this upgrade is not directly a part of the plan to authorize a quiet zone, the public authority may take credit for the risk reduction achieved by the improvement from a passive STOP sign crossing to a crossing equipped with flashing lights and gates. Unlike New Quiet Zones, upgrades to warning devices in Pre-Rule Quiet Zones do contribute to the risk reduction necessary to qualify under the rule. Table 6 shows the quiet zone corridor after including the warning device upgrade at Z Street. The Quiet Zone Risk Index has been reduced to 29,500.

TABLE 6

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0	42,000
Y	33,500	20,083.93	0	33,500
Z	7,500	8,576.33	0	7,500
	RIWH	.....	.....	QZRI
	18,705.83	.....	.....	29,500

(e) The public authority elects to install four-quadrant gates without vehicle presence detection at X Street. As shown in Table 7, this reduces the Quiet Zone Risk Index to 20,890. This risk reduction is not sufficient to quality as quiet zone under the rule.

TABLE 7

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35,000	20,983.21	0	35,000
X	42,000	25,179.86	0.82	7,560
Y	33,500	20,083.93	0	33,500
Z	7,500	8,576.33	0	7,500
	RIWH	.....	.....	QZRI
	18,705.83	.....	.....	20,890

(f) The public authority next decides to use traffic channelization devices at W Street. Table 8 shows that the Quiet Zone Risk Index is now reduced to 14,327.5. This risk reduction fully compensates for the loss of the train horn as it is less than the Risk Index with Horns. The quiet zone is qualified under the rule.

TABLE 8

Street	Crossing risk index w/o horns	Crossing risk index w/ horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0.75	8750
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH	.....	.....	QZRI
	18705.83	.....	.....	14327.5

Appendix D to Part 222—Determining Risk Levels

Introduction

The Nationwide Significant Risk Threshold, the Crossing Corridor Risk Index, and the Quiet Zone Risk Index are all measures of collision risk at public highway-rail grade crossings that are weighted by the severity of the associated casualties. Each crossing can be assigned a risk index.

(a) The *Nationwide Significant Risk Threshold* represents the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. FRA developed this index to serve as a threshold of permissible risk for quiet zones established under this rule.

(b) The *Crossing Corridor Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings along a defined rail corridor.

(c) The *Quiet Zone Risk Index* represents the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone.

The Prediction Formulas

(a) The Prediction Formulas were developed by DOT as a guide for allocating scarce traffic safety budgets at the State level. They allow users to rank candidate crossings for safety improvements by collision probability. There are three formulas, one for each warning device category:

1. automatic gates with flashing lights;
2. flashing lights with no gates; and
3. passive warning devices.

(b) The prediction formulas can be used to derive the following for each crossing:

1. the predicted collisions (PC)
2. the probability of a fatal collision given that a collision occurs (P(FC|C))
3. the probability of a casualty collision given that a collision occurs (P(CC|C))

(c) The following factors are the determinants of the number of predicted collisions per year:

1. average annual daily traffic
2. total number of trains per day
3. number of highway lanes
4. number of main tracks
5. maximum timetable train speed
6. whether the highway is paved or not
7. number of through trains per day during daylight hours

(d) The resulting basic prediction is improved in two ways. It is enriched by the particular crossing's collision history for the previous five years and it is calibrated by resetting normalizing constants. The normalizing constants are reset so that the sum of the predicted accidents in each warning device group (passive, flashing lights, gates) for the top twenty percent most hazardous crossings exactly equals the

number of accidents which occurred in a recent period for the top twenty percent of that group. This adjustment factor allows the formulas to stay current with collision trends. The calibration also corrects for errors such as data entry errors. The final output is the predicted number of collisions (PC).

(e) The severity formulas answer the question, ''What is the chance that a fatality (or casualty) will happen, given that a collision has occurred?'' The fatality formula calculates the probability of a fatal collision given that a collision occurs (*i.e.*, the probability of a collision in which a fatality occurs) P(FC|C). Similarly, the casualty formula calculates the probability of a casualty collision given that a collision occurs P(CC|C). As casualties consist of both fatalities and injuries, the probability of a non-fatal injury collision is found by subtracting the probability of a fatal collision from the probability of a casualty collision. To convert the probability of a fatal or casualty collision to the number of expected fatal or casualty collisions, that probability is multiplied by the number of predicted collisions (PC).

(f) For the prediction and severity index formulas, please see the following DOT publications: *Summary of the DOT Rail-Highway Crossings Resource Allocation Procedure—Revised*, June 1987, and the *Rail-Highway Crossing Resource Allocation Procedure: User's Guide, Third Edition*, August 1987. Both documents are in the docket for this rulemaking and also available through the National Technical Information Service located in Springfield, Virginia 22161.

Risk Index

(a) The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing. It incorporates three outputs of the DOT prediction formulas. The two components of a risk index are:

1. Predicted Cost of Fatalities = PC × P(FC|C) × (Average Number of Fatalities Observed In Fatal Collisions) × $3 million
2. Predicted Cost of Injuries = PC × (P(CC|C)—P(FC|C)) × (Average Number of Injuries in Collisions Involving Injuries) × $1,167,000

PC, P(CC|C), and P(FC|C) are direct outputs of the DOT prediction formulas.

(b) The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries were calculated by FRA as follows.

(c) The highway-rail incident files from 1999 through 2003 were matched against a data file containing the list of whistle ban crossings in existence from January 1, 1999 through December 31, 2003 to identify two types of collisions involving trains and motor vehicles: (1) Those that occurred at crossings where a whistle ban was in place during the period, and (2) those that occurred at crossings equipped with automatic gates where a whistle ban was not in place. Certain records were excluded. These were incidents where the driver was not in the motor vehicle, or the motor vehicle struck the train beyond the 4th locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[2]

(d) Collisions in the group containing the gated crossings nationwide where horns are routinely sounded were then identified as either fatal, injury only, or no casualty. Collisions were identified as fatal if one or more deaths occurred, regardless of whether or not injuries were also sustained. Collisions were identified as injury only when injuries, but no fatalities, resulted.

(e) The collisions (incidents) selected were summarized by year from 1999 through 2003. The total number of collisions for the period was 2,161. The fatality rate for each year was calculated by dividing the number of fatalities (''Deaths'') by the number of fatal incidents (''Number''). The injury rates were calculated by dividing the number of injuries in injury only incidents (''Injured'') by the number of injury only incidents (''Number''). There were 274 fatal incidents resulting in 324 fatalities and yielding a fatality rate 1.1825 for the period. There were 551 injury-only incidents resulting in 733 injuries and yielding an injury rate 1.3303 for the period.

(f) Per guidance from DOT, $3 million is the value placed on preventing a fatality. The Abbreviated Injury Scale (AIS) developed by the Association for the Advancement of Automotive Medicine categorizes injuries into six levels of severity. Each AIS level is assigned a value of injury avoidance as a fraction of the value of avoiding a fatality . FRA rates collisions that occur at train speeds in excess of 25 mph as an AIS level 5 ($2,287,500) and injuries that result from collisions involving trains traveling under 25 mph as an AIS level 2 ($46,500). About half of grade crossing collisions occur at speeds greater than 25 mph. Therefore, FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is $1,167,000 (the average of an AIS–5 injury and an AIS–2 injury).

(g) Notice that the quantity [PC*P(FC|C)] represents the expected number of fatal collisions. Similarly, {PC*[P(CC|C)–P(FC|C)]} represents the expected number of injury collisions. These are then multiplied by their respective average number of fatalities and injuries (from the table above) to develop the number of expected casualties. The final parts of the expressions attach the dollar values for these casualties.

(h) The Risk Index for a Crossing is the integer sum of the Predicted Cost of Fatalities and the Predicted Cost of Injuries.

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. FRA identified 35,803 gated non-whistle ban crossings for input to the Nationwide Significant Risk Threshold.

The Nationwide Significant Risk Threshold rounds to 17,030. This value is recalculated annually.

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the crossings in a defined rail corridor. Communities seeking to establish ''Quiet Zones'' should initially calculate this average for potential corridors.

Quiet Zone Risk Index

The Quiet Zone Risk Index is the average of the risk indexes of all the public crossings in a Quiet Zone. It takes into consideration the absence of the horn sound and any safety measures that may have been installed.

Appendix E to Part 222—Requirements for Wayside Horns

This appendix sets forth the following minimum requirements for wayside horn use at highway-rail grade crossings:

1. Highway-rail crossing must be equipped with constant warning time device, if reasonably practical, and power-out indicator;
2. Horn system must be equipped with an indicator or other system to notify the locomotive engineer as to whether the wayside horn is operating as intended in sufficient time to enable the locomotive engineer to sound the locomotive horn for at least 15 seconds prior to arrival at the crossing in the event the wayside horn is not operating as intended;
3. The railroad must adopt an operating rule, bulletin or special instruction requiring that the train horn be sounded if the wayside horn indicator is not visible approaching the crossing or if the wayside horn indicator, or an equivalent system, indicates that the system is not operating as intended;
4. Horn system must provide a minimum sound level of 92 dB(A) and a maximum of 110 dB(A) when measured 100 feet from the centerline of the nearest track;
5. Horn system must sound at a minimum of 15 seconds prior to the train's arrival at the crossing and while the lead locomotive is traveling across the crossing. It is permissible for the horn system to begin to sound simultaneously with activation of the flashing lights or descent of the crossing arm; arm
6. Horn shall be directed toward approaching traffic.

Appendix F to Part 222—Diagnostic Team Considerations

For purposes of this part, a diagnostic team is a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning the safety needs at that crossing. Crossings proposed for inclusion in a quiet zone should be reviewed in the field by a diagnostic team composed of railroad personnel, public safety or law enforcement, engineering personnel from the State agency responsible for grade crossing safety, and other concerned parties.

[2] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck By Highway User; 28—Number of Locomotive Units; and 29—Number of Cars of the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

This diagnostic team, using crossing safety management principles, should evaluate conditions at a grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what safety measures authorized by this part might be utilized to compensate for the silencing of the train horns within the proposed quiet zone.

All Crossings Within a Proposed Quiet Zone

The diagnostic team should obtain and review the following information about each crossing within the proposed quiet zone:

1. Current highway traffic volumes and percent of trucks;
2. Posted speed limits on all highway approaches;
3. Maximum allowable train speeds, both passenger and freight;
4. Accident history for each crossing under consideration;
5. School bus or transit bus use at the crossing; and
6. Presence of U.S. DOT grade crossing inventory numbers clearly posted at each of the crossings in question.

The diagnostic team should obtain all inventory information for each crossing and should check, while in the field, to see that inventory information is up-to-date and accurate. Outdated inventory information should be updated as part of the quiet zone development process.

When in the field, the diagnostic team should take note of the physical characteristics of each crossing, including the following items:

1. Can any of the crossings within the proposed quiet zone be closed or consolidated with another adjacent crossing? Crossing elimination should always be the preferred alternative and it should be explored for crossings within the proposed quiet zone.
2. What is the number of lanes on each highway approach? Note the pavement condition on each approach, as well as the condition of the crossing itself.
3. Is the grade crossing surface smooth, well graded and free draining?
4. Does the alignment of the railroad tracks at the crossing create any problems for road users on the crossing? Are the tracks in superelevation (are they banked on a curve?) and does this create a conflict with the vertical alignment of the crossing roadway?
5. Note the distance to the nearest intersection or traffic signal on each approach (if within 500 feet or so of the crossing or if the signal or intersection is determined to have a potential impact on highway traffic at the crossing because of queuing or other special problems).
6. If a roadway that runs parallel to the railroad tracks is within 100 feet of the railroad tracks when it crosses an intersecting road that also crosses the tracks, the appropriate advance warning signs should be posted as shown in the MUTCD.
7. Is the posted highway speed (on each approach to the crossing) appropriate for the alignment of the roadway and the configuration of the crossing?
8. Does the vertical alignment of the crossing create the potential for a ''hump crossing'' where long, low-clearance vehicles might get stuck on the crossing?
9. What are the grade crossing warning devices in place at each crossing? Flashing lights and gates are required for each public crossing in a New Quiet Zone. Are all required warning devices, signals, pavement markings and advance signing in place, visible and in good condition for both day and night time visibility?
10. What kind of train detection is in place at each crossing? Are these systems old or outmoded; are they in need of replacement, upgrading, or refurbishment?
11. Are there sidings or other tracks adjacent to the crossing that are often used to store railroad cars, locomotives, or other equipment that could obscure the vision of road users as they approach the crossings in the quiet zone? Clear visibility may help to reduce automatic warning device violations.
12. Are motorists currently violating the warning devices at any of the crossings at an excessive rate?
13. Do collision statistics for the corridor indicate any potential problems at any of the crossings?
14. If school buses or transit buses use crossings within the proposed quiet zone corridor, can they be rerouted to use a single crossing within or outside of the quiet zone?

Private Crossings Within a Proposed Quiet Zone

In addition to the items discussed above, a diagnostic team should note the following issues when examining any private crossings within a proposed quiet zone:

1. How often is the private crossing used?
2. What kind of signing or pavement markings are in place at the private crossing?
3. What types of vehicles use the private crossing?
   School buses
   Large trucks
   Hazmat carriers
   Farm equipment
4. What is the volume, speed and type of train traffic over the crossing?
5. Do passenger trains use the crossing?
6. Do approaching trains sound the horn at the private crossing?
   State or local law requires it?
   Railroad safety rule requires it?
7. Are there any nearby crossings where train horns sound that might also provide some warning if train horns were not sounded at the private crossing?
8. What are the approach (corner) sight distances?
9. What is the clearing sight distance for all approaches?
10. What are the private roadway approach grades?
11. What are the private roadway pavement surfaces?

Pedestrian Crossings Within a Proposed Quiet Zone

In addition to the items discussed in the section titled, ''All crossings within a proposed quiet zone'', a diagnostic team should note the following issues when examining any pedestrian crossings within a proposed quiet zone:

1. How often is the pedestrian crossing used?
2. What kind of signing or pavement markings are in place at the pedestrian crossing?
3. What is the volume, speed, and type of train traffic over the crossing?
4. Do approaching trains sound the horn at the pedestrian crossing?
   State or local law requires it?
   Railroad safety rule requires it?
5. Are there any crossings where train horns sound that might also provide some warning if train horns were not sounded at the pedestrian crossing?
6. What are the approach sight distances?
7. What is the clearing sight distance for all approaches?

Appendix G to Part 222—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
§ 222.21 Use of locomotive horn		
(a) Failure to sound horn at grade crossing	$5,000	$7,500
Failure to sound horn in proper pattern	1,000	3,000
(b) Failure to sound horn at least 15 seconds and less than ¼-mile before crossing	5,000	7,500
Sounding the locomotive horn more than 25 seconds before crossing	1,000	2,000
Sounding the locomotive horn more than ¼-mile in advance of crossing	1,000	2,000
§ 222.33 Failure to sound horn when conditions of § 222.33 are not met	5,000	7,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. See 49 CFR Part 209, appendix A.

Section		Violation	Willful violation
§ 222.45	Routine sounding of the locomotive horn at quiet zone crossing	5,000	7,500
§ 222.49	(b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
§ 222.59	(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	5,000	7,500

PART 229—[AMENDED]

■ 2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–20302, 21304; 49 CFR 149(c), (m).

■ 3. Section 229.5 is amended by adding the following definitions in alphabetical order:

§ 229.5 Definitions.

* * * * *

Acceptable quality level (AQL). The AQL is expressed in terms of percent defective or defects per 100 units. Lots having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for that AQL.

* * * * *

Defective means, for purposes of section 229.129 of this part, a locomotive equipped with an audible warning device that produces a maximum sound level in excess of 110 dB(A) and/or a minimum sound level below 96 dB(A), as measured 100 feet forward of the locomotive in the direction of travel.

* * * * *

Lot means a collection of locomotives, equipped with the same horn model, configuration, and location, and the same air pressure and delivery system, which has been manufactured or processed under essentially the same conditions.

* * * * *

■ 4. Section 229.129 is revised to read as follows:

§ 229.129 Locomotive horn.

(a) Each lead locomotive shall be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The locomotive horn shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive.

(b)(1) Each locomotive built on or after September 18, 2006 shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section. Locomotives built on or after September 18, 2006 may, however, be tested in accordance with an acceptance sampling scheme such that there is a probability of .05 or less of rejecting a lot with a proportion of defectives equal to an AQL of 1% or less, as set forth in 7 CFR part 43.

(2) Each locomotive built before September 18, 2006 shall be tested in accordance with this section before June 24, 2010 to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(3) Each remanufactured locomotive, as determined pursuant to § 229.5 of this part, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a).

(4)(i) Except as provided in paragraph (b)(4)(ii) of this section, each locomotive equipped with a replacement locomotive horn shall be tested, in accordance with paragraph (c) of this section, before the next two annual tests required by § 229.27 of this part are completed.

(ii) Locomotives that have already been tested individually or through acceptance sampling, in accordance with paragraphs (b)(1), (b)(2), or (b)(3) of this section, shall not be required to undergo sound level testing when equipped with a replacement locomotive horn, provided the replacement locomotive horn is of the same model as the locomotive horn that was replaced and the mounting location and type of mounting are the same.

(c) Testing of the locomotive horn sound level shall be in accordance with the following requirements:

(1) A properly calibrated sound level meter shall be used that, at a minimum, complies with the requirements of International Electrotechnical Commission (IEC) Standard 61672–1 (2002–05) for a Class 2 instrument.

(2) An acoustic calibrator shall be used that, at a minimum, complies with the requirements of IEC standard 60942 (1997–11) for a Class 2 instrument.

(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory recalibration shall be followed.

(4) A microphone windscreen shall be used and tripods or similar microphone mountings shall be used that minimize interference with the sound being measured.

(5) The test site shall be free of large reflective structures, such as barriers, hills, billboards, tractor trailers or other large vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings, within 200 feet to the front and sides of the locomotive. The locomotive shall be positioned on straight, level track.

(6) Measurements shall be taken only when ambient air temperature is between 32 degrees and 104 degrees Fahrenheit inclusively; relative humidity is between 20 percent and 95 percent inclusively; wind velocity is not more than 12 miles per hour and there is no precipitation.

(7) With the exception of cab-mounted or low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, 15 feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. For cab-mounted and low-mounted horns, the microphone shall be located 100 feet forward of the front knuckle of the locomotive, four feet above the top of the rail, at an angle no greater than 20 degrees from the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(8) Background noise shall be minimal: the sound level at the test site immediately before and after each horn sounding event shall be at least 10 dB(A) below the level measured during the horn sounding.

(9) *Measurement procedures.* The sound level meter shall be set for A-weighting with slow exponential response and shall be calibrated with the acoustic calibrator immediately before and after compliance tests. Any change in the before and after calibration levels shall be less than 0.5 dB. After the output from the locomotive horn system has reached a stable level, the A-weighted equivalent sound level (slow response) for a 10-second duration (LAeq, 10s) shall be obtained either directly using an integrating-averaging sound level meter,

or recorded once per second and calculated indirectly. The arithmetic-average of a series of at least six such 10-second duration readings shall be used to determine compliance. The standard deviation of the readings shall be less than 1.5 dB.

(10) Written reports of locomotive horn testing required by this part shall be made and shall reflect horn type; the date, place, and manner of testing; and sound level measurements. These reports, which shall be signed by the person who performs the test, shall be retained by the railroad, at a location of its choice, until a subsequent locomotive horn test is completed and shall be made available, upon request, to FRA as provided by 49 U.S.C. 20107.

(d) This section does not apply to locomotives of rapid transit operations which are otherwise subject to this part.

■ 5. The entry for § 229.129 ''Audible warning device'' in appendix B to Part 229 is revised to read as follows:

Appendix B to Part 229—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
229.129 Locomotive horn:		
(a) Prescribed sound levels	2,500	5,000
Arrangement of horn	2,500	5,000
(b) Failure to perform sound level test	2,500	5,000
(c) Sound level test improperly performed	2,500	5,000
Record of sound level test improperly executed, or not retained	1,000	4,000
* * * * * * *		

Issued in Washington, DC on August 7, 2006.

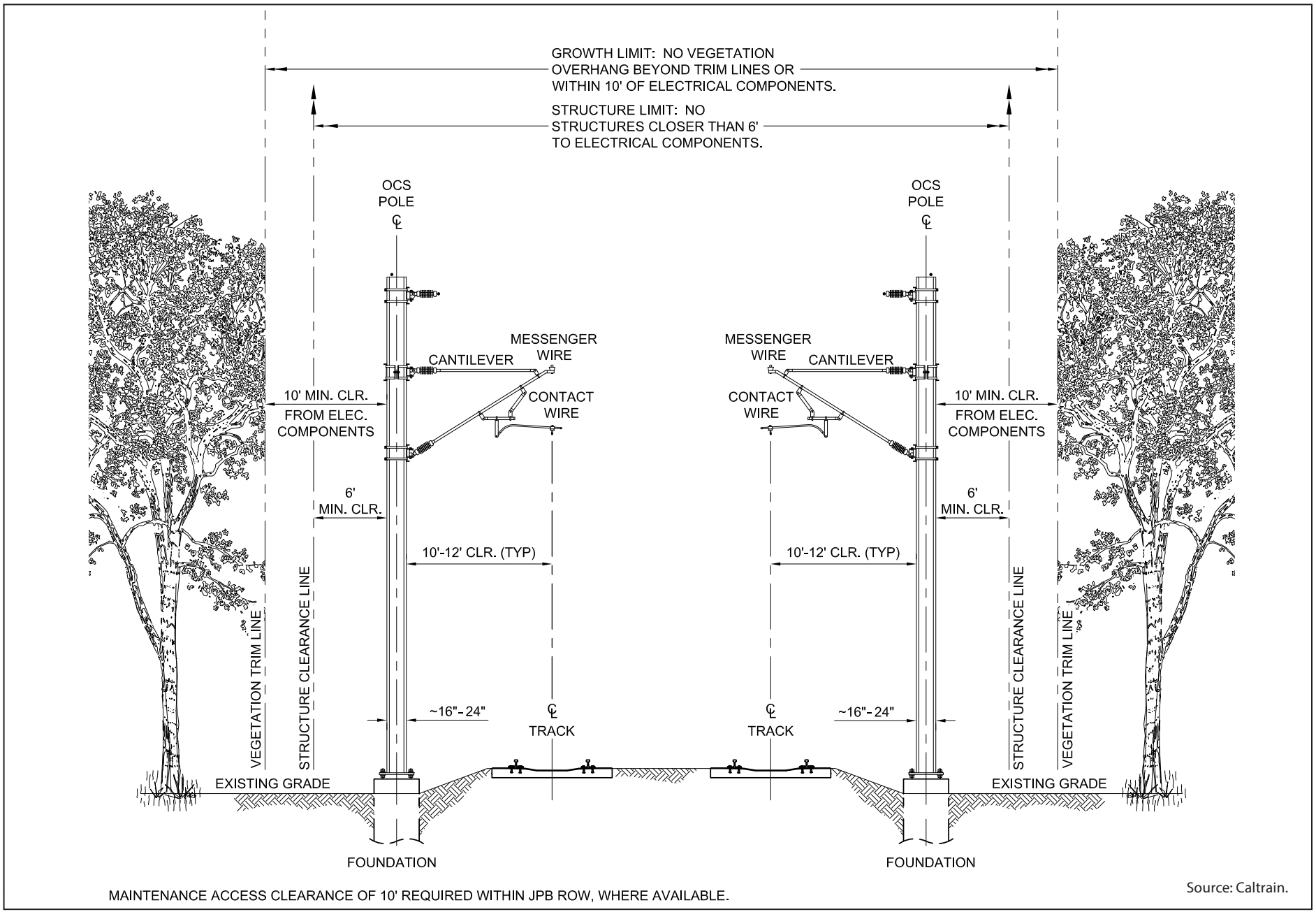
Joseph H. Boardman,

Administrator.

[FR Doc. 06–6912 Filed 8–16–06; 8:45 am]

BILLING CODE 4910–06–P

THIS PAGE INTENTIONALLY LEFT BLANK



Graphics ... 00606.12 (11-13-13)

Figure 2-8
Vegetation Clearance
Peninsula Corridor Electrification Project

Looking northwest down the rail corridor with the OCS system and tree trimming, as seen from the Atherton Caltrain Station platform near Fair Oaks Lane.

Source: Environmental Vision 2013

Figure 3.1-7
Simulation 5: Atherton Caltrain Station, Atherton
Peninsula Corridor Electrification Project

Looking southeast down the rail corridor with the OCS system and tree trimming, as seen from Churchill Avenue.

Source: Environmental Vision 2013

Figure 3.1-9
Simulation 7: Churchill Avenue, Palo Alto
Peninsula Corridor Electrification Project

THIS PAGE INTENTIONALLY LEFT BLANK