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5. Public Hearing: The City Council will consider a Request by Herman Shaw of A&D Protocol Transportation, Inc. for a Five-Year Extension to an Approved Tentative Map for a 10-Lot Residential Subdivision Located at 525 San Antonio Road. City Council Approved the Tentative Map on July 1, 2002. No Modifications to this Map have been Made

Since that Time. Environmental Assessment: A Negative Declaration has been prepared. Zone District: R-1(743). File No. [04-SUB-01; 04-EIA-05].260

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ADJOURNMENT: The meeting adjourned at 10:10 p.m.264

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:05 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Morton, Mossar, Ojakian

ABSENT: Kleinberg

STUDY SESSION

1. Part-Time Employee Report

City Manager Frank Benest presented and reviewed a briefing paper on the hourly employee issue. He emphasized City management was open to the group or any group organizing as a recognized bargaining unit. The initial issue was the appropriate definition and composition of the proposed unit. He also identified a number of different types of "hourly" employees, including continuous hourlies, seasonal employees, PERS exempt staff, PERS retirees, and intermittent hourly employees. Finally, the City Manager presented the legal process the City must follow in considering the petition to form the bargaining unit.

No action required.

ADJOURNMENT: The meeting adjourned at 6:50 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:00 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Morton, Mossar, Ojakian

ABSENT: Kleinberg

Junior Girl Scout Troop 663 from Duvenek Elementary School led the meeting with the Pledge of Allegiance and presented the Mayor with an orchid.

ORAL COMMUNICATIONS

Ed Powers, 2254 Dartmouth Street, spoke regarding good government and sang.

APPROVAL OF MINUTES

Assistant City Clerk Deanna Riding requested the minutes of September 20, 2004, be removed from the agenda.

CONSENT CALENDAR

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 1-3.

LEGISLATIVE

1. Adoption of a Resolution Authorizing the Approval of Amendment No. 4 to the Agreement for Funding of Operation and Maintenance for the Central Valley Project Power Facilities and Authorization to the City Manager to Execute Amendment No. 4 to the Agreement

Resolution 8461 entitled "Resolution of the Council of the City of Palo Alto Approving Amendment No. 4 to Agreement for Funding of Operation and Maintenance for the Central Valley Project Power Facilities"

2. Adoption of a Resolution Electing to Establish a Health Benefit Vesting Requirement for Future Retirees Under the Public Employees' Medical and Hospital Care Act (PEMHCA) for SEIU, Service Employees' International Union, Local 715

Resolution 8462 entitled "Resolution of the Council of the City of Palo Alto Electing to Establish a Health Benefit Vesting Requirement for Future Regular Employee Retirees from Local 715, Service Employees' International Union (SEIU) Under the Public Employees' Medical and Hospital Care Act"

COUNCIL COMMITTEE RECOMMENDATION

3. The Finance Committee recommends to the City Council Adoption of a Resolution Authorizing the Northern California Power Agency (NCPA) to Apply Payments Due from Pacific Gas & Electric Company (PG&E), as appropriate, to set off the alleged PG&E claim related to its Scheduling Coordinator Services (SCS).

Resolution 8463 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Northern California Power Agency to Apply Payments Due from PG&E to Set Off the Alleged Pacific Gas and Electric Company Claim Relating to its Scheduling Coordinator Services Tariff"

MOTION PASSED 8-0, Kleinberg absent.

PUBLIC HEARING

4. Public Hearing: The City Council will consider an Application by Hoover Associates on behalf of Richard Peery for Site and Design Review of a new 73,932 Square Foot Office Building with at Grade Parking and Related Site Improvements Located on a 5.66-Acre Site at 2300 East Bayshore Road within the LM (D)(3) Limited Industrial Site Combining Zone District. Draft Initial Study Recommending the Preparation of a Mitigated Negative Declaration. File Numbers: 03-EIA-17, 03-D-04.

Mayor Beecham indicated the matter before them was quasi-judicial and subject to Council disclosure.

Council Member Kishimoto walked by the site and spoke with several members of the public.

Council Member Freeman did not obtain any new information from persons she spoke with.

Council Member Cordell spoke with approximately three members of the public and the developer, and did not glean any new information.

Council Member Ojakian spoke with Ms. Volterra and Mr. Peery, and did not receive any new information.

Council Member Morton spoke with Mr. Peery and did not receive any new information.

Mayor Beecham and Vice Mayor Burch did not receive any new information.

Planning and Community Environment Director Steve Emslie said the project began in 2000, when the applicant submitted a Planned Community (PC) application for an approximate 110,000-square-foot office building. In early 2003, the PC application was rejected by the City Council on the recommendation of the Planning and Transportation Commission (P&TC) and Planning staff. The Council at that time, with the support of the P&TC, adopted a Mitigated Negative Declaration (MND) in conjunction with approving the applicant's request to rezone the restaurant parcel from a PC to a LM(D)(3). The project was subsequently reduced to 73,932 square feet. In addition, the project met or exceeded all other development standards, was less than the 35-foot height limit, reduced the impervious coverage by 7.5 percent, exceeded the 10percent landscape requirement by 4.3 percent, and exceeded all required setbacks by a substantial margin. The action before the Council that evening was the approval of an architectural and site plan, as required under the City's site and design provisions. Staff recommended to the Council approval of the site design based on the findings contained in the staff report (CMR:446:04) and the attachments. Staff found the building was similar in height to other existing two-story buildings in the vicinity, and approximately 50 percent of the proposed landscaping was verified by City Arborist Dave Dockter to be native or naturalized vegetation consistent with Baylands policy. The building was substantially set back from public streets providing an appropriate landscape buffer and complimented the approach to the Baylands. The project was also consistent with the Comp Plan, which established the Bayshore area as a diverse employment center.

Chief Planning Official Lisa Grote said the proposed project was within the allowable Floor Area Ratio (FAR) of .3 to 1. The site coverage was at 16 percent, which was below the 30 percent allowed. In addition to providing more landscaping than required, the applicant modified the landscape plan to be more reflective of the Baylands. The eleven proposed Redwood trees would be moved from the south side of the building to a southeast perimeter location, which would help screen the site from the bike path. In addition, the remaining perimeter of the site had been modified to reflect native or naturalized plant material. The two areas adjacent to the main entrance had been modified to reflect Byxbee Park landscaping and other Baylands native plant material, and the applicant was amenable to providing informational

signs to reference the landscaped areas. The applicant had proposed 54 additional parking spaces over and above the 246-minimum required. The P&TC recommended the additional 54 spaces be placed in landscape reserve, which was noted in Attachment A of the ordinance. Planning staff recommended the 54 additional parking spaces be provided at the same time as the rest of the parking because it would be useful in an area where there was no room for overflow or on-street parking.

Transportation Engineer Heba El-Guendy described the Congestion Management Program (CMP) guidelines for performing traffic impact analysis for cities and towns within Santa Clara County. The guidelines covered four analysis scenarios: 1) existing conditions; 2) background conditions; 3) project conditions; and 4) cumulative conditions. Existing conditions were based on representative traffic volumes, turning movement counts, and the study intersections, as well as segment counts on freeways. Background conditions covered the list of approved projects and were determined for the year when the project was completed. Project conditions involved project generated trips, which were added to the background volumes at study intersections and roadway segments. If there were approved projects on the site that could be fully occupied without going through another approval process, and had its own set of implemented mitigations, the project would be provided with credit for its existing uses. The project trips would then be the difference between the project-generated trips minus the existing uses. Cumulative conditions were typically asked of projects, which generated net trips of 100 or more trips during the AM or PM peak hour.

Planning and Transportation Commissioner Karen Holman, said the P&TC motion was to approve the MND with four conditions. They included: 1) the Transportation Demand Management (TDM) Program that went to the Director of Planning and Community Environment for approval, plus consideration of any possible additional funding for a shuttle as part of the TDM program; 2) the 54 additional parking spaces should be placed in landscape reserve; 3) the driveway should be moved pending police and fire considerations and needs; and 4) the landscape plan should reflect the Baylands Master Plan (BMP). Amendments to the plan suggested: 1) integration of the bicycle path along the southern edge of the property should be incorporated into the TDM program; 2) consideration should be given to preserve more of the existing trees; and 3) possible salvage of the buildings being removed. There was considerable discussion about the site and design review of the physical building and its compatibility with the BMP, which was referred to the ARB.

Architectural Review Board Member David Solnick, said the ARB felt the architectural drawings were not complete with regard to details and

materials. They also did not feel the concept would be in context with the Baylands.

Mayor Beecham declared the Public Hearing open at 7:30 p.m.

Lee Ashby, Architect, Hoover and Associates, urged Council's support of staff's recommendation to approve the MND, as well as the site and design review application for the proposed office building. During the life of the project a number of design changes were made in direct response to the City process. In December 2001, Hoover and Associates met with the ARB, after which a number of changes were made to the site and floor plans. They included changes to the building wings, the exterior walls, and delivery vehicle spaces. After the project went before the Council, the building was downsized and the underground parking was eliminated. Additional changes occurred in 2004, whereby the first and second floors were offset, columns were added to give the south façade a more three-dimensional appearance, the landscape plan was modified, and an interpretive landscape area was added. The color palette was changed to more closely resemble the colors found in the Baylands. Despite the many changes, there were a number of items the architect could not concur with: 1) a more architectural inventiveness and responsiveness to the site's location at the gateway to the Baylands. The colors, textures, forms and variations in the architectural composition were, in his mind, compatible with those found in the Baylands, while appropriate for use as an office building. The building palette of materials was varied and included pre-cast concrete, green-colored vision glass, etc. The building's façade achieved variety through its two- and three-dimensional characteristics, changes in height, and floor placed geometry, which added animation to the building; and 2) a higher level of sustainable design. The project incorporated high performance dual glazed windows with low e-vision glass, showers and lockers for bicyclists, a reduction of building coverage from the existing plan, parking lot landscaping, the lowest FAR in the City, bio swells along the off-ramp, energy star high reflective roofing cap sheets for possible photovoltaic cells, water conservative irrigation systems, and the use of fly ash in the concrete. He expressed his love of the project, the way it was presented, how it met or exceeded all the City standards for zoning, and was believed to be a quality project.

Dorothy Bender, Military Way, referred to Attachment H of the staff report (CMR:446:04), and said the MND being proposed had not yet been circulated for public review. The ARB unanimously denied the project on April 2004, because of its basic flaws related to the requirements of the BMP, as follows: 1) compliance with the requirement for compatibility with the Baylands and for no increase in urbanization; 2) compliance with the requirement for sustainable architecture; and 3) design of the project as a gateway building. She urged the Council to deny the project.

Emily Renzel, 1056 Forest Avenue, said because of the misgivings of some P&TC members and the full ARB Board, the Council would be wise to refer the project back for further review or deny it.

Lynn Chiapella, 631 Colorado Street, urged the Council to deny the project and pay attention to the comments of the ARB.

Robert Moss, 4010 Orme Street, said he believed the Environmental Impact Report (EIR) was inadequate and insufficient. He also felt the Council should take a serious look at the ARB's comments regarding the site and design review of the project. He urged the Council to reject the project.

Joy Ogawa, Yale Street, urged the Council to follow the unanimous decision of the ARB to deny the site and design review application for the project.

Herb Borock, P.O. Box 632, concurred with the comments of Dorothy Bender. A fair argument had been made that the project would have a potentially significant impact that was not mitigated by the present MND. Either the MND should be amended or an EIR prepared.

Mike Alexander, Barron Park, said the ARB's unanimous denial of the project was impressive and unique. He believed the ARB was looking for a more ambitious refection of the Baylands site. The developer had been cooperative in some respects, and contrary in others. The building was too urban for the location, did not relate to the nature of the Baylands, had no special gateway qualities, and lacked progressive sustainability elements. He urged the Council to require the developer to continue working with the ARB to improve the design.

Diane Sekimura, 2082 Sandalwood Court, expressed her concern about traffic. She said based on Tom Brohard's focused study report, there were numerous errors and outstanding transportation issues associated with the projects. The Fehrs & Peers Traffic Impact Analysis (TIA) failed to show all of the significant and/or potentially significant impacts of the project or to provide adequate mitigation, and should not be approved.

Angelica Volterra, P.O. Box 1724, said in 2002, public hearings were held to discuss the dangerous and congested situation created as the result of the International School of the Peninsula's move to Laura Lane, not far from the site of the proposed project. There was approximately 389,000 square feet of vacant office space in the project's immediate vicinity. The project was being built on a dead end cul-de-sac on Watson Court near the highly congested intersection at Embarcadero and East Bayshore Roads. A study commissioned by the City regarding the aforementioned roads stated a project at that intersection would cause significant environmental impacts

and operational safety hazards that had not been disclosed. She urged the Council to deny the proposed project.

Council Member Kishimoto asked Ms. Volterra for clarification of how she arrived at the figure of approximately 389,000 square feet of vacant office space in the project's immediate vicinity.

Ms. Volterra said she documented the amount of vacant square footage that covered East Bayshore Road to the south just north of the Emily Renzel Marsh, north along East Bayshore Road to the Post Office, and eastward on Embarcadero Road that included part of Geng Road.

Toni Stein, 800 Magnolia Street, Menlo Park, said the proposed project was in the treasured Baylands. The Fehrs & Peers TIA report failed to conduct a Level of Service (LOS) analysis at the intersection at Watson Court and East Bayshore Road, and they assumed all the traffic coming from the restaurant would come out at Watson Court, rather than East Bayshore Road. She encouraged the Council to take a look at the flaws in the TIA, including the fact it did not assume all the permitted uses.

Jason Peery, Peery-Arrillaga, said he and his team had been responsive to the comments of the P&TC, the ARB, and the public for the past four years.

Council Member Mossar asked why photovoltaic cells were a possibility rather than a certainty.

Lee Ashby, Hoover and Associates, said he did not believe it was a requirement, but the structure was being upgraded to include it if the tenants so desired.

Mayor Beecham declared the Public Hearing closed at 8:05 p.m.

Chief Transportation Official Joseph Kott said staff received an email attachment that afternoon of the work of Mr. Brohard and did a cursory review of his submittal.

Mr. Emslie said the traffic analysis had undergone extensive review by the previous and current Planning staff, and both were satisfied the TIA was adequate to conclude the findings in the MND.

Council Member Morton said the suggestion was made that Watson Court was an intersection; however, it seemed more like a driveway. He asked whether that was a correct analysis.

Ms. El-Guendy said that was correct. Watson Court only served the Peery-Arrillaga development. In addition, the property at 2370 Embarcadero Road had two parking lots, one of which was a driveway off Watson Court.

Council Member Mossar referred to the City Attorney's Report dated October 12, 2004, regarding 2300 East Bayshore Baseline Analysis. She said it was important for the Council to proceed with the current strategy for traffic baseline analysis. She did not want to see the City get into the business of not crediting baseline traffic when buildings were unoccupied because it would make it difficult to convert those properties into housing. She encouraged her colleagues to stay the course and not change policy.

Council Member Morton asked for a point of order. He expressed general concern about due notification to the public. It seemed to be a major policy issue that had not received adequate notification.

Mayor Beecham asked staff whether adequate notification had been given on the issue of baseline analysis.

City Attorney Gary Baum said adequate notification had been given to deal with the issue in its present context.

Mayor Beecham clarified the issue was relative to 2300 East Bayshore Road although the Council may want to consider future ramifications as well.

Mr. Baum agreed and stated every project the Council considered might have other ramifications; however, the Council was able to deal with the baseline issue that evening.

MOTION: Council Member Mossar moved, seconded by Morton, that for this project the baseline traffic count, as suggested by staff, would be used.

Mayor Beecham said it would also provide credit for the project for the existing buildings, even though they might be vacant and had been so for some time.

Council Member Morton said he was happy to limit the discussion solely to the motion on the table.

Council Member Kishimoto asked whether the City Attorney wanted to present his recommendations.

Mr. Baum said the City Attorney Report dated October 14, 2004, outlined three possible options, any of which were legally defensible. He also laid out approximately eight baseline cases that equally upheld or rejected the

variance. The issue was before the Council so there would be an adequate record that the cases clearly required the decision makers to adopt a baseline, but they must establish, for the record, how they got there and make the findings.

SUBSTITUTE MOTION: Council Member Kishimoto moved, seconded by Freeman, to accept City Attorney Baum's recommendations to count restaurant traffic, but not count the office traffic, as the office buildings had been vacant for four years.

Mayor Beecham said if the Council wished to consider a substitute motion that reversed where the main motion was headed he wanted to get an understanding of the preference. He accepted the substitute motion for Option 2, which was to accept the traffic credit for the restaurant into the baseline.

Council Member Kishimoto said she chose Option 2 because it was a compromise based on a consistency of how other traffic analyses were done. She asked when an LOS was measured at an intersection, did it involve extrapolations based on adding back the 400,000 square feet of vacancy or were actual counts taken.

Mr. Emslie said regular readings or actual counts were taken.

Council Member Kishimoto said the CEQA wording stated the conditions must be evaluated as they existed. If extrapolation was used for traffic increase, it needed to be consistent in applying it to evaluating impacted intersections.

Council Member Freeman said there had been a number of changes at the intersection of East Bayshore and Embarcadero Roads with different projects; however, the capacity of the intersection was known based on what had been there previously. She believed it should be counted.

Council Member Cordell commended the City Attorney for being proactive in raising an issue that needed discussion. She concurred with Council Member Morton that it could not be disposed of that evening. She indicated she spoke with Mr. Peery who stated the process had been a very long one. He also pointed out he was told what the baseline would be, and now the rules seemed to change. She wondered what was morally and ethically the right thing to do with respect to Mr. Peery and the proposed project. She expressed opposition to the substitute motion.

Vice Mayor Burch expressed opposition to the substitute motion. He said Palo Alto had always considered the "re-occupancy" rate the same as what was there originally.

Council Member Morton said he was not appreciative of the City Attorney's memo. While he appreciated the fact there were policy questions, they needed to be duly noticed with input from everyone. He expressed opposition to the substitute motion.

Council Member Ojakian said the substitute motion and the City Attorney's recommendation was in opposition to longstanding policies and practices the City had and was contrary to what most other cities in the Bay Area and in California were doing. He suggested the City Attorney take another look at the baseline issue. He expressed opposition to the substitute motion, as it would encourage maximum use of a building if someone wanted to redevelop the site.

Council Member Freeman said she realized her colleagues' dilemma involved two difficult moral issues: 1) following through with the original decision on the basis of fairness; and 2) what was the overall good for the long-term safety and welfare of the community. She believed it was the responsibility of the Council, based on the information presented, to make a moral decision.

Mayor Beecham said the Council had decisions to make on land use, zoning, and traffic to name a few; however, emotionally charged issues of morality, patriotism, or the flag should not be discussed. He believed it was in the City's best interest to support the existing usage of the buildings and to acknowledge, if the application was not approved, the landlord could lease those buildings out, knowing the traffic would return when the economy improved. He expressed support for the original motion.

Council Member Kishimoto asked whether staff understood the consistency issue and took into account the consistency between traffic counts and LOS analysis.

Staff nodded in agreement.

SUBSTITUTE MOTION WITHDRAWN BY THE MAKER AND SECONDER.

MOTION PASSED 8-0, Kleinberg absent.

RECESS: 8:45 p.m. to 8:52 p.m.

MOTION: Council Member Mossar moved, seconded by Kishimoto, to deny approval of the 2300 East Bayshore Road Application.

Council Member Mossar felt the project did not comply with the direction or history of the community in protecting the Baylands and developing the area

to be compatible with the Baylands Master Plan. She said regardless of the previous baseline discussions, she did not believe the traffic analysis could withstand a logical interpretation, and was disappointed the project did not adequately deal with the bicycle access issue.

Council Member Kishimoto said she would like her previous questions to staff to be made part of the record. She asked whether it was true that without any further review by either the Director of Planning and Community Environment or the Council, the entire project could be used for a medical/dental or a private educational facility.

Ms. El-Guendy said that was not true. Those types of land uses had different trip generation rates.

Council Member Kishimoto said based on how the Zoning Code was written a medical/dental facility was a permitted use.

Ms. Lisa Grote said medical/dental and private educational facilities were permitted uses; however, staff would look at traffic and parking impacts as uses that had more intensive parking requirements.

Council Member Kishimoto asked when that would be done.

Ms. Grote said it would be looked at when the uses changed.

Council Member Kishimoto asked whether it would go through the Planning Department's discretionary review.

Ms. Grote said it was not a discretionary review, but staff would require more parking when they became aware of tenant changes.

Council Member Kishimoto clarified there was no obligation to report the change in use.

Ms. Grote said the City did not require business licenses so they were not automatically notified.

Council Member Kishimoto said without the City knowing about it, the facility could become 100 percent medical/dental. In looking at the cumulative impacts, she asked whether staff included the Four Seasons Hotel and/or University Palm.

Ms. El-Guendy said no. The cumulative impacts were not included in the study. She said based on her own analysis, there would be some mitigation required under Policy 20-15.

Council Member Kishimoto expressed opposition to the project, which was based in part on the extensive record she received. She noted the P&TC deferred a lot of the design review to the ARB, who denied the project based on their findings. She also noted if there was substantial evidence that a project would have a significant impact on the environment, the agency was obligated to prepare a Draft Environmental Impact Report (DEIR). She found the record to be incomplete, the site and design findings could not be made, there was substantial evidence to prepare an EIR, and there were mistakes in the staff report.

Council Member Morton said the project before them involved three empty warehouses and an empty restaurant on an unpleasant intersection and not on the edge of the Baylands. Staff indicated the project met all the requirements, did not ask for any variances or access, had an environmentally sensitive landscaping program, and was on the corner of a street of office buildings. There had been some suggestions certain members of the ARB felt the applicant would not respond to textures or colors. He asked whether staff had any apprehension the applicant would not work with them in terms of preferred colors and compatible landscaping.

Mr. Emslie said no. Staff supported the project and believed the applicant would work with them.

Council Member Morton clarified the applicant would also be a willing partner in the landscaping and colors. He asked his colleagues to vote against the motion and support staff's recommendation. It was a project that was four year's in the making.

Vice Mayor Burch said the project was a lot further from the Baylands than other buildings in between. He had been to the Emily Renzel Wetlands on numerous occasions, but the proposed project was different, and he could not foresee any development in the space that would not pose traffic problems. He expressed concern about what was really being said and what any developer or property owner was expected to do on the site that would make it valuable to him or her, and a value to the City. He expressed support for the project.

Council Member Ojakian asked whether there was substantial evidence or contradictory evidence as to how CEQA should be handled.

Mr. Baum said the standard requirement for an EIR was whether there was a fair argument based on substantial evidence of a significant impact upon the environment. It was up to the Council to make that determination.

Council Member Ojakian asked how the dueling traffic studies came into play.

Mr. Baum said there could be contradictory information provided; however, there was a traffic engineer on staff who had evaluated the traffic impacts and was comfortable with it.

Mr. Emslie said he understood CEQA case law and regulations stated disagreement among experts was not necessarily reasonable cause for making a fair argument that an EIR should be prepared.

Council Member Ojakian clarified if the project went forward and was legally challenged, staff was comfortable with their recommendation.

Mr. Baum said the MND, if passed by Council, was legally defensible.

Council Member Ojakian asked for clarification of the project not being compatible with the BMP, and there being no guidelines yet developed.

Mr. Emslie said there were numerous documentations and plans for the Baylands, which had been reviewed and considered by the City over the years. One of the items on the Planning Department's work plan was the compilation of the existing policies in relation to what existed in the Comp Plan and what, if any, changes were necessary to bring the intended policies of the Baylands into compliance with the Comp Plan. Staff was scheduled to bring back Council's consideration of the Environmental Services Center (ESC) in conjunction with the results of the Comp Plan policies, now imbedded in the Comp Plan and which amendments, if any, would be needed. He said there were no guidelines in place, but recommendations to be implemented.

Council Member Ojakian said there were traffic issues surrounding Laura Lane. He asked staff for their perception. He also asked what the TDM covered.

Mr. Emslie said there was a condition for the TDM plan to be implemented in conjunction with the project, which required the applicant to come back and propose specific measures. Staff, however, could not anticipate the implementation of a shuttle system, but rather a ride matching work hours type of issue. Staff could give the Council a more in depth analysis of Laura Lane; however, they would need time to compile the information.

Council Member Ojakian asked whether the TDM addressed the concerns Council Member Mossar raised around traffic and LOS at the intersection of Embarcadero and East Bayshore Roads.

Mr. Emslie said trip generation rates and staff's experience with diversion of traffic would yield a fairly low percentage of trip diversion, or approximately 5 to 8 percent through a comprehensive TDM program.

Council Member Ojakian concurred with the comments of Vice Mayor Burch. He was concerned if a project such as the one proposed could not be approved, the City would perhaps be left with something less appealing. He said staff comments and recommendations and the P&TC recommendation in support of the project should be weighed in conjunction with the ARB's unanimous vote against the project. The applicant had made several changes over the years and brought the project down to a reasonable level. He hoped, if the motion failed, the Council would come back and approve the project.

Council Member Morton asked whether the existing shuttle's route included the area around the proposed project.

Mr. Emslie said that was correct.

Council Member Cordell said she wanted to remind her colleagues they were there for two specific reasons: 1) approve the MND; and 2) approve the site and design review application. The overriding goal however was to have a project at 2300 East Bayshore that mitigated any environmental impacts. She expressed concern about the process, which seemed convoluted. When the P&TC looked at the site and design review they had to make four findings, which they could not do and deferred the matter to the ARB. The ARB could not do it either, but did request more information from the developer. The project went back to the P&TC without having all four of the findings made, but the P&TC still approved the site and design review. The question in her mind was how could the Council make a decision that the site and design review findings had been made when: 1) the P&TC was unable to make all four of the findings; and 2) the ARB could not make them either. The project was in the Baylands and called for special scrutiny to be applied. She expressed support for the motion.

Mayor Beecham said from his point of view, the discussion that evening was not about the use. The TIA was consistent with the kinds of analysis relied on previously, including data and projections. Issues had been raised about whether the project was an appropriate gateway facility. He did not perceive the gateway to the Baylands to be something outstanding in terms of being multi-storied nor was it a row of telephone poles stuck on a building. He would like it to be something that did not attract much attention but was surrounded by landscaping to soften it, which the proposed project did. He believed the findings were there and could be supported. He expressed opposition to the motion.

Council Member Freeman said it had been stated the project relied on a previous traffic analysis. The previous traffic analysis was the cause of problems at the intersection with the ISP. She wondered whether the vision of the Baylands was an office building that you could not see, or was the vision one of changing the Baylands to a more natural looking habitat. She believed the site called for more precise information based on the realities of today's knowledge.

MOTION FAILED 4-4, Beecham, Burch, Morton, Ojakian no, Kleinberg absent.

Mayor Beecham suggested making a motion to close the public hearing, and continue the item to a date certain when all nine Council members were present.

Mr. Benest said staff would look at the calendar and select a date to return the item to Council.

Mayor Beecham asked whether a date certain was needed in the motion.

Mr. Baum said without a date in the motion, the item would need to be re-noticed.

Council Mossar said the strategy to continue the item would favor one side over the other. The side that voted to deny was in a better position to have the item fail.

Mr. Baum said based on Council Protocol, there was nothing to prevent any Council Member from agendaing a matter that resulted in a tie vote for a subsequent meeting.

Mayor Beecham clarified regardless of whether action was taken that evening, the item could be called back by either side; however, the public hearing, as well as the entire process, would be reopened.

MOTION: Council Member Ojakian moved, seconded by Morton, to return to Council with this item on November 8, 2004, when Council Member Kleinberg is in attendance.

Council Member Freeman asked what would be the next step if the motion to continue the item failed.

Mayor Beecham said the Council would have taken no action on the item nor would they have continued it. The situation remained whereby any two members of the Council could ask to have item agendaed and brought back.

Council Member Freeman clarified the motion would not have failed, but rather no action was taken.

Mayor Beecham said yes.

Mr. Benest said staff was concerned given the other major items facing Council before the end of year. If the item were to come back, the public hearing should be closed.

Council Member Morton said if the motion to continue the item did not pass, he and Council Member Ojakian would request to reagendaize the item.

Council Member Kishimoto requested clarification on the status of the project if the motion to continue failed.

Mayor Beecham asked whether the Council was obligated to take action on the item by a certain time.

Mr. Baum said under the Permanent Streamlining Act the Council would be; however, under Council Protocols the project would be suspended if the matter were continued.

Mayor Beecham asked if the Council became truly tied in any action and thereby took no action, would that put them in any jeopardy that required them to take action on the application.

Mr. Baum said, ultimately, the developer could bring an action in court to compel action to be taken. It was a multi-step process that tended not to be successful.

Council Member Kishimoto asked whether the status could be denial of the project because of a failed majority.

Mr. Baum said in certain cities that rule applied; however, Palo Alto was not one of them. Palo Alto did not have an ordinance deemed denied.

Council Member Cordell stated the Council took a vote that evening to deny approval of the application, which failed on a 4-4 vote. The Council had not taken a vote to approve the application on the assumption it too would fail, but she believed that vote should be taken. If that motion failed on a 4-4 vote, then the Council would be in a position to say that no action had been taken.

MOTION WITHDRAWN BY MAKER AND SECONDER

MOTION: Council Member Ojakian moved, seconded by Burch, to approve the 2300 East Bayshore Road Application.

MOTION FAILED 4-4, Cordell, Freeman, Kishimoto, Mossar no, Kleinberg absent.

MOTION: Council Member Ojakian moved, seconded by Morton, to return to Council with this item on November 8, 2004, when Council Member Kleinberg is in attendance.

MOTION PASSED 6-2, Kishimoto, Mossar no, Kleinberg absent.

5. Public Hearing: The City Council will consider a Request by Herman Shaw of A&D Protocol Transportation, Inc. for a Five-Year Extension to an Approved Tentative Map for a 10-Lot Residential Subdivision Located at 525 San Antonio Road. City Council Approved the Tentative Map on July 1, 2002. No Modifications to this Map have been Made Since that Time. Environmental Assessment: A Negative Declaration has been prepared. Zone District: R-1(743). File No. [04-SUB-01; 04-EIA-05].

Chief Planning Official Lisa Grote said staff's recommendation to the Council was to approve a five-year extension of the Tentative Map for a 10-Lot residential subdivision at 525 San Antonio Road. All aspects of the original proposal were the same, as well as all of the conditions originally attached. The extension would not interfere with the continuation of the Peninsula Day Care Center (PDCC). The Tentative Map would be extended to July 1, 2009.

Mayor Beecham opened the Public Hearing at 9:45 p.m.

Ken Schreiber, 432 Webster Street, said in order to process the Final Map, the City Attorney's office concluded the buildings would have to be demolished and PDCC closed, which the operators did not want to do. Thus, the five-year extension was sought.

Mayor Beecham declared the Public Hearing closed at 9:46

MOTION: Council Member Ojakian moved, seconded by Morton, to approve the staff and Planning and Transportation Commission recommendation to extend the approval of the Tentative Map for an additional five-year period, based upon the original project findings, one modified Condition of Approval extending the approval, and all other original Conditions of Approval contained with the Record of Land Use Action.

ACTION NO. 2004-06
Record of the Council of the City of Palo Alto Land Use Action
For 525 San Antonio Road: Approved Tentative Map Extension
04-SUB-01; 04-EIA-05 (A&D Protocol, Applicant)

Council Member Ojakian said PDCC was one of the biggest daycare centers in town with the largest number of slots for incoming children. He expressed support for the extension.

Council Member Morton said although the use would continue, did it require the use to be in place for the next five years or could the applicant shorten the time.

Director of Planning and Community Environment Steve Emslie said the extension allowed the applicant five additional years in which to prepare and have the Council approve their Final Subdivision Map.

Council Member Mossar clarified when the Council previously approved the Tentative Map, the approval was conditioned on having a bike/pedestrian access through the end of the proposed cul-de-sac onto the school district property. She understood that condition still existed; however, it did not show on the Tentative Map.

Mr. Emslie said it was referenced in the Conditions of Approval and the purpose of the Final Map was to implement those conditions. It would be reflected on the recorded Final Map.

Ms. Grote said the bike/pedestrian access was outlined on Page 6, Section 6, under "Prior to Recordation of Final Map."

Council Member Freeman asked what legal ramifications would exist to extending the Final Map.

City Attorney Gary Baum said the original approval was simply extended for five years with no changes.

MOTION PASSED 8-0, Kleinberg absent.

REPORTS OF OFFICIALS

6. City Attorney Focused Work Plan

City Attorney Gary Baum presented an overview of the City Attorney's Office and Focused Work Plan. The Focused Work Plan outlined seven action items for the City Attorney to concentrate upon for the balance of the fiscal year.

Those items were in addition to the regular responsibilities of the City Attorney including attending Council meetings, providing legal advice to Council, responding to staff requests and managing the City Attorney's office. The Attorney's Office was comprised of five fulltime attorneys, plus several hourly and part-time attorneys. There were seven action items as well as seven goals, which were consistent with the Council's Top Five Priorities: 1) Complete more assignments while reducing the turnaround time. The goal was to enhance the Office's productivity by making staff more task oriented; 2) Prepare or form a "Conflicts Analysis Strike Force" utilizing two in-house attorneys and one outside attorney. The goal was to enhance the advice provided to Council; 3) Assist in the City contract-streamlining program. The goal was to reduce contract-processing time and standardize City forms. A small number of boilerplate forms would be placed on a shared drive for staff members to utilize; 4) Attempt to reduce outside counsel for utility-related work. It would involve monitoring outside counsel as well as bring as many items in house as possible; 5) Continue to analyze Code Enforcement and determine the best way to provide those services; 6) Assist in providing training in areas of need and increase the availability of legal services. The goal was to enhance the legal services to the Police Department by direct involvement by the City Attorney; and 7) Maximize the City recovery on the Utility User's Tax lawsuit and the entire process to net additional revenue for the General Fund.

MOTION: Council Member Morton moved, seconded by Kishimoto, to approve the City Attorney Focused Work Plan but without use of the word "boilerplate."

AMENDMENT TO THE MOTION: Council Member Kishimoto moved, seconded by Freeman, to amend the Work Plan by adding that the City Attorney would work with the Planning Department to update the Council on California Environmental Quality Act (CEQA) standards and procedures.

Council Member Kishimoto asked the City Attorney for input to her amendment.

Mr. Baum said he would take responsibility for working with the Planning Department in updating the CEQA standards and procedures.

Council Member Ojakian asked where did the Zoning Ordinance Update (ZOU) fit into the proposed Work Plan.

Mr. Baum said staff had been working consistently on the issue. He did not believe there was much left to do.

Council Member Ojakian asked what timeline had been set for the Work Plan.

Mr. Baum said the Work Plan was set for the balance of the fiscal year.

Council Member Morton urged his colleagues to vote against the amendment until the fiscal impact was determined.

City Manager Frank Benest said the City Attorney's Work Plan also affected the Planning Department's Work Plan, which was ambitious at best. If the Council voted to move forward with additions to the Work Plan, he would suggest proposed takeaways from their present workload.

Council Member Freeman said she seconded the amendment because every time an issue was raised that involved CEQA, lengthy discussions ensued because there were no standardized guidelines.

Council Member Mossar expressed opposition to the amendment because it involved taking the City Attorney's Work Plan and attaching a topic of interest the Council had not given a high priority status.

Council Member Kishimoto said the CEQA update had been on the Planning Department's Work Plan for a number of years. She asked whether staff had the issue on their current year's Work Plan.

Mr. Benest said it was not a priority of the Planning Department given their present workload.

AMENDMENT FAILED 2-6, Kishimoto, Freeman yes, Kleinberg absent.

Council Member Freeman asked whether the noise ordinance fell under code enforcement and, if so, could the ordinance be reviewed to see if it was up-to-date.

Mr. Baum said the noise ordinance was not included with code enforcement at the present time.

MOTION: Council Member Freeman moved to request that the City Attorney review and determine if the noise ordinance is up-to-date.

MOTION FAILED DUE TO LACK OF A SECOND.

MOTION PASSED 8-0, Kleinberg absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Morton asked City Attorney Baum to provide the Council with guidelines on how to call for the question and if that action takes precedence over other actions.

Mr. Baum stated Council Protocols state the action takes precedence but the Mayor has the ultimate prerogative to run the meeting.

Mayor Beecham clarified the question was whether a colleague could call for the question or did they have to be recognized by the Chair in order to make that motion.

ADJOURNMENT: The meeting adjourned at 10:10 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.