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October 21, 2002

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FINAL ADJOURNMENT: The meeting adjourned at 11:10 p.m.....27

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 p.m.

PRESENT: Beecham (arrived at 6:15 p.m.), Burch (arrived at 6:15 p.m.), Freeman, Kishimoto, Morton, Mossar

ABSENT: Kleinberg, Lytle, Ojakian

SPECIAL MEETING

1. Study Session: VTA Community Design and Transportation Program

Chris Augenstein, Valley Transportation Agency (VTA), presented the VTA's *Community Design & Transportation Program* (CDT), which was developed to promote land use strategies designed to support the VTA's overarching goal of improving the efficiency of Palo Alto's transportation systems and the overall quality of life in Santa Clara County. VTA will invest billions of dollars in transportation improvements in the coming decades. Such an enormous commitment compels us to ensure thoughtful and thorough coordination with land use policy, especially around transit facilities and along multi-modal corridors that offer transportation choices beyond the automobile. The *CDT Program* looks beyond boundaries of jurisdiction and discipline to create an active partnership between VTA, the cities, and the county with ongoing participation by local government staff and decision-makers.

Mr. Augenstein described the first major product of the CDT, the *Manual of Best Practices for Integrating Transportation and Land Use*. This manual provides design guidelines, planning tools, and policy strategies for coordinating transportation and land use in projects across the county. The VTA Board of Directors will adopt the program principles and practices presented in the Manual, and after that adoption, VTA member agencies - the cities and County of Santa Clara - will be asked to make formal commitments to incorporate the principles and practices into their planning, design and approval processes. In addition, to help local jurisdictions implement Best Practice-type projects, VTA is pursuing linkages between its *CDT Program* and the grant funding programs it administers.

In advance of this process, VTA is currently engaged in an outreach program of individualized working group sessions with each city's elected officials, planning departments, and commissions.

ADJOURNMENT: The meeting adjourned at 6:48 p.m.

Regular Meeting
October 21, 2002

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, Freeman, Kishimoto, Lytle, Morton, Mossar

ABSENT: Kleinberg, Ojakian

Vice Mayor Mossar noted the City Attorney had a memo at places stating that due to conflicts of interest the Council would not have a quorum for Item No. 20 that evening. Staff would reschedule the matter for November 12, 2002.

ORAL COMMUNICATIONS

Victor Frost, Homeless, spoke regarding survival needs for the homeless.

Susan Rosenberg, 1425 Stanford Avenue, spoke regarding trees for El Camino project.

Sophia Dhrymes, 483 Hawthorne Avenue, spoke regarding her income - her property and tenants.

SPECIAL ORDERS OF THE DAY

1. Resolution 8218 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Mary Jo Levy Upon Her Retirement"

MOTION: Council Member Beecham moved, seconded by Morton, to adopt the resolution.

MOTION PASSED 7-0, Kleinberg, Ojakian absent.

Director of Community Services Paul Thiltgen expressed appreciation to Mary Jo Levy for her work in putting together the Palo Alto library system and providing quality service to the community.

Mary Jo Levy thanked the community members who had expressed their gratitude to her. She also expressed her respect of the library staff.

Council Member Kishimoto thanked Mary Jo Levy for the warmth and professionalism of the library staff.

Council Member Morton thanked Mary Jo Levy for setting a standard for caring that was almost impossible to live up to.

2. Presentation on Palo Alto Expressways in the County's Expressway Study

Dawn Cameron, Consulting Transportation Planner for the County of Santa Clara Roads and Airports Department, said the Expressway Study would serve as a long-range strategic plan for the improvement and maintenance of the expressways. The Study took a comprehensive look at each expressway and included capacity enhancements, signal improvements, transit, bicycle, and pedestrian accommodations, soundwalls, landscaping, maintenance, and operational needs. A key to the success of the Study was a strong collaborative planning process. Two committees had been established to provide ongoing review and input for the Study. They included: 1) the Technical Working Group (TWG), which was composed of staff from all 15 cities in the County plus Caltrans, Metropolitan Transportation Commission (MTC), and Santa Clara Valley Transportation Authority (VTA); and 2) the Policy Advisory Board (PAB), composed of two County Supervisors, 12 council members from cities with existing or potential future expressway mileage, two VTA Board members, and two County Roads Commissioners. The major level of service issues for the City of Palo Alto involved Foothill Expressway and Page Mill/Oregon Expressway intersection. The proposed vision for the Page Mill/Oregon Expressway included an arterial with smooth flowing traffic. Along Oregon Expressway, the vision was to improve signal operations and pedestrian crossing improvements, including wheelchair access ramps. Other projects being studied included reconstructing the Alma Street/Oregon Expressway interchange to eliminate the tight ramps and improve site lines. Improvements for Page Mill Road/Hwy 280 included the facilitation of safer bicycle travel through the area. It was noted that the common vision for Foothill Expressway was to be more arterial-like. The next steps for the project were to establish specific project lists for all elements and an implementation plan with funding strategies.

Council Member Morton said he would like staff to consider implementing clearly defined east-west bicycle routes along Page Mill Road at Oregon Expressway, and include the Oregon Expressway parallel as a defined bike route.

Council Member Kishimoto commended the VTA staff for a well-designed and structured Study, and the sensitivity shown to the unique characteristics of expressways in Santa Clara County. She looked forward to representing Palo Alto on the task force.

Council Member Burch said he was supportive of eliminating the tight ramps at the Alma Street/Oregon Expressway interchange. He was aware that dump trucks carrying dirt and other heavy loads were not able to turn onto Oregon Expressway from Alma Street because of the tight turns.

No action required.

APPROVAL OF MINUTES

MOTION: Council Member Burch moved, seconded by Morton, to approve the minutes of September 17, 2002, as submitted.

MOTION PASSED 7-0, Kleinberg, Ojakian absent.

CONSENT CALENDAR

Wei Wang, 3054 Price Court, spoke regarding Item No. 4. She urged the Council not to approve using taxpayer money to construct a concrete wall that was detrimental to the environment. She proposed the alternative of soundproof windows and doors, and an acoustic-type 8-foot wood wall.

Council Member Morton would not participate on Item No. 4 due to a conflict of interest because he was the Founder of Community Skating, Inc.

Council Member Freeman removed Item No. 8 to become Item No. 20B. She asked whether the information coming from the Storm Drain Committee would have any effect on the upgrading project as described in Item No. 15.

Director of Public Works Glenn Roberts said the upgrading project for the storm drains was already scheduled to occur. Funding for the project would come from revenues generated from a prior bond sale on the previous rate structure and was independent of new actions and recommendations.

Council Member Kishimoto removed Item Nos. 7 and 14 to become Item Nos. 20A and 18A.

Council Member Lytle would not participate in Item No. 15 due to a conflict of interest because she owned a residence in the affected area.

Council Member Kishimoto related to her colleagues there was a new policy document attached to the resolution in Item No. 17, which incorporated the Council's requested changes.

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 3-6, 9-13, 15-18.

LEGISLATIVE

3. Approval of Budget Amendment Ordinance in the Amount of \$276,435, Transferring \$276,435 from the Citizens for Public Safety (COPS) Fund into Capital Improvement Project (CIP) 19913 - Police Records Management Systems Project and a Contract Between the City of Palo Alto and Public Safety Systems, Inc. in an Amount Not To Exceed \$249,800 for Software and Hardware Upgrade of Public Safety Computer Systems

Ordinance 4766 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for Fiscal Year 2002-2003 to Transfer \$276,435 from the Citizens for Public Safety (COPS) Funds into Capital Improvement Project (CIP) 19913 - Police Records Management Systems Project"

Contract Between the City of Palo Alto and Public Safety Systems, Inc. in an Amount Not To Exceed \$249,800 for Software Enhancements and Hardware Upgrade of Public Safety Computer Systems

4. Ordinance 4767 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for Fiscal Year 2001-02 in An Amount Not to Exceed \$50,000 as City Contribution to Cost of Sound Wall for Tennis Facility at 3005 Middlefield Road"
5. Further Discussion of the Resolution to Install Stop Signs on Ilima Way and Ilima Court at Laguna Avenue

Resolution 8219 entitled "Resolution of the Council of the City of Palo Alto Amending the Citywide Stop Intersection System Map to Approve Stop Signs at the Intersections of Ilima Court and Laguna Avenue and Ilima Way and Laguna Avenue"

6. Ordinances Adopting Various Parts of the 2001 California Building Standards Code (Consisting of State Amendments to the 1997 Uniform Building, 2000 Uniform Mechanical and Plumbing Codes, and the 1999 National Electrical Code); Enacting Local Amendments; Making Certain Findings; and Setting a Public Hearing for November 12, 2002

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Adopting Parts 2, 4 and 10 of the

2001 California Building Standards Code (1997 Uniform Building Code, 2000 Uniform Mechanical Code and California Historical Building Code, Respectively) and the 2001 California Code for Building Conservation; Amending Chapter 16.04 of the Palo Alto Municipal Code; and Making Certain Findings with Respect Thereto"

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Adopting Part 5 of the 2001 California Building Standards Code (2000 Uniform Plumbing Code); Amending Chapter 16.08 of the Palo Alto Municipal Code; and Making Certain Findings with Respect Thereto"

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Adopting Part 3 of the 2001 California Building Standards Code (1999 National Electrical Code); Amending Chapter 16.16 of the Palo Alto Municipal Code; and Making Certain Findings with Respect Thereto"

9. Resolution 8220 entitled "Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Hourly Personnel and Rescinding Resolution Nos. 8097, 8112, and 8193"

ADMINISTRATIVE

10. Contract Between the City of Palo Alto and Cupertino Electric, Inc. in the Amount of \$70,000 for Electric Reliability Services for Commercial Utility Customers
11. Contract Between the City of Palo Alto and Conor Pacific in the Amount of \$65,313 for Landfill Environmental Monitoring
12. Joint Use Agreement Between the City of Palo Alto and Santa Clara Valley Water District for Wilkie Way Bridge
13. Amendment No. 1 to Contract No. S2137477 (Hardware Maintenance Support Contract) Between the City of Palo Alto and Golden Gate Systems in the Amount of \$76,961 for H-P 3000 and H-P 9000 Servers
15. Contract Between the City of Palo Alto and K. J. Woods Construction, Inc. in the Amount of \$258,141 for Storm Drain Upgrades at Charleston Road/Park Boulevard, Channing Avenue/Heather Lane, and Kendall Avenue/Whitsell Avenue - Capital Improvement Project 47716
16. Request for Approval of Increased Change Order Authority for Contract No. S0124304 Between the City of Palo Alto and

Nortrax West (formerly Empire Equipment Company) in the Amount of \$175,000 for Landfill Heavy Equipment Maintenance and Repair

COUNCIL COMMITTEE RECOMMENDATION

17. The Finance Committee recommends to the City Council re Energy Risk Management Policies Adoption of a Resolution approving the amended and restated Utilities Energy Risk Management Policies, and Delegating to the City Manager the Authority to Establish and Promulgate Energy Risk Management Guidelines and Procedures

Resolution 8221 entitled "Resolution of the Council of Palo Alto Approving the Amended and Restated Utilities Energy Risk Management Policies and Delegating to the City Manager the Authority to Establish and Promulgate Energy Risk Management Guidelines, Rules and Procedures"

18. Finance Committee recommendation re Long-Term Electric Acquisition Plan to approve seven Electric Portfolio Planning and Management Guidelines to guide staff in Developing and Managing the City's Long-Term Electric Acquisition Plan (LEAP) and that Guideline 6 be amended to state the City pursue an expected target level of new renewable purchases of 10 percent of the expected portfolio load by 2008 with the retail rate impact not to exceed .5 cents/kWh on average, and to move to a 20 percent target by 2015 contingent on economic viability

Resolution 8222 entitled "Resolution of the Council of the City of Palo Alto Approving the Planning Guidelines for the Long-Term Electric Acquisition Plan to Address the Potential for Deficits in the City's Long-Term Energy Needs"

MOTION PASSED 7-0 for Item Nos. 3, 5, 6, 9-13, 16-18, Kleinberg, Ojakian absent.

MOTION FAILED 5-1 for Item No. 4, Beecham, Burch, Freeman, Kishimoto, Lytle "yes," Morton "not participating", Kleinberg, Ojakian absent.

City Attorney Calonne noted that Item No. 4 was not approved because a Budget Amendment Ordinance required a super majority approval of the Council.

Council Member Beecham suggested to Vice Mayor Mossar that Item No. 4 be reconsidered.

Vice Mayor Mossar noted for the record that she would change her vote on Item No. 4 to "yes".

MOTION PASSED 6-0 for Item No. 4, Morton "not participating", Kleinberg, Ojakian absent.

MOTION PASSED 6-0 for Item No. 15, Lytle "not participating", Kleinberg, Ojakian absent.

18A. (Old Item No.14) 945 Hutchinson Avenue [02-IR-42]: Appeals by Linda Wank, 901 Hutchinson Avenue, and Anne K. Wilbur, 1240 Channing Avenue, of the Director of Planning and Community Environment's Approval of the Application for Relocation of an Existing two-story residence from 1421 Emerson Street to 945 Hutchinson Avenue, Owned by Tench Coxe, 1401 Emerson Street, under the Single-Family Individual Review Process

Chief Planning Official Lisa Grote said the appellant's concerns were specific to the individual review guideline related to privacy issues and solar access. Four or more affirmative votes by the Council Members were needed to set the matter for a future hearing date.

Daniel Garber, 2201 Byron Street, urged the Council to oppose the vote to hear the appeal. The project met all code and zoning requirements and went through the procedural parts of the Individual Family Review.

Brendan Leary, 251 Lytton Avenue, said the homeowners made every effort to save the property and reviewed whether it would diminish the value of the surrounding properties, including the community center.

Simone Coxe, 1401 Emerson Street, urged the Council to refuse to hear the appeal.

Herb Borock, P.O. Box 632, said it appeared that staff in the Planning Division had become advocates for projects at the Director's Hearing. He recalled previously where staff would process the applications, but were neutral in their decision, because they were agents of the Director.

City Attorney Ariel Calonne said the ordinance specifically called for staff to write the proposed decision for the Director, make the recommendation, and take a position. He did not believe there was any impropriety in doing that.

MOTION: Council Member Morton, seconded by Beecham, that the City Council decline to hear the appeal, thereby upholding the Director of Planning and Community Environment's approval.

Council Member Morton said he was in favor of moving forward, supporting staff's recommendation, and allowing the homeowners to complete their project.

Council Member Beecham said the process setup by Council allowed the public to ask the Council to make the determination to accept or not accept to review the appeal. If the Council accepted the appeal, the decision would be based on the belief the Director's decision was unreasonable or staff had misinterpreted the adopted ordinance. He did not believe that standard had been reached, and was in support of staff's recommendation.

Council Member Lytle asked whether staff had determined the number of public street trees that would need to be removed as a result of moving the house.

Director of Planning and Community Environment Steven Emslie said Managing Arborist Dave Sandage indicated there were two trees on the site that would have to be removed.

Council Member Lytle commented the trees at the receptor site would not have to be removed.

Mr. Emslie said that was correct.

Council Member Lytle clarified the trees along the route would not have to be significantly trimmed.

Mr. Emslie said no pruning or trimming was required along the route.

Council Member Lytle asked whether the new home was able to look into the rear yard of the potential appellant's home.

Chief Planning Official Lisa Grote said a person would need to stand at the window in order to look into the appellant's rear yard. In addition, the only available wall space for a bed or large piece of furniture was under the window in question.

Council Member Lytle said the solar analysis indicated a significantly greater shadow cast in the winter months on the appellant's backyard pool area.

Ms. Grote concurred there was some additional shadow cast in the winter months, however the amount was not significant.

Council Member Lytle clarified there was partial exposure of the pool to solar access in the winter months; however, when the house was built there would be none.

Ms. Grote said the appellant's backyard pool area would still have partial solar access in the winter months from early to late morning. Increased shadows over the pool area would occur for a period in the afternoon.

Council Member Freeman said the issue before the Council that evening was whether the proposed project fell within the guidelines and whether the Director's decision was a reasonable one. She believed her colleagues needed to separate those two issues when making a decision.

Council Member Kishimoto said one of the guideline policy statements was to minimize intrusion on privacy for adjacent homes, primary patio, or outdoor living areas. She referred to the minutes from the Director's Hearing, which addressed the privacy and solar issue by reducing the second floor and expanding the lot coverage. She asked whether that option had been explored.

Ms. Grote said the original proposal moved the house farther away from the two rear yards. During the process, the ceiling height for the second floor was reduced and the footprint on the first floor increased. That option was not pursued because it would have had a negative impact on the existing house.

Council Member Kishimoto asked whether mediation between the parties was pursued.

Ms. Grote said yes. Mediation was pursued; however, not all of the parties wanted to engage in it and it required 100 percent participation.

MOTION PASSED 5-2, Kishimoto, Lytle "no", Kleinberg, Ojakian absent.

REPORTS OF OFFICIALS

19. City Staff and Utilities Advisory Commission Recommendation to Support Northern California Power Agency in Trinity River Fisheries Restoration Litigation

Director of Utilities John Ulrich said the City of Palo Alto had been receiving hydroelectricity from the Central Valley project since the middle part of the 1960s. Palo Alto had a history of supporting environmentally friendly ways of getting electricity to the City. The City Council had received a number of requests in recent months to remove the City from the litigation process. The litigation, supported by the Northern California Power Agency (NCPA), started in the latter part of the year 2000 when the Record of Decision (ROD) was issued by the then Department of Interior (DOI) Secretary Bruce Babbitt. The evaluation process, in staff's opinion, was deficient and it seemed appropriate to have further investigation. While the issues in Palo Alto might be different than those of NCPA and the Sacramento Municipal Utility District (SMUD), the objective of the litigation was to see that all of the issues were brought forth through the hearing process. Staff and the Utilities Advisory Commission (UAC) recommended the City Council support the NCPA's ongoing due process litigation against the DOI and allow City Council action to be informed by the U.S. District Courts ruling.

City Attorney Ariel Calonne interjected he would not support having the Council authorize participation in an appeal. He clarified that the motion was to continue support of the existing litigation.

Mr. Ulrich said that was correct. On August 5, 2002, the City Council directed the Utilities Advisory Commission (UAC) to work with staff to develop a deeper understanding of the issues related to the litigation and then return to the City Council with a recommendation regarding a negotiation position. At that meeting, members of the public came to the City Council and asked them to consider that particular action. On September 4, 2002, the UAC approved the staff's recommendation to allow due process litigation to proceed. On September 23, 2002, the Council voted to implement staff's recommendation of agendaing the Trinity River litigation support decision for October 21, 2002. The litigation was not a case of power generation versus the environment, but of how to maximize fishery restoration in a less risky and damaging method than proposed in the ROD. NCPA clarified that the Trinity River would remain a managed river with controlled peak flood flows that were not large enough to scour the deep hole habitat in the river under any alternative including the current situation. As a managed river system, the Trinity River would benefit from NCPA's less risky incremental action, science-based alternative. Palo Alto presently purchased over 50 percent of its power from hydroelectric sources and actively promoted resource efficiency ethics to city facilities, residents, businesses, and institutions.

Utilities Advisory Commission Chairperson Richard Carlson said the UAC did not see Trinity River as an environmental versus economics tradeoff, but a tradeoff of different aspects of the environment colored by environmental politics and symbolism. The UAC concluded it was prudent to allow the litigation to be heard and ruled upon by an independent Judge before doing anything. The UAC also concluded the proposal of the ROD was a certain loss of a large amount of renewable energy that would be substituted by burning fossil fuel. There was also the possibility of an environmental loss to the Delta of the Sacramento River.

Utilities Advisory Commissioner Rick Ferguson quoted Environmental Defense Senior Analyst Spreck Rosekrans by saying, "If one of the reasons for the litigation was to eliminate high energy bills in Palo Alto, then it was pointless to pursue the litigation. However, if the real reason was based on good science and the belief that the right thing was not being done then pursuing the litigation was the right thing to do." Palo Alto was not concerned about the incremental increase in dollar cost for finding substitute power; however, it was concerned about the difficulty in applying the good science as the specific engineering of the Trinity River restoration unfolded.

Vice Mayor Mossar reminded her colleagues that Agenda Item No. 18, which passed on the Consent Calendar that evening, was the approval of the Electric Portfolio Planning and Management Guidelines, which would provide funding for increased purchase of renewable energy.

Al Zepp, Federal Legislative Analyst with NCPA, said the NCPA had gone through great effort to participate with Palo Alto as it reviewed the Commission's decisions and policies on the Trinity River litigation. NCPA, as an entity, had no stake in the outcome of the decision; however, the member cities did have a stake. Renewable resources generated 70 percent of the power that members consumed through NCPA. The process that led NCPA to make the decision to pursue the litigation was reasoned, sound, and based on the serious consideration of the issues involved.

Jeff Phipps, Independent Water Resource Management Consultant, said he began following the Trinity River in 1993 on behalf of NCPA. At that time, NCPA had a task force in place responsible for developing a restoration plan and implementation for restoration of the Trinity River and Basin. Prior to the ROD, NCPA contacted and wrote to the DOI expressing concerns about the direction of the ROD. There were indications of a collaborative and objective process with the DOI, but it never happened.

Mr. Calonne said the City could vicariously end up in litigation without any Council consideration in advance. It warranted significant attention by the Council as to the process.

Council Member Morton clarified because NCPA was involved in the litigation and Palo Alto was a member, the City, in effect, was committed to the litigation by association.

Mr. Calonne said that was correct. The Council was also being briefed on issues regarding litigation that had not been discussed before. It was an unusual situation for the Council to be in.

Council Member Morton asked for a synonym for vicarious.

Mr. Calonne said vicarious meant guilt by association. The Council has had no prior policy stance on the specific issue, and the City's involvement was strictly vicarious through NCPA.

Vice Mayor Mossar asked whether the discussion the Council was having that evening put them in jeopardy.

Mr. Calonne said he had no substantive legal review of the matter. The Council was operating on information received from NCPA with no review from the City Attorney's office.

Council Member Freeman asked whether comments made by the Council that evening could have an adverse affect in the City Attorney's office.

Mr. Calonne said that was not correct. He believed the Council's involvement in the Trinity litigation was similar to that of a shareholder being accountable for the actions of the corporation he or she owned a piece of. He was troubled by the idea that the Council would self-adjudicate the technical issues.

Council Member Lytle asked whether the Council could disassociate itself from the litigation without risk.

Mr. Calonne said the Council had already authorized the City's NCPA Commissioner to get involved appropriately. He did not believe the Council should disassociate itself, but there may be process concerns with respect to future NCPA litigation.

Council Member Lytle asked what the risk would be, if any.

Mr. Calonne said there was direct connection between the City action and the outcome of the lawsuit.

Council Member Lytle asked whether that meant there was no risk.

Mr. Calonne said that was correct.

Council Member Burch understood that NCPA filed the lawsuit on behalf of themselves and, by implication, all the cities that they represented.

Mr. Calonne said the process was known as disintermediation.

Council Member Kishimoto said she understood the City Attorney advised the Council that NCPA was already in litigation and Palo Alto had agreed to participate. She asked whether the Council could vote to direct the City's NCPA representative to express the City's intentions, whichever way it went.

Mr. Calonne said that was correct.

City Manager Benest said the Council needed to be careful about empowering its colleagues to take leadership roles and to represent the City.

Spreck Rosekrans, Senior Analyst of Environmental Defense, urged the Council to vote to direct Council Member Beecham, the NCPA Commissioner, to withdraw the City's support of the ongoing litigation. Palo Alto was fortunate to have a generous contract for low cost Federal hydropower. If the proposed plan went into effect, the City would spend approximately 8 percent and still retain 92 percent of the benefits.

Jared Tinklenberg, Director of the Stanford/Veterans Administration (VA) Alzheimer Research Center of California, 2841 Greer Road, outlined some of the health hazards derived after the diverted Trinity water was used to produce electricity. Much of the diverted water went to the Central Valley to irrigate desert land that naturally contained selenium and other toxins. Those toxins inevitably leaked into the runoff. Some of those toxins eventually leaked into the San Joaquin River and then into the Bay. The largest portion of Trinity water was used by Westlands Farm Corporations to produce cotton, which required large amounts of pesticides and herbicides. Pesticides also became airborne and added to the health hazards in Fresno and other downwind places. He urged the Council not to support the litigation and withdraw from it.

Jerome Yesavage, Governor, California Trout, 827 Santa Fe Avenue, Stanford, said Palo Alto decisions were seen as a model for what other municipalities should do. He encouraged the

Council to disassociate itself from the present episode of legal maneuvering.

Michael MacWilliams, P.O. Box 16057, Stanford, spoke on behalf of the Northern California Council of the Federation of Fly-Fishers and urged the Council to pass a resolution to remove the City of Palo Alto from the NCPA litigation. He said the litigation was an attempt to derail the process of restoring the Trinity River and take the focus away from the original issue, which stipulated no harm would come to the fishery.

Mondy Lariz, 2353 Venndale Avenue, San Jose, spoke on behalf of the Yurok Indian Tribe. The Yurok Tribe relied solely on the Klamath River and the fish for their subsistence. He agreed Palo Alto was a City with a vision and understanding of the environment and would set a terrible example to be involved with Westlands and the lawsuit. He urged the Council to disassociate itself from the litigation.

Michael Stanley-Jones, 725-C Blair Court, Sunnyvale, urged the Council to withdraw from the NCPA litigation.

Ann Hayden, Environmental Defense, spoke on behalf of Clifford Marshall from the Hoopa Valley Tribal Council and asked the Council to withdraw its support of the lawsuit, which has kept more water from flowing into the Trinity. The fish and the Trinity River had been a part of the Hoopa Indian culture for thousands of years.

Richard Izmirian, 2215 Eaton Avenue, San Carlos, spoke on behalf of the California Sport Fishing Protection Alliance and urged the Council to disassociate itself from the Westlands NCPA litigation.

Barry Nelson, National Resources Defense Council, 21 Stevenson Street, San Francisco, supported the restoration of the Trinity River. He said the power impacts of restoration amounted to approximately two-tenths of one-percent of the States total power usage. The State of California had saved about 100 times that amount in the past 20 years through conservation. He hoped that Palo Alto would think carefully about what would happen if the lawsuit were successful.

Michael McGuire, 505 W. Crescent Drive, urged the Council to get Palo Alto out of the NCPA litigation.

John Baca, 484 Oxford Avenue, said Palo Alto should act to effect a change in NCPA toward environmental responsibility for

the long-term benefits of everyone. Withdrawing from the lawsuit would be the strongest message to give the NCPA.

Herb Borock, P.O. Box 632, commented on a statement made by former Mayor Rosenbaum, who said he was not comfortable withdrawing from the lawsuit and trusted the Council would go along with the staff position. He said it had been 11 weeks since the matter was on the Council Agenda. It initially was placed on the agenda in such a way that the Council could not express their opinion. The matter then went back to the Council on September 23, 2002, and no vote was taken. He wanted to know if the Council Members would vote the same way they would have voted if they could have done so on August 5, 2002.

RECESS: 9:37 p.m. to 9:47 p.m.

Council Member Burch asked when the Council could expect to have the Judge's ruling.

Mr. Ulrich said staff did not know. He understood it was up to the Judge when the ruling would be made; however, he believed it to be within 60 days.

Council Member Burch said the expectation was that the Judge would either uphold the ROD or accept the suit that was filed.

Mr. Ulrich said he believed the Judge had the opportunity to make modifications or possibly come up with something different.

Council Member Burch asked whether the Judge's decision could be appealed.

Mr. Ulrich said yes. It could go to the Appeals Court.

Council Member Morton asked whether the NCPA litigation would continue regardless of what the Council decided that evening.

Mr. Calonne said NCPA had already acted to join the Westlands litigation. The City Council could ask the NCPA Commissioner to register its displeasure with the lawsuit; however, NCPA would need to take its own action to withdraw. Palo Alto alone could not effect a change in NCPA's stance. He did not believe it would be appropriate to attempt to influence the litigation outside the record through political channels.

Council Member Morton asked whether it was more appropriate to allow the Judge to render his decision and then have the Council express its support or objection.

Mr. Calonne said no. The City had an appointed NCPA Commissioner who operated under the rules established by the Council. It would be damaging to the City's participation at NCPA for the Council to circumvent the process on the present issue. He advised the Council to express themselves to their Commission, the City Manager, and the Director of Utilities on how to handle any future matters, as well as on the appeal decision.

Vice Mayor Mossar was under the impression the solution supported by NCPA was not a bulldozer solution. She recalled reading in the staff report (CMR:423:02) that the ROD had approximately 14 sites where bulldozers would be used, and asked for clarification on the issue.

Mr. Phipps said the ROD included a mechanical method the first year followed by flows to maintain it. Other alternatives suggested mechanical every year; however, NCPA had not taken that position.

Vice Mayor Mossar clarified the proposal from NCPA was not to use bulldozers.

Mr. Phipps said that was correct.

MOTION: Council Member Freeman, seconded by Lytle, that the City withdraw from the Northern California Power Agency's litigation against the Department of Interior (DOI) regarding the adequacy of the Record of Decision (ROD) on the method of Trinity River fisheries restoration. Further, that the City Attorney draft appropriate language, and direct Palo Alto's Commissioner to present the decision to all appropriate affected/interested parties reflecting Palo Alto's withdrawal.

Council Member Freeman said the proposal before the Council was a macro-level decision based on a high-level value tradeoff. The tradeoff was between the City's historically strong position for long-term sustainability of the environment and a short-term low-percentage position of hydro energy needs. The ROD described the negative environmental and cultural impacts of the present Trinity River situation. She referenced the 1981 Andrus Decision in the ROD which stated, "These rights are tribal assets which the Secretary, as trustee, has an obligation to manage for the benefit of the tribes. The Secretary may not abrogate these rights even if the benefit to a portion of the public from such an abrogation would be greater than the loss to the Indians." The Council, that evening, voted to increase the City's target investments for renewable energy technologies to 20 percent by the year 2015, which could reduce the City's dependency on the present form of energy. She believed whatever the Council

decided that evening would not affect the ongoing litigation and the ruling of the Judge. The message Palo Altans should send was that the protection of the environment was of paramount importance.

Council Member Lytle said although the Council had no obligation to accept the challenge of the Environmental Defense Fund or use the City's environmental ethics to audit its actions, it could elect to raise the bar for itself without causing damage to the ability to function with NCPA. She could not ignore and rectify the City's policy and history as leaders in environmental citizenship with its participation in the lawsuit. The present litigation had delayed a long overdue and necessary action to restore the Trinity River and Northern California mainstream fisheries, as well as reduce significant biological and cultural impacts caused by the hydroelectric power consortium.

SUBSTITUTE MOTION: Council Member Beecham, seconded by Morton, that Palo Alto's Commissioner to Northern California Power Agency (NCPA) receive direction from Council prior to taking any position at NCPA on any continuing NCPA participation in litigation following the Judge's decision on the current NCPA litigation. Furthermore, the Council expresses its full support for the restoration of the Trinity River.

Council Member Beecham said he believed NCPA's interest acknowledged the need to improve the Trinity River and its position did not prevent, prohibit, or delay that. The decree issued by the Judge in 2000 was felt by many to have resolved the issue. No one knew what the Judge's decision would be in the present litigation; however, one side or the other would most likely appeal it. The Council, at that time, could make decision on which way to proceed.

Council Member Morton said he was not of the opinion that waiting to hear the Judge's ruling somehow aligned Palo Alto with Westlands. Palo Alto was a community with a deep and sincere environmental ethic that could be fulfilled by staying the course.

Council Member Kishimoto asked whether the substitute motion was to replace the initial motion.

Council Member Beecham said yes.

Council Member Kishimoto said she would not support the substitute motion. As a publicly elected official, she represented an important part of the community that would gladly trade off the 3 percent of electricity supply for a substitution

of other renewable energy or conservation. She voted for a strong message to support the decision made by the DOI, and have that message brought to the NCPA with total respect.

Council Member Burch said he agreed with the comments made by Council Member Beecham and would support the substitute motion.

Council Member Freeman said the proposed litigation was about the environment, the City's responsibility to the Native Americans who lived there, and about the fish and their survival. She believed the way the vote went that evening would be indicative of her colleagues' stand on environmental sustainability.

Vice Mayor Mossar expressed her support for the substitute motion. She did not believe anyone's vote that evening was an indication of whether he or she was environmentally oriented or not. She consulted with the Bay Area Air Quality Management District (BAAQMD) about air quality impact for the different sources of energy generation and was informed that hydroelectric power, wind, and solar had no air quality impacts. She said there was an underlying issue of damming rivers. California had relied heavily on a system of dams over the past several years to provide power and water for its residents. She believed the substitute motion was appropriate for the Council to bring the matter back after the Judge's ruling, and then give instructions to the City's representative and staff on how to proceed.

Council Member Lytle said although she was opposed to the substitute motion, she appreciated the amount of progress the action had shown for Palo Alto in terms of environmental ethics.

SUBSTITUTE MOTION PASSED 4-3 Freeman, Kishimoto, Lytle "no," Kleinberg, Ojakian absent.

20. Report from the Director of Planning and Community Environment to the City Council to request a Massing Study for SoFA II

Item to be continued to the November 12, 2002, regular City Council meeting.

20A. (Old Item No. 7) Implement Utility Risk Management Support

Resolution 8223 entitled "Resolution of the Council of the City of Palo Alto Amending the Compensation Plan for Management and Confidential Personnel and Council Appointed Officers to Delete the Classification of Manager,

Competitive Assessment, and Add the Classification of Manager, Energy Risk"

Ordinance 4765 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2002-03 Adding 1.0 Full-Time Equivalent Manager, Energy Risk Position in the Administrative Services Department for the Utilities Risk Management Program and Dropping 1.0 Full-Time Equivalent Manager, Competitive Assessment in the Utilities Department"

Council Member Kishimoto said she had concerns about the second portion of the motion, which directed staff to simultaneously recruit in-house as well as from the private sector for contractual risk management services. She asked for clarification on that issue.

Director of Utilities John Ulrich said the position was specialized, and staff hoped they could recruit and find the right person. Staff also felt it was appropriate to find a service where the person would be available 24-hours a day, and could provide existing, continued, and improved service. There was not a bias to select one or the other for filling the position.

City Manager Frank Benest said he had a bias. His preference was to recruit from within. The backup plan would only be used if due diligence for an in-house employee was unsuccessful.

Council Member Kishimoto asked whether language to reflect that staff's first preference was to recruit from within could be incorporated into the motion.

Mr. Benest said yes.

MOTION: Council Member Kishimoto, seconded by Morton to adopt a Budget Amendment Ordinance and Resolution creating a Manager, Energy Risk position in the City's Table of Organization and Employee Classification System and direct staff to simultaneously pursue recruitment of a staff Manager Energy Risk and contractual risk management services with a strong preference of the City Council for an in-house staff employee.

Council Member Morton said it was possible staff would need to hire an outside contractor until an in-house staff person was found. He wanted the option to be available as an interim measure.

Council Member Freeman asked whether the "dollars" for the specialized person were already included or anticipated for in the budget.

Mr. Ulrich said the cost of whatever was needed would be paid by with utility budget funds.

Council Member Lytle said she understood staff was not increasing any Full-Time Equivalent (FTE) positions and there would be no increase to the budget.

Director of Administrative Services Carl Yeats said staff was not increasing General Fund costs.

Council Member Lytle asked whether more money was being put into employee salaries and benefits.

Mr. Yeats said he believed there was a slight increase because of the higher level of job skills and requirements defined by the Human Resources Department.

Council Member Lytle asked if there was a way to cut back salaries and benefits for employees to compensate for the additional cost of the higher skill level.

Mr. Yeats said there would not be any additional cost because of salary savings and different cost-saving measures in the Utilities Budget. The Utilities Department had vacant positions, and took an existing position and reclassified it.

Council Member Lytle said she understood from the previous Finance Committee meeting on the issue that staff would not be putting more money into salaries and benefits for employees.

Mr. Benest said the City would be well within the existing allocation for salaries and benefits for the Utilities Department, even with the minor increase.

Council Member Lytle said her intent was to hold the City accountable to a "no growth" on staff salaries and benefits in a strict accounting manner. She believed Palo Alto was under a great deal of criticism for growing its government extravagantly.

Council Member Burch said he did not believe the City was growing extravagantly. Whenever new staff was added it was on the basis they were revenue neutral or revenue producing. He was not opposed to adding personnel and their salaries if in turn they would bring more money in.

Council Member Beecham said he understood the City Manager's comments to be that for the total amount budgeted for the department, he would stay within that amount. He did not believe it was the Council's place to micro-manage individual salaries.

Council Member Morton said the Finance Committee did not attempt to tie staff's hands on the funding of the position.

Council Member Freeman said she believed Council Member Lytle's question had nothing to do with the pay for the new position. The question was focused on "holding the line" on the budget when the City was in a major recession and losing revenue.

MOTION PASSED 6-1, Lytle "no", Kleinberg, Ojakian absent.

20B. (Old Item No. 8) Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Management and Confidential Personnel and Council Appointed Officers and Rescinding Resolution Nos. 8096, 8117, 8165, 8181 and 8194

Council Member Freeman questioned the reimbursement of job related computer software/hardware, and home/office equipment in the amount of \$1,500 per fiscal year, per management employee, for use in their home. She also believed if new Council Appointed Officers, Assistant City Manager, and Department Heads wished to take advantage of the Direct City Loans program, for relocation assistance, it would be more beneficial if the property was located in Palo Alto. Persons who did not want to relocate to Palo Alto and take advantage of the City's loan program, may not be the ideal candidate for those positions.

MOTION: Council Member Freeman, seconded by Lytle, to change Item 2B on page 16 of the City Attorney's Report dated October 21, 2002 regarding Location of Property - to qualify for Direct City Loan, the home being purchased must be located within Palo Alto.

Council Member Burch said he suggested adding language stating if you lived in Palo Alto, the Direct City Loan would be five times the annual salary of the lende/employee. If you lived outside the City the Direct City Loan would be four times the annual salary.

Vice Mayor Mossar suggested a motion to refer the matter back to the Finance Committee for more discussion.

City Attorney Ariel Calonne said there was no urgent need for an action that evening and could be referred back to the Finance Committee.

City Manager Benest said it was proper for the Council to say they had a value preference that the City's executive employees should live in Palo Alto. However, the Council needed to recognize the financial decision that preference would carry.

MOTION RESTATED: Council Member Freeman, seconded by Lytle to refer Item 20B back to Finance Committee with direction to review the Management Benefit Program section and the Direct City Loan section.

Council Member Morton said the motion was an unnecessary intrusion into difficult decisions for City staff.

SUBSTITUTE MOTION: Council Member Morton, seconded by Burch to adopt the staff recommendation for the resolution as noted in the agenda.

Council Member Burch agreed with the comments made by Council Member Morton. He would be interested in a report from staff as to the total cost in the past year of reimbursing job-related computer equipment and software.

SUBSTITUTE MOTION FAILED 3-4, Burch, Morton, Mossar "yes," Kleinberg, Ojakian absent.

RESTATED MOTION PASSED 6-1, Morton "no", Kleinberg, Ojakian absent.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Lytle noted the City of Menlo Park would have a decision regarding the road widening and pathways C-1 proposal on November 12, 2002. Council was on record objecting to the trail alignment. The County asked Stanford to do an EIR for the alternative to the proposed trail alignment. City Attorney Ariel Calonne was looking into preparing a letter to send to Menlo Park and wondered whether the Council should agendaize the issue for discussion.

City Attorney Ariel Calonne noted he would be meeting with the City Attorney in Menlo Park the next week.

City Manager Frank Benest noted a special Council meeting would have to be scheduled.

Mr. Calonne suggested he report to the Council by the end of the next week.

Council Member Freeman thanked City Manager Frank Benest and Director of Planning and Community Environment Steve Emslie for taking action on the San Jose cultural event posters on the City's utility poles and the complaint from a citizen on sandwich board signs.

MOTION: Council Member Freeman moved the City Council reconvene the committee that reviewed the Palo Alto single-family individual review guidelines to look at the 81 approvals that have gone through so far to see if there are areas requiring updating, especially regarding privacy (Guideline No. 1) and solar orientation/shadowing (Guideline No. 6).

MOTION DIED FOR LACK OF A SECOND

Council Member Lytle thanked staff for the report in the packet on the Electric Public Benefits program and tree planting that yielded a Shade Tree program.

CLOSED SESSION

The meeting adjourned to a Closed Session at 11:00 p.m.

21. Conference with City Attorney - Existing Litigation
Subject: Edna Schreyer v. City of Palo Alto; SCC#CV802683
Authority: Government Code Section 54956.9(a)

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item No. 21.

Mayor Ojakian announced that no reportable action was taken on Agenda Item No. 21.

FINAL ADJOURNMENT: The meeting adjourned at 11:10 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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