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June 2, 2003

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<u>ADJOURNMENT</u> : The meeting adjourned at 10:47 p.m. in memory of Barbara Violante who had passed away. A Palo Alto resident, she was a nurse and an active volunteer at Castilleja School, Palo Alto public schools, and Girl Scouts. Her daughter, Christina, is part of the Girl Scout Troup 784. ....	96

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 5:50 p.m.

PRESENT: Beecham, Burch, Freeman (arrived at 6:05 p.m.), Kishimoto, Kleinberg (arrived at 6:00 p.m.), Lytle (arrived at 6:25 p.m.), Morton (arrived at 6:00 p.m.), Mossar, Ojakian

SPECIAL MEETING

1. Joint Meeting with the Architectural Review Board

**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 6:55 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

SPECIAL MEETING

1. Annual Report to Council from the Palo Alto Airport Joint Community Relations Committee

**No action required.**

ADJOURNMENT The meeting adjourned at 7:05 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:06 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

**MOTION:** Council Member Morton moved, seconded by Burch, to approve the City Attorney's request for continuance of City Clerk's Report on Sufficiency of Initiative Petitions Regarding Establishing Conditions for Flouridating Palo Alto Public Drinking Water; Immediate Cessation.

**MOTION PASSED 9-0.**

ORAL COMMUNICATIONS

Jacquie Knott, 3419 Alma Street, spoke regarding Alma Plaza.

Elaine Meyer, 609 Kingsley Avenue, spoke regarding the SOFA Working Group.

Ed Power, 2854 Dartmouth Street, spoke regarding conduct of the City Council.

SPECIAL ORDERS OF THE DAY

1. Selection of Candidates to be Interviewed for the Utilities Advisory Committee

Mayor Mossar noted an action was taken in June 1999 that stated when more than 12 applications were received for a Board or Commission, the City Council could appoint a screening committee. She suggested that Council Member Freeman Chair the Committee. She announced that Vice Mayor Beecham and Council Member Kishimoto would also serve on the Committee.

APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Lytle, to approve the minutes of March 17, 2003, as corrected, and April 14, 2003, as submitted.

**MOTION PASSED 9-0.**

CONSENT CALENDAR

06/02/03

Council Member Lytle registered a "no" vote on Item No. 2.

Council Member Kleinberg stated she would not participate in Item Nos. 2 and 4 due to a potential conflict of interest because her husband's former law firm represented Stanford in land use matters.

Mayor Mossar stated she would not participate in Item Nos. 2 and 4 due to a conflict of interest because her husband was employed by Stanford University.

Council Member Freeman registered a "no" vote on Item Nos. 2 and 3.

Ed Power, 2254 Dartmouth Street, spoke regarding Item No. 7. He said he did not see why the Iraqi people should have fewer civil rights than the people of the United States. He disagreed with the invasion of Iraq.

Wayne Martin, 3687 Bryant Street, spoke regarding Item No. 7. He said he did not believe the Patriot Act would be used to harass the good, honest people in Palo Alto, but there was clear evidence that the local authorities used actions to abuse visitors and residents.

Robert Moss, 4010 Orme Street, spoke regarding Item No. 8. He said he was in favor of anti-discrimination but was against the inclusion of "weight" designation in the ordinance. Obesity was a serious problem in the country.

Ed Glazier, 255 Everett Street, spoke regarding Item No. 8. He discussed issues with the Boy Scouts of America regarding its discriminatory policies.

Council Member Kishimoto requested Item No. 4 be removed.

Mayor Mossar announced that Item No. 4 would become Item No. 12A.

**MOTION:** Council Member Morton, seconded by Burch, to approve Consent Calendar Item Nos. 2A, 3, and 5-8.

#### LEGISLATIVE



2. Approval of a Budget Amendment Ordinance for the Seismic Retrofit of the Sand Hill Road Bridge (Capital Improvement Program Project 10018) in the Amount of \$2,494 to Accept and Expend State Grant Funding and Authorization for the City Manager to Approve and Manage the Program Supplement to the Master Agreement between the State of California and the City of Palo Alto

~~Ordinance of the Council of the City of Palo Alto Amending the Budget for Fiscal Year 2002-03 to Provide an Additional Appropriation of~~  
06/02/03 96-78

~~\$2,494 for State Bridge Seismic Retrofit Grant Funding for the Sand Hill Road Bridge CIP 10018~~

- 2A. Resolution 8295 entitled "Resolution of the Council of the City of Palo Alto Supporting and Endorsing the Midpeninsula Regional Open Space District's Proposed Extension of its Boundaries to the San Mateo County Coast to Preserve Open Space and Agricultural Lands"

#### ADMINISTRATIVE

3. Contracts Between the City of Palo Alto and Carter Israel Advertising and Public Relations, Inc., Carl and Manor Advertising, a General Partnership, and Fineline Graphics and Design, Inc., in the Amount of \$540,000 for Three Years for Utility Department Customer Program and Service Marketing
- ~~4. Planning and Transportation Commission Review and Comment on the Proposed Santa Clara County Text for the Stanford Open Space/Field Research (OS/F) Zoning District to Implement the 2000 Stanford Community Plan~~
5. Contract Between the City of Palo Alto and Musson Theatrical in the Amount of \$194,548 for Lighting System and Installation at the Palo Alto Children's Theater
6. Contract Between the City of Palo Alto and McCain Traffic Supply, Inc. in the \$1,524,662 for Implementation of an Advanced Transportation Management System
7. Human Relations Commission Recommendation to the City Council to Adopt a Resolution IN RESPONSE TO THE U.S.A. PATRIOT ACT, to Protect Civil Liberties in Palo Alto

#### COUNCIL COMMITTEE RECOMMENDATION

8. The Policy and Services Committee recommends to the City Council inclusion of a weight and height designation in Palo Alto's Anti-Discrimination Ordinance

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Adding Chapter 9.73 to Title 9 [Public Peace, Morals and Safety] To Establish City Policy Against Arbitrary Discrimination"

**MOTION PASSED** 9-0 for Item Nos. 2A and 5-8.

**MOTION FAILED** 2-5 for Item No. 2, Beecham, Burch, Kishimoto, Morton, Ojakian “yes,” Kleinberg, Mossar “not participating.”

**MOTION PASSED** 8-1 for Item No. 3, Freeman “no.”

Council Member Ojakian noted that Item No. 2, which was a Budget Amendment Ordinance requirement, failed to carry with six votes.

Council Member Beecham asked that Item No. 2 be reconsidered or continued in order to allow for further discussion.

Mr. Calonne suggested the Council take the motion to reconsider and then decide whether to discuss the item or continue it to another meeting.

**MOTION TO RECONSIDER:** Council Member Lytle moved, seconded by Ojakian, to reconsider Item No. 2.

**MOTION TO RECONSIDER PASSED** 7-0, Kleinberg, Mossar “not participating.”

Council Member Lytle suggested the item be continued to another meeting.

Mayor Mossar announced that Item No. 2 would return on another City Council agenda for reconsideration.

#### PUBLIC HEARINGS

9. Public Hearing: The City Council will consider proposed revisions to the Zoning Regulations, Title 18 of the Palo Alto Municipal Code, to allow accessory dwelling units as permitted use, rather than a conditional use, in the Residential Estate (RE), Single Family (R-1), and Open Space (OS) Districts; and to amend the Architectural Review Board Review for accessory dwelling units in the Neighborhood Preservation Combining (NP) District

Director of Planning and Community Environment Steve Emslie reported that Assembly Bill (AB) 1866 was passed into law in September 2002, which mandated that cities permit, by right, second units in single-family neighborhoods. Palo Alto had a second unit ordinance for some time and had developed standards that were currently in place. The major change in the ordinance was the change in process from a discretionary use permit to an entitled permit. The major standard change was that the smaller, attached units were allowed with one uncovered parking space. The Zoning Code Update would include a review of all the standards.



Planning Manager John Lusardi said the proposal was to amend the Zoning Code to eliminate the discretionary review and the public hearing for second units, to be replaced by a ministerial review. The ordinance was in compliance with AB 1866. The ordinance would not change the existing development standards for detached units, such as minimum lot sizes, maximum unit sizes, floor area, and setback requirements. The ordinance did not apply to illegal units that currently existed within the City. For second story units, the individual review process remained. The review process that dealt with guidelines such as neighborhood compatibility, streetscape, and privacy would be reviewed; however, the individual review process could not be applied to the use. The ministerial review of second units would change in estate residential, single family, and open space districts. Conditional use permits were changed to permitted uses. Attached second units in the same zoning districts were allowed. The ordinance was recommended for adoption and would assure that the City policy regarding second units reflected State policy and that the requirements of AB 1866 were met, while preserving neighborhood character and the single-family nature of the City.

Mayor Mossar declared the Public Hearing open and, hearing no requests to speak, declared the Public Hearing closed at 7:45 p.m.

Council Member Morton asked why State Law required the City to include open space. Many people in open space areas did not desire second units.

Mr. Lusardi said second units were currently allowed in the open space district. The review was changed from discretionary to ministerial.

Council Member Kishimoto expressed concern about the issue of allowing second stories above garages by right.

Mr. Lusardi said the ordinance removed the requirement for a conditional use permit or the Zoning Administrator making findings with regard to a unit over a garage. The individual review guidelines were applied, which essentially protected the issues of privacy and compatibility.

Council Member Kishimoto asked whether the City was required to allow second stories above garages or allowed to decide that, until the Zoning Ordinance Update was finished, second stories above garages were not allowed by right.

City Attorney Ariel Calonne responded the legislation did not compel second units over garages but forbid public hearings or discretionary review on the propriety of a second unit.

**MOTION:** Council Member Kishimoto moved, seconded by Lytle, to approve the Planning and Transportation Commission recommendation to adopt the ordinance (Attachment A of CMR:289:03) amending the RE, R-1, and OS district regulations to allow accessory dwelling units as a permitted use, rather than as a conditional use, and to amend the review by the Architectural Review Board for accessory dwelling units in the NP combining district, with direction to staff to revise the ordinance to remove the second-story over detached garages by right.

Mayor Mossar asked the City Attorney whether the motion was correct.

Mr. Calonne said his question was whether or not the motion needed to be referred back to the Planning and Transportation Commission (P&TC).

Senior Assistant City Attorney Wynn Furth said the issue was discussed by the P&TC.

Mr. Calonne suggested directing staff to bring back revised language.

Mayor Mossar clarified the motion was direction to staff to revise the ordinance to remove the second story over garages by right.

Mr. Calonne said the wording was understandable enough for staff to draft the changes.

Council Member Lytle said the revision to the cottage ordinance that allowed second units over garages was the result of the fact the City found there many parts of the community where second units over garages were traditional, typical, and fit in well. Action needed to be delayed until the cottage ordinance returned to the Council.

Council Member Kleinberg understood the accessory units over a garage were subject to the same departmental review that all second stories in single-family residences were subject to.

Mr. Lusardi said units over garages were subject to the current development standards and individual review process, which were the same standards as a second story addition to a main structure.

Council Member Kleinberg said one of the challenges with providing enough affordable housing in the community without densely inhabiting certain areas was to allow certain types of developments throughout the City. Certain types of properties did not allow accessory units.

Mr. Lusardi said development standards, such as minimum lot size, would address or limit the ability of putting in a second unit in many circumstances.

Council Member Freeman asked whether the standards were in effect for units over a garage.

Mr. Lusardi said yes.

Council Member Freeman clarified there would be a floor area ratio (FAR) issue.

Mr. Lusardi replied that the lot size determined whether a second unit would be added.

Council Member Burch asked whether second units were allowed over garages in the ten units built at the corner of Channing Avenue and Waverly Street. He recalled second units were allowed with the recommendation that they had separate metering for utilities.

Mr. Lusardi said that was correct. Entrance, utility hook ups, and parking needed to be provided.

**SUBSTITUTE MOTION:** Council Member Burch moved, seconded by Kleinberg, to approve the Planning and Transportation Commission recommendation to adopt the ordinance (Attachment A of CMR:289:03) amending the RE, R-1, and OS district regulations to allow accessory dwelling units as a permitted use, rather than as a conditional use, and to amend the review by the Architectural Review Board for accessory dwelling units in the NP combining district.

Ordinance 1<sup>st</sup> Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Title 18 [Zoning] of the Palo Alto Municipal Code to Amend Chapters 18.10 [Residential Estate District Regulations], 18.12 [Single-Family Residence District Regulations], 18.30 [Neighborhood Preservation Combining District Regulations] and 18.71 [Open Space District Regulations] Pertaining to Second Dwelling Units"

Council Member Morton supported the motion and said staff made it clear the review process for garage units was as strict as ever.

Council Member Ojakian said there would be an opportunity to further discuss second units through the Zoning Ordinance Update.

Mr. Calonne said staff spent considerable time trying to make sense of the legislation and tried to make recommendations that let the Council implement the law without overdoing the restrictive aspects of it. Staff would defend the Council's prerogative to have as much control as possible.

**AMENDMENT TO SUBSTITUTE MOTION:** Council Member Lytle moved, seconded by Kleinberg, to eliminate from the legislation all references to architectural compatibility under all four Code sections where applicable to attached second dwelling units.

Council Member Lytle said if the unit were inside the main residence, the main residence would be compatible with itself.

Council Member Burch said he did not understand the phrase "inside" the building.

Chief Planning Official Lisa Grote said the language was intended to address the case where an attached second unit could be added to an existing house. Suggested wording was "for attached second units that are new construction or for newly constructed attached second units, they must be architecturally compatible."

Council Member Morton did not support the amendment.

Vice Mayor Beecham asked whether there was the same condition for construction in the case where a bedroom or second room was added.

Ms. Grote said the condition applied on the second floor as part of individual review if the size was over 150 square feet.

Vice Mayor Beecham clarified attached units were handled differently than when someone attached a structure for a different use.

Ms. Grote said staff expected the same materials would be used for an addition to an existing single-family house.

Ms. Furth said when the State removed the cities' power to either require a public hearing or do a conditional use permit for a second unit, the State added language that the City could have architectural review. Confusion resulted because ministerial architectural review was an oxymoron. Many cities in the State decided to write straightforward, staff administered, architectural compatibility standards.

Mayor Mossar clarified the motion was about attached second units, but Council Member Lytle talked about interior units. Staff talked about second units that were appended to the existing structure.

Council Member Lytle said a unit was only allowed within what was an allowed addition to a home. The addition was an interior part of the future home.

Mayor Mossar clarified Council Member Lytle's intention was to use the same set of rules that were used for adding a family room to a house.

Council Member Lytle responded she meant architectural review.

Council Member Kleinberg said she was amazed at the interest of lawmakers who were policy makers to make design decisions. She envisioned a building made of wood with a brick appendage that was a very common architectural style. What was suggested by Council Member Lytle would not allow that. The City had regular guidelines used by residents who wanted to add on to their homes.

**AMENDMENT TO SUBSTITUTE MOTION PASSED** 7-2, Burch, Morton "no."

Council Member Lytle said her intent in seconding the original motion was to explain there were some areas in the community where second-story second units were not appropriate. First-story second units were permitted on lots of sufficient size.

**AMENDMENT TO SUBSTITUTE MOTION:** Council Member Lytle moved, seconded by Kishimoto, to prohibit second-story second units over detached garages provisions in the ordinance until future deliberation.

Council Member Kishimoto said she was not against second units over garages but felt there might be some sections in the City where second units over garages were not appropriate and were allowed by right.

Vice Mayor Beecham said the staff report (CMR:289:03) mentioned the City handled an average of five units per years, which did not add much to the housing stock and would not affect affordable housing. One or two cases of second stories over garages every other year might create problems. Taking care with second stories over garages was reasonable.

Council Member Freeman asked for a clarification of "ministerial" versus "otherwise review."

Mr. Lusardi explained that "ministerial" review was essentially the same as a building permit. Discretionary review allowed a decision to be made to approve or disapprove a project or have a hearing.

Council Member Freeman asked about the process for a neighbor who was dissatisfied with a second-story addition.

Mr. Lusardi responded there was no appeal process.

Council Member Lytle disagreed with the affect the ordinance had on production of second units in the community. Attached units were long in demand in the community and were not permitted. The City would see an enormous number of second units as a result of the ministerial action.

**AMENDMENT TO SUBSTITUTE MOTION PASSED** 5-4, Burch, Morton, Mossar, Ojakian "no."

Council Member Kleinberg queried the rationale for requiring an additional parking space.

Mr. Lusardi said there was a standard in the existing ordinance that applied to an attached unit. The overall intent was to insure there would not be spill over parking on the street. Parking requirements for second units needed to be explored further.

Council Member Kleinberg said there was a consistent fear that adding another unit to an existing single-family residence would result in too many cars in the neighborhood.

Mr. Lusardi said staff would look at the issue.

**SUBSTITUTE MOTION AS AMENDED** 9-0.

#### REPORTS OF OFFICIALS

10. Request for Council Direction to NCPA Commissioner Regarding Trinity River

Director of Utilities John Ulrich said the prior month the Council requested staff return the item to the Council because the Northern California Power Agency (NCPA) participated in litigation with other agencies regarding the flow of water in the fishery in the Trinity River. The Trinity River was an important asset to many people, was a way of life for residents in the area, and had a flow regime that provided for irrigation water uses in other parts of California. Palo Alto had a contract with Central Valley Power (CVP) for the

prior 40 years. During that time, Palo Alto and other cities enjoyed the cost and benefits of hydro-generation. The contract would change in approximately 18 months where the City would be dependent on the hydro as a major source of power. Efforts to look at the proper flows of water down the Trinity River were a form of dispute and concern for many people for several years, which went to the courts to settle. In December 2000, the Department of Interior released a Record of Decision (ROD), which the Westlands Water District, Sacramento Municipal Utility District (SMUD), and NCPA felt did not take into account the full impact of water flows on the River. Litigation was initiated after efforts to try to mediate what the flows would be. The City received the decision in December 2002, where the majority of the plaintiff's motions were granted. The Council needed to look at the pros and cons of "staying the course." The pros were that it fully supported the Trinity River fishery restoration. The cons were that negative attention of environmental and Native American groups were attracted. Staff recommended the Council support the NCPA in its efforts to restore the Trinity River Fisheries (TRF).

Spreck Rosekrans, Environmental Defense, 5655 College Avenue, Oakland, submitted materials from Hoopa Tribe residents unable to attend the meeting and a report from the United States Geological Survey (USGS) that did screening analysis of the SMUD alternative. The ROD was a good alternative. An unsympathetic court found some limited legal problems. The SMUD alternative was looked at and screened out by independent review by the USGS. There were two views at the Department of the Interior. Some people liked the plan and wanted to restore the River and others did not care about the environmental operations. Continuing to oppose the plan gave the enemies of the River the means to obstruct the plan.

Michael MacWilliams, Northern California Council of the Federation of Flyfishers, P.O. Box 16057, Stanford, said members were concerned with the future of the Trinity River. Since the construction of the Trinity River Division of the Central Valley Project (CVP) Project, as much as 90 percent of the Trinity River's water was diverted and had a dramatic impact on the health of the Trinity River and its fisheries. There was evidence the approach advocated by the ROD was a viable solution for restoring the Trinity River. The flow schedule recommended by the ROD was based on more than 20 years of scientific study and was designed to restore the important geomorphic processes necessary to maintain the channel and to provide adequate habitat. The SMUD alternative advocated by the NCPA lawsuit did not achieve those objectives. According to the USGS, the SMUD proposal failed to demonstrate any serious flaws in the ROD. The USGS found that SMUD's analysis was severely flawed in many respects. Fish and rivers needed water. The facts needed to be recognized to give the Trinity River

the water it needed. The Council was asked to take a strong stand on the issue by voting to withdraw from the NCPA lawsuit.

Reid Bryson, Institute for Fisheries Resources, P.O. Box 29196, San Francisco said the Trinity River was vitally important to the men and women who depended on salmon for their livelihood. Regulations that limited the number of fish allowed were adopted on a Federal level based on actual conditions, populations of fish, and rivers. Since the 1960's, approximately 10 percent of normal flows were allowed down the River, which had an impact on the fish in the river. Members of the Institute for Fisheries Resources were supportive of the ROD, which would have returned the flows down the River to 48 percent of normal.

Peter Drukmeier for Michael Stanley-Jones, 725-C Blair Court, Sunnyvale, said the Loma Prieta Chapter of the Sierra Club supported restoration of the Trinity River and encouraged the City of Palo Alto to withdraw from the lawsuit.

Tod Bedrosian, 835 Klein Way, Sacramento, asked the Council to not accept the recommendation of staff, to withdraw from the Supplemental Environment Impact Study (SEIS) process, and to encourage the NCPA to withdraw their support from the litigation. SMUD withdrew from the litigation because it went against the recommendations of their staff. The Hoopa Indian tribes lived on the shores of the Trinity River for 10,000 years and did not have another reservation to move to. The fish did not have another river to swim in.

Jared Tinklenberg, 2841 Greer Road, urged the Council to vote for withdrawing from the litigation that would continue the diversion of the Trinity River water.

Utilities Advisory Commission Dexter Dawes, 350 Santa Rita, said the Utilities Advisory Commission (UAC) heard extensive views on the subject during the prior year. The UAC voted unanimously to urge the City of Palo Alto to support NCPA. The Judge heard arguments from the various environmental groups, and his conclusion was that the impacts on the Sacramento River area were not fully studied. The objective of the SEIS was for additional knowledge on the environmental impacts of the Sacramento River flows on the Trinity side and the Sacramento side.

Ryan Wiegel, 2282 #B Amhurst Street, said solar was the way to go. SMUD did not do its job in Sacramento.



Mayor Mossar asked what impact there was if Palo Alto withdrew its support from the lawsuit, given the fact that a Judge ruled that the SEIS had to be completed.

Mr. Ulrich said Palo Alto, as a member of NCPA, was part of the litigation, which allowed Palo Alto to review what people had to say. The legal process was that everyone had an opportunity to tell the judge what was on his or her mind.

Mayor Mossar clarified the process would proceed regardless of action taken by the Council.

Mr. Ulrich said that was his opinion.

City Attorney Ariel Calonne said there should not be legal deference with the appeals filed.

**MOTION:** Council Member Freeman moved, seconded by Lytle, to direct the City of Palo Alto's Northern California Power Agency (NCPA) representative to immediately withdraw Palo Alto from the NCPA Trinity River litigation.

Council Member Freeman said evaluating fish as renewable resources was crucial. Fish species could be lost. Salmon lived in the ocean and rivers and spawned in rivers. Smelling instincts allowed fish to return to the exact location for spawning. The ROD contained scientific information and evidence of what was happening in the Trinity River. The City found itself in a situation of political, environmental, and legal battle. The NCPA could function without Palo Alto's dollars. Palo Alto had the opportunity to send a clear statement to the NCPA that Palo Alto wanted to restore the Trinity River.

Council Member Lytle said the City had a chance to pull back a decision that proved to be one that was not environmentally sound on a statewide and regional basis. The City had an obligation to take the opportunity and lead the way to restore the Trinity River.

Council Member Morton said the SEIS had to take into consideration what was done to the watersheds.

**SUBSTITUTE MOTION:** Council Member Morton moved, seconded by Mossar, to approve the staff recommendation to support the Northern California Power Agency (NCPA) in its efforts to restore the Trinity River Fisheries (TRF).

Mayor Mossar said she was not convinced that Palo Alto's withdrawing was anything but ceremonial. The Trinity watershed was in trouble. A decision for the City to withdraw needed to be clear that it was based on a set of environmental principles that had economic impact on the citizens. The City must explore alternatives that removed reliance on sources of energy that caused problems for fish and people.

Council Member Burch asked about the effect of the motion to withdraw.

Mr. Calonne said Vice Mayor Beecham would communicate the Council's action to NCPA. He did not know what budgetary effect the withdrawal had on the litigation.

Mr. Ulrich said members of NCPA shared costs according to various formulas, depending on the situation. If Vice Mayor Beecham said the City did not want to participate, another member of NCPA could take over the share of costs, if the majority of members wanted to continue with litigation. There was no impact on the outcome of what NCPA did going forward.

Council Member Burch clarified the decision did not effect whatever share of the energy the City received. The activity of withdrawing did not change the City's involvement in NCPA.

Mr. Ulrich said that was correct. The contract with the Western Area Power Administration (WAPA) would not be impacted.

Council Member Morton asked whether Palo Alto was liable for its share of the costs if the City chose to withdraw.

Mr. Calonne said the lawsuit was still pending. If the Council were to withdraw, the City would make the argument that as to costs yet to be incurred, Palo Alto should not be assessed.

Council Member Ojakian said Palo Alto was one of 15 members in NCPA and asked whether there was any indication of what the other members would do. The City of Santa Clara voted to continue in the initial stage with the litigation.

Mr. Ulrich said his assessment was that the other members were committed to the course of action that Palo Alto was embarking on.

Council Member Ojakian asked whether members from NCPA gave any indication if other members might think about dropping out.

Vice Mayor Beecham said none of his NCPA colleagues indicated they would be on the verge of doing the same type of action.

Council Member Morton clarified the City was liable for costs incurred, and the City could not unilaterally make the decision to give notice the City did not wish to be liable for future costs.

Mr. Calonne said the City would make the argument for costs not yet incurred.

Council Member Kishimoto understood Palo Alto could decide whether it wanted to spend money and participate in various parts of NCPA.

Mr. Ulrich said the City had input into the budget and could make decisions on spending money.

Council Member Kishimoto asked how the voting was weighted.

Vice Mayor Beecham said on most general issues, the vote was simple majority. Certain projects required a roll call for those who participated in the project. There was a procedure where there was voting according to how much one participated in a project.

Mayor Mossar questioned the status relative to the claim on power generation if the City withdrew from the lawsuit.

Mr. Ulrich did not believe there was any impact.

Mayor Mossar said if the City withdrew from the lawsuit, the City would have no rights of input or participation in the ultimate decision.

Mr. Ulrich said that was correct. The City paid to be a member of the process that had an opportunity to voice an opinion and work with the other team members towards an appropriate solution.

Mayor Mossar said NCPA was a sophisticated, complex organization. She understood the cohesion of the group and asked whether the City's action to withdraw from NCPA's decision on the matter would be potentially problematic.

Mr. Ulrich said he attended meetings and noticed that decisions that were made were looked at as in the best interest of the entire NCPA, as opposed to one member voting in his/her best interest.

Council Member Freeman said the Council was voicing a large opinion. The need was insignificant at a jurisdictional level compared to the environmental damage seen on both ends of the dam. Decisions people made as a body did not have to be unilateral for the body to work.

Council Member Kleinberg clarified the original motion was to direct the City's representative to tell NCPA that it was no longer involved in litigation. She questioned whether it was stronger for the Council to take a vote on whether the Council wanted to withdraw from the litigation. The question was asked how supporting the SEIS activity fully supported restoration.

Mr. Ulrich said there were points in the material presented to the Council that pointed to the opposite end of the spectrum; for example, on how the fisheries should be restored. Many people believed the fisheries could be improved. Staff's belief was that following the SEIS there was an opportunity for everyone to provide input.

Council Member Kleinberg clarified the City was given an opportunity, within the SEIS process, to support full restoration.

Mr. Ulrich said that was correct.

Council Member Kleinberg said the danger of coming down on the side of withdrawal from litigation was that the City was not thinking clearly about the objectives of both sides. Some of the advantages listed in the staff report (CMR:304:03) in support of the SEIS were of interest. The financial impact to Palo Alto citizens was reduced and supply reliability was increased. Being consistent in principles was important. Palo Alto had a great heritage of being environmentally sensitive and courageous. To potentially pay more was a tough call. Palo Alto could live better with its conscience and reputation as a community by withdrawing from the litigation and the SEIS. The Federal government did studies and came down on the side of Trinity River restoration, and that should be honored.

Council Member Burch supported withdrawing from the lawsuit.

Council Member Kishimoto noted the Council's decision was based on values, constituents, and new information from USGS.

Council Member Morton said Palo Alto was known for its commitment to the environment, which was the main reason he supported staying in the litigation.

Council Member Ojakian said getting out of the lawsuit was a mistake because the lawsuit would go on and Palo Alto would not be a participant. Palo Alto had to live with the results of the lawsuit.

Vice Mayor Beecham said NCPA got into the issue when the issue went through the Department of Interior, and NCPA raised questions as to how proposals affected power generation. He read from the Judge's decision on the issue in order to give a history of what happened.

**SUBSTITUTE MOTION FAILED** 4-5, Beecham, Morton, Mossar, Ojakian "yes."

**MOTION RESTATED:** Council Member Freeman moved, seconded by Lytle, that Palo Alto affirms its support of the Trinity River Restoration Plan and the December 2000 Record of Decision (ROD) by withdrawing from the Northern California Power Agency (NCPA) litigation and Supplemental Environmental Impact Study (SEIS) activities.

**MOTION AS AMENDED PASSED** 5-4, Beecham, Morton, Mossar, Ojakian "no."

11. City Clerk's Report on Sufficiency of Initiative Petitions Regarding Establishing Conditions for Fluoridating Palo Alto Public Drinking Water; Immediate Cessation

**Item continued to a date uncertain.**

#### COUNCIL MATTERS

12. Colleagues Memo from Mayor Mossar and Council Member Burch regarding Request to Agendize an Additional Architectural Review Board (ARB) Standard of Review to Include Sustainability and Green Building Design

Cedric de LaBeaujardiere, 3153 Stelling Drive, asked when the Council agendized the item, that Council make a motion to recommend staff consider applying the sustainability design review standards to residential buildings as well as commercial buildings. Unsustainable construction would cost the City more, such as increased costs to provide electricity, gas, water, and to treat sewage.

**MOTION:** Mayor Mossar moved, seconded by Burch, to direct staff to complete their report and make recommendations to the City Council for discussion and possible action in regard to the Architectural Review Board

(ARB) request for changes to the ARB standard of review to include sustainability and green building design.

**MOTION PASSED 9-0.**

RECESS: 10:05 P.M. TO 10:15 P.M.

12A. (Old Item No. 4) Planning and Transportation Commission Review and Comment on the Proposed Santa Clara County Text for the Stanford Open Space/Field Research (OS/F) Zoning District to Implement the 2000 Stanford Community Plan

Council Member Kleinberg stated she would not participate in the item due to a potential conflict of interest because her husband's former law firm represented Stanford in land use matters.

Mayor Mossar stated she would not participate in the item due to a conflict of interest because her husband was employed by Stanford University.

Planning Manager Julie Caporgno said the item was a referral from Santa Clara County (SCC) requesting the City Council recommendation to the SCC Board of Supervisors regarding the proposed Open Space/Field Research (OS/F) Zoning District Text. The text was intended to implement the Stanford University Community Plan adopted by the Board of Supervisors in September 2000. The Board of Supervisors was scheduled to take action on the Zoning District text the following day. The Zoning District text was reviewed and commented on by the Planning and Transportation Commission (P&TC) at several meetings during the prior year. The Council sent letters to the Board of Supervisors regarding the proposed text. As a result of comments received on the text, numerous revisions were made that addressed many of the concerns raised by the City in previous letters. The P&TC recommended support of the text with the following additions: (1) protect trail view shed when Stanford Trails are established; (2) regulate fencing in the District to protect wildlife; and (3) notify the District 5 representatives when the SCC Architectural and Site Approval (ASA) Committee considered open space field research projects. Staff recommended the Council emphasize the importance of protecting view sheds in areas at lower elevations such as undeveloped areas along Foothill Expressway.

Nonette Hanco, 3172 Emerson Street, said any project proposed for the intersection in the southwest area should be required to go to the County Planning Commission. Otherwise, the project went to the ASA who was supposed to notify the public of meetings. The notification did not always happen.

John Baca, 484 Oxford Street, said there were loopholes in the OS/F zoning, and some projects were able to go through the approval process without any public review. Bringing the item to the Board of Supervisors was appropriate, and asking the Board to look at appropriate language to include the public in the approval process.

Herb Borock, P.O. Box 632, the staff report (CMR:298:03) included a draft letter to be signed by the Mayor. The letter should be signed by the Vice Mayor because the Mayor was conflicted on the issue.

Council Member Kishimoto suggested changes to the staff report (CMR:298:03) 1) change No. 3, after "Notifying the District 5 representative," add " Palo Alto Planning Director and interested distribution list"; 2) change No. 4 to "along Foothill Expressway, add "and Page Mill Road are protected and any project in this undeveloped area are reviewed by the County Planning Commission;" and 3) add No. 5, "Ensure public review (or CEQA review) of projects requiring significant grading or excavation affecting natural habitat land in OS/F zoning.

**MOTION:** Council Member Kishimoto moved, seconded by Ojakian, to accept staff and Planning and Transportation Commission (P&TC) recommendation that the City Council recommend to the Santa Clara County (SCC) Board of Supervisors adoption of the proposed Open Space/Field Research (OS/F) Zoning District text with the following comments regarding its application:

- Protecting trail viewshed within the OS/F district when the Stanford C-1 and S-1 trails are established.
- Regulating fencing in the OS/F district to minimize impacts to wildlife migration while respecting the needs of agricultural leaseholders and acknowledging Stanford's need to protect research equipment.
- Notifying the District 5 representative on the County Planning Commission, the Palo Alto Planning Director and the interested party distribution list when the Santa Clara County Architectural and Site Approval Committee (ASA) considers OS/F district.
- Protecting viewsheds in areas at lower elevations such as, undeveloped areas along Foothill Expressway and Page Mill Road and requiring review by the SCC Planning Commission for any projects in this area.
- Ensuring CEQA review of all projects requiring significant grading or excavation affecting natural habitat land in OS/F zoning.

Council Member Ojakian said the P&TC provided the Council with substantive information. He agreed with the changes proposed by Council Member Kishimoto, especially the need for the SCC Planning Commission to be involved in some of the reviews.

Council Member Freeman asked about the signator on the letter.

City Attorney Ariel Calonne said the Presiding Officer, which was the Vice Mayor, signed the letter.

Council Member Lytle said she heard the three party agreement, which required ASA referral to staff, did not work as smoothly as it once had. The burden should not be on staff to have to watchdog that on the Internet. Stanford University should reach out to Palo Alto to fulfill its part of the third party agreement and allow Palo Alto adequate time to comment.

Chief Planning Official Lisa Grote said staff sometimes received late notices but was building a relationship with SCC staff.

Planning and Transportation Commissioner Michael Griffin said the P&TC had not had much luck in making a dent, but felt the third time might be the charm.

Council Member Burch asked about prohibiting commercial antennas.

Ms. Grote responded the P&TC discussed prohibiting commercial antennas but did not include that.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add a sixth bullet as follows: If commercial antennas are allowed, ensuring that any visual impacts are minimal.

**MOTION PASSED** 7-0, Kleinberg, Mossar "not participating."

#### COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman applauded the Finance Committee and staff for all their work for the budget meetings.

Council Member Ojakian requested the meeting be adjourned in memory of Barbara Violante, a Palo Alto resident.

Council Member Burch noted on Friday, May 30, 2003, he attended the Art Council for Silicon Valley, and Bruce Davis had noted there were 31 students from Santa Clara County, 15 of which were from Palo Alto.

ADJOURNMENT: The meeting adjourned at 10:47 p.m. in memory of Barbara Violante who had passed away. A Palo Alto resident, she was a nurse and an active volunteer at Castilleja School, Palo Alto public schools, and Girl Scouts. Her daughter, Christina, is part of the Girl Scout Troup 784.



ATTEST:

APPROVED:

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City Clerk

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Mayor

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