



STANFORD LAW SCHOOL
ENVIRONMENTAL AND NATURAL RESOURCES
LAW AND POLICY PROGRAM

SLS Case No. 03-001

Santa Clara Campus
Sun Microsystems, Inc.
“Development is a privilege not a right.”¹

Part I. SITE SELECTION

INTRODUCTION

On July 1, 1996, Sandy Sloan received a call from Chuck Dolci, Associate General Counsel, at Sun Microsystems, Inc. (“Sun”). Silicon Valley was booming — small companies were starting up, large companies were growing larger and real estate was at a premium. In the San Francisco Bay Area, Sun, a Fortune 100 Company and provider of hardware, software and services for “open network” computing, had employees located at properties it owned in Palo Alto and Menlo Park and at buildings it leased scattered throughout the South Bay. However, to accommodate the projected growth in employees, Sun’s Board of Directors had just approved buying land to build an additional million square feet of office and R&D buildings — a “campus” similar to the one Sun had just completed in Menlo Park. Brokers for Sun had scoured the area between Redwood City and San Jose looking for properties for sale, and Sun’s Corporate Real Estate Group (“RE Group”) had narrowed the choices to three sites. Bill Agnello, Sun’s Senior Vice President for Real Estate, was aware that Cisco Systems and Microsoft, among many other large companies, were seeking additional land, and Sun needed to move quickly. In addition to evaluating its business needs before making any offers to purchase property, Sun was looking for a legal analysis of all three sites.

¹ Trent Meredith, Inc. v. City of Oxnard 114 Cal. App. 3d 317, 328; 170 Cal. Rptr. 685 (1981); petition for rehearing denied February 5, 1981 and petition to Supreme Court denied March 11, 1981.

Margaret A. (“Sandy”) Sloan prepared this case study under the editorial guidance of Meg Caldwell, Lecturer of Law, Director of Environmental and Natural Resources Law and Policy Program, Stanford Law School, as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an environmental matter. Some or all of the characters or events may have been fictionalized for pedagogical purposes. Copyright © 2003 by the Board of Trustees of the Leland Stanford Jr. University. To request permission to use or reproduce case materials, write to Environmental and Natural Resources Law and Policy Program, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 or visit www.stanford.edu/group/law/library/casestudies/lawschool.shtml.

Sandy Sloan

Sandy Sloan, a 1979 graduate of Stanford Law School, had been practicing real estate and land use law for almost 20 years. She had experience evaluating proposed projects from both the government and the private perspective. Because she spent seven and a half years in the Palo Alto City Attorney's Office handling land use matters, she not only understood the complicated legal processes necessary to obtain project approval from the various governmental agencies that have jurisdiction over land in California, she also understood how cities operate. She had previously provided legal assistance to Sun on evaluating, purchasing and obtaining approvals (sometimes called "entitlements") for its million square foot campus in Menlo Park at the foot of the Dumbarton Bridge, the southern-most crossing over the San Francisco Bay. The Menlo Park campus was a tremendous success for Sun. Its square footage was ample enough to include a cafeteria, coffee shop, and fitness facility. The buildings were low-rise, encouraging employees to walk the stairs and interact more with each other, and the outdoor spaces also encouraged interaction among employees and made the campus a place where people genuinely wanted to work.

Chuck Dolci now called Sandy to work with Sun's RE Group in evaluating three possible new sites for Sun. The Real Estate Group hoped to select a site, procure all the entitlements necessary to build a campus, and construct the buildings in three years or less. Sandy immediately set about learning all she could about the three sites.

Site Issues

All three sites were located in Santa Clara County. Two the sites were in San Jose and one was in the City of Santa Clara. Sandy began reviewing the general plans and zoning ordinances of both those cities to see what the applicable land use designations for the properties were. She began preparing a matrix to present this data to the RE Group. ([See Exhibit A](#)). To gain more information, Sandy made appointments with the Planning Directors for both cities; she hoped to find out background information not set out in any plan or zoning ordinance.

She knew she would have to develop a list of questions to pose to the Planning Directors that would evoke both legal and strategic information. *What specific questions should Sandy ask and why are these questions important?*

As Sandy investigated the sites, it became clear that the two San Jose sites would be much easier to develop than the Santa Clara site. However, it also became clear that, as the RE Group looked at the sites, the Santa Clara site was Sun's favorite:

- It was in an excellent location, near several freeways for easy access. ([See Exhibit B](#)).
- More land was available than on the other sites, so buildings could be low rise and Sun's architects would have more freedom in working out a design.

- The mature landscaping would provide more of the “campus” atmosphere Sun desired.
- Some of the existing historical buildings could be reused and become a creative important part of the campus.

Sandy wanted to make certain that Sun’s RE Group truly understood the complexities of the site; she constructed a list of major issues to raise with RE Group:

- The site was owned by the State of California and such ownership raised issues about the State’s authority to sell the property. It was a former facility for the “insane” and “developmentally disabled,” called Agnews Developmental Center. The facility had developed at the turn of the century as a self-contained village for the most-severely disabled. Residents and doctors had lived on site, some residents had worked in the agricultural fields and learned trades, an on-site hospital had served the residential patients, and an auditorium had provided a place for social activities.
- Sandy recalled that the California Legislature had just passed a bill regarding disposition of state property. Her box was cluttered with legal updates and alerts, but she found the reference to Senate Bill 1770 and ran a search to determine its status and substantive provisions. ([Exhibit C](#)). She jotted down the following:
 1. *Did the State need to go out to bid?*
 2. *Did the State need to choose the highest bidder? If not, how would the State choose the purchaser?*
 3. *Would negotiations need to be conducted in public? How long would the process take?*
- Although partially developed, the site was essentially a “blank slate” from a regulatory standpoint. Since it had been occupied for many years by the Agnews Developmental Center, it was exempt from local zoning² and its General Plan designation was “Institutional.” It was a huge site of approximately 300 acres and now that the disabled no longer resided there, the City believed the entire site should be “master-planned.” However, Sun was interested in only about 80 of the 300 acres.
- In an effort to cut costs, the State had moved all the former residents of the Agnews site in Santa Clara (“Agnews Santa Clara”) to the Agnews site in San Jose (“Agnews San Jose”), or to small group homes. However, the residents of Agnews San Jose were frequently taken over to Agnews Santa Clara for recreation. Many families of the Agnews’ residents and former residents

²The principle that the State can shield its properties from City zoning flows from the doctrine of State sovereign immunity enunciated in Hall v. City of Taft 47 Cal. 2d 177 (1956).

living in the area did not want the State to sell the property because they were hoping the State would reopen Agnews Santa Clara³.

- Local leaders had eyed Agnews Santa Clara for years, hoping that, if the land were sold, it could be used for projects they were interested in. Although some, such as Lorne Smyth, head of a local neighborhood association, wanted commercial uses and governmental uses (this North of Highway 101 neighborhood lacked a grocery store, library or police substation), others, such as former Santa Clara mayor Eddie Souza, envisioned a baseball stadium for the Oakland A's or a football stadium for the San Francisco 49ers at the site.
- The 80 acres of the site that the State wanted to sell first were occupied by 56 historical buildings — a director's house, doctors' cottages, an administration building, an auditorium, a clock tower with hospital buildings on either side, and many other buildings.
- Since moving all residents to Agnews San Jose several years earlier, the State had leased out some of the buildings to various non-profits for no or very little rent. These non-profits, including a day care center and the Emergency Housing Consortium⁴, did not want to vacate the buildings, despite their poor condition, unless assured of new space. They intended to have a strong voice in the reuse of Agnews Santa Clara.

Most attorneys in negotiating contracts deal with one other party. But when City approvals are necessary for the development of land, more parties are involved. The attorneys for the buyer must negotiate with the Seller, the approving City (which involves City staff, the appointed Planning Commission and the elected City Council) and the public. And, as Sandy well knew, the public is made up of different “stakeholders” who care passionately about the use of the land in question. Sandy wanted to make sure her clients had a clear picture of the negotiating parties and the other interested parties. To develop a strategy on how to work with all of them, she understood that Sun would need to be briefed on their operating parameters, including legal, financial and social constraints, and their primary interests.

Sandy began making a list of the negotiating parties and the stakeholders and began to understand the interrelationship of all their interests.

³In fact, in continuing its philosophy of not “institutionalizing” disabled persons, the State is now taking steps to close Agnews San Jose. This philosophy is still controversial. See recent news article in San Jose Mercury News, September 26, 2003. ([Exhibit D](#)).

⁴A non-profit providing temporary housing for the homeless.

INTERESTED PARTIES

<u>Party</u>	<u>Primary Interest</u>	<u>Stands to Gain</u>	<u>Stands to Lose</u>	<u>Ultimate Goal in Negotiations</u>
Sun Microsystems				
State of California				
City of Santa Clara				
Santa Clara County				
Neighbors				
Historic Community				
Families of Agnews Patients				
Non-profits On Site				
Environmental Groups				

Clearly if Sun wanted to purchase and develop the Santa Clara site, it had its work cut out for it.

Purchase Agreement

Despite the complexities of the site, Sun decided to begin negotiating a purchase agreement with the State. Although Sun's transactional real estate attorney drafted the agreement, Sandy participated in the negotiations. As land use counsel, she wanted to make certain that Sun did not close escrow on the property until Sun was assured it had received approvals and could begin construction. She was well aware that even if the City Council ultimately voted in favor of Sun's proposed project, some residents might seek to overturn the decision in court or through a voter referendum.

As part of the negotiations, Sun and the State began jointly exploring how to deal with the non-profits located on the site. Although the State acknowledged that relocating or terminating the leases of these non-profits was a State obligation, the Department of General Services, the State agency tasked with selling the site, had no discretionary money. Creative solutions were essential.

As Sun was contracting to purchase 82.5 acres of the Agnews Santa Clara site, Sun's architects were conceptually designing the campus and applications for the necessary approvals were being submitted to the City. No matter what the terms of the sale were, the City needed to comply with the California Environmental Quality Act ("CEQA"). Therefore, one of the City Planning Department's first steps was to hire an environmental consultant to prepare the Environmental Impact Report ("EIR") required by CEQA to analyze the environmental impacts of the proposed project. Although the EIR would analyze impacts in the areas of land use, traffic, air quality, noise, visual effects, hazardous materials, City services and biological resources, it was clear that the biggest issue, and one that concerned people even outside the City limits, was the impact of any proposed development on historical resources. Sandy asked her associate to draft a brief memo to the Real Estate Group on this issue. This is the memo:

DRAFT

To: Bill Agnello, Sr. Vice President
Real Estate Group

From: Sandy Sloan

Re: Agnews' Historic Buildings

With 56 historic buildings on site, most of which Sun cannot reuse, it is certain that no matter what Sun, or the State for that matter, does with the Agnews Santa Clara property the impact on historic resources will be significant and unmitigatable.

1. CEQA. Under CEQA, a proposed project can still be approved by a City, even if it results in significant unmitigated effects, as long as the City finds mitigating the significant effects to a less than significant level “infeasible” for social, economic, technological or other reasons. In addition to the infeasibility, the City must also find that the benefits of the project outweigh the significant unmitigated effects and that, therefore, there are “overriding considerations” for approving the project.

2. SHPO. Since the Agnews historic resources are State-owned, under California Public Resources Code Section 5024.5 ([Exhibit E](#)), they cannot be transferred or demolished without the concurrence of the State Historic Preservation Officer (“SHPO”). If concurrence is not obtained, the matter can be “mediated” with the State’s Office of Planning and Research, but the statute does not specify what will occur if ultimately no resolution with SHPO is reached.

When Sandy reviewed the draft memo, she knew it needed to cover several other issues, including: How could Sun work within the legal parameters of CEQA and the Office of State Historic Preservation? Why was saving most of the buildings “infeasible?” What benefits of the project could “override” destroying historic buildings? What information would be beneficial to SHPO in order to obtain “concurrence?” (See [Exhibit F](#)).

Sandy suggested weekly meetings with the RE Group team in charge of this project, as well as the project architect and the project engineer to formulate a strategy for dealing with the historic issues (as well as other issues) and obtaining approvals for this site.

Part II. WORKING WITH HISTORY

Historical Buildings

When Sun originally considered acquiring the Agnews property, the RE Group sent its development consultants to examine all the buildings on site. What the consultants found were buildings ranging in age from fifty to ninety years designed for institutional use. All were in poor condition and most, having been unoccupied for several years, were

deteriorating and vandalized. The landscaping was also unmaintained and even older trees were dying. ([See Exhibit G](#)).

After hearing from its development consultants, Sun thought it could reuse three of the historic buildings around Palm Drive, the entrance to the Agnews “Village.” These three - - the director’s home (or “mansion”), the auditorium and the clock tower (where the former hospital was housed) were the most impressive buildings. Although the consultants reported that it would undoubtedly cost more to rehabilitate these buildings than to demolish them and construct new ones, they were unique buildings that Sun could reuse: the clock tower as a main lobby for the campus, the auditorium for large gatherings of employees and the mansion for smaller gatherings of employees. Furthermore, these three buildings were the only ones the public had ever seen —when the public was invited to the director’s reception or when families of Agnews residents came to social gatherings in the auditorium.

Sandy began conversations with citizens active in historic preservation issues, both in the City and in Santa Clara County. As Sandy compiled notes from these conversations, it became clear that many wanted *more* than three buildings saved. Her notes indicated several key opinions:

- The administration building was also highly visible as it was located on Palm Drive.
- The “wings” of the clock tower were an integral part of the clock tower and formed a graceful setting to the landscaping at the end of Palm Drive.
- The doctors’ cottages could be used as housing.
- Several other large buildings were reusable. Hadn’t the Martinson Day Care Center and the Emergency Housing Consortium been using two of the buildings?
- The entire Agnews Santa Clara Village or at least the “core” of the Village was historically important, not just because of the individual buildings, but because the “Village” of buildings represented the way the State had historically housed and treated “insane” and “developmentally disabled” citizens. The Village represented a chapter in California history.
- Rehabilitated buildings should be accessible to the public because they were a public resource.

Sandy knew Sun had to be pro-active and analyze all the buildings in depth to understand which buildings it could rehabilitate and use, which it could not and which it might be able to move so that someone could reuse the buildings.⁵ A nationally known historic architect, Jay Turnbull, from Page & Turnbull, Inc. in San Francisco was hired to prepare an “adaptive reuse” study of the entire Agnews Santa Clara site. The study examined the historic significance of all buildings, and then examined possible reuses of the buildings.

⁵ See [Exhibit R](#).

Sun's construction consultants "crunched numbers" to ascertain costs for possible reuse. The study outlined a full preservation alternative, an intermediate preservation alternative and a minimum preservation alternative, which would save only three buildings. ([Exhibit H](#)).

The "Sunshine Law"

While the Adaptive Re-Use Study was taking place, Sandy worked with Jay Turnbull and the RE Group on what actions, other than saving more buildings, would help mitigate a significant loss of local history. Sun's RE Group began "brainstorming" about ways to integrate rehabilitated buildings into its new campus as well as documenting Agnews' history and allowing some public access to the central part of the campus.

Bill Agnello asked Sandy if they could start meeting Councilmembers to discuss Sun's plans. Sandy informed Bill of California's "Sunshine Law," the Ralph M. Brown Act ("Brown Act") California Government Code Section 54950 et seq., which mandated that Councilmembers meet and make decisions in public. But Bill wanted to know, whether he could he talk to individual councilmembers without violating the Brown Act. Sandy sat down to draft a memo explaining how that could be done. She pulled out Sections 54950 through 54952.6 of the Government Code ([Exhibit I](#)) and went to look for cases interpreting these sections.

After examining the adaptive reuse study, analyzing costs and Sun's needs, the RE Group team decided it would propose to the community saving the four major buildings along Palm Drive. It would also propose providing some public access to all of these except the administration building, which would only contain Sun offices. At a January 14, 1997 "study session" of the City Council, the City's Director of Planning, Geoffrey Goodfellow presented an "Agenda Report" reporting on Sun's proposal and answering other questions Councilmembers had raised to staff. ([Exhibit J](#)). After presentations from City staff and Sun, three of the seven council members seemed impressed and one thought the preservation did not go far enough. Two council members seemed displeased with the State for planning to sell the property in the first place and one council member seemed genuinely conflicted about the issues.

Meanwhile, SHPO was not satisfied enough with Sun's plans to concur with its proposal. SHPO also expressed strong displeasure with the State Office of Real Estate and Design Services for not inventorying and maintaining the historical buildings in the first place. SHPO wrote a letter questioning Sun's proposal. ([Exhibit K](#)).

Sun had more work to do in the area of historic resources if it wanted its project approved by the City and SHPO.

More Preservation

Given the strong feelings about the Agnews historic buildings from some of the historic preservationists and some councilmembers, Sandy urged the RE Group to reconsider saving the "wings" of the clock tower and/or saving the doctors' cottages. She also suggested

working with the City staff on public access so that Sun would be able to show the community that, even though many buildings were being destroyed, it was much better to have a few important buildings saved from deterioration and allow public access to those buildings so that they could be used and enjoyed as the buildings never had been in the past. With Sun's approval, Sandy began working with Larry Wolfe, the City's Director of Parks and Recreation on defining the boundaries of an historic easement as authorized by California Civil Code Section 815 ([Exhibit L](#)) to be placed over the entrance to the Sun campus and the surrounding area. She also pulled out her conservation easement handbook so that she would be prepared to answer Sun's questions about historic easements. ([Exhibit M](#)). With such an easement in place, Sun would guarantee to the City that the landscaping and buildings within the easement area would be rehabilitated and maintained in their rehabilitated state in perpetuity. Sun would give up the flexibility to reuse the area in a different way in the future, but would gain a relief from State property tax for the area. Additionally, Sandy began working with Larry on the terms and conditions of access to the historic easement area during daytime hours and the idea of public access to the interior of the clock tower, the auditorium and the mansion. Larry Wolfe told Sandy that he had already had several inquiries from public members interested in using the auditorium for such events as theater groups, choir practices and square dancing and using the mansion for weddings and neighborhood meetings.

Sandy was now faced with a unique concept of the public and a private corporation sharing space. She began to mediate between Sun and the City. She knew her job was to make the "deal" work without compromising her clients' concerns. She began to make a list of the City's and Sun's concerns about public access.

Additionally Sun agreed to move the ten doctors' cottages to any other areas within Santa Clara, if someone was willing to accept one or more and rehabilitate the cottages themselves. Since the cottages were rather small and did not have deep foundations, the cost of moving them was easy to absorb in Sun's construction budget. However, moving one of the larger buildings was more problematic. The councilmember who was the "swing vote" on the council was very interested in preserving a large building and moving it to the other part of the Agnews Santa Clara site for a future branch public library. Sun reluctantly agreed to this condition, realizing it would cost close to a million dollars to move the building. However, Sun made it clear it could not rehabilitate and use the wing buildings on either side of the clock tower. In addition, Sun agreed to document the Agnews site history with photographs and scaled drawings of all existing buildings. Sun also agreed to display artifacts from the early days of Agnews Santa Clara in a museum in the lobby of the auditorium and contract with an historian to have a history of Agnews compiled. With these mitigations taking shape, SHPO issued a May 28, 1997 letter concurring with the Sun plan. ([Exhibit N](#)).

City Council Vote

At each public meeting on the proposed Sun development before both the Planning Commission and the City Council 50 or 60 people would line up to speak. Feelings ran high and speakers were about equally divided between those who supported the proposed project and those who were opposed to it. Often the meetings at both the Planning Commission and

City Council were not adjourned until two in the morning. After several public hearings on the project at the City Council, the Mayor was hospitalized for emergency surgery. At the next meeting the Council deadlocked on being able to continue the item and deadlocked on being able to approve the project. This deadlock continued for approximately a month until the Mayor returned. Then the Council, on October 14, 1997, approved Sun's plans by voting four to three in favor of an amendment to the City's General Plan ([Exhibit O](#)), a Zoning Amendment ([Exhibit P](#)) and a Development Agreement with Sun. ([Exhibit Q](#)). The minutes formally approved for the Council's October 14, 1997 meeting reflect the negotiations between and among councilmembers on the details of the approval. ([Exhibit V](#)).

DEVELOPMENT AGREEMENT

Normally, under California law, a party does not obtain "vested rights" to build a project that has been approved unless the developer makes substantial expenditures in good faith reliance on a building permit. Avco Community Developers, Inc. v. South Coast Reg'l Comm'n, 17 Cal. 3d 785 (1976). Since after a project is approved, it takes a substantial amount of time, effort and expense to prepare "working drawings" for buildings in order to receive a building permit, there is often a long delay between receiving approval for a project and actually starting construction on it. Furthermore, a large project often proceeds in phases with several years between each phase of the project. Therefore, it is possible for a developer to receive approval for a project and then watch an election change the members of the city council and, therefore, the direction of the city council with regard to development. A new council could then conceivably prevent a developer from proceeding with the project by amending the zoning of property before all construction was completed.

Sandy, as any other land use attorney would, advised her client that in addition to receiving the basic approvals — a general plan amendment and zoning amendment allowing 1,000,000 square feet of development — for the project to proceed, Sun should enter into a development agreement with the City to assure "vested rights." A development agreement is essentially a contract between a developer and a city authorized by the California Government Code. ([Exhibit S](#)). It outlines the conditions of approval of the project and assures the developer that it will be able to build out the project as approved during the life of the development agreement.

A city is not required to enter into a development agreement when it is requested, and some cities are averse to such long-range planning. Some cities require more conditions than would normally be placed on a project in return for giving the developer such assurance of its "vested rights." However, the City of Santa Clara had entered into several development agreements over the last years and was amenable to one for any large project. Negotiations regarding the development agreement went smoothly between Sandy and Michael Downey, the City Attorney, and the development agreement was approved by the City Council at the same time as the general plan and zoning amendments. State Law requires a development to be approved by enactment of an ordinance, and an ordinance requires an "introduction" (a first reading) at one city council meeting and the actual adoption by the city council (the second reading) at a subsequent meeting. Thus, although the General Plan Amendment, the Zoning Amendment and the Development Agreement were all voted on at the same meeting

on October 14, 1997, the Development Agreement returned to the City Council for a second reading on October 22, 1997 and became effective 30 days after the second reading. The General Plan and Zoning Amendments, on the other hand, were adopted by resolution and became effective 30 days after the action was taken on those two approvals.

PART III. CHALLENGES

Cities are given a great deal of leeway in making land use decisions as long as they follow proper procedures. If citizens are disgruntled with the planning decisions of a city council, it is almost impossible to bring a successful lawsuit claiming that the decision was the “wrong” one. Instead, if citizens are disgruntled, they generally have two possibilities to challenge the decision. They can (1) file a lawsuit under CEQA, claiming the environmental review for the proposed project was inadequate or (2) circulate a petition for a referendum to overturn the city council’s legislative decision. In the case of Santa Clara’s approval of the Sun project, the City got hit with both.

CEQA Lawsuit

When a city prepares an environmental impact report (“EIR”), within 5 days after the city makes the decision on a project, it must file with the county clerk’s office a “Notice of Determination” indicating that the EIR was certified by the city council as complete and, if overriding considerations were made, that these considerations were supported by adequate findings. ([Exhibit T](#)). After the Notice of Determination is filed, any citizens dissatisfied with the project or the environmental review of the project can bring a Petition for Writ of Mandate against the city, naming the city as respondent and the developer as the real party in interest, within 30 days of the date the Notice of Determination was filed and posted by the county clerk. The petitioners in such a lawsuit can allege that the EIR was inadequate and/or that the Statement of Overriding Considerations (*see* [Exhibit O](#)) was not supported by adequate evidence.

When Petitioners, an unincorporated association named the Agnews Preservation Coalition, filed their Petition for Writ of Mandate asking the Superior Court to overturn the City’s decisions in approving the Sun project on CEQA grounds, they focused on the historical buildings, claiming primarily that the City made the wrong decision in allowing Sun to proceed and that the City’s Statement of Overriding Considerations was inadequate. As Sandy read the Petitioners’ Brief ([Exhibit U](#)), although realizing that the lawsuit would delay moving forward with the project, she told Bill Agnello she was greatly relieved. He asked why.

When a Petition for a Writ of Mandate is filed, the approving governmental agency is the Respondent to the Petition, and the applicant for the approved project is known as the Real-Party-in-Interest. In such a case, normally the agency and “Real Party” work together to defend the lawsuit. Agnews Preservation Coalition, trying to prevent both the sale and redevelopment of the Agnews Santa Clara site named both Sun Microsystems and the State of California as Real-Parties-in-Interest.

When the Petition against the Sun project was filed, the City Attorney turned to a very experienced CEQA litigator, Roger Beers, to represent the City in responding to the Petition. Sun too turned to an experienced CEQA litigator, Mike Zischke, to represent its interests. The State of California was represented by the State Attorney General's Office. Sandy, Mike Zischke, the City Attorney, Roger Beers and the Attorney General's Office worked closely to coordinate on preparing responses to the Petition.

Referendum

In California, no legislative act, with certain exceptions, will become effective before 30 days after the date of its enactment. Thus, when the City Council approved the General Plan Amendment (*see Exhibit O*) and Zoning Amendment (*see Exhibit P*), their actions did not become effective for 30 days. Likewise, the Development Agreement with Sun did not become effective for 30 days after the date of its second reading. During these 30-day periods, any qualified registered voter of the City may circulate a petition protesting the legislative act. The petition must be in a very specific form outlined in the California Election Code and each petition circulator must attach to each section of the referendum an affidavit stating that all signatures were made in his or her presence, that to the best of his or her knowledge each signature is authentic, the dates on which the signatures were obtained and that the circulator is a registered voter or able to become a registered voter. When the petitions are submitted to the clerk of the city, the clerk must determine whether the number of signatures on the petition equals or exceeds ten percent (10%) of the voters of the city according to the county clerk's last official report of registration to the Secretary of State. If from this examination, the clerk determines that the number of signatures appears to be sufficient, the clerk must accept the petition for filing, subject to a more detailed examination. After accepting the petition for filing, the clerk sends the petition to the County Register of Voters who, using records of registration, determines whether or not the petition contains authentic signatures of the requisite number of voters. The city clerk then certifies the results of this examination to the city council at its next regular meeting.

Where it is determined that the petition contains the signatures of the requisite number of the city's qualified registered voters, the effective date of the legislative act is suspended and the city council must reconsider the ordinance. The city council must either repeal the ordinance or submit it to the voters at the next regular municipal election or at a special election to be held at any time with not less than 88 days notice. The ordinance that is the subject of the referendum will not become effective if an election takes place unless a majority of the city's voters vote in favor of it.

Like it or not, Sandy explained to the RE Group, so called "ballot box planning" has become commonplace in California. Courts have ruled that citizens retain the constitutional power to challenge a city's legislative land use decisions through referenda and to initiate new land use legislation through initiatives. The California Supreme Court blessed these processes

in 1974 in a watershed decision, *San Diego Building Contractors Ass'n v. City Council* 13 Cal. 3d 205 (1974), app. dismissed 427 U.S. 901 (1976).

Supporters of ballot box planning believe that initiatives and referenda maximize local control and political accountability by providing residents with the authority to shape their own communities and have a stronger voice in issues that affect them the most — issues councilmembers might not be willing to address.

On the other hand, opponents of “ballot box planning” criticize the use of these measures, pointing out that they improperly tie the hands of local officials who were elected by the people. Opponents also point out that ballot box measures are too often used to promote narrow special interest groups and don’t allow for compromise and consideration of alternatives. And, in the case of initiatives, drafting of legislation is often poor — leaving a wake of confusion in implementation.

Citizens who opposed the Sun project began circulating petitions against all three of the City’s actions immediately after the City Council’s approval. Because petitions against the first two acts, the General Plan Amendment and Zoning Amendment, needed to be submitted more quickly than petitions against the Development Agreement, the circulators were unable to obtain the requisite number of signatures. However, in the case of the Development Agreement, the circulators were able to obtain the number of signatures required to trigger a referendum. When the petition for the Development Agreement was certified as containing the requisite number of signatures, Sun needed to determine whether it wished to put the City and itself through an election. After all, a development agreement was not a necessity for it to build the project.

Bill Agnello asked Sandy to lead Sun’s RE Group in a discussion of the pros and cons of holding a referendum election. Bill knew that Sun could, if it wished, simply withdraw its request for the development agreement. What, Bill asked himself, should Sun do?

Exhibits

- A: Matrix Overview of Potential Sites Prepared by Sun
- B: Regional and Vicinity maps showing Agnews site location
- C: Senate Bill 1770, Johnston. State-owned property
- D: Battling For Agnews: Families Try To Keep Santa Clara Center From Closing, San Jose Mercury News article September 26, 2003
- E: Public Resources Code §5024.5
- F: Curtin's Californai Land Use and Planning Law
- G: Photos of Historic Buildings and site conditions on 02/20/98
- H: Excerpts from Adaptive Re-use Study
- I: Section 54950-54953 of the Ralph M. Brown Act
- J: Agenda Report, January 7, 1997, containing Q & A on Sun/Anews Proposal
- K: SHPO letter, March 6, 1997
- L: California Civil Code §815 concerning Conservation Easements
- M: Conservation Easement Handbook
- N: SHPO letter, May 28, 1997
- O: General Plan Amendment & Statement of Overriding Consideration Resolution
- P: Resolution 6348 (Zoning Amendment)
- Q: Development Agreement Between The City of Santa Clara and Sun Microsystems, Inc., Sept. 4, 1998.
- R: Secretary of Interior Standards Definition of Terms
- S: California Government Code § 65864 - 65869.5
- T: Notice of Determination
- U: Petitioner's Trial Brief in Support of Writ of Mandate, January 30, 1998
- V: Minutes of the City Council of the City of Santa Clara for meeting held on Tuesday evening, October 14, 1997.