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City of San José Planning Commission.
Wednesday, February 10, 2010

Commissioner Do: Good evening. My name is Thang Do, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, February 10, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A and not PD 06-et cetera. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearing on these items. The first order of business tonight is roll call. Let the record reflect that all Commissioners except for Commissioner Kamkar are present. Next item, deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items past 11:00 p.m., to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions on how to be heard by the Planning Commission will be heard no later than 11:00 p.m. Staff.

Orator: Thank you, Chairman. We have one item for deferral. And actually, it's requested by the applicant to be dropped and re-noticed. It's a conditional use permit and

associated determination of public convenience and necessity, CP 09-051 and ABC 09-003. That concludes staff recommended deferral.

Commissioner Do: Thank you. Motion to approve deferral, all in favor raise your hand. The electronic voting is not working. So deferrals is approved. Next item is consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time. Staff. Director? I'm sorry. There are no items on the consent calendar. Right?

Orator: Laurel Prevetti: There are no items on consent.

Commissioner Do: There are no items on consent. Is there a motion to approve consent calendar? Sorry. Next item is public hearing items. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. Item 3A. GP 09-07-02, general plan amendment request to change the land use transportation diagram designation to add mixed industrial overlay to an existing heavy industrial land use designation on a 3.95 gross acre site located at 2159 south 10th street. Staff.

Orator: Staff has no further comments at this time.

Commissioner Do: Thank you, director.

Orator: Laurel Prevetti: Thank you, good evening. Just as a reminder, this item is back on the agenda, because of the Planning Commission's vote, at its last meeting, to reconsider the item. You heard significant public testimony, and we had quite a discussion about the motion. But at the last Planning Commission meeting towards the end of our meeting one of our commissioners put a motion for reconsideration. And so that is why this item is back on the agenda. It is not to reopen the hearing, but rather, to allow for that reconsideration to occur. Thank you.

Commissioner Do: Thank you, director. Any discussion from the commission? From the commission or is there a motion? I would invite a motion. Commissioner Jensen.

Commissioner Jensen: Thank you, Mr. Chair. Yes, I'm prepared to make a motion. Deny the general plan amendment request to change the land use Transportation designation to add mixed industrial overlay to an existing heavy industrial land use designation on a 3.95 gross acre site as recommended by staff.

Orator: Second.

Commissioner Do: Thank you commissioner. There's a motion and there's a second. Any discussion? Otherwise let's vote by hand. All in favor of the motion? This is motion to deny. So all commissioners except for Commissioner Campos are in favor of this motion, am I reading it correctly? You had your hand up like that. So the motion is passed. So moving on. Item 3B. PDA88-068-04, appeal of the planning director's decision to approve a planned development permit amendment to allow offsale of alcoholic beverages at an existing retail store on a 1.72 gross acre site in the A(PD) planned development zoning district located on the Northwest corner of capitol avenue and capitol expressway. Staff.

Orator: Thank you, Mr. Chair. This is a planned development permit to allow the offsale of beer and wine at an existing narcotic. In this instance a determination of public inconvenience or necessity is not required since this project is not required in an area with a 20% or greater crime index and is also not in an area where the existing ratio of existing retail on-sale and offsale licenses to the population in the census tract exceeds the ratio in the county as a whole. The site abuts two major streets and the specific tenant is oriented away from residential uses. The subject use is for offsale as an incident to food sales which includes fresh meat and produce. Staff feels that unlike a liquor store or a convenience store which sells a limited amount of prepackaged food items that the proposed use would provide a convenience to its commerce by providing a more complete shopping opportunity. This permit includes a condition that alcohol sales be incidental and in conjunction with the food sale that includes fresh meat and produce. It should be noted that the planning department is neutral to the off sale of alcohol at this location. Staff has reviewed this proposal in the context of the zoning ordinance requirements for offsale of alcohol proposals and is able to make all the required findings as noted in the staff report. This item is exempt from CEQA. I do want to indicate that the appellant for this project has required English translation services. Juan Barelli of our staff is actually here to provide those translation services. Maybe it would be appropriate to let Mr. Barelli provide a comment for the appellant who is here that does not speak English to announce that we have the translation services available.

Commissioner Do: Yes, please do Mr. Barelli.

Commissioner Zito.

Commissioner Zito: Just a note for clarification. Who exactly is the appellant? There seems to be some controversy about that and I want to understand who the appellant actually is.

Orator: Thank you, Mr. Chair. The appellant is Maria Diaz. She lives in Gorgenia avenue near the site. Maria Diaz is officially the appellant.

Commissioner Zito: Is she going to speak on the matter tonight?

Orator: We'll find out in a moment. But we have translation services available for Maria Diaz, the appellant.

Orator: [Speaking Spanish]

Commissioner Do: Thank you. Is the appellant here? Would the appellant like to come to the podium to speak? Would you translate that?

Orator: Good evening, commissioners with your permission, the appellant is unable to attend because of the harassment and intimidations by the applicant, makes her very afraid to be present here before you. But if you can allow me, to speak on her behalf, so that's why I'm here, asking for your permission.

Commissioner Do: Okay. You will have two minutes just like any other interested party, public interested party to speak. So please proceed.

Orator: Okay, thank you, chair. My name is Alofa Talivaa, and I'm the president of the neighborhood where this store is located. The City of San José Planning Commissioners, you would be determining whether or not to approve a legal license for this store. This is an issue that has created the uproar in the immediate community, so much so that the organizing group that has asked the community members, planning to attend the meeting tonight, to make sure our voice is heard. After two meetings with the planning director, they go ahead with the recommendation to approve. We've been meeting, and our position as a community, we're opposing it. We don't need this. What are we up to? This is a family oriented family. We wanted to keep it that way. We tried so hard to remove the blight, but then if you are going to approve it it's going to be a high crime area, loitering, littering and graffiti. Most of the time I have to pick up the phone and call the owner of that shopping center, to clean up the graffiti there in that store particularly. The graffiti is covered all over the store. The nuisance, the people that they pass out by the store, drinking. And I have pictures over here for you to look at it. You know, I know I received this report, from the deputy director, planning, it's very nice, the pictures inside. But the outside, you know, that's where all that bad stuff is happening. And what has really angered many of us, after two community meetings after I mention it, you know, the planning director still move forward. To approve.

Commissioner Do: Your time is up, thank you for your comments.

Orator: Okay, I have the pictures over here and stuff.

Commissioner Do: Please hand it to the technician. Okay, I will read, there are a number of speaker cards. I will read three names at a time so please come down and line up at the bottom of the stairs. Bob Dolce, Claudia Flynn, please come down Mr. Dolce. Please state your name and you have up to two minutes.

Orator: Yes, my name is Bob Dolce, resident of district 5. And I live about a block and a half from this business establishment. And I represent the interests of the Lyndale

Neighborhood Association, which is on the east side of Capitol Avenue. The Sierra neighborhood association which Alofa represents, is on the left side of capitol avenue. We are in a situation ourselves of promoting healthy families in our community. And that, in our minds and hearts does not include having additional, additional, additional businesses that sell alcohol. We already have two alcohol-selling businesses within two blocks of this street, right up the street on capitol avenue. And if you round the corner, from capitol avenue and Alum Rock, there is a couple more. So as Alofa said, we don't need it. We are well served in this regard. There was no interest by the business owner to reach out to the neighborhood association to say what -- what their intentions are and et cetera. In my own business of developing affordable housing we do that. So any reputable business would reach out to the community that it is serving to promote the interest of the business in the community, not just to make money. So I hope you take seriously this thought and this approach and not approve this recommendation to -- for this permit. Thank you.

Commissioner Do: Thank you very much.

Orator: Good evening. My name is yah rivera. I'm a resident of K.O.N.A. SNI. I'm a neighbor from the East valley 680. These have been supporters of our community, we have the same goals, we work very hard in eradicating blight and constantly cleaning graffiti and picking litter up. And it just discouraging to work through our communities and see all the graffiti and the blight. And so I am here asking to please, please, support the east valley 680 district 5 and don't approve the sale of alcohol. Thank you very much for giving me permission to come and speak to you. Thank you.

Commissioner Do: Before the next speaker, thank you very much ma'am. Before the next speaker I would ask the applicant, I neglected to ask the applicant to address the commission. So is the applicant here? Please state your name. You have up to five minutes.

Orator: Thank you. Good evening, my name is Greg Kays. I work with liquor license services limited and I'm here on behalf of the applicant. We did submit yesterday, a four-page document which I believe was e-mailed to all the commissioners and I would like to first address this issue of, is there a valid appeal. Because I don't think there is a valid appeal. As we raised in the documents we submitted, a statement signed under penalty of perjury, the permit appeal document that was filed in this case does not contain the signature of Maria Diaz. Maria Diaz is not here. The only person who purports to speak for Maria Diaz was the first speaker, Ms. Talivaa, who listed herself as a contact person on the permit appeal. I think we have a very, very series situation here, was a fraudulent appeal filed? Ms. Diaz came to the store and showed her driver's license to the store owner. She had a conversation with the store owner in the store. And she said, "I did not fill this out, I did not sign this." This alleged harassment is a figment of someone's imagination. What is going on tonight is an effort to ignore the rules that exist for appeals. The appellant must live within a thousand feet. There is no valid appellant. There is no valid appeal. And I would say that the first speaker's comments about this alleged harassment and why Ms. Diaz is not here should be viewed with great, great

suspicion. Particularly in light of the document that we submitted, and the effort that we went to, to investigate this issue. And I think this commission should be very concerned about how its procedures, and its rules, are followed or not followed, with the expectation that they can come in and have a hearing, without following the rules. Now, for those people who have gone to this store, who have actually visited this store, you do see a full service store. It has a meat counter, it has a produce section, it has a variety of food items. And what's being offered here is simply a license to sell beer and wine in a limited area. And what has come out through the process is a very, very good permit amendment. It places restrictions on the owner, that he will have to do certain things, that he cannot exceed certain things. And all of the concerns that are voiced about bad liquor stores who allow loitering and allow all sorts of things to go on, well, everybody's going to have one of those stories. But that story does not apply to this merchant and this store. And if you visited this store, and seen it and given the owner a chance then you will see that what you're going to hear tonight if you allow this hearing to go forward and even though it's not a valid appeal, is you're going to hear a lot of loud noise about what a bad place this is. But it's not. It's not. And this store owner has a greater interest than anyone else, in having a good place of business. He wants to attract a good clientele. He wants to attract more customers. And so that's really what we have here. The second speaker talked about reaching out to the community. If you're familiar with the background here, this store owner had two community meetings. We had a community meeting in the summer, based upon a 500 foot mailer. We went to the planning director for a hearing in August, in August, and it was approved in August. One person spoke against the permit amendment at the August planning director's hearing and that was Ms. Talivaa. But it was still approved. And a few days later we were notified there had been a complaint, I suspect by Ms. Talivaa, and we had to go back and start again. Instead of a 500 foot mailer we did a thousand foot mailer and held a second community meeting and we went through several planning director's hearings and were finally approved. The time has come for this permit amendment to be upheld.

Commissioner Do: Sir, thank you. We have some questions for you. Commissioner Zito.

Commissioner Zito: Mr. Chair, point of order. I think the applicant has a very valid point that needs to be cleared up and that is, we need to get a determination on whether or not this appeal is valid or not.

Commissioner Do: Agreed. I was going to suspend the public hearing for a moment while getting a clarification from either counsel or the director, on the validity of the appeal.

Orator: Thank you, Mr. Chair. I have been inquiring with the director on whether any sort of investigation has been performed. And at this point just based on the information that's provided on the application form, planning believes that they have a valid appeal. But they haven't compared the signatures. They don't have access to that information the way that the speaker appears to by virtue of having viewed the applicant's signature on her driver's license. In consultation with the speaker, recognizing that the speaker has

additional information that unfortunately the planning division does not have. My understanding consulting with the planning director, it is believed they have a valid appeal. So I think the preference probably of the applicant as well is to obtain a decision of this but it would be within the purview of the commission to make a request to please have the director perform some additional investigation to ascertain whether there is additional information readily available out there to try and ascertain whether or not there is a valid appeal.

Commissioner Zito: The other question I have Mr. Chair is it looks to me according to what I see is that the section of Maria Diaz is actually crossed out and there is an arrow transposing Ms. Talivaa and Ms. Diaz's names. I was just wondering what -- to me that raises a question as well. I'm assuming that Ms. Talivaa does not live within the required thousand feet.

Orator: She does not.

Commissioner Zito: Okay, therein lies an issue. I don't know if it's in order to, again, make a motion to defer, until at such time that we can get the appropriate information to validate this appeal.

Commissioner Do: Please, director.

Orator: Laurel Prevetti: I think staff has some additional information that may be useful to the commission as they consider this motion. Thank you.

Orator: Thank you. I'd like to point out that I sat down with Juan Barelli in our office middle of last week to have a conversation with Maria Diaz and Juan acted as the translator for that and he had indicated that Maria Diaz indicated that she had personally submitted the appeal request.

Commissioner Zito: Excuse me, was that conversation over a telephone?

Orator: That conversation was over the telephone.

Commissioner Zito: You were fairly certain that who you were speaking to was Maria Diaz?

Orator: It was the phone number listed that we contacted the phone number that's on the appeal application, that was provided. Asked for Maria Diaz. She was the person that answered the phone, she was the person that Mr. Barelli had the conversation with and indicated she was the person who filed the form.

Commissioner Zito: So if I could ask, somebody paid this \$101.25, somebody submitted the appeal. Can anybody say that they -- I'm assuming if that's true Maria Diaz did in fact bring the appeal application, to the city desk and submitted it, I mean, do we --

Orator: We don't have a requirement that the appellant personally deliver it so it was delivered. I think the arrows and what on the appeal form were by the permit center staff, to identify Ms. Talivaa as the contact person. As opposed to, I don't know why he crossed a name out. But again, there is no requirement that it be personally delivered by the appellant and we don't require a notary of the signature.

Commissioner Zito: Right sure.

Orator: So we are going to presume that it was filed by Ms. Diaz and the payment needed was given.

Commissioner Zito: So the only requirement is that it's signed by the appellant. In other words, anybody can fill it out, the appellant has to sign it, and then anybody can submit it as long as the appellant signs it and they meet the valid criteria. What I'm hearing staff saying is from all evidence that you have, you have no reason to believe that it was not filed according to proper procedures.

Orator: That is correct.

Commissioner Zito: And that this name down here Maria Diaz in the signature box is in fact her signature and not just a re--

Orator: Again we just take it upon that because in our procedures we don't require a notary so we take it on its face value.

Commissioner Zito: Okay. It's just odd to me it's printed again as opposed to a signature and that could be a signature, that could be her signature. So what I'm hearing is that staff is giving their good-faith statement that they believe that this is a valid application of appeal. And I'm not sure that deferring it is going to get us any more information. So with that and with the consent of the seconder I'm going to withdraw my motion. Do you have any comments Commissioner Platten?

Commissioner Platten: If it's all right with the chair do I have a problem. The problem is that we have a statement signed under penalty of perjury that affirms that Maria Diaz identified by her driver's license claimed to an individual who's stating under penalty of perjury that she did not file the appeal and has no objection to location of the store. So despite the fact that staff has information I don't believe in all good faith that we should proceed forward on this until we can ascertain if Maria Diaz, who lives at 2621 Georgina avenue San José, in fact signed the permit appeal.

Commissioner Zito: I guess Commissioner Platten what I'm understanding you saying is that the statement by the applicant is stating that under penalty of perjury that they spoke with Ms. Diaz and Ms. Diaz essentially said she did not sign it.

Commissioner Platten: Spoke face to face and she identified herself with the California driver's license. That to me is substantial evidence that we have a question of fact here that needs to be resolved.

Commissioner Zito: That's a fair statement and you being counsel, I will defer to that. So my motion will stand, and I think we need to really come to a firm conclusion as to whether or not the applicant did in fact or wants to go forward because according to, as Commissioner Platten pointed out, she's saying that she denies she filed it.

Commissioner Do: So we ask staff to clarify. What would happen if this motion is deferred, then staff would undertake additional investigation to ascertain the validity of the appeal? What would happen? I assume, I mean that is a hardship on the applicant I guess because we are deferring a decision on the application. Please, counsel.

Orator: I guess at a minimum, the planning division could have a Spanish speaker call Ms. Diaz and ask her. No, I'm -- planning, somebody from the Department of Planning.

Orator: Laurel Prevetti: We did that couple days ago. We had that conversation as relayed by staff.

Orator: Right, okay.

Orator: Laurel Prevetti: Short of asking for seeing a driver's license and then comparing it to the signature on the form that's really about the extent of our investigative abilities, because we're really planners, we're not investigators, so we tend to trust that when people submit documents that they've done it in good faith, also recognizing that this is a legal document. So we will do our best to get a copy of Maria Diaz's drivers license and compare it to the signature on this form. If we find that it is an invalid appeal, then this item will be dropped, and the director's decision will stand.

Commissioner Platten: Mr. Chairmanman.

Commissioner Do: Please.

Commissioner Platten: I want to be heard. I won't speak for Commissioner Zito but this motion which we do need to vote on does not in any way reflect my vote on the substantive issue. But we do make sure that the process is due process and is followed. I want to be sure that the record is clear on that.

Commissioner Do: Thank you Commissioner Platten. Commissioner Zito.

Commissioner Zito: I want to comment on that. When this motion came before us originally we were ready to make a motion essentially to uphold the director's wishes on this or their findings on this, and I specifically said we didn't have the appellant here and we need to have a full hearing. I think it's all about process. Okay, either way, it's all about process. And so it doesn't really reflect whether or not we believe this should or

should not go forward. What we do need to do is follow the process. And I think that's really why I made the motion.

Commissioner Do: Thank you, thank you, Commissioner Zito. I don't see any arms -- Commissioner Campos.

Commissioner Campos: Thank you, Mr. Chair. One thing I do want to recognize is that there are a number of people who came out here tonight. And so just -- and again, just to be air-tight clear, there is -- because of the uncertainty, there is no way we can hear any of the testimony from the audience, is that clear, is that correct?

Commissioner Do: I think that is correct. If we vote to defer, then essentially we do not have a public hearing today because we are not sure that the appeal is valid so I think that is the case.

Commissioner Campos: Okay, okay, thank you.

Commissioner Do: So without further discussion then let's vote by hand. There's a motion to defer the issue. So all in favor? So -- the motion is passed with all commissioners present voting in favor. So the issue's been deferred to a future date.

Orator: And would I just like to say for a date certain that would be deferred to February 24th.

Commissioner Do: Okay, thank you. So moving on to item 3 C. PDC 09-023. Planned development rezoning from LI light industrial to A(PD) planned development do demolish an existing gas station building and construct a new gas station mini mart/car wash on a .6 gross acre site located on the north side of Auzerais avenue between bird avenue and royal avenue. Staff. Ms. Hamilton.

Orator: Laurel Prevetti: If you will just give staff one moment and we'll be right with the commission.

Commissioner Do: Sure.

Orator: I apologize. This is a planned development rezoning for basically a reconstruction of a gas station, combined with a retail convenience market and car wash. It is a planned development zoning primarily for the purposes of commenting some reduced setbacks, because this site does have three frontages, one on bird, one on Auzerais and then one on royal avenue. So in order to free up space, we wanted to create some reasonable setbacks for it. Otherwise, the uses proposed really do fit within the combined industrial commercial general plan designation and as previously talked about when we did allow now for the combination of retail sale of food and beverages with gasoline service stations, the goal is to really allow for investment in these sites by the property owners to kind of get a new development that can enhance the neighborhood

and provide for the needs of the area residents. With that, staff is available for any questions.

Commissioner Do: Thank you. Is the applicant here? Please come down to the podium if you wish to address the commission. Please state your name and you have up to five minutes.

Orator: My name is Mafin Abraham. I'm one of the architects on behalf of the application, Sonny Goyal. I don't have any presentation but I'm here to answer any question you might have for this development.

Commissioner Do: Thank you. Are there any questions from commissioners? There aren't. So thank you, sir. You have another opportunity to rebut any -- actually this is also from you, right?

Orator: No. This card.

Commissioner Do: So we -- thank you very much. You'll have another opportunity to readdress the commission after other speakers.

Orator: Okay.

Commissioner Do: Thank you. So there is one speaker card, Bakdash Amini. Are you here? Please come down to the podium and you have up to two minutes. Please state your name.

Orator: Bakdash amini. As a concerned community member I don't see a need to construct a mini mart with a car wash at this location. There's always five other small grocery stores within the area, and I -- basically I see this as a way of corporate companies expanding into our communities and driving out small businesses. And I wish that you would deny this application. Thank you.

Commissioner Do: Thank you. Does the applicant wish to address the commission again?

Orator: Currently the gas station is existing. The building, the existing building has three-bay building, they service cars over there, but you know, business is not going well, and most gas stations, in order for them to survive, they convert their auto base to convenience stores, so they can survive financially. So that's the reason of that conversion and modernize the building.

Commissioner Do: Thank you very much.

Orator: Sure.

Commissioner Do: Is there a motion to close public hearing? All in favor? Please raise your hand, aye. So public hearing is closed. Staff, any additional points?

Orator: Staff has no additional comments.

Commissioner Do: Thank you very much. Any discussion from the commission? Entertain a motion? Commissioner Zito.

Commissioner Zito: Sure. Recommend approval of a planned development rezoning from LI light industrial to A(PD) planned development to demolish an existing gas station building and construct a new gas station mini mart/car wash on a .6 gross acre site as recommended by staff.

Commissioner Do: There's a motion and there's a second.

Commissioner Zito: Just real quickly.

Commissioner Do: Please.

Commissioner Zito: I just see in this economic time yeah, there's a lot of competition out there for business, between businesses, and that's just kind of the way it is. I feel for the small mom-and-pop shops but at the same token we can't deny the right of one business owner to progress with their business for the sake of another business. So...

Commissioner Do: Thank you, Commissioner Zito. No further discussion? No further discussion, so let's vote by hand. All in favor? The motion is passed unanimously with all commissioners present voting in favor. So moving on, to item 3D. Final environmental impact report. The EIR evaluates one project that consists of two distinct and geographically separate components. 1, the airport West stadium, PDC 09-004. The airport West stadium component proposes a planned development rezoning to allow for the development of a professional sports stadium with up to 18,000 seats on an approximately 14.5 acre site located at the southwest quadrant of the Coleman avenue and Newhall drive intersection. 2, Great Oaks place project, file numbers GP 07-02-01 and PDC 07-098. The Great Oaks place component proposes a general plan amendment, file number GP 07-02-01, to allow for the development of between 914 to 1905 residential units and a planned development rezoning, file number PDC 07-098 to allow for the development of between 1100 and 1500 residential units on approximately 76 acre site located at the southeast quadrant of the Monterey road and Manassas road. It is the intent of the project proponent to obtain approval of the proposed GPA and rezoning of the great oaks place site, sell the Great Oaks place site to residential developers, and use a portion of the funds from the sale to fund or reimburses a portion of the construction of the sports stadium that is proposed under the airport west stadium development component. staff.

Orator: Thank you, Mr. Chair. So, Akoni Danielson from planning staff. I'm going to briefly speak to the process for which this EIR was prepared and then also briefly speak

to the substance that it discloses. The city, last fall, circulated a notice of availability, announcing that the draft EIR was available for public review to the state clearing house to responsible agencies and to the surrounding public. The draft EIR circulated for the 45 day mandated public review period from September 5th to November 9th of 2009. The city prepared a First Amendment which has been delivered to the commission that includes response to all substantive comments that were received on the draft EIR as well as associated text revisions to the document. The First Amendment and the draft EIR together constitute the final EIR. And the First Amendment final EIR was sent to all who commented on the document in addition to the commission. The commission's action tonight is to certify the EIR as being adequate to inform the decisions about the pending applications that was written to address that were described in the agenda and that the commission needs to certify that the EIR is complete and in compliance with CEQA. If the commission certifies the EIR, it can then take action on the related application that is on tonight's agenda. At the request of the applicant, the applications related to the Great Oaks place or Istar property in Edenvale that component of the project have not been agendized and the time frame for their decision is unknown. So we're certifying an EIR tonight covering two distinct properties, two distinct developments, but the only action that's before you that's for a recommendation is related to the zoning for the FMC component. So as was stated on the agenda, the applicant has indicated an intended financial relationship between the two developments in that the housing conversion may be used to fund or reimburse some portion of the soccer stadium cost, therefore regardless of the sequence of which site would develop first the potential environment impacts from development of the second site must be disclosed to the decision maker and the public so that the reasonably foreseeable impacts can be acknowledged. So with that, the planning staff is recommending tonight that the commission adopt the resolution to certify that the Planning Commission has read and considered the final EIR, that the final EIR reflects the independent judgment and analysis of the city, that the final EIR is complete in compliance with CEQA, and that the planning director shall transmit the final EIR to the city council and the project applicant. This concludes staff report with respect to the environmental impact report.

Commissioner Do: Thank you. Since the city is the lead agency to the EIR we go straight to the public speakers and there are a number of speaker cards and I will call three names at a time again. Matthew bright, pat Saucedo and Don -- I'm sorry, Galiardi. So please come down and -- please state your name and you have up to two minutes.

Orator: Hello, my name is Matthew bright. I'm a resident of the Newhall neighborhood, the section that's just on the other side of the train tracks from the proposed development. I'm here to speak about the planning process for the stadium and the public participation that I don't believe has happened adequately. It's a 500 foot noticing, we've had unfortunately very few people that fall within that and for a project of this size the impact on the neighborhood is a lot larger than a noticing range of 500 feet maybe a thousand feet. With the lighting impacts, with the sound impacts with the possibility of unchecked multiple nights per week and evening events, these all represent a significant impact on the community. I'm asking for the commission to consider a brief delay while we involve the community at a more detailed level regarding this development. And in addition, a

fully enclosed stadium is probably the best way to actually mitigate the noise impacts, the lighting impacts. And the potential for late-night events. So thank you very much.

Commissioner Do: Thank you. I just want to remind the public that this item deals with the EIR itself. Thank you sir? There is a subsequent item on zoning. If you want to speak on the zoning you may want to wait for the next issue?

Orator: You're going to handle the zoning after the EIR? I'll wait then.

Commissioner Do: Mr. Don Galiardi.

Orator: You got that right, Don Galiardi. Good evening I represent thousands of fans of the San José earthquakes. I'm here on behalf of soccer Silicon Valley which is the advocacy group for earthquakes fans and this is a part of a very long process bringing professional soccer back to San José and building a permanent home for soccer in San José. It will do wonderful things for the economy of San José and will bring lots of joy to future generations of San José so I urge you to approve the final EIR. Thank you very much.

Commissioner Do: Thank you. Next three speakers, Ned Zuparko, Shiloh Ballard, Mary Ann Zukas, please come down to the podium.

Orator: Good evening, my name is Ned Zuparko, I'm a member of soccer Silicon Valley foundation, I want to lend my voice to staff recommendation to carry through on these items. I'm a school teacher and in the past I've addressed the city council on this on the connection between the San José earthquakes and the community. And the educational community. And I just thought I'd throw in a quick anecdote in here. Last year we had a pilot program with San José earthquakes and the Santa Clara County office of education. We had maybe half a dozen classrooms involved in a physical fitness program and I've been contacted by the quakes lately and we're going to continue now this year and now it looks like there's 200 teachers who would like to get this free program through quakes and the office of education so I just wanted to let you know that these are the community benefits, are going forward, and the sooner we get a stadium up and the quakes in place and more connections, the better it's going to be for everybody so thank you very much for your time.

Commissioner Do: Thank you. Next speaker please.

Orator: Good evening, my name is Shiloh Ballard. I'm here on behalf of the Silicon Valley leadership group and I'll kill two birds with one stone and speak to the zoning and EIR. Last time you saw me here I actually had my arm in a sling because I had a broken collar bone due to a soccer injury. Despite that, I ran into somebody really hard on the field and broke my collar bone. Despite that I'm here to speak in favor of soccer in San José and in favor of the stadium again on behalf of the leadership group. We do believe that this project has tremendous positive economic development, pluses. And we hope that you move forward tonight. Thank you very much.

Commissioner Do: Thank you. Thank you. Next speaker, and then I will call three more names. Mara Crags, Joann Corning and John Urban. Please, ma'am, please proceed.

Orator: My name is Mary Ann Lewis. I live in the Newhall neighborhood, which is directly opposite the -- on the other side of the railroad tracks. This is an older, meaning these homes have been there for years, established family oriented neighborhood if you haven't been there. It's a beautiful neighborhood and we already experience noise and lights from Shott Stadium, which only holds 1500 people. This proposed stadium will be hold be 18,000 people. And then, of course, the earthquakes played at the Santa Clara Buckshaw last year, we don't dislike soccer, obviously. We can't all be in one neighborhood. But we could hear the loud noise from that earthquake game, and it's even further away than what this proposed stadium is going to be. So we're asking if you must go forward with the stadium, please enclose it, and please have it be at least 20 feet below grade. And that will keep the light away from our neighborhood, and the noise, and hopefully, not have, you know, late-night noise like concerts or something that's, you know, creating a great deal of noise. It will greatly depreciate the beauty and the serenity of our neighborhood. Many days when there aren't games at shott or Santa Clara, it's quite peaceful, in that area, even though we're around the trains and the airplanes, that kind of noise is much quieter much less invasive than if there were to be concerts there. So we hope you can eliminate that kind of thing and anything else that might be dangerous for a family neighborhood. Thank you.

Commissioner Do: Thank you very much. Next speaker, please.

Orator: Mara Crags. I live in the Newhall neighborhood. And Mary Ann just informed me. We already have two stadiums right near us. One is a 1500 seat stadium, which we hear them. We see their lights exactly the same distance between my house and that stadium you now propose to build an 18,000 seat open-air stadium. I'll hear it, I'll see it, it is over 12 times as big as the ones that are there now. Furthermore, we will then have the Shott stadium, the Buckshaw stadium, the soccer stadium, the HP Pavilion, and the Diridon ballpark, five major stadiums within a two-mile radius. I wonder if that's the best use of all of our resources. In addition, the city has a policy which says new designs should be designed to improve the character of existing neighborhoods. I really don't know how a stadium that's 93 feet tall adding 400 new lights, plus the parking lights with 63-foot-tall scoreboards is going to improve our quality of our existing neighborhood. The EIR also says there are no impacts on the aesthetic resources in the area. Many of the people in our neighborhood have a view of the mountains today. They will now have this structure in the way. I think that is an impact. Also all of these things, noise lights et cetera are cumulative, we already have the impacts of the airport, these other stadiums, future things to happen Santa Clara stationary plan, BART, high-speed rail, Campbell, nothing of these things is evaluated fully in the EIR, because it admits they're not here yet and they can't do it but yet these impacts are cumulative, and they really need to be evaluated. The other thing is the EIR does not specify what type events are going to be held here what duration, what frequency what hours of operation and so on therefore again I don't know how you can properly evaluate the impacts without those details so

bottom line we request that if this stadium is going to go forward if it is going to be the best use of our resources that have five stadiums within two miles then it needs to be fully enclosed with light blocking and sound blocking material and it needs to be 20 feet below grade. The project proponent says you can't play soccer anywhere but outside in the sunshine, yet he proposes night games that are lit. I think that argument's off the table. And we would appreciate it if the newest ALC safety guidelines were adhered to and the construction and operation of this facility and that neighbors have input into the operating rules surrounding events that are held there to mitigate the impact. Thank you for your time.

Commissioner Do: Thank you. Next speaker, please.

Orator: My name is Joann Kern. I'm a resident of the Newhall neighborhood. Living of course very closely to where the stadium would be built. My concerns, as mara was saying, is that there's going to be a cumulative effect of all the development that's being planned in the next five, ten years for that area. We've got high speed rail that's going to be running between the proposed new stadium and our homes. Along with eventually possibly the new BART station. The airport is also there. There is a lot of things being planned. And when each EIR only considers its own impact, and you don't look at the cumulative effects of all of the things that are going to be happening in the next few years you can end up with a really tremendously damaged quality of life in your homes. It is an older neighborhood, it's 75 to 80 years old, little cottage neighborhood and you know, it's just very -- I won't say that a stadium is inconsistent with it. I do support a soccer stadium. I think it's a fine item even close to my house is fine as long as it is -- as long as it takes into consideration being a good neighbor in the neighborhood. Not being 93 feet tall, partially below ground, fully enclosed, right now we can hear the baseball bats hitting the balls over at shott stadium. I mean sound travels very, very easily there. Concerts going on to 11, 12:00. Hopefully there will be curfews. It's just, you need to plan it as a good neighbor in the neighborhood and I'm hoping -- it's hard to consider an 18,500 seat stadium next to all these housing developments but if it is going to be there please plan it carefully and do whatever you can to mitigate noise and light.

Commissioner Do: Thank you, thank you very much. Next speaker.

Orator: Hello, my name is John urban, president of the Newhall neighborhood association and I'd like to start out by just thanking both Commissioner Platten as well as Zito. Three years ago you voted against having Campbell avenue developed and sure enough, you know, the people especially on the east side of Campbell avenue having to endure what we're going through right now I'm glad that you folks had foresight to see it coming. You wanted to not have light industrial eliminated, thank you for voting with the old brain. I appreciate that. I'm speaking against the ratification of the environmental impact certification. Noise and light was not adequately addressed. Things like noise and light on the first floor were addressed, but there are second and third floors on this development and that just doesn't make sense. Also, you have to -- doesn't address the cumulative effects of high speed rail, the BART yard that has been approved, there is heavy freight that comes through every night, and we you know, there's of course the

airport. There are 15 supposedly around 15 concerts proposed which is, you know, just too much for our community with all this cumulative sound effects. Or sound impacts. I just don't think that's right. We'd like to have an enclosed stadium, something that will address the noise, and the lights for those who live east of Campbell avenue, that now have this medium high density housing. It's just not right. You go ahead and approve housing and then jam this stuff in. It's not called proper and smart planning, I'm afraid. We'd also like some kind of a citizens task force since we're going to get overwhelmed by all this noise so that we can have some interaction, a little input on what's going on with events and how loud they are and the duration. Thank you.

Commissioner Do: Sir, thank you. Thank you. There's one additional speaker, Colin McCarthy. Please come down.

Orator: Thank you, ladies and gentlemen of the Planning Commission. I'm here to speak in favor of approving the economic impact report as it relates to the soccer stadium. I'm not a lighting expert, and I'm not a roofing expert or a sound expert, but I can probably offer myself as a soccer expert and a soccer spectating expert and maybe a stadium participant expert. So in terms of the complaints regarding noise and lighting I'll tell you my personal experience in going to soccer matches with roofs on it, as this stadium is proposed to have a roof. The idea behind that is to actually keep the sound in the stadium. Because soccer teams play better when the fans are cheering, it's very organic game experience, unlike maybe many of the experiences that people go to in sporting events. Soccer is really fan-driven so the noise generated by the fans is actually intended, and I believe designed, to be kept in the stadium so that it doesn't go out and goes down on the field so that you have a greater impact for go earthquakes, beat OA, the other team is intimidated, the Ref is intimidated so the Ref gives us all the right calls. The way the stadium is set up I believe that the enclosure is and the lights are on the top facing down inward and the enclosure is back to the Newhall neighborhood. So it is enclosed to the extent that if the noise gets projected it would be projected away down towards the field and away from the neighborhood. So again I'm not an acoustical expert, you'll have to consult somebody else but in termination of the soccer experience and the lighting experience it is all designed to go down and in. So thank you and please vote in favor.

Commissioner Do: Thank you. Motion to close public hearing? Yes, motion to close public hearing.

Commissioner Campos: So moved.

Commissioner Do: All in favor? Okay, staff. Would you like to respond?

Orator: Thank you, Mr. Chair. I'll address the comments as I took notes if I omit something please let me know and I will get to it. So it's sort of in the order in which they were presented. There was a comment or a concern about the outreach that had been conducted and in preparing this EIR and involving the public, facilitating the public's participation in the process the city staff has followed both the city's public outreach policy which mandates thousand feet radius, notification surrounding the site, both the

FMC site and the Great Oaks site down add Edenvale, we have published all the notices in the Mercury News. We attempted to capture those living near it and those at large who would find it through the media. In compliance with both CEQA and the City's public outreach policy. There were a variety of comments, all focused on the FMC property. Staff didn't hear any comments that directly relate to the Great Oaks site in Edenvale. The remainder of the comments are going to focus on the FMC site itself and the proposed soccer stadium there. There were concerns about lights and noise, and that is one of the primary purposes of doing this analysis, is conducting studies by professional engineers, in noise and lighting, to forecast what the resulting conditions would be. So we've done our best to disclose what we can predict will occur, we've heard comments that there's concern about the noise and the lighting, and you know, the EIR does disclose those conditions, we believe. Accurately and objectively. The -- many of the issues that were raised tonight were received by the city as comments on the draft EIR. So in the First Amendment itself you'll see many similar comments and in each case there's a detailed staff response responding to the substance of the issue. So I would say there were concerns raised about the type and the frequency of the events that we've anticipated in the soccer stadium, and so, you know, if the commission would care to, it was in the First Amendment itself on page 80, there's a response, there's a comment under what's called M 4 and another one under M 10 that both speak to our assumptions in modeling the frequency of use and the type of use, how we've modeled the noise that would result from the soccer game versus a concert and other events. So we have taken into account what we can predict at this point in terms of how often it would be used by different types of uses but it's our estimate. We don't expect the facility will be open every night, it won't but it should be open multiple times a week is what we can predict and some of those will be soccer some might concerts and other things. We've done our best to disclose what we think will happen and we are confident that within that range, we've captured the foreseeable occupancy of the facility. There were concerns about blocking views to the hills. Again that was a comment we received in writing. We responded to it in the first item. We acknowledge there are intermittent views of the hills, but it is not uncommon to any new development adjacent to any development to block views. There was a comment or suggestion made that the stadium should be conforming to the airport land use commission's draft proposed plan. We've evaluated the proposed soccer stadium in terms of the existing approved ALUC plan. It was found in conformance by the ALUC last year, in 2009, and under CEQA comparing a proposal against another agency's proposed standard is not evidence of an environmental effect. If and when the site needed to go through a subsequent rezoning which we don't predict at this point but if and when it did at that point it would be compared by whatever the standard was by the ALUC and may or may not be in conformance at that point, we don't know. They haven't don't adopted it yet. I would say in terms of safety issues and airports, the city abides by the FAA requirements. The ALUC guidelines speak to compatibility of land uses and the airport, and we really look to the FAA to tell us when things are unsafe with respect to airports and the FAA has not raised concerns. The number of comments spoke to ways in which the stadium could be designed to minimize some of the neighborhood impacts that have been discussed, noise, light and other things. And the alternative section of the EIR specifically does address an enclosed stadium. It also addresses a partially submerged stadium. So for the decision making process, so for the commission's --

assuming you certify this the commission's deliberation about the zonings, you could discuss whether any of the alternatives we've included in the EIR might be feasible, from your perspective, and whether you want to recommend any of those to the council, and similarly, when the council gets around to making a decision about the project, it could consider whether any of the those alternatives that we've identified, that would reduce impacts beyond what we've disclosed, are feasible. That will be a question for the council when it makes a decision. There were comments raised about cumulative impacts and, as was mentioned, there are other existing sports facilities in the vicinity, there are others that are proposed in the vicinity, there are major transportation plans in the works, BART, high speed rail and others. And we have to the extent that we can at this stage given where those other projects are in their processes we've accounted for their impacts in a quantitative way where possible. So BART is fairly far along in its environmental analysis so we can actually plug that into our documents, we can account for BART in a quantitative way. High speed rail is not far enough long for us to do that, so we, because of where they are in their process, can't model them in the same way that we can other projects. We're not obligated to, it's not our project. We've attempted to disclose, again, to the extent we can, those cumulative effects that are reasonably foreseeable based upon the status of the other projects in the vicinity. So those were my notes. If I've omitted anything please let me know.

Commissioner Do: I'm not sure you have but Commissioner Zito has some questions. Please continual.

Commissioner Zito: Thank you, Mr. Chair. Just a clarification. What I'm understanding that is EIR was conducted with just the partial enclosure, is that correct? There was a diagram, that I remember seeing, that had a partial enclosure, is that –

Orator: So as I understand it there was a mitigation to partially enclose it, that would deal with lighting, but not noise. And then there is an alternative that would be a fully enclosed stadium, so there's really two different flavors to that.

Commissioner Zito: So the director is showing me page 17 about the EIR shows an illustration of the proposed stadium and shows a kind of a canopy, right?

Orator: Right, so that's what's proposed right, partially enclosed not fully enclosed.

Commissioner Zito: When you ran the EIR was that acoustics based on that design?

Orator: Partially enclosed, but to eliminate the noise impacts that has been requested by the community, an enclosed stadium is what would you need to do and that conflicts to a certain extent to the applicant's objectives for the use and that's where the council will need to decide whether it believes that the enclosed stadium is in fact feasible.

Commissioner Zito: I'm looking at the environmentally superior alternative, you do mention enclosing the roof and partially submerging the stadium.

Orator: The question will be are they feasible do they meet the project objectives, did you key water if you excavate that far down, those are going to factor into the decision making process.

Commissioner Zito: Those were studies and that's what the EIR is all about is making sure all the data is in there to make an informed decision by city council.

Orator: Yes.

Commissioner Do: Thank you.

Commissioner Zito: I do --

Commissioner Do: Commissioner Zito.

Commissioner Zito: I do have one other question. This is one of the more creative EIRs in the sense that it has two locations and two projects under one EIR. I'm not used to seeing that although we haven't had some for quite some time now. I'm curious. Help me understand, why -- could this be two separate EIRs or did they have to exist together?

Orator: Mr. Chair, staff and the City Attorney that's advising me tonight spent a fair amount of time talking this through to understand whether there was a linkage and whether these should be addressed as a combined project or as distinct projects. And when this process started, the first applications that were on file with the city were actually for the Istar property, the Great Oaks site in Edenvale. So at that time we had an application for what I'll call a housing conversion, housing on industrial land because there was money to be made based on that conversion, and the state of the housing market at the time. So at the initial proposal was to build housing in Edenvale and the rationale for that was, it would fund something else. And that something else was a soccer facility, that was also in San José, and we knew that something of that size, at that location, with that type of use, was likely going to have environmental impacts. And so we wanted to make sure that the council understood that, in making a decision about a housing project in Edenvale, it was likely going to result in a future action in front of the council for a soccer stadium that it was a first step that was going to lead to a soccer stadium so we wanted to make sure that they understood that the first action was going to lead to reasonably foreseeable, potential, at least, environmental impacts somewhere else and what those might be. So that's how we got here. Things have changed since then. Now it's the soccer stadium that is moving forward, the housing market is not good, and so I'd say sort of the relationship between the two components has reversed and may not be as strong as it once was.

Commissioner Zito: So what I'd like to understand is regardless of the finances because that's not something the EIR ever takes into consideration. Do these projects stand discrete and on their own? In other words, could one project go ahead without ever doing the other project and still the EIR is valid and conforms?

Orator: It does. The EIR evaluates, because they're so far apart from each other geographically and they involve very different uses, I would say the environments in which they occur are very different. So we aren't disclosing very many if any combined effects from the two of them. So they really are geographically and substantively distinct, I would say. So the environmental analysis you could separate out this document into two distinct EIRs and they would both be adequate about informing decisions about each of them independently. But to start out with we thought there was a linkage and that one would sort of lead to another. So we wanted to make sure the impacts of both of them occurring in their respective environments were adequately disclosed. So we think that they do stand alone. So if the Istar project never happened, we'd disclose the impacts of the soccer stadium.

Commissioner Zito: I think just from my limited ability to comprehend these kinds of complex things, it would have made more sense to me if these projects were a little bit more adjacent, and so I could see the interrelationship. But they're so distinctly apart that again, I want to make sure that if we go ahead and approve, this -- it looks, I mean, personally it looks good to me, that we're not prohibiting or precluding the ability of doing one and not the other, and that from -- my original question to you is, could these have been two distinct EIRs? And it sounds from what I'm hearing staff saying, is they could be, and that each project can stand on its own merits, given the EIR, and that maybe you'll have to do a supplement, but in general this is adequate for each, individually and combined.

Orator: They are linked in terms of the applicant's stated intention to fund one some in some way, through the other.

Commissioner Zito: But that's a financial issue.

Orator: That's true. But in going to the council, when the council would be making a decision on one of them, it is -- it was, in our opinion, at least, to be very conservative in approaching this that it was reasonably foreseeable that the second action would at some point be before the council.

Commissioner Zito: Sure. But my job here is to make sure that from a CEQA perspective, that these are complete and adequate and that each project is individual.

Commissioner Do: Commissioner Zito, I think that counsel could provide some additional clarification.

Orator: So Commissioner Zito's comments are accurate, in that they are two separate and distinct projects, and had there not been the possibility that one might be used to fund another, you're right. We would have kept them distinctly separate. They're two distinct projects, they're geographically separate. But in an abundance of caution, because as you know CEQA requires that we analyze the whole of the action and to the extent there was a possibility that the approval of one would be used to fund the construction of another, they were linked through funding although you're correct, funding is not an

environmental concern. But yet when we try to identify what is the whole of the project that is happening here? And we have some evidence that voluntarily, we have a developer who's saying gee, if I am able to develop this housing, the whatever profit, if there is any, that is generated I think I'll use it to construct or fund a soccer stadium, we thought, you know, to the extent that one could facilitate another, that we should analyze the whole of the action. So Mr. Danielson was saying, so that it's fully disclosed to council by the way in approving a housing development you may be funding a soccer stadium or making it more likely. Again, the environment has completely changed but when the was originally being developed that was reasonably foreseeable.

Commissioner Zito: What I want to make sure is when a motion is being made, and we have to ponder the significance of that, we aren't saying that we would approve this EIR or not based on both projects coming forward? In other words, is there a constraint, the way that this is being brought to us, that says that you are approving this EIR based on two projects coming forward?

Orator: No.

Commissioner Zito: So regardless they can stand alone and be distinct?

Orator: Yes.

Orator: Laurel Prevetti: Let me add Mr. Chair if I may that the decision before you on item D is the certification of the final environmental impact report. It is not in any way predetermine a particular outcome of your recommendation of the subsequent item for the rezoning or a future recommendation should it ever come for the general plan amendment.

Commissioner Zito: Right but the study, the EIR study does not base its findings on both projects coming forward.

Orator: So I think for example what you might be asking is, what if there was some mitigatory impact of the housing, that somehow the housing offsets some of the impacts of the stadium or vice versa.

Commissioner Zito: Exactly.

Orator: Did they have to come forward such that the impacts of one would be offsetting the other and no the answer is no, they were analyzed independent of the other.

Commissioner Zito: If one of the projects turns into a Dairy Queen, who knows, that's not going to prohibit or invalidate the mitigation and the study for the other. And now I'm hearing the answer is no on that, and that's the question.

Orator: Mr. Chair, no, they were written as stand-alone analyses of each project independently on its own site in its local environment. But we packaged it into one EIR

because we understood the applicant's intention to link them through funding and have both appear at council at some point. We didn't know the order. If only one of them got to council the environmental impacts that we've disclosed for that one item have been fully disclosed.

Commissioner Zito: Perfect. Thank you.

Commissioner Do: Thank you, Commissioner Zito. I don't see any other --
Commissioner Campos.

Commissioner Campos: Thank you, Mr. Chair. I'm going to go ahead and put forward a motion. That we recommend certification of the final environmental impact report for the airport West stadium and Great Oaks place project as complete and in compliance with CEQA.

Commissioner Do: There's a motion and there's a second. Would you like to discuss your motion? Are there any other comments? If not, then let's vote by hand. All in favor? Okay so the motion is passed, unanimously with all commissioners present, with the exception of Commissioner Kamkar who is not here. I would like to ask the director, I think the director would like to make a recognition so please, director.

Orator: Laurel Prevetti: Thank you very much. This evening is Akoni Danielson's last commission meeting with the City of San José. He has accepted an offer to work in the private sector and I just wanted to give the commission an opportunity to recognize Akoni's career here with the City of San José and his great service not only in environmental review but in the very many other functions that he's served with the city so thank you very much, Akoni.

[applause]

Commissioner Do: Thank you, director. I think I can speak on behalf of the commission in extending our recognition as well for the great work that you've done and the always lucid and complete briefing to the commission especially on CEQA issues such as illustrated by tonight's issue so thank you and good luck on the future. Thank you. Are there other comments? Commissioner Jensen.

Commissioner Jensen: Thank you, Mr. Chair. I'd also like to extend my personal appreciation to Akoni. My very first appearance before the Planning Commission came with a project that Akoni was managing and as a community member I was completely baffled by the process. Akoni was completely gracious and completely helpful and helped me walk through process in a way that nobody else probably could have done. Although at times I was completely mystified by his calm composure, and I thought he was against me terribly. But I really appreciate your professionalism and all the help that you lent to me, and good luck in the future.

Commissioner Do: Thank you, Commissioner Jensen. Commissioner Zito.

Commissioner Zito: Thank you, Mr. Chair. I'd also like to underscore those sentiments and after seven and a half years on the commission, it's several times we've had disagreements about the EIR, but I'd have to say his professionalism and objectivism of the facts is just outstanding. I have learned a tremendous amount from you and I thank you very much for your time and effort and your patience you've had in dealing with me personally and the commission in general and I wish you the best of luck.

Commissioner Do: Thank you. So moving on to item 3 E, PDC 09-004. Planned development rezoning from A(PD) planned development zoning district to A(PD) planned development zoning district to allow an 18,000 seat professional sports stadium as a permitted use on an approximately 94.8 gross acre site located on the West side of Coleman avenue north of Newhall drive. Staff.

Orator: Thank you, Mr. Chair. This planned development zoning is covering a total of approximately 95 acres of former FMC site which is comprised of about 75 acre property owned currently by the City of San José, which is referred to as airport West, and the adjacent 20 acre property owned by Arcadia development company which is currently being developed as Coleman landing. The existing zoning on the site which is PDC 08-050 allows for up to 1.5 million square feet of commercial office, 300 hotel rooms and 7500 square feet of airport development on the airport west property. The remaining 20 acre site is currently being developed with approximately 254,000 square feet of commercial space which includes the Lowe's home improvement store with future pad buildings that are under construction. The proposed rezoning is intended to allow a professional sports stadium with up to 18,000 seats as a permitted use in addition to all of these currently allowed uses on the site. Staff is recommending approval of the planned development zoning for a number of reasons. The project conforms to the city concept, goals, and policies of the general plan in that it would create a new cultural attraction in the San José. The proposed project conforms to the economic development of the general plan because it would be increasing the overall development capacity and potential amount of jobs on the subject property. The proposed project conforms to the urban design goals and policies of the general plan and that it creates development standards to meet the intent of the design guidelines as we currently have none for sports stadiums. And finally the proposed zoning conforms to the general plan designation of combined industrial commercial and that will maintain the flexibility for a mixture of industrial R&D office and commercial uses while also allowing a new land use that is a combination of assembly, outdoor recreation, and other supportive commercial uses. This concludes -- excuse me, staff would like to clarify, there are some minor modifications proposed to the draft development standards, on page 2 of 6 of the attached development standards, under item D 1 D for area 5, staff proposes to modify the language to, instead, state for area 5 that uses allowed are limited to those that do not generate p.m. hour traffic trips. And there is also a revised final Public Works memo which, on page 3 of 4 there is some modified language regarding the traffic and park management plan which they set an agreement between the project applicant and the City of San José must be executed prior to the approval of a planned development permit. This agreement must detail the terms of the traffic and park management plan including financial obligations by the developer. The final traffic and parking management plan

shall be produced by the Department of Transportation in coordination with the project applicant and other relevant agencies that the final traffic and parking management plan shall commence at building permit issuance and finalized prior to the opening of the stadium. This concludes staff report.

Commissioner Do: Thank you. Even though the city is the other than of the property there is an applicant is that correct?

Orator: That's correct, Mr. Chair.

Commissioner Do: Is the applicant here? Do you wish to speak to the -- do you wish to address the commission? Do you wish to address the commission, please? Yes, okay. Please approach the podium and you have up to five minutes sir.

Orator: Thank you, Keith Wolff with the San José earthquakes. And I'd be happy to answer any questions that you have regarding the application.

Commissioner Do: Thank you. Are there any questions from commissioners? There are -- okay, Commissioner Campos.

Commissioner Campos: Sorry about that. There were a number of questions on the EIR regarding the different options. If you could just sort of comment on this them as so why they not be feasible.

Orator: Sure. In terms of having an enclosed soccer stadium we're unaware of any soccer stadiums in the United States being enclosed and it would be a huge building to be fully enclosed so we're actually proposing to have a roof structure around the whole stadium which is consistent with a lot of the stadiums overseas and Europe. And what that will do is it will help a little bit with the sound. It will also keep the lights instead of having large light posts that shine for the FAA and the surrounding community, we're bringing those lights down underneath the eyebrow of that roof structure so there's more mitigation in terms of lighting. But in terms of, you know, putting a roof over the whole stadium it just would not be financially feasible and we're unaware of any soccer stadiums in the United States that have that. I think one other comment was sinking the stadium down 20 feet. As you might be aware the FMC site has some environmental issues, in fact the site that we're looking at, the DTSC which oversee the environmental issues on the site loves the use of the soccer stadium because this is a site that had some contamination. And they don't want to have it necessarily enclosed by office buildings so having it underneath the soil of a stadium, and letting that portion of the project breathe is something that the DTSC really liked. But in terms of excavating, going down 20 feet, one, financially it's a difficult thing, and two it wouldn't be feasible on the site due to the environmental conditions. In fact we're not going beneath the existing great because of the conditions that exist. It is a good use of the is site because we are not going down with any excavation.

Commissioner Do: There is a speaker light, I'm not sure which, Commissioner Zito.

Commissioner Zito: Thank you, Mr. Chair. There is a lot going on with new lighting technologies, LEDs, et cetera. I'm just wondering if there is any technology that you see either available or coming soon that would help mitigate some of those problems and your ability to incorporate that into your design.

Orator: Sure. Again, in terms of lighting, we're moving away from, and even on the baseball side that we've researching in the Bay Area, we've looked at this issue, and so again, putting it under this eyebrow is a huge mitigation as opposed to Santa Clara right now which are big light stands and the lights. In terms of again I'm not an engineer and it's all I think addressed in the EIR there is not a lot of light that actually escapes from the site itself. From a distance, you would normally see a light but if it's underneath this eyebrow, it really mitigates that issue. The other thing that is happening in stadium lighting now, is they actually have these cans around the actual lights themselves. And that focuses the light onto the field itself. And so that's been an innovation in stadium lighting that's happened in the last few years for all new stadiums. And that's something that's really helped keep the light focused on the field which is where you want it and not you know really just going out into the ether. You know same thing with sound. What used to happen with sound is they used to in the older stadiums have these big banks of speakers that just blasted the sound out to the crowds. What happens now in the newer stadiums to mitigate what was brought up they do have dispersed speaker systems so there's small speakers throughout the stand. So instead of just having large speakers at a score board location that blasts sound out as loud as you can, what it does now is there's little speakers throughout the stands so you don't have to have the same decibel level for the crowd to hear the announcers and things like that. Those are innovations that have happened in stadiums and these types of projects in the last few years.

Commissioner Zito: And I realize this isn't a C.U.P. or anything like that, it's just a zoning. But typically what would you do to help mitigate the cumulative effects of other activities in the area, as some of the speakers have come up and testified? They are sort of the epicenter of three or four or five different venues, so what do you do to help mitigate those kinds of impact?

Orator: You know, I think that all we can do is kind of work within the envelope that we have. I know that those issues have been studied in the EIR, and unfortunately I can't speak to training noise and we thought that this was a great location in terms of impacts because there's already an airport, we're separated by train tracks from a community, and so those are the types of things that, you know, were studied I believe in the EIR and I can't really speak to the –

Commissioner Zito: But do you typically work to like coordinate schedules so you're not you know all venues are operating at the same exact time things like that? Is that something that you typically go through?

Orator: Yeah you know those things can occur and we would work to do that to the best, the greatest extent we could. I think one thing that is going to happen too is we already

play our games over at Santa Clara and obviously those games will no longer occur on that side of the tracks, it will come back to this side. We will try to coordinate with the other venues as we can as feasible.

Commissioner Zito: Thank you.

Commissioner Do: Thank you, Commissioner Zito. Thank you. Thank you sir. You will have an opportunity to rebut whatever public comment there is after the public speakers. So thank you.

Orator: All right, thank you.

Commissioner Do: There's one public speaker, pat Saucedo so please come down. Please state your name and you have up to two minutes.

Orator: Good evening, chair and commissioners I'm Pat Saucedo, representing the San José Silicon Valley chamber of commerce. We sent a letter in regards to the EIR but wanted to speak to the project this evening. The Silicon Valley chamber of commerce strongly supports a permanent home for major league soccer within our community. A soccer stadium as proposed this evening will generate significant jobs, taxable revenue, tourism and other very tangible social, community benefits for our local community. It will provide national and international identity, it will generate sports and recreational opportunities for our local families, positive role modeling and it will be overall a very good resource from within our community. From a land use environmental standpoint the project conforms to the City's goals and policies for the general plan and very significantly it conforms to the economic development strategy of the general plan. This project will generate jobs. Having just participated in the City's economic development strategy session this week, jobs is the number one issue, as we all know, in San José. Today, but also going forward into the future. This project conforms to the general plan designation of combined industrial/commercial, maintaining the flexibility for a mix of industrial, R&D, office and commercial uses, while allowing new recreational and economic uses on the site. This is a new concept in the city and I think through this stadium and the building of this stadium we are actually going to see a new policy that can deliver the goods that we've been looking for. So the chamber strongly recommends that this project be approved. It will be a great asset for the community of all ages all income levels and all skill sets. Thank you very much.

Commissioner Do: Thank you very much. There are two additional speakers, John Urban and Joann Carmey. Please come on down.

Orator: Hello there, John Urban, Newhall neighborhood association. I'd just like to point out that yeah it's expensive for Mr. Wolff to go ahead and foot the cross. So it's this kind of cross subsidy where he wants to save his money by not putting a top on it so yeah, we get to pay for it, and I don't know you know how fair that is. We get to enjoy all the free concerts as it were and all the yelling and screaming and cheering, and yet he gets to save a couple of bucks, some money on his stadium. That's all I have to say.

Commissioner Do: Thank you. Next speaker, please. And there are two additional speakers following. Mara Craggs and Don Galiardi. Thank. Please proceed ma'am.

Orator: I'm Joann Kern from the Newhall neighborhood. I agree that the soccer stadium is a benefit to the community. I don't have an argument with it. I don't even have an argument with it being around my neighborhood. However you do have to understand that we don't live in some place like, you know, North Dakota, you know, maybe Florida where you have tens of thousands of acres to choose where to put something. The site that's available is sandwiched in between an airport and a number of existing residential homes. Sure there's an airport, sure there are train tracks but you can't compare the location of this coliseum to, stadium to say Oakland stadium which is near an airport and train tracks which is absolutely different. You can't claim it's by an airport, train tracks, we don't need to do this, don't need to do that. It is directly adjacent to hundreds of homes, thousands of people who have been living here. This isn't like something you can plan from scratch. We heard a statement that as a soccer playing, you know someone had experienced as a fan who attended soccer games, and enjoys it and again, that's great, I have experience living next to some very noisy venues. And he'll go and see soccer once, twice a month maybe, I'll be living there 24 hours a day. The argument was given that an enclosed roof, that there aren't any soccer stadiums in the U.S. that are enclosed. You know how many years ago there were no football stadiums enclosed. Super Bowl was just played in an enclosed stadium. There's no reason not to do it just because you're not aware of something having been done before. It may be turn out to be a very feasible idea, may turn out to be an example that other cities can use to build stadiums in areas that currently are not being approved because they are so close to other residences.

Commissioner Do: Thank you, ma'am, your time is up. Next speaker, please.

Orator: Good evening again, Mara Craggs. I'm going to keep this brief, just two points. First off, earlier I said that the city has a policy that says new development should be designed in a manner that improves the character of existing neighborhoods. I honestly do not understand how anyone can say this is going to improve the character of our existing neighborhood. Second opponent, there have been a lot of points said tonight about how you would just have this thing be fully enclosed you could do a lot to mitigate the impacts on the neighborhood. The answer we've heard is that it's never been done before, and that gets my Irish up. We're Silicon Valley, we're the capital of Silicon Valley, entrepreneurs, high tech, let's be first, why not?

Commissioner Do: Next speaker, please, Galiardi.

Orator: Good evening, again, Don Galiardi, on behalf of soccer Silicon Valley. As you know I'm a soccer fan and of course supportive of the rezoning. But many of you also know that I am also a neighborhood activist. I come to speak about my neighborhood about neighborhood issues. I recall two years ago speaking to the city council in Santa Clara, about the earthquakes playing soccer in Santa Clara's open-air stadium at Buckshaw stadium and hearing the concerns of neighborhoods in Santa Clara, I think one

of them is also called the Newhall neighborhood of Santa Clara and many of the same concerns we're hearing here tonight were expressed there. And I have to say that the earthquakes have been tremendous in work with the community and that the concerns that were expressed were quite overwrought I believe and have not proved to be a problem. In fact Santa Clara has extended the term of the lease. I think this is important to understand where this is at. It's next to an airport, it's next to train tracks. Neighborhoods are a good distance away from it and in fact the plan is quite revolutionary. The eyebrow as Keith Wolff has described it is a revolutionary design. It's designed to enhance the fan experience in the stadium. This will tremendously benefit the property, and be a great asset to the entire community and I think the adjacent neighborhoods and I predict will raise their property values. Thank you.

Commissioner Do: Thank you. Mr. Wolff would you like to make a rebuttal statement? You have up to five minutes.

Orator: I don't think that there's anything else to -- for us to address in terms of rebuttal. Happy to answer any questions if there are further questions.

Commissioner Do: Thank you. Commissioner Cahan.

Commissioner Cahan: Thank you, Mr. Chair. The discussion of fully enclosing it –

Orator: Sure.

Commissioner Cahan: Are you -- is that something that is a feasible option or is it something that if that is mandated then you will absolutely not do the project?

Orator: We absolutely couldn't do the project if we had to fully enclose the stadium. The football stadiums you're talking about even without roofs it can cost a billion dollars, with a roof adds significant cost, takes away from the fan experience, and just isn't done for soccer in the United States. So I think when the EIR was studied it was studied with those things in mind and not having a roof. We've tried to do the best we can to mitigate with this partial enclosure that goes over the stands but we can't enclose the overwhelm stadium it just doesn't make sense unfortunately financially it just makes the project not feasible.

Commissioner Do: Thank you, Commissioner Cahan. Commissioner Zito.

Commissioner Zito: Thank you, Mr. Chair. Excuse my ignorance but what's a typical season for soccer?

Orator: We have within 15 to 20 games.

Commissioner Zito: What is the actual time of year?

Orator: The actual time of year I'm going to have to defer to our guys, it starts in a couple of months.

Commissioner Zito: You have exhibition and season –

Orator: Exactly.

Commissioner Zito: I'm just curious what the exact months are.

Orator: I'll have to defer to our team here.

Commissioner Zito: I'm hearing same as baseball?

(inaudible).

Orator: There you go, March through November.

(inaudible).

Commissioner Zito: So it's typically you don't worry about the weather too much?

Orator: No.

Commissioner Zito: Not too much chance of rain being the issue?

Orator: Not here in California and not in the United States, again, there's nothing that's fully enclosed. The eyebrow that we'll have on the stadium will be over the seating as currently proposed.

Commissioner Zito: Right. Could you know the proportion of night games to day games?

Orator: We'd have to look at the exact schedule again, which was all included in the EIR, I don't have that in front of me. You're asking tough questions. Maybe I can get Dave Alioto who is the president of the team to answer the specifics.

Orator: Hi, thank you for having me here. Real quickly our schedule usually starts the 1st of April and goes through October, if we were to get into the playoffs it could be extended. What was the question?

Commissioner Zito: The proportion.

Orator: It's about 75% night games and 25% day games and that ends up usually working out to where almost all the games are on the weekend. We are required to play a few weekday night game. All the rest of the games are on Saturdays.

Commissioner Zito: Trying to figure out, if it's summertime, it doesn't get dark until eight or 9:00 anyway. Just figure out the impacts –

Orator: One of the great things about soccer it's a 90 minute game. From when we get going to when it's over it's a 15 minute half, the lights don't take hold and the game is over, you're right, it really doesn't get in the way.

Commissioner Zito: Soccer, you don't have breaks for commercials?

Orator: There's no breaks, it's real quick.

Commissioner Do: Thank you, Commissioner Zito. Are there other questions from the commission? Is there a motion to close public hearing?

Orator: So moved.

Commissioner Do: All in favor, thank you. Staff?

Orator: Thank you, Mr. Chair. Staff would like to address a couple of comments. The -- as was stated in the EIR there is a stated objective, as with this soccer stadium, the objective is to have a well maintained natural turf playing field which would be including the cost of building a fully enclosed structure you then have to contend with how are you going to maintain natural turf that has no access to sunlight. And originally, the conceptual design did not have a roofing structure, and so the applicant has been very willing to work with staff, to get that conceptual design in place, in order to further reduce those impacts that we figured would come up at the very beginning of the project. And as for the number of sporting events, we're not looking to add a new soccer team to San José, that's an existing soccer team, they just happen to play at buckshaw stadium right now. They're going to relocating at this new stadium. Overall there wouldn't be more soccer games being played within the vicinity. Thank you.

Commissioner Do: Thank you. Any comment from commissioners? Commissioner Cahan.

Commissioner Cahan: Thank you, Mr. Chair. Remind me, the concerts, is there a time limit that they would be allowed to go until?

Orator: There's currently not a time limit within the development regulations. It's something that generally we would address at the development permit stage and that's -- it's something that we can even, you know, have as conditions of approval of a permit.

Commissioner Cahan: So that would be later on?

Orator: Correct.

Commissioner Cahan: Thank you.

Commissioner Do: Thank you, Commissioner Cahan. Any other comments or questions? Commissioner Campos.

Commissioner Campos: Thank you, Mr. Chair. I think that this is -- one, we lost a soccer team already, and we were fortunate, very fortunate to one, retain our name and get a soccer team back. I think what we -- what we can't lose sight of is that this is an opportunity to again give a shot in the arm to the local economy. This will create jobs and we need to get people to work. On top of that we need to think about our kids. One of the reasons that soccer is so popular worldwide is all you need is a ball. And you provide these opportunities for kids, a professional soccer team actually gives kids inspiration to aspire to get out, move around, get fit, and hopefully, one day, they have opportunities to potentially become a professional soccer player. And so I think that we need to embrace our soccer team. I think we need to create this opportunity to have a first-class venue. I've actually been to the soccer stadium in I think it's the Home Depot center. It's a beautiful park. I think from the pictures here, this will be ten times better than that. So I commend the investment into our community. And with that I'm ready to make a motion. That we recommend approval of the planned development rezoning from A(PD) planned development zoning district to A(PD) planned development zoning district to allow a professional sports stadium with up to 18,000 seats in addition to the already allowed uses on an approximately 94.8 gross acre site located Northwest and Southwest corners of Coleman avenue and Newhall drive.

Commissioner Do: Thank you, I think actually what you read was the item description itself and not the motion so –

Commissioner Campos: Well, you didn't want me to read what staff had for us because that would have included a senior housing development.

Commissioner Do: Right, okay. So there's a motion and there's a second. And any discussion? Commissioner Cahan.

Commissioner Cahan: Thank you, Mr. Chair. I would like to add to what the previous commissioner was talking about, what the need for soccer to be here, as we hear increased reports of head trauma caused by football, and that is our American passion right now, we really need to find an alternative sport that our children, our boys, our women, our girls, need to have something else that they can focus on, in addition to football that will get them out there, get them fit, get them involved, get the community involved. And so I am supporting this, because I'm supporting having this great alternative sport available to us. I am sympathetic with the neighbors' issues. And I wish there was an alternative place that we could put this. But this seems to be a good place for this soccer stadium. Thank you.

Commissioner Do: Thank you, Commissioner Cahan. Commissioner Zito.

Commissioner Zito: Thank you, Mr. Chair. Just to remind the other commissioners, everywhere else in the world soccer is football. But with that said, no, I agree, even what Ms. Ballard said, not everybody breaks their shoulder when they play soccer.

[inaudible]

Commissioner Zito: That's true. Better your shoulder than your head. I don't know if the PD permit stage is going to come before us, usually they don't. My hope is -- I'm going to be supporting the motion and I fully support the sport and the whole venue and what we intend to do here especially with the additional ideas of concerts and multiple uses for that stadium, it's great. I would ask that staff as they go forward with the permit stage to work with the community as they have all along, and try as best as they can to mitigate the impacts, especially when there's competing venues going on in the surrounding areas with traffic, with noise, things like that, and I'm sure when people put their heads together some good solutions can come out of it. I just urge you to work together with the community, keep them engaged, and I urge the community to stay engaged and work with staff to help mitigate that. But I think overall this is going to be a really great project, and it will be a real good shot in the arm for San José.

Commissioner Do: Thank you, Commissioner Zito. Is there any other comments? There's a motion and second, let's vote by hand. All in favor, the motion is passed unanimously with all commissioners present except for Commissioner Kamkar who is absent. Moving on to 3 F. SP 09-058, appeal of the planning director's decision to approve a special use permit to erect a monopole on a residential property on 3.13 gross acre site in the R-1-5 single family residence zoning district located at 1200 Fleming avenue. Staff.

Orator: Thank you. As presented in the staff report, this project is an appeal of the director of planning's decision to approve a special use permit for a slim line monopole on a three plus acre residential property up in the east foothill area of San José. The director's decision to approve such a facility on a residential parcel primarily based on its location at the edge of the city in a hillside area underserved at this time. And due to the lack of nonresidential opportunities, we saw this as a viable option. These conditions still exist and as such staff continues to recommend approval of the SUP. That concludes staff presentation and we're ready to answer any questions.

Commissioner Do: Thank you. Is the appellant here? The appellant who is Mr. William Collins. Mr. Collins, are you here? Yes, please come down and you have up to five minutes to address the commission. Please state your name.

Orator: My name is Bill Collins and I want to thank you for the opportunity to speak before you at this time. Again as indicated in the appeal that's before you I suspect, there are a few issues that I was most concerned with not the least of which was at the time of the original hearing and before I go too far with that I want to kind of address, I would trust there's some, maybe some misrepresentation in your staff report which has been wonderful to me, that's fine but it says here in a staff report that was sent to me, that the -- that on September 17th of 2009, an appeal of this decision was made by William Collins and I can assure you that's not the case. Maybe that's just a typo, I did make an appeal but that was in December, December 9th. So I'm not too sure where that came from.

That -- having said that on the appeal, I went ahead and addressed the three main points not the least of which was the time of the hearing originally was 9:00 in the morning. I'm in education. I teach with the east side union high school district and had to make arrangements for a sub, in order to come to try to make that meeting. By the time I had to make all those arrangements, the hearing had been held and approved. So that was an issue. I was a bit concerned with that. The second part was, your staff was terrific, they presented me with documents and all that I could wish for, in terms of the process. But the documentation and the photographs that were presented to me were all of pictures taken from Fleming avenue and below. My residence is above the proposed site, Romeo, which is about 300 feet uphill from the proposed site, and also, Macbeth. So the combined 28 acre parcel that would be looking down on the project. And so my question just simply was, and what would my view of the monopole be? And so that was the second point. Then not the least of which is, when you approve these types of projects I'm sure you look at the land as it is, and you have no way of knowing what some other corporations or institutions or individuals may propose for the land and its use. I'm the director of the sisters foundation which is a nonprofit math support center. Right at this point in time, we do tutoring at Romeo. But our concern was and is, what would happen if we were to propose a childcare or some other type of learning facility, and now there's a monopole there and it may be a moot point, because I know for every professional who says that there is no concerns in this area, there's another one who can say there is. So I'm not even going to get into that. I'm not -- I know my limitations and that's not my area of expertise. But I would hate to be -- have to stand before this committee or some other committee and say, I'd like to open a childcare or a learning facilities or expand our operations and then have it be said that there's a monopole now, and there's an issue that can you not go forward with your project. So our main concern is just to make sure that that awareness is there, it's been addressed, it's been discussed, and on the record, if you will. And then finally, again, I am sure there may or may not be, I don't know who else may have concerns regarding the proposal, and again, I'm -- to be quite honest with you, the learning center that I run, and propose, is very heavily dependent upon technology. So that's not the issue. The only point, again, to summarize, was the time of the original hearing, the perspective, whether -- and also, Ms. Kelly, one of the AT&T representatives, spent a great deal of time, she came out and heard our concerns and I'm sure she's made reference in letters regarding her finding, maybe she's here as well and she was very gracious. That's fine. We did want to have our concerns expressed, have them considered and discussed and then we can go forward, we can have some assurances that our plans and our hopes and dreams and visions for that area would not be somehow compromised or put at disadvantage because the monopole has been approved and established and constructed. And that's it.

Commissioner Do: Mr. Collins, thank you very much for your comment. Your time is up for now. You will have the opportunity to readdress the commission after the public hearing portion, at the end of the public hearing portion.

Orator: That's no problem.

Commissioner Do: Is the applicant here, Patricia Kelly? Please come down you have up to five minutes to address the commission.

Orator: Good evening, my name is Les Nederveld, I'm with the Neyerveld company, AT&T is our client, a year or so ago AT&T requested me to go into the area as being an extremely underserved area, they had received a lot of requests from residents, areas where there is absolutely no coverage whatsoever and they had a great concern over it. So we have gone through the area, studied it very carefully and arrived at the best solution was the Lares property on which we have designed the monopole. I'm here to answer any questions that you might have about, if you would like to know how we arrived at that location, or -- I'm an open book on it, I'm the one that did all the work on it.

Commissioner Do: Thank you. Commissioner Campos.

Commissioner Campos: You thank you, Mr. Chair. I sympathize with the appellant and given that this is hillside, have you considered any other additional mitigation measures? I know there are things you can do with monopoles to try to masquerade them, so that they blend in better with the hillside.

Orator: Pat Kelly. I'm the planner for AT&T mobility on this project. Yes, in fact, when I met with Mr. Collins and his wife, and in the -- the staff report is an attached letter discussing my meeting with Mr. Collins and his wife and my meeting I had with the planning staff at the Santa Clara County. Because Mr. Collins property is in the unincorporated area, it is not in the City of San José and so I went to the planning staff at the county. And I wanted to understand if in fact the installation of the slim line pole, would it in fact encroach on his property rights expand on his family use which is tutoring from mathematics, or anything else, would it encroach on any rights that he had, as property owner? There is a parcel between our property site, project site and his property but would it encroach on his rights and I found out talking to planning staff and I specifically talked to the planner who does nothing but processes wireless telecommunications applications, that no it would not be a problem and that the county in fact approves and has approved for a number of years these type of facilities of facilities on school locations hospital locations and during my discussion with Mr. Collins I asked if he would be open to us, AT&T putting in trees, planting trees, so that the visual impact, it would mitigate for his visual impact, would he be willing to participate in the -- some type of painting or color for the pole that would be more aesthetically appropriate for the area.

Commissioner Campos: Have you considered making it a tree pole? I mean, you see those as you're driving, you know, in some of the mountainous regions.

Orator: Commissioner Campos that was one of our original plans, in planning with staff, to make it a monopine. That wasn't consistent with the zoning ordinance, the zoning ordinance requires that it's a slim line pole.

Commissioner Campos: Thank you.

Commissioner Do: Thank you Commissioner Campos. Thank you. I don't see any other questions. Actually I'm sorry, Commissioner Zito.

Commissioner Zito: It was kind of a -- goes along with Commissioner Campos' question. We just had a similar project come before us that was utilizing a religious facility site up in the hillside in East San José. What they did is they met with the community and actually chose colors of the pole to help blend in depending on how you're looking at it so those kinds of things I think is what Commissioner Campos was also going toward is a way to mitigate the visual impacts and so on. So I'm assuming that yes, would you work with the community on those grounds.

Orator: AT&T, we would be more than happy to work with the community on that, yes.

Commissioner Zito: And I see the permit is for a 60-foot pole. Is that the height that you have to go to or is that just a maximum height?

Orator: No, the height of 60 feet is the height that we need to cover as much area as we possibly can. That happens to also come out of the ordinance of the City of San José. If we go much lower we would have to end up doing two locations but the 60-foot is in your ordinance and that's why it's 60 feet. We would prefer it to be higher, actually.

Commissioner Zito: I see, okay because what we just approved was 50 feet. But I was just wondering, what you tell me is it has to do with coverage. Do you have a higher output on your -- on the emitters if you will, because it's --

Orator: Could you say that again? I didn't hear what you said.

Commissioner Zito: What I first said was we just approved one that was 50 feet, but sounds like your 60 feet has to do with coverage, you need to get more coverage.

Orator: Yes, the higher are, the better area we can cover. If you look at page 5 in your staff report, you'll see an area that was green and green as we all know is always good. And then you see a yellow and purple and reds. Yellow marginal, purple and red there's just no coverage and there's a tremendous amount of no coverage there at all.

Commissioner Zito: I'm just wondering by going to 60 feet do you have a higher output on the emitters because you're trying to get a greater range?

Orator: I'm sorry, I'm having trouble hearing you excuse me.

Commissioner Do: Maybe you're trying to say the signal is stronger perhaps?

Commissioner Zito: Is the signal stronger with the 60 foot because you're trying to get a greater range out of it?

Orator: It is only because it's higher -- the frequencies can go out farther. It is not stronger, the same amount of power as if we were at 50 feet --

Commissioner Zito: Okay, so there's no additional power, it's not like you're going to go out, I'm just using numbers, 1500 watts versus a thousand watts or something like that?

Orator: There's no change between 50 feet and 60.

Orator: Excuse me, Pat Kelly. The technology requires that, this is talking to the RF engineers and the A and E people that I work with, they can only allow so much overlap so those signals cannot broadcast way out. They can only engineering wise technically only so much overlap so there's a limit to you know your really, your scope of where your project, where your pole will go is really limited based on existing facilities in the area or lack of.

Commissioner Zito: Do you allow or typically allow co-location with other --

Orator: Absolutely.

Commissioner Zito: Very good, thank you.

Commissioner Do: Thank you very much. I don't believe there are any other questions. Okay. Commissioner Campos.

Commissioner Campos: One last one. AT&T you will maintain the site, so you will maintain, or make sure that there's no vegetation that creeps up to the power boxes? This is a hillside and most of the year it is very dry. You will maintain this and actually not leave it up to the property owner?

Orator: Actually, Commissioner Campos, it is right near the site, right near the location where there's asphalt driveway, there's an improved area where there's a cut slope and has retaining wall. And there's not -- I mean the vegetation that is on the residential site now has to be maintained anyways because of fire retention requirements and it is every year and I had that discussion with the property owner during this process over the last few weeks. And so yes, the answer is, that in this particular site there's going to be very little maintenance but yes, AT&T will do the maintenance and whatever's required to make sure that the equipment stays painted and it's operational and it's taken care -- and the fencing is taken care of and so on.

Commissioner Campos: And the vegetation doesn't creep up to the power boxes?

Orator: Exactly the vegetation. And in this situation, it's kind of hard for the vegetation to creep up next to the ground equipment because of the improvements on the site but yes.

Commissioner Do: Thank you, Commissioner Campos. Before we go on I just wanted to mention to the commissioners there's a fair amount of interest on the issue and fairly thick stack of public speakers. Commissioner Cahan you have a question as well.

Commissioner Cahan: Thank you, Mr. Chair. Did I understand you were going to plant trees to help mitigate the visual effect?

Orator: What I did say is during my investigation Mr. and Mrs. Collins, when I met with him, he talked about that when he was up here, I offered that. I offered that AT&T would be willing to plant trees so that we could, you know, mitigate for visual impact. At the time, during the discussion that we had that day, he rejected that idea. But it -- we'd be willing to do that, yes. And I also stated that we'd be willing to paint the slim line pole, you know the appropriate color that would fit into that community.

Commissioner Cahan: Thank you.

Commissioner Do: Thank you, Commissioner Cahan. Thank you very much. You'll have another opportunity to address the commission at the end of the public speakers.

Orator: Thank you.

Commissioner Do: I will call three names at a time of people who would like to speak. Carmen Lopez, Anna Lopez and Lorando Luarca. Please come down to the bottom of the stairs. Anna Lopez and Rolando Luara here as well. Please state your name and you have up to two minutes.

Orator: Mr. Chairman, Rolando Luara, I'm here in support of the staff's recommendation to uphold the director's decision to approve the special use permit for the monopole. It's really life and safety type issues there. When you're in the hillside, no cell reception and emergent situation, there's no reception at all for cell phones. So I'd appreciate your consideration on this issue. Thank you.

Commissioner Do: Thank you very much. Next three names, Sergio Lopez, Wesley Briggs, and Tanya Ruel please come down to the bottom of the stairs. Please state your name, and you have up to two minutes.

Orator: My name is Wesley Briggs. I have been friends with the Lareses for many years. I'm often up to their house, once or twice a week. And I have a son in Europe who calls me on the cell phone, and he gets very upset when he cannot contact me. And you know, that's one of the poorest communication areas in San José. I think it will be wonderful when we get a monopole erected, and operational. Thank you.

Orator: Sergio Lopez, I'm an air to the family, too, I think it's really bad up there, our home phone numbers are locally, our cell phone are like locally, we can't get any reception at all. If we can get approval it would be helpful to us. Thank you.

Commissioner Do: I will call the next three speakers. Robert Harris -- or Lares, Masalino Guel, and Elvia Lares.

Orator: Hi, my name is Tanya Guel, and I've lived on Fleming Avenue for ten years. Cell phone reception is a must in our area. If you look closely to why our neighbor is trying to appeal this, this idea, none of it is valid. We have collected over 400 signatures of our residents who agree, what an impact it has not to have cell phone reception in our area. I've had Verizon T-Mobile, and no representation. Please allow them to put a monopole on their property. Thank you.

Commissioner Do: Next speaker.

Orator: Thank you. My name is Robert Lares. I live on the property. My wife -- my mom is 91 years old. I purchased a cell phone for her, she drives got her license for four more years. And I gave her, I provide a phone for her. I want her to be able to communicate with me wherever she's at. She goes to the doctor, church, so on and our cell phone is a problem. So I would appreciate it. Thank you.

Commissioner Do: Thank you. Next speaker, please.

Orator: Hi, my name is Elvie Lares. I also live at 1200 Fleming avenue. And when I was first approached from AT&T, my first question was, what's it going to look like? I have a beautiful home on the top of a hillside. It's a three-acre parcel. We have a beautiful view of the Bay Area, and that was my first concern. I have seen some of the stuff that's out there and believe me I do not want anything like that out had. So I have seen pictures, and I have also seen an actual slim line monopole and I know what it's going to look like. And I have also done some research. And believe me I would not compromise my property with something that is going to be a visual negative impact. Also, I usually have to drive around two miles from my house to get any service. And with this project we have talked to hundreds of people, and most of these people agree, that we need cell service just like everybody else and we just don't have it. Okay, thank you for your time.

Commissioner Do: Thank you, ma'am, please stay. Ma'am, please stay add the podium. We have some questions for you. Commissioner Jensen.

Commissioner Jensen: Thank you, Mr. Chair. Mrs. Lares when you were looking at the different photos of different types of monopoles did you look at or consider a tree type monopole?

Orator: Well at first that's what they told me that it was going to be. And I did see some trees. And I also looked at a picture of my property with a tree drawn in, right where it

would be. There was not that much of a visual impact. I -- it did bother me a little bit that it was -- it might look a little bit different. There is a tree over on Piedmont drive on a park there so we went to see it and it looks perfectly fine with me. I would rather have the monopole because it's more natural, it's not a phony kind of a thing. It really, either one, is not the visual impact that everybody else thinks it's going to be and like I say, I understand it because if you go down Story Road, over by McLaughlin, there are some towers that look gross. So I understand, the concern. Thank you.

Commissioner Jensen: But you said you would prefer the monopole to a tree monopole?

Orator: Yes, yes. Our intention is to maybe some day make it into a flag pole. We now have an existing 40 foot flag pole, there is no impact, it looks beautiful. It would just be a little bit taller.

Commissioner Jensen: Thank you.

Commissioner Do: Thank you. Our next three speakers are Alfonso Rodriguez, Roger Altantaras, Claudia Baragan. Please come down to the bottom of the stairs.

Orator: Good evening, my name is Alfonso Rodriguez. I live at 3756 Monsant Drive and I'm all for the proposed pole. I've lived there for quite many years. I've grown up and at this point now, my grievance -- I submitted an e-mail to Avril I believe it is, and I was informed that my e-mail, that you have a copy of it. And in addition to my grievances of you know, the bad service and everything, not being able to conduct business with people and other and family, you know, contact family members in that area, is which I really got a cell phone for, so I could keep contact with my mother who I help out a lot who she helps me out with my two kids, you know. And the transfer of children and the safety of them. You know? That area, seems to be an area that is prone to violence or crime because it is like in the outskirts. Now, with no contact with the police or anything, majority of the time people, 95% of the time people will have cell phones on them and when the incident occurs such as one night when I came home and I was unloading my truck and there was a hit and run down Boyer, near marchant, I didn't have my cell phone, by the time I went in the house I forgot the license plate number and I could have been ran over. A person, a body was dumped at our house. July 29th, 2005. If you care to see this, I'll present it to you. I didn't have time because I had the kids, to make copies. I recommended tot council do take huge consideration on our safety, not against because when it comes to safety, you'll take it from whoever you can no matter -- you won't discriminate when it's a matter of life and death. Thank you.

Commissioner Do: Thank you. Next speaker, please.

Orator: Good evening. My name is Roger Alcantera. I'm a neighbor, live at the foot of the hill in question. There's a situation there that people are complaining about the looks of the pole. And we think that the pole may save lives, and that overrides all other considerations. The reception is unreliable, to say the least. So I support the project. Thank you.

Commissioner Do: Thank you very much. Is Claudia Baragan here? Next three speakers are Pretunilo Baragan, Eu Quo Sue, Carla Gunnals, and it looks like Mr. Pretunilo Baragan may not be here. So Mr. Sue, please. Carla Gunnals, and the next speaker is Willie harder.

Orator: Hi, commissioners. My name is Eu Quo Sue, I live on Foria drive. I have a concern, there is a long term and potential long term health risk. Because I just purchased the house last year and if I know, AT&T plan to build the monopole with their name, I won't buy the house I can tell you the truth. And last October, I invited all my friends for a housewarming. And Verizon is working, T-Mobile is working. Metro PC is working, only AT&T doesn't work. So if we are concerning about reception, can you use some other companies. So and then, that's why I think because if the monopole is going to be received, my house is next tot framing, so ask you, if you, your house in your next door is going to build a monopole, are you going to oppose or are you going to accept? Please consider our situation. Thank you.

Commissioner Do: Thank you. No, actually, sir, please come back. Commissioner Zito.

Commissioner Zito: Yes, sir, I was just curious. There is a marked diagram, I know you don't have a pointer.

Orator: Fourth, number four.

Commissioner Zito: Fourth one in?

Orator: Number 4, foria drive.

Commissioner Zito: Right there where the finger is pointing?

Orator: Oh, yeah yeah yeah.

Commissioner Zito: So you're backing up to that?

Orator: Yeah yeah yeah.

Commissioner Zito: Trying to find out the location on the map, it's actually on the other side of the property. Actually just wanted to get an idea. Okay, thank you.

Commissioner Do: Thank you. Next speaker.

Orator: Hi, my name is Carla gunnels, I'm at 1 two 03 Fleming, the L shaped that is right by Fleming and the proposed monopole. I wanted to bring up a few issues. First of all, I group up on this site, I went to Mt. pleasant high school, I graduated from San José State. I'm a long time resident on this street, so I've seen a lot of changes in the area. First of all I was never notified about the December 9th meeting about the proposed monopole. I

was not notified about this meeting. My mother lives at 1285 Fleming which is the next house over and she was not notified either. The only reason I do know about this is because my across the street neighbor who is here asked me what I thought about this monopole. I started doing some research, and I don't agree that it should be located here. Most monopoles are located on public property at schools at libraries, and instead, this is in a residential area. Even the Planning Commission said, this is a very unusual situation. I think that there are three schools within one mile of this location, if you want to go for schools, Horace Keerton, Joseph George are both on East Hills drive, which are .8 and .9 miles away. The National Hispanic University which is on Story Road is exactly one mile away. If you want to put them at a school which you usually do, I suggest putting them at a school. I decided to do a petition, original copy I can give to you. The map that I used is not exactly that map. My neighbor gave me this map, which the circled area, circled area shows the people who should have been notified. Those are the areas which I concentrated on. No one outside of that because these are the most affected people in the area. So I have, of those in that circled area, 62 people that do not want the monopole in their backyard. We have several different reasons for that. We have concerns over health issues. I don't know that anybody can conclusively say that the radiation emitted from this will not cause any health problems. The latest research released in 2007 from the bioinitiative working group, which is an international collaboration of prestigious experts from the U.S., Sweden, Denmark, Austria and China released a 650 page report citing more than 2,000 studies, many very recent, detailing the toxic effects –

Commissioner Do: Ma'am, thank you for your comments, your time is up.

Orator: Would you like my position?

Commissioner Do: Please would you pass it to staff who will pass it to us. Thank you. And the last speaker is Mr. Harder.

Orator: Yes.

Commissioner Do: Please approach the podium, you have two minutes.

Orator: My name is Wiley Harder, I live about a quarter mile downhill from the proposed site. I've been here for 16 years and I will guarantee that the signal right there is just about nonexistent. I measure it at about minus 115 DBM, a whisper. I've tried over the years, AT&T and T-Mobile and now I'm with Verizon. None of them do an adequate job. No one has mentioned that the special attribute of the region, a special valley, coming down and there's a little ridge and that ridge shades that entire residential area from any signals coming from downhill so the only opportunity is an uphill site. And I'd be very much in favor of being able to use cell phones in there. I don't like brick mode, sorry, that's referring to an ad. Any yes, sir?

Commissioner Do: Thank you, there are no questions. Thank you very much. So the appellant you have up to five minutes to make any additional comment. The appellant which is Mr.-- okay, he's coming down.

Commissioner Do: Mr. Collins.

Orator: The appellant, it was me. I just wanted to speak to the issue, this is not dramatic. But I really, I do have a -- I've been with Verizon for many years, my company's with Verizon. Just to be fair and balanced, I just purchased an iPhone, which is exclusive with AT&T. I just say that only to say that that's not the issue here. The main issue that I had again to summarize was the time of the original hearing. And I appreciate the opportunity now, that others had a chance to speak, how you rule is your call on that. Again also, I just -- the main, another part of my concern was, to view the area as residential and to -- at that sometimes assumes that there is no other possibilities in terms of use. So I know, the monopole may be a fine -- a needed use of the land. But as long as it doesn't preclude any other possible uses down the road. And that's neither here nor there. And then finally, that -- well, that's essentially it. So I thank you for your time and I thank you for your deliberations at this point in time.

Commissioner Do: Thank you, Mr. Collins.

Orator: Sure, no problem.

Commissioner Do: The applicant, Mr. Kelly, would you like to make additional comments? You have up to five minutes. Thank you.

Orator: Thank you, commissioners, I think at this time, we really don't have anything else to say. But we'll be more than happy to take any of your questions.

Commissioner Do: Thank you very much. It doesn't appear like there are any questions. So is in a motion to close public hearing?

Orator: So move.

Commissioner Do: All in favor say aye. So thank you, the public hearing portion is closed. Staff. Are there any -- anything else to clarify?

Orator: Thank you yes. Staff would like to comment on a few items that were brought up. I think you know the first point of clarification is that this is a residential district so there is a height limit of 35 feet. In order for a wireless communicate facility of 60 feet to be located, it would have to get, qualify for a height exception and these height exceptions are only available for a wireless facility that conforms to the definition of slim line. Questions were asked relative to a monopine or a wireless antenna masked in the form of a tree. Those do not qualify but that being said even if we did have the opportunity again, this is in a hillside and we really look to using that kind of alternative where there are other are large trees in the area so that if it does have to be set out from a

grove of trees it doesn't look like it's out there on its own. So there were reasons why we did kind of dismiss that alternative early on in that we wouldn't be able to get a facility up to 60 feet on this site. Again, you know, I think the long term health issue you guys have dealt with we really don't have the ability to address in our local decisions. And you know, I'm -- we did do the noticing. Our hearings are typically at 9:00 in the morning. We do recognize that it at times conflicts with others. But again, hopefully, the you know early noticing gives people the opportunity to call in to staff and get any questions answered so if they can be answered, and they don't want to come to the hearing, that they're at least able to get their questions answered. As far as anything else, I'm available for questions. Thank you.

Commissioner Do: Thank you. Commissioner Zito.

Commissioner Zito: Thank you, Mr. Chair. Couple questions. Could you remind, can you remind us what the requirement is as far as location from a residential property? If I remember correctly there's a certain setback requirement.

Orator: Well, as we stated in the staff report for the policies, there's a guideline of, I think it's one foot for every height of -- I'd have to find it in the staff report. But at any rate, this is 203 to 208 feet from the nearest residential structure. I think on page 5 of 6, and 6 is where we talk about the setback as recommended in the policy versus what was being proposed and this far exceeds what would be suggested for the policy.

Commissioner Zito: So, I want to understand something. I'm reading it's located approximately 93 feet from the nearest residential property line to the north, right? But isn't this parcel itself a residential property?

Orator: Yes. But we do have the ability to consider wireless communication facilities on a residential property, specifically a slim line would be a special use. If it was anything other, then it would be a conditional use. The policy does discourage location. However given the fact that there were limited if truly a lack of nonresidential alternatives, again we do locate these in residential zoning districts. We like to look for nonresidential uses such as you know, institutional uses which the larger flag poles or, you know, augmenting church steeples and things like that. There are really a lack of opportunities in this area. We have conditioned that there be a term of five years on here. Again just because there's a term does not mean that we cannot approve it. But again, encouraging kind of redressing the technology advances, as well as requiring that they accept co-location on them is our way of further minimizing any intrusion. Again, we do recognize that this is not typical. This is I think a location that, again, because of the lack of school, the churches, and not being able to do kind of another physical alternative --

Commissioner Zito: It's just I don't remember ever having considered an application for a pole on an actual residential site.

Orator: I think we've only done one other one.

Commissioner Zito: Yes.

Orator: We don't look to be supportive of but again given the real lack of service out here and alternatives –

Commissioner Zito: I just want to understand. I just want to be sure that year not in contrast with any of our regulations, like I said I remember reading specifically that there has to be a specific set bang to any residential property. For instance the one we just approved was at the Sikh temple off Quimby. It had to be whatever 300 feet from –

Orator: So you're asking the fact this is a residential property would preclude it?

Commissioner Zito: Would preclude it.

Orator: Would I say no, our use allowances allows us to locate them in residential districts. That would suggest that we don't have a performance standard that says no to placing it in residential properties, we have a policy that discourages it, but regardless of any property it is placed on any adjacent residential property we would look to support those setbacks.

Commissioner Zito: Just want to make sure we're not contradicting any of our regulations. With that if the chair pleases I'll make a motion.

Commissioner Do: Please do.

Commissioner Zito: And then I'll speak to that motion. Uphold the director's decision to approve a special use permit to erect a monopole on a residential property on 3.13 gross acre site in the R-1-5 single family residence zoning district as recommended by staff. Okay, real quickly as I mentioned several times, this just came before us a couple -- maybe a month ago, at a church site which was essentially in the middle of a residential area. The issue of any health risk, this commission is barred by state statute, for essentially taking that into consideration. So it is basically saying we cannot deny a permit based solely on supposed health risks because it is inconclusive. Other aesthetics and so on are fair game but not health risks. One interesting of the temple site is it is within 300 feet of my home. So I met with the applicant, the provider, unfortunately it wasn't AT&T, I have an AT&T phone, I'm not going to get any coverage even though they're going to erect that pole. But they did meet with us to set colors and to try to mitigate its impact because again it was up against a hillside, as residents are looking up at a hillside, they're going to see that pole there. They're trying to mitigate as best as possible and I suggest that the neighbors do work with the applicant and the provider to do as best as they can to mitigate that. I think the slim line pole is probably the best of any other options, all due respect to my fellow commissioners. I think it's going to be the least intrusive and from the service aspect there are a lot of good reasons that, from a safety aspect, the more cell phone coverage we can get, the better in that regard. I think it will really improve responsiveness for not only emergency situations but also just your quality of life in general.

Commissioner Do: Thank you, Commissioner Zito. Counsel.

Orator: Thank you, Mr. Chair. Again, as Commissioner Zito noted, this is mostly for the public, because the commission understands the scope of its authority. But especially for the gentleman who came to the podium and had quite a few concerns about the health impacts and I think there was another speaker that noted that there have been studies, that indicated that after quite a few years this should be given another look. I wanted to let the public know and also let the commission know that as Commissioner Zito noted this Planning Commission is preempted by federal law from denying a wireless communications facility on the basis of health impacts because the federal government has decided that it is the decision maker on that particular issue. I wanted to let the commission know that I believe it's the City of Portland and Los Angeles county, have both called for a repeal of that preemption, because of the additional studies that have been coming out, some jurisdictions are feeling that it is time to take another look at the issue, and so the preemption may be change in the future, and that's something that various jurisdictions are asking the FCC to look at because they feel that they would like a broader ability to examine the issue and protect their citizens.

Commissioner Do: Thank you, counsel. There are any other comments or questions? No, there's a motion, and there's a second. So let's vote by hand. All in favor? Raise your hand. So the motion is passed, with all commissioner present, voting in favor. So that closes the public hearing portion of the meeting. Next item is petitions and communications. And there are none, I believe. Next items is referrals from city council, boards, commissions or other agencies.

Orator: Laurel Prevetti: There are none.

Commissioner Do: Thank you. Next, good and welfare, report of the city council.

Orator: Laurel Prevetti: Just briefly, as one of the speakers mentioned this evening, on Monday afternoon the city council did hold a study session on economic development. They're very interested in what we can do as a city to make sure that we are ready for the upturn in the economy. And I just want to recognize all of your work as our Planning Commission, because as development applications come to you, you are part of that economic engine. So again, great endorsement by the council, for trying to spur economic development in the City of San José. Thank you.

Commissioner Do: Thank you director. Commissioners report from committees, Norman Y. Mineta San José international airport noise advisory committee. Commissioner Campos. Anything to report from the airport committee?

Commissioner Campos: Thank you, Mr. Chair. Nothing to report.

Commissioner Do: Thank you. Commissioner Kamkar is not here. Would either Commissioner Jensen or Commissioner Zito like to report on the envision San José 2040 general plan update?

Commissioner Zito: Yes I can do that Mr. Chair. Had a very lively discussion about transportation issues on this past Monday and city staff and VTA came to us with some policy decisions and some goals. And they were discussed quite in depth and we'll be coming back to the task force for further discussion and hopefully decision. Our next meeting is in two weeks.

Commissioner Do: Thank you, Commissioner Zito. Review synopsis of the last meeting of January 27th, 2010. Any comments or is there a motion to approve? There's a motion and second. All in favor? So the synopsis is approved. We need to take a vote on the cancellation of the March 24th hearing due to conflict in schedules. All in favor of the cancellation, okay, so that meeting is cancelled. We vote to add a joint study session with parks commission on April 21st, 2010. All in favor? Aye. So that is adopted. And subcommittee reports on outstanding business, are there any subcommittee reports? There are none. So the meeting is adjourned. Thank you very much.