MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF SEPTEMBER 8, 2005

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan (arrived 7:05 p.m.), King, Lorenz, Lydon, and Sharma

ABSENT: Weaver (excused)

STAFF PRESENT: Barbara Meerjans, Senior Planner
Michael Barrett, Assistant City Attorney
Kathleen Livermore, Senior Planner
Scott Plambaeck, Associate Planner
Joel Pullen, Planner I
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Miriam Shalit, Video Technician

APPROVAL OF MINUTES: Regular Meeting of August 11, 2005 was approved with the following corrections:
Page 14 voting results: Ayes, ~~7~~ 5
Page 24, fourth line: owners~~hip~~

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2 AND 5.

IT WAS MOVED (KING/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 2 AND 5.

Item 2. **FIRE STATION 2 – 37299 Niles Boulevard – (PLN2005-00316)** - to consider a Finding of General Plan conformity for acquisition of property for a new fire station proposed to be located in the Niles Planning Area. A Mitigated Negative Declaration was prepared and circulated for this project.

ADDENDUM TO STAFF REPORT

Zoning Conformance: *The proposed site is zoned C-C (H) Community Commercial (Historical Overlay) District. A fire station is allowed in the zoning district subject to a Conditional Use Permit per Section 8-21103(x) Public uses and quasi-public uses. The new structure is also subject to review by the Historical Architectural Review Board.*

ADDENDUM TO EXHIBIT "A"

FINDINGS

4. The Planning Commission has considered that the proposed site is zoned C-C (H) Community Commercial (Historical Overlay) District. A fire station is allowed in the zoning district subject to a Conditional Use Permit, per Section 8-21103(the Secretary of Interior Standards,) Public uses and quasi-public uses.

Corrections to the report were as follows:

Second line down: reference to Central Avenue
Findings: 10,000 square foot lot.
Response time: 90 percent was the correct percentage

HOLD PUBLIC HEARING;

AND

FIND THAT PLN2005-00051 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS AND HEALTH AND SAFETY CHAPTERS, AS SET FORTH IN EXHIBIT A, HEREBY ADOPTED BY REFERENCE.

Item 5. **VESTING TENTATIVE PARCEL MAP 8739 – 3572 Beard Rd – (PLN2005-00351)** - to consider Vesting Tentative Parcel Map 8739 for a 2-lot subdivision and a variance to lot width and setback standards on a 29,000 square foot parcel located in the Northern Plain Planning Area. This project is categorically exempt from CEQA, per Section 15332; In-Fill Development Projects.

Chairperson Harrison noted error on Page 1, "A total of xx notices were mailed."

HOLD PUBLIC HEARING;

AND

FIND THE PROJECT CATEGORICALLY EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT, PER SECTION 15332, IN-FILL DEVELOPMENT PROJECTS;

AND

FIND PLN2005-00351, CONSISTING OF A VARIANCE AND VESTING TENTATIVE PARCEL MAP 8739 ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN;

AND

FIND PLN2005-00351, CONSISTING OF A VARIANCE AND VESTING TENTATIVE PARCEL MAP 8739 (AS SHOWN ON EXHIBIT "A"); FULFILL THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

APPROVE PLN2005-00351, CONSISTING OF A VARIANCE AND VESTING TENTATIVE TRACT MAP 8739 IN CONFORMANCE WITH EXHIBIT "A" BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B".

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

John Smith, League of Women Voters, announced that on Saturday, September 24th, a meeting would be hosted by the Bay Area League at the Fremont main library concerning the California Environmental Quality Act (CEQA) to address if CEQA had worked and if it needed to be changed. He passed out flyers and advised that reservations should be made.

PUBLIC HEARING ITEMS

Item 1. **CINGULAR WIRELESS – Hillview Drive – (PLN2005-00308)** - to consider a conditional use permit for construction of a wireless telecommunication facility and a 55' tall monopole on a Alameda County Water District parcel adjacent to 614 Hillview Drive in the Niles Planning Area. A Mitigated Negative Declaration was prepared and circulated for this project.

ADDENDUM TO STAFF REPORT (see attachments)

Petition signed by 108 people opposing the project. (Informational 1)

Objection letter to the project. (Informational 2)

Public comments for the Draft Mitigated Negative Declaration. (Informational 3)

Staff responses to the comments for the Mitigated Negative Declaration (Informational 4)

Recommended Condition of Approval: The applicant cannot trim the trees to improve the signal. The trimming of the trees shall only be permitted for safety reasons after review and approval by the City.

Jason Trollope, Cingular Wireless agent, stated that the facility was necessary in this area, because subscribers now wanted good coverage in residential neighborhoods. The signal at a nearby site could not be "beefed up", because a stronger signal would interfere with other sites and neighborhood topographical features would stifle or reflect Cingular's low power radio signal. Using technical and legal parameters, it was decided that the proposed site, on land managed by the Alamada County Water District, was most appropriate. Earlier in the year, Cingular representatives had met with city officials to develop a strategy to provide improved coverage to various neighborhoods with generally poor coverage. A strong, clear signal would be available both outdoors and indoors and additional safety would be provided to users of the nearby recreational areas. The height of the pole was needed to emit a signal as far as possible and as much as possible through trees and into buildings. City code required that the pole be able to accommodate a second carrier. Below a certain height, a second carrier would not be able to emit a signal above homes, low trees and across the quarry ponds. A slim design, painted to match existing scenery, generally allowed the pole to blend with existing vertical lines and to disappear. Associated equipment would be located within a six-foot tall fenced enclosure just big enough for the safe maintenance of the equipment, cabinets and pole. Green fence slats and fast-growing ivy would blend with existing greenery and mitigate graffiti.

Commissioner King asked how this facility would enhance the nearby recreational area. Given the number of homeowners who had objected to this plan, he asked the speaker how the demand was measured for this service in this residential area.

Mr. Trollope replied that the facility would enhance the safety of the recreational area. Demand was measured by certain data that included dropped calls and call clarity, and this data was compared to their competitors.

Commissioner Sharma asked how the height of the pole was determined. Could the height of the pole be less, if it was not to be used by a second carrier? Had the growth of the nearby trees been taken into account when determining the pole height?

Mr. Trollope replied that the Radio Frequency (RF) engineers had calculated the necessary height of the pole based upon the surrounding topography. The pole also had to be high enough to support a second carrier and, because of different technologies, vertical separation was needed between the antennas. The proposed height was the optimal height needed by Cingular. Perhaps, the height could be adjusted if there was not to be a second carrier, but that would have to be decided by the RF engineers. The trees had been taken into account, and they were something the applicant "would have to live with."

Chairperson Harrison asked the applicant to speak about the stealth technologies, such as the poles that imitated trees. Was this technology not appropriate for this location?

Mr. Trollope agreed that all technologies had been discussed with staff and he was open and flexible regarding to this facility.

Commissioner Chan asked if not being able to trim existing trees would affect the signal. She asked for his response to the objections and protests (Informational 2) from the neighbors.

Mr. Trollope said that as the trees grew larger and when they were in full leaf during the summer, the signal would be affected. He had spent a good deal of time with Mr. Pitsker, the author of the response and who led the petition, and he believed that Mr. Pitsker's written responses misrepresented his comments.

Commissioner Lorenz asked if his company had a policy of providing RF ratings to the surrounding neighbors after the poles were operational. He felt that many of the neighborhood concerns would be allayed, if that kind of data were available to them.

Mr. Trollope stated that his company was willing to provide radio frequency exposure data to the residents after installation of the poles.

Commissioner King saw these facilities as being similar to the installation of telephone and utility poles and lines many years ago to accommodate progress. He asked if underground facilities might be available sometime in the future. He asked the applicant's position with this company.

Mr. Trollope replied that he was aware of technologies in other parts of the world that, supposedly, emitted signals from the ground, but he had not personally seen any and did not know if they were successful in urban areas with certain topographical features. He would certainly vote for that kind of technology! He stated that he worked for Parsons Corporation, and he was responsible for putting together the application, permits, working with city staff.

Chairperson Harrison opened the public hearing.

Kathy Shelly, 24-year Fremont resident, stated that she supported solid cell phone coverage throughout the city. Many cities' first responders utilized cell phones, as well as city residents who had cell phones for personal and business use.

Commissioner King asked if the speaker was in favor of this measure.

Ms. Shelly replied that she was.

Commissioner Chan asked if she lived in the area where this pole would be located.

Ms. Shelly stated that she lived in the Centerville area and she could not use her cell phone in her home.

Commissioner Sharma asked if this new facility would enhance her reception.

Ms. Shelly replied that she was making a general statement.

Tim Pitsker, resident in the neighborhood where the facility was proposed to be located, stated that he wished to highlight the key points in his written opposition, as follows:

- This facility would be located very near to five local recreation areas, Ranch Arroyo Park, Shinn Pond, Alameda Creek, Niles Community Park and Quarry Lake. The scenic beauty of this recreation area would be greatly harmed.
- This facility would be "an ugly eyesore . . . especially in the winter when the leaves on the deciduous trees had fallen . . ." The canopy of the tree would be cut away to facilitate the installation of the pole and he believed the damage could not be hidden.
- The petition with 108 adult signatures was the tip of the iceberg and represented just the people he had quickly contacted in his surrounding neighborhood. He believed that the vast majority of all people within the area would object to this facility, "except for a couple of Cingular people."
- Monopoles in the parks were not allowed by the city, but this application was tantamount to a monopole in the park by allowing it to be installed on a "little sliver of land that belongs to Alameda County Water District that goes between Shinn Pond and Rancho Arroyo Park."
- Neither the city nor the majority of the neighborhood would see a benefit from this facility; only a very small number of Cingular users would receive a benefit.
- Ordinance 2213(C2) stated that telecommunications companies must seek to use façade, roof or ground mounts before seeking a monopole. What permits had Cingular sought for mounts other than a monopole? None. The only effort made was an application for the façade of the Henkle building, the old chemical plant on the edge of Niles, which had been withdrawn. He also suggested façade or roof mounts on other old unused buildings in the area.
- Ordinance 2213(B1) stated that there were no restrictions on façade and roof mounts.
- Ordinance 2213(A1) required that a mock facility be constructed, if there was potential for substantial visual impact, which had not been done.
- A pole on Shinn Street, along with a future pole at the Papillion Restaurant and a façade mount on the Hinkle Building, could provide the same coverage as this facility.
- All possible options had not been exhausted.

Chairperson Harrison asked what exactly had been presented to the people who signed the petition and if the photo simulation had been used. If stealth technology were approved, would the speaker change his opinion?

Mr. Pitsker replied that he spoke with people and showed them the plan for the monopole in the park. He believed that the photo simulation was a "bit inaccurate" and he had not showed it. Stealth technology that was 55 feet high would not make any sense, along with the color.

Commissioner Sharma asked what was the speaker's main concern, as he knew from reading his letter that his concerns also included safety and aesthetic issues.

Mr. Pitsker stated that the aesthetics of the nature areas and his view of the facility from his backyard were his two main concerns. He added that when speaking to the applicant, he

was told that a stronger signal could not be created from an existing pole because of the health considerations, which was inconsistent with the applicant's statement that was made to the Commission.

Chairperson Harrison asked why most of the 108 people who had signed the petition were not present at this hearing.

Mr. Pitsker replied that he had stated that he would be in attendance, but he did not specifically ask them to attend.

Ron Fong, citizen of Fremont, stated that he frequently traveled in the Niles area and no one could hear him when he was using his cell phone while in Niles, as well as when he was near Hopkins Junior High School. He was speaking in favor of this measure, because he believed the drivers of the thousands of vehicles that traveled along Niles and Mission Boulevards probably had experienced the same difficulties. In his professional opinion, if a cellular tower was limited to one carrier, the height would not be reduced more than five feet, which was not enough to make a difference. He believed that a "tree disguised pole, as ugly as they are, is probably more appropriate than a monopole."

Carolyn Sutherland, School Street resident, questioned why the pole on the other side of Shinn Pond could not be used along with the additional pole to be located at the Papillion Restaurant site. She lived on that lake and she did not want to look at the pole. The proposed area was overgrown and natural, and it would be impacted by the construction associated with the pole. She had T-Mobile with good reception. She suggested that the applicant co-locate on that pole, rather than installing a new one. She asked, "When was enough, enough?"

Chairperson Harrison asked if the pole looked like a tree, would she feel differently.

Ms. Sutherland asked if he had seen one of those poles and if they looked like trees.

Chairperson Harrison replied that it looked more like a tree than a pole.

Ms. Sutherland stated that it was to be located in a nature area, and she reiterated her suggestion about using another carrier's pole for co-location.

Emiko McAuley realized that she wished to speak about the other Cingular application, which was Item 3.

Mr. Trollope concluded with stating that the Shinn Street pole was not a Cingular facility. Their closest facility to that site was located at 1111 Mowry Avenue, which was an old site and was too far away to properly cover the area in question. Using the Shinn Street pole would require the signal to cross Quarry Pond and the reflection from the water would deteriorate the signal to such a degree that it would be significantly mitigated by the time it reached the preferred location near the trees. The tree canopy would not be trimmed unless it posed a fire risk or dead limbs compromised the safety of the people installing the pole. This location offered adequate screening. In his opinion, the photo simulations gave a good representation of what the site would look like. In fact, comments were often made that the colors were "a little bit too day-glow and not lifelike colors." He passed photo simulations to the Commission. He offered to use a tree pole, instead, which were very lifelike to passersby, or paint the pole any color ("polka dots, if need be"). The conversation he had with Mr. Pitsker was hypothetical. He was asked why two or three poles could not be located at the edge of town that could blast their signal into the whole of the city. His answer was that people living near such a facility would probably have the same concerns as living near an FM transmission tower of a similar size. The highest ambient RF emission exposure

would be 1.7 percent of the allowable federal limit. He would love to have a 75-foot pole, which would give the best coverage, but 55 feet was the lowest height that would do the job.

Chairperson Harrison asked if the pole in the photo simulation was the same height as the tree. Could second carriers be mounted to a tree pole? He asked if the applicant was familiar with the application for a facility at the Papillion site.

Mr. Trollope replied that the tree and the pole in the simulation were at 55 feet. He understood that the Papillion site involved in a co-location on an existing facility.

Commissioner Chan asked if the residents had an opportunity to see what a tree pole actually looked like and if any of the residents had seen the photo simulations. She asked if he had spoken to any of the neighbors and if his company could co-locate on the T-Mobile pole. She also asked about the roof or façade locations that were mentioned by the previous speakers.

Mr. Trollope stated that it was decided that the slim line pole was a better choice, as it disappeared when within trees and existing utility poles, which created a lot of vertical lines. When he became aware of Mr. Pitsker's strong opposition to the facility, he had contacted him directly. He did not know where the T-Mobile site was and referred the question to his colleague. He assured the Commission that there were no other options and if it were possible to co-locate on an existing pole that was close enough to the coverage objective, he would have done it. No roof or façade locations were high enough to cover the residential location and the commercial buildings were too far away.

Chairperson Harrison asked if an industry clearing house existed that showed where all of the cellular facilities were located and if all of those facilities had been evaluated. He asked, again, if all co-location facilities had been exhausted.

Mr. Trollope stated that companies, such as PG&E, advertised any facilities that were appropriate for wireless communication facilities. They would prefer to co-locate on another company's pole, if it met their needs. All co-location opportunities had been exhausted.

Commissioner King asked if what looked like a tree, as shown in the photo simulation, was what he was proposing to put up.

Mr. Trollope stated that he was correct. If the Commissioners felt that the slim line pole was unsuitable, then he would be willing to consider a tree pole.

Vice-Chairperson Lydon recalled that one of the speakers had identified several commercial building sites in the Niles District that he felt would be suitable sites for a new facility. Did the applicant state that they were not tall enough?

Mr. Trollope stated that those buildings were too far away. He could not speak to the height of the buildings, as they were simply too far away and not an option.

Chairperson Harrison closed the public hearing and stated, for the record, that the Commission had received an email from Eric Olm who supported the project.

Commissioner King noted that the "whole world was using a cell phone" and it was irritating and frustrating when calls were dropped. Phone service that worked was important. He would vote in favor of the measure.

Commissioner Sharma asked why one form of pole was chosen over the other. He also noted that the proposed site was not a beautiful area, because it had buildings and pipes. He guessed that some trees in the neighborhood would not loose their leaves.

Associate Planner Plambaeck replied that the tree would not look like a tree when viewed close up by joggers and walkers using the recreation facilities surrounding the site. When the adjoining trees lost their leaves, the tree would be very visible.

Vice Chairperson Lydon stated that the citizens of this nation were certainly dependent upon cell phones. He guessed that one of the first things to dot the horizon on the gulf coast would be towers that would help to restore communications. Probably most of the 108 people who signed the petition against this application had cell phones that they depended upon every day. It had been suggested that people were foregoing wired telephone service in their residences for cellular phones. One way to prepare for a disaster was to make the trade-off in order to have dependable cell service. That particular area of the city had been under water in 1967, and he believed the residents would have been grateful to put up with a pole, which allowed them the ability to call someone. The photo simulations were not "Ansel Adams," but they provided a close representation of what the pole would look like. He suspected that a tree pole might look better. He could not grasp the idea that a single, slim pole at the end of Hillview would destroy nature. He noted that rubber dams had been put in the creek to capture the water for drinking by the city's residents and those rubber dams were much more intrusive than this Cingular pole. He would support the application.

Commissioner Chan asked for comments from staff on Mr. Pitsker's remarks:

- *Monopoles were not allowed within city parks.*
  Senior Planner Livermore replied that this was a trade-off, since it was difficult to find a suitable location for a cellular facility. This would be on the periphery of a park, and it would be blocked by trees behind and in front of it. Many poles and mechanical equipment were in this area.
- *A mock facility had not been constructed, per the ordinance he had quoted.*
  Senior Planner Livermore stated that the language could be interpreted in more than one way. It was staff policy to use the very sophisticated photo simulations, which provided a great degree of information about the appearance of the facility.

Commissioner Lorenz agreed that a balance needed to be struck between service needs and the beauty of the view through our parks and from our neighborhoods. He would support this application, if it were a stealth pole. He asked that a condition be added to require the applicant to supply the radio frequency field readings to any interested neighbor after the pole was operational, as he believed they would allay fears concerning the electromagnetic frequencies.

Chairperson Harrison applauded Mr. Pitsker for bringing his concerns forward and for his diligent work. He agreed with Ms. Sutherland that the trees did not look like trees, but a tree pole was still better than a big, green pole. He asked if staff would prefer to bring this matter back to the Commission after changing the pole to the stealth tree technology or would a condition be adequate. He also suggested that a condition be added about the RF testing.

Associate Planner Meerjans replied that it could be added as a condition and staff could work with the applicant concerning the stealth tree pole. She suggested that the RF condition used for another applicant previously could be reviewed and added to this application.

Commissioner Sharma agreed that a tree pole would be best. He asked that a condition be added that the applicant would be responsible for removing the equipment when it was no longer needed.

Commissioner Lorenz asked if it was usual and customary for a condition that required the applicant to inspect the facility every four to eight weeks.

Associate Planner Meerjans replied that the applicants had typically proposed the maintenance schedule for their facilities.

Chairperson Harrison summarized the additional conditions:

- That the Commission recommended using the tree pole with the stealth technology
- That the RF testing results be available to the neighbors
- That if the equipment was no longer needed, it would be removed and the site would be restored to its previous condition

IT WAS MOVED (KING/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES. THEREFORE, FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES AND RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;

AND

ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION FOR THE PROJECT FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THE PROJECT AS MITIGATED WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FINDING THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

APPROVE MITIGATION MONITORING PLAN (EXHIBIT "6") FOR THE PROJECT;

AND

FIND THAT PLN2005-00308 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS, LAND USE, PUBLIC FACILITIES, AND NATURAL RESOURCE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THAT PLN2005-00308 IS IN CONFORMANCE WITH STANDARDS OF THE WIRELESS TELECOMMUNICATIONS ORDINANCE (#2213);

AND

FIND THAT PLN2005-00308 IS IN CONFORMANCE WITH THE ZONING REQUIREMENTS OF THE O-S, OPEN SPACE ZONING DISTRICT;

AND

APPROVE PLN2005-00308, EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

Chairperson Harrison called a recess at 8:20 p.m.

Chairperson Harrison called the meeting back to order at 8:32 p.m.

Item 3. **CINGULAR WIRELESS LEMOS LANE - Paseo Padre/Lemos Lane – (PLN2005-00122)** - to consider a conditional use permit for construction of a wireless telecommunications facility for six panel antennas and parabolic microwave antennas mounted on top of an existing PG&E lattice tower with three accessory ground-mounted equipments enclosed by a fence on property located between Ladero Street and Marabu Way, west of Lemos Lane in the Mission San Jose Planning Area. This project is categorically exempt from CEQA review, per Section 15303, New Construction or Conversion of Structures.

Steve Christenson, Cingular Wireless agent, stated that 49 notices had been mailed and no replies had been received. There was one person who wished to speak tonight. This proposed project was consistent with the city's General Plan, as it was to be a co-location on an existing tower. The antennas would be painted to match the PG&E tower and he agreed to all the terms and conditions. He understood the future speaker was concerned about EMF issues and this facility would emit approximately 2.1 percent of the limits allowed by the FCC. He agreed with the demolition that had been required on Item 1 and with the radio frequency emissions reports. However, he suggested they be made available to any interested person through staff rather than mailing them to the surrounding neighborhood. That way any questions could be answered.

Chairperson Harrison asked for clarification of Exhibit E, which was a map showing existing towers and where his facility would be located.

Mr. Christenson stated that the first page showed the existing coverage, the second page showed the expected, fill-in coverage, the third page showed the 3,000-foot radius, per the city's guidelines.

Commissioner Sharma felt the radioactive symbols that represented the antenna locations was a poor choice as they could cause undue concern by the general public. He asked if the additional structure to the PG&E tower was required.

Mr. Christenson stated the symbols showed the direction of the signals, but he may be correct about the symbols chosen and a different symbol might be better. The additional structure was added to provide addition separation and because it was requested by PG&E at this particular location. The location of the equipment shelter was also dictated by PG&E.

Commissioner Chan asked if he had spoken to any of the neighbors and if he would be willing to call a meeting, if needed.

Mr. Christenson replied that he had not talked to the neighbors, because there had been no response to the notices and he had not been aware of any opposition for this hearing. He agreed to meeting with anyone who had expressed doubts about the project.

Commissioner Lorenz asked if the maintenance of the equipment would be similar to what had been recommended for Item 1. He also asked if the redwood shelter would be maintained.

Mr. Christenson stated that, typically, the equipment was checked and any necessary maintenance was performed on a monthly basis. The antennas on the tower would not be checked. The shelter would be maintained. Staff had suggested a chain link fence, but PG&E preferred that metal not be used and had required redwood fencing. Vines would be used to hide it.

Chairperson Harrison opened the public hearing.

Emiko McAuley, 23-year Ladero Street resident, stated that three PG&E, high-voltage towers were behind her backyard fence, and she had always worried about radiation from

these towers. She strongly opposed this facility being added to one of the towers, since it could add to the emissions she and her family were subjected to. She wanted more details about how this facility could affect the human body, and she compared existing knowledge about emissions to current knowledge about asbestos, which had been considered benign years ago.

Commissioner Chan asked if the PG&E towers had been in place at the time she moved into her home 23 years ago.

Ms. McAuley replied that they were there.

Ron Fong, Kimber Park area resident, stated that he lived very near this area. He stated that his children's schools were located such that he was required to drive approximately six times a day past this area plus those times necessary for work. The signal in this are was quite weak and he had experienced many dropped calls while driving in the area. Adding some dishes on the already grand scale of the towers, which were ugly already, would not change the appearance. The additional radio frequency (RF) emissions would be insignificant compared to the current EMF emissions from the power lines. He supported this measure.

Vice Chairperson Lydon asked how the city could convey his information to the previous speaker in a form that would be easier to understand. He understood that the RF factor from the cellular site at the top of the tower would be negligible and certainly would not compare to the emissions from the towers during the last the 23 years.

Mr. Fong suggested that the Cingular agent should speak with the speaker and educate her about the cellular facility. EMF was so pervasive that this facility would not make much difference. He thought that a microwave oven in the kitchen produced more emissions than this facility would.

Vice Chairperson Lydon thanked him for the great example, which should allow a better perspective and make it easier to grasp.

Mr. Christenson closed by stating that he would be happy to speak with the speaker who was in opposition to this facility. He had no idea what the city could prepare to educate people with the previous speaker's concerns, but he offered to get information from PG&E about the radiation emitted from their high-tension wires. Emissions from six antennas located at the top of an 85-foot transmission tower were completely negligible.

Commissioner Sharma recalled that two experts in the field had spoken at a past hearing about emission levels and health issues, and he suggested these kinds of experts might be helpful the next time this kind of facility was proposed within the city and there was opposition.

Mr. Christenson stated that his report had included that kind of expert opinion; however, since there had been no known opposition and this project had been placed on consent, he had not been prepared to bring forward experts to speak.

Commissioner Sharma reiterated that site cleanup should be performed, if this facility was no longer needed, and he asked that the city make that report available to any interested person with staff available to answer questions. He agreed with the applicant's suggestion that the future emissions reports would better serve the neighbors if it were available at city offices where staff could explain it, rather than mailing it to the neighbors who may not recognize what it was.

Chairperson Harrison closed the public hearing.

Commissioner Lorenz asked if the city had established a standard policy concerning notification of residents about the EMF emission report after six and twelve months.

Associate Planner Meerjans stated that there was no formal policy, but it had been added as a condition to a few of the recent applications. She suggested making it a standard condition.

Commissioner Lorenz agreed, as it would be fair to all involved.

Commissioner Sharma questioned using such a standard condition when a facility may be in a location where no residents were involved. He was not sure that it was important that residents always be informed of RF emissions after six months.

Chairperson Harrison suggested that the information that the applicant offered to obtain from PG&E could be a part of the first six-month report. He asked if the similar project heard by the Commission a few months ago was up and running yet.

Associate Planner Meerjans replied that facility was not yet in operation.

Chairperson Harrison asked if the city would receive money from this facility, since the report said the owner was the City of Fremont. It irked him when he heard of opportunities that the city had refused when they could have brought a little more money into the city.

Associate Planner Meerjans stated that this location was on a city-owned parcel; it had a PG&E easement; and, of course, it was not a park.

Chairperson Harrison summarized the additional conditions:

- Local residents to be noticed concerning a six-month and 12-month report regarding RF emissions from this facility
- PG&E information gathered by the applicant to be a part of the six-month report
- Site to be returned to original condition, if facility no longer needed

IT WAS MOVED (SHARMA/KING) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

FIND PLN2005-00122 IS EXEMPT FROM CEQA REVIEW, PER SECTION 15303, NEW CONSTRUCTION OR CONVERSION OF STRUCTURES;

AND

FIND THAT PLN2005-00122 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS, LAND USE, PUBLIC FACILITIES, AND NATURAL RESOURCE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THAT PLN2005-00122IS IN CONFORMANCE WITH STANDARDS OF THE WIRELESS TELECOMMUNICATIONS ORDINANCE (#2213);

AND

FIND THAT PLN2005-00122 IS IN CONFORMANCE WITH THE ZONING REQUIREMENTS OF THE O-S, OPEN SPACE ZONING DISTRICT;

AND

APPROVE PLN2005-00122, EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

Item 4. **AUTO MALL STUDY DISTRICT - Auto Mall Parkway - (PLN2005-00307)** - to consider a City Initiated Interim Study District for the Auto Mall Pocket located generally within 500 feet of the centerline of Auto Mall Parkway near I-880 in the Industrial Planning Area. This project is exempt from CEQA under Section 15061(b)(3), no potential of an impact on the environment.

Chairperson Harrison opened the public hearing.

Ray Tong, city resident and business owner, stated that he was in attendance with Mr. Mahern who was also a property owner on Auto Mall Parkway and Technology Place. They supported the retail push along Auto Mall Parkway, as it was positive and was needed very much. However, they felt that specific uses should be added to the conditional uses, such as professional offices, a supermarket, food services and restaurants and something like general retail. Mr. Mahern hoped to bring a project to the city soon, and they feared that this study could delay their project. He suggested that the study zone be extended to the south so that the lots on the south side of Technology Place were included.

Ted Schildge, Jr., architect and engineer for the buildings on Hanover Place, stated that some vacant lots were left in that industrial park. He asked what, specifically, this ordinance would allow in the future on those vacant lots. He liked this ordinance because it would upgrade the land and allow a top-notch building to be designed and constructed.

Chairperson Harrison closed the public hearing.

Associate Planner Meerjans stated that establishing the Study District would allow staff to study this area to possibly change the land use in the future. No currently allowed uses would be deleted. Hazardous materials uses would have to comply with the limits of hazardous materials regulations, which would be the same as in the Light Industrial District. Uses consisting of large numbers of people might be allowed where they might not be allowed currently in the GI District. Concerning the speaker's use suggestions, restaurants were already allowed, to a great extent. All of the other suggestions would be under Other Uses and could be considered by the Planning Commission for a Conditional Use Permit. Many of his suggestions were probably already permitted or would be reviewed at the staff level. Office uses could be allowed to the extent that they were allowed now. A pure office might not be, but it was not allowed at the present. She was not sure if a large supermarket would be allowed in the GI District.

Chairperson Harrison asked how this study would impact a new proposal.

Associate Planner Meerjans stated that it would be reviewed and a decision would be made according to what was currently allowed. There would be no moratorium on building construction.

Commissioner Chan asked how long this study would run.

Associate Planner Meerjans replied it should take 6 to 12 months. The original Study District was designed to be roughly 500 feet from Auto Mall parkway. Parcels presently being used for heavy manufacturing or more industrial were not included.

Senior Planner Livermore suggested that the speaker contact Wayne Morris, the planner.

Chairperson Harrison appreciated the speaker coming before the Commission with his concerns, as he did not want this study to delay any project that was coming forward.

IT WAS MOVED (KING/CHAN) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC MEETING;**

AND

RECOMMEND THAT THE CITY COUNCIL FIND THIS PROJECT EXEMPT FROM CEQA REVIEW, PER SECTION 15061(B)(3), BECAUSE THE PROJECT HAS NO POTENTIAL FOR CAUSING A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

RECOMMEND THAT THE CITY COUNCIL FIND THAT PLN2005-00307 IS IN CONFORMANCE WITH THE RELEVANT POLICIES CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, AND POLICE SET FORTH IN THE CITY'S GENERAL PLAN'S LAND USE AND HEALTH & SAFETY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND THAT THE CITY COUNCIL FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THE INTERIM STUDY DISTRICT PLN2005-00307 BECAUSE IT WILL ASSIST IN PREVENTING ADVERSE IMPACT ON CONFLICTING LAND USES IN THE INDUSTRIAL AREA;

AND

RECOMMEND PLN2005-00307 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (INTERIM STUDY DISTRICT) AND EXHIBIT "B" (INTERIM STUDY DISTRICT MAP).

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

Item 6. **PROPERTY ACCESS – Citywide – (PLN2005-00330)** - to amend The Fremont Municipal Code Text to specify circumstances under which city staff may enter private property for development activity review. This project is exempt from CEQA, per Section 15061(b)(3) – no potential of a significant impact upon the environment.

MODIFICATION TO EXHIBIT A

Unless otherwise provided by law, or unless otherwise arranged and mutually agreed to by a property owner (or the property owner's agent) and City, City staff shall ~~give~~ *provide* notice *reasonably calculated to ensure receipt* to the property owner (or the property owner's agent) three (3) *City business* days before accessing private property for the purposes of planning and development application review or inspection for development projects[1] ~~.~~*in accordance with California Government Code Section 65105.* The property owner (or the property owner's agent) shall provide access for City (including its employees, agents, consultants, and officials) to the subject site within three *City business* days. If the property owner (or the property owner's agent) fails to provide access within three *City business* days, City (including its employees, agents, consultants, and officials) is authorized to enter onto the site for such review or inspection. …

Planner Pullen clarified that this was a modification, only, and the ellipses at the end of the last sentence referred to the rest of the exhibit.

Chairperson Harrison stated that the modifications to Exhibit A answered many of his questions.

Commissioner Chan asked had what caused the creation of this proposal. If an applicant chose not to allow access, a delay would be a consequence of their inaction. She wondered why the City wanted to pursue something with an unwilling applicant. She was unclear about the kind of notification.

Associate Planner Meerjans replied that a question related to a previous application had concerned the process of notification to visit a site, so staff felt it prudent to formulate a clear process.

Planner Pullen replied that any method used to notify the applicant would have to reach the applicant three days before those three days started.

Commissioner Chan asked if three City business days was reasonable when many property owners lived elsewhere.

Associate Planner Meerjans stated that many property owners assigned an agent to represent them, so they could be contacted if the property owner could not be reached. Generally, when working on an application, staff worked with the agent. If the agent could not be contacted, a delay would occur concerning staff's review of this site.

Commissioner Chan questioned why staff would pursue site review if the property owner or his agent did not respond. She wondered why this amendment was necessary. She also questioned the grammar on the Development application.

Planner Pullen stated that State law already gave City staff authority to enter property for review of development and planning applications. This amendment would clarify the communication process between the city and the applicant. It was good for the applicant to understand in what cases staff would exercise that right. This was a mechanism that the applicant would be aware of when he signed the application.

Commissioner Chan asked if a site inspection triggered the need for a review from another city department, would the notification process begin again.

Assistant City Attorney Barrett stated that it would depend upon how the request for access was put together. Practically speaking, this amendment would codify what was already in the application. In the absence of a broader authority, yes, the property owner would have to be notified, again.

Chairperson Harrison asked if a visit would entail entering the property and looking from the outside. Obviously, if a person had not responded, no attempt would be made to enter a building.

Planner Pullen replied that staff would be excluded from going onto the property, because there would be no need to go inside of a finished building to process an application.

Chairperson Harrison could not find in the amendment where an initial contact would be made before the three-day notification would come into effect.

Planner Pullen said that for most projects, a day and time would be set up. This amendment is for the rare exception when staff was unable to contact anyone associated with the project.

Chairperson Harrison asked what California Government Code, Section 65105 said.

Assistant City Attorney Barrett read, "In the performance of their functions, planning agency personnel may enter upon any land and make examinations and surveys provided that the entries, examinations and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession."

Vice Chairperson Lydon asked if a mutual acceptable appointment was not reached, why would not that end in staff returning the application, because of the applicant's failure to reply? It seemed to him that would be a less contentious way to deal with the situation.

Assistant City Attorney Barrett agreed that, if there was not adequate information to process the application, it could be rejected as incomplete or the application could be denied. It was difficult to ascertain what would be less contentious.

Commissioner Sharma asked if this amendment was being created to cover an exception, as, generally, there would be no problem with access an applicant's property for inspection. Would this amendment apply only for construction and planning or would it be applicable for code enforcement?

Planner Pullen stated that code enforcement, police and fire personnel would be specifically excluded, because they already had their own legal means of going onto properties in an emergency.

Commissioner Sharma asked if an applicant wanted an inspection before the three days, would staff accommodate him?

Associate Planner Meerjans stated that staff could arrange an appointment earlier, if the applicant was agreeable.

Planner Pullen noted the caveat included in the amendment, "unless otherwise provided by law or unless arranged and mutually agreed to by a property owner (or the property owner's agent) and the City," and added this would include 99 percent of the cases.

Commissioner Sharma asked if the city inspector could visit the site and sign off on the building permit that was posted outside the building.

Planner Pullen replied that the Building Code already gave building inspectors the right to enter property. The entitlement phase that involved planners was prior to the building phase and no change would be made to the building inspectors' procedures.

Commissioner Lorenz stated, in his opinion, this amendment could facilitate moving through the process much faster and it would cut some of the bureaucracy. Would this amendment apply to Planning Commissioners and Council Members, if they wanted to visit a property?

Associate Planner Meerjans replied that staff was discussing a blanket notice that stated Planning Commissioners might be coming to the site during the week before the hearing.

Chairperson Harrison recalled being told when he was a new Commissioner that Planning Commissioners could not be denied access to any facility that was a part of their duties.

Commissioner King stated that since the code already gave staff permission to go onto an applicant's property, he did not understand the need for this amendment. However, he would approve it, if staff believed it was necessary.

Associate Planner Meerjans stated that a similar statement was on the current applications and the applicant was expected to sign it. However, this amendment would provide the authority to do that.

Planner Pullen stated that this amendment make the rules clear to both the applicant and staff and there would be no conflict about what the rules were.

Chairperson Harrison worried that if staff denied the project, the applicant might stop the project before it was completed, as apparently had happened concerning one project in the city. This amendment would allow for some flexibility.

IT WAS MOVED (SHARMA/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

FIND THAT THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, PER SECTION 15061(B)(3) OF THE CEQA GUIDELINES;

AND

FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN;

AND

FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS MUNICIPAL CODE TEXT AMENDMENT (PLN2005-00330) BECAUSE STAFF'S ABILITY TO REVIEW PROJECTS IN A TIMELY AND PREDICTABLE MANNER SAVES BOTH CITY AND THE APPLICANT TIME AND MONEY AND INCREASES OVERSIGHT OF PLANNING AND DEVELOPMENT APPLICATIONS;

AND

RECOMMEND PLN2005-00330 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (MUNICIPAL CODE TEXT AMENDMENT).

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
    - Report on actions of City Council Regular Meeting
        - **Associate Planner Meerjans** announced that a straw vote had been taken concerning the Auto Mall General Plan Amendment and voted to approve it at the upcoming General Plan hearing.
        - The second reading for the planning issues for Fire Station No. 6 in Centerville had been heard.
    - Cancel September 22, 2005 Regular Meeting

- Planning Commission/Staff Retreat: October 13, 2005

  Commissioner King stated that he would be out of the country on October 13th.

- Information from Commission: Commission members may report on matters of interest.

  Chairperson Harrison announced that the Rodent Society was holding their annual fundraiser for the fire and police memorial in the city on Sunday, September 11th at Mossimo's restaurant. A donation of 25 dollars would be expected.

  The Rodent Society would hold a fundraiser for hurricane relief on Saturday, September 17th, from 2:00 p.m. to 7:00 p.m. at Spin-A-Yarn restaurant with a donation of 25 dollars, also.

  A movie, The Majestic, would show at the Center Theater on Sunday, September 18th at 5:00 p.m. with donations to go the hurricane relief and sponsored by Commissioner Lorenz and Mayor Wasserman.

  Logan Seto was born to Senior Deputy City Attorney Seto on August 31st. Everyone wished them good luck.

  Commissioner Lorenz announced that the 10th Annual Good Neighbor Day had been celebrated on September 7th and hosted by Fremont Flowers. Hundreds of dozens of roses were given out with the idea that the recipient would keep one and give one to each of his/her neighbors. He offered the roses that were left to the Commissioners and staff. He thanked staff for the recycle boxes.

  Commissioner Chan announced that Celebrate Fremont would hold a community meeting on Thursday, September 15th, at the Center Theater, to provide an update about the plans and to show a wonderful video about the history of the City of Fremont. She thanked Commissioner Lorenz for helping with the arrangements.

Meeting adjourned at 9:40 p.m.

SUBMITTED BY:	APPROVED BY:
Alice Malotte Recording Clerk	Barbara Meerjans, Secretary Planning Commission