#### **MINUTES**

City Council Regular Meeting 2212 Beach Boulevard Pacifica, CA 94044 October 11, 2010

Mayor Digre called the meeting to order at 5:30 p.m., stating that all councilmembers were present and announced that the Council would meet in Closed Session. City Attorney Quick announced the business to be discussed:

- 1. PURSUANT TO GOVERNMENT CODE SECTION 54957.6: Conference with labor negotiator. Agency negotiator: Ann Ritzma. Employee organization: Fire Fighters Local 2400; Teamsters Local 856 Battalion Chiefs; Pacifica Police Officers Association; Pacifica supervisors Association; Police Management Teamsters Local 350.
- 2. PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a): Conference with legal counsel, pending litigation. In the matter of City of Pacifica, California Regional Water Quality Control Board, San Francisco Bay Region Complaint No. R2-2009-0075; and Our Children's Earth v. City of Pacifica. U. S. District Court, Case No. CV-08-5201 EMC.
- 3. PURSUANT TO GOVERNMENT CODE SECTION 54956.8: Conference with real property negotiator. Discussion will concern price and terms of payment. Property: 1220 Linda Mar Blvd., Pacifica. Agency representative attending session: Stephen Rhodes. Negotiating parties: City of Pacifica and Stephen Johnson..

Mayor Digre convened to Closed Session.

Mayor Digre reconvened the meeting at 7:05 p.m.

Present:

Councilmembers:

Lancelle, DeJarnatt, Nihart and Digre.

Excused:

Councilmembers:

Vreeland.

Staff Present:

Steve Rhodes, City Manager; Cecilia Quick, City Attorney; Ann Ritzma, Administrative Services Director; Lee Diaz, Associate Planner; Christina Horrisberger, Assistant Planner; Jesse deGuzman, Assistant Engineer; Jim Saunders, Police Chief; Mike Perez, PB&R Director; Kathy O'Connell, City

Clerk.

Councilmember DeJarnatt led the Salute to the Flag.

Commission Liaison:

Planning Commissioners Leon and Clifford.

Chamber Liaison:

None.

### **CLOSED SESSION:**

City Attorney Quick stated that there were no reportable actions taken in Closed Session.

### **CONSENT CALENDAR:**

Councilmember Lancelle moved approval of the Consent Calendar, as amended, as follows: Approval of disbursements dated 09/16/10 to 09/16/10 in the amount of \$11,667.40, regular and quick checks numbered 10615 to 10621; and disbursements dated 09/16/10 to 09/24/10 in the amount of \$961,420.48, regular and quick checks numbered 10622 to 10829, as set forth in Item #1; Approval of Minutes of regular City Council meeting of September 27, 2010, as set forth in Item #2; Authorize Staff to Advertise for Sealed Bids for the Department of Public Works Corporation Yard Roof Repair Project, as set forth in Item #3; Continuance of Local Emergency; seconded by Councilmember DeJarnatt.

City Clerk made a correction to the minutes, correcting the spelling of the word "Wor-Tech" to "War-Tech."

#### **ROLL CALL VOTE:**

Ayes: Councilmembers: Lancelle, DeJarnatt, Nihart and Digre.

Noes: Councilmembers: None.

Motion carried: 4-0.

### SPECIAL PRESENTATION:

Mayor Digre read a proclamation celebrating National Arts and Humanities Month.

Christina Aiella, Peninsula Arts Council board member, accepted the proclamation on behalf of their organization and other organizations in Pacifica. She then briefly explained the importance of the arts and thanked the Council for joining the President and other Councils in the County in recognizing the arts.

Mayor Digre thanked her for her diligence, as well as all the organizations in Pacifica, stating that our City was blessed by everything they do.

## **PUBLIC HEARINGS:**

5. Appeal of Planning Commission approval of the Installation of a New Wireless Communications Facility Including a Monopole with Three Antennas and Related Equipment Cabinets at 4700 Fassler Avenue, Pacifica (APN 022-150-370).

Assistant Planner Horrisberger presented the staff report.

Planning Commissioner Leon stated that he had nothing further to add but was ready to answer any questions.

Christina Flaherty, Appellant, stated that she was representing 135 local residents who were asking that the Council grant the appeal and revoke the Planning Commission's approval. She stated that this was the 4<sup>th</sup> wireless communication facility on the same ridge and they felt it needed to stop. She felt erecting the tower on the ridge was inconsistent with the Pacifica zoning codes and didn't meet the conditions of a use permit. She referred to the cumulative visual impact, pointing out that the Hillside Preservation District required utilities to be undergrounded, and she questioned why the City would then give a wireless carrier a special permit to erect antennas on the ridge. She referred to a court decision on this subject in San Francisco and then stated that the nearby residents conducted an adequate coverage field test on their own,

explaining the specifics of their test and asserting that T-Mobile had not adequately met the burden of proof that there was a significant gap in coverage. She concluded by asking the Council to grant their appeal.

Mayor pro Tem Nihart asked if they could ask questions at this time.

City Attorney Quick asked if the Council was asking a question of staff or the appellant.

Mayor pro Tem Nihart stated that they wanted to ask the appellant.

City Attorney Quick stated that they could ask a question of the appellant.

Mayor pro Tem Nihart asked if all the calls they attempted and received were listed in their report.

Ms. Flaherty stated that it was all in their report, adding that they did it on several different days.

Mayor pro Tem Nihart asked if they did anything besides Saturdays or Sundays, adding that all the dates appeared to be Saturdays and Sundays.

Ms. Flaherty thought the last three were weeknights.

Mayor pro Tem Nihart stated that they had September 12 which was a Sunday.

Ms. Flaherty asked her to look on Exhibit C, which was the one they added at the last minute when T-Mobile gave them their map. She stated that those last three calls were made in house, etc. and were weekdays.

Mayor pro Tem Nihart clarified that the last three calls were weekdays but all the others were on weekends.

Ms. Flaherty agreed, stating that it was whatever the dates said.

Greg Garazzi, T-Mobile representative, stated that he also had Paul Allbritton, T-Mobile's counsel, and a radiofrequency engineer to address specific questions. He stated that Paul would also like to make a presentation. He thanked staff and the Commission for their unanimous approval of the project. He explained the need for the tower, and addressed the perceived danger of the batteries, comparing them favorably as opposed to car batteries. He then deferred to Paul Allbritton.

**Paul Allbritton, T-Mobile's counsel**, stated that they had provided a thorough legal package, then specifically addressed the federal laws and how they impact the Council's decision. He gave specifics that showed that they have met the burden of substantial evidence regarding approval of the site, while the appellant had given circumstantial evidence about aesthetics and phone calls which did not rise to the level of significance in terms of the law. His report cited a relevant court decision.

Councilmember DeJarnatt stated that he was at the site during the day, and he asked confirmation by the applicant that the new pole would go to the west of the existing tanks.

Mr. Garazzi agreed, stating that it was west of the most westerly tank.

Mayor pro Tem Nihart asked City Attorney Quick if she understood that they could not take into account anything related to radiation because of lack of evidence for the health risk.

City Attorney Quick responded affirmatively, clarifying the Telecommunications Act which was overhauled a few years earlier and preempted local agencies from taking the health effects of RF emissions into account. She stated that the only question local agencies can ask was to ask T-Mobile to confirm that the RF frequency was consistent with the federal standard, and they had submitted such evidence.

Mayor pro Tem Nihart asked if she could ask a question to confirm that the public understood what they were talking about in relationship to something more common.

City Attorney Quick responded affirmatively.

Mayor pro Tem Nihart then asked if the applicant could compare the radiation exposure to a dental x-ray or a microwave.

Mr. Garazzi stated that there were tables to that effect. He stated that the T-Mobile site was only about 1,600 watts, and was fairly low compared to the other facilities at the site. He stated that, by itself, it only added .2% of the federal standard anywhere on the grounds, and was less than a portable phone in the home, a baby monitor or WiFi network.

Mayor pro Tem Nihart stated that her followup question was about radiation through the tanks.

Mr. Garazzi stated that the radiation didn't go through the tanks or the metal. It was only line of site technology. He mentioned that one proposal was to put their antennas below the Sprint antennas, which would be below the level of the tank and block their coverage to the north.

Mayor pro Tem Nihart asked if it would still have exposure to the area they were trying to cover.

Mr. Garazzi confirmed the coverage to the north and south but it would be blocked to the east. He stated that meeting federal requirements would take the matter out of local hands, but he felt that this was a very distant site. He stated that similar sites were put on roof tops of apartment buildings in San Francisco and complied with federal standards. He clarified that the public exposure area would have to be on a 35-foot ladder 20 feet away and directly in front. He stressed that cellular technology had been around for 25 years, and there were no reported cases of any problems with towers.

Mayor pro Tem Nihart clarified that she was asking the questions to be sure that the public understands. She referred to the combined public limit.

Mr. Garazzi stated that the 1.24% statistic he gave was for all five carriers and was anywhere on the ground in the compound at maximum output, but the normal actual output was normally much lower.

Mayor pro Tem Nihart asked staff to explain the comment in the report regarding clumping the antennas for less visual impact.

Assistant Planner Horrisberger stated that it mentioned that it was preferred that wireless carriers co-locate to minimize the proliferation of wireless sites within the city, and it didn't create additional visual impact but merely added to what was already there.

Associate Planner Diaz added that these were guidelines from the Hillside Preservation District, specifically preferring that structures are clustered together to minimize the impact.

Councilmember Lancelle wanted to clarify things for the public, stating that some things in the petition might frighten the public. She asked the applicant to describe the diameter and height of the pole.

Mr. Garazzi stated that it would be identical to the pole next to it, specifically stating that it was about as tall as the overall height of the building, and the pole diameter would be about 24 inches.

Councilmember Lancelle asked if it would be painted similar to another pole on the site.

Mr. Garazzi stated that the pole next to their proposed facility was painted green on the lower half and white on the top portion to blend in with the background when looking up at it from below.

Councilmember Lancelle asked for an explanation of the visual location with regard to brush, etc.

Mr. Garazzi stated that the interior compound of the water district facility was mostly asphalt driveways and parking areas, had been recently renovated by the district and was in very good condition. He stated that the area where T-Mobile was locating was right off the pavement in a cleared gravel surface.

Mr. Allbritton added that they would be planting trees and shrubs to hide the pole from the view below. He stated that the size was similar to a common utility or telephone pole, i.e., 35-feet, many of which were in the neighborhood with lines and cross bars on them. This one would be camouflaged, and he explained that this added pole was preferable to adding more height on the existing Sprint pole which would then be far more visible. He explained that, on looking at their photos, their pole would not be very visible.

Councilmember Lancelle asked clarification of how the radiofrequency decreased as it traveled a distance, referring to his comment about the inverse ratio.

Mr. Allbritton stated that it was the inverse square rule.

Councilmember Lancelle mentioned that she understood that it dropped precipitously downward quickly and, with distance, it decreased very quickly.

Mr. Allbritton agreed, stating that for each increment the reduction was doubled, for two increments the reduction was quadrupled, i.e., the inverse square rule, and for each third increment, it was nine times the reduction of power.

Councilmember Lancelle acknowledged that it was minimized very quickly and she thought it was an important thing to understand about the radio frequencies coming off the pole. She then referred to the battery backup for emergencies and a generator being on site, and asked if that meant we would have cell service in a disaster even after the telephone poles fell down.

Mr. Allbritton stated that the proposed facility does not include a generator. He thought the water district had a generator to power their facility but it would not be tied into T-Mobile. He did acknowledge that there would be batteries to back up the site and keep it on air during an emergency.

Mr. Garazzi stated that the batteries were in the contained unit itself and were contained within stainless steel within the radio cabinet itself, with the battery inside gel to prevent leakage.

Councilmember Lancelle asked if those were for emergency.

Mr. Garazzi stated that it was backup. He stated that they can put it in a cabinet to give them eight hours of backup battery. He stated that, in the Loma Prieta earthquake, the phone systems went down because many were electrically controlled, and the cell phone systems remained up because they were built to standards that would survive earthquakes and other catastrophes. T-Mobile was part of the emergency service network. He added that when AT&T and Singular merged, the Federal Communications Commission required Singular to sell its network to T-Mobile so that there would be five competitive networks in the Bay Area and they would all continue to enjoy low cost cell phone service. He stated that T-Mobile was playing catchup in terms of customers.

Councilmember Lancelle referred to the safety standards, and stated that it came up as a concern about the radiofrequencies being a health hazard. She thought the reason they were not considering that was that the Federal government has studied it and established standards for safety, and asked if she was correct.

Mr. Garazzi stated that she was correct. He added that there were over one million cell sites worldwide and there has never been a health issue.

Mayor Digre opened the Public Hearing.

Don Mendel, 76 Driftwood Circle, stated that the appeal before the Council should be granted because there was not sufficient credible information upon which the use permit application can be granted. He stated that T-Mobile's application stated that there was a significant gap in coverage in the Linda Mar area and a small group of citizens questioned that position and conducted an informal study and determined that there was not one dropped call. He then quoted a restatement of T-Mobile's position which asserted that there was a gap in coverage in a reduced area from the original report. Those citizens again tested the revised area. He felt the glaring inconsistency in T-Mobile's stated position and its significant gap area, coupled with the citizen's empirical data, established a credibility problem with T-Mobile's information. He felt T-Mobile should not be granted a use permit based on the information provided to date which compels additional findings. He felt the City should conduct an independent study at the applicant's expense to determine the actual coverage reality to make an informed decision on the application.

Bill Moore, Pacifica, urged the Council to grant the appeal and revoke the recent approval of use permit and variance because he felt there was no need for it while cluttering the ridge line and increasing the amount of potentially dangerous material stored at the ridge. He stated that, as a T-Mobile customer, he relied on the cell phone and routinely had a strong signal. He was skeptical of T-Mobile's claim of coverage gaps, and he felt the informal field test confirmed his experience. He then referred to T-Mobile's position that the field test was unscientific and unreliable. He doubted that they were lucky 100% of the time and he doubted that they were at a significant gap in coverage. He also mentioned that, when using T-Mobile's own website to test

significant gap areas, T-Mobile referred to the area having fast mobile web data coverage without a gap. He offered to take the Councilmembers on a test of the significant gap coverage area. He asked that they take time to consider the importance of the ridge line and ambiguous information.

Tim Flaherty, Pacifica, asked the Council to grant the appeal and revoke the recent approval for the cell tower on the ridge, stating that T-Mobile has not proven that the facility is needed to provide adequate service to existing customers in SW Pacifica. He referred to T-Mobile's comment that they needed to catch up, and stated that the Council was not there to help them catch up. He pointed out T-Mobile's assertion regarding the need to provide emergency service and stated that all emergency calls would be connected to the nearest tower regardless of what service the caller used. He added that T-Mobile had not commented on whether those were sufficient to handle the 911 cell phone calls. He questioned whether there was sufficient evidence to prove that this tower was truly necessary to provide adequate coverage to T-Mobile's customers or to bolster public safety. He felt we should not allow them to destroy the ridge line to help them catch up. He felt it was actually a way to achieve greater market share and, under Federal law, the City was not obligated to help T-Mobile in such efforts.

Tim Fredenburg, Pacifica, gave kudos to the citizens who had done all this research. He felt the amount of effort they put in justifies the City Council insisting on a third party study on this. He mentioned all the various antennas he sees when he looks out his window. He then commented on the City's endeavors to underground all the wires, such as at Rockaway Beach, which was his idea of scenic Pacifica. He begged the Council to grant the appeal.

Doreen Murphy, Driftwood Circle, asked the Council to grant the appeal and not allow another cell phone tower behind her home. She stated that she sees all the existing towers now. She referred to T-Mobile's comment that the City could not legally deny it. She stated that her concern was possibly looking out her window and seeing ten towers. She asked what the City's policy was on "when enough is enough." She referred to T-Mobile having 11 cell towers in the area, adding that she still felt they need to prove significant gap. She referred to a coverage gap in San Ramon when they had the carrier put a cell phone booster on the roof which resolved the problem without a 35-foot tower. She stated that, regarding the current towers, there were eight trees planted to block the view and only two trees were left. She stated that no one has come back to fix that problem, so she questioned who would maintain the planting. She also asked how many trees we will be putting there.

**Tod Schlesinger, Linda Mar**, stated that he lives two blocks from the site, with a PG&E facility with high power wires behind his home. He stated that he has lived there for 20 years and his mental capacity was intact.

Christina Flaherty, appellant, reiterated that she didn't believe T-Mobile had even met the conditions for a use permit and was not even at the significant gap issue. She felt that, with evidence that potentially raised a red flag that the applicant's study was not accurate, they had not passed that barrier of the zoning code. She expected T-Mobile to dismiss their field test as unscientific, but she felt the results should raise a red flag that something was wrong with T-Mobile's data. She mentioned that the Planning Department felt T-Mobile met its burden because they turned in a professionally prepared study, but asked how they could rely on that document with the conflicting data. She mentioned some of the issues that must still be addressed, including the concern as to the extent of those actual problems and what other viable options there are to solve those problems. She commented that this was just one location being looked at by T-Mobile.

Paul Allbritton, T-Mobile's counsel, stated that it should be apparent that there was some kind of disconnect. He stated that, in terms of aesthetics, this was a diminutive tower next to an existing tower and about the size of a utility pole. He felt this was not being placed in homeowners' primary view, and he also felt that T-Mobile needed the facility, mentioning that they had spent four years trying to fill a gap they identified in their network. He commented that it didn't make sense for T-Mobile spend the time, energy and money to fill the gap if they didn't feel it was necessary. He referred to the "catch up" comment, explaining that T-Mobile had the same rights as AT&T, Verizon and everyone else to set up their network under Federal law. He then referred to the batteries, stating that the City had a very capable Building Department and Fire Department, and they made the decisions about the safety and emergency response requirements for the batteries as they do for every other emergency facility in the community. He stated that, on looking at the valley and how radio propagation currently existed between T-Mobile facilities, it was easy to see there was a problem with their network and they were solving it with the least intrusive means with a diminutive tower on a ridge that serves both sides. He commented that public infrastructure was very difficult to locate, while benefitting many people but always impacting a few. He encouraged the Council to stick with staff's recommendation and Planning Commission's approval.

Greg Garazzi, T-Mobile representative, added that micro-cells required placement on existing utility poles, and neighborhoods with undergrounding, such as most of the area now and the future, they were not even a possibility. He stated that boosters can only be used where there is a repeater and they can pick up a signal and repeat it, and this area's coverage was too weak to provide a booster, adding that it would also require facilities in the Linda Mar area on every street corner. He felt this was, by far, the least intrusive means to provide coverage to that area with a single site solution.

Mr. Allbritton stated that he had a copy of the PCC map from the webpage which shows moderate outdoor coverage in otherwise good coverage around the Linda Mar area. He stated that moderate outdoor coverage says that they infrequently can do in vehicle and in building calls, but generally it was poor coverage.

Mayor Digre closed the Public Hearing.

Mayor pro Tem Nihart referred to significant gap in coverage and that in a standard cell phone there was variability when she gets a call, based on the phone itself, and asked if that thinking was true.

Mr. Allbritton agreed, adding that one problem with the anecdotal phone call was that they didn't know what kind of equipment it was. Another aspect of the site was that it has to be able to receive the signal from the phone but different phones have different strengths. He stated that there are many factors, such as time of day and day, which were important. He stated that the system was overloaded during commute hours and cell site coverage shrinks as it picks up calls closest to the tower, and the time of day will affect the coverage, with evenings and weekends having better service, along with the type of phone and the service it carries. He stated that you can't use a Verizon phone and call on T-Mobile's or AT&T's 911 network, however, you can use an AT&T phone to call on T-Mobile's 911 network because they were on a similar system, and concluded that you can't rely on the other users' facilities.

Councilmember Lancelle asked Planning Commissioner Leon about their discussion about when enough was enough and asked him to recount the outcome.

Planning Commissioner Leon stated that the Commissioners, like most citizens, were concerned about the proliferation of cell towers. He acknowledged that they look into every aspect available to them regarding cell phone towers, and proliferation was one such area. They did discuss doubling up on the existing towers at each site, but they would have to move up the slope to accommodate the cabinets and increase the height of the existing tower. History indicated that this was not the first application by the applicant. Other applications were denied because of no space for the cabinets.

Councilmember Lancelle thought her memory was that, doing the calculations, there was no unreasonable impact on the radiofrequency yet.

Planning Commissioner Leon apologized, because he thought she was talking about the cumulative effect of the number of towers and not the radiofrequency. He stated that they pursued those issues as far as they could, but there were legal restrictions on how far they can address that question.

Councilmember Lancelle stated that it was within the safety standards laid out by the Federal government.

Planning Commissioner Leon agreed, adding that one of the commissioners had military service related radio experience which gave the Commission expertise on that point.

Councilmember DeJarnatt stated that he liked to support appellants and a group of neighbors as opposed to an outside entity but, unfortunately, he can't do that in this instance. He went to the site today and he found it relevant that the new tower was over 520 feet away from the appellant's neighborhood and wasn't even visible from there. The argument mentioned being able to see the existing monopoles from Highway 1, which he couldn't. However, he did notice that the monopole closest to the Driftwood Circle neighborhood was highly visible, and he wouldn't want to see anymore up that far. He stated that this one would be about 20 feet lower than the more visible one. He questioned whether ceanothus would grow there, but he would like to see some care to ensure that the plants and trees do survive. He also thought they would need to be watered regularly for the first year or so. He did question whether there were a million towers around the world, but he didn't question that there were hundreds of thousands of them and he has never heard of any of them being a problem. He confirmed that CEQA was not an issue. He didn't have a problem with the pole but he wouldn't want to see many more than the present number and definitely would not want to see more located further to the east. Based on his observations, he confirmed that he did not support the appeal.

Councilmember Lancelle thought that all of the Councilmembers have been before other Councils making their case and she appreciated the public's effort to be in attendance. She agreed with Councilmember DeJarnatt. She appreciated the work put in on the informal cell phone study, but she thought portions of the target areas were not included. She appreciated the concern about the visibility of the towers, and asked staff if that one large tower was the one that had safety services and was a City tower.

Assistant Planner Horrisberger responded that the last tower had public safety equipment and then there was a Verizon tower that had camouflaging paint.

Councilmember Lancelle asked confirmation that Verizon's was the pole with the paint on it. She wondered if there was a modern version of the pole for City services available that wasn't an eyesore. She suggested that the City look into that.

Mayor pro Tem Nihart expressed her "condolences" to the audience. She stated that she has been in their position before, and she felt they had done an awesome job presenting their case. She stated that there were a couple of problems with their case. Legally, the Council had to have a basis on which to deny. She went to the site, to Driftwood Circle and down below, looking from as many different angles as possible. She had been concerned about the visual impact, but she felt that was on the low west side. She was concerned overall, and suggested that they take this forward in the General Plan process or look at how they look at it in the future, because she felt this would only be increasing and she would like to have the limits of where the City would go with this. She stated that she asked about co-location because she can see the pros and cons. She agreed that she didn't want us to become San Bruno Mountain, but she didn't want them all over town either. She referred to undergrounding utilities, but acknowledged that this was a line of sight operation. She stated that, when traveling, she saw that, in such places as Singapore, everyone was on a cell phone, and they have a lot more cell towers than we have. She would like to look at all aspects of this to come forward with something that gives guidance to the Planning Commission and applicants. She stated that, in this particular situation, she agreed with Councilmember DeJarnatt. She found a point of reference to look for but couldn't find the visual impact. She asked a lot of questions about the cell service study because she noticed that they were mostly on Saturday and Sunday. She stated that her carrier was awful most of the time, but really good on Saturday and Sunday.

Mayor Digre asked whose responsibility it was to follow through when they required shrubbery and trees.

Assistant Planner Horrisberger asked for clarification.

Mayor Digre stated that there were six trees proposed in a previous application and they were down to three now. She stated that T-Mobile agreed to provide trees and shrubbery.

Assistant Planner Horrisberger stated that generally staff requires that and they go out and check periodically and inform the applicant and ask that it be addressed.

Mayor Digre asked confirmation that the applicant was responsible.

Associate Planner Diaz responded affirmatively, adding that there was a condition of approval that states that the applicant was responsible for maintaining the landscape.

Mayor Digre stated that she was attempting to make sure that the maintenance was also important and the City should be able to go after them for that. She referred to a court hearing where she was surprised to find that it was a very strict rule and they could not deny without going through numerous hoops. She stated that the City had to be very careful not to deny frivolously, although she acknowledged the public's comments, adding that it was an educational evening. She applauded them for making the effort and thanked them for coming. She did agree that it was something they need to watch in case science changes the game.

Councilmember DeJarnatt asked that staff put some thought into this and bring back a procedure plan to talk about cell phone towers for future reference and be proactive in that regard.

Councilmember DeJarnatt moved that the City Council **DENY** the appeal and uphold the Planning Commission approval of PV-504-10 and UP-012-110 for a new wireless communications facility at 4700 Fassler Avenue, adopt the findings set forth in the August 2,

2010 staff report and that all maps and testimony be incorporated into the record by reference; seconded by Councilmember Lancelle.

Mayor pro Tem Nihart thought there was a piece of some of the General Plan issues regarding use, stating that they will have to get further down into permits and zoning. She asked if Planning Commissioner Leon was going to say something about that.

Planning Commissioner Leon acknowledged that there was a missing piece to the conversation. He stated that it involves the Water Department. He stated that, invariably, in all cases with similar efforts and concerns as were raised at this time, they needed to actively work with the Water Department on each of the sites. He stated that most contentious sites seemed to be located on Water Department property. He reiterated that they needed to work very closely with the Water Department, all being at the table.

Mayor pro Tem Nihart stated that she looked for ways to support the neighborhood but, with the restrictions, could not find any way. However, she would like them to have better guidance around this in the future.

### **ROLL CALL VOTE:**

Ayes: Councilmembers: Lancelle, DeJarnatt, Nihart and Digre.

Noes: Councilmembers: None.

Motion passed: 5-0.

Mayor Digre called for a short break, then reconvened the meeting.

# **COUNCIL COMMUNICATIONS:**

Mayor pro Tem Nihart stated that she and Councilmember Lancelle met with the Pacifica Resource Center staff, including Anita Reese, and were discussing payday lenders, with three such sites in Pacifica putting the city at the highest percentage per capita in San Mateo County. She asked the City Attorney to look into that with a possible moratorium to hold up new applications for that while looking at a possible ordinance. She explained that, with such sites, you borrow \$300 and get \$255, give them \$45 and in two weeks, you borrow \$300 to pay the first \$300 and, by the end of the year, you are 460% in the hole. She thought it was mind boggling. She was putting that forward and telling them that she had sent it to the City Attorney. She also stated that the Chamber had a town hall meeting about working with City governments which was extremely interesting. She also attended the Library Foundation's presentation regarding a drive to educate the public about the use of a library, etc. She then reminded everyone that the Economic Development Committee would meet on the next day at the Police Station. She would be skyping because she would be in Louisville to chair a conference. There will be a presentation about branding Pacifica. Then, on the 19<sup>th</sup> was a third meeting of the Palmetto Business Association.

Mayor Digre asked the City Attorney if they needed to agendize that.

City Attorney Quick asked if she was referring to the payday lender question.

Mayor Digre responded affirmatively.

City Attorney Quick thought it was a good idea to put it on the agenda to give formal direction to staff.

Mayor Digre stated that she had questions when one came up on Manor.

City Attorney Quick asked if she was officially asking staff to come back with an agenda item.

Mayor Digre responded affirmatively.

City Attorney Quick acknowledged the request.

Mayor Digre reported that Pacifica's Preserve our Pier group had their 10<sup>th</sup> anniversary celebration the past weekend and referred everyone to their website. She stated that the Historical Society had their quarterly meeting with an excellent presentation on the Ocean Shore Railroad and referred everyone to their website. She stated that, as of September, Pacifica became a member of the San Mateo County Silicon Valley Visitors' Bureau and had a tour for them to learn more about Pacifica. She stated that the next day she would be meeting with several people about transportation on the coastside. She would be learning more about water on the 14<sup>th</sup>.

Mayor pro Tem Nihart stated that she would be attending ABAG's General Assembly the following week.

### **ORAL COMMUNICATIONS**

Mayor Digre opened Oral Communications.

Leo Leon, Pacifica, was speaking as a private citizen and former field operations manager for the Census Bureau. He stated that, in 2008, he came out of retirement and joined the effort to start the 2010 census. He explained that they hired about 6,000 on the San Francisco peninsula and they had no budget for training. His job was to find donated space for training, and he commended Pacifica for cooperating to accomplish the training, mentioning a few participating Pacifica organizations. He stated that a side benefit during the training was that they had to eat and drive in and out of Pacifica, with many discovering what a great place Pacifica was. He thanked Pacifica and the City Manager for being cooperative. He stated that the census was over and they would be presenting the results to the president on December 31, 2010. He added that you can go on census gov and american factfinder to find out the demographics and information about the United States.

Therese Dyer, 1408 Crespi Drive, wished they would put oral communications before all their business because she was missing "Dancing with the Stars." She gave an update on her request from two weeks ago regarding a letter to be written by either the Planning Department or Building Inspector. She heard from Mr. Crabtree who said that he couldn't write the letter. She then talked to Doug Rider the following day who said he would write the letter and have Chilore sign it when he returned from vacation. She found out that Chilore was back today but Doug Rider would not be in until tomorrow. She stated that she was going to pay them a visit tomorrow. She explained what she wants in the letter, and they shouldn't have any problem with it. She thought the right hand might not know what the left hand was doing but they would get down to that. Then, she mentioned talking to Mr. Rhodes today and was assured that she would get the letter. She explained the importance of the letter because the small claims court judge has ordered her to do some specific things. She stated that, if she didn't get it in letter form, she would use the subpoena process, which she didn't want to do.

Hal Bohner, Pacifica, stated that he was present to speak about something that others may speak about, specifically Pacifica State Beach and the snowy plovers. He stated that Open Space and PB&R have discussed it many times; however, there was still no clear resolution to it. He thought there was a deadlock and thought it would be helpful if the Council would get involved and lend their persuasion to get something resolved. He referred to a recommendation by the Open Space Committee that the Council write a letter to U.S. Fish and Wildlife for guidance about what was best for the snowy plovers on the beach. He didn't think their recommendation would be binding but merely a recommendation but they were experts on the subject and it would be worthwhile to hear from them. He stated that the Council was a leader on various matters, and asked that they be a leader on moral grounds. He stated that the snowy plover was a threatened species, adding that a lot of people don't even realize that the bird was here or the significance of their existence. He felt it would be important from a moral standpoint to help educate people in Pacifica.

Mayor Digre asked that they put it on the agenda.

City Manager Rhodes reminded the Mayor that, as they had discussed, the entire issue was coming forward on the agenda, not just the U.S. Fish and Wildlife, because it was all part of a subcommittee's agenda for over a year, working on recommendations. He stated that it has been to the PB&R Commission, as well as the Open Space Committee and were now preparing to come to Council, probably in November, for Council to take their role in moving forward with the issues.

Mayor Digre stated that she didn't think the speaker was asking for the whole issue.

City Manager Rhodes explained that it was all wrapped up together and part of the same issue, and gets to the heart of a lot of discussions. He didn't believe they could separate that specific issue.

Dyer Crouch, Pacifica, understood that this was coming up on the agenda, and he has notes as far back as 2007 on the subject. He and a lot of people in the community believe that part of what comes to Council should be that input from U.S. Fish and Wildlife. He thought that, in the near future, they will hopefully be addressing the shorebird protections. He stated that Pacifica State Beach had a Federal designation of CA48 with the U.S. Fish and Wildlife Service, which was the recovery plan for this animal. The beach was a Federally recognized habitat for the western snowy plovers. He added that CA48 was not addressed in any way during the recent beach upgrades a couple of years ago, which inadvertently increased the stress to this habitat and to the animals that rely on it. He was speaking for himself and the Shorebird Alliance when he respectfully requested that Pacifica contact the U.S. Fish and Wildlife Service to use their expertise on this subject or forward the results of this subcommittee to come to City Council. He asked them to give these animals the protections that laws allow them. He stated that staff can accomplish this with a single letter to U.S. Fish and Wildlife, and he questioned why the City can't do this as part of the package the Council receives.

Tod Schlesinger, Linda Mar, referred to Closed Sessions, stating that the public was supposed to find out when the Council made decisions. However, to this day, he has never heard one time that they have had disclosure and transparency as to what goes on behind closed doors. He asked why it was in the Code of Conduct if the Council didn't adhere to it. He did not see that as transparency. He thought there were some important issues that go on in Closed Session, otherwise, why would they be in closed session. He felt the silence on that subject spoke volumes, specifically that they don't want the public to know what goes on in Closed Session

and, if that is the case, tell the public that. He then referred to the upcoming elections and showed a sign regarding "no incumbents." He questioned why Councilmember Vreeland has not been at meetings lately, stating that he has missed a meeting in July, August and September and now a meeting in October. He questioned how such a person can claim that he represents his constituents. He closed with this thought; stating that if you want to find out what is going on with incumbents, go to this website: jeffsbigmouth.blogspot.com, since that was where the facts were.

Thomas Clifford, Pacifica, stated that he was present to make a statement, specifically that the following candidates for City Council did not support or condone the vandalism or destruction of any candidate's sign, i.e., Tom Clifford, William "Leo" Leon, Susan Vellone, Sue Digre and Barbara Arietta. He then stated that he was personally offering a \$500 reward for information leading to the arrest and conviction of anyone vandalizing any City Council candidate's sign. He stated that this has gone on for years at every election, with somebody destroying somebody's sign. He will not stand for it, thus, his offer of a \$500 reward.

Noel Blincoe, Pacifica, stated that he has worked on the Open Space Committee and subcommittee on the shorebird protection. He stated that, in 2001, the U.S. Fish and Wildlife Service released the draft snowy plover recovery plan providing goals and management guidelines. He also stated that last year, Julie Lancelle, as mayor, established the Pacifica State Beach Shorebird Subcommittee based on recommendations suggested by Pt. Reyes Bird Observatory and the committee worked through many significant protection measures. However, the committee members felt that they were lacking significant scientific knowledge and couldn't reach agreements on important issues to protect the snowy plover and, as a result, the Open Space Committee recommended that the City Council direct City staff to request that the U.S. Fish and Wildlife Service act as an authority in determining the proper measures that would be appropriate under the Endangered Species Act to protect the western snowy plover habitat on the Pacifica State Beach. He added that several other studies, such as in Santa Barbara, were successfully conducted. In the interest of moving forward, he strongly urged staff and the City Manager to establish contact with the U.S. Fish and Wildlife Service before Council consideration of this item.

Bill Collins, Pacifica, stated that he was representing the Sierra Club's local committee, Loma Prieta Chapter, and the Pacifica Beach Coalition. He stated that he had attended several meetings of the Brisbane City Council, mentioning that they had a controversial development on the mountain which has endangered species, and they consulted with the U.S. Fish and Wildlife Service, asking for input as to whether the development was going to extirpate the species. He stated that the Service came from Sacramento and provided testimony, and the Council felt it was extremely helpful in making a sound decision. He added that the Sierra Club wasn't happy with the advice, but acknowledged that they were the experts. He stated that they were now asking Pacifica to do that now, not waiting for an agenda item, but preceding the complete agenda item with a letter or maybe even a phone call. He talked with staff and felt that the plan seems to be not to ask the Federal government but rather make recommendations based on what happened at Crissy Field. He stated that Pacifica State Beach wasn't Crissy Field and you can't cherry pick the things you want to do unless you get input from the experts. He stated that the snowy plovers used to raise their chicks on the beach but have figured that it is not safe and they don't nest here anymore, although they do rest here. He stated that they would like the decision to be science based, adding that Pacifica Beach was unique, and not Crissy Field. He didn't understand why the City would not take advantage of this free information. Staff could do a phone call or a letter tomorrow, but he thought there was reluctance to do it for some reason.

Mayor Digre closed Oral Communications.

# **CONSIDERATION**

None.

Mayor Digre adjourned the meeting at 9:10 p.m.

Transcribed by Barbara Medina, Public Meeting Stenographer.

Respectfully submitted,

Kathy O'Connell, City Clerk

APPROVED:

10/25/10;

Councilmember DeJarnatt absent

Sue Digre, Mayor