

**MINUTES OF THE  
PLANNING COMMISSION MEETING  
January 10, 2024**

The Imperial County Planning Commission convened a Meeting on Wednesday, January 10, 2024, at 9:00 a.m. in the Board of Supervisors Chambers, El Centro, California.

**Staff present:** Director, Jim Minnick; Assistant Director, Michael Abraham; Planning Division Manager, Diana Robinson; Planner III Derek Newland; Planner II Gerado Quero; Planner II Luis Valenzuela; Planner II Evelia Jimenez; Planner I Rocio Yee; Clerks- Laryssa Alvarado & Aimee Trujillo.

Chairman Rudy Schaffner called meeting to order at 9:00 a.m.

**I. Roll Call: Commissioners present:** Schaffner, Kalin, Roben, Bergh, Wright, and Pacheco

**II. Pledge of Allegiance:**

**III. Public Hearings**

**1. Approval of Minutes:** Chairman Schaffner entertained a motion to approve the Planning Commission Minutes for the **December 13, 2023** meeting as submitted by staff; **Commissioner Pacheco** made motion to approve minutes seconded by **Commissioner Kalin** and carried on the affirmative vote by the Commissioners present Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes) Pacheco (yes) to approve minutes as they stand.

**2. Election of Officers:**

**3. Consideration of Reclamation Plan #21-0001/Initial Study #21-0029** as submitted SMP Gold Corp. (aka Oro Cruz). The applicant proposes mineral exploration activities consisting of using existing access roads and improving some existing roads, as well as constructing a new temporary exploration drilling access road, up to eight (8) helicopter landing pads and sixty-five (65) drill pads to support exploration in seven (7) Drill Areas. The Project would also entail constructing a new permanent access road and 2.8-acre staging area for access to the Oro Cruz Portal on BLM lands. The total surface disturbance on BLM lands for the proposed Project activities is estimated at 21.3 acres. The Project is located on previously mined BLM lands, (APN 050-110-006, 007, 008, 009, 023, 024, and 050-280-001, 012 and 013) within T15S, R20E, Sections 1, 2, 12 and 13, and T15S, R21E, Sections 6, 7 and 18, SBBM; Winterhaven area, Supervisorial District #5), [Gerardo A. Quero, Planner II at (442) 265-1736 or by email at [gerardoquero@co.imperial.ca.us](mailto:gerardoquero@co.imperial.ca.us)].

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Rocio Yee**, Planner I, to read the project into the record.

**Rocio Yee, Planner I;** Read the PowerPoint Presentation of the project into the record.

**Graham Stephens, Consultant;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Del Fortner, Applicant;** Introduced himself.

**Chairman Schaffner;** Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

**Del Fortner, Applicant;** Stated that they read and did agree with everything on the project.

**Del Fortner, Applicant;** I do, thank you, yes, I have a prepared statement for you, sir. Good morning once again, Commissioners. Good to see you in the New Year and hope you all had a good New Year celebration period. Again, my name is Del Fortner I am a geologist I've got over forty-nine years of practical experience in the permitting of energy and minerals projects throughout the United States, pardon me, I'm suffering a little bit. This is the 4th Imperial County Planning Commission hearing regarding this topic, the Reclamation Plan for the Oro Cruz Project. The area proposed for Oro Cruz exploration has been actively mined for centuries beginning with the Spanish and as recently as 1996, a rich mining history has been documented and is evident in the field today. The area was designated a mining district ten years before the mining law of 1872 so that takes you back aways. The area was designated a mining district, because it was designated as the very first gold mine in California area. That was even before the state was California and the 1st gold mine. The area is open for recreation and prospect today. SMP has mining claims on both BLM and has private land. All proposed prospecting activity proceeds to the exploration plan of operations is on the mining claims which are BLM administered on public land. So today I come to you with a challenge, not a challenge of your authority but a challenge for you to exercise that authority by rendering a decision. It is SMP's hope that your decision will be to support the resolution before you today that approves the Oro Cruz Reclamation Plan. As I see it, you have two options to consider. The 1st option is to approve the resolution based on the rule of law. You have all read and understand CEQA and SMARA, the California laws covering this exploration project, and no one understands the Imperial County ordinances as well as the Planning Department and this Commission. The area is zoned Open Space by the County. Discussions concerning the implementation outcomes of government-to-government consultation is the purview of BLM, and BLM has made the determination to approve the Oro Cruz Project as it is entirely on BLM managed public land and was made only after extensive and documented government to government consultation with the Tribes. The BLM decision has withstood appeal. The BLM decision is a full force and effect decision, and the only thing that can stop it is a stay by a court or an injunction. Neither of those two things have happened. The 2nd option you have is to deny the resolution, but such action should be based on the merits of the Reclamation Plan and a plan that has been subject to review by your own Planning Department and by the Environmental Evaluation Committee, as well as the California Division of Mine Reclamation. Considerations should not be based on obfuscation provided by the opponents to the Oro Cruz project. Their approach of protest without end, coupled with bluster, exaggeration and dissembling arguments, results in disorder, chaos, and confusion and, as we heard last month, resorted to name calling and threats. I believe that any formal body that begins a hearing with the Pledge of Allegiance to the United States will ultimately make their decision based on the rule of law. In any event, either decision will result in progress for the process. SMP believes in the process and will proceed based on your decision. But before you vote, SMP wishes to correct ongoing misinformation presented at every meeting, every hearing by the opponents of the project. First, the Oro Cruz Project Exploration Plan of Operation activities are located entirely on BLM administered land. It is not tribal land as reported in the news, and nobody lives on the land also as reported in the newspaper. Second and this cannot be emphasized enough, the Oro Cruz Project plan of operation and the related Reclamation Plan are for exploration only. SMP does not propose a mining operation. You will continue to hear comments related to chemicals. The only chemical we're using is drilling water. Water is not something that you need to be concerned about, it's going to be purchased locally from a water purveyor. You will continue to hear things like cyanide, arsenic, and the like, and those are not proposed and will not be used. The Oro Cruz project activities are confined to exploratory drilling in areas where there have been significant previous disturbing activities, and all access has been designed to follow existing and preexisting roads to limit any new disturbance. It is interesting to note that the opponents to the Oro Cruz project have shown no opposition to an actual, currently active and ongoing mining operation at the nearby Padre Madre Mine site. SMP seeks your decision today. I'm here to answer any questions you may have regarding the Reclamation Plan. Also joining me by video conference is Dale Walster, he's the CEO and President of SMP, and David Tupper, Vice President for exploration of SMP Gold Corp. I really appreciate your time today. Thank you for inviting us.

**Chairman Schaffner;** Opened the public portion of the meeting.

**Chairman Schaffner;** Okay, I don't have my name caller here. Can you go ahead and read the names off as the people? Then come forward as they call your name. Can you be my timer? Give me 3 min. You'll be given 3 min to speak.

**Commissioner Bergh;** Mr. Chairman I have a specific question for the consultant that I want to have answered first.

**Chairman Schaffner;** Okay, so anyway, if anybody has one of the yellow slips that hasn't been turned in, make sure they get turned in up here. Go ahead.

**Commissioner Bergh;** Specifically, how is this going to change? In other words, I've been up there, I was up there about five, six years ago, snooping around. After what they're going to propose to do, how is this going to change the look of the area? In other words, is it going to be they're going to come in, do the drilling, do all their correction work and then leave?

**Graham Stephens;** That is the goal. So to start, reclamation is a five period, five year reclamation period and usually what that is, the 1st two years, is what we would call active reclamation, where you come in, flatten any, you know, you flatten any new disturbances, you smooth out the land to mimic the land form that was there prior and then you revegetate that area. So actually, in many ways with the revegetation there could be some improvements to what exists there today. And then, so following that active reclamation period, which is recontouring, replanting, there's a three year monitoring period where essentially you have to monitor the site to ensure primarily that the vegetation is self-sustaining and can survive on its own without irrigation. And then at that point, well, so five years is an estimate. They will not deem the site reclaimed until it's been inspected by the County, the Division of Mine Reclamation, the State, and they have deemed okay based on the approved reclamation plan this you know, you have accomplished reclamation, you can now essentially leave the site as it is and you don't need to actively monitor or plant or anything of that nature

**Commissioner Bergh;** So it potentially could maybe partially improve the area? Maybe?

**Graham Stephens;** From the photos I've seen the revegetation, I believe, you know, it seems pretty barren, right? And so, we've created the seed mix of native seeds, which again was approved by the BLM, the County, DMR, as well as our consulting biologists. And so that, you know, it's ostensibly, it could be true. At a minimum, though, you know the reclamation plan SMARA requires that you reclaim the land to as close to, you know, the state as it was found prior to any new activities. O

**Commissioner Bergh;** Okay, thank you.

**Chairman Schaffner;** Okay, go ahead, start the first one.

**Jordan Joaquin;** Good Morning, Tribal Member, lifetime resident of Imperial County, member of the Quechan Indian Tribe and currently the President. First and foremost, I want to give our condolences on behalf of the Quechan Tribe to the City of Brawley, the County of Imperial, for this horrendous, tragic accident that happened a couple of days ago, losing four lives. You have our condolences from the Tribe. Thank you. My first comment is wow. Threats, not threats. I'd like to give you guys an update. The last time I wasn't here, the Vice President was here. We basically gave an update on our appeal to the Interior Board of Land of Appeals that has not gone through yet. We haven't had answers from there, so we're still waiting for that. So, as you guys were well aware, we offered our meeting minutes to our November 3 Tribal Consultation. I disagree with the two other ones. And if you hear in the recordings and it still off, it's still afforded to you guys. Ms. Carey did acknowledge that was the first acknowledgement of tribal consultation. Yes, it is BLM land but we are the originators of the land. I'm not challenging you Planning Commission, I'm just asking you guys to do the right thing, which we would love to obviously stay for this off the agenda again and again, you know. So, but we would love for you guys to disapprove of this because it is not just land as

people see it, it's our DNA. Those are our ancestors out there. You visited out there the area, we came from that area, we are from the land, from the air. And so it's so unique that last month our Tribe signed historic water agreements to forbear our water to help the water crisis that's going on with the Bureau of Reclamation, yet we're having problems with the local BLM office. We're here not to fight. We're not here to name call or call names. We're here for partnership of Imperial County. We are lifetime residents of Imperial County. We're not visitors. So it upsets me and I was, I came with another prepared speech. But we're just asking and I think it was said, have you guys exhausted all or your appeals? We haven't heard back from the Interior Board of Land Appeals yet. Where is BLM? Local BLM office? Were they here? They're not here. There's a reason why they're not here. We ask of you and you'll hear from our tribal members, not to name call, not to call threats, you know that just to the importance of that area. Please take this off the calendar, please. We're not going to challenge you. That's the old way. We're here for partnership, we're here for the future of Imperial County because we are lifetime residents of Imperial County. That's who we are. We're the Quechan people, we're survivors of the air, the water, the land. Thank you.

**Gail Overton;** Good morning I was here. I think I only have 3 min, is that correct? So I don't have time. I wrote a rather long letter some of you may have gotten. I sent it to David Tupper and Dale Walter about the Oro Cruz Project. I am one of the few people who has the privilege of living in this area. I've lived in my home for 20 years, which is approximately less than 2 miles from the project drilling site. And if I had a video option here, I could show you what a beautiful landscape this area is. The verbiage that was used in the BLM Environmental Assessment for a Mitigated Declaration points out again and again how this area was previously disturbed by mining operations. I just wanted to inform people if you haven't been out to that location the previous mining operations that disturbed that area were completed in 1996. That land has had nearly thirty years to reclamate on its own in terms of the wildlife species that live there, and the only major scars that exist currently that wreck the landscape are the scars that were made by open pit operations in the 80s and 90s. Those two scars are very ugly. I've been going to that desert since I was five years old and went off had a life in other states and locations came back in 2002 and bought my home there and was really quite disgusted at the time to see what those operations did to the tumco landscape. All of the previous mining operations in the 1800s caused very little surface disturbance because it was all underground mining, and as we know today, underground mining is not profitable for mining companies. What I was most disturbed by as a resident living so close is I learned about this on the news media about this project because the Tribe was vocal in opposing it and the only reason I was informed is because I happened to watch the news when a story was on. There certainly wasn't much transparency in informing the public around that area about the impact of this mine and I'm sorry, I'm a little bit nervous, and I'm extremely upset about learning about this operation for the simple fact that talking about a Reclamation Plan is quite a joke. Honestly that Reclamation Plan that you guys have put together will probably never be implemented because you do know that exploratory drilling is really allowing SMP to find out where that or body is, where the gold is located, so that they can go in and strip mine the areas with the highest content of gold. Reclamation Plan will never get implemented because once gold is found and you all know from SMP that gold is going to be found there, not a question.

**Chairman Schaffner;** It's time Thank you.

**Gail Overton;** You won't give me any additional time?

**Chairman Schaffner;** Not today.

**Gail Overton;** Okay I will say as I leave, that Imperial County and the BLM have failed the public

**Preston Arrow-weed;** Another 3 min to save the world. Well, I'd like to say something about what our Chairman said, Jordan Joaquin, he said, we've been residents here for a long time. It's true. If you look out in the desert under any archaeologists here will tell you there are trails going all over Imperial County. There are trails that go to San Diego, Mexico. They have a trail going all the way to Laughlin, Nevada where our

creation mountain and we're connected to that right here. Our trails connect us over to San Diego, all over. We have been residents. Our footprints are here in Imperial Valley in California. That is the proof that we have been residents for a long time. I know and then I see that 1872 mining law has gone a little bit too far because when that law was made there was only a donkey, a pan, a pick, and a shovel and he couldn't do much damage but today what they're talking about, what they're going to do to this land is way beyond that of the 1872 mining law. It was very simple and very small but today they're going to tear up the land. It's not like what it used to be, it shouldn't be like that. They should change that law too. If they can do this, they can tear up any place and to say the land does not belong to the Quechan, we had it first but it was taken away illegally. It was wrong what they've done. They never negotiated, just took it. We were stewards of the land and then the US government took it as stewards of the land. And they're letting them, letting others destroy that land. You know, they never talk about the adverse impact that's going to happen with all the things that are being done. They never talk about that, what can happen when you do that. They never talk about that. They only talk about what good its going to bring, what good is going to do, the money, you going to take, all those things. But they never talk about the impact. And you should know that anytime you do something you have to look at, look at the other side too. And that's never done. You only look one way, that's to get money to make more jewelry of gold. That's what I see. I believe that we should start looking into our tribal ways too, to try to save this land. We're not, we're trying to save the land more than we're trying to destroy it. It's going to be destroyed and that's what we want to save. Okay, that's all I got to say.

**Faron Owl;** Good morning. The last time I was here and I think I've been here for the last four meetings but you know it seem like every time we go back I talk a little bit about the history of our area and the last time I challenged everybody to go out there and look at it and look at the impact of the previous mined activities have been out there. None of them, all of them have dug holes, all of them have destroyed the land and they just left it as it is. As if you were when you went out there that big hole still out there nobody ever filled it. There's little small samples everywhere and it's all on the west side of Cargo Muchacho mountains and if you ever get a chance to look at it and see what was destroyed out there and they'll never be repaired again. The Quechans are resilient people we've always been resilient, from our land that was taken away from us, all of our rights that were taken from us, all the things that happened to us in the 1700s & 1800s and even up to today. You're looking at poverty, you're looking at diseases, you're looking at all these things that came across us that we still were able to fight it off and today we're back here again. The Reclamation Plan last time somebody said there was like a thousand pages or four something unbelievable pages. If you had the opportunity to go through it and see the mistakes that are made on that, it's unbelievable. And just to go through that, the disclosure, the analysis of the project's impact, the biological resources, the cultural resources, greenhouse gases, energy, soil, the quality of air, all of that, especially the water. Our President is talking about how precious that water is to us. So now it comes back to you guys to make that judgment and make that choice and, and I'm here to try to explain to you how important our area is and with these concerns that are in that description of the Reclamation Plan, this should not be even going forward. This should have been done back in January, but now we're still here and I'm here today just to tell you, or hopefully that you do not approve this plan. Thank you very much for your time.

**Willie White;** Morning, gentlemen. As President Joaquin from our Tribe, my name is Willie White. I'm from the Quechan Tribe, and I'd like to pick up where some of the others have left off. We're not here to call names or point fingers, but I do want to address the miners and the scientists and give you guys a little bit of history. California Native Tribes, particularly during the gold rush, were targeted in killings between 10,000 and 27,000 were also taken as forced labor by settlers. The State of California used its institution to favor white settlers over indigenous rights dispossessing natives then the State of California sponsored bounties for the red skin scalps who would interfere with the progress of mining. In 2019, Governor Newsom apologized for this debt genocide he acknowledged it. Now I'm not into politics I don't really care who's, you know running for what election, I'm into preserving what we have, I'm into making sure that the future generations can go out and see what our Tribe has lived through. So that they can learn the lessons of resistance and how important it is to know where you come from. These mines have been going on for a long time, you're right. Sure, it's just an exploration, and you guys are just approving access, right? But that

access leads to further mining, that access leads to further destruction. And it dispossesses our Tribe even farther from our history and from what we have in that area now. I'll have you know that if you approve this today, it's just another step in the direction of progress in your minds. But for us, it's much more than that. It's egregious, and we will take counter actions to that. In addition, this area that we're talking about here today is being proposed for a national monument. A national monument to protect the area because it is recognized as a sacred site in the Nata tribunals in the 90's and in the early 2000's. It was also recognized by international courts and the same companies out of Canada who are trying to mine for gold were shut down. They were stopped. Now, as the price of gold continues to go up, they keep coming back and they keep enticing you guys with more proposals and ways that they can, you know, enrich truly themselves. I ask, what is the benefit to the County for the mitigated destruction of this land? It's not mitigated, it's completely wide open. I know that you guys, you know, don't want to participate in genocide and don't want to be called colonizers, so do the right thing. See this for what it is. It's not in the best interests of Imperial County and its residents. This serves one purpose, and that is to this mining company. That's all I have to say.

**Lorey Cachora;** Good morning. Regardless how this turns out, I just want you to know that I respect your decision and also, ask you to respect my challenge if the event comes. Hopefully, looking at the Board of Supervisors of Imperial County, California, that means you reside here just like the rest of us do. You control the area like the rest of us do. Anything that happens, I would expect you to come forward for the future of the goodness for everybody in Imperial Valley and that's how we look. And as you've heard from the rest here, similar to what I have to say, except for that I want you to know, going back again in the history, that we're following the information that not the Creator, but the Supreme Being that gave us the wisdom and knowledge to follow. And that we are doing that along with today. Just like you on Sundays, the Creator you look to them. But we do that every day in our life, and that's designed for that, and that's what we follow. And in the process, they, our ancestors, created the hills that they're talking about here, such as Cargo Muchacho and the rest, that they created that for their own, in that fashion, in a way which is a religion. All the reports that I referred to very seldom mentions religion, the areas, the desert, the valleys, animals, all that are included within their own natural rights. Again, that they did that to fit the needs of the people also, for today and tomorrow and the future. The religions also, they're all connected regardless of what area you look at. The ecosystem is again, we have in our own way of knowing that these areas are divided. The desert, the valleys, the mountains are all part of the Quechan life. We call traditional evidence which you very seldom see that word, an old fashioned word, also just like your 1872 mining law. It goes side by side. We also believe that everything that the world is that we believe in is clear up to the universe. We can explain that with no problem. Our religion, again, is distinct from the American religion, and I won't get into that because there is quite a bit of that, but to give you, in everything that we just did this morning, we stood up to the flag. And that's how it began on the name of God, which later become a charter of civil liberty drawn in America for the first succession that it's an instrument that became the foundation of the miracles of America. That's what we believe in today. However, there's nothing in that, the religion saying anything about preserving the world's environment. But today we look at some of us not all of us, but some have gone astray from their own religion that they have written, which is very problematic for me, especially understanding my own religion, which I practice every day from the morning to the evening. It never ends Anyway, yes, thank you for that but I would suggest you refer to all the anthropologists and archaeology report on this and you will find everything that I've said in there. Thank you

**Zion White;** Good morning to all. My name is Zion White. I'm Councilman for the Fort Yuma Quechan Indian Tribe. My fellow tribal leaders as well as fellow community members are here before the Planning Commission once again to ask for the postponement of this agenda item. I myself would like to on record request that this agenda item be tabled in light of the Quechan Tribe having had no other meeting with BLM aside from the one that we do agree upon the November 3, and I find it quite ironic that they claim that it was extensive and meaningful consultation, when you would clearly see that the first supposed consultation in the second happened over a year apart. The third, in which we had agreed to be a consultation and the second were a year apart. So is that truly, you know, meaningful consultation? The Tribe is still attempting recourse avenues through the Interior Board of Land Appeals. Yes, that is true. So I would ask for at a minimum, until

the Tribe receives response from the Interior Board of Land Appeals, this item be tabled. I would like to take the rest of my time to argue the fact that the tribe and the land that is supposed in this proposal may not have a connection to it. Well, I might, you know, remind everybody of the simple composition of the human body 60% of our body is water. The water that has always sustained my people, the Quechan people, has been the Colorado River. The minerals that you can find on the periodic table that comprises the human body have always been from the land, this area. So, you know, it's quite literal when I say we are the land, we are the water and we are the air. So we have much as a right to say, just as much as a right to say what happens to this land as anybody else. And you know, it only perpetuates this project, the genocide against native people, genocide of the land. You think to yourself what might be genocide of the land, take a look at the pictures they shared with you, it only perpetuates it further. So you know, I'd like to remind everybody that we are the land, we are the water, we are the air, and that we are still here. Thank you.

**Joceline Moreles;** Hello everyone, hello. So I wrote something. I am here in opposition of the SMP Gold exploration project, requesting the Imperial County Planning Commission to reject the project that would cause irrepressible damage to the sacred and cultural area that is where the mine is being or not mine, sorry, the drilling area supposed to be occurring. Land is not up for takes to give freely to a foreign entity that holds no stake in our valley. It is a shame that the BLM does not hold the same land preservation values as their federal land management counterparts like NPS, Forest Service, U.S. Fish and Wildlife. It is a shame that they think they can decide and undermine the connection that the Quechan have held to this line for longer than these institutions have existed. It is a sacrilege and a disgrace what they have done in the past and they are trying to do once more. How can the project be approved when the site is within an area of critical environmental concern from effects that the mining was done like previously. The Mojave desert tortoise was found to inhabit the project area with eight boroughs in proximity to the drill areas, as well as five other species in with special status. We already live in an area with a lot of environmental degradation. It's not enough to restore or mitigate impacts to our lands and ecosystems. We must prevent further land and environmental degradation. Our people's health is directly tied to the health of our ecosystems. Our community was harshly hit during the Covid-19 pandemic and we have one of the highest rates of asthma from our youth. Mining accounts for 4-7 percent of global greenhouse emissions we cannot let those who have previously harmed or infected our land to do more further damage. Our lives matter more than the short term profit only a few will exploit. The purpose of exploring or large-scale mining of gold should not come at the price of desecrating Quechan sacred land, violating the National Historic Preservation Act, nor at the price of our community's health. We must protect all life in the desert, protect our water. There is no way any one of us in this room will ever see the land heal if it is mined once again, for that process will precede us and it's highly damaging to our planet. I wanted to read some, like a quote. So, even though you won't believe it, native people are still around. They treat the earth with respect. No, it's sacred ground. They live in remote places the takers still can't colonize. They are the true voice of reason. They have Nature's eyes. They've been enacting the story for 3 million years the one that says that human must obey natural law, the one that says that human is connected to every living thing. That man is one strand in the web of life. Thank you.

**Jonathan Koteen;** Good morning everyone. I too, am here to oppose the mining exploration and any Reclamation Plan that they have in place. You know as they showed you the pictures before, you know they mentioned the 1872 mining act and you know, ten years before that they're already doing active mining here. Still today you see the land, there's no reclamation it's still healing and like President said that's like an open scar, an open wound that they're going to be mining into and drilling into, exploring. Again for what? You know the sake of profit? Is it really going to benefit the residents of Imperial County? No it's going to be going to a Canadian gold company that's coming in and destroying once again opening up another wound. You know the Quechan people have been here and predate any 1872 mining law. This land for generations, you know, has been sacred to us. Like it was mentioned before, we have many petroglyphs and Taglioni, many ancient trails that we use, and it's still being used today and I just want to say that, you know, we're still going through our appeal process through IBLA and I just request that you would make a motion to stay and not approve this plan at this time.

**Donald Medart Jr;** Good morning, Commissioners. My name is Donald Medart, Jr. I'm a member of the Fort Yuma Quechan Indian Tribe, and I also have the pleasure of serving as a councilman for the Quechan Tribe. I'm here this morning in opposition of this SMP Gold proposal. I would just like to, you know, say thank you for putting it off for this long and I would appreciate if you guys would continue that, continue putting off making a decision on this until we've gone through our processes until we've exhausted our appeals. I understand that you know he was talking about you know the letter of the law, but you guys aren't here on the letter of the law, you guys are here to do what's best for Imperial County but sometimes that's the spirit of the law. So the spirit of the law you know would say that you guys need to do you know what is you know ultimately the best and what you guys know in your heart is the best for the Imperial County residents and I know that we're on the far side of the county and you know we're often you know we're so far away from the county seat that we're often forgotten. We are our own government within the United States but we're here humbly asking for you to put this off until we've had our day in court and we've had our day to give you know the speeches that we need to give and to give the talks that we need to give to actually be heard. So for the BLM to you know continuously tell you that they've done consultation with us is absolutely incorrect. We've come here time and time again to let you know that and our attorneys have made that very clear and we're still going through our appeal processes. Just like you know my fellow councilman said, you know the Quechan people predate this 1872 mining act by thousands and thousands of years. We have artifacts in that desert that predate the United States, you know by thousands of years and so we are the original stewards of this land, we are the original you know keepers of this land. We have direct ties to that land, you know for him to say that you know we don't oppose a mine that's right down the road, we've gone to the White House recently to ask for protections of the land all the way around this area and even further in all the way through the Coachella valley. So for you know those statements to be made, I think is you know irresponsible to make statements that you truly know nothing about. So we have you know been the stewards of this land, we are the protectors of this land and we are going above and beyond to make sure that these lines are protected. This is just a small component of that but I would like to say you know thank you for putting it off this long and I would hope that you continue to put off making this decision until everyone has been heard. Thank you very much for your time.

**Juan Valencia;** Hi my name is Juan Valencia. I am a lifelong Calexico resident and an Imperial County community advocate. I prepared a written comment but first I would like to educate you sir, because you keep calling the mining history a proud history. Let me tell you what I learned from a Mojave friend that I made up in Needles. He said that his great, great grandfather and five hundred other natives were taken to mines to look for gold supposedly to help them with economic mobility and you know what they did they sealed them all in there, they threw dynamite and murdered all of them. That is the history that all of you are perpetuating by continuing to insist on approving this item. At the last Planning Commission meeting, you all had a historic attendance of Quechan Tribe elders expressing their concerns over the threats being made to their land and proud history, and all you so called public servants had to answer back to them was interruptions and an insistence on getting the meeting over with as quickly as possible. Once more, that's so shameful of you. You all clearly don't care about the community you supposedly serve. You know fully well that this reclamation project should not be approved, since the Quechan people have barely even been acknowledged by BLM. If that's what you Imperial County workers call meaningful tribal consultation, then I must tell you all Imperial County tribal consultation is a national embarrassment. And now you put this item back on the agenda, clearly by doing this you're showing that you don't care. I know maybe my words probably don't mean anything to you and they're falling on deaf ears but there is a word that did seem to get a reaction out of you and it was echoed earlier as well, colonizers and that's what you all are El Centro Planning Commission and Bureau of Land Management. There is native blood now forever staining your hands because of the carelessness with which you insist on voting on this item and I'm not exaggerating in the least because these actions are the late capitalist echoes of centuries old colonization and cultural genocide that started in this California land since 1769 and you all are here at the forefront of it still in 2024. So get it through your heads you all are not representing Imperial County you are not representing the Quechan tribe you all are representing the pockets of SMP Gold if you decide to vote yes on this and



disgusting is the most polite word that I can think of to call these actions. So if you don't further delay this item I tell you, we the community, have barely started fighting for our land and we're going to keep doing it but I find it so pitiful and so shameful that we have to defend it from our own public servants.

**Raul Urena;** Good morning Mr. Chair, I didn't put it on my public request slip, but I do have a documented disability with the County that allows me one and a half time for public comments, so I would ask for 4 min and 30 seconds of public comment time.

**Chairman Schaffner;** I never heard of that, but if that exists, I don't have a problem with it.

**Raul Urena;** Thank you. Honorable Planning Commission, Council, Community. My name is Raul Urena and I'm representing myself as a singular elected council member from the great city of Calexico. And let me be the first one to tell you as an elected, as an elected, not appointed official, that this does not end here. The days of this politics, where people, where the tribal consultation that is happening before your eyes is over. It will be challenged and it will have electoral consequences. I will bring to council the Great Council of the City of Calexico a resolution to be considered in the same opposition to the disgrace that is going on in these chambers, the lack of democracy. As a governing body it is disrespectful having the power to allocate time and I tell you that as a mayor that runs meetings as well. The power to allocate time it is so disrespectful to treat the applicants as experts when they make such jarring historical statements like rule of law and rich mining history to justify their destructive activities and then we treat the tribe giving them little minutes thirty seconds to speak and treat them as if they were not experts or even as if they were outsiders. But the truth is this, the rule of law the law of 1872 was made to legalize killing natives to extract these same resources in the same desert the history of the Quechan people is a history of millennia thousands of years before this rich mining history, a rich mining history is a rich history of killing and destruction. The Quechan people are experts of this land and should be treated as such not as second class citizens. The miners are carpet baggers and yet they are glorified as all outsiders are in this County of Imperial where we have a rich history of treating the carpet baggers that seek to take our air, our land and our water as glorified saviors and like the Quechan President said here, their land is their DNA. Their ancestors are here, we're here, and continue to be here. And if you are Christian, if you go to church like I do as a proud Catholic, this is as if they were proposing to drill the holiest site in Jerusalem for the wealth of Egypt. This is exactly what is going on here. They are not an Indian nation. Indians are from India. They are a Native nation, Native, built here from this land. And if any of you know anything about even the most recent Imperial County history, especially if you're proposing to run for a resource management company like the IID, you should know exactly how the populations of this County, the Calexico's, the Brawley's, the Imperials, the Calipats have been swindled by solar, swindled by agriculture, and now we are proposed to be swindled by lithium and gold if we are not careful. If you don't want to represent them, I am asking you to represent me. If I need some European blood to be represented, I have it, and I am asking you. I am demanding you to respectfully represent the people and the interests of the great city of Calexico which will be later defined by Council vote. But in the case of myself, Raul Urena, the Council member, I rise in righteous opposition to this disgusting distortion of democracy here in America. I pledge allegiance to the flag. Thank you,

**Chris;** Good morning. I'm opposed for this gold mine as well. There's songs connected to these areas. There's creatures I heard what you said that there's all no occupants living over there, but there are creatures over there. I've been over there that trail recently, and I could see deer tracks, you can see coyote tracks, you can see the rats and whatever animals there. There are occupants over there. And I must say that what they're proposing to do is digging the earth and there's chances of destroying the aquifers down there and I myself would not want that. I'm sure you guys will not want that too because what if the Colorado eventually does dry up and we're going to be dependent on that water. I'm hoping you guys decide to postpone it or just deny it altogether, but that's all I would have to say. Thank you

**Maritza Hurtado;** Good morning, My name is Maritza Hurtado, the former mayor of the city of Calexico, and I'm also the team leader for the recall of Raul Urena, the speaker that just was here. It is highly hypocritical of

our mayor in the City of Calexico to be here saying that he's representing our city, when in fact in our city he just gave a park for free to Comite Civico, and I'm glad this meeting is happening, and I'm so sorry that this topic is the topic that it is. I wasn't here to speak on this, but yesterday we were here again to complain about the fact that we have a group right now in Imperial County. They're sitting right there together with the Mayor of Calexico and a Councilman that are being recalled. Why? Because these ideas here with regard to parks and

**Chairman Schaffner;** Let her speak.

**Maritza Hurtado;** Thank you, we all have sacred land. Calexico has sacred land, Rockwood Plaza. This group, together with Comite Civico of Brawley took our land for free. They paid absolutely nothing in the project. Sir, I am asking you all to be warned of Comite Civico and these charger, EV charger programs and projects that are being handled in the County. They took our land for free. There was no land acquisition plans. They did everything secretly. And that Mayor did that with his friend Louis Olmedo of Comite Civico. And that there is locally here, he should be fighting for our land. We asked what happened to our land? Why was it given away for free? It's a hypocritical statement of what you just saw from this person from Calexico not to stand in devotion to his own city. He did this in the name of EV chargers and took the two only parks we have in our community. We are suffering in Calexico as a community. My daughter broke her leg on our parks because they're so bad. We need, we don't need anyone to take our land either, we don't need anyone to take our land either. And the fact that we are here listening to this, this is the Planning Commission, and this is about how what is happening in our community right now. We have a lot of stealing going on, and we need to pay attention to that in the big projects and the little ones too, because people like us in Calexico, one little park matters as well, and this Planning Commission must be aware of Comite Civico as well as IV Equity & Justice who got a \$170,000 for lithium exploration. I'm sorry not exploration but lithium support. It's okay, I'm nervous that's okay. You guys are very disrespectful and I want you guys all to know if you're going to ask this group IV Equity and Justice to support you they're under investigation. Yesterday there was a discussion, also at the Supervisors meeting with regard to those \$170,000 because those \$170,000 that were given to this group for protection of the citizens' rights was mishandled.

**Cary Meister;** I am indeed Carry Meister, and I'm speaking today as the Conservation Chair of the Yuma Audubon Society. We have recently signed on to the documents that you have received from the Coalition of Environmental and Quechan Groups, who have submitted comments to you. First of all, I would like to thank each one of you individually for your careful consideration of this issue. The fact that you have continued this for a number of months is evidence of that, and I hope that you will continue to operate in that spirit. We've already established that before mining occurred in this area, this land was sacred and still is sacred to the Quechan. This issue needs to be resolved before further action is taken, and I hope that you will either continue or deny the request in that light. We've heard a number of people from the Quechan Nation today, and to me these do not sound like people who are satisfied with the current state of this proposal, and that again is why I ask you to continue or deny it at this point. It could always be brought back when these outside factors are resolved and we wouldn't have to travel so far and your time wouldn't have to be taken up if you would deny it and then if the company wants to have it considered again after things are resolved, it could be on the agenda, I would assume. I'm also personally affronted and aggrieved, not at you but at the BLM for designating an area of critical environmental concern and then when approached by a mining company, acting as if it doesn't exist and approving mining in an area of critical environmental concern. Consider what those words mean. It doesn't sound like it's simple for mining. As you've heard the action, the appeal to BLM still hasn't been resolved, so I hope again that you will at least continue this item until there is such resolution. Whatever action you take, as I'm sure you realize, will probably be appealed by the party that feels aggrieved. So this is an opportunity for you to do the right thing, as you have done before, and not make a hasty decision. Consider it carefully. We've heard from the Quechan, they're not satisfied, and I hope that you will make your decision in that light. Thank you.

**Ina Hal;** Good morning. My name's Anna Hall and I'm the Vice President of the Quechan Indian Tribe. I'm coming here today, I have Virgil Smith, also a council member of the tribe you know, here that is going and has a letter that was sent to you all, and we wanted to put this on the record today by it being read here. I know that there was a lot of things said and I was having trouble so I might start coughing. So he's here to help me. But I know that, you know, there was a lot of things here said today, our last meeting. And I want you to know, I think that there was some things that were misconstrued about maybe name calling and things like that. That wasn't the intent, that's not the intent of our people. Our people are good people, but we are just very passionate about trying to protect our resources, not just for us but for everybody, and we just want to make that clear. It was no disrespect to any of you or any of you here. So with that being said, they were showing pictures of all of these things that it has been mined before. Yes, it has been mined before, but it's trying to restore itself. There aren't animals coming back, there's life coming back, there's grass, there's plant life coming back, and that's important. That's what we want to preserve. There wasn't government to government consultation. Like the last time that we were here and I think that's what you needed to know and what you want to hear. Did it happen again? No, there's no been no further, only that one meeting that was on record that we offered to you at that time and still offered to you to listen to. And on the record it stated by our President that was our first government to government meeting on record. And she, the lady there, Ms. Carrie, had acknowledged that. So I just want to make that clear and the mining act of 1872 as well, that was brought up that was you know not in considering natives at all. At that time to see as that we just were considered American citizens 100 years ago so that wasn't even the benefit of the Native Americans who still, to this day, try to utilize our knowledge and our ancestry to be able to protect our resources for everybody. So I would just like the letter read on record if we could. Please, sir. Just one of the documents we have, we have, so it is on the record. But if you go ahead, if you want to read it quick. Thank you. Dear Chairman Schaffner as you are aware on December 13<sup>TH</sup> 2023 the Imperial County Planning Commission unanimously voted to continue consideration of Reclamation Plan number 21-0001/ Initial Study number 21-0029 for the purpose for the proposed Oro Cruz Gold exploration project. This followed two previous unanimous votes to continue commission consideration of the matter first on September 13<sup>th</sup> 2023 and again on October 25<sup>th</sup>, 2023. Each time the commission stated that the purpose of the continuance was to allow time for legal mandated meaningful government to government consultation between the Bureau of Land Management and the Quechan Indian tribe with the four union reservation to take place. I write today on behalf of the Tribe to once again respectfully request the Commission's continued stay of consideration of the reclamation plan and initial study. For the reasons stated herein further I request that letter we read into the record at the hearing on January 10<sup>th</sup> 2024, first only one government to government consultation meeting has taken place between the Tribe and BLM since we first came before the commission in September. That meeting occurred on November 3<sup>rd</sup>, 2023 at that time the Tribe's request for BLM state director review of the El Centro Field Office decision to approve the project which the Tribes submitted on September 29<sup>th</sup>, 2023 was still under consideration by state director Karen Martinson. Therefore the tribe and BLM agreed that it would be prudent to wait to schedule further consultation meetings until the tribe received a response from Director Martinson. Director Martinson did not respond to the tribe until November 21<sup>st</sup> 2023 when she declined our request for state director review on stay of decision to approve the project without addressing any of the tribe substantive arguments and similarity concluding that sufficient consultation with the Tribe regarding this project had already taken place. As a result the Tribe filed a notice of appeal and petitions for staying before the Interior Board of Land Appeals (IBLA) on December 18<sup>th</sup> 2023. In the meantime the Tribe has received no further communication from BLM about scheduling additional consultation meetings. Second in the December 13<sup>TH</sup> 2023 hearing a commissioner stated that one consultation meeting between BLM and the Tribe is not enough and expressed that at least one more meeting should take place before the commission votes on the Reclamation Plan and Initial Study. The Tribe agrees that consultation has been insufficient which is precisely why we are appealing this decision with IBLA. The Tribe disputes the characterization of meetings with our cultural committee as listed in the environmental assessment Mitigated Negative Declaration as consultation meetings. Indeed BLM El Centro Field Office Associate Field Manager Carrie Sahagun acknowledged in on November 3<sup>rd</sup> 2023 consultation meeting that BLM's previous meetings with the Tribes Cultural Committee did not constitute government to government consultation. Through our appeal to the IBLA the Tribe seeks to have its consultation rights

properly recognized that evidence of cultural and environmental impacts can be appropriately considered by BLM in accordance with the federal law and policy as well as the DOI and BLM internal policies and procedures. Third another commissioner stated on December 13<sup>th</sup> hearing that as long as the Tribe continues to appeal the decision there is no need for a Reclamation Plan. Further the Commissioner asserted that there is no harm in the Commission waiting until the Tribe's administrative appeals are exhausted to approve the Reclamation Plan and initial study. Again the Tribe agrees. At this time the Commission's consideration of the reclamation plan the initial study for the project would be premature. Due to BLM's failure to inadequately consult the Tribes regarding the project, the reclamation plans the commission is being asked to approve are not based on updated and accurate information. The tribe believes it is in the best interest of all the parties involved for the Commission to continue consideration of this incomplete Reclamation Plan in an initial study until at a minimum, the IBLA rules on the Tribe's Petition for Stay. Such a continuance will not cause undue delay or prejudice to any party as BLM approval of the project isn't effective until there is a ruling on the Petition for Stay. See 43 C.F.R 4.21 (A) Pursuant to 43 C.F.R 4.21 (b)(4) the IBLA must rule on the Petition for Stay by February 1st 2024. We thank the commission for its consideration of the Tribe's request and its attention to the Tribe's concerns. Please do not hesitate to contact me with any concerns regarding this important matter. Jordan Joaquin President.

**Irene Romero;** Good morning I stand before you to address a matter of great concern and urgency regarding the proposed project by SMP Gold Corp in the Oro Cruz region. This project not only threatens the natural beauty of the land, but more importantly, it jeopardizes the sacred heritage of the Quechan people. The Bureau of Land Management's approval of the Oro Cruz exploration project has been marred by the troubling lack of meaningful consultation with the Quechan Tribal Council. Process mandated by policies such as the Natural Historic Preservation Act was sidestepped. Disregarding the profound cultural, religious, and spiritual significance of this land to the Quechan people despite the Tribal Council's effort to raise concerns. It is disheartening to note that the Bureau of Land Management has proceeded with a project without adequate consideration for the impact on the tribal cultural resources. The Quechan people, rooted in the traditions and ceremonies tied to this land, have been denied the rightful government to government consultation. The repeated stays by the Imperial County Planning Commission highlight the inadequacy of the consultation process, and the Tribe's subsequent appeal and petition for state underscore their commitment to protecting their ancestral lands. The denial of this request by the Bureau of Land Management raises serious questions about the integrity of the decision making process. As we await the decision from Interior Board of Land Appeals, we must recognize the significance of this issue. It extends beyond the immediate threat to the environment, and it speaks to the preservation of the Quechan people's past, present and future. We must be against the shortsightedness of prioritizing profit over the cultural and spiritual wellbeing of a community. I just think that we should respect the wishes of the people who own this land. Thank you so much for your time.

**Daniella Flores;** Good morning, Planning Commission. Members of the public. My name is Daniella Flores, the Executive Organizer of Imperial Valley Equity and Justice Coalition. Last time I spoke up here, there's like some things yelled my way about my generation being the problem and just questioning me about whether I read. And so I'm here again in opposition of the exploration project and the Reclamation Plan, right? You know things that are said about our group, about our generation. It only makes me proud that we are our generation, and even younger generations in my own are willing to speak truth to power. You know, you all sitting there in positions of power, of great power, and just taking a look at who gets to sit there, right, what are the demographics of the people that get to sit there, and what are the demographics of some groups that you know are fighting for social and environmental justice in our community, right? So there's differences there. But I am proud, I am proud to stand with Quechan, I'm proud to stand against further colonization, I am proud to stand for protecting our environment, protecting those occupants of that land. As Chris mentioned, there are animals that live there. As others have mentioned, that land is still trying to heal from the past harm that's been done. An advisor once shared with me a couple of key things that you know the way that these folks have defined colonization. Some advisors of mine and they mentioned these four components. They

mentioned that disconnection from community identity and culture, the disruption, distrust, and disempowering of tribes, the erasure and systemic issues perpetuating barriers, right? So those are some of the things that we can consider and that we have seen through history that are done. Whether the intention is or not, the impact is further isolating those communities, further erasing them, and further taking them away from the connection that they have and then the great responsibility that they've had to preserve our land for as long as they have. Again, I'm here to ask that you, you know, um, they clearly that we have heard that there's the consultation have not, has not been sufficient. So I think that it would be premature to make a decision, to approve so either table or oppose at this time, you know. I'm not sure whether you all have political aspirations, I know, Pacheco you do, but politics outside, like let's get politics outside of this. We're talking about land, water, earth, we're talking about preserving our planet so that for many generations others can, also know what that land looks like and to learn about the rich history that the Quechan, you know, know so much about because they have been here for as long as they have. Okay, so thank you with that I'll conclude.

**Gilberto Manzanarez;** Good morning, everyone. I was having a tough time trying to decipher what I was going to talk about today until I heard the words rule of law. It is the rule of law. You guys are in authority to either deny table or approve this project. But the rule of law in this country has had a complicated and long history. In this country slavery was once rule of law, the genocide of American tribes here the first people nations was also rule of law, the trail of tears where ten tens of thousands of Native Americans perished was also the result of the rule of law back then. The rule of law doesn't make it right. Right is being on the right side of history to recognize the patterns of genocide, of neglect of this people's all throughout the history of this beautiful, beautiful country. They say that the land belongs to BLM, and I ask whose land was it before BLM? The people, the rightful owners, are still here today. They have spoken to you today. As I was saying that I was having a hard time to decipher my feelings, I decided to instead cut my comment short and instead quote the Imperial County itself. The following are not my words. They are the official Imperial Counties on their website and social media pages. In it says "Today, we pay tribute to the rich cultural heritage and contributions of the Native American tribes in our region, including the Quechan, Kumeyay, Kia, and Cocopah peoples, whose history and traditions have been woven into the fabric of our community. As we reflect on the enduring wisdom and resilience of our Indigenous neighbors, we also acknowledge the injustices and challenges they have faced throughout history. We commit to building stronger bridges of understanding and collaboration, honoring their heritage, and working towards a more inclusive and equitable future for all." Those are not my words. That's the Imperial County words I suggest you stand by. Thank you.

**Jason Andrews;** Good morning, everybody. My name is Jason Andrews. I come before you guys today. I am a practicing member of my traditional ways here today. Just like my ancestors in the past, they left their footmark, their footprint on the land out there. We, today still do what they did. We still carry on our traditional ways, we still carry on our songs. And our songs, like I said the last time in the last meeting, speak about the land that you guys going to allow this man to try to desecrate. It's been done before in the past and our land is barely healing. We got a lot of our songs, stories of animals, witnessing man's life. And these animals live out there, thrive out there, and for to allow a gold company to come in and desecrate the land and leave whatever chemicals they leave in the process of getting this gold that he wants. It's going to hurt the land, it's going to hurt the people. Not only maybe and not here today, but for future generations to come, my children, my children's children, the Tribe, our kids, our youth are going to hurt from this decision. And I just ask that you guys humbly, as a practicing traditional man of my Tribe, I come to you spiritually with a humble heart and asking you guys to open your guys' hearts and see what is about to happen today. Put it in you guys' hearts. I've been praying this whole way, that you guys make the right decision. Open your eyes to what's been happening. Don't follow your guys' ancestors. Don't follow your guys' ancestral ways. We were nothing to them, the Treaty of the Gold Mine, that we had our ways, our traditional way of life, our spiritual life, even our life was not even thought of in that contract that the government made with this these gold people back in 1800. We weren't even a nation then, we weren't even thought of as a people it wasn't until the 1970s that we were finally realized that we are a people. The government today still does not acknowledge the damage

that they did to us. And it's our voice here today that is hoping that you guys hear that you guys are the first people to take that step to understand that where we come from, the hurt that we feel, the hurt that our children are going to feel from this decision. I just ask that you guys put it upon your hearts to make the right one. Thank you.

**Julian Laurenzana;** Hi, my name is Julian Laurenzana. I ran for the Quechan Spur, went to stop Oro Cruz last year. A few days ago, I went to see where they're digging the water and to me it just looks like they're just mining. Also, the sacred photographs which are neither mine could be damaged when they are mining for gold or water. If they keep digging for the water or gold, they can potentially contaminate our reservation and it could kill some of our people. In conclusion, I think we should just stop the mining and they are just hurting our sacred land. Thank you for your time

**Laryssa Alvarado, Clerk;** The next are just via Zoom. We have three speakers

**Chairman Schaffner;** Okay.

**Hallie Kutak;** Yes, hi, everyone. So I noticed that the Planning oh I'm Hallie, I'm an attorney with the Center for Biological Diversity. I've commented for the commissioners before, thank you for hearing my testimony. I noticed that the Planning Commission Staff finally updated their presentation to clarify that the project will contain no permanent access roads, as the project applicant confirmed at the last hearing. This was obviously a welcome change, as we've been flagging this error for months. But unfortunately, none of the project documents themselves have been updated to fix this mistake. The staff report recommendation and reclamation plan still erroneously claimed that there will be a permanent access road. Without making these changes to the documents as required, the public has zero assurances, and you know the County's record frankly lacks the evidence to conclude that the County's plan actually reclaims this road which is a violation of SMARA. It's the County's obligation to ensure that the Reclamation Plan is adequate. I urge the county not to act hastily and to really do its due diligence. Go back, review the plan, review the project documents and correct these mistakes before approving the project. Finally, I just want to comment on something the project applicant said today. The project applicant said that in reclamation it would leave the site in better condition than it found it. You know I hope the Commission approaches that statement with a healthy dose of skepticism. The project applicant in part claimed it would do so through revegetation that it claims it will continue to monitor until any vegetation can survive without irrigation. The project doesn't know where its going to get its water yet. I don't know how with a region with limited and precious water resources, the project applicant will be able to irrigate this site until its fully revegetated and the project applicant doesn't either which just assumes it will have the adequate sources to do so. I urge the commission to go back, instruct the County to go back, look at the documents and correct the legal errors in them before approving the project. Thank you.

**Cassandra Pino;** Good morning everyone I am a policy manager for the Native American Land Conservancy, a tribal organization that works with any tribes in Southern California on activities involving land stewardship, cultural preservation, youth education and advocacy. I'm here today to comment on the SMP mining exploration project. The Native American Land Conservancy is close with the Quechan Tribal Government and the Quechan community members here today and their continued efforts to protect this cultural landscape from mining projects and harmful development activities. We ask you and the Bureau of Land Management to properly address all concerns raised by Quechan members today. I want to emphasize these are cultural and spiritual landscapes which are still held sacred to indigenous people who have existed here since time and memorial. Indigenous people is in our entire history's culture, songs, which is now lifeways the identity formed by our ancestors and the places we are from. Natural and cultural resources are interconnected, and both must be properly preserved to protect business livelihoods. There have been comments made here today by the project applicant about folks moving over the land and using the Reclamation Plan to mimic the way it was before exploration activities. This type of language is extremely harmful because it perpetuates the misinformed idea that landscapes can be simply returned to the way they

have naturally existed for thousands or millions of years. Landscapes, canyons, rock faces, and other natural geographic features are forever changed by mining activities. They do not simply return to their original formations by the efforts of manmade machines, and the destruction and desecration of above ground and below ground natural features directly impacts what future generations of indigenous children will learn. Additionally, the statement made that the line can somehow be quote "improved by a mining reclamation process and re-vegetation that lasts just a few years" is short sighted and shows a great misunderstanding of indigenous values and principles, which seek to respect and protect the interconnectedness of all life for future generations. Additionally, there have been comments made here today that this is an Indigenous land, that this is strictly BLM land, and that no one lives in these areas. For hundreds of years, countless efforts by the U.S. Government and State governments have sought to forcibly sever the connections of Indigenous people to our homelands and to try and eradicate our cultures and languages, which are intimately tied to the landscapes we've come from. Despite this, we are still here and we continue to heal from these historic atrocities. Even if you don't see us living in these regions, we once were, it doesn't mean we don't return to them, that we aren't here. It doesn't mean the physical presence of our ancestors are gone. They're present through cultural objects, rock art, and trails, to name a few things. We hold connections to all places our ancestors once inhabited, which transcend current political boundaries. Today, Indigenous people all over this country continue to defend the rights to nature and landscapes to exist and to fight for the Indigenous rights, as both are inseparable parts of a whole. We ask you to do the right thing and to address the various concerns raised here today and to listen to the Quechan people, the original people of this region. Thank you.

**Jared Naimark;** Good morning. My name is Jared Naimark. I'm the California Organizer with Earthworks, and we're a national nonprofit organization that protects communities and the environment from the adverse impacts of mining. And for the past two years, I've been working in coalition with the Conservation, Environmental Justice, and Quechan Tribal organizations who are concerned about the impacts of the Oro Cruz exploration project. So I'm here once again in solidarity with the Quechan people and Imperial County residents to urge the Planning Commission to reject this flawed project and require an EIR. I won't repeat all of my previous comments. The Commission is well aware of the issues we've raised regarding the Reclamation Plan and the inadequacy of the CEQA document to analyze environmental impacts, and it sounds like from today that the Commission should also be well aware of the lack of government to government tribal consultation. I do however want to clarify several points that I heard today from the proponent. The Quechan's history, as many have testified, of stewarding this landscape far predates any of the mining history in the area. The trails, geo glyphs, and cultural features, the ceremonies that are still practiced there today go back to time and memorial more than tens of thousands of years. And federal and state laws require that the impact to those native lands, those traditional cultural properties, those ceremonies be analyzed and they haven't been analyzed in the environmental documents. BLM simply said, we need more information, and that's not an adequate analysis of the impacts to those cultural resources and that broader sacred landscape. I also want to clarify that, yes, much of the area has previously been damaged by mining, but SMP is also proposing to mine in previously undisturbed areas, and this would irreversibly damage habitat for sensitive species, drill into mountains that Quechan Tribal members have testified as containing sacred knowledge, and so this is an important point that the Commission needs to consider, and it hasn't been analyzed properly either. I also want to clarify that, yes, we understand that cyanide won't be used in the drilling process itself, but it would be if a mining operation is developed, and so I think it's reasonable for the public to be concerned about that in the future. Even without those chemicals, the drilling itself would have a significant impact, especially if groundwater is encountered, which again and we've raised this in numerous comment letters hasn't been properly analyzed in the environmental documents. To conclude, BLM has clearly abdicated its responsibility to protect the sensitive environmental and cultural resources in the project area by approving it without proper environmental review. Now the Planning Commission has an opportunity to do the right thing and reject the project. Listen to your constituents and the public here today. Thank you very much.

**Layla;** Can you hear me? Yes, yes. Okay, sorry about that. It sounds like my phone wasn't working, so I have to connect through my laptop. So, Chairman Schaffner and members of the Board, I wish I could wish you a good morning today, but the fact that you all have placed this item once again on the agenda tells me that this is actually, in fact, not a good morning, and I must pause to acknowledge some of the comments that were made earlier here today. I've heard someone say flatten any disturbances. That's violent language, it's inflammatory language, and we should acknowledge it for what it is. And also, I heard a member say improve the area. So, what exactly does that mean? That's again colonizer language. So something that I did note is that the agenda entry is entitled Consideration of Reclamation Plan. So let's consider the definition of reclamation. The definition is the process of claiming something back or of reasserting a right, and the process again, the process of claiming something back or of reasserting a right. This is both obscene and it's an unsuitable title. The assertion that this Commission can reclaim something that was never theirs in the first place fails common sense and is a clear illustration of the arrogance with which this body is continuing to choose to operate. And the fact that this Commission continues its assault on the sacred land of our beloved Quechan people and their families is an abomination. It's embarrassing. And if your intention is to continue to lead this community and this capacity, then it is incumbent upon you to listen to what the community is telling you. Our beloved Quechan people have said that they use these trails, that they use this land for prayer circles and that they perform sacred ceremonies. They have told us that this land is sacred to them. So shame on this Commission for continuing to insult and bring flight to our beloved Quechan people after everything that they have been put through. They've survived genocide, apartheid, rape, murder, massacre after massacre, and children who were ripped away from their families and tortured in faraway places, and today we drag them back here with the threat of reclamation and stealing their sacred land. We say no to colonization, and we say no to the dehumanization of our beloved Quechan communities. We stand with them and the arrogance and impunity with which you are charging forward is not the way of the future. It is not sustainable and it's morally corrupt. You say the project will not have a significant effect on the environment. Do you realize the acceleration of climate change? You all keep telling us oh just a little more it won't hurt but look at the current state of the globe. When is it enough? Is it profits over everything by any means necessary, including trampling through and disintegrating sacred sites of our beloved indigenous communities over and over again? Stealing land is already a terrible thing to do, but stealing sacred land is an offense in the tallest orders, and shame on you. For entertaining this topic again and dragging our beloved Quechan people out here again, when they have already said no, this is not how you lead this Commission into the future. The world has changed, and we no longer turn a blind eye to the destruction and dehumanization of our indigenous community. Member Sergio Cabanas, Member Ernesto Medina, Member Luis Pacheco, shame on you for entertaining this agenda item on your commission and Gerardo A Quero Planner II, who is listed as a contact on this project, why are you doing this? I lament to see the day when the colonized become the colonizer, do better. To everyone sitting on this Board today we will not accept you on this Board going forward in the future if you refuse to stand with our indigenous communities and our community the era of erasing our indigenous communities is over, do better.

**Chairman Schaffner;** Okay, we've gotten everybody. Did anybody not get their yellow card turned in? Okay. We're going to close the public portion of the hearing, we're going to bring it back to the Commissioners. Do we have any other questions or comments for the applicant?

**Commissioner Bergh;** I'd like to hear more from the consultant, what he is, what they're saying, I'd like to hear from him. Counter.

**Graham Stephens;** So there were a couple comments made about water. Water will be trucked to the site via mobile water truck. Most of the water use will actually occur during the exploration for dust control and that's the water truck would be used to irrigate any revegetated areas as necessary. Planting generally occurs right before the rainy season and the hopes that you can take advantage of any natural rain. But yeah, that's where the water would come from if needed. They talked about the water source. We cite the Gold Rock Ranch RV Resort as the most likely source of water however, it could come from the City of Yuma as well. You know, often I know that we had discussions about water will serve letters as being a part, you



know, something that could be obtained up front before the project initiates. That way the, you know, issue of water is addressed up front and taken care of in that manner. So, if there's any other comments.

**Commissioner Bergh;** This is just an exploration. This is not mining, correct?

**Graham Stephens;** Correct, but it's still subject to the Surface Mining and Reclamation Act and therefore you need to. Yeah, and one other, we're not using water source.

**Chairman Schaffner;** The public portion is closed. Then the issue of the water will be addressed. It's up to them to get the water somewhere, and I doubt if they're going to go out there and well, I can't say who where they're going to get it. I don't know. We hope they're going to do something legal there and you guys can watch them, But I don't know where they're going to get the water. They got the Colorado River, they got Yuma. They got lots of places they can get water out there. Do you have any idea roughly how much water I think they're going to use?

**Graham Stephens;** To get that may not be.. Yeah, actually, I jotted that down. It's 240,000 gallons total it's about 2,000 gallons a day, .7 acre feet and we you know as part of the CEQA document, we looked at groundwater resources and water availability and we presume that if they were using a you know a purveyor that was using a groundwater source, it would be from the Ogilby Valley Basin, which the most recent records had natural recharge annual recharge capacity of 250 acre feet per year. You know it's in the grand scheme of things, minimal quantities of water, and again it's primarily for dust control during the exploration activities on the roads primarily

**Chairman Schaffner;** Okay, thank you.

**Commissioner Pacheco;** I have a question for the President. President Joaquin, How long do you think you'll get this stay from the Interior Board of Land Appeals? Is this on their minutes? Is this going to happen?

**Jordan Joaquin;** When we met with them, when tribal council traveled to Washington, DC and we met with the Department of Interior, I believe she's acting now, the Department of Interior Director. She wanted to know if there's a timeline that they're supposed to reply back, they haven't at that time. You finally did apply a return, give a reply. There are so many days they have to respond by. But with our problem with BLM, when they go past that date, that gives us the Tribe to say, well we have it, we have a date you have to reply back to, you haven't responded back to you, that's just more evidence for us, they're just not listening to us. So is there a timeline? I can't speak for BLM unfortunately, but you know, we are doing the Quechan Tribe, you know. We could just automatically just say we're going to sue the BLM, but we know what's going to happen is did you guys, did you guys exhaust all of your avenues before you going to sue them? No, we're following the rules established by the government of this United States, which we're proud to be citizens of. We're following the rules, we're following what the steps in progress. So once we determine and if we get a reply back on our appeal, if it's denied then we have to make further action. So we're doing the right things, following the law, following the rules. And I'm glad the rule of law has been brought up because as a former police officer, there's a letter of the law when I see you drive and maybe you might have a crack windshield, the letter of the law is to write you up and say here's your ticket and the spirit of laws say get it fixed within 30 days. I'm glad there is a spiritual law, not just a letter of the law. And if I could respond back really simply on the water issue, they're talking about bringing in water, we're concerned, and when they drill into our ancestors excuse me drill into our land, that drill may hit aquifer. That's what we're concerned about, and when you ask the question is the land going to be placed back? We think it is, it's a possibility, well, it's also a possibility no, it won't be brought back to where it's at, so I just wanted to bring that. We're following the rules, Planning Commission. We heard you guys, go out, meet with BLM, hasn't happened. Maybe they're waiting for the letter from the appeal from there from the IBLA. We're following the rules Planning Commission, we're following what set for and that's all we're trying to do today.

**Chairman Schaffner;** Are you saying the government works slow? That's amazing.

**Jordan Joaquin;** I'm going to say it beyond slow.

**Commissioner Pacheco;** Do you foresee a consultation at all in the near future?

**Jordan Joaquin;** I would hope so. That's what the guideline says, because we're not a non-profit organization, we're not a committee, we're a sovereign nation, and we deserve the right to be considered a government within our own people, elected by our own people. BLM for some reason doesn't understand, and their own mission statement says that. And I said that I always read their mission statement too. You guys are stewards of the land. We're the original stewards of the land. Work with us, don't work against us.

**Commissioner Pacheco;** Fourth meeting

**Jordan Joaquin;** Fourth meeting. And I think doing the right thing like the gentleman said, not a tribal member, but another member of the community. He'll bring it back anyway if it gets denied, which we're asking for. Let us go through the process. Deny this request. Our travel members far travel from 60 mi away and will keep traveling because you're not dividing us, you're strengthening us. There's a 109 federal recognized tribes in California, 23 tribes in the state of Arizona our sister tribes. You're making us stronger sir. You're making us stronger. Planning and Zoning, I'm not going to challenge you, but the right thing to do is to reject this until all avenues have been exhausted. Thank you.

**Commissioner Kalin;** So I guess I feel like we've given a very fair ability to hear so many of you speak and so many of you eloquently speak. I appreciate that very much, and I think we've really heard, I've heard what you've said. The process has stopped here. We're not making, you're not making any progress. We're not making any progress with it stopped here. If we deny this, we have to make a finding as to what was wrong with the Reclamation Plan? It'll go back and be corrected if there is anything wrong with it, and it'll come back, and we'll go through this all over again. No matter what way we vote here today, the decision is going to be appealed to the Board of Supervisors. That's progress. It may not be progress you like but at least you've exhausted the Planning Commission decision and then go on to the Board of Supervisors and then you're going to continue to everything you can to keep this mine or exploration from happening, and I applaud you for that. I respect that very much, but I think at this point we need to make a decision one way or another. And I don't see a way clear to say that there's something or anything wrong that can be corrected in the Reclamation Plan.

**Commissioner Kalin;** Made a motion to approve Agenda Item #3 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (no).

**Jim Minnick, Director;** Can we take a five minute break?

**Chairman Schaffner;** Yeah, sure,

**Jim Minnick;** Thank you. Before we take a break, the project stands approved by this Commission.

**Jim Minnick, Director;** Stated **Agenda Item #3** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

**Jim Minnick, Director;** Commissioners we need to go back to Agenda Item #2. Agenda Item #2 is the election of officers, this is our first meeting in January. I jumped that I was so excited to get to Agenda Item #3 so I apologize for the out of order situation. I am hereby requesting a nomination for Chairman of the Planning Commission.

**Commissioner Kalin;** I'll make a motion to nominate Mr. Schaffner as Chairman.

**Jim Minnick, Director;** All in favor say aye.

**Commissioners;** Aye

**Jim Minnick, Director;** Any opposed? Second action to elect Vice Chairman

**Commissioner Pacheco;** Lets keep the ball rolling and keep the same individuals.

**Jim Minnick, Director;** Any opposed? All in favor?

**Commissioners;** Aye

**Jim Minnick;** For the 2024 season, Chairman Schaffner and Vice Chairman Kalin. Thank you very much for your service we appreciate the timeless efforts you've put into this meeting and your guarantee that each one of these meetings only last 20 minutes

4. **Consideration of Time Extension #23-0009** as submitted by Kazem Zomorrodian., requests an 1-year time extension for Tract Map #00956 as permitted under the Subdivision Map Act section 664582.6. The project consists of two parcels legally described as the REMAINDER POR OF LOT F OF TR 956 SUBDIVISION (APNs 054-601-021 & 054-605-068-000). (1135 Pitzer Rd., Heber, CA 92249, and; Supervisorial District #2), [Derek Newland, Planner III at 442-265-1736 or by email at [dereknewland@co.imperial.ca.us](mailto:dereknewland@co.imperial.ca.us)].

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Derek Newland**, Planner III, to read the project into the record.

**Derek Newland, Planner III;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Alex Baroni & Lisa Tylenda, Representative;** Introduced themselves.

**Chairman Schaffner;** Asked if they had any questions or comments regarding the project, and if they read and agreed with everything.

**Alex Baroni, Representative;** Stated that they read and did agree with everything on the project.

**Chairman Schaffner;** Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

**Commissioner Kalin:** Made a motion to approve Agenda Item #4 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #4** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

5. **Consideration of Lot Line Adjustment #00333** as submitted by Andres Joel Carmona and Osterkamp Farms, who are requesting to correct an encroachment of Parcel 1 onto Parcel 2 property. Parcel 1 with Assessor's Parcel Number 045-010-035-000 (2714 James Road Imperial, CA 92251; is legally described as Portion of Tract 60, Township 15 South., Range 15 East, S.B.B.M.; Parcel 2 with Assessor's Parcel Number 0445-010-063-000; is legally described as Tract 60, Township 15 South, Range 15 East, S.B.M. except the above-mentioned property. Supervisory District #5; [Rocio Yee, Planner I at (442) 265-1736, extension 1750 or via email at [rocioyee@co.imperial.ca.us](mailto:rocioyee@co.imperial.ca.us) ]

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Rocio Yee**, Planner I, to read the project into the record.

**Rocio Yee, Planner I;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Tyler Preece, Representative;** Introduced himself.

**Chairman Schaffner;** Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

**Tyler Preece, Representative;** Stated that he read and did agree with everything on the project.

**Chairman Schaffner;** Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

**Commissioner Kalin;** Made a motion to approve Agenda Item #5 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #5** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

6. **Consideration of Lot Line Adjustment #00334** as submitted by Miguel A. Barba Martinez, Osterkamp Farms and Mary C. Gilbert, who are requesting to correct an encroachment of a residential home onto the agriculture field. Parcel 1 with Assessor's Parcel Number 045-470-011-000 (839 E. Worthington Road Imperial, CA 92251) is legally described as W 210FT OF E 230FT OF S 210FT OF N 270FT OF S2 TR 54 15-15; Parcel 2 with Assessor's Parcel Number 045-470-012-000 (Rubber Canal Delivery 4-A) is legally described as POR S 102FT TR 54 15-15 38.99 AC; Parcel 3 with Assessor's Parcel Number 045-470-010-000 (945 Worthington Rd, Imperial, CA 92251) is legally described as E 80 AC OF W 120 AC TR 51 T15S R15E 80 AC.; Supervisory District #5 [Evelia Jimenez, Planner II at (442) 265-1736, extension 1757 or via email at [ejimenez@co.imperial.ca.us](mailto:ejimenez@co.imperial.ca.us)]

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Evelia Jimenez**, Planner II, to read the project into the record.

**Evelia Jimenez, Planner II;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Tyler Preece, Representative;** Introduced himself.

**Chairman Schaffner;** Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

**Tyler Preece, Representative;** Stated that he read and did agree with everything on the project.

**Chairman Schaffner;** Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

**Commissioner Kalin:** Made a motion to approve Agenda Item #6 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #6** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

7. **Consideration of Conditional Use Permit #23-0009 and Variance #23-0003** who is proposing a 155'-foot monopole tower with a 10'-0" lightning rod for a total height of 165'-0" and Variance to exceed the height limitation in an area zoned Recreation/Open Space (S-2) by 65 ft. The project site is located at 5359 E Hwy 78, Brawley, CA, on property identified as Assessor Parcel Number 039-310-019-000, and is further described as POR SBE 872-13-6A-5 & -7-1 OF TR 37 & SEC 34 13-18 39.15AC on the unincorporated town of Brawley of the County of Imperial; State of California (Supervisorial District #5), [Luis Valenzuela, Planner II at 442-265-1736, or by email at [luisvalenzuela@co.imperial.ca.us](mailto:luisvalenzuela@co.imperial.ca.us)].

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Luis Valenzuela**, Planner II, to read the project into the record.

**Luis Valenzuela, Planner II;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Michael Bieniek & Allison Burke, Representatives;** Introduced themselves.

**Allison Burke;** Read the PowerPoint Presentation of the project into the record.

**Michael Bieniek;** We'd also like to request the ability to rebut SBA's items.

**Chairman Schaffner;** Asked if they had any questions or comments regarding the project, and if they read and agreed with everything.

**Allison Burke, Representative;** Stated that she read and didn't agree with everything on the project.

**Chairman Schaffner;** Okay, without a dollar figure. Can you tell me how many times more that they're paying than it should be? Or what you think it should be?

**Allison Burke, Representative;** This particular site is six times. On one site in the aggregate over the three sites that we'll talk about, it's over twenty years, 13 million dollars and that's three sites in Imperial County and this is you know, currently we're in Imperial County but this is a nationwide issue for at AT&T and so for this site and the other two, they've determined that these are what they call high rent relocation sites and so across their portfolio of sites where they pay rent, these ones are expensive relative to other leases and terms. They've been able to negotiate with other providers and so they're looking to move to other towers with better terms.

**Michael Bieniek, Representative;** And that's not including the fact that the railroad needs, you know, the ability to put equipment on this facility, but they can't on the SBA tower. It's strictly on their right, in their right of way.

**Commissioner Bergh;** Okay, the way I understand it then What you're paying or would be paying to SBA. You put them out of business and then you're in the same boat, the same chair as they are now on competitors.

**Michael Bieniek, Representative;** They would not be out of business. There's other equipment on those towers, so those towers won't go away. It would simply be AT&T relocating.

**Commissioner Bergh;** But AT&T would have the ability to upgrade considerably faster and more economical than, say, another entity, is that correct?

**Allison Burke, Representative;** Can you rephrase that? I'm not sure I understood

**Commissioner Bergh;** Other words, SBA would not have the wherewithal, the money and the backing to upgrade their systems in comparable to yours.

**Allison Burke, Representative;** So SBA and City Switch build towers.

**Commissioner Bergh;** Yes.

**Allison Burke, Representative;** When AT&T goes to SBA and wants to upgrade their equipment, if that tower requires modifications, AT&T pays for that. So SBA itself isn't contributing anything when the cell providers need to make that.

**Commissioner Bergh;** That's not what I'm talking about, I'm talking about competition. In other words, when the chair changes and SBA no longer here in the valley and AT&T, has the control of the towers, then you're going to be in the same position that you're saying the SBA is putting you into.

**Allison Burke, Representative;** I understand where you're coming from. So CitySwitch is the one that owns the towers, ok, and leases space to providers like at AT&T. These leases are long term even in the long term, there's not going to be ability to drastically raise rent or drastically alter lease terms because it's locked in for a really long time. But if that existing tower is there, it forces both to be competitive with each other, so it's not like that tower is going to go away. SBA would be forced to accommodate other providers at competitive lease terms, and right now there's no incentive for them to do that.

**Commissioner Bergh;** Well, the limitation of how many towers you can put up in Imperial County would be a detriment. I mean, if you put up a sufficient number of towers, everybody does, then the navy will say, "Hey, we have no reason to stay, we'll move to Yuma." I'm concerned more. You go outside and look at the number of towers now just and around El Centro alone. There's red lights, red lights, red lights everywhere. You see your red lights on towers. And I understand to the FAA that they are having to continually update their maps coming into the Imperial County because of the windmills, the alternative sites, the antennas that are going up. So what I'm just saying is that you're going, even if you compete with SBA it's still not going to degrade or limit the number of towers that we have here. You're not improving the system so you can have more towers.

**Allison Burke, Representative;** I understand what you're saying, so a couple comments. First the Airport Land Use Commission made a determination.

**Commissioner Bergh;** I know that.

**Allison Burke, Representative;** This was consistent. There's no lighting on this specific tower because it's not required by FAA regulations. As to the proliferation of towers, at some point, there's a certain number of towers that are required to deploy the current level of technology. While I get your concern about the total number, from our perspective, there's no specific limitation in the code on the total number of towers. There's no specific limitation in the code on distance between existing towers, and that could have been written in. But there isn't one right now.

**Commissioner Bergh;** Who's fault is that?

**Allison Burke, Representative;** I'm not sure who adopted the code, who drafted the code, but there are ways to impose strict limitations and those, you know, those haven't been imposed here, so we've met the written requirements as they're articulated in the code.

**Chairman Schaffner;** Opened the public portion of the meeting.

**Robert Kenny;** Good morning commissioners this is Robert Kenny, I'm the attorney for SBA Structure's LLC and we did provide objections to all three of the towers that are on the agenda this morning. We'll start with this first one which is 009. CitySwitch has a existing tower, as has been noted, approximately 15 hundred feet, I'm sorry, SBA has a tower 15 hundred feet from the proposed CitySwitch location. And I think it's important to note that CitySwitch has not provided any evidence or indication that there is any public need for this or any of the other towers. There's no showing of an absence of self service in the area, no showing of any problems with existing service, any dropped calls, any public need or self-user need for this or any of the other towers. The only reason presented by CitySwitch is the desire of the current tenant on the SBA tower at AT&T to save money. AT&T has been a long term tenant on this and the other SBA towers they were there when SBA acquired the towers in the early 2000s. Second they've been, they've been actually operating since the early 2000s. The only evidence given to show this economic difficulty or alleged undue economic burden is the declaration of the AT&T representative Mr. Gambrel and Mr. Gambrel simply says that they determined that it would be more economically beneficial for them to move to the proposed CitySwitch tower and I think it's important to note there's no actual agreement that's been shown. This is just a master lease agreement or a master agreement that CitySwitch has under which they build towers. I'm trying to build towers for carriers who will then rent the space and I think it's very important to note that since the Gambrel statement was provided or signed in February of 2023. CitySwitch and I'm sorry SBA and AT&T have entered into a master lease agreement which covers all 6500 towers around the nation that will govern the terms and covers the terms for these towers that are issued today. We provided statements, letters from the estimate Marcuses, who is the person in charge of handling the carrier relations in California, and she expresses her surprise that AT&T has raised these issues because they have not been raised with her and AT&T has never raised any issues with its representative, with SBA representative indicating there's any equipment issue at all or any ability inability to upgrade the system. In fact, the only reason that the Gambrel declaration states for the need to technical issues is the need to upgrade to first net system the new nationwide 1st Responder Emergency Services system. And as the SBA representative reports in her letters that has already been done on this and the other two towers. SBA and AT&T have entered into agreements, and have already upgraded the towers to handle the 1st Net systems, the equipment and it's already in place and working. Another important point that's brought out in the letters, the SBA letters with Macuses's letters are that SBA is prepared under the new master lease agreement terms to renegotiate the terms for the AT&T and is in fact willing to match less ten dollars any rates that CitySwitch is proposing for any leases on these on these towers. In other words, the AT&T rent will actually decrease if they remain on the SBA tower and AT&T can use the money they would otherwise use to pay to relocate its equipment to the CitySwitch, can use it to build towers that can be more readily used and are needed in the community. So, in addition to the fact that there's no showing that there's any technical need for any of these towers, there is no need by the public for any of these towers, and SBA has offered to match and actually reduce the rent that CitySwitch is proposing to charge. The economic burden element is simply not met. The SBA has provided and in addition to the letters, they provided the RF analyses and they provided the RF propagation maps, showing that these proposed towers, this one in particular on the first matter we're looking at, do not add any appreciable coverage. They are duplicative, they overlap the existing coverage provided by the SBA tower. SBA has a good relationship with AT&T and SBA welcomes the opportunity to continue to work with AT&T to stay on these. Look at these SBA towers. SBA has again has offered and is offering to negotiate with AT&T to bring the rent down to whatever rental rate that CitySwitch is proposing. SBA urges the Planning Commission to deny this and the other applications based on 9241.00, the purpose of the ordinance. The ordinance provides that its standards are intended to protect and promote public health, safety, community welfare, and

the unique visual character of the County by minimizing the number of towers throughout the community. The proposed CitySwitch towers violate the intent of the County workings because the towers will be located less than half a mile from the existing SBA towers. This new tower and the other two towers proposed by CitySwitch are duplicative, they're unnecessary and they're contrary to the goals established in the ordinance. CitySwitch has not met its burden of showing necessity in the absence of alternatives to justify overriding just public interest in minimizing the number of hours of number of towers in the particular area, it would not be in public, in the public interest, to allow CitySwitch to build duplicative towers just to help AT&T save money and to compete with its competitor. That is not the purpose for these ordinances that govern the public interests in making sure there are not too many cell towers placed in the same location. As far as the railroad goes, the applicant hasn't produced any evidence that shows how the railroad system works or as SBA reports has an MLA with Union Pacific Railroad, and there's no indication that Union Pacific Railroad isn't adequately served by the existing SBA tower or any other SBA towers that would be available. And so there's simply no showing that there is need by either UPRR or AT&T. And there's certainly no showing that this is something that is in the best interest of the public. So, as the staff noted, this proposal for this particular tower, as well as the other two, is inconsistent with the stated intent to minimize the number of towers. These towers are simply too, posed to be too close to the existing SBA tower, and there's just no there's no justification that would meet the satisfy that would satisfy the requirements of the code. So SBA proposes that the request that the Commission deny these applications, this one in particular, and if it chooses to further look at this, we would recommend that the Commission appoint a third party independent expert to perform both the technical analysis which is permitted by Section 92406.01 and also to do an economic analysis based on the fact that there is not real reason why AT&T has economic burden or undue burden to stay on these particular towers. So we recommend that the Commission deny the application or the alternative that they take CitySwitch up on its proposal to hire independent 3rd party consultants to look at the technical and economic issues.

**Chairman Schaffner;** Thank you is the other gentleman going to speak? There's a guy up there

**Jason Laskey;** Sorry, folks, you can you hear me? Okay? Just a few recent notes.

**Chairman Schaffner;** Your name and address for the record

**Jason Laskey;** Sure my name is Jason Laskey with SBA Communications 1621 NE 17th Terrace Fort Lauderdale Florida 33305, thank you. I just want to touch base on a couple of items. This particular tower site is in the middle of the recreational area. There's actually no tower within 14 miles east or west of this. Given that fact, it is better served for the community to build a tower that is complementary to this tower. SBA is by no means monopoly. We are no means anti-tower development. We welcome tower developers where it's appropriate. CitySwitch, in particular is a company that promotes build to relocate towers and they target, and I'm not that, I think the code in in Imperial County because is quite robust, but they do target jurisdictions that lack strong codes regarding towers siting and allows them to, in some cases, build a tower within hundreds of feet from an existing tower and this isn't done solely against the SBA. This particular tower SBA acquired the site I think around 2006. It had been built by another company and they entered into a long term master lease agreement with AT&T that established at that time in 2004 or 2005 the base rank and where those escalations were. It's not as though that this was brought upon at AT&T unexpectedly. Obviously, we have a new MLA we're always wanting to negotiate with our tenants. We have over 15,000 towers around the country as AT&T is on a handful, six thousand or more and then I would just add that the idea that we slow the process down or somehow our tower is inferior to what they're proposing. Yes the tower is 12-15 years old I'd look at each of these three towers, this one in particular, the capacity that's left on this is quite robust the tower capacity is at 50 percent meaning we could add, they were designed to at least accommodate four or five carriers of this particular study. This particular site in addition to AT&T has, Sprint, and Verizon. There is room to move up the in height for AT&T. Although we all acknowledge this isn't a signal issue, they're not saying that they'll get better coverage, but we do require that our tenants do a proper structural analysis and get a building permit for any time upgrades are done. To the degree that's our fault or



that slows them down, that is just industry standard and I would just leave it at that. We can't just give cartte blanche to have a tenant put equipment that we don't know is there, but also for structural reasons and for local building code reasons. And that's really, that's all I have to add. I think at this point in this application.

**Allison Burke, Representative;** I just like to respond to some of the points made by SBA and then some of the points made by Mr. Jacobs. So first with respect to SBA and Mr. Jacobs, I guess both, have mentioned this lack of public need for the tower and that there's no issues with coverage or capacity. The Code doesn't require a showing of need. In fact, the Code doesn't require the carrier to submit propagation maps which show the coverage to be provided by the proposed tower, which is pretty common in a lot of jurisdictions to show that that's important. I will note under Federal Telecommunications Act and the orders issued by the FCC the standard has moved away from coverage to materially inhibit. So before 2018 providers had to show that they were filling a gap that there was something missing in that area and that they needed that tower to provide the coverage that was missing. Now the focus is on regulations that materially inhibit the provision of wireless service without regard for whether there's a gap in coverage in that particular space and this is due to the change over time in the marketplace and the fact that the Federal Telecommunications Act was enacted in 1996, your wireless ordinance was originally acted in 2000. The way that we operate as a society is markedly different from 1996 and 2000.

**Chairman Schaffner;** I'm not following you there I realized we had gaps that we needed to fill the gaps

**Allison Burke, Representative;** Yeah that was

**Chairman Schaffner;** So what do we need to do now and that once the gaps are filled so just about bandwidth and stuff or what?

**Allison Burke;** so before there's a couple topics in there so before 2018 the regulations focused on gap filling so if I came in and I wanted to get a tower State and Local zoning regulations could not enforce regulations where a carrier was coming in to fill a coverage gap. After 2018 that standard changed and now the focus is on regulations that materially inhibit the provision of wireless services. So if I come in and you're going to enforce a regulation against me that will prevent me from providing services in the area that regulation is not enforceable.

**Chairman Schaffner;** Well I'm looking at the map here I wasn't sure what it is. Is that tower still at Jim Burger's yard? And they want to put a tower right there? Bullshit. You don't need it. It's right there in the same field.

**Michael Bieniek;** Here's the thing we're not arguing SBA kind of pointed out they provided coverage and we're not arguing coverage, we're saying that the nearby power would have similar coverage. That's not an issue, it's about the economic of kind. It's significant.

**Chairman Schaffner;** Because they're going to give everybody a cheaper rate?

**Michael Bieniek;** One hundred percent.

**Allison Burke;** The new tower is less expensive for rent and it has better and more competitive lease terms so as their representative noted, the master lease agreement with SBA or SBA successor was entered in 2005 with rent escalators to take place over the life of that long term lease. Over the life of that lease SBA has refused to renegotiate, they've refused to offer better more competitive lease terms but the market has changed completely so what AT&T is able to negotiate for itself now is so much different than the lease that they're locked into with SBA that SBA refuses to negotiate. So he mentioned that SBA has now offered yesterday, on the eve of today's Planning Commission hearing, to charge rent that's ten dollars cheaper than what CitySwitch is charging. This is a very common ploy our applications were submitted in April of 2023, 9

months ago they had 9 months to renegotiate rent, 9 months to make an offer, 9 months to renegotiate the lease terms. They waited till yesterday. They waited till this morning to make that point in today's hearing to confuse everybody to come in and appear like they're the good guys and AT&T is the bad guy for trying to go and get a better deal on the marketplace for itself and it's just simply untrue. A 3rd point that they made is that AT&T and SBA have entered into an agreement that covers this site. That agreement was February 2023, our applications were submitted in April of 2023 with an economic burden affidavit from AT&T in April of 2023 that demonstrated this site means a high cost site for AT&T. So the fact that they're trying to swoop it into that agreement that they haven't provided or shared with anybody is evidence that that is not part of the agreement. They also pointed out that AT&T is not unable to upgrade its equipment. That's not the point. The point is that every time AT&T wants to upgrade equipment fees to SBA to do so. Then, they also pointed to the purpose of the wireless ordinance. And as I mentioned in my opening presentation, there are a lot of purposes in the opening section of the wireless ordinance. Some of those purposes are to locate towers away from residential properties, and for the most part, well, this one particularly is away from a residential property. There's nothing close. The other primary purpose was to promote efficient, effective and quick provision of wireless services. None of those purposes are furthered by the existing SBA tower. Finally, with respect to SBA, they've argued that we've not proved that we have any lease agreements with AT&T or with Union Pacific, or that we have any existing tenants. First of all, none of that is required under the Code. There's no requirement that a tower builder come in and prove that they have tenants. Second, if the Planning Commission wants that type of evidence, we just ask that you defer your decision today so that we can get it and submit it for you guys to review. And finally, with respect to Mr. Jacobs, one of his primary concerns was we..

**Jim Minnick, Director;** Excuse me, planning director, can we hold off on Mr. Jacobs? That's item number nine.

**Allison Burke, Representative;** Yeah, of course,

**Jim Minnick, Director;** And we are out of order if we are talking about item number nine, which we have not presented to our Commission yet.

**Allison Burke;** Okay, yeah, okay, that works. Let me just make sure I've gotten all my points I think that covers just about everything.

**Commissioner Bergh;** You're saying that every time that you make changes to your to your equipment the SBA charges you to do that, how do they go about doing that? Do they bring in a crane or what how are they doing are they just saying "Okay Joe you're going to have to pay me \$100,000 dollars because you're just have to going to update equipment." How do they do that?

**Allison Burke, Representative;** I don't know the logistics of that, do you?

**Michael Bieniek, Representative;** Yeah I do. So when AT&T goes to upgrade from 4g to 5g for example, they have to provide SBA an application and that application includes a structural analysis as Mr. Laskey mentioned which is understandable.

**Commissioner Bergh;** Yeah that's fine

**Michael Bieniek, Representative;** But they typically will upgrade the lease, they'll charge AT&T another level of lease. Then, um, of course they have to get all the necessary building permits, which is fine and that's understood, but every time we do anything they have to, they charge, add in to the rent. Plus, on this tower it's not germane, but if the tower was failing you know, the upgrades caused it to get into that failing point. Then they would upgrade the tower and AT&T would end up paying that amount and even though there might be other carriers on there, AT&T would bore that burden.

**Commissioner Bergh;** So the administrative fee is what you're objecting to?

**Michael Bieniek, Representative;** No, we're talking about-

**Commissioner Bergh;** Maybe if you're talking about like a permits and I'm a structural engineer, so if you're going to have to go in and get a permit for something. And you have, as you see, the towers and first of all, they look like they're well overwhelmed as it is structurally now, right? You're objecting to that?

**Michael Bieniek, Representative;** No, no. What we're objecting to the fact that in this instance what do you say sixteen million dollars?

**Allison Burke, Representative;** No, this particular site is six million dollars

**Michael Bieniek, Representative;** 6 million dollars okay, if they're paying 6 million dollars over the next 20 years, you think about it, they mentioned that they have a 150 I think it was a 150 thousand sites throughout the country. AT&T is on over 66,000, start doing a little bit of math that becomes a huge burden and I guarantee you I've sat through meetings. I'm out of the Chicago area. I've sat through meetings in Wisconsin, Michigan, North Carolina, Tennessee, out here and they have the same exact argument. It's to basically say that we're not paying too much, it's not a big deal. And they're talking about renegotiating, as Allison mentioned, and yet they're just bringing it up now. AT&T can't work that way. That's not fair to them to show up at a meeting and say, yeah, we'll work it, work with them. And then what happens if you deny this? Then tomorrow they could say, you know, too bad.

**Commissioner Bergh;** But you, you reclaim all those administrative fees, you get all that back. The consumer is paying for that. The person has a cell phone or, and it's connected to the internet, they're paying for it. You're not keeping that, you're passing it.

**Michael Bieniek, Representative** Yes and no. Because what happens is AT&T you know, the major metropolitan areas, no big deal. You know, they've got those networks all built out, but there's a lot of rural areas throughout this country that aren't built and this money that they're quote unquote, wasting in paying extra rates, is keeping them from going out and building the networks in the rural areas that need to be served. You know that it's, it's not just, oh well, they're getting you a little, little bit. This is a big issue, it's, it's nationwide.

**Chairman Schaffner;** So if we continue this will it give you a chance to negotiate with them and have something figured out?

**Allison Burke, Representative;** If you continue, it would give us the opportunity to negotiate with them, I will say. I don't know that that has always been fruitful, but we would welcome that as an opportunity rather than denial of a permit today.

**Commissioner Bergh;** I rather see an economic analysis of like you had proposed continuous and you talk with them and get the economic analysis and bring that back to us.

**Commissioner Roben:** I don't think that's going to make much of a difference really. We're here to determine whether or not we are going to allow another tower next to another tower which is something we've never done. We've never done that and the fact that AT&T signs these leases, their long term leases, they know what the escalation clauses are. I guarantee you its in there so they know what the cost of this thing is going to be all the way up to the 20 year period and now to come back and say its too expensive is kind of silly to me.

**Allison Burke, Representative;** At the time in 2005, they entered into a contract for 20 years. The marketplace for cellular services for tower leases is so much different than it was in 2005.

**Commissioner Roben;** While I'm sure there's a clause in the contract to negotiate those things and if there's not they signed it. So I don't know if you want to break the lease or we're going to be here letting people break leases or allowing people to go to another tower and break a lease. I mean its going to end up that everybody is going to do it. They got these 20 year periods that they are in.

**Allison Burke, representative;** So I have a question about the economic analysis what type of information would you want in the economic analysis?

**Commissioner Bergh;** No that would be a waste of time.

**Chairman Schaffner;** that is not our problem.

**Jim Minnick, Director;** Alright a couple things really quick. Our antiquated telecommunication regulations that we adopted had a primary goal of minimizing the number of towers in the County of Imperial. We met the Telecommunications Act of 1996 we still meet that requirement. If we are at a point where we have reached capacity in a tower and there is no other availability to collocate on that tower then it would make sense to have a tower in proximity to it. Otherwise it does not.

**Chairman Schaffner;** I'm seeing a lot of towers with less and less antennas on it because there used to be like what 9 carriers here now we got 3. Theres less on the ones I'm looking at.

**Jim Minnick, Director;** Number 2 the applicant is representing the tower company, the applicant is the tower company. AT&T would be a person on that tower, a lessee. Okay, so we don't have that lessee here to explain their issue with SBA or anything else. We have a competitive company, which is perfectly okay. You have the right to review and hear the other thing about the Telecommunications Act as it is a discretionary action by this County as to whether to add towers if the gaps are not, if the gaps are already filled. Regardless of what the 2018 law says you still have that right, that's why we are in front of you so if you recommend approval you have that right, if you recommend denial of that please be aware of that right that you have okay. Our ordinance says minimize the number of towers there has to be a justification of why the second tower needs to be in the proximity of a first tower.

**Chairman Schaffner;** I agree I'd like to hear from some of the other people that are waiting out here. Mr. Heuberger you're being really quiet out there, you know, about this stuff. You lived it from the day it started. Nothing to say. Okay, is there anyone else I'd like to speak on this item?

**Robert Kenny;** I would like to just respond to something that counsel said that's not accurate. The SBA/AT&T master lease agreement was just finalized in July of 2023 months after the AT&T statement was submitted. And so this has been an ongoing process and the SBA mark, the representative for the for the area has had no contact, has not been contacted at all by AT&T under the terms of this new agreement to negotiate just as we've suggested will happen and we are willing to do that. So I just want to make it clear that we did not have this new agreement in place that will allow certainly allow these type of adjustments until after months after the AT&T statement was signed and the application was submitted.

**Chairman Schaffner;** Any other comments from the public? Okay, did I leave anything? I cut you off, I think.

**Allison Burke, Representative;** No, I think you're fine. I was not going to respond to her because I think she's in regard to a different agenda item.

**Jim Minnick, Director;** She's on an agenda item number nine.

**Allison Burke, Representative;** I'm just going to respond to one statement that you had about an AT&T representative not being here. If there's information that you think would change your mind from an AT&T representative being here, then we just asked to defer.

**Jim Minnick, Director;** What I was trying to get at was I wanted to make sure the Commission understood, because we were talking this way and this way and this way, that you represent a tower company that is wanting to build a tower. You're wanting to utilize that in order to have at AT&T be on your tower as a service, and I wanted them to understand it's not at AT&T building the tower, correct?

**Allison Burke, Representative;** Well, no, it's not AT&T. No, it's owned by City Switch and it's leased to providers. This one is, will be leased to at AT&T.

**Jim Minnick, Director;** And then you have four more co locators?

**Allison Burke, Representative;** Space for other co locators.

**Jim Minnick, Director;** Okay, that's what I wanted to make sure they understood, because he got into the question about economics, you brought up economics from the beginning of your presentations. Our ordinance talks about minimizing the number of towers. It does not come up with economics, that is not a factor, it's a factor in coverage and capacity. If you were here saying the tower that they're on is met capacity there's no more room, we can't expand, we can't do these things then I think the Commission has to take that into consideration. But you brought the question of economics as a tower provider on behalf of a client. They don't have the client here to hear that client's story and that client is not the applicant. So, it's a little bit confusing the way you presented the project and I was trying to clarify that.

**Allison Burke, Representative;** That's fair thank you.

**Michael Bieniek, Representative;** And to be clear, at AT&T approached City Switch about the need for a new tower.

**Jim Minnick, Director;** Understood and we've processed plenty of projects if you come in Interstate 8, we've processed American Towers there are 300 foot towers from Yuma to San Diego for the whole purpose of having eight or more carriers on them. So we have handled, just like your company, other companies that's sole purpose was to build a tower to provide it to rent space for providers. We've also dealt with companies that were the sole owner and the provider. So we have both, both scenarios in it. And I wanted to make sure they understood that in this case you are an independent party that is proposing to hire or to rent space to at AT&T. And so they understood that it wasn't at AT&T that's here, it's your company that's here asking for a tower. They've already approved some of your towers in the past and so I just want to make sure they understood that.

**Michael Bieniek, Representative;** Yeah, I just wanted to be clear that City Switch doesn't go out and just speculate on where to put towers.

**Jim Minnick, Director;** I would be surprised if you did.

**Michael Bieniek, Representative;** Yeah, no, I just wanted to be clear.

**Chairman Schaffner;** I have one question, I'm not trying to make this go on forever, but you keep saying it has changed. What has actually changed? Why do you need two towers next to each other?

**Michael Bieniek, Representative;** So basically back in the early 2000s the carriers were building the towers typically by themselves and what was happening was at the start of the early infancy of the industry, these carriers didn't have any coverage in any areas. So they were, you know, as soon as they found sites, they would lease up the space at whatever the landlord said, basically. They'd pay a king's ransom just to get their coverage so that they could build out their network to beat Sprint or Verizon or AT&T, whomever the other competitors were. They would pay whatever. Well those leases matured throughout the year. So in this case it's been since 2005 and say they started at \$2,000, I'm just using random numbers, if they started at \$2,000 a month and that has escalated from there, you see where we're at in 2023. So essentially it started there, it's up here. Well these carriers can't afford that anymore. And so what they're doing is they're trying to get leases that are significantly lower and they haven't matured yet. So you're talking you know half to a quarter of that 2,000 which is now probably up over \$3,000 a month. So AT&T is paying for that maturation of those leases. The industry has reset itself over the last couple of years. I don't do much leasing, but I've seen, I've spoken to people, you know landlords, and it's not anywhere near what they're paying these carriers are paying now. So yes, they did understand that this, you know, was significantly expensive but it was because they had to get their coverage out to be to stay competitive with the other carriers. And so what happens back then was in the early 2000s after AT&T or Verizon or whomever built their towers, SBA, American tower, other tower companies were purchasing those leases and then leasing back to the carriers. So It's understood, but at the same time, that's how they got to that point. The whole market has reset itself. It was getting to be impossible to pay those lease rates, so they've since reset themselves. It's kind of like when you,

**Chairman Schaffner;** The rates you're talking about is for a standing tower?

**Michael Bieniek, Representative;** Yeah, it's basically like, if you think about it, if you lease a house. That lease goes up every year and eventually it comes a point where, hey, this house isn't worth that anymore and so you have to look at other alternatives. And that's basically what the market has done.

**Chairman Schaffner;** Okay. Any other comments from public? If not, we close the public portion of the Hearing. Commissioners?

**Commissioner Kalin;** Which cell tower is this?

**Jim Minnick, Director;** Item seven only, cell CUP and Variance.

**Commissioner Kalin;** Okay and seven is that's Glamis? Okay. And again, it's complete good coverage out there right now.

**Chairman Schaffner;** I don't go out there, I don't know.

**Commissioner Kalin;** Okay, all right.

**Commissioner Kalin:** Made a motion to deny Agenda Item #7 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #7** stands denied by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

8. **Consideration of Conditional Use Permit #23-0010 and Variance #23-0004** who is proposing a 170'-foot monopole tower with a 10'-0" lightning rod for a total height of 180'-0" and Variance to exceed the height

limitation in an area zoned Recreation/Open Space (S-2) by 80 ft. The project site is located at 673 Sidwinder Rd., Winterhaven, CA, on property identified as Assessor Parcel Number 056-470-002-000, and is further described as POR SBE 872-13-9-3 OF SEC 21 16-21. on the unincorporated town of Winterhaven of the County of Imperial; State of California (Supervisorial District #5), [Evelia Jimenez, Planner II at 442-265-1736, or by email at [ejimenez@co.imperial.ca.us](mailto:ejimenez@co.imperial.ca.us) ]

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Evelia Jimenez**, Planner II, to read the project into the record.

**Evelia Jimenez, Planner II;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Michael Bieniek & Allison Burke, Representatives;** introduced themselves.

**Allison Burke, Representative;** So it's the same type of issue. I'm not sure how much of the same presentation you'd like to hear from us. But this is a proposed, I believe we're a little bit out of order, a proposed 180 foot pole also in an S-2 zone where wireless facilities are allowed with a conditional use permit. On this particular tower, AT&T and Verizon are committed new tenants. I don't think Verizon is an existing tenant of the SBA tower but I'm not one hundred percent certain of that, it would just be a new tenant to the area attracted by the lower rents that would be charged by CitySwitch, as compared to SBA which has an adjacent tower relatively close by. I know this is a new application. I'm not sure procedurally what we should do with respect to argument and how much of it you want me to give you, because it is the same, so I'll defer to you in terms of what you'd like to hear from us.

**Chairman Schaffner;** How close is it to the other tower?

**Allison Burke, Representative;** This particular one is point two miles away.

**Commissioner Kalin;** How close is it to the center of the earth?

**Allison Burke;** That's beyond my pay grade. It went over my head.

**Michael Bieniek, Representative;** It's in Winterhaven area over by Yuma. How close is the Center of the Earth to there?

**Commissioner Kalin;** Felicity is maybe a thousand feet away from there.

**Chairman Schaffner;** Doesn't Winterhaven have a tower with nobody on it right now?  
**Michael Bieniek, Representative;** No.

**Chairman Schaffner;** The one at the fire department the County had?

**Michael Bieniek, Representative;** There's a County tower that's significantly smaller.

**Chairman Schaffner;** Nothing on it, right?

**Michael Bieniek, Representative;** Yeah but that's only like 60 ft tall

**Allison Burke, Representative;** Just for the record purposes to the extent you're considering the economic burden, I just want to incorporate everything that we talked about in CUP23-0009. Just for purposes of making a record I know we're not going to hash through all of the same Q and A, I don't want to make all of

the same points to you today because it would be repetitive and boring, but I just want to incorporate that for the record.

**Michael Bieniek, Representative;** And I think the big issue is Verizon also is interested in this.

**Chairman Schaffner;** Well, speaking of repetitive and boring, we spend a lot of hours for a lot of years here trying to minimize the amount of antennas here in the valley, and all of a sudden they come here today and they want to do the exact opposite thing.

**Michael Bieniek, Representative;** Well you do have a section of I-8, east of here that has three towers within three tenths of a mile of each other.

**Chairman Schaffner;** Yeah, but those are on my property. Just kidding.

**Michael Bieniek, Representative;** But seriously it's not I mean it's not unheard of.

**Chairman Schaffner;** We have had some of that where a couple miles apart because they got maxed down I won't say it hasn't happened but it was for very special circumstances. It wasn't just about money.

**Michael Bieniek, Representative;** Well but there's three towers within those three ten miles I took a picture of it when I was driving.

**Allison Burke, Representative;** Do you recall the circumstances that have been present when you've approved towers much closer together?

**Chairman Schaffner;** Well, they were still, I don't remember what it was, but it was. It wasn't anywhere as close to what you're talking about.

**Allison Burke, Representative;** Do you recall the circumstances that that was approved by this Planning Commission, though? What factors existed? Why was it okay to have towers in close proximity to each other?

**Chairman Schaffner;** Because we said they could.

**Allison Burke, Representative;** I know. I just trying to understand factually why our towers.

**Chairman Schaffner;** I don't remember specifically, I know where it's at, but I don't remember exactly what the reason was. But I think it was this first tower, was a little skinny one.

**Commissioner Roben;** There were existing towers prior to us refining all the ordinance and all that that were there too and yeah, that's part of why we did, what we did is to clean that up. We have a witness here in case you want testimony.

**Chairman Schaffner;** Blame him.

**Jim Minnick, Director;** Commissioner Roben did an excellent job.

**Chairman Schaffner;** Okay do we have anyone for the public would like to speak on this item?

**Robert Kenny;** This is Mr. Kenny. SBA makes the same objections to this tower. This tower is only two thousand feet from the SBA tower. The new master lease agreement applies to this tower as well. SBA is willing and has always been willing had AT&T even approached it to under that new MLA. Bring the rates



down, bring them, make the competitive actually match lower than what CitySwitch is proposing and again this is just helping CitySwitch lure away a customer from its competitor. It is certainly not a legitimate reason to build an unneeded and duplicative tower, just two thousand feet from the SBA tower for the same reasons that the last application was denied. SBA urges the Commission to deny this one.

**Allison Burke, Representative;** I'd just like to make one brief comment in response. Just because SBA was here first isn't really a legitimate reason to continue to give them a monopoly over tower services in the area, and that's effectively what denying our obligations is doing today.

**Chairman Schaffner;** Same thing happens with restaurants.

**Jim Minnick, Director;** With all due respect, our ordinance says to minimize towers. It's a visual blight. By making the statement you just made implies something to the contrary. Please read our ordinance. Please understand it.

**Allison Burke;** Read it many times.

**Jim Minnick, Director;** We do process projects and we look at them and we take them to hearing. But our ordinance says what our Board of Supervisors dictated is how it's in the code to minimize the number of towers. So if there is a capacity issue with an adjacent tower or if there is a void in the system, as was mentioned earlier, there is no tower between 14 mi from the Glamis one to add a tower, that makes logical sense. Okay, but we're not trying to go against any competitor or non competitor. That's not what the County is about. The County inherits the visual blight you mentioned. There are three towers that are close to each other. If the County had to do it over again, there would not be three towers. Okay, so please understand that our ordinance says to minimize the number of towers, period and to collocate whenever possible.

**Allison Burke, Representative;** Thank you. I understand the wireless ordinance. I've read it many, many times. I personally have not seen any provision related to, while it says minimize towers, there's nothing that says minimize towers, except for coverage and capacity or at issue or minimized towers except where.

**Jim Minnick, Director;** Okay, that's fine.

**Allison Burke, Representative;** I'm just wondering what specific code provisions you're pointing to today.

**Jim Minnick, Director;** The section that is referenced in the ordinance that is shown in the packet. Minimize the number of towers. In the past, we have required for propagation and line of sight and all those sorts of things to make sure there's justification why a tower has to be added. Okay, over time, because of carrying capacity, we have also offered or allowed for towers to be closer together if there is a capacity issue. Okay, so if you're presenting a capacity issue at Sidwinder or at Glamis or at the farm field, then the Commissioners need to address that and proximity takes a 2nd step. Numerical number of towers takes a 2nd step. If we're not meeting the mandate, okay, but we're not in the business to deal with the financial aspect of AT&T versus not, your company versus SBA versus American Tower. That's not what they're tasked with, That task, with following the code that we have

**Allison Burke, Representative;** Understood.

**Commissioner Kalin;** I'd like to ask, is it Mr. Kenny.

**Robert Kenny;** Yes.

**Commissioner Kalin;** How much capacity do you have left on that tower out that you have out by Sidwinder Road?

**Robert Kenny;** There is capacity. I think Mr. Lasky is best people to respond

**Jason Laskey;** Yes, I would say, I think we're talking about two separate ideas of capacity. The SBA tower, I think that the structure in the tower itself, is at 60%, which is relatively low.

**Commissioner Kalin;** Did you say 15%?

**Jason Laskey;** 60%.

**Commissioner Kalin;** Thank you.

**Jason Laskey;** A failing that has this particular tower, the SBA Tower, has T-Mobile and AT&T on it. A failing structure is at 105%

**Commissioner Bergh;** Okay we're not talking about the structural integrity, we're talking about the network integrity. How much coverage?

**Jason Laskey;** Coverage wise I know our props reference it. There's different levels of coverage, but this will cover 4 miles. Capacity in the sense that if there were a lot of residences users if this were downtown, you would need more towers, closer together. The nearest tower is the American Tower a 300 foot tower in access to the west which perhaps you know, we don't we don't know if Verizon is located there either. Suddenly, Verizon is part of this application, apparently, as is UPRR you alluded to in the application, when in fact they just have reserved space to possibly use in the future. Capacity is generated the more number of calls that reaches cell site, if it's, the more calls that come in, that service area actually shrinks. So if this were busy during, let's say, rush hour, probably not, this wouldn't be the right spot, but if this highway was busy at certain times, the coverage actually expands and, you know, increases and decreases. It is just a function of how cellular works.

**Commissioner Kalin;** And how many more carriers could you put on that tower?

**Jason Laskey;** At least four, probably.

**Commissioner Kalin;** Okay. Didn't mean to get get you in the weeds there. Thanks.

**Jason Laskey;** I did have one other question. I don't want to speak out of turn. I wanted to just bring up one point that was made. When SBA enters into any tower company really, when we enter into new lease agreements, a brand new study or not a brand new study in the sense, a new lease for the tenant, these rents start at, you know, a normal rate that's similar, you know, standard of the industry. We don't know the rates that CitySwitch charges, we don't know the escalations. And the gentleman was right. If you're paying rent in an apartment and it escalates at 4% in 20 years, if you do the math, it's going to increase and that has to be renegotiated. What has happened in the past with AT&T and the reason that they say they were showing up now, when we've known about this, they didn't really broadcast this to us in particularly. Second of all, the agreements are that we've agreed that we can renegotiate, we renegotiate the MLA. But the point that I was trying to get to is that there was a time when AT&T did not want to talk about specific site by site. If they didn't want to negotiate because they had implemented a plan with a company like CitySwitch to try to force relocation sites is in part really a renegotiation tactic for the bigger picture of six thousand towers that they're on with SBA. We're not just talking a handful of towers and additionally these MLA's don't they're not.

**Commissioner Kalin;** Yeah we don't really need to know that information that's kind of that doesn't have anything to do with our project here today.

**Jason Laskey;** And I just bring it up in that we would have if AT&T came to us, we would have negotiated in per our letter that we submitted. They wouldn't, they didn't come to us. And we're here today because that's still the case under the MLA.

**Chairman Schaffner;** Okay, I don't remember where we're at. Is everybody in the public had a chance to speak on this? Come on, give us your name and address on the record.

**Joseph Marlin;** I know that I'm an AT&T customer. I live in Holtville, I only have 1 bar, I live in Holtville. So I don't care if it's at AT&T or T-Mobile, but give me better service.

**Commissioner Kalin;** This is agenda item number eight, right?

**Chairman Schaffner;** I don't know my things are two different numbers I've been going nuts here

**Commissioner Kalin;** About a quarter of a mile away from Felicity, which is the self described Center of the World right?

**Chairman Schaffner;** It used to be a service station there.

**Commissioner Kalin;** Thank you.

**Commissioner Kalin;** Made a motion to deny Agenda Item #8 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #8** stands denied by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

9. **Consideration of Conditional Use Permit #23-0011 and Variance #23-0006** as submitted by CitySwitch who is proposing a 200-foot-tall self-supported lattice telecommunications tower with a 10-foot lightning rod for a total height of 210-foot tower to be located within a leased 50' x 50' leased, fenced area and Variance to exceed the 120-foot height limitation for the A-2 (General Agriculture) zone by 90 feet. The proposed project site is located at 1505 East Keystone Road, Brawley, CA 92227, on property identified as Assessor's Parcel Number 041-200-008-000, and further described as a Portion of the State Board of Equalization (SBE) #872-13-34-2 of Tract 90 & 91, Township 14 South, Range 15 East of the San Bernardino Base and Meridian (S.B.B.M.), County of Imperial; State of California (Supervisory District #5), [Gerardo A. Quero, Planner II at 442-265-1736, or via email at [gerardoquero@co.imperial.ca.us](mailto:gerardoquero@co.imperial.ca.us)].

**Jim Minnick, Director;** Gave a brief description of the project, and introduced **Gerardo Quero**, Planner II, to read the project into the record.

**Gerardo Quero, Planner II;** Read the PowerPoint Presentation of the project into the record.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Michael Bieniek & Allison Burke, Representatives;** introduced themselves.

**Allison Burke, Representative;** As Mr. Quero noted this is a 210 foot tower proposed in Brawley, California .2 miles away from an existing SBA tower. For the sake of brevity, we incorporate all of our previous arguments with respect to the economic burden to our tenant at AT&T at this site. And that it's not feasible for

them to remain on that existing tower and it would be better to have this new proposed tower to attract other potential tenants to the area at lower rents and better lease terms.

**Chairman Schaffner;** Thank you, We'll open this up to the public. Would anyone like to speak on this item?

**Robert Kenny;** This is Mr. Kenny on behalf of the SBA. We will just incorporate the prior objections they all apply. I just like to point out that this is actually the closest tower it's 965 feet from the existing SBA tower and as we heard earlier, their residents nearby agree that this is not a welcome addition from an aesthetic standpoint. And again, there's no been no showing of need, and we incorporate the same objections.

**Commissioner Kalin;** Mr. Kenny, what is the height of the existing tower? Your tower at that location?

**Robert Kenney;** Mr Laskey you might have that.

**Jason Laskey;** Yes in fact I was going to mention height. The SBA tower is 182 feet to the top of the tower. AT&T is at 157 feet and the only point I was going to bring up is that the application does not justify it. If it were to be approved a height taller than what AT&T is currently at, as there is no height suggested what UPRR would need if in the future they were to co locate on that tower. That's the information that I have. Thank you,

**Jim Minnick, Director;** Thank you. Just for the record, I wanted to reaffirm the two comments from the Jacobs that they did on item seven that I believe they were for item nine. So from the minute standpoint, make sure that those comments go there. Jacob, you're always welcome to speak again.

**Chairman Schaffner;** Okay, thank you. Any other comments from the public? There was a gentleman was already asking me for you, go ahead, you stood up a couple times already, come on up.

**Haskell Jacobs;** It was a good morning guess it's good afternoon. My name is Haskell Jacobs and I live at 1596 E Keystone Road in Brawley. The number nine item on the agenda. I don't want the tower built there for a few reasons, my personal reasons, because I live close by, a half mile away, for my family, you know, the long-term health effects. Like you were saying, there's towers all over the place. If there's an existing tower a quarter mile away and we're going to have two right next to each other, it just seems like there's too many of these things going up and they're not serving a purpose really. They could do better. That intersection at Keystone & Highway 115 there's a lot of car accidents there. It could cause a problem you know people driving and they hit it because it's going to be right on the corner you know. It also exceeds a 120-foot height limitation, we have crop dusters and helicopters out there all the time doing applications for the farm. That could be a problem too. We have property that's adjacent to it, my family does, and if there's an accident, we're liable, you know, for this. And there's really no need for these extra towers. There's also a buried drain that goes along right where that tower site is with the IID. I'm not sure if that's going to be a problem too, if it collapses or something, or if the IID could access that drain to clean it. Let me see. We had an instance a while back, too, where the existing tower had a light burn out, and you know I noticed it, reported it. It wasn't fixed, it took weeks before it was fixed. You know, they're just dangerous, and so if we could limit the amount of towers in the Valley, I think it would be a great thing. So that's all I have to say. Thank you guys

**Anna Jacobs;** Hi my name is Anna Jacobs I also reside at 1596 E Keystone Road where there is a tower a quarter mile away from our house at a relative's property and it just seems like your company is wanting to come in to build to relocate. Mr. Roben said AT&T entered into these agreements they know what they're getting into they're probably a very smart company they've got lawyers they've got lots of people and like Mr. Bergh said they're making their money back. I see my cell phone bill every month. The six million dollars is a probably a little bit drop in the bucket but yes I know by you do the math by 6,000 top towers around nationwide but I just don't see the need for another tower. I don't. I have perfect cell service where I live I you

know don't need it all the time but I still have it. It's there when I need it and as Mr. Kenny said that they've already got the emergency application up on their tower, so I see no need for another tower quarter mile away from an existing working tower, thank you.

**Commissioner Bergh;** Why do you need a higher tower?

**Allison Burke, Representative;** So the higher tower is to meet technologic needs. That's what CitySwitch and AT&T have determined is appropriate. I don't think it is appropriate for SBA to call into question whether we need the higher tower. I just know that's-

**Commissioner Bergh;** I'm just asking is there a building somewhere in between or some obstruction, or the IID got towers up there or what?

**Allison Burke, Representative;** No.

**Commissioner Bergh;** So it's arbitrary?

**Allison Burke, Representative;** I don't know that it's arbitrary. I think it's to meet the needs of the carriers.

**Commissioner Bergh;** And that's 210 feet right?

**Allison Burke, Representative;** Yes 200 foot tower

**Commissioner Bergh;** Well I know but lightning rod, lightning rod has effect on airplanes flying through

**Allison Burke, Representative;** But the Airport Land Use Commission determined that these are all compatible with the plans.

**Commissioner Bergh;** I realize that but I'm thinking of it I have a friend who's a crop duster.

**Michael Bieniek, Representative;** The additional height, he carriers select a different height when they need additional height because it broadcasts. As Mr. Lasky kind of explained that's exactly right, that the signals are like, kind of like a rubber band during, you know, low usage, they kind of expand and then as the usage increases, that the coverage area shrinks, but AT&T apparently has determined that they need an additional 50 ft.

**Commissioner Bergh;** That includes upgrading the system, right?

**Michael Bieniek, Representative;** Correct.

**Commissioner Bergh;** You're saying the SBA is an older system and yours is a newer one. Why do you need more tower?

**Michael Bieniek, Representative;** The tower is not a system. The carriers antennas in their equipment system.

**Commissioner Bergh;** I understand that, but I'm just saying, maybe im saying it wrong.

**Jim Minnick, Director;** Typically when you have a tower that has multiple carriers, the carriers at a set height from tower to tower to tower, which is one of the reasons why we have variances on most of our towers because they needed to be able to line them up. So if I have eight carriers on a 300 foot tall tower this guy is this is Russell's, this is Rudy's, this is Billy's and so forth and it goes from one to one to one. So the

person on the zoom call said our A&T carrier is at 154, why does this tower need to be 200+. It may be it doesn't need it for AT&T but it may be for a future carrier because they are going to do multiple carriers which is what our ordinance requires right ? Multiple carriers. And maybe a different carrier would be at a higher level it's just whatever the applicant is asking for in terms of the height because if they have five or six carriers maybe one of their carriers is at the 200 level that's what I just wanted to explain.

**Michael Bieniek, Representative;** That's not exactly correct.

**Chairman Schaffner;** Don't ask him again he'll just keep talking.

**Michael Bieniek, Representative;** The carriers don't have to be if they're at 150 feet on one tower they don't have to be 150 feet on all towers.

**Jim Minnick, Director;** I understand that but please keep in mind since 2000 we've been told lies by every carrier and every tower company on the planet that's come to the County from what I just said. I do understand that they can vary but the biggest claim to fame and the reason why there has to be a separation between the carriers and that the carriers prefer to be on the same level from tower to tower, you can look at all the documentation that we have. Doesn't mean it's not perfect okay, you mentioned a rubber band. Rubber band is going this way, not this way, not that way, not this way okay. But yes obviously there is always exceptions to any rule or any process

**Michael Bieniek, Representative;** Yeah I mean if you're talking one tower is 300 foot tall and they're up there at 300 foot and then the next one is 100 foot level that makes a significant difference. That was my point.

**Chairman Schaffner;** then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

**Allison Burke, Representative;** Could I just take a minute to respond to Mr. Jacobs comments about health concerns with respect to RF emissions? So he was concerned primarily with RF emissions causing health issues. Our proposed tower would comply with FCC regulations with respect to RF emissions, and towers that comply with FCC regulations cannot be denied on the basis of RF emissions under federal law. So I just wanted to make that point for the record.

**Chairman Schaffner;** What's your pleasure?

**Commissioner Kalin;** Did you close it?

**Chairman Schaffner;** Yeah I closed it.

**Commissioner Kalin:** Made a motion to deny Agenda Item #9 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #9** stands denied by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

- 10. Consideration of Conditional Use Permit #22-0029** as submitted by Holtville Peaker BESS who proposes Conditional Use Permit #22-0029 for the construction and operation of a 100-Megawatt (MW) Battery Energy Storage System (BESS) facility that would connect to the existing Imperial Irrigation District's 92-Kilovolt (kV) "E" Line immediately adjacent to the east of the site along Melon Road. The BESS facility would include battery containers and storage sites, a control room, on-site substation, and associated facilities

surrounded by fencing in the south-central portion of the parcel, with the remainder of the parcel used for temporary construction access and staging. The proposed project site is located at 2275 Melon Road, Holtville, CA 92250, on property identified as Assessor's Parcel Number 045-570-087-000, and further described as Parcel 1 per Lot Line Adjustment #234, Township 15 South, Range 15 East of the San Bernardino Base and Meridian (S.B.B.M.), County of Imperial; State of California (Supervisory District #5), [Gerardo A. Quero, Planner II at 442-265-1736, or via email at [gerardoquero@co.imperial.ca.us](mailto:gerardoquero@co.imperial.ca.us)].

**Jim Minnick, Director;** Gave a brief description of the project, and introduced Gerardo Quero, Planner II, to read the project into the record.

**Gerardo Quero, Planner II;** Read the PowerPoint Presentation of the project into the record.

**Sharyn Hidalgo, Consultant;** introduced herself.

**Commissioner Bergh;** And that's what shows what the battery containers are going to look like? And they're going to be out in the open is that correct? They're not enclosed in a building. I was wondering what you're doing here.

**Chairman Schaffner;** He was just enjoying it.

**Commissioner Bergh;** You want to take a nap.

**Chairman Schaffner;** Asked if there was a representative for the project to approach the podium.

**Jurg Heuberger, Representative;** introduced himself.

**Jurg Heuberger, Representative;** Yes, these modules are designed to be in the open. They're self contained. They are in fact designed not to burn, but rather to melt if there's a fire. We've gone through this with the County Fire Department. I don't know how many times now we actually brought Tesla down to show them how it works, and Tesla, in order to get approval for these, actually took a number of these units. They're usually a six foot separation back to back. Tesla actually lit one of the units on fire. Basically, the unit burns for about an hour and a half, 2 hours but it seals itself up the minute, detects fire, so all the ventilation that keeps it cool seals up and the system basically just melts, okay. The fallacy that the Fire Departments always had is they, and it's not a fallacy from a fire government perspective because they're used to trying to fight fires, right? But the minute you put water on one of these, you create the same problem you create with haystacks, they keep smoldering, burning forever. Okay, so these are designed, so the example that they showed the Fire Departments, they lit one of these and the other one next to it, this one in, within a two hour period basically melted to the ground. The one 6 ft away continued to operate just like there was no problem and they're not inside a building, so there's no fire suppression.

**Commissioner Bergh;** What's with the battery composed of lithium or what?

**Jurg Heuberger, Representative;** Batteries most of the time are lithium, not sure on this one.

**Commissioner Bergh;** But there's no hazardous waste from the burning down?

**Jurg Heuberger, Representative;** Well, the material once it burns to the ground where it's lead acid or anything else is hazardous.

**Chairman Schaffner;** How is Elon doing?

**Jurg Heuberger, Representative;** I don't know, you know.

**Chairman Schaffner;** You hung out with them there for the day.

**Jurg Heuberger, Representative;** We met with their engineers.

**Chairman Schaffner;** Oh okay, my only question on that, IID is doing the same thing. At the other. So that's, not too much in one spot, how they decided they needed it. Somebody figured this out, I guess,

**Jurg Heuberger, Representative;** No, they're being done all over. And as you know, the state has basically mandated solar projects to have batteries and the purpose of these BESS projects is basically to help regulate the grid, right? Because as you know, during the day we generate excess power and then at night we have to fire up fossil fuel or something else to keep up.

**Commissioner Bergh;** I'm familiar with the one up in Niland area where it's enclosed, totally enclosed in a building and they have air suppressors and that type of thing.

**Jurg Heuberger, Representative;** Originally I think that was sort of, I think the, IID needed it out there at their power plant, Dogwood, and most of them have gone away from that because it creates additional problems. Because then you do have fire protection issues, because then the building code for in fact said you have to provide fire suppression because you're in a building and kind of defeats the whole purpose of the way it goes on.

**Commissioner Bergh;** Did you enjoy your nap?

**Jurg Heuberger, Representative;** No, not really.

**Chairman Schaffner;** Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

**Jurg Heuberger, Representative;** Stated that he read and did agree with everything on the project.

**Chairman Schaffner;** Opened the public portion of the meeting.

**Paul Lopez;** Good morning this proposed plant that they're doing 100 megawatt plant is within two blocks from the city high school. 400 students are going to have to be evacuated when this thing goes on fire. Is the safety of four hundred kids more important than this? They can move this thing somewhere else down the road, because high school owns a acreage at the Cam Road and Melon, they can put it there. The lines are there. Relocate it for the safety of the kids, safety of the city. Right straight across the street from this location, they're building a senior citizen park housing development. It's already been proposed. What are they going to do with them? They can't move once they're located there. Most generally they're handicapped. That's another issue. I live on Woodridge, a block basically a block away from this thing. I've seen the district's battery vault blow the door completely across our parking lot and it was 20 batteries in that vault and I saw it after it happened, the results of the batteries blown up. I worked for the district 37 years and I retired but this is a dangerous thing. I don't agree with it. I don't agree with the district even putting them across from the high school in the news division that they're doing. I don't know who approved that but in that substation, there's the same things going on, and it is right across from the high school. I don't agree with that I'm opposed to that, that's all I have to say.

**Joseph Marlin;** Good morning I will try to speak loud enough. I have paralysis and my vocal cords is paralyzed, so I don't have volume, so you'll have to turn it up to hear me. I live at 546 Woodridge Avenue two houses down from him. There is housing on the west end of this facility. There is housing across the street on the north end from this BESS proposal and then there's properties like he said, that senior citizens complex going in our block is on the east, so you're surrounded by housing. One of the biggest issues with the BESS is not only the fires, as you mentioned, but explosions. Those are the most difficult things to consider. Just on the very, very, very small chance that it can happen. Is it worth it? Yes, the kids are close



by too. I'm not against it, like Paul said, just relocate it along the same lines, that all of the lines, power lines into an area that's outside for the safety of residents. Thank you.

**Commissioner Bergh;** I understand this is not the same kind of battery we're talking about.

**Jurg Heuberger, Representative;** No, while I understand the gentleman's concerns and I share the concerns. Part of the reason for the location, well first let me say we've moved the thing as far west as possible to get it away from the majority of the housing again, not with the idea that we even have the remotest thought that it will explode. Number one, it will not explode, it will melt. If you're done now, if the fire department does put water on it, which we have told them, do not do that, then you're going to create a smoke problem. Yes, so hopefully we've got that resolved. The other thing is the location of these things is being picked not so much by applicants but by the utility companies saying this is where our best connection is. So we balance the grid because the further away we put them, the more we have to upgrade power lines, powers, you know, additional substations. So yeah, it'd be nice if we could take all of these and put them out in the middle of the desert, just like a lot of projects, all right, but then you create other problems. So it's one of those things we try to put them where the utilities think it's the best location.

**Chairman Schaffner;** How many years has that lot been empty?

**Jurg Heuberger, Representative;** Well, I went to high school there. It was empty when I was there. Mr. Schaffner, you went to high school there.

**Chairman Schaffner;** I've been begging people for years to come in and do something with that.

**Commissioner Bergh;** About the time the Egyptians were there? You don't remember high school?

**Jurg Heuberger, Representative;** I thought you were older than that

**Commissioner Bergh;** Your older than I am

**Commissioner Pacheco;** The issues with an explosion is that a different type?

**Jurg Heuberger, Representative;** It's a different type of battery that's been in the case of the explosions that we're familiar with, they have been a different type of battery and a different operation, again mostly within building types as opposed to these freestanding, self-modulate.

**Commissioner Pacheco;** So it's minimal.

**Jurg Heuberger, Representative;** Yeah.

**Paul Lopez;** Can I say something else?

**Chairman Schaffner;** Sure I'm going to let you do it since it's been such a short meeting.

**Paul Lopez;** For the Record Yuma County, they just did away with the approval of about four of these same facilities. Yuma County just did away with them. The people voted them out. They're unsafe.

**Chairman Schaffner;** I have family about five, six houses away from there and I feel very comfortable in having that thing there, just saying.

**Commissioner Bergh;** Arizona does funny things.

**Chairman Schaffner;** he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

**Commissioner Kalin;** Made a motion to approve Agenda Item #10 seconded by **Commissioner Bergh** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Roben (yes), Bergh (yes), Wright (yes), Pacheco (yes).

**Jim Minnick, Director;** Stated **Agenda Item #10** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

**Chairman Schaffner;** What firemen would put water on anything electric? They can't even pull the hose out when they were on all that high powered electric, it'd be nuts.

**Commissioner Roben;** They'd be dead.

**Chairman Schaffner;** Was that our last one? Thank God.

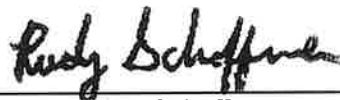
**IV. Public Comments, NONE**

**V. Planning Commissioner Comments,**

**VI. Director Comments,**

**Chairman Schaffner;** adjourned meeting.

**IX. Adjournment:** Meeting adjourned at 1:15 p.m.



Submitted by Rudy Schaffner  
Chairman of the Planning Commission

Attest:



Jim Minnick, Director of  
Imperial County Planning Commission

Laryssa Alvarado & Aimee Trujillo-PC Recording Clerks

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