

May 3, 2010

Good Neighbor Committee;

In your packets, is first: a very insightful 2007 SJ Merc OEI article that explains OEI well, second: a personal opinion piece that I wrote for myself to sort out and try & understand the Disadvantages vs Advantages of NOT having a City adopted OEI Policy, third: a five page document summary that I cut & pasted from 15 City OEI Memorandums from April 2006 through March 2010, which tracks the lack of OEI Policy adoption and the deferral chain, from primarily the RDA, SJ Downtown Merchants Assoc, and the Chamber of Commerce, for the past 4 years. The last City deferral was Aug 2009, and fourth: my three OEI bullet points for the Framework for Implementation. My third bullet point regarding Certainty, is the strongest and most complex.

The City adoption or denial, of an Airlines/Airport OEI Policy, will be the determining factor in the height & density of all development in the Diridon area - (See the Diridon Station Area Plan - Existing Conditions Report, Chapter 3. Airport Height Constraints which is posted on the SJ Planning Dept website) The last sentence of that Chapter 3 reads: "This is comparable to the existing height of the HP Pavilion". This refers to all future height limitations regarding FAA & OEI surfaces on all future development in the Diridon area and acknowledges the impact of the OEI and FAA height restrictions that will limit "how high" the Diridon Area planning box will be. Should OEI surfaces go away, this will seriously impact the Airport's heavy long-haul flights and long-range Economic goals regarding heavy transatlantic international flights and cargo carriers. It would be helpful if our Airport Director, Bill Sherry could speak to this GNC group.

How you all perceive this OEI issue is important and complex... and although this OEI issue may be beyond this Committee's scope, understanding what's at stake here, has everything to do with the Diridon area and its future development, density, and economic growth.

*The size of development is proportional to the impact on the surrounding neighborhoods.*

Our City Council won't be dealing with a decision regarding OEI, until mid-2011.

This controversial OEI discussion has gone on for many years. I'm not so much concerned on which side of the fence you are on - regarding this OEI issue, but I'm concerned that a City would be asked to vote and decide on a major development project in this impacted area, without having such an impactful adopted Policy (or not) in place, before it went to the City for a vote.

The Airport, City Planners, Developers, and the Community need CERTAINTY on this OEI issue in order to move forward with any future development in this OEI impacted Diridon Area.

Thanks for your attention.

Terri Balandra

District 6

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**Good Neighbor Committee, Diridon Area  
Bullets for Framework of Implementation:**

**I respectfully request that these items be considered:**

**Also, a suggestion to bring our Airport Director, Bill Sherry, here to speak to the GNC – regarding OEI (One Engine Inoperative) Height Obstructions in the Diridon/Downtown**

+ The Airlines "One Engine Inoperative" (OEI) surfaces need to be addressed in the Environmental Impact Review of the elevated HSR alternative. The City's lack of an adopted Policy OEI Policy, may leave this important issue out of the HSR EIR. This will impact the height of the great "iconic look" & height of the new Diridon Station.

+ Possible Ballpark Stadium, and all future development height in the Diridon Development - to have no greater impact than the H.P. Pavilion/Arena, per Airport OEI recommendation.

+ **Certainty:** The lack of an official City OEI Economic Policy, leaves the Diridon Area, and surrounding community, with Uncertainty. Assessing future economic Diridon Area development is complex, - However, the size of the development is proportional to the impact on the surrounding neighborhoods.

**Any important public decisions** - on any type of future development in this OEI impacted Diridon Area, should only occur ***after serious public/Council OEI discussion & agreement***, weighing all Economic impacts - both to Airport Economic impact vs. Downtown Economic Impact.

**The Airport, Developer, and Community need Certainty to move forward, with *any* future development in the OEI impacted Diridon Area.**

Thank you.

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**Disadvantages of having NO City OEI Policy vs. Advantages of having NO City OEI Policy**

- **1) CERTAINTY** – No Certainty for Airlines, Developers, Planning Dept, or Community.
  - **2) OEI Consideration** may not be required In EIRs of large Projects, since there is no adopted City OEI Policy. How does this affect the project's compatibility with future airport operations?
  - **3) The Public's perception** that Height Restrictions in Airline Safety Zones are always carefully scrutinized in new development proposals. The greater Community is unaware that the previous "No Hazard Determination" rulings by the FAA, (which was all that was required by SJ Planning Dept in the past for Project approval), pertained to airline flight hazards – not individual Airline emergency OEI flight safety zones. The greater Community is unaware that previously built tall downtown projects were improperly charted by the Project Developers, so even the FAA didn't know exactly "where" these existing tall buildings exist – since SJ Planning Dept was not in receipt of these FAA forms to check the exact coordinates.
  - **4) Community Uncertainty** in regards to the OEI and the Ohlone Towers project. The lack of any clear Policy caused push back and uncertainty between Community, Developer, Planning Dept, and City Officials. The Community feels they are being "set up" as NIMBYS because the lack of any type of OEI Policy, is causing confusion, questions, and contention.
- 1)** Developers have more opportunities, as their special interest groups apply pressure to City Officials to defer adoption of an OEI Policy.
  - 2)** The Developer's project does not have to be scrutinized so closely if there is no OEI Policy in place. The Project will be allowed to develop and proceed – gathering support and momentum. Pressure from special interest groups will allow special allowances & "exceptions" to be formed.
  - 3)** Several high-rises have already been built without proper location charting by the Project Developer – thus allowing these tall structures to become critical airline obstructions in the OEI area.
  - 4)** The City's delay in releasing the completed airport OEI technical data seems to stem from special interest groups asking the Council for an additional \$250,000 for an Economic Study... and there's no harm done in the delay, since there is very little development now, due to the tough economic times.  
*One wonders the wisdom of holding back the release of the technical data until AFTER important decisions need to be made.*

**Disadvantages of NO City OEI Policy vs. The Advantages of NO City OEI Policy**

• **5) The OEI Uncertainty in the Diridon Area-Ballpark-High Speed Rail planning** is causing confusion with the Community and Planning Dept. If there was an OEI Policy in place, either a Project would need to adhere to the the Policy – or not be built. The “exceptions” to the Policy, granted by Council are confusing, at best. It seems that the Council is getting tremendous pushback from the Development Community, so this pressure keeps delaying a decision and continues to allow projects to get into the Development pipeline, awaiting highly contentious decisions- causing ill will between the Community, Developers, Planners, and City Officials. The Airport Officials have been begging the City to adopt the Airline OEI Policy for many, many years- through two administrations. *Why aren't our City Officials supporting our City's expensive investment in our Airport?*

5) With no adopted OEI Policy in place, special interest groups that favor high-rise development, can keep trying to explore the possibilities –hoping that by exerting enough pressure on the City Council and Staff, that Amendments and exceptions will be granted ... and projects can proceed.

Diridon/Ballpark/HSR Planning can continue to proceed without having critical completed Airport technical data presented to the City until the new Economic Study is completed, sometime in mid-2011. Meanwhile critical decisions need to be made by the Council AND the Community – without the already completed technical data presented to the City Council. *Why?*

**All above are conclusions I came to - and my own opinion, after studying the 15 individual OEI Memorandums from 2006 – present 2010**

**Terri Balandra  
D6 Planning & Land Use**

## Airport Obstruction Study / San Jose City Council Deferrals

Information from numerous City Memorandums, dated from April 24, 2006 through March 3, 2010:

I have mostly cut & pasted from the actual Memorandum, but did underline, italicized, or put in caps – what I thought to be interesting data.

**04/24/06: To City Council from William Sherry, Director of Aviation** : Airport has initiated Airport Obstruction Study. American Airlines has determined that the Phase I Adobe Tower, which faces Park Ave, is an impediment to the emergency procedures that the airline has developed for southerly departures of its flight to Narita, Japan. Also, many improperly charted high-rise buildings. Airport Staff has notified all authorities.

**06/10/06: To City Council from William Sherry, Director of Aviation** : On May 9, 2006, Council accepted a progress report on the Study. *Analytical results for Downtown portion was to be presented to Council in June 2006.* Consultant's technical analysis is nearly complete, but *Staff needs more time to access findings with appropriate stakeholders, so Staff anticipates the Council presentation in September 2006.*

**11/20/2006: To City Council from Les White, City Manager & Harry Mavrogenes, RDA Director** : Direct City & Staff to initiate amendments to the General Plan & other key policy documents to restrict maximum building heights, etc. The technical analysis for the downtown area has been completed. The City has embarked on the implementation of the Downtown Strategy and Airport Master Plan. The "No Hazard Determination" review by the FAA under FAR 77 regulations was previously thought to be the only issue of aviation concern to the City for high-rise development projects. However, such evaluations only protect the ability to safely operate the Airport, not the air service that can be provided at the Airport. Southerly departures from the Airport's runways occur approximately 15% of the time. Massing analysis for potential development west of hwy 87 under the General Plan and Downtown Strategy Plan show approximately 504,000 square feet of office, or 563 housing units being lost as a result of using the more restrictive OEI elevation limits for that area, at a potential annual revenue loss estimated to be \$687,000-\$959,000. However, if development were allowed to exceed the OEI surfaces, the annual economic impact of the potential loss of just one transoceanic flight is estimated to range from \$6 million-\$24 million. It remains to be seen what the market impact of lowering potential building heights in Diridon will have on the development potential for this area. While Diridon will remain a viable development area, mid-rise projects may not pencil out in today's market. Diridon could be faced with the prospect of development of traditional smaller scale office and lower density residential projects. The OEI issue is anticipated to remain with the City for the long-term, as new technology focusing is focusing on fuel economy, rather than takeoff performance. Airspace protection also identified some incorrectly charted high-rise buildings. It seems, development applicants did not submit accurate data to the FAA for their required airspace reviews, while in other cases – the FAA did not add or correctly plot buildings, once constructed, into data bases. In the next few months, City Staff will be trained in airspace issues and assist the Airport in reviewing/updating FAA-required airspace drawings. Policy Alternatives: Alternative #1: Adopt

Building Height Limitations that support full operation of the Airport and reduce the amount of development that can be allowed Downtown. (*Reason for not recommending: Does not address potential replacement development opportunities.*) Alternative #2: Adopt height limitations per

current Part 77 rules and retain additional development potential downtown, but lose the ability of certain aircraft and market combinations to be served from the airport. (*Reason for not recommending: Impacts international and many transcontinental airline markets operations reducing the number of potential airlines serving the Airport.*) Addendum to the Final EIR for the Downtown Strategy 2000: Revise the City's General Plan Policies and development review procedures to lower the currently identified building height limitations in a portion of the downtown area – areas westerly of hwy 87 in which FAA requirements determine allowable maximum building heights. This proposal is a program-level policy change that would not provide project-level clearance for any specific projects or sites.

**02/16/07 : To City Council, from William Sherry, Director of Aviation:** A set of joint Administration/Agency recommendations for future downtown development had been agendized for Council consideration & action on 12/05/06, but was deferred in order to conduct additional outreach in response to concerns raised by downtown development interests. *Staff has been meeting regularly with the Chamber of Commerce and SJ Downtown Association who intend to conduct their own independent consultant study to validate the City's technical work and conduct further analysis of economic implications and potential City policy alternatives. Staff offers to participate in the Study will need Council's approval for a contribution of Airport funds to participate in the Study. A prominent SJ Merc article, dated 01/31/07, by Deborah Lohse, states : Scott Knies, SJ Downtown Association, "We want to have our cake and eat it too. We want a vibrant downtown core, and we want an international airport."*

**10/30/07: To City Council, from William Sherry, Director of Aviation:** A set of City/RDA Staff recommendations from the obstruction study was scheduled for Council consideration in early Dec 2006. Council deferred consideration of Staff's recommendations to conduct outreach to downtown development stakeholders. In mid-Dec 2006, staff conducted three meetings. In January 2007, City/RDA WITHDREW its combined recommendations for Council consideration AT THE REQUEST OF THE CHAMBER OF COMMERCE AND THE DOWNTOWN ASSOCIATION, to allow more time for stakeholder review of the City's consultant's findings. The Chamber/Downtown Association/Airport joint study was anticipated to be completed in March 2007. A Council Study session, which included pending staff recommendations, was anticipated in early April 2007. The study was not completed in March and the early April Study Session was postponed due to complex issues. Some new possible alternatives have been identified, which will require additional technical work and the Chamber is now in the process of amending the consultant contracts. The new projected date for the Chamber/Downtown/Airport Joint Study is now December 2007. Staff now plans to return to the Community and Economic Development Committee and Council in the first quarter of 2008 to present

recommendations for a "win-win" solution. City Planning staff continues to advise high-rise project developers of the proposed OEI elevation limits and to monitor compliance with FAA requirements.

**03/10/08: To Community & Economic Development Committee, from William Sherry, Director of Aviation:** There is a long summary of previous Memorandums with deferred dated for Study

presentations, and descriptions of both OEI and FAR Part 77. It mentions the two corridors in which airline OEI surfaces are more restrictive than the FAA imaginary surfaces, one in the core east of hwy 87 and one west of hwy 87. The OEI corridor over the downtown core is a straight-out procedure used by the majority of the airlines operating at the Airport, with the critical existing obstructions being the Adobe Towers, the Bank of America building, and the Knight Ridder building. The OEI corridor west of Hwy 87 is used by those airlines with long-haul flights (including American and Hawaiian) that cannot use the straight-out procedure over the downtown core due to existing structures and so must turn toward the west in order to clear those critical buildings. **THE DIRIDON AREA IS RELATIVELY UNOBSTRUCTED BY HIGH-RISE DEVELOPMENT, WITH THE HP PAVILION SERVING AS THE ONLY CRITICAL OBSTRUCTION.** Within the downtown core, the differences between the most restrictive OEI surface and FAA obstruction criteria range up to 30 feet. **IN THE DIRIDON AREA, HOWEVER, THE DIFFERENCES BETWEEN THE MOST RESTRICTIVE OEI SURFACE AND FAA OBSTRUCTION CRITERIA RANGE FROM 20-90 FEET. In other words, the heights of buildings in the Diridon area, would be further restricted by imposition of the OEI limits by up to 90 feet, depending upon specific location within this corridor.** Within the next 2-3 months, Staff goal is to present a set of recommendations for a "win-win" solution for continued growth and development of downtown and the Airport.

**03/14/08: To Community & Economic Development Committee, from William Sherry, Director of Aviation:** Supplement to Status Report on Airport Obstruction Study: At the 3/10/08 stakeholder meeting, the Chamber of Commerce/Downtown Association presented technical information on three alternatives that could allow development in some parts of downtown, without impacting air service capability: 1) Tweaking the OEI surfaces over downtown to assume a continuous steeper climb where required to clear the critical existing obstruction, and also widening the OEI corridor over the **LARGELY OBSTRUCTION-FREE DIRIDON AREA.** 2) Recommending the FAA raise or terminate use of its TERPS Non-Precision Approach surfaces, which are currently the most restrictive of the FAA instrument surfaces over most of downtown. 3) Recommending the City **NOT PROTECT FOR ANY STRAIGHT-OUT AIRLINE OEI SURFACES OVER THE DOWNTOWN CORE,** and instead **ONLY PROTECT FOR A WIDER OEI CORRIDOR OVER THE DIRIDON AREA,** leaving the downtown core restrictions to FAA determinations based on its TERPS surfaces. Airline input to the consultants indicate general concurrence on items 1 & 2 - with some level of concern with Item #3. The Chamber of Commerce & Downtown Association have expressed a preference for combining all 3 of these alternatives in order to maximize potential development heights in the downtown core and **ACCEPTING PROTECTION OF A WIDER OEI CORRIDOR OVER THE DIRIDON AREA.**

**03/13/09: To City Council, from William Sherry, Director of Aviation:** On February 26, 2009, Directors and key staff from RDA, Airport, Planning, City Manager's Office, and technical consultants from the Chamber of Commerce met to discuss the concerns of the RDA regarding staff's pending recommendation to the Community & Economic Development Committee and City Council. The primary objectives were 1) Present technical findings & discuss questions, concerns, and issues regarding Staff recommendations. 2) Explore the potential for further technical refinements that might result in additional alternatives to achieve a win-win. Staff directed the Airport's consultants to

conduct further analysis and outreach to airlines on the specific alternatives. As a result, staff has deferred the obstruction study findings and recommendations to the Community & Economic Development Committee meeting on June 22, 2009, rather than in March. Staff will also need Council's approval to approve contract compensation resulting from the continuing technical work.

**04/02/08: To Airport Commission, from David Maas, Airport Deputy Director, Planning & Development:** The Airport staff will present a status report on the Airport Obstruction Study, along with a report of the ongoing progress of the validation effort initiated by the Chamber of Commerce and San Jose Downtown Association, and will report out to Council on April 8, 08.

**05/20/09: To City Council, from William Sherry, Director of Aviation:** Approve a second amendment with the consultant firm, increasing the maximum cost of the agreement by \$300,000, from \$200,000 to an amount not to exceed \$500,000. Best to maintain the services of the same firm, and not put out to bid.

**08/11/09: To City Council, from Debra Figone, City Manager:** City Staff is recommending deferral of the Airport Obstruction Study to City Council for 3 reasons: 1) The FAA is conducting an OEI Study at five major airports. 2) Staff needs to conduct additional study of the economic tradeoffs between OEI protection vs. non-protection before Council consideration. 3) The Airport Terminal Area Improvement Program is at a critical stage requires the complete focus of the Airport staff. Bill Sherry has spoken to RDA's Harry Mavrogenes, Chamber of Commerce's Pat Dando, and Downtown Association's Scott Knies, and all are in agreement with deferral.

**08/11/09: To Debra Figone, from William Sherry, Paul Krutko, and Joe Horwedel:** Recommending continued OEI evaluation, with any development proposals reviewed on a case-by-case basis – following current policy and practice for evaluating potential high-rise applications, which will be brought to Council for full consideration. The FAA Study on OEI issues at five major airports will be monitored. At this time, it is impossible to predict where the FAA may end up on the issue, OR WHEN IT MIGHT COMPLETE THIS EVALUATION. The Ohlone Towers Project applicant has submitted a General Plan amendment for the additional height. **Staff has expressed great concern with the proposed height.** When the additional technical and economic analyses are complete, or as new information becomes available from the FAA, staff will schedule review of the relevant policy issues with the Community & Economic Development Committee and City Council. We will continue to meet

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with the RDA, C of C, Downtown Assoc, and development community as new information becomes available.

**09/01/09: To Airport Commission, from William Sherry, Director of Aviation:** The City Manager has deferred presentation of the Airport Obstruction Study. In the interim, the City's review of high-rise projects will incorporate the pending OEI restrictions.

**02/24/10: To Rules & Open Government Committee, from William Sherry, Director of Aviation:** Airport Director to set a Council Study Session on March 8, 2010, 1:30-5pm, Council Chambers. As a result, the City Council will have a deeper understanding of the Airport's competitive an financial challenges.

**03/03/10: To City Council, from William Sherry, Director of Aviation: 5b)page 12, Prevent Downtown Obstructions That Could Limit Long-Distance Air Service.** Four the past four years staff has worked with the RDA, C of C, & Downtwn Assoc to address & resolve incompatibilities. **UNCERTAINTY REGARDING THE AVAILIBILIY OF AIRSPACE PROTECTION FOR LONG-HAUL FLIGHTS IS A SIGNIFICANT DISINCENTIVE FOR AIRLINES TO START UP NEW AIRLINE SERVICE. THE LENGTHY PERIOD OF POLICY INDECISION AFFECTS BOTH POTENTIAL FUTURE AIRLINES, AS WELL AS CURRENT AIRLINES.**

Prepared by:

**Terri Balandra, District 6 Neighborhood Planning and Land Use**

**All information regarding OEI, either copied directly or summarized from various City Memorandums, dated 04/24/06 – 03/03/10**

# The Mercury News

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## San Jose skyline vs. flight path

### AIRLINES WANT LOWER-RISES FOR EMERGENCY ROUTE

By Deborah Lohse  
Mercury News

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Updated: 01/30/2007 06:21:04 AM PST

San Jose's plans for a downtown full of high-rise buildings are on a collision course with its ambitions for a vibrant Mineta San Jose International Airport.

The prospect has local developers and business groups scrambling for an alternative - and in some cases, threatening to pull out of deals. The developer of the 25-story City Front Square downtown luxury high-rise - which hopes to lure upscale tenants with its high-vaulted ceilings, valet parking and concierge services - says he could not proceed if forced to cut his building by even one floor.

Although San Jose has long restricted building heights to meet basic federal safety standards, the problem of buildings obstructing emergency plane routes has taken on more prominence in the past 18 months in San Jose and nationwide. Airlines have been raising objections as more cities seek to build high-rises around their airports, even as aircraft are designed with fewer engines for fuel efficiency, causing them to need more clearance room in engine emergencies.

Federal and international regulations require

airlines to have clear emergency routes for takeoff in the event that one engine of a plane fails.

If a pilot knows the plane can't clear an obstacle with one missing engine, the pilot must make adjustments. That can pose problems for airlines because the most obvious pre-adjustment - limiting the number of passengers to reduce weight - cuts into profit margins. Cross-country and overseas flights, which carry the heaviest fuel loads, are most vulnerable.

In San Jose, the building height issue took on a new urgency in early December, when San Jose's planning department sought to persuade the city council to approve revised regulations. The department's proposal would severely limit the height allowed for buildings located in two downtown regions beneath airlines' emergency-takeoff routes.

When the San Jose Downtown Association and Chamber of Commerce got wind of the planned policy, they had it yanked from the council agenda.

"We were shocked at the proposal, which was essentially to scalp the downtown for potential future airline service," Knies said.

For Knies and others in the business community, the issue had come up suddenly. For years, the requirement for airplane emergency routes hasn't caused San Jose much of a problem.

Most of the time, planes leaving the city's airport take off to the north toward Santa Clara, where they have plenty of clearance from buildings. In the minority of cases when planes must take off to the south - about 15 percent of all flights - airlines crafted emergency routes over the heart of downtown San Jose that avoided the tallest high-

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rises.

But about two years ago, a major problem surfaced when KT Properties sought permits to build 22 stories of condos along Almaden Boulevard, behind the Hotel DeAnza. To the surprise of city and airport officials, Southwest and American Airlines protested, saying an airplane with one engine out would not be able to ascend over the building fast enough.

The project was approved at the proposed heights, much to the chagrin of the airlines. But the episode convinced airport officials that they needed to get their arms around the "one engine inoperative" situation. So they hired a consultant at a cost of \$250,000 to study the issue.

Results so far indicate that at least three high-rise buildings currently in the planning process ought to be scaled back. In addition, most of the dozen or so high-rise residences or corporate buildings envisioned for the Diridon train station area would have to be trimmed, perhaps by one-third.

And at least some of the buildings Adobe Systems initially planned for the former San Jose Water property could be too tall.

City officials issued a report estimating that losing just one future international flight could cost as much as \$24 million in "economic impact" to the city including an estimated \$750 in spending per international visitor. The report also estimated the lost tax revenue from shorter buildings in the Diridon area was much less: \$700,000 to nearly \$1 million a year, depending on whether the buildings were residential or commercial.

"The comparison to us was pretty compelling that you need to maintain your options for international and transcontinental flights," said Paul Krutko, San

Jose's chief development officer. "There are other places in downtown where we could build high rises. You can't move the airport."

But those estimates provoked an uproar by business groups, who plan to hire their own consultant to study ways to meet the needs of airlines without trimming so many buildings.

### Possible business losses

Kries said the city's study fails to account for the affect of new rules on private business. "Just knocking off one floor of a commercial high-rise - 500,000 square feet - that would be \$12 million in annual rent," he said.

Mike Kriozere, principal at Urban West Associates of San Diego, the developer of City Front Square condos and apartments at Market and San Carlos, said his 25-story high-rise project cannot afford to lose even one floor. City officials say it may need to be shortened by 24 feet.

"We'll be forced to walk away," he said. "You can't take your pro forma (balance sheet) and lop off \$18 million," Kriozere said, referring to the money that would be lost by having fewer condominiums to sell.

Airport officials say if a solution isn't found, San Jose risks losing potential international flights and some cross-country flights to cities such as Boston, New York or Chicago.

Meanwhile, business groups insist some alternative can be found.

"We want to have our cake and eat it too," Kries said. "We want a vibrant downtown core, and we \*

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\* want an international airport." ←

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