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>> Commissioner Do: Good evening. My name is Thang Do, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, April 7, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD 06-et cetera. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, rezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. So, the first order of business is roll call. Let the record reflect that all commissioners are present. Except for Commissioner Zito and Commissioner Platten. And we have two parts of the agenda tonight. We have our regular agenda as well as our general plan amendment hearing. The first item of business is deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items past 11:00 p.m, to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff. No, no problem.

>> Thank you. Staff is recommending for deferral a conditional use permit C 09050, to give the applicant more time to provide the required exhibits and that's being recommended to be deferred to our next Planning Commission meeting of April 21st. And then item 1B is an ordinance amendment to deal with a business destination district area parking. And that's being recommended to deferral for April 21st, per staff request. That's staff-recommended deferral.

>> Commissioner Do: Thank you. All in favor, say aye. Unanimously approved. Next item is item 2, consent calendar. there's not a writing on this so I'll just wing it. Consent calendar is all the items that the commission will take action on, as a single motion. Unless members of the commission or the public would like to pull any of the items. So there's no public -- there's no cards and staff.

>> We don't -- we're not requesting pulling any of them.

>> Commissioner Do: Okay, great. Is there a motion to approve? Okay. All in favor, say aye. Okay, the consent calendar is approved. Next item is public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. the only item on the public hearing agenda is 3A. PDC 08-033. Planned development rezoning from RM multiple residence zoning district to the A(PD) planned development zoning district to allow up to six residential units within the existing structures on a .17 gross acre site located on the west side of north third street, 340 feet South of Hensley street, in the Hensley historic district. Staff.

>> Thank you. Again as presented in the staff report this is a planned development zoning to allow for an increase in the units on the existing site from 3 to 6. It would propose to put two additional units in the basement of the

existing structure as well as one in the carriage house. Staff is not recommending support of this because the proposed number of units exceeds the allowable density as set forth in the San José 2020 general plan. And it does not further the objectives, goals and policies of the urban conservation policies in the general plan. This is located within the Hensley historic district and again, pointing out what we did in the staff report, this was -- this site was the subject of a burn-down, a fire, and was very sensitively reconstructed so it does fit within the fabric of the neighborhood. However, it's through that reconstruction has lost its status of any historic significance. So there really is not the need to increase the number of units to help maintain that historic structure. If staff's available to answer any other questions beyond what's presented in the staff report.

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

>> Thank you, Mr. Chair and members of the commission. I'm Jerry de Young with truth and young representing the applicant. I trust that the staff did provide you with the copy of the neighborhood analysis that we submitted and would I just like to go through that very briefly with you. If I could have a minute to realize which way this goes. I've watched everybody try to figure this out and I don't get it right myself. Ah, okay. That's good. One of the issues in this is, the density. It's a primary issue, the density. I guess one of the reasons we did the neighborhood analysis is because we wanted to provide you with some contextual information. Sometimes, the neighborhood analysis is important. Sometimes it's not. In this particular case we had had enough conversation with the staff to know that they didn't support it, and they were concerned about the density. Clearly, the downtown and the areas around City Hall and whatnot are very much different than your typical suburban neighborhoods where it's 6,000 square foot lots or whatever. This is a very eclectic neighborhood. It is also obviously historic. And so we simply wanted to point out several things as you begin your deliberation about whether or not this is -- whether three additional units should be approved or two additional units or one additional unit or you want to support the staff and say that it really is not appropriate. What I have on this screen in front of you is the analysis that we looked at did several things. And you have them in front of you. You hopefully you've looked through them, was to demonstrate that this is not your typical single family residential neighborhood. It is a very eclectic neighborhood as I said. I may have been single family over a period of time it has transitioned and it's now a variety of multiple units. We did have a conversation with the Hensley community and I do want to acknowledge that they asked me well how do you define units? I said we're defining units in this analysis as we walked up to the front of the house, we looked at that time number of mailboxes that were there, we looked at the number of gas meters that were there. So we tried to make an assessment of how many units were there. Were those units just a bedroom or were there's a one bedroom unit or a two bedroom unit, we really couldn't tell. I want to be clear on that, it's an analysis that was performed from the outside, it didn't look at public records, it simply went door to door, looked at the house, took a picture of the house, to the extent the back yard was open and there was parking in the back yard we've demonstrated that in our pictures and so basically what we found out that on third street, on the same block as the subject property, that the density on that side on the project side was about 27 units per acre. Units, again, defined as a mailbox or a gas meter. That's all we could tell. On the other side of the street it's about 18 dwelling units per acre. Interestingly enough as you go up the street it's kind of the opposite which means that on third street side, on the Eastside it's about 26 units to the acre, on the other side it's lower somewhere around 17 to the acre. So I'm going to stay just on Third Street right now. And the reason that this contextual analysis I think is important is where is this in the Hensley neighborhood? It is not in the north end, it is not in the middle end, it's pretty much in the south end. The reason this diagram is up here is because in blue it shows the densities of the adjacent or very nearby of the south end of the Hensley district or pretty much this neighborhood what the densities are. On September of the street there is a 79 acre project, on the other side adjacent to the site there's 39 units, 31 immediately adjacent to the site and then on the south side of the railroad tracks 65, I found a case over on fourth street that wasn't included in our analysis, that said it was 31 dwelling units to the acre and it was an interesting look at kind of planning. It's actually an M-1 zoning. And the staff made the case, and giving the conditional use permit, that the general plan didn't apply to this piece of property. And since it was M-1 zoning they could find conformance because of certain other regulations in the city code that allowed them to make a finding that in fact it could have seven units which was 31 dwelling units per acre. The other component part of this and the numbers on the bottom of each individual little property is the number of parking spaces. And again that's a visual analysis. In essence what it says if you read the analysis, neighborhood analysis presented it says basically that the neighborhood has approximately one space, provides one space per one unit. And that's exactly the level that we're achieving with the six spaces for the six units. Now, how is it that that seems to be appropriate in the community? And I think part of that is because keep in mind in the downtown neighborhoods and we'll call

this a downtown neighborhood, who rents these? It's typically people who live or work in the downtown. They may be students. It's those individuals who for whatever reasons in their personal lifestyles they don't want a car they don't need a car. They use public transit. So the application of kind of the suburban notion of residential design guidelines of 1.8 park spaces per unit or greater doesn't seem to apply here and that's the reason why we've applied for a conditional use permit.

>> Commissioner Do: Mr. de Young, your time is up for now. You'll have up to five minutes to rebut.

>> Understand Mr. Chair. I will have a few more comments.

>> Commissioner Do: There are a number of speaker cards. I will call three names at a time. As your names are called, please line up at the bottom of the stairs. Each speaker will have up to two minutes to address the commission. First speaker is Bill priest and Joe Pate and Lornell Porcella and Mr. Priest come down to the podium.

>> Can you see that?

>> Commissioner Do: Yes, we can.

>> All right.

>> Commissioner Do: Please proceed.

>> My name is Bill priest. I'm one of the owners of the property in question. Along with my wife, we purchased this property in about 1987. We already lived in the neighborhood, we purchased the property in the condition that you see here which was -- that picture was taken a year or two before that. We owned it at the time that it burned down in 1990. And when it did burn down, because we were in the historic neighborhood we felt strongly that we needed to preserve the historic character of the building in order to be consistent with the rest of the neighborhood. So we did build a replica, basically, which you see here. And in the process we went -- it took two years to get it planned and rebuilt. And it was very substantially expensive because of the fact that we preserved the historic nature. We preserved a lot of the gingerbread from the old structure and had a lot of the gingerbread milled from scratch in order to match what was there before. After we finally did get it rebuilt and we were in the planning process and we were looking at six units on the property because the size of the footprint and the size of the building made sense for that at the time but the planning process would have taken another couple of years and the fact is we had a burned out pile of rubbish sitting in the middle of the neighborhood that we really wanted to rebuild on. And we finally did at a cost of about \$200,000 additional in order to preserve that historic character and in order to get it done timely. We were substantially disappointed with the Planning Department's approach to our application on the project because even though the planning report says that we haven't offered anything in mitigation we have, in fact. And one of the things we offered was to --

>> Commissioner Do: Mr. Priest, I'm sorry your time is up sir.

>> All right.

>> Commissioner Do: Thank you very much.

>> But we do offer to mitigate and to compromise to the extent that you do --

>> Commissioner Do: There's a question from a commissioner for you so please remain. Commissioner Cahan first.

>> Commissioner Cahan: Thank you, Mr. Chair. Your home is lovely. I visited it and I was very impressed by the condition it was in and it really is an addition to the neighborhood. When I was looking around the home I saw a bike up against a wall and I didn't see any particular bike parking. Do you have bike parking there?

>> Not as yet but we're certainly willing to do that. We're willing to do whatever we need to do to satisfy the requirements, and the wishes of the city, in trying to accomplish this.

>> Commissioner Cahan: Okay. Thank you.

>> Commissioner Do: Thank you, Commissioner Cahan. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. You started talking about the mitigation. Could you quickly explain that so when the future presenters come and talk, I understand what you mean by mitigation.

>> Sure. One of the things we meant was to dedicate the three units to low income housing and to permanently dedicate those because that we feel would be a benefit to the neighborhood. There are a lot of college students, in fact the only people we've had living in the two little one bedroom units were college students so that was part of it. The other thing was that we had offered to limit the parking and to include in our lease, even proposed to have a permanent agreement with the city, that says we would not allow, and this could be a covenant that would run with the land, not allow tenants that had more than one car. In order to ameliorate the parking situation.

>> Commissioner Kamkar: Thank you.

>> And we've also asked for guidance, we asked for guidance but we really didn't get any. There's nothing in the report that suggests what planning would like.

>> Commissioner Do: Thank you. I think you answered Commissioner Kamkar's questions. Next speaker, please, Mr. Joe pate. Please state your name. You have up to two minutes.

>> Sure. My name's Joe pate. I'm here with my wife tonight. We live at 409 north third street, right next door to this proposed thing. We did some research and found out that you guys zoning only allows about two apartments for 7,000 square foot which is about what their lot is. Across the street, at 408 north third street you stopped them from putting in a duplex in 2005. I see no justification any way, shape or form of allowing these people to put in six units. We have enough problems already with parking and congestion and other things. We have the Salvation Army, the Italian heritage club, the Islamic center the artist lofts and whenever there's music downtown we get impacted by that and impacted by Japantown park. We do not need this. This is a terrible payoff. We've been there for over 30 years trying to bring back a Victorian house and that's the other thing. Our street is not multiple dwellings. I don't know where that guy -- what street he was looking at. He sure wasn't looking at our street. Every house on that street like I said we've been there 30 years is single family dwelling except for unwed mother's home. The city pays us back by allowing multiple dwellings beyond the zoning that is supposed to be -- I'm really just shocked. Thank you.

>> Commissioner Do: Thank you, Mr. Pate. Next speaker, Lenora Porcella, and I will call the next three speakers, Sharon Lane, Brian Hunter and Dave Dudak. Please proceed, Ms. Parcella.

>> I have a picture. Oh, I'm Lenore Parcella. I'm here tonight not to support the neighborhood but to support a friend and a neighbor. Bill's been a neighbor I think for almost 30 years and he has had this home which you already have seen was well maintained and another home which enhanced the historic district. While I support the neighborhood goals, I come here disappointed that we have an all or nothing choice here tonight, and it's not news to anyone, I mean we have landmarks meeting on the vacant issue tonight so we have a carriage house that's been vacant for some time now, and we have a history in San José of bad things happening to vacant buildings. And I think it would be a shame and a huge loss for the historic district to lose a contributing structure. It's not likely any of us are going to have a carriage any time soon and it's my understanding that the carriage house isn't really large enough to put back you know to use as a garage. So since it's there, since it's vacant, since a fire there jeopardizes other homes in the neighborhood, and also since it's a contributing structure, I think there would be some merit in looking at an adaptive reuse of the carriage house as a rental unit here, I think there's no purpose served to have it vacant and to not let the property owner use his property. So I'm going to suggest that we maybe look at the carriage house in this project, and that -- and I think that if this was a single family home and not already three units you know, the commission would probably have no problem with a granny unit and I think that's what this is. So I'm just going to ask you to consider that when you look at the whole

picture. And I think the neighborhood would like to find a way to continue the dialogue with Mr. Priest because he has been a good neighbor all these years. And see if we can't find a win win for everybody.

>> Commissioner Do: Thank you, your time is up, thank you very much. Next speaker please, Sharon Lane.

>> Hi, I am one of the owners of the property. My husband and I have been downtown for 40 years. We love the neighborhood. We wanted to live downtown and we wanted to live in a Victorian. In 1985, we started looking. We found an old Victorian that was dilapidated run down on third and Hensley. We purchased that building. We also purchased a small duplex at 405 north third. For the next seven years we were living in the Hensley house and working with the historic commission to restore that house and make it into a bed and breakfast inn. We had no idea the long and expensive process we were entering into and we were deeply in debt. At the same time something very frightening was happening in our neighborhood. An arsonist was burning down all of the old Victorians and we were all on guard. We heard the fire engines, we saw the lights, we ran down the street and we saw our Victorian burned to the ground. We hired an architect, and we started working with the planning department and the historic landmarks commission. This was the first project that went before the landmarks commission from the Hensley historic district. I was on the landmarks commission. We asked at that time from planning if we could put more units in than three because the planning and the landmarks commission had asked us to replicate this Victorian. We were told at that time that if we wanted to do that, it would take years to get this through. We were under extreme hardship. We were paying a mortgage and borrowing money to replicate this beautiful Victorian. So we had the insurance to pay for just building three units. We didn't have the insurance to pay to replicate this Victorian. We had all of the gingerbread milled --

>> Commissioner Do: Ma'am, your time is up. I'm sorry. Thank you for your comment. Next speaker, please, Ryan Hunter.

>> Good evening, my name is Brian Hunter. I live at 411 north third street which I purchased back in 1974. While I'd like to thank Bill priest for having built a home which does fit in the neighborhood I'm very much against the project. We live on a street despite the data you were shown earlier about the number of park et cetera, we are severely impacted, drive around the block to find a parking spot, particularly with street sweeping. I'm concerned about high density, the high density numbers that he quoted come primary from the conversion of the old moving company into the artist lofts and into the condominium next door. And while I really didn't like that high density, that moving company was built in the '50s and the conversion actually added to the neighborhood but yes it pushed up the density but it's not represented with the rest of the neighborhood. I know I'm a single family owner, because my family lives in that home and as far as to know as Joe pate already stated the other homes are also single family with the exception of the home for unwed mothers. So I'd like to again ask you to vote against this and keep the units where they are, at three, thank you.

>> Commissioner Do: Thank you. Mr. Dave Duda or Dudda. Please state your name.

>> Dave Dudak, co-chair of the Hensley historic district. It gives me no pleasure to speak against this particular project because I really do admire and appreciate the work that the applicant has put into the neighborhood over sometime. But it's quite clear to me that if this were to be approved it would be an extraordinarily dangerous precedent. What we're talking about is approving double the density that the general plan has for this neighborhood. If this applicant is allowed to do it what will prevent us from any applicant being allowed to do it? In the Hensley historic district we have a very long view, it's a 120 year neighborhood and we'd like the neighborhood to be here another 120 years. That's why we're a nationally recognized historic district. We're supposed to be here for a long time. Any time you take and add more units to a building or take a single family home and convert it to multifamily use you jeopardize the long term viability of that building and so it's very clear to me we need to -- this needs to be rejected, no way it could possibly be supported by the neighborhood association.

>> Commissioner Do: Thank you. There are a couple of questions. There are questions from several commissioners. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Mr. Dudak Ms. Porcella raised the issue of the carriage house, if there are ways to keep the property at three units but utilize the carriage house as one of those three units

would that be something that the neighborhood association would be able to support or is that something you talked about?

>> The neighborhood association is very interested in preserving the architectural integrity of the neighborhood. There are a couple of things that go into that and certainly contributing structures like carriage houses are part of that and adaptive uses are important to us. Another thing comes to mind. If you look at the front of the structure the front porch has been removed from that building. 1950 to 1951 by looking at the Sanborn maps you can see the front porch used to be there. At some point, somebody, I don't know who, and I didn't try to figure out if it was the permits or not, somebody removed the front porch and installed an addition that sort of sticks out. If the priests were interested in removing that addition that doesn't belong there, the nonhistoric addition that's sticking out of the front of the house, they did an okay job of disguising it, but you can tell as you drive by down the street it's not original. If they were willing to remove that as part of a general agreement to do something larger you know to reach an agreement and it's amenable to all parties I can see that type of thing happening. So I think there's certainly room for compromise here but this proposal that's in front of you today I simply can't imagine being approved. I really hope you don't.

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

>> Commissioner Zito: Thank you, Mr. Chair. Trying to make heads or tails of some of the data that was given us. I'm looking at I guess what Mr. de Young gave us. Mr. Dudek, according to what Mr. de Young gave us there's units across the street that have five units associated with it. There's two doors down, three doors down has ten units associated with it. (inaudible).

>> Commissioner Zito: And I'm just trying to understand, I hear a lot of talk about okay, so right next door and a couple doors down there's one unit for their property and across the street there's one and two units but I'm seeing you know five and ten and eight and so on. I mean I don't -- I don't live there. Driving through you really can't tell so much. Help me understand.

>> Sure. Well --

>> Commissioner Zito: What's really going on.

>> Certainly the characterization that the planning consultant of the applicant gave you that we live in an eclectic neighborhood is certainly true. Originally the neighborhood was built primarily as single family homes, some of them are very large, some of them are not so large. This one happens to be one that is actually not so large. And over time many of them were divided into multiple units. I happen to -- I know of a number of factual errors on this particular chart and they all happen to be in the direction of saying there's more units than there are so I would take this as a little bit of a grain of salt but I would certainly concede that we live in an eclectic neighborhood. I would just, for example, the Hensley house, I know the applicant knows well because they restored it, that's this one right here, it may be it's zoned for five bedrooms but there's a single family home living there, it's got one front door, one back door, and a single family living in it. But on this chart it's shown as five units. I mean, to me it's a single family house. Directly across the street, this one right here, that's just a single family house. It's got one front door, one back door, and a family living in it. So if there are errors in here it's certainly towards the higher density.

>> Commissioner Zito: How about the homes directly across the street that have fives?

>> I can't picture them at the moment but I believe they're Victorians that have been carved into multiple units. Thinking long term in the district we are working very hard to get R-1 units. People converting it back to single family home which is wonderful for the future of the home and for the neighborhood because again as I say 120 years from now we want this neighborhood to be in good shape.

>> Commissioner Zito: Sure, I understand. I'm trying to figure what impact has some of these other multiple family units as they're stated here what impacts have they had on the neighborhood? Can you explain?

>> Sure there's a few things I mean as you walk down the street in our neighborhood you can pretty well tell. Other than occupied, renter, owner occupied, renter. Actually the priests are an exception. It gives me no pleasure to oppose this project. This is people I really do admire but I simply cannot support their project. To answer your question, 1, perhaps most important to the neighborhood is that long term it's bad for properties and they become dilapidated and it's just -- it's a real shame and especially as did only National recognized historic district in the city it's a shame. Second there's a severe parking impact in our neighborhood. I mean, the applicant I think is arguing, they're looking for similar as what's happening on the rest of the neighborhood. They installed a second driveway on their I think it's a 45 foot frontage in order to be able to put more cars off the street and on their driveway. Because they needed the parking to accommodate the people who lived there. So parking is clearly an impact here. So I'm trying to think of what else is in the planning report. They discuss lack of open space, they discuss the parking problems. And then the density. And all of those things are important.

>> Commissioner Zito: So there was a discussion of three units, rebuilding to three units. Do you see any compromise? Are you basically saying one unit is really all the district --

>> I -- just try to clarify a misunderstanding. My understanding is the building was legally rebuilt after a fire in something like 1992. And it was legally rebuilt as three units. Since that time additional units have been added to the basement two more units and at some point the carriage house was also, I don't know if it was converted or when it was occupied as an additional unit but the total of six units are three units legally in the main house, two units that were illegally added by the applicant in the basement of the house and the carriage house as well. I don't think I answered your question.

>> Commissioner Zito: You sort of expect you gave me a little bit of history which was helpful. What I'm thinking is, again, I understand your ultimate goal, ultimate goal is it would be great if everything was single family, okay? But down to earth now.

>> Right.

>> Commissioner Zito: So is another number acceptable?

>> Well, yeah, quite possibly. And that's the kind of thing I think the historic district would like to work with the applicant to see if they're willing to do things. I suspect there may be opportunity first for middle ground here. I don't see this as middle ground here, I see this as the applicant going for it all and seeing what happens. The -- the structural integrity is very important to us and restoring the front porch for example, decreasing the number of units. I think there are things that certainly could be done to end up with a number higher than 3 that would be acceptable to the neighborhood. It would be a bit of a precedent we would be worried about because we don't want other people to say gee, special zoning here we could have special zoning too but the requirement to fix a structural problem about the house I think that --

>> Commissioner Zito: I agree with you it sounds like you've got an applicant who's been a major contributor to the neighborhood in many ways. They have already set the bar high, in just their own actions, if you will. It's possible maybe that there could be some sort of a guideline, a guiding principle, that can be built on this, you know, this particular resident or applicant as a kind of a starting point and saying you have to meet this bar. Anybody else has to meet this bar. This is what this applicant did, all future applicants have to reach that level and maybe that would help alleviate some of the concern. I'm just exploring this and I appreciate your frankness. Thank you.

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

>> Commissioner Jensen: Thank you, Mr. Chair. Mr. Dudak, so Commissioner Zito is clear, if I understood, you and the neighborhood are completely okay with the existing three units that are in the main building?

>> The existing three units that are in the main building are legally there.

>> Commissioner Jensen: So that's okay, right?

>> Pie in the sky I would love someone to buy that and convert it back to single family home and the reality is that happens to several of the homes in the neighborhood.

>> Commissioner Jensen: You're okay with how it is today, you're not asking it to be converted back to a single family resident with one family --

>> I have no right to say take your income property and change it into something else.

>> Commissioner Jensen: Thank you.

>> Commissioner Do: Mr. de young you have up to five minutes to rebut.

>> Mr. Chair, members of the commission I'll try to keep it brief. Commissioner Zito, the subject, the property that you were asking about is actually contained in the photographic analysis. The one that you happened to point to was 406 north third street and that happens to be actually an apartment unit it's more to the back there. The one adjacent to that was one I would define is the larger structure single family house probably at one time that's been converted. What I do -- what I do want to make sure that you understand and this is always the difficult part of these situations, you know I've been up here a lot representing people that have had some code enforcement problems and some other things. I want to make sure that to the Commissioner Jensen's point, not to your point, but bouncing off of that point is denial of this project does not convert this property back to single family residential. We clearly understand -- I clearly understand that the community's long term desire to bring it back to a single family residential neighborhood, as I said in my presentation it took a long time for it to convert incrementally from single family residential into the state in whichists presently in and has been for some period of time. Conversely, the approval of the additional unit or units does not preclude its conversion back to a single family house. Evidence of that as pointed out by the previous speaker, the Hensley house for which the priests got an approval to have five units in that is now presently, I'm being told, lived in as a single family residential unit. Somebody saw the value in that house for their own personal residence. It takes place today, it takes place legally so it doesn't mean that the priest house couldn't eventually go back to single family residence. I wanted to comment on where I thought Commissioner Jensen might be going with the carriage house, and that is so let's trade one unit in the building to the carriage house. I think that would be difficult. It would create some problems because there's no incentive for the property owner to let's call it deconstruct a unit inside the building in favor of a many, many smaller, less desirable unit in the back. I think as Bill priest may have indicated, I was thinking about my own thoughts but you know Bill lived there for a while. Bill lived there until he was thrown out by code enforcement. He has a place someplace else, he comes, he works in San José, just like his tenants. He thought it was a nice place to work, he could walk to work, he didn't need a car, except the commuting back home. So there really wouldn't be an incentive to do that. I think the way to incentivize the property owner to keep it up the way the neighbors want is to allow at least one more unit. I'm glad to hear that one of the community members I believe in high regard with the community a member of standing has suggested that the appropriate adaptive reuse for the carriage house and to retain that as a historic element in this community is to allow some productive use of that. And I would suggest that one of the ways to do that is to allow that unit to be used as a residential rental. And not at the price of taking one unit out of the existing building. So with that Mr. Chair, I hope that our presentation visually and graphically has given you some impression of what the neighborhood is like. I certainly understand the neighborhood's particular goal of wanting it to be different than it is today and I think that that can occur over a long period of time even if you recommend in favor of additional unit or units on this particular site. Thank you very much.

>> Commissioner Do: Thank you, Mr. de Young. There are questions from several commissioners. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Mr. de young what I thought I might have heard you say and correct me if I'm wrong, that while six is what you're asking for, four, i.e. three in the house and one in the carriage house, may also work. Is that --

>> I think actually Mr. Priest indicated that he was looking for some direction by the commission and ultimately by the council and what is the appropriate number? I think the answer to that is yes.

>> Commissioner Zito: One thing just as a side note. Couple meetings back I just have a problem with rewarding activities that were not justified or authorized earlier. So the fact -- the way I understand it, they moved to six units without getting the proper permits to do so. And they've been running with six units until now and now they're asking for essentially now that we've got it let us do legally.

>> I believe it was 2007, because they came to me in 2007, having been cited by code enforcement, they had a series of ongoing conversations with code enforcement of what they could do to bring it up to code. And after the rezoning was filed they subsequently vacated all the units. I don't know where Bill sleeps at night now when he's working over here. But -- so it has not existed since sometime in 2007.

>> Commissioner Zito: Okay, so it's been vacant --

>> Those units have not been used in some time in 2007.

>> Commissioner Zito: Okay, thank you very much.

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

>> Commissioner Cahan: Thank you, Mr. Chair. Would you clarify for me. I believe I heard you say that with the carriage house, that they would not want to have a facility there if they have to take one out of the main house. But I'm a little confused because right now they have five in the main house and they're only supposed to have three.

>> No -- well, okay. After the fire the house was reconstructed for three units on the ground floor. Plus the second story. So one of those -- two of those units have just like a single family house that has two levels. The bedrooms are upstairs. So there are three legal units in the main building. The illegal units were in the basement. Those have been vacated. So my point was, if you were to say we really think you should only have three units and oh, by the way why don't you go in and adaptively reuse the carriage house there is no economic incentive of that because the existing house is built with three units in it. Forget the basement. The basement improvements would have to be taken out.

>> Commissioner Cahan: What you're saying they wouldn't want to have two in the house and one as the carriage house?

>> Yes, correct.

>> Commissioner Cahan: Thank you.

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

>> Commissioner Zito: Thank you, Mr. Chair. I didn't think you would get to me that quickly. Mr. de Young do you know the usable size of the carriage house? It's probably on your plans and I didn't --

>> You know I don't know, I don't even notice whether we calculated the square footage --

>> Commissioner Do: The dimensions on the plan shows 28 feet by 16 feet.

>> Commissioner Zito: 400 square feet give or take.

>> And the upstairs is a bedroom and half of the downstairs space is occupied by attic space, it's not total two story. I didn't bring the plans up here.

>> Commissioner Zito: It's kind of hard to see. Is that already improved in other words plumbed and electric and all that?

>> Yes.

>> Commissioner Zito: Thank you.

>> Mr. Chair, if I may make a point, I don't know if this has any bearing, the carriage houses have been used for a number of years as a residential unit. I mean, when you look back at these neighborhoods clearly, these have been well used buildings, people use them in the -- for a period of time, you know, illegally admittedly but prior to the priest ownership.

>> Commissioner Zito: I understand, thank you very much.

>> Commissioner Do: Thank you, Mr. de Young. Motion to close public hearing? All in favor. Staff, returning something to low income housing especially if you -- and if you could also explain on the parking requirements for whether it's four units or six units or three units and et cetera.

>> Yes, thank you. Again, to respond to some earlier comments relative to staff not offering up some guidance, or responding to some what they termed mitigation, we consistently recognize the lack of conformance with the general plan density. So in those situations it's very difficult for us to guide them as to how they can basically accommodate six units. It's difficult to provide for parking not only for the six units but for the three. Legally, they should only have three parking spaces, on the site to the rear of the building. Even those three parking spaces fall short for what two two bedroom and one one bedroom should have, which would be 5.something which would round up to 6. So even the existing legal three units falls short of what would typically be provided for that. As far as an income restriction, clearly that can be done. Again, we don't feel that that really is something that supports going beyond the density and again, really overdeveloping this site because of the lack of open space and the deficiency in the parking areas. So that has been kind of our guiding response, not only the preliminary review stage, but once it came in as a formal application. The issues relative to utilizing the carriage house planning, the city has very often been supportive of that. Again they typically have been in situations where the site has been able to accommodate for the additional units. Clearly, parking in the front is not acceptable. Never really has been acceptable. And we are working in not only this neighborhood but other downtown neighborhoods to return the front setback areas to landscaping and not the hardscaped which now is what cars are pulled up on. So that is not an option to look to, to provide parking so that you can put additional units on the site. Some other issues that have been brought up, again, the three units are legal in the main house. The HP permit that was issued for the reconstruction shows that they only have to provide the three parking spaces in the rear. And that is what we're comfortable with. If they wanted to do an adaptive reuse of the carriage house, again, we would have to look at how other things balanced on the site. So even at the three units, we are somewhat deficient in you know open space, albeit on the original plan approved with the HP permit it does show a larger common open space area than I think what is actually being provided today. So with that I can answer any additional questions you may have.

>> Commissioner Do: Thank you. In the original approval whereby they were allowed to build three units or they were allowed to have three units in the main house, what was the use of the carriage house? And also, can you discuss the exact historical status of the carriage house? It doesn't appear to me like it's architecturally significant, but there may be something that I'm not aware of.

>> In the HP permit that was approved there was no alternate use included in that approval for the carriage house. Oftentimes those are used for parking or storage or any sort of accessory structure. The research did not indicate that the carriage house in and of itself was historically significant. You know at a higher level I think we all have a sense that they do contribute to the historic character. And continually look to do what's reasonable to keep them in the neighborhoods, whether it's a carriage house, whether it's a tank house, or any other sort of accessory structure. But again, HP permit that was approved did not indicate an alternate use for the carriage house, other than accessory uses.

>> Commissioner Do: Thank you. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Staff, currently they have three rear parking, is that correct?

>> Yeah, HP permit, again, that was approved for the reconstruction. Because they didn't need a planning permit because they could do that under the legal nonconforming provisions. They have three parking spaces to the rear.

>> Commissioner Zito: Right, and what I'm understanding just wanted to make sure I understand the staff report, the proposed second driveway is just not acceptable, that has to be pulled, right?

>> Correct.

>> Commissioner Zito: And can that be returned to any kind of open space, can that be grassed over, that sort of thing? Is that something --

>> Sure it can.

>> Commissioner Zito: Front yard, we can make it open space, that sort of thing.

>> Because that again that was not approved so in our mind it doesn't exist. Shouldn't exist.

>> Commissioner Zito: Yeah, yeah, I understand. How about front -- I mean typically a lot of times when A(PD) is planned, we -- this onstreet parking does that count at all here?

>> Again, it's an offstreet parking requirement. And if we're ever to consider a reduction in that we look to what is going on in the existing neighborhood. Whether or not you know it's reasonable to reduce the parking for other reasons, but not to suggest that the parking in front of these properties would always be available. So we cannot commit public street parking to individual projects.

>> Commissioner Zito: Right, okay. The carriage house, is it -- it's not an open -- to me carriage house means space to park and you live above it, right? I don't know the condition of this particular carriage house.

>> It used to be space to pull the carriage in and store the hay above it.

>> Commissioner Zito: Right.

>> Depending on size of carriage houses they've been adapted for a variety of configurations some larger than others.

>> Commissioner Zito: I'm not -- doing a drive by I didn't have the opportunity to actually understand the carriage house. The carriage house two story can underneath be a parking area?

>> Well, again, that's an opportunity to perhaps open it up to pull some parking in there. And maybe relieve the surface parking from the existing area to create open space. But again, when you've got parking going one way and parking going another way you get a conflict. So it may not, you know, be that simple to open up the carriage house to create more parking. Because you're going to have a perpendicular --

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: Okay.

>> Commissioner Do: I did a walk to the back of that house and because it's awkwardly located as a garage structure if it were to function as a garage, because of the dimensions, it's only 16 feet deep, usually other garages are deeper than that.

>> Commissioner Zito: 20.

>> Commissioner Do: To accommodate parking it would have to be substantially restructured somehow.

>> Commissioner Zito: I'm looking at the plans sheet 3 and notice that the bulk of the building is 16 feet and then there's another three feet of extension on front of that. It's 19 feet. Again not going back there I don't know if like I have a three car garage and one of them extends out which allows you slightly --

>> Commissioner Do: It's just awkwardly located because if it were a straight shot you know directly in front of the driveway it may work. I don't mean to supplant staff.

>> Commissioner Zito: Okay. So again I'm just trying to see and I know that there's other PDs where we have reduced the parking because we're saying it's downtown and we want to encourage more pedestrian uses and so on. So I'm trying to see if there's a --

>> Again I think it already is reduced three spaces for three units, that's a one to one which is typical for downtown, we typically don't go below that.

>> Commissioner Zito: And four would mean it would have to take up some of the backyard open space is what you're saying?

>> You're typically taking all of the open space and the only open space is a little corner back adjacent to the carriage house.

>> Commissioner Zito: I see.

>> Commissioner Do: Commissioner Zito, there are several other commissioners in line. May I turn the floor over to Commissioner Jensen please.

>> Commissioner Jensen: Thank you, Mr. Chair. First I would like to acknowledge and appreciate the neighbors who are there, Lenore and David, I know you put a great deal of time into the care and feeding of your neighborhood and also to recognize, as Mr. Dudak pointed out this is San José's only historic district, the only one that San José has. And they have done a remarkable job of continuing to rebuild and appreciate this neighborhood. And I'd like to recognize and appreciate Mr. Priest and Mrs. Lane, Ms. Lane for all the work that you've done in restoring this home, and bringing it up to the beauty that it is now and being very, very respectful of the carriage house on the property and for the tremendous work that did you on the Hensley house. That is just a gorgeous, gorgeous property. That said, this neighborhood is working very hard to return to single family home ownership and that is a choice that the neighborhood makes. And it is an effort that many neighborhoods actively work towards through a variety of efforts that are happening across the nation to bring in property owners and people who are going to be lifetime committed to neighborhoods, and create for the rest of the neighborhood what Mr. Dudak and Ms. Porcella and Mr. Priest have created in their single family homes, I know some of the folks who live over there, including houses that were moved into the neighborhood as single family homes by the redevelopment agency. It's a beautiful neighborhood. I would be interested in seeing if there could be an arrangement worked out with the property owners, and staff, to convert the three units inside the original building to two units, and to reuse through adaptive reuse the carriage house. There are a number of carriage houses throughout the downtown area that have been turned into apartments. I know a bunch of people in my own neighborhood who have lived in carriage houses while they were working on their own and have rented them out afterwards. And they're tiny but they're eclectic and interesting and if you're interested in living in the downtown it's certainly one very inexpensive way of doing it. I am prepared to make a motion. And I am betting that you can guess where this is going. Recommend to the city council denial of a planned development rezoning from the R-M multiple residence zoning district to the A(PD) planned development zoning district to allow up to six residential units within the existing structure on a .17 acre site as recommended by staff.

>> Commissioner Do: There's a motion. Is there a second?

>> Commissioner Jensen: I guess not.

>> Commissioner Do: So we'll continue the discussion. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. Actually, I'm you know pretty close in alignment with Commissioner Jensen on the motion, except for the conversion of three back to the two. So -- but I have a question for staff regarding the -- regarding the -- at least the open space, and, you know, hearing the property owners' willingness to work with the city and work with the neighborhood. What's the possibility of turning the back area, still it's a parking area but it's made of turf block where it's greenery, you got grass, short grass, growing through turf, where you get the you know benefits of grass as well as the advantage of being able to park some cars in there, you know, as a compromise? Is there anything in our code that prevents that to happen?

>> No, they can treat that parking area however they like, in fact we'd encourage them to treat it with pervious situation. It still remains a parking area though.

>> Commissioner Kamkar: Yes, I understand.

>> It does not serve the purpose of a common open space. Because when people are there you would assume their cars are there so they would be in the parking space so we wouldn't support the use of that as open space.

>> Commissioner Kamkar: I understand. It doesn't address the parking problem but it addresses the having a sea of concrete back there that is one of the things. Then I like Commissioner Cahan's suggestion of adding bike rack, you know to encourage biking, you know and encourage use your bike. I like Commissioner Zito's suggestion of turning that tandem parking area back to more grassy and landscaping area, you know. So I'd like to put a recommendation together or a motion together, if possible, to see if this would be acceptable by enough commissioners.

>> Commissioner Do: Please do.

>> Commissioner Kamkar: Thank you. So recommend to the city council acceptance of a planned development rezoning to the A(PD) development district to allow up to four residential units within the existing structure as well as the carriage house, by conversion of the two tandem parking spaces back to landscaping, by -- and I guess that's the only thing would I do different. I would encourage turning the back area into turf block, but I don't want to make that as a recommendation.

>> Commissioner Zito: I'll second that, Mr. Chair. And if I could offer a friendly amendment.

>> Commissioner Do: Sure, please do.

>> Commissioner Zito: Yeah. I agree with the four units but I would have one condition that the fourth unit would be the carriage house. That they would not increase the number of units inside the home. So it would be three plus one.

>> Commissioner Kamkar: Absolutely.

>> Commissioner Zito: If they can't adaptively reuse the carriage house then it needs to be three.

>> Commissioner Kamkar: That's actually what I meant. You mentioned it more eloquently, that's what I meant. The fourth would have to be the carriage house not existing main.

>> Commissioner Zito: The second along the lines you were saying Commissioner Kamkar is they need to return the front of the house to a green scape front yard as opposed to a dual driveway scenario so we cover some open space in that regard and work with staff to maximize the open space of the rest of the property with a maximum of four parking spaces. That would be -- that would be what I would suggest as --

>> Commissioner Kamkar: I will accept that as a friendly amendment.

>> Commissioner Zito: Thank you.

>> Commissioner Do: Thank you, Commissioner Kamkar and Commissioner Zito. Continuing discussion. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Mr. Chair. I too agree that the front yard to be returned back. The house is beautifully maintained, it's very attractive to look like, except for these tire tracks in the front yard. So I think it would be -- just really give the overall completeness to how nice it is to have that all as a green scape. And in the back, did area that would be -- I really wouldn't foresee someone using it as open space so I think we should convert that so there are four total spaces in the back. I can't really support having four units there without four parking places.

>> Commissioner Zito: That was the intent of the motion. The motion was -- four parking spaces for the four units and if they can maximize whatever is left for open space if there is anything left.

>> Commissioner Do: Commissioner Kamkar and Zito, I wonder if I could offer a friendly amendment. I guess I just cleared with the director that I could. That if you were to in your motion, would you entertain you know, there is a space on the side of the carriage house that currently is too narrow for a car parking. But if they were to modify the carriage house slightly by relocating a wall a foot in or something like that they could add -- my concern is that we are setting some precedents, we are basically, we are singling out this one property to give them a break on the park requirement. And as staff indicated, even with the three originally approved units they are short on parking already. So here we are allowing them to increase that number and yet -- so I'm just requesting to see if you would require that they -- they, you know, I would reluctantly support if I could have seconded I would have seconded Commissioner Jensen's motion. But so -- if you were to allow them to have the one additional unit, then it seems to me that we ought to require additional parking as well.

>> Commissioner Zito: So I'm trying understand Mr. Chair, what are you -- what is the number of parking spaces you are asking that we require?

>> Commissioner Do: Five.

>> Commissioner Zito: Five, so you want to essentially modify the site of the carriage house so that can you park two on the side and then three on the -- somehow against that wall there?

>> Commissioner Do: Well, there exists -- currently there's three parking spaces. I think in your motion you already require that they somehow convert that, remove the patio or whatever to create the fourth parking space. I was thinking that you already required that. So I'm asking to require a fifth parking space.

>> Commissioner Zito: Um --

>> Commissioner Do: Or were you speaking of four units with only three parking spaces?

>> Commissioner Zito: No, no, one to one, four, and staff mentioned they were already starting to use that as a guideline for the downtown, one for one, and for that reason I figure one to one works.

>> Commissioner Do: Okay.

>> Commissioner Zito: And one statement was that possibly we either urge or even require ecopasses be available. You know --

>> Staff needs to clarify. I did not mean to intend we would use it as a guideline. I said in the downtown zoning district that is what the parking ratio is. This is not in the downtown zoning district.

>> Commissioner Zito: I understand but we do have one to one in the downtown.

>> Commissioner Do: So Commissioner Kamkar, would you --

>> Commissioner Kamkar: Let me clarify.

>> Commissioner Do: Sure.

>> Commissioner Kamkar: The reason I made the motion the way I did it is, we approved this as -- sometime ago as a three unit with three parking space. So that was one to one.

>> This is not approved by planning. It has legal nonconforming status, the three units came to be in this structure at a time in which no planning permit was required. So again, just to clarify that. What was approved was a historic preservation permit for the reconstruction of this legal nonconforming three-unit. So again, just to make sure, there has not been a city approval. It came to be three units, at a time when there was no building permits required.

>> Commissioner Kamkar: I understand. I used the reasoning that there be three legal, albeit nonconforming three legal units there with three parking spaces. So if we're going to increase it to four, I want to make sure there's a fourth parking space. That's the basic premise behind my reasoning. If you want to go to five, to me, I don't know what it is, we got eight feet already, and so we need probably one more feet, one more foot to get to the nine foot. I will accept that as a friendly amend, if you absolutely think five is necessary, you know and I heard the other than saying that they're willing to work with us. So I will go for five. I would however like to leave it up to them, to figure out where to place it.

>> Commissioner Do: Of course.

>> Commissioner Kamkar: We don't want to dictate to them it has to be there. If they can show us they're smarter than us, we'll accept that.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Do: Exactly. I do not want to require them to have to make such a major modification to the carriage house that it makes it infeasible for them. That's my main concern. If it's possible for them to put that fifth against the south side of that lot, and allow it somehow to get another parking space in there and again, because it's -- all the residents are there they can play jockey car or whatever to get it out that's fine with me. But I don't -- as long as the fifth spot does not require them to make major modifications where it becomes prohibitive then I will accept that motion.

>> Commissioner Do: Is that motion -- is that a feasible motion that we require a fifth as long as they don't have to do a lot of work to get the fifth? Is that --

>> If I could interject a little bit I mean I think the space that you're looking to literally is the size of a parking space, not even considering any sort of buffer area adjacent to that single family residence, I believe to the north. So again, you know staff has looked at it, and quite honestly, absent tearing down the carriage house very difficult to put reasonable parking on this site, at the same time you're suggesting that we look to maximize open space because again, it's, you know, the carriage house is where it is. So I'm just going to -- we wouldn't -- we wouldn't encourage a parking space to go back there. If that was reasonable we would -- you would have seen it here. But it's literally shoehorning something in so I'm a little concerned with that.

>> Commissioner Do: To simplify the issue, my friendly amendment is not feasible, I therefore would withdraw it so we would go back to Commissioner Kamkar's original motion which has been seconded by Commissioner Zito. There are additional comments. Commissioner Cahan have you finished with your comments or --

>> Commissioner Cahan: Thank you, Mr. Chair. I just wanted to clarify the porch that you discussed that we were talking about having them remove isn't really a porch, it's concrete, continuation of the parking lot. It's not as though it's a built porch that we want them to tear down.

>> Commissioner Do: Thank you for the clarification. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. So as staff has pointed out this is legal nonconforming. It has currently five -- six park spaces which already leaves the three units of units and the residents there underparked and forced to park on the street. The neighborhood is already overparked as it is regardless of whose numbers you're going to look at the neighborhood is overparked. Adding another unit in there is going to further burden the people who live there with a struggle to try and figure out how to park. There is no currently no common open space, what they have is a large parcel of cement. Both in the backyard and on the side of the house, which creates an additional heat sync problem for San José and for the people who live there. And I'm -- I'm surprised that there is such an urgency on the part of my fellow commissioners to try to shoe in additional residents for one tiny little space not being respectful for the neighborhood or the community or the tremendous amount of work that staff has done with the neighborhood association to try and put this proposal forward. I will not be supporting this motion.

>> Commissioner Do: Thank you, Commissioner Jensen. I too will not be supporting the motion. Because I think that we -- I support density. I support -- and I even support the possibility of lowering parking requirements but it needs to be done as a matter of policy and it shouldn't be done on a case-by-case basis because the owner happens to keep the property in good condition and all of that. I do think it's a very small site to try to put in so many units like that. So there are no further lights so let's vote by light. The motion is passed with commissioners Do and Jensen opposed. We're now into the second part of the meeting agenda tonight. This is the -- I will open the 2010 spring general plan amendments hearing.

>> Commissioner Zito: So moved.

>> Commissioner Do: Second?

>> Second.

>> Commissioner Do: All in favor. Okay. So the next item is general plan consent calendar. And again, the consent calendar is -- are items that will be adopted by the commission, in one motion. Unless one of the commissioners or members of the public will -- wants to pull the item off the agenda. Is there -- staff, is there any further clarification?

>> Thank you, Mr. Chair. I'd like to make an additional statement for 5A, file number GP '08-08-03. Planning staff has responded in writing from the Santa Clara County parks and recreation department before the end of the comment period. The comments and remarks were handed to you before the beginning of this meeting. The comments did not affect the conclusion of the negative declaration in that there are no significant environmental impacts from or to the proposed project. Thank you.

>> Commissioner Do: Thank you. Director, there are no speaker cards, right?

>> Laurel Prevetti: We have a speaker card for item 5B. The applicant is here for 5A as well as another individual but they requested only to speak if the commission or another member of the public pulled the item.

>> Commissioner Do: Okay so 5B will be pulled then. So we will pull 5B. Commissioner Zito.

>> Commissioner Zito: Yes, Mr. Chair, I'd like to pull 5A.

>> Commissioner Do: 5A so basically we do not have a consent calendar anymore. Next item is general plan public hearing. So let's start with item 5A. Which is GP 08-08-03. General plan amendment request to change the San José 2020 general plan land use transportation diagram land use designation from nonurban hillside Silver Creek planned residential community to public quasipublic Silver Creek planned residential community, on a three acre portion of a 21.1 acre site located on the east side of dove hill road approximately 500 feet north of Hassler parkway. Staff.

>> Thank you, Mr. Chair. The requested land use change is consistent with the goals and policies of the San José 2020 general plan including the growth management strategy as the land use changes for a site that's located within the urban service area. The land use change is on a portion of the site that is below the 15% slope line, in

conformance with the green line urban growth boundary, major strategy. And as well as it is within -- it's adjacent to an urban throughway and the public quasi-public use would provide an opportunity for a building with architectural interest consistent with the scenic route policy. This concludes staff report.

>> Commissioner Do: Thank you, staff. Is the applicant here? You have five minutes.

>> Good evening, my name is Sal Caruso. We are in full agreement with the staff report, I had one clarification and that is, where it speaks to land use designation, it has a floor area ratio of 1.5, interior condition space, the building condition space not the park structure?

>> Not parking.

>> Okay, thank you.

>> Commissioner Do: Thank you, Mr. Caruso. Are there any questions from commissioners? Commissioner Zito.

>> Commissioner Zito: Yeah, Mr. Caruso came to our district 8 community round table meeting and I was present there so I had heard what he was proposing for the project. I don't know if the other commissioners are interested. I think it's a good project. I would like to -- I have some questions mostly for staff, though.

>> Commissioner Do: Thank you, Commissioner Zito. Thank you, sir. Let's see, there are -- that's fine. You will have another five minutes to rebut, if you wish to do so. There is one speaker card, Mr. Richard Rothdale. Please come down to the podium, you have up to two minutes to address the commission. Please state your name sir.

>> Thank you very much. My name is Richard Rothdale representing Lavidia Smith, one of the residents adjacent to this property, lived there since 1950. We very much appreciate this project open the hill. This has been an eyesore area for 50 years. And we are very much supporting a change here. So we'd like to thank the commission, and we would like to support the project. Thank you.

>> Commissioner Do: Thank you, Mr. Rothdale. Mr. Caruso, would you like to make a further statement?

>> I was hoping to find out what questions there were of staff and then that way if there was anything there that I could clarify from the applicant I would like to do it after the fact if that was possible.

>> Commissioner Do: I think that is possible. That depends on whether staff would require your answer or not but thank you very much for that offer.

>> Commissioner Zito: If I might --

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: It will work this way as well, Mr. Caruso, this project come before us as I forget what we call it --

>> Early consideration.

>> Commissioner Zito: Thank you, early consideration, I needed that and staff wasn't terrifically thrilled about that at that time, I'm wondering what has changed?

>> What has changed, the facts have been brought to the table, the scope of the project has been reduced from five acres to three acres, the 15% slope line has been identified on the site, at that time it was still in question. I think with the submittal on our part with the additional findings and information, topographic surveys, additional information came available and therefore we came to common consensus and understanding and agreement if you will on the appropriateness of the application. So I think further information helped us all come to the same conclusion.

>> Commissioner Zito: Has the intended use or intensity has that changed in any substantial way?

>> Well it has decreased from a five acre total scope to a three acre total scope so yes in that regard the number of beds are roughly the same that are being proposed in the overall project that will come before you on a PD level of 351 beds total for the assisted senior living facility.

>> Commissioner Zito: How about the number of cars or trips estimated?

>> The number of trips in the traffic report were actually adopted already in the Evergreen, I apologize I don't remember the name of it but in the Evergreen traffic study that was done that was formally adopted.

>> Commissioner Zito: The Evergreen traffic policy?

>> That was already adopted.

>> Commissioner Zito: Not a major change in who you had anticipated?

>> Not in the number of beds, no.

>> Commissioner Zito: Or the number of -- in other words you're not expecting there to be more or less cars or trips?

>> Well, the project is being parked and that really wasn't clarified at that time. We were too early in the process to clarify those things and that's why I think we come to the same conclusion because now more information was available to everyone. The parking on this is minimal because it parked as an assisted senior living not as a residential project. We are very careful and planning was very observant, park low level which is appropriate for an assisted senior living project because 90 plus% of the residents do not have cars, the parking is for visitors and staff to attend to the senior citizens.

>> Commissioner Zito: When you first came to us I believe the project was -- you were asking for a general plan change to commercial now it's public quasipublic. Does that change in any way your ability to carry out the function?

>> No. In further discussions and dialogue with planning staff we wanted a designation that would allow assisted senior living from day one and then in further discussions with them we came to the consensus that public quasi-public is the best designation, to protect this property from becoming a Walmart if it were general commercial if you will, I don't know if I'm misspeaking, something along those lines. So therefore, we wanted something that we could be achieving assisted living but protect the city that the use would be long term appropriate. Again more information was available, better decisions were made.

>> Commissioner Do: Thank you Mr. Caruso, motion to close public hearing, all in favor? Okay so I'm assuming there was nothing for staff to -- unless there are additional comments from staff, Commissioner Zito.

>> Commissioner Zito: Well I'll let -- if staff has any further comments first, I don't know.

>> No, the applicant was correct. The original scope of the general plan amendment was for designation that staff didn't feel was appropriate and after further analysis and additional information, locating the development below the 15% slope line, in a very specific area, and to public-quasi-public has us supporting the amendment.

>> Commissioner Zito: So for clarification and for the benefit of the commission and maybe the public, with the PQP designation, what could they build, in other words let's say they get the change in general plan and for whatever reason they don't build it. What could go there?

>> Public quasi-public allows museums, government offices airports hospitals things of a public nature. So any sort of use that falls in that category.

>> Commissioner Zito: Okay. If an assisted living facility again for some reason isn't built there and somebody wants to build a school there or a church there would a new tract impact study have to be performed for each use?

>> That would be correct. When it came to the point of the zoning stage the specific development would be analyzed for exactly that specific use because a church for instance would have a differently operational traffic operational analysis than an assisted living facility.

>> Commissioner Zito: Okay. And staff, it sounds like when it first came to us like I said staff wasn't too crazy about it and now I guess you concur with the applicant as far as, you know, by defining the 15% slope line, by reducing the size of the developable area that's what really made the difference is that pretty much?

>> That is correct and the designation change from commercial which allows a wide variety of things to public quasipublic so this is more narrow.

>> Commissioner Zito: This is more like a hospital that's why it's a PQP?

>> That's correct.

>> Commissioner Zito: It's a for profit but it fits because it's more of a hospital type scenario?

>> Yes.

>> Commissioner Zito: Thank you.

>> Commissioner Do: Thank you, Commissioner Zito. There are no other speaker lights.

>> Commissioner Zito: Ready to make a motion?

>> Commissioner Do: Please do.

>> Commissioner Zito: Okay so my motion is to consider the draft negative declaration in accordance with CEQA, recommend to the city council the approval of the GP amendment, request to change the San José 2020 general plan land use transportation diagrams, use designation from a nonurban hillside, Silver Creek planned development residential community, to a public quasi-public planned development residential community on a three acre portion of the 21.1 acre site as recommended by staff.

>> Commissioner Do: There's a motion and there's a second. No speaker lights. Let's vote by light. the motion is approved, unanimously. Next item on the agenda, which is item 5B, GP ten-01-01. General plan amendment request to amend the San José 2020 general plan land use/transportation diagram to add a neighborhood business district overlay to the Winchester boulevard generally from Stevens Creek boulevard to Impala drive. Staff.

>> Thank you, Mr. Chair. In this case I'll be doing a very brief staff report. This amendment was applied for by the redevelopment agency after they did a community based process for a Winchester enhancement strategy working with property owners and other neighboring businesses and residents. The goal here is to promote more business development along the Winchester boulevard corridor and so with the NBD overlay would come all of the other benefits that come with neighborhood businesses such as reduced parking requirements for certain ground floor uses and other benefits associated with signage. We did get one comment from the public that was distributed to you regarding signage, and that was placed to you. The same individual also submitted similar comments, as regards to the negative declaration. The sign issue was evaluated in the negative declaration, so the comment is not raising any new issues, and the negative declaration has now been adopted. This concludes staff's report.

>> Commissioner Do: Thank you, director. Since the city is the applicant, is there anybody from the RDA -- you just spoke on behalf of the city is that correct?

>> Laurel Prevetti: I don't believe anybody from the agency is present. We do have two speaker cards though.

>> Commissioner Do: Please come down to the bottom of the stairs as I call your name, Robert Atkinson. Second is Vince Nguyen. Please come down to the bottom of the stairs. Please state your name, you have up to two minutes to address the commission.

>> Good evening, my name is Robert Atkinson, I represent Sy West development and Syufi development. We are the owners of the theater site located on Winchester boulevard. We strongly support the NBD for Winchester boulevard and have been working closely with staff on a concern we have regarding parking. The proposed restaurant parking ratio is 1 stall per 400 square feet of restaurant, which is 90% less than the current ratio of 1 stall per 400 feet of restaurant. So the restaurant issue represents the 90% reduction, while we believe and support changes to the restaurant park ratio, we believe the changes should be more consistent with some of the neighboring communities, that base their ratios on both the square footage and a seat count. We believe this approach to the ratios would help minimize potential parking conflicts that could occur between adjacent commercial properties or commercial properties in residential areas. I spent the better part of today driving some of the NBDs and there was actually very exciting to see what has occurred in areas that have developed. I did talk to some restaurant tenants, and knocked on a few doors and spoke to a few restaurant managers and at rush hour there are some challenges and we believe that by working with staff, as we have, that some thoughts and adjustments and alternates on that 90% reduction in the restaurant parking, something that's more consistent with the neighboring communities, would be more beneficial to this particular NBD. Thank you very much.

>> Commissioner Do: Thank you, sir. Thank you. Next speaker, please. Mr. Nguyen. Please state your name and you have up to two minutes.

>> My name is Vince Nguyen. To the commissioners, staff, I am one of the owners of the commercial plaza where it is located on one side the movie theater and the other side the Toyota. And I'm coming here to wholeheartedly support the measure. I will provide an example, a living example, to support what Mrs. Prevetti has just said. She told us that the adoption of this measure is going to increase to make the area more prosperous and more specifically to increase the job and the sales tax. I will provide one living example. In our plaza which last the name first century plaza, there are units right now that are not leasable because we didn't meet the park requirement. If this measure is adopted you know the two units will be leasable, and in terms of chart, I can estimate that each unit is going to create four jobs. So three times two, I'm sorry, three times four, that will be 12 more jobs. And talking about a sales tax, I would assume that out of the three, two will be retail. And a day, \$500, a month, 15,000, a year \$180,000, about \$17,000 for sales tax per one unit. So that's about 37 for both units. So I am here to wholly support the measure. Thank you.

>> Commissioner Do: Thank you, Mr. Nguyen. Motion to close public hearing? All in favor? That is -- okay, great. So staff, any further information on this? Director.

>> Laurel Prevetti: No, thank you.

>> Commissioner Do: Okay. Any questions from the commissioners? I just have one quick question which is, what is unique about this district that subject it to this change in zoning? In the sense that I mean I drove along there, and I mean if it were a true transit corridor, it would have been -- I could very well see that. But there is a bus or more than one bus line along there but it's not on a light rail, it's not on -- or anything like that so can you clarify on that issue please?

>> Laurel Prevetti: Certainly. The last time we did a general plan update Winchester boulevard was identified as an intensification corridor which meant that the city saw that there was potential for more commercial businesses to come along the street. And in certain instances a little bit of mixed use development with residential. At a later point the city council decided that the term intensification corridor might be a little bit scary to neighbors. And so the council changed the name of all the intensification corridors to transit oriented development corridors, whether or not there was planned or existing light rail service at the time. Subsequent to that, we've done the strong neighborhoods initiative, this area is within the strong neighborhoods initiative, and part of the improvement plan for that area identified the need for an enhancement strategy to essentially create a very precise economic

development strategy for the corridor. It was through that community based process that the businesses thought that there would be tremendous benefit to them if they could be an NBD. As we look forward with the general plan update that's currently under way that some of our commissioners are involved in, we see that we will be probably doing future corridor studies and village planning, so we're -- this is kind of the trend that we're starting to see. And so while the tool of the NBD is a little bit cumbersome and maybe not tailored to all of the precise needs of the community, it is the tool that we have today.

>> Commissioner Do: Thank you, director. Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. Staff could there be potential years down the road maybe even decades down the road that this could be a candidate for bus rapid transit?

>> Laurel Prevetti: Absolutely.

>> Commissioner Campos: I'm prepared to make a motion.

>> Commissioner Do: Please do Commissioner Campos.

>> Commissioner Campos: That we consider the negative declaration in accordance with CEQA, that we recommend to the city council the approval of the general plan amendment request to amend the San José 2020 general plan land use transportation diagram to add the neighborhood business district overlay to the Winchester boulevard area as recommended by staff.

>> Commissioner Do: Thank you. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. If the commissioner could address the one speaker's question about zoning codes for parking.

>> Laurel Prevetti: The zoning code is the place that contains our parking standards, not the general plan. So the parking standards really is not an issue before you this evening. However if the council were to place the overlay on this property, then the parking standards in the zoning code would apply to this area. And the minimum park standards are reduced in the NBDs for certain ground floor uses including restaurants, some retail, et cetera. And they are minimums. So again, oftentimes staff has a difficult time having property owners go to the minimum, oftentimes property owners want to do more parking. And so that's constantly the struggle. We have other provisions underway that may modify those parking standards but again that's really not the item before us this evening.

>> Commissioner Zito: So one recommendation would be that when it does get discussed, that the discussion of joint parking agreements be considered, and maximize the use in that regard?

>> Laurel Prevetti: Yeah, again we don't have a zoning, a pending zoning ordinance that would mandate that kind of joint parking. But I think as the council moves forward with future parking discussions, I think we're going to see probably some significant changes in that area. But we'll be happy to pass along the commission's comments to the council.

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

>> Commissioner Cahan: Thank you, Mr. Chair. And look at the e-mail that we received about signage, I was hoping that we could also suggest that the signs be clear, as well as not clustered. Talking about the concerns that this person had with about some signs being blocked currently and some being includes period. And I just wanted to be sure that the signs that we do allow would be appropriate to the area.

>> Laurel Prevetti: If I may Mr. Chair.

>> Commissioner Do: Please, director.

>> Laurel Prevetti: The zoning code also and the sign code has very specific provisions for signs. So what the writer of this e-mail is identifying is an existing condition, and most likely, some of the signage that she is observing is not in compliance with the sign code. And so as businesses come forward, to our permit center asking for sign approvals, we work with the business owners to make sure that all their signs are in conformance. So again, we'll be working with the future businesses as they do put their signs up. Thank you.

>> Commissioner Cahan: Thank you.

>> Commissioner Do: Thank you, Commissioner Cahan. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Director, if I could ask, the parking in neighborhood business districts may be lowered based on an assumption that neighborhood business districts see an increased use of pedestrian accesses of neighborhood businesses?

>> Laurel Prevetti: That's true and you know each in our suburban neighborhoods we do find people are walking more. Or bike riding. And as we implement our bicycle master plan and more of our pedestrian improvements, even the adjacent, more typical suburban areas would see an increase in walking. So those -- these are parking standards that have been in place for even NBDs such as Story Road which is also a very busy street, Willow Street, and other places not just like the Lincoln avenue type of NBDs.

>> Commissioner Jensen: And given that Winchester is more aligned with perhaps the story and king type intersections in terms of volume of traffic than Willow Glen, it's reasonable to assume that there will be a significant traffic impact and parking impact on the businesses?

>> Laurel Prevetti: Again we did a negative declaration and a full initial study that should have been provided to you. And the consultants found no impact for parking or traffic.

>> Commissioner Jensen: Okay, all right, well I'm going to be supporting the motion. I just would like to recognize that a neighborhood business district along Winchester is not the same as a neighborhood business district along Lincoln avenue.

>> Commissioner Do: Thank you, Commissioner Jensen. There are no further lights so let's vote by light. The motion is passed unanimously. So moving on to item 6A. GP 07-10-01. General plan amended request to change the San José 2020 general plan land use/transportation diagram designation from very low density residential, two dwelling units per acre, to medium low density residential, five dwelling units per acre on a 1.82 acre site located on the east side of Almaden expressway Approximately 300 feet northerly of Fleetwood drive. staff.

>> Thank you, Mr. Chair. Planning staff is recommending approval of the proposed general plan amendment with a staff alternative land use designation of five dwelling units per acre on 1.38 acres and private open space on .44 acres of the site. A development on the site at eight dwelling units per acre as the applicant has requested would not achieve compatibility with the existing surrounding land use patterns. Therefore we're making the recommendation for five units to the acre, with private open space on the riparian setback area as the site is adjacent to two creeks, Golf creek and Los Alamitos creek. The change, as staff recommended the 5 units to the acre and private open space would facilitate infill housing development within an urbanized area that's compatible with the development pattern of the surrounding neighborhood and is consistent with the setback guidelines of the riparian corridor policy. This concludes staff report.

>> Commissioner Do: Thank you. Is the applicant here? Please come to the podium. You have up to five minutes to address the commission.

>> Excuse me sir?

>> Commissioner Do: You have up to five minutes to address the commission. Please state your name, sir.

>> First of all, my family wants to thank the Commission, we started this path approximately three years ago, to get this approved, and we agree with the staff on the recommendation.

>> Commissioner Do: Thank you.

>> Thank you.

>> Commissioner Do: Thank you sir. Let's see, there are two speaker cards. Tom Mazone.

>> That's me, sir.

>> Commissioner Do: Thank you, sir. And Nancy Wilson. Please come to the podium. Thank you. Please state your name and you have up to two minutes.

>> My name is Nancy Wilson. I live at 1085 Mazzone drive. I am a home other than adjacent to this proposed development. And I am also on the board of directors of the Almaden hills estates homeowners association. I'm opposed to the recommendation by staff for a number of reasons. I'd like to say overall that the whole development of this project, or this new subdivision, office subdivision, has, in a word, been dicey. This is a property that is, right now, agricultural and rural in nature with farm animals. And it's surrounded by Los Alamitos creek trail and golf creek and so there are creeks surrounding the majority of the property, with Almaden expressway as the frontage. And the -- the proposed development is really based on a -- what is called a conceptually resolved issue of access which in my mind has not been resolved. There is -- in order for this property to be developed there has to be a way to access it. And this has been a major problem within a number of the different neighborhoods and communities trying to decide how these various properties maximize their development, and then also have access. I happen to be on the corner of cross springs drive and Mazzone. The proposed access for this property would be approximately three 90-degree turns to get over a proposed bridge over a creek to get over this property that is on paper shown to be 1.8 acres.

>> Commissioner Do: Ma'am, I'm sorry your time is up.

>> But it's only .89 acres. Because of the power lines and the real usability.

>> Commissioner Do: Thank you for your comment. Your time is up, ma'am, thank you. Okay, let's see, there's one additional speaker card, one additional speaker, Alex Fraser. Please come to the podium. You have up to two minutes. Good thank you, appreciate the opportunity to address this issue. I'm also from the Almaden hills estates homeowners association. As you know the proposed access and one that we support is that this development will go through our neighborhood. There's no other in or out. It goes all the way through our neighborhood and that's its only access. So we become a major player in this development, in essence they become part of our neighborhood. We support the staff's recommendation of five units per acre. That's consistent with our neighborhood and the surrounding area. We feel that that's appropriate. Eight units per acre is inconsistent with our neighborhood and also puts a lot of pressure on the surrounding environment which as Nancy mentioned is very rural. It's right up against the creek and those sorts of things. So our position is that we support five units per acre. We don't support eight. Thank you.

>> Commissioner Do: Thank you very much. Sir, please come back. Commissioner Kamkar has questions for you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Fraser, I thank you for your testimony and I just want to applaud you you know for stepping out and mentioning this. Because access has been the issue all along.

>> Yes.

>> Commissioner Kamkar: And you know, I think you're taking the high road by saying you know we realize the best access would have to be from that neighborhood and you know save everyone a lot of grief and I just wanted to acknowledge that. And five units to an acre makes sense, it's pretty compatible to the neighborhood so I just wanted to recognize you for doing that.

>> Thank you. You know nobody wants more traffic through their neighborhood obviously I mean you know, if we controlled the world we'd say no more traffic but --

>> Commissioner Kamkar: There is no other choice.

>> The Mazzone family has a piece of property, we understand that we're good neighbors.

>> Commissioner Do: Thank you sir. Mr. Mazzone, the applicant, do you want to make any rebuttal statement? You have five minutes. Thank you very much. Motion to close public hearing? All in favor? Staff? Any additional clarification?

>> Thank you, Mr. Chair. I just wanted to say that staff has worked carefully with the Santa Clara County roads and airports department with access to this site and the three other sites that are to the south off of Fleetwood Drive, and it was determined that access from the expressway was not feasible and therefore this project would need to access through Mazzone drive from the north. And then in addition, there is a PG&E easement that's nonbuildable on the property, so the five dwelling units per acre would be clustered in sort of the Northwest corner of the property with the riparian setback obviously provided. That concludes staff report.

>> Commissioner Do: Thank you. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Couple of questions. First of all are there any creek trails planned for that Alamos creek or the golf creek?

>> Thank you, Mr. Chair. There is not a creek trail on this side of the creek. It's actually on the opposite side of the creek. There is a Santa Clara Valley Water District maintenance road that runs at the back of the property. The Santa Clara Valley Water District actually owns the property and has some equipment in the parcel immediately South.

>> Commissioner Zito: Okay. Now you just said that access to this property is going to come off of Mazzone?

>> Correct.

>> Commissioner Zito: And that means you're going to be cutting through the public park and open space to get to that property?

>> Well, if you look up at the map, Almaden road would be basically brought across to the property, it would go across Golf creek and onto the property.

>> Commissioner Zito: Is that going to be a separated road from Almaden expressway?

>> Yes.

>> Commissioner Zito: It will be almost like a frontage road?

>> Right and part of that road is actually already there.

>> Commissioner Zito: Just extend it, okay. If we wanted to do, let's say 50 to 75 foot of frontage on golf creek for riparian instead of just the 30, which is the bare bare bare minimum, how would that change the numbers? Because right now it sounds like you've got .44 acres that's riparian setback. If you went to 50 or 75 feet, to make it consistent, would that change that number much?

>> Yes, it would. If the setback was increased they'd more than likely have to lose units because of the increased setback. It is important to note that golf creek is basically concrete with sort of like chicken wire. It's not an actual viable riparian in its current state.

>> Commissioner Zito: Is it a culvert, is that what you're suggesting?

>> Currently a culvert but the whole creek itself is basically -- there's not really any vegetation. It's concrete chicken wire.

>> Commissioner Zito: So how is this application or this development going to improve that?

>> At this point, from what we know, the Water District maintains the right to allow a property owner to do mitigation in that creek. And at this point they are not allowing that mitigation to occur. The Water District is reserving it for its own mitigation at this time.

>> Commissioner Zito: And is the Water District okay with just 30 feet?

>> I don't know that at this point. As this is just the general plan amendment and the 30 feet is what we've determined is the perfect for the riparian setback.

>> Commissioner Zito: If we GP 30 feet then that's all they're required to do, right?

>> Right, that would be the minimal, at the PD zoning stage you could obviously always require more but we're saying at the general plan amendment stage at the minimum it has to be 30 feet, that's why we're requiring that that 30 feet stays there.

>> Commissioner Zito: Right but I want to be clear, because we had an issue on San Felipe road where we GP'd 50 feet, and when we tried to get more, they said huh-uh, we don't want to do more, we were compliant to GP, and that's all we're doing.

>> Commissioner Do: I think the director wants to make a comment.

>> Laurel Prevetti: If I can just say as we go forward with the zoning stage we'll be in additional communication with the Water District and so if the Water District determines that we need additional land then we'll handle that through the planned development zoning process. I appreciate the commission's experience with some past projects in this case we're trying to balance the appropriate ability to make sure we've got riparian protection. But then also, that it's tailored to the condition of the creeks that are in this area.

>> Commissioner Zito: I understand. My only concern is that again, if staff could allay my concerns that we make it minimum 30 feet and we can at the zoning stage require let's say 50 feet, and that the applicant doesn't have the right to say no, I don't want to do 50 feet, I want to do 30 because the GP allows me to do only 30, then I'm okay with that. But if the GP sets the standard and we're stuck with that then I may have some reservations.

>> Laurel Prevetti: It's the general plan goals and policies as it pertains to riparian areas and biotic resources together with the city's adopted riparian corridor study that guide the appropriate setbacks and we've had study sessions about how we determine what the appropriate width should be. So in this case, staff has done the analysis and has identified 30 feet to be appropriate for what is essentially a culvert. In most other communities wouldn't even require anything close to that amount of space. We're trying to balance that with also the PG&E consideration in the second creek and still have a viable residential project, where there can be some investment. So I think it would probably be unrealistic for the commission to have an expectation of this one going all the way up to 50 feet, at the zoning stage we have to have a reasonable expectation in relationship to what it is we're requiring and we feel 30 is consistent with the city's established policies.

>> Commissioner Zito: So if the Water District comes back and says we want to do something different there's not much they can do with it if we approve 30?

>> Laurel Prevetti: The Water District, as -- as we're kind of a party in interest in terms of how those corridors are handled, if they have a need for additional land for some kind of mitigation program or they've got some other kind of improvement that they need to do, then we would work with them at the zoning stage to make sure that, again, that either their -- they've made some arrangement with the property owner or through the zoning we've identified

a appropriate condition that has reasonable nexus that we can actually ask for it. But again the item really before you is really more of a general plan amendment, what is the correct density for this property and really, just the motion, the introduction of additional green space on the property is staff's indication that we are trying to support our riparian areas to the maximum extent extent possible.

>> Commissioner Zito: I understand and I appreciate that. Just wondering if we've allocated enough of the property to designate for riparian to cover all of the different conditions, and that's why I asked the question right now I appreciate staff doing this, delineating that 1.38 and the .44 for riparian. And I was just wondering if that's going to be enough given the fact that we haven't really had full dialogue with the Water District on this. And I do understand, and respect the fact that it's not really a creek, it's more of a culvert. But I guess when it gets to the zoning stage, then the Water District tends to be late to the party a lot, and causes -- it can cause an issue.

>> Commissioner Do: Thank you, Commissioner Zito. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. I'm ready to offer a motion.

>> Commissioner Do: Please do.

>> Commissioner Kamkar: Okay, so consider a negative declaration in accordance with CEQA. Recommend to the city council the approval of a proposed general plan amendment with alternative land use designation of low density residential, five Dwellings per acre on a 1.38 acres and private open space on .4 acres as recommended by staff.

>> Commissioner Do: I think there were misannouncements of the words, for example, .44 acres, but I'm sure the record would be reflected correctly. So let's vote by light. Okay, the motion is passed unanimously. Moving on to the next item, item 6B. GP 09-08-01. General plan amendment request to change the San José 2020 general plan land use/transportation diagram designation from public quasipublic to medium low density residential, 8 dwelling units per acre, on a 3.2 acre site located at the southeast corner of Yerba Buena road and highway 101. Staff.

>> Thank you, Mr. Chair. Planning staff recommends no change to the general plan land use designation on this site because it's inconsistent with the goals and policies of the San José 2020 general plan and that a land use on the site would not direct growth away from the hillside, it would create a visual impact affecting properties in public places including the visual and aesthetic scene as viewed from the urban through way that traverse the city, and in addition 1995, a general plan amendment was approved on the site that changed the land use designation from nonurban hillside to public quasipublic for a church use. This land use was appropriate given the lack of land designated for public-quasipublic uses, and it was concluded that a church use would be of low intensity and could be designed to protect the scenic views of the hillsides. Therefore, any land use change should only be to convert the site back to its original nonurban hillside designation. For the reason stated, planning staff is again recommendation the Planning Commission forward a recommendation of no change to the city council. This concludes the staff report.

>> Commissioner Do: Is the applicant here, Mr. de Young.

>> Good evening, Mr. Chair, Jerry de Young, speaking on behalf of the owner and applicant. You notice I took my tie off, I tried to change my appearance a little bit since I have to speak to you on two items that the staff doesn't support. So I'm trying to figure out a creative way to change things up.

>> Commissioner Do: You should wear a mustache.

>> Let me start things off by commenting about the staff. Leslie Xavier has been working on this project with me for a long time. She's put up with my constant, could we do this, could we do this, could we do this, could we do this. She's been very professional, she's politely said no, she's politely said lots of other things, so I just want to acknowledge this because oftentimes we don't oftentimes stand up here and acknowledge the staff particularly when they're suggesting that they don't support our application. So I want to do that. Also, having done that, I do want to raise an issue that has to do with how things happen sometimes. You probably wonder, why do applicants

finally decide to stick their oar in the water, I have five minutes now and five minutes later, I will actually break the presentation because I want to make a couple of key points here. In 2005 the owner has approached the city about the possibly of changing the designation on this. They submitted a prelim. The prelim was for something much more intense than this. The response was the Evergreen visioning study was going on so they couldn't do anything then, B, that the project would need to conform to the applicable general plan policies, but that the planning staff would consider the use of surplus public quasipublic alternate use in order to designate a use of 8 to 16, it goes on a little bit more with some outstanding things with landscaping that was very appropriate. They said a planned unit rezoning would need to be applied for and goes on to further permits. In 2005 since the applicant couldn't actually make a submittal they decided to wait. In 2007 we began to have a conversation in anticipation of the Evergreen policy being completed. We were all hopeful at that point in time, that we could start to have a conversation. In that conversation, we engaged the staff in a discussion about what could occur here, clearly and I was part of this in the late '90s and early 2000s we got approval for a church on this site. And we started talking about well look, we do residential and a church. The church that was approved here was for a 1200 seat sanctuary. I'm going to show you pictures of that in a minute hope to make the case relative to visual impact of certain land uses but we worked through the period. In 2007 we were working with them. In 2009 as you know and later 2008 the city council finally made a decision relative to Evergreen, the policy of not allowing application to be off and we filed an application. Since early 2009 we've been continuing to discuss with the staff, opportunities to show how this site could be developed. Unfortunately we couldn't convince them the error of their ways so here we stand tonight. Let me do a very quick visual analysis here for you because I think visual analyses are important when staff is talking about visual impacts. Oh, the heck with it. As you -- let me just to go up here to the site, if you're not familiar with it, and kind of put a context to it, the freeway offramp, just to make sure that you understand that the subject property is this entire piece, however, this piece here probably has an oops on it and that oops is it's already general planned eight dwelling units per acre. So that's why it's actually not included although it's part of the property. The part of property is actually, the property ownership actually goes up the hill. We're recognizing it's above the 15% slope line so we're moving forward. Staff talks about relatively 1995 when the general plan was made, changed this to public, quasipublic, relatively speaking this is what it looked likely. Clearly part of a hillside that at the time was intended to be protected by the city through its growth development policies. Relatively speaking, today and I apologize for the graininess of the photograph but relatively today this is what it looks like. As you know the ranch is on the top of the hill, there is golf course, there are homes that have been built over here, this is about north of capitol expressway to demonstrate that that hillside in its native pristine circumstance doesn't exist anymore. City council through it's infinite wisdom did a policy change and said yes it could be developed.

>> Commissioner Do: Mr. de young, you have about 20 seconds left. You can choose where you would like to break it.

>> I apologize, I didn't take the right side, the correct side, but when you get closer to it you see this is the site and above the site is residential unit at approximately eight dwelling units per acre. With regard to the other visual impacts there is a picture of some development in Evergreen that at one time was pristine hillside, we didn't want to ruin the hillside, we didn't want to have visual impact as a practical matter that is what exists today in conformance with city policies. I will stop my presentation and come back and finish at the latter part. Thank you.

>> Commissioner Do: Thank you, there are two speaker cards, Ann Green and daisy Chu. Please come to the bottom of the stairs. Both speakers come to the bottom of the stairs. Ms. Green, please state your name and you have up to two minutes.

>> My name is Ann Green and I'm one of the owners of the properties between -- along 101 between Yerba Buena and Hellyer. Two of us are here tonight of the owners that actually live on the hillside. There's only one other owner that lives on the hillside. There's a problem that I foresee about this. I live up this hill and the property as he showed his diagram before that went all the way to the freeway that included the house that is now graffiti'd almost daily with the crucifix there. There's a lot of transients that come up our property. People can throw a match on the grass is this tall, the poison oak is from this tall, onto that that area that we drive through to get up to our property. And when I was reading your things that talk about the neighborhood policy, it says the development should be designed to improve the character of existing neighborhoods, the existing neighborhoods, is it an ag or is it the hillside, that's my question? The other thing is if we want to have people walk through this area, which is fine with me, I want to have it safe, I want to have fire hydrants above so when a cigarette but gets thrown and it

goes up on to properties that is a dirt road that it doesn't burn down my house like it burnt down Jerry fullmer's house, it went up and burnt his house down.

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

>> Good evening, chair Do and commissioners. I am daisy Chu, former San José small business development commissioner. I'm here this evening to speak for this project, dove hill road general plan amendment. The developer, Mr. Joey Lo, wife Frances and son Victor are good citizens in the community, they are strong supporters of local charities, they're involved in community based organizations. They're very much involved. And why I'm asking you to approve the project not because they are good people, because they are ready to start a project, they are ready to provide jobs during this difficult time to boost the economy and they're ready to help us. So I'm asking you to approve the project and I thank you.

>> Commissioner Do: Thank you. Thank you. Mr. de Young.

>> My, how five minutes goes by quickly. Okay. So I was at the presentation about what's there. Let me talk just very briefly about the visual impacts. This was the photosimulation of the church that was going to occur on the site, unfortunately it didn't happen. This was from the freeway, this is from Yerba Buena road looking back to the site, from the residential area. That's what the residential area would have seen. I show you this picture because this is in the adjacent backyards and while you play not be able to distinguish this the church required to have two 20-foot high walls just basically on the other side of the creek. So there was a visual impact that was created by the church. There will a visual impact created by any other church that were to go there if this general plan amendment were to not be approved. The staff also talks a little bit about preserving public quasipublic for churches. In Evergreen I can tell you just for some quick analysis that the asterisks in black are churches. None of those are -- one of those are located on a public quasipublic site, and it is right adjacent to the foothills, it's the last piece of land that's going to be developed. And there probably was like staff in 1995 said we shouldn't general plan this residential because it's right up against the urban hillside. That might have been the case for this site in 1995. But it certainly isn't the case today. I do want to say that when this was anticipated to come before you in December, November, December last year, I had a meeting with the district 8 round table and briefed them on this particular proposal. And told them that notwithstanding the fact that we were asking to change the general plan to residential, that didn't preclude a church. The point that I made in my diagram is that many churches are located in residentially zoned and general plan district so it doesn't automatically foreclose the possibility of this site being used for a church. Admittedly it would be a smaller church. At the time in October I was told that the district 8 round table would support the general plan designation to eight dwelling units per acre. Throughout the early part of this year into a few weeks ago I communicated with the district leadership of the district 8 round table and they told me that they maintained the support for the project with one caveat and that caveat is one that you will understand and that is that they were concerned about an opportunity that someone might take as to zone the property for all residential, build the same number of residential on half the site, leave it available for a small church, come back 15 or 20 years later and try develop it for additional residential. That has been tried in Evergreen. It's also failed in Evergreen. And I think there are now policies that have clearly been set out in the Evergreen development policy and others to free concluded that from happening. I also think from the zoning process we can preclude that from happening. So the message that I want to leave you tonight is a recommendation of approval to change this to eight dwelling units per acre does not automatically mean that there won't be a church there. It doesn't mean that there will be only residential there. It means that it provides the opportunity, through a rezoning process to determine what's the best use of the land. And so I would ask for your recommendation for approval of this, this evening, and Mr. Chair, I will answer any questions you have. Thank you.

>> Commissioner Do: Thank you, thank you Mr. de young. There are no speaker lights so that's all Mr. Young. Thank you. Motion to close public hearing?

>> Commissioner Zito: So move.

>> Commissioner Do: All in favor? Staff any further clarifications?

>> Thank you, Mr. Chair, just real quickly. I did want to state that this site is not surplus public quasipublic property as the use was never actually developed on the site so there's no opportunity to demolish something and reuse it for something else. So there was never development on the site. In addition the public quasipublic general plan land use designation would provide an opportunity for a single structure on the site with architectural interest as opposed to multiple single family homes that currently dot the hillside. Similar to the other amendment we heard tonight on the opposite side of dove hill road that the public quasipublic would provide that opportunity to provide one structure of interest that would be acceptable as opposed to just having hillside there.

>> Commissioner Do: Thank you, just very quick question. In recommending a no change to the general plan at this particular site, what possible future uses do staff hope that may occur at this site? Could you talk about that? I mean is it a church or is it some kind of a more truly public in the sense of like a fire station or something like that?

>> Thank you, Mr. Chair. The current zoning for the site is to allow a church. So that would be the allowed use at this point. And then that's the general plan designation again it could allow something like the assisted living facility, it could allow a museum, it could allow a school. So anything in that designation would be appropriate.

>> Commissioner Do: Thank you. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. As most of you know, I'm a resident of district 8 and a member of the District 8 community round table. Mr. de Young did come before us to make the presentation and he accurately stated the concerns. It has happened in the past, in Evergreen and I'm sure in other parts of the city where it was a density that was proposed, that number of units was built on a specific portion of the land, another portion of the land was held and then somehow they came back and was able to build on that. From what I hear there are safeguards in place that that can't happen. So if this were the will of the commission to approve the applicant's request, that would be one of the recommendations or comments that I would make to go forward to the zoning, that that not that we preclude the capability of doing that to front-end the homes and make 2,000 square foot lots and then you know just for the possibility of building a church and then have somebody come back later on and decide to change that. My question with staff is essentially, I've looked at this a number of times, I've visited the site a number of times, I drive by that quite often. I just don't understand really away we're trying to -- what's the problem we're trying to solve by keeping it the way it is. It seems we've allowed it to occur up and down 101. If you look at the diagram just on the front of staff report there's houses that would abut this particular community. It -- to me it just seems like it's a natural progression and there's enough buffer to 101, if you look where the property line ends there's probably what, at least a couple hundred feet between the property line and the actual freeway itself? So I guess I just don't know what we're trying protect. I mean if it's truly trying to preserve -- to land bank for a church, like the applicant said, you know, a church can go there. I just don't -- I'm just trying to see what's the benefit of not allowing the application to go forward.

>> Thank you, Mr. Chair. I would like to comment that the adjacent residential development, staff was not supportive of putting that on the hillside. And in addition, the public quasipublic land use designation there aren't many spaces in the city with that designation and churches are often having a hard time locate because there is nowhere actually designated for them. They can be allowed they are allowed in single family residential districts but finding spaces large enough for churches is difficult and they often look to industrial buildings to find that space so having that land available is important.

>> Commissioner Zito: Has staff seen or had requests come to them for that particular use? Is somebody come up and say hey I'm really looking for 20 acres to build a church or whatever, you know is that something that's truly been in demand?

>> Laurel Prevetti: It is actually Mr. Chair if I may even through the general plan update process we've had interested pastors and other places of worship, wondering when are we going to get on for planning for places of worship in the general plan update. These are pretty precious opportunities and while the applicant's representative did mention that a church can occur in a directionally designated area once the general plan is changed to residential it does raise the land values, making it far more difficult for a place of worship to actually locate in a residentially designated area. I think staff adequately did mention the importance of the public-quasipublic as well as the importance of our hillsides. So while council may have differed in the past with staff's

recommendation in terms of appropriate hillside development it doesn't necessarily mean that we want to continue down a path of doing more of the same. Thank you.

>> Commissioner Do: Thank you director.

>> Commissioner Zito: Additional question. I'm looking at the general plan designation for that area the second page, and noticed there's nonurban hillside, but it says on that I guess you could call it a stab tan spot there and there's some parcels that are closer to the freeway. Those other parcels that are closer to the freeway where the word dove in dove hill is written, are those -- and then you look at the zoning and you've got the teal color over there, are those developable parcels?

>> The nonurban hillside parcels or --

>> Commissioner Zito: I'm looking at --

>> Or the more orange colored parcels?

>> Commissioner Zito: The light orange I guess but if you go down to the zoning there's that teal, there's two parcels like a bigger -- combined they're about the same size as this site.

>> Laurel Prevetti: Just for clarification is that AP 99-028 or whatever? So it looks like it's a planned development zoning.

>> That's actually part of the entire site. The church was part of the site we're talk about and the teal section, it encompassed that entire area.

>> Commissioner Zito: So the church can go on that part?

>> The specific, the specific on the nongeneral plan is not original hillside.

>> Commissioner Zito: The zoning, that teal color, basically what you're telling me is that could only be a parking lot?

>> As approved on the planned development zoning as it exists right now, yeah.

>> Commissioner Zito: Okay, is there anything that would preclude it from being the church site?

>> Other than the fact it's designated as non, on the project plan.

>> Commissioner Do: Commissioner Zito do you have many more questions?

>> Commissioner Zito: No I'm good for now.

>> Commissioner Do: Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. Actually Commissioner Zito asked all the questions that were going through my mind. And I guess -- well, you answered them because to me the previous project that we dealt with a few years ago, I mean it provided the same in my opinion dilemma that we have. Now you have a hillside, that had no development, in that particular case it was actually used as a dump, you know, because they stored a lot of vehicles there and that's going to be an improvement. But now you have a structure that will be going on there and so I look at this as the same way. You have a structure that will be going on there. What makes a church structure visually more appealing than a row of houses like you already have on the ridge? I can't see the difference. I think that using some of the provisions that Commissioner Zito talked about, making sure that we restrict any additional units onto the entire property, would be something that would be appropriate, as part of a motion. So I am going to make a motion, that we consider the draft negative declaration in accordance with CEQA, recommend to the city council the approval of a general plan amendment, request to change the San José

2020 land use transportation diagram designation from public cause eye public residential. To medium low density residential, as recommended by the staff, as recommended by the commission. I just want to go here on the staff report, it says a lot. Okay, that's the site. And you want to preserve a hillside, you know the views of the hillside from the valley floor. But you already have a row of houses there. So I think the opportunity passed with the approval of, you know, the Silver Creek area up here. And so You know I think that to allow the applicant to continue with what they want to do with their property, in a way that it doesn't seem as intense that they could ask for, possibly, I think that, you know, here's an opportunity to approve this, and put restrictions so that, you know, this is it. The number of units that they're requesting. Thank you.

>> Commissioner Zito: I'll second that with a friendly amendment.

>> Commissioner Do: Thank you, Commissioner Campos. I think Commissioner Platten already seconded it.

>> Commissioner Zito: I'm sorry, I apologize.

>> Commissioner Do: Okay, Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. I'd like to go back to one of the questions that Commissioner Zito raised and maybe dig into it a little bit further. Director indicated that there are a number of church groups that have been making request during the GP process to identify lands for worship. This parcel has been available for the past 15 years so in the past 15 years, a church hasn't happened there and I'm curious as to why. And there are 17 acres total in Evergreen as stated in the staff report. Why aren't those being snapped up? Is it location, is it cost? Is it the size?

>> Laurel Prevetti: I don't have that level of detail. Oftentimes these are transactions between a property other than and a potential user of the land, so whether it would be through a lease or a sale. And I'm not privy to any of that information in terms of what this property other than may have been doing to secure someone to actually pursue and build per the zoning. I also don't know all the transaction history of this property, has subsequent to that zoning if the property actually changed hands, to a residential someone who has more residential aspirations. So there could have been a lot of other reasons that are more based on the private market forces as opposed to planning reasons and information that the public would have access to.

>> Commissioner Jensen: So it sounds like then for the place of worship it's not just a matter of the City of San José providing that land. But perhaps, finding a process to assist, and this is outside the scope of the commission, obviously, but if this property's been vacant for 15 years, with that designation, and we have all these places of worship clamoring for space, it seems inconceivable that they wouldn't have taken advantage of it.

>> Laurel Prevetti: And when staff does hear from potential places of worship that are interested in moving into San José, oftentimes they have their own location requirements, in terms of where their current congregation might be located or the market share that they're trying to attract. So oftentimes, you know, there isn't always an exact match. But we do indicate and provide copies of our general plan land use transportation diagram so they know where the mixed industrial overlay areas are as well as our public quasipublic and then oftentimes they have professional brokers to help them find the land. So we do our best through the policies that we have. You know, this is a particular set of circumstances that I don't know all of the detail, and again, you know, the item before you tonight is, should this property retain the existing designation or should it be changed to residential use?

>> Commissioner Jensen: Great, thank you very much.

>> Commissioner Do: Thank you, Commissioner Jensen. To piggyback on Commissioner Jensen's question, does the staff know whether there's a scarcity of land for religious assembly use in Evergreen or is there -- is it lower than average citywide, that may justify preserving the land for such use in the future?

>> Thank you, Mr. Chair. The only information that I do have is, the amount of land that's actually designated for public quasipublic on the general plan designation, on the general plan land use designation map. In Evergreen

it's approximately 17 acres total. Throughout the entire city it's more like 100 acres total. Those numbers aren't exact and this is from a land use evacuee from 2007.

>> Commissioner Do: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Mr. Chair. I have some reservations about changing the designation because of the cost issue that a church that wants to come in, if we change it then they may not be able to afford it any longer. And I was initially supportive of the idea until that point was brought up. And then I also was thinking about the fact that if you build part of it as residential and then leave some space for a church it's going to be a much smaller space that's available. And it may not actually be viable for many of the churches that would want to go in there. So at this point I won't be able to support the motion for those two reasons.

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

>> Commissioner Zito: Thank you, Mr. Chair. I just want to again bring up the riparian aspect. If it is the will of the commission to recommend an approval, just making sure that part of that is to respect the upper Silver Creek riparian to the extent necessary. I see on the general plan diagram, on page 2, it's a fairly narrow strip and I guess it doesn't make sense to really go much wider than that but just to ensure that that's at least that level of respect is given.

>> Mr. Chair if I may I'd just like to clarify that that's a concrete channel at that location.

>> Commissioner Zito: Yes, and it goes under the street, goes under Yerba Buena to the other side. Just to address Commissioner Cahan's concerns if I could. I would not be supportive of the motion if in fact they did say oh, we're only going to build at eight units to the acre, let's say two-thirds, because that would mean that the lot sizes for the number of units that they could build would be much smaller because they'd have to calculate in what's not being built. So in other words, they use 3 acres, they could build 24 units, and 24 units on on three acres is whatever, 5,000 square foot lots but if they're going to reserve a third of that then the lot size is dropped down to 3,000 square feet and they have this big open space. That makes no sense at all. That would be completely inconsistent with the character of the surrounding neighborhoods. I would not be supportive of anything along those lines. So to me, the question is it's either residential or it stays public quasipublic and a church goes there. It's not a both scenario, see? And so my support of this GP change is with the expectation that it will be all homes. Just --

>> Commissioner Do: Thank you, Commissioner Zito. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. I want to go back to something the representative for the applicant said, in that part of this site already has eight dwellings per acre designation. Can you point on screen, or somewhere, as to which portion of it, which portion of it is and is that included in the 3.2 acre total or is that additional?

>> Thank you, Mr. Chair. It's not included in the subject site. It's the sort of triangular shape, to the left there, and staff has researched how that got to be eight units to the acre and was not able to determine what the initial source was.

>> Commissioner Do: Mr. de Young maybe you can clarify on that issue if you could?

>> I thought it was down here I guess on your screen on the left-hand side of the diagram up here the piece that we were just referring to which is eight dwelling units per acre is part of the land ownership and that's what I meant. Actually, I think it was Commissioner Zito, just to the left of that. Left, down. Up. All right. Well, anyway, there's -- just -- it's gone. So just to the left of there it's all under the same ownership including the piece of property that Commissioner Zito I think was referring to before, thank you very much. It's -- this is the piece, this piece, this piece and this piece, are all under the same ownership.

>> Commissioner Kamkar: Wait wait wait, hold on.

>> Sorry, I'm trying.

>> Commissioner Kamkar: Technology.

>> Okay. Just for clarification, this piece, this piece, and this piece are all under the same ownership. So this piece is what I was referring to, and we view this, this piece and this piece would be together as the residential. Just very quickly in response, there's no intention to develop the nonurban hillside portion of this in the zoning in the same way that the church zoning had no use on that. It was just -- it was private open space on that particular parcel.

>> Commissioner Kamkar: Thank you, Mr. de young. Thank you.

>> Commissioner Zito: Mr. Chair, a clarification from Mr. de young. He made a statement if I could, very focused clarification. You had said that that orange piece. You said this piece this piece and this piece that orange piece that does currently have the residential designation.

>> Right here.

>> Commissioner Zito: You said you are considering this as part of this application?

>> We would consider as part of the development and part of the zoning, a nuance.

>> Commissioner Zito: So what I'm hearing you say then is that at the time that the zoning comes in --

>> Commissioner Do: Okay, excuse me I'm advised by counsel that we must reopen public hearing.

>> Commissioner Zito: I move we open public hearing for this specific question.

>> Commissioner Do: Okay, all in favor? Thank you.

>> Commissioner Zito: I appreciate the commission indulging me on this. So what I'm hearing the applicant saying is that at the time of the zoning, when the zoning comes, that piece will be part of the total acreage that will be developed?

>> That piece together with the piece that's in the lighter color, yes.

>> Commissioner Zito: Right, the piece that we're GPing that we're considering to GP today.

>> This piece this piece and this piece, because this piece right here was part of the original church zoning so we have to rezone that entire piece to get rid of the prior application. Now let me just -- let me see if I can beat you to the question. As a practical matter as I said earlier we have looked at this we have studied this site and I heard your comment about not desiring to move down to smaller lots. When you look at basically five, 6,000 square foot lots, quite frankly, to the total of the two pieces that would be in the group color would probably be not more than 20 lots. As a matter of fact, I think it's 19 lots. So we ran into that thing all the time. We asked for a general plan designation as eight dwelling units per acre. We can go as low as five. I can tell you there isn't 24 plus whatever that piece is down there. But we can't go for 6.2.

>> Commissioner Zito: I understand.

>> Okay? Thank you.

>> Commissioner Zito: No, that's not what I'm going after. What I want to make sure is that we're not right now my consideration of the GP is that blue area. Okay?

>> Yes.

>> Commissioner Zito: And my thought going forward is that if and when that's approved and you go with the zoning, blah blah blah, that that's the part that's going to get developed. But what I'm hearing you say now is that the adjacent lots would be part of the zoning and you would develop up to the freeway essentially.

>> Currently there is a parcel that is designated residentially, which absent this discussion could come in for development proposal to develop it residentially. It is not designated nonurban hillside because again we're not -- we're not -- there's a property ownership that exists now, whether that continues in the future we have no control over that. So we're looking at sites, absent ownership, because again, that -- could change.

>> Commissioner Zito: I understand completely.

>> The history I think to changing that to public quasipublic the reason it did not encompass that odd orange area is because it didn't need to and the city historically did not go out and proactively designate sites public quasipublic and the reason you didn't see that little orange area extended is because this was nonurban hillside. And the only appropriate use the city felt at that time, if it was going to change the designation for nonurban hillside to anything, would be to public quasipublic use to support the proposal that was in front of us at the time which was for a church or institutional use which they felt was appropriate.

>> Commissioner Zito: Okay.

>> Commissioner Do: Thank you, Commissioner Zito.

>> Commissioner Zito: Motion to close public hearing.

>> Commissioner Do: All in favor? So back to Commissioner Kamkar. You were in the middle of your --

>> Commissioner Kamkar: Thank you. The question is access to the site, it is not from ridgely place, sit? It would have access from Yerba Buena road.

>> Thank you, Mr. Chair. The current access to that road is from dove hill road off Yerba Buena. That's the current access.

>> Commissioner Kamkar: I see so a church site then would tremendously increase the traffic on that site. There's not any homes there but if those two sides do get developed as homes then they see a lot of traffic in front of them?

>> On dove hill road traffic would be increased with increased development, yes.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Do: Thank you Commissioner Kamkar. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Mr. Chair. I would just like to clarify that I was not suggesting that we build 3,000 square foot lots in this area.

>> Commissioner Do: Thank you, Commissioner Cahan. There are no further lights so let's vote by light.

>> Commissioner Zito: For the record, Mr. Chair, I can't get the screen to vote for some reason. So I vote aye.

>> Commissioner Do: Okay. Is there a problem with -- because on my screen, the -- I see no result. I just see the voting box again.

>> Reset it and try again.

>> Commissioner Do: Reset, try again, okay.

>> Commissioner Zito: My jean screen, I actually can see the vote in real time. It's quite entertaining. I can't switch it to --

>> Commissioner Do: With Commissioner Zito's aye vote the vote is passed with five commissioners voting in support, commissioners Jensen and Cahan opposed. Moving on to the last item of the public hearing, which is C. GP 09-08-03. General plan amendment request to change the San José 2020 general plan land use/transportation diagram designation from very low density residential, two dwelling units per acre, to low density residential, five dwelling units per acre, on a 2.61 gross acre site located at the northeast corner of Ruby avenue and Murillo avenue. There is a thick stack of speaker cards on this issue. So first, staff.

>> Thank you, Mr. Chair. Planning staff is recommending no change to the general plan land use designation on the site because of increased residential density would be out of character for the neighborhood. Ruby avenue is a clear dividing line of residential densities, as shown on the residential map. Properties easterly of ruby avenue are very low density residential in contrast to the medium low and low density residential westerly of Ruby Avenue down the hill. These designations deliberately reflect the topography of the area. In addition to the seat and the larger area around it are not being considered in the San José 2040 update process as location for housing development beyond the two units per acre because the site is not near planned or existing transit and a land use change at this location would result in an isolated spot of five units to the acre and there's a larger area designated as two units to the acre on those properties easterly of ruby avenue. The area of ruby avenue again was deliberately planned because it appropriately reflects the hillside topography. So for the reasons stated planning staff again recommends that the Planning Commission forward a recommendation of no change to the general plan. Thank you.

>> Commissioner Do: You have up to five minutes, please state your name.

>> Thank you, Mr. Chair. Members of the commission. My name is Jerry Strangess representing the applicant. Ruby hills estate. The owners are here, Mr. Mahmoud and Masiri Gihri. They are in the autopsies. I'm splitting my time up between myself and the civil engineer and the plan architecture which is Curt Anderson. We did send out a letter with some exhibits. I hope most of the commissioners did receive them. If not I have extra copies for you. We are here respectfully asking for the support tonight for the change to the general plan so that we can go forward with our application that we have on file for the zoning for the PD zoning. What I'd like to go over right now is the exhibit in front of you. And speak a little bit just to the level of support that we have. To the south of the subject site, the development that is there existing residential development, the houses that are marked with the stars were able to actually review the plans, and signed a petition in support of the project. The others were simply not home and did not comment to calls. To the north of the project is the South Bay Islamic association. It is where the Muslim mosque is under development. They have thoroughly reviewed the plans and are in support of the project. I'm not going to introduce Vince Rivero who is going to talk about the adjacent densities and then Curt Anderson talking about the architecture. Thank you.

>> Good evening, commissioners, Mr. Chair, staff. I'd like to get started by giving you a little bit of the surrounding area, information that we have for this site. As Mr. Strangess stated we have contacted the surrounding neighborhoods, in essence, we presented them with the plans, grading plans, of development proposal that we have on site. And our site is unique on a very -- variety of aspects here. Specifically speaking, to the north of us, to the north of us we have a public quasipublic site there that is a 2000 member mosque, SBIA. To the south of us we have an existing residential development, existing residential development that is zoned at 5.2 residents tot acre. Ruby avenue along our frontage to the west side is bounded by one side by eight building units to the acre and the other side as five dwelling units to the acre. As listed on that document. You have a a couple of parcels that are zoned eight dwelling units to the acre. The site has received a negative declaration, it's a geologic hazard from the city geologist so it's been challenged as disputable for development. It is also right now looks like to me we are proposing 10,000, approximately 11,000 square foot lots which is in conformance or consistent with the neighborhood just to the south of us, there are lots there that are exactly 10,500 square feet, we're in that area as well. I'd like Mr. Anderson to speak a little bit more with a little bit more details.

>> Commissioner Do: Thank you, you have a little bit less than one minute at the initial five minutes of your presentation. I will allow you to use a little bit more if that makes your presentation more coherent.

>> Mr. Chair, thank you.

>> Commissioner Do: How much more do you think you need?

>> I'll just take the minute, out of the five. Thank you.

>> Commissioner Do: So you want to make your presentation at the end?

>> I'd like to make my presentation at the rebuttal time, if that's okay.

>> Commissioner Do: Is there a question from commission -- sir, Mr. Anderson please come back.

>> Making me wake up walking back and forth. That's okay.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: I'm not sure who the appropriate gentleman would be to answer the question. Going back to the diagram, I realize it's a GP and you're asking for five units to the acre, as it's conceptually drawn there what the approximately the smallest lot size be, given the way you have this laid out?

>> The smallest lot size is 10,000 square feet, not taking away the street there. 10,000 square feet is the short answer.

>> Commissioner Zito: Okay, because the way this looks is you've got essentially two highways on 40% of the land and you've got the other eight houses on 60% of the land because they're all toward the back and you've got that long --

>> Thayer pretty uniform lot sizes once you look at the lots --

>> Commissioner Zito: You're saying the way you're anticipating, again this is just a GP stage I understand that but you could conceptually put minimum lot size of 10,000 square foot?

>> Absolutely.

>> Yes.

>> Commissioner Zito: All right, all I'm going after.

>> Commissioner Do: Great, thank you, thank you. So I will call -- there are fewer speakers than I thought because three of the speaker cards were from the applicant. I will call three namings at a time. Allen Jahangir, forgive my pronunciation, hamid Hussein and Sharaf. Please come down to the bottom of the stairs. First speaker, okay the first one is not here. Okay so I will call the next name is Mohammed Khampa. Hamid, is not here. What about Mr. Challan, after Mr. Allenger, then Shafif and then Mohammed. Two minutes.

>> My name is Allam Jahangi, I live very close to the site, 36 55 valley ridge, the site they are trying to develop is a vacant lot with a lot of weeds and in need of development actually is a nice thing to do there so I'm in favor it.

>> Commissioner Do: Thank you very much. Thank you. Next speaker, please. Mr. Shafaf Sayed.

>> Good evening, my name is Shafaf sayed I'm president of the South Bay Islamic association. We own the property adjacent to the proposed plan and our congregation represents about 2,000 individuals. We operate a center here in downtown as well as the center at 2486 ruby avenue. We've had a chance to meet with the owners, review the plans in details and we are in support of this proposed plan. We believe that a development there will enhance the beauty of the location. It's also an attractive opportunity for members of our community to be close to the center to minimize any driving. So we are in support of this project.

>> Commissioner Do: Thank you very much. Mohammed Champa. Please come down and then following Mr. Champa is Acbar sayed. And Mr. Sayed Sholtan.

>> Good evening to all the commissioners. I'm the board director of SBIA so I'm trying to promote this most, we are mostly we are follow to all the guidance that San José was propose so I support this site, to continue, so that we can support to all the member who's around that. To the point some of the others are against it that is very minor but the majority that is people around that area, that would -- we can support you know all the people there, capable to be close to people can go there and worship, that's a place that I would like to encourage your support this evening. Thank you.

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

>> Good evening, commissioners, my name is Akbar sayed. I live walking distance from this property. I'm in that area for more than 23 years. I see that lot, I see all the time this lot is empty. I would rather wish something is built over there and I see that the recommendation is to change to the area, all the homes across the street and in the neighborhood are all in city home. I don't think will change the demography of the residence. Thank you very much. I will support the project.

>> Commissioner Do: Thank you. Is Mr. Sayed Chohan here?

>> Thank you for the opportunity to express my feelings. I live in the neighborhood. And I actually have personal interest in the project, because once I wanted to develop it myself, but my partners backed out. This I think will be -- greatly enhance the area. It's an area and the neighborhood, and I think provide us an opportunity to live close to the mosque that we are developing next door. I thanks the questions of slide and all that I was reading the comments here, I'm sure have been taken care of by the geologist and also, I think it will provide an opportunity to have an affordable housing, good quality affordable housing, to the people of the community. I think it will be an asset to the area. Thanks.

>> Commissioner Do: Thank you very much. Mr. Anderson. Would you like to make your presentation now? You have up to five minutes. If you need one additional mini think we can live with that but we always appreciate brief comments.

>> Thank you, Mr. Chair, members of the commission. My name is Curt Anderson, I'm the architect for the project. Just a brief comment I'd like the extend our appreciation to staff. They've worked very hard with us to get us to this point and given today's economic climates everyone is overworked underpaid as we all know. Appreciate you didn't forget us at this point. I want to go back to this map. Vince, the one that shows the adjacent parcels please. We consider this, this is good. We consider this a transitional piece. As you can see, the mosque to the north with the big star, the big parcel there it's a large parcel in size. Large floor area of the church itself, parking area is impervious service. By taking this parcel, the area adjacent to the South, reare reducing impervious areas and we're also reducing the heights from the projects previously approved. This is designed as a green prompt. You have heard this word, big buzz and that stuff, I'm certified green myself and we have taken very strict accounts into designing these units. Large overhangs, reusable materials, I could go on and on, but we are not going to waste your time. Carbon footprint reduction, to service these homes. The amount of traffic that this project is going to generate as compared to the original -- the other approved project. And on this, I hope you can see, this is the original project, the project that was approved prior to us. This is the church and this is the mosque right here, you can see the approved mosque. This is the mosque that is currently on zoning approved. That's the church. Can you enlarge these numbers for me here? You can see there's a tremendous reduction in traffic by changing the original project from zoning like this. That's what you need to see. You can see these top two numbers, 206 and 827? Pointing backwards, that's about 2,000 trips a week from the church. Go to the residential we're looking at about 700 units. One of the concerns of the neighborhood is traffic. This project tremendously reduces A traffic at the area. So that's important to see. This is what we're talking about here, this is what we're proposing, you can see the difference. Thank you. That building to the left is a mosque, and the two buildings in the middle are our project and to the right is the project directly to the south of it. Traffic style of architecture, going the direction of San José wanting to be the green community in California and we really respect and request your approval on this project. Jerry, would you like to add additional material on this? If you have no further questions of the team we respectfully request approval of this project.

>> Commissioner Do: There are no questions from the commissioners. Motion to close public hearing?

>> Move.

>> Commissioner Do: All in favor. Staff.

>> Thank you, Mr. Chair. Staff would just like to reiterate that we really see Ruby avenue is the dividing line between densities in the area that ruby avenue to the East which is up hill versus to the west downhill where the higher densities are so we maintain that two units to the acre is a appropriate designation, five unit to the acre would result in an isolated spot of five to the acre and if this were the wish of the council to go to five units to the acre then really it should be looked at as the whole area on ruby avenue because there are opportunities for other parcels to request for the same kind of change. Thank you.

>> Commissioner Do: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. Question, if you were to compare the average slope for the site versus the average slope for the lots to the east of the site, so, you know, imagine you're starting from ruby avenue and you were headed East towards Kline road I guess, what would you say would be the comparative average slopes that we're talking about?

>> Thank you, Mr. Chair. I don't have that information. I do know that as you move towards the East, the hill does get steeper which is why the lot sizes to the West of the site are larger.

>> Commissioner Kamkar: Exactly. And that's basically my point. I can understand if it was a uniform slope, you had a straight line from ruby avenue to Kline road, then I would want everything to be similar too, because same slope. But if it goes like that, well not to that extent, but if the slope increases the way you describe it then that would make sense. And I looked at it on the topography maps, I would expect larger lot sizes as I get steeper. And so would you know what the average slope is on this proposal, approximately? I mean they're not in the 15% zone or you know --

>> No, they're below the 15% slope line.

>> Commissioner Kamkar: So you know, that's why I can understand that it becomes a nice transition piece between the left and the right side, the left being left of the ruby and the right being the so-called steeper part of the hillside. It's also compatible to the neighborhood, to the south of Murillo, so if we were to look at, at a comparative site. To me it's like except for the Islamic site, Islamic mosque, it's the only big parcel left, you know, so sort of in a little category of its own. And so I just wanted to ask those questions of you. Thank you.

>> Commissioner Do: Thank you, Commissioner Kamkar. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Just real quick. Any roadway that gets put into that piece of property to support those homes, would that be a private roadway or would that be a public roadway?

>> Thank you, Mr. Chair. More than likely it would be public but there's nothing to preclude it from being private, as well. I don't -- I would have to confer with Public Works staff. Which I don't have right now.

>> Commissioner Zito: The only -- I think that's probably the only concern I have, we don't want to continuously burden the public infrastructure. Again if it's the will of this commission to go forward, my comments would be to consider that as a private roadway. I'm willing to make a motion.

>> Commissioner Do: Please do.

>> Commissioner Zito: Thank you, Mr. Chair. I move that we consider the draft negative declaration in accordance with CEQA. Recommend to the city council the denial of a general plan amendment request to change the San José 2020 general plan land use/transportation diagram dissention from very low density

residential, two dwelling units per acre, to low density residential, five dwelling units per acre, on a 2.61 gross acre site as recommended by staff. And it follows, if you follow east of Murillo is five units per acre, there is a lot of large lot properties up there. If you follow ruby to the north maybe a mile or so, mile and a half, there's again residential. Staff's comments is well taken as far as if you do this property, you have to consider the domino effect. I respect that and I frankly probably would not support anything higher than five units per acre East of ruby, but the way this has been laid out is tastefully done and frankly the tradeoff with the Buddhist church is positive for the neighborhood from a traffic perspective. You know, we would have welcomed, the neighborhood would have welcomed the Buddhist church there no question about it but I see this as overall, objectively speaking, and improvement in the traffic aspects and overall intensity. But anything that could be converted to private maintenance, should be converted to private maintenance. And I appreciate the green aspect of the project as well and whatever the equivalent of the LEED silver in the residential realm should be what they follow.

>> Commissioner Do: Thank you, Commissioner Zito. There's a motion and there's a second. There are no other speaker lights. So let's vote by light. The motion is approved, unanimously. So that concludes the public hearing. Motion to close the general plan amendment hearing? All in favor? Next item is petitions and communications. And there are no cards. Are there any items from the Commission or from --

>> No, director.

>> Commissioner Do: Item number 9, Referrals from City Council, boards, commissions or other agencies. director?

>> Laurel Prevetti: There are none.

>> Commissioner Do: Item 10 good and welfare report from city council.

>> Laurel Prevetti: The City Council last week considered a proposal for medicinal cannabis. The council has asked for us to come back and the commission will be invited to participate in those discussions and that concludes staff's report.

>> Commissioner Do: Thank you commissioner. Commissioners' report from committees. 1, Norman Y. Mineta San José international airport noise advisory committee. Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. Haven't met yet.

>> Commissioner Do: Thank you. Envision San José 2040 general plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: I would like to defer to my colleague, Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Commission followed on the conversation revolved around the traffic intense areas of Berryessa and Diridon if I remember correctly and voting on intensifying those particular areas and again embellishing staff's recommendation on option 6 I believe it was option 6. Next meeting is Monday and we will continue along those lines and finally put a blueprint I guess or a work plan in place to present to city council.

>> Commissioner Do: Thank you, Commissioner Zito. Review and approve synopsis from the last meeting, March 10th, 2010. Is there a motion to approve?

>> Move to approve.

>> Laurel Prevetti: Mr. Chair, if I may there is a minor correction to good and welfare item D. The commission, the synopsis should read, given limited staff support to establish a subcommittee for May 12th, 2010 so just a clarification that we did not have that study session today.

>> Commissioner Do: So the date for that is May 12th?

>> Laurel Prevetti: That's correct and there's a separate agenda item to set that this evening.

>> Commissioner Zito: So I move acceptance with that correction.

>> Commissioner Do: Is there a second? All in favor? Aye. Next item is subcommittee reports and outstanding business. Oh, I see, so we still have to go -- we still have to -- oh, I see, I see, I'm sorry. So we need to -- is there a motion to set the study session date for May 12th?

>> Commissioner Zito: Second.

>> Commissioner Do: All in favor, okay so that's it. So our subcommittee reports -- pardon me?

>> Laurel Prevetti: I do have something to say on that. I had a conversation with Commissioner Jensen yesterday, and I would like to invite both commissioners Jensen and Campos to join staff in putting together the agenda for that meeting. We want to make sure that this is a productive session, we'll kind of roll up our sleeves and there might be some ideas that you want to pursue and bring this forward again we can make this as much of a productive session as possible. So I'll be setting that up off line with you. Thank you.

>> Commissioner Jensen: Thank you. And I'd just like to let you know I'm available. I'll make myself available to staff.

>> Commissioner Do: Thank you, subcommittee reports and outstanding business, none. And appoint vice chair to be effective May 5th, which is the meeting after the next one, 2010. So this is an election, is that correct? So this is the first election that I will handle but so I guess what we've done before is we take nomination. We take nominations all together and then we vote. Commissioner Zito.

>> Commissioner Zito: Clarification, please. This vice chair will only serve until the end of June, is that correct?

>> Commissioner Do: That's correct.

>> Commissioner Zito: just wanted to make sure. In other words, it would have to go up for another election. This term is only through June.

>> Commissioner Do: Is there a nomination?

>> Commissioner Zito: Yeah, I'll nominate Commissioner Kamkar for vice chair.

>> Commissioner Do: There is a nomination, there is a second. Are there any additional nominations? There are none. So let's vote by light. So Commissioner Kamkar has been elected as vice chair commencing on May 5th, 2010. Thank you, congratulations.

>> Laurel Prevetti: Mr. Chair, I just have one -- two quick announcements, just a reminder that on April 21st we do have a joint study session with the parks commission, dinner will be served. So we will be providing refreshments in this instance, and secondly, we are moving ahead with the ballpark environmental impact report. That will be coming to you on May 12th. So I just want to make sure that all of you have your supplemental EIR and access to the original final EIR that was adopted in 2007. We could -- we'd be happy to provide you additional hard copies, or they are accessible on the Website. Okay, thank you.

>> Commissioner Do: Thank you, director. Without any further business, the meeting is adjourned. Thank you.