The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Commissioner Jensen: Good evening. My name is Lisa Jensen, 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 wed, December 1. 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, please 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. For example, 4.A, not PD 06-023. 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 card in the order received. As your name is called, please line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After 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 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 has 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, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all commissioners are present. With the exception of Commissioner Platten and Commissioner Kamkar. 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 would like to change any of the deferral dates requested 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 the remaining agendized items past 11:00 p.m, 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. we have one item listed for deferral. CPA 00-009-01. A conditional use permit amendment for the timely renewal of an asphalt concrete crushing Company. Staff.

>> Thank you, yes. This is being recommended for deferral to the Planning Commission meeting of December 15th, 2010. Per staff request.

>> Commissioner Jensen: Thank you staff. May I entertain a motion on deferrals?

>> Commissioner Kline: Move deferral to December 15th.

>> Commissioner Jensen: There is a motion and second. That passes unanimously with commissioners Kamkar and Platten absent. Consent. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. There are current no items scheduled on the consent calendar. Public hearing items. 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 agendas for public hearing time management purposes. 3 A. CP10-022 and ABC 10-011. Conditional use permit and determination of public convenience or necessity to allow offsale of alcohol at a general retail store/pharmacy, In an existing 15,465 square foot tenant space in a shopping center on an approximately 7.2 gross acre site in the CN commercial neighborhood zoning district locationed in the southwest corner of Meridian avenue and Hamilton avenue. Staff.

>> Thank you. As you stated, this is a conditional use permit, request as well as a request for determination of public convenience and necessity to allow for the offsale of alcohol limited to beer and wine at an existing general retailer pharmacy, specifically a Walgreen's, and an existing approximately 15,000 square foot tenant space. At a

shopping center on the southwest corner of Meridian and Hamilton avenues. The applicants has indicated that the retail store intends to add the offsale of alcohol again limited to beer and wine to the array of items they currently retail in the store. Their proposal shows that the alcohol sales area would represent less than 5% of the total sales area and as part of their proposal there is not an expansion of the building area. The applicant has stated that the store is currently open until 10:00 p.m. However they do have an as of right ability to stay open until midnight. Staff is recommending that the Planning Commission deny the requested use permit as well as not make a determination of public convenience or necessity for the following reasons: The proposed offsale of alcohol at the subject site would lead to a grouping of six offsale establishments within a thousand foot radius of that corner. It is located within 150 feet of a residence to the west-southwest. Staff feels that the addition of offsale of alcohol at this location would adversely affect the peace, health, safety, morals, and welfare of persons residing, and this is one of the findings needed to make in order to support a conditional use permit. As we stated in our staff report there is a large number of existing offsale establishments within a thousand feet and this would just add more to it. And again we don't really see how the addition of this offsale of alcohol establishment would facilitate the vitality of an existing commercial center or enhance the shopping experience for the residents in the area. There was a community meeting held for this and again, you know, all of that's been presented in the staff report. So again, staff is recommending denial of the use permit request as well as the not granting the determination of public convenience and necessity for the reasons I just stated and further, detailed in the staff report. Thank you.

>> Commissioner Jensen: Thank you staff. And I have a card here for Don Cramer representing the applicant. If you'd like to come forward you may have up to five minutes.

>> Thank you. My name is Dan Cramer I'm outside counsel for Walgreen's. I've read the Planning Department's staff report you have before you and I have to say that I'm deeply troubled and disappointed by it as I feel it paints an inaccurate picture of both Walgreen's as a company and the nature of the use that we're requesting approval for today. To be clear, Walgreen's intends to put just one ten-foot cooler of beer and 18 feet of shelf space of wine in the store. Beer will be sold only in six packs and 12 packs and cases. Wine inventory will consist of predominantly California varietials, no singles no malt liquor. No numerous closed circuit TV cameras and public

view monitors on site to assist store employees and with lost prevention. Employees under the age of 21 willing not be allowed to stock or sell beer and wine and all the employees will be undergoing responsible alcohol assets training program. Customers who appear to be under the age of 40 will be I.Ded. Walgreen's is a company to who people have trusted to handle controlled substances for over 100 years, a company who has sold alcohol in its stores throughout the country since the end of prohibition and a company with strict safety, security and training guidelines in place. Yet despite these facts and despite the nature of the intended product mix, the Planning Department on page 5 of your package and again in the conclusion on page 8, has stated categorically that they believe the sale of beer and wine at Walgreen's will adversely affect the peace health safety moral and general welfare of persons residing or working in the surrounding area. I ask you where is the evidence to support this finding? The basis for staff's findings were certainly not obtained from the San José police department who, when asked whether they had concerns over the issuance of this permit, responded, that they were not opposed. Great deference must be given to law enforcement's assessment of whether this use poses threats to peace, health and safety of the surrounding area as they are the experts in this field and I think it's important to note for the record that in the four instances where the police department did state that they have concerns over a Walgreen's carrying beer and wine, Walgreen's voluntarily pulled its application. Nor was the basis of staff's findings taken from the historical evidence that would illustrate Walgreen's impeccable legal compliance record when it sold alcohol at many of its stores in San José in the past. And I can assure you that in the neighborhoods surrounding the 180 stores throughout California where Walgreen's sold this is not another liquor store and it's hardly the selection that will atrack vague rants looking for a cheap buzz. The suggestion that a mere overconcentration of a census track nature of youth and the convenience it provides a neighborhood must be weighed as well. I hope it is evidence that the nature of the youths will certainly not create a detriment to the neighborhood as well. while you have been provided with copies of the signed petition at the end of the package we were disappointed to see that there is no mention in the staff report that in a period of just six days, from October 13th, to October 18th of this year, 775 Walgreen's customers signed a petition stating that it would increase the convenience of their shopping experience, if beer and wine was sold at Walgreen's. Nor was the letter from the Willow Glen neighborhood association in support of this use included in this package whatsoever. Despite this overwhelming support from the community, the Planning Department maintains that no convenience would be provided by the addition of beer and wine. That this community support was not given more weight in the staff report is

surprising. And one has to question whether personal opinions were substituted over the opinions of the community. Lastly we are puzzled by the fact that the Planning Department suggests in its staff report that a grocery store that sells alcohol provides a benefit to the community but a pharmacy and general retailer who also sells fruit meat cheese milk bread crackers chips candy and hundreds of other products that grocery stores sell somehow would harm the community --

>> Commissioner Jensen: Thank you, Mr. Cramer. You will have an additional five minutes after public testimony.

>> Okay.

>> Commissioner Jensen: I'm going to call the first three speakers. Allison ruby, Jeff Gordon and Richard Zepelli. If you would line up at the bottom of the stairs. Please come forward. Thank you. You have up to two minutes and if you could introduce yourself.

>> My name is Allison Ruge, I live very close to the Walgreen's, not at this location, though. I live at the willow and bird location. Is that a different --

>> Commissioner Jensen: That is a different item. Would you like us to hold your card and have you speak -- okay, thank you. Mr. Gordon. Please come forward.

>> Thank you, Commissioner Jensen and members of the Planning Commission. My name is Jeff Gordon. I reside at 420 shepherd avenue which is literally across the street from the property in question. I think it's clear from the staff report that a good analysis has been done of some of this key concerns of the neighborhood relative to safety, health and overall welfare with regard to the fact that we already have an abundance of these establishments in this vicinity where people can go and purchase those products when they need to, does not need for another opportunity for people to perhaps involve themselves with purchasing liquor and then wind up drinking in front of our homes or in the streets around our neighborhood. Clearly you have with Walgreen's a

company that does not need to bring liquor into a store to be successful. They employ San José residents and area residents. We are not at risk of losing an employer or losing jobs if we don't provide this opportunity for them when again their customers can quickly go literally hundreds of feet down the street if that's a product that they can't find in the store. And finally I think it's important to note that to provide Walgreen's this opportunity to bring these services, these products into their store, also is going to provide for competition for local businesses who are working closely with the community and attentive to those needs and we are now talking about a national corporation. And while their counsel may speak to their ability to monitor nationally, the real question I think we have to look at is within that store who is going to be able to enforce some of the rules and guidelines and laws because we just need one unfortunate incident and then we'll all be back here again saying why didn't we do something different. Thank you.

>> Commissioner Jensen: Thank you. Mr. Zepelli.

>> Good evening, commissioners, Richard Zepelli representing the Willow Glen neighborhood association, I'm the board secretary. We had 68 people present they made their presentation. I must say it was very professional, there was not one objection in that room to Walgreen's applying for a liquor license. It is our hope that they will appeal this decision. And we will support that appeal should they do that. I'd like to point out that Walgreen's is very active in the community. Just recently, creek cleanup with Ash Kalra in his area. For a chain this is very unusual. We have chains on Lincoln avenue that do not participate with the neighborhood. They do. Also, this location is a location that's competing with a CVS long's that is in Campbell. Both are on Hamilton avenue. Walgreen's on Meridian, CVS on Bascom. libraries and community centers are important to us. When our customers are our residents and their customers go to CVS long's the sales tax dollars go to Campbell, not to San José. It is important that this is a good employer. Thank you.

>> Commissioner Jensen: Thank you. Mr. Cramer, if you would like you may have up to five minutes to respond to anything that you've heard. You're not obligated to take that time. It's up to you.

>> Thank you. I just want to add, and touch upon something that Mr. Zepelli stated and that's that every other major pharmacy chain in San José sells alcohol and what we respectfully request from you is that you provide Walgreen's with a level playing field and allow it to do the same. Thank you.

>> Commissioner Jensen: Thank you. Motion to close public hearing? There's a motion and second. Is -- all those in favor please say aye. That passes unanimously. Staff?

>> Thank you. I just wanted to point out that there is no personal opinion as part of this staff report. We pride ourselves on doing an objective planning analysis of things. I've been before you for a number of years so I think you can kind of attest to that. I don't feel that the staff report targets Walgreen's if this was a CVS or whatever. Unfortunately maybe the name Walgreen's in there, this is going with the land, it doesn't go to Walgreen's. We are looking for an offsale of alcohol at this site whether it's Walgreen's or CVS or independent. So that -- I just want to make sure that that's understood. I think the issue of whether or not you know we discuss the petition in this is also important in that we just take that in. If we were expected to validate all those signatures or analyze them that would be, you know, time prohibitive and cost prohibitive. But you know quick looking of the petition there would be some questions. On one of the back pages, the handwriting of all the signatures is the same. So you know, we really don't like to kind of get into that. We accept it, we give it to you. And everybody can kind of look at it and take away what they want to from those signatures. Because we don't really have any control over how they are offered to people for signing and stuff. So it wasn't intentional. It's typical of how we do present that sort of information, that's given to us, that we do pass it on to the Planning Commission so that they are aware of it and can you know, review it at their convenience and take away from it what they would like. Again, I think one of the bigger issues here really is the number of existing establishments in the area. And it really goes beyond what we've seen in a lot of cases. You get to four and you really have a concern. Here we're going to get to six within a thousand foot radius. You have the Safeway. Everybody's talking about the CVS in Campbell but you have a Safeway right across the street, very convenient where you have everything. You have the full service grocery store, you've got the sundries, you've got the pharmacy, you have got the everything. So that's really the type of shopping experience that the city is now looking to really kind of support in the area of the limited licenses that are available, and although yes, the city could grant a permit of convenience and necessity, we really take to

heart that there is a reason why we have the legislation we do, that there is the reason for concentration of offsale of alcohol establishments within a geographic populated area. So we just don't necessarily take the position that convenience means you can get everything and anything at one place. Convenience means, you know, maybe you might have to walk across the street or on your way home you can stop and get it. So convenience, you know, can start to spread out from different areas. So again I think in our staff record we did, you know, through our analysis, support the reason why we don't feel an additional establishment in this area is warranted, given that overconcentration, given the proximity to residential, and again, just wanted to reiterate that this is an objective planning analysis, and no personal opinion is in this report. I'm available for questions.

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

>> Commissioner Cahan: Thank you, Madam Chair. I'm ready to make a motion and upon a second I'd like to speak to that motion. To make a motion to deny a conditional use permit and determination of public convenience or necessity to allow offsale of alcohol at a general retail store pharmacy Walgreen's in an existing 15,465 square foot tenant space in a shopping center on an approximately 7.2 gross acre site in the CN commercial neighborhood zoning district as recommended by staff.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion?

>> Commissioner Cahan: Yes, thank you. Due to the overconcentration of alcohol sites in this area, it's -- I just -- behooves us not to, it behooves us to deny this. Additionally, there is a residence, there are residences right behind that are very easily accessible. And it would be a problem, I could see it being a problem for those residents to have the alcohol sold there. It would be very easy to walk with your six pack right to one of the houses and leave the garbage in one of the front yards or what have you. Additionally I do agree that we would like to keep our tax dollars in San José but there is a Safeway right across the street, there is a rite aid right across the street. I would perceive that someone would go right to those instead of driving a few blocks down to get to the CVS. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. I see no additional speaker lights. May we vote by light?

>> Commissioner Platten: Yes, Madam Chair, since I was delayed for traffic, could not be here for public comment, I will abstain from the vote.

>> Commissioner Jensen: Commissioner Platten is abstaining from the vote. Commissioner Cahan's motion to deny passes on a 5-0 vote, thank you very much. With Commissioner Platten abstaining and Commissioner Kamkar absent. 3 B. PD 10-016 and ABC 10-012. Planned development permit and determination of public convenience or necessity to allow offsale of alcohol at a general retail store pharmacy, In an existing approximately 14,000 square foot tenant space in a shopping center on an approximately 4.2 gross acre site in the A(PD) planned development zoning district located on the southeast corner of bird avenue And willow. Staff.

>> Thank you. Once again, this is a request for a use permit, in this case it's a planned development permit because the subject shopping center is a planned development zoning but it is akin to a use permit. And a request for a determination of public convenience or necessity to allow for the offsale of alcohol limited to beer and wine at an existing general retail store/pharmacy. In this case it's an approximate 14,000 square foot tenant space in the shopping center, it's about a four acre site, that's located on the southeast side of bird and willow. It's the same applicant as the previous proposal and again, their program is to have the alcohol sales area represent less than 5% of the total sales area. Again, there is no proposed expansion at the site and the store does not currently operate past midnight nor will they request to do so. Planning staff is recommending that the Planning Commission deny the requested planned development permit and not make a determination of public convenience or necessity for the following reasons. That the proposed offsale of alcohol will adversely affect the peace, health, safety, morals and welfare of the persons residing or working in the surrounding area, and again as detailed in our staff report. And that the offsale of alcohol will not hangs or facilitate the vitality of an existing commercial area without presenting significant impact on the Public Health and safety. There was also a community meeting held for this proposal. On October 18th. And there were a number of attendees at that, that unanimously opposed the proposed offsale at this location. They cited a number of different reasons, probably

most relevant are the number of establishments although not in a radius like the last one, but along the commercial corridor of willow Street. Again, there is, although this is a four-corner commercial area, just beyond is the residential neighborhoods on all four corners. I think there have been a lot of e-mails forwarded to you relative to this proposal, also. So again, that's pretty much it. We recommend that you deny it and not grant the public convenience or necessity request and I'm available for questions.

>> Commissioner Jensen: Thank you staff. Mr. Cramer if you would like to come forward representing the applicant you may have up to five minutes and if you would again introduce yourself when you come forward, thank you.

>> Dan Cramer. Outside counsel for Walgreen's. As you know, for the Planning Commission to determine public convenience or necessity certain findings are mandatory and in this case all the findings support a determination of public convenience or necessity exist, the store is not located in strong neighborhood initiative area oren in an area where the police department has determined that the proposed use would increase the severity of law enforcement or nuisance problems. There are not more than four offsale uses within a thousand-foot radius. Here there are only two offsale operations within a thousand feet of Walgreen's. The proposed use meets all the distance requirements from parks, schools and residences, according to the staff report the nearest residence is more than 200 feet away and there's separation by a fence on the one side and a major road on the other and alcohol sales will not represent the majority of the proposed use as with the store on Hamilton and Meridian Walgreen's intends to put just one ten foot cooler of beer and 18 feet of shelf space much wine in the store so therefore all the statutorily requested findings have been satisfied to make a determination of public convenience or necessity. So the questions is can a C.U.P. be issued to Walgreen's or will the sale of beer and wine by a company that people have trusted to sell controlled substances for over 100 years a company that has sold alcohol in its stores throughout the country since the end of prohibition, a company with strict safety and security training guidelines in place, truly affect the police or the peace health safety morals and welfare of persons residing working in the neighborhood? To determine this I thought we could take a quick look back at the analysis made by the Planning Department in this commission just two weeks ago when a C.U.P. was issued to Chavez supermarket for the sale of beer and wine. I'll read a couple of the findings from the staff report prepared by that

hearing. The subject site is surrounded primarily by commercial uses within a shopping center 5% of the total floor area the police department is neutral as to the issuance of the C.U.P. and based on the above analysis staff concludes that approval of the C.U.P. can be made. So here the subject site is surrounded primarily by commercial uses within a shopping center. The display of alcohol will occupy less than 5% of the total floor area. The police department is neutral as to the issuance of the C.U.P. This use is the same in many respects to the use that was approved by this commission just two weeks ago except that unlike Chavez supermarket Walgreen's is not a grocery store but rather it is a pharmacy in general retailer who like a grocery store sells fruit milk cheese crackers candy minor difference the Planning Department has indicated that approval of the C.U.P. cannot be made. And on page 6 of your report the planning staff takes this line of thinking even further. They state that because the two liquor stores within a thousand neat do not sell fresh produce nor do the three other liquor stores 1800 feet away, the sale of beer and wine by Walgreen's would therefore be detrimental to the welfare of the neighborhood. But the real question is, whether the proposed using will provide the neighborhood with a shopping experience not already existing in the neighborhood and not whether a store does or does not carry certain grocery items. In fact on page 6 of your report staff expressly indicates that the offsale licenses need to be preserved for businesses offering the neighborhood with a shopping experience not already existing in the neighborhood and we wholeheartedly agree with staff's statement. Walgreen's is the only pharmacy within almost one mile, the nearest one being the CVS located on Lincoln and brace. Today residents of the surrounding community do not have the option of shopping at a pharmacy and purchasing a bottle of wine for dinner at the same time. Instead they would have to get back in their cars and go to the closes liquor store. As you know many people don't like to shop at a liquor store for wine and beer, many people would like ops product mix specifically designed not to attract bad elements instead of a liquor store that maybe sells a $4 fifth of vodka and beer by the can. By allowing Walgreen's to sell beer and wine it will absolutely provide a shopping experience not already existing in the neighborhood. Staff already indicated and you will hear from other people tonight, that because alcohol. But this is like saying that because there are numerous burger joints in the neighborhood there is no need for a steak house as well. But just as Morton's steak house is not the same as McDonald's simply because they both sell meat, Walgreen's is not the same as the corner liquor store because they both sell alcohol. By providing one stop shopping and despite the vocal opposition you will likely hear from some members of the community this is exactly what the greater community wants. In fact during just a five day period over 1,000 people signed a

petition indicating their support for this offering. I would call this overwhelming support. You will also likely hear from some members of the community that when Walgreen's previously sold alcohol in this store from 1990 to 2000 there were law enforcement and public nuisance issues and if Walgreen's were allowed to sell Merlot and Chardonnay, and cannot share the same concerns. Again great deference must be made to law enforcement's analysis as they are the body with the most experience in the field. If there was truly going to be police issues as a result of Walgreen's selling wine and beer at this store I'm sure the police department would have indicated its concern. To set the record straight from 1990 to 2000 Walgreen's operated under a type 21 license which allowed for the sale of beer wine and spirits. At that time Walgreen's had an entire department devoted to a sale of alcohol.

>> Commissioner Jensen: Thank you, Mr. Cramer your time is up. But you will have an additional five minutes at the end of speaker time. Again, my apologies in advance for what I'm about to do many Dan Irsig harvey Darnell and Lila federoff. Mr. Irsig please introduce yourself so I don't goof your name up again.

>> Okay. Good evening, my name is Dan Irsig and I've been a homeowner in the neighborhood directly across the street of bird and willow for 25 years. For 25 years I've been a very active neighbor in neighborhood improvements and the restoration of our North Willow Glen neighborhood. One of the problems that I have with Walgreen's wanting to sell beer and wine is that we still have, even though we've made tremendous improvements in our neighborhood, we still have a problem with gangs. We have a large problem with derelict folks and homeless people. We've got an overabundance of, I hate to use the term, Winos. Walgreen's several years ago, sold beer and wine at this very location. It was a disaster. They had to have an armed officer at the store carrying a gun. I have to saw that when Walgreen's first opened that store, we were very pleased, it was a wholesome environment, it was very welcome in the neighborhood. We felt safe there and when they started selling beer and wine and hard liquor the whole environment of the store changed. Many of my neighbors quit shopping there. It was a very grim experience. I would hate to see us go back to that. Another issue we have is, the store borders on vacant railroad property where lots of homeless and derelict people hang out. Also, gang kids buy their alcohol there, hang out at this vacant property and cause problems. So I urge you to please, on

behalf of our neighborhood, trying to improve itself and succeeding tremendously, I urge you to deny this request. Thank you.

>> Commissioner Jensen: Thank you.

>> Chair Jensen, members of the commission. I'm Harvey Darnell. I'm chair of the greater Gardner SNI NAC. This area is not in the NAC. It's only couple hundred feet away from a NAC border at Delmas and willow. This is an area that had huge, huge gang problems, many of them emanated from that Walgreen's. It kills me to stand before you tonight. I am a member of the general plan envision 2040 update task force. I am a very heavy neighborhood business, mixed with residential, supporter. And it's killing me to deny this. But we've had so many problems with that space, there were gangs, there was alcohol in the railroad as you've heard which is soon to be the three creeks trail. So it's not listed as a parks today because it's not official there but it will soon be the three creeks trail. The NAC at its October 6th, 2010, meeting passed a motion to approve the -- to oppose the resumption of sale of alcohol at this store because of the fact that we have so many alcohol problems in our neighborhood. There are 11 businesses within a one mile radius of this area, most of which are a half-mile or less that sell alcohol offsite. There was a community meeting with 45 members in attendance. Not a single member, and the councilmember, Councilmember Oliverio, asked for a vote of the people in that room. Not a single member stated that they wanted alcohol to be sold at this pharmacy. So I don't understand where the public convenience would be. There was plenty of places for people to go and it would certainly have a detriment to us in our work with the NAC. Thank you so much.

>> Commissioner Jensen: Thank you, Mr. Darnell. Ms. Federoff as you're coming forwards I'm going to call the next three speakers. Barbara Keegan, Donna Reseri and Richard Zepelli. Thank you.

>> My name is Lila federoff and I've lived in this neighborhood for about seven years. I have two young daughters ages four and two and up until this business about applying for a liquor license I shopped at that Walgreen's probably about twice a week. I want to support my local businesses, especially ones that are right down the street from me. I feel like that overall will improve the quality of my life and improve the quality of my immediate

community. It would not be convenient for me, I can take -- I can have convenient shopping experiences right down the street which is what I have chosen to do since they have applied for this liquor license. The shopping center is not a nice shopping center. It's really on -- I would say it's on the edge. There is a cigarette vending store there, there is a nail salon. Again I try to you know spend as much money as I can in that shopping center but I think that selling beer and wine is only going to bring that shopping center down a couple of notches. There's a laundromat in that shopping center. What's to stop somebody from going across, getting a six-pack of beer and waiting for their laundry to be done drinking in the parking lot? I also want to say that beer is a problem. I might argue that maybe Chardonnay is not but I think beer is a problem. Just last week we were volunteering putting undecorations in the neighborhood. We met at 9:00 in the morning and somebody was buying a case of beer out of the liquor store where we had met. That's a problem to me and I don't want to see that sort of thing happening at a shopping center where I would like to continue to shop and feel safe going there parking my car bringing my girls to go pick up our prescriptions, our you know cosmetics, photos, et cetera. So thank you.

>> Commissioner Jensen: Thank you.

>> Good evening, my name is Barbara Keegan and I am a 26 year resident of the North Willow Glen neighborhood and I'm also a member of the North Willow Glen association board. In addition to that professionally I'm a civil engineer and I have a master's degree in emphasis in transportation management. I think there are many who can speak eloquently tonight as to the negative effects of drinking in the neighborhood but I would really like to focus in on the trail component. Trail systems serve both transportation and recreational needs. As Harvey pointed out, we have a future trail along the southern Pacific right-of-way that has been abandoned. Problems associated with rail to trail system in place one of those issues is that you have very limited access points. So essentially you kind of have almost a tunnel situation. So if we continue to experience, which I believe we will if this liquor selling is approved, if we have people congregating on the trail, consuming alcohol that's going to be a disincentive for the community to take advantage of what the City of San José has made a huge investment in, in improving our trail system. So I would really encourage you to think about how you would feel walking several hundred feet and then coming upon a group of people gang members even perhaps consuming alcohol that would not be a very pleasant or very safe feeling and I think it would result in the future

trail system being underutilized and that current investment that the city is making not being fully utilized. And I'd also like to say a little bit more in terms of the shopping center activity going on right now. I personally have observed alcohol and drug use on that property. Which concerns me. I would hate to see that exacerbated by the addition of selling alcohol there. Thank you very much, I appreciate your time.

>> Commissioner Jensen: Thank you Ms. Keegan.

>> Hello, I'm Dana Rice Avi, I'm a resident for 22 years thank you for hearing this issue and giving us a voice. On the time I've lived on Warren avenue and been a part of the neighborhood I've seen steady improvements in the walkability in the safety of the neighborhood and it's wonderful to see, you see community members out and about. When the Walgreen's stopped selling alcohol there's a significant reduction in petty crimes on Warren avenue, people breaking into cars. I cannot say it's totally coordinated but it seems pretty consistent when you have lots of alcohol in the neighborhood and people wandering through the neighborhood to get to the alcohol, you can see an improvement when the alcohol goes away. I'm very concerned about the changes that will come about when we reintroduce alcohol. I ask for your support in building a stronger neighborhood that's safe for the kids and also provides a competitive environment for Walgreen's. But I believe they can do that without the sale of alcohol. So I urge you to not support this measure. Thank you very much.

>> Commissioner Jensen: Thank you. Mr. Zepelli and as you're coming forward I'm going to call the next three speakers. Allison Rouge Steve Kline, Gary Jansen.

>> Good evening once again planners I'm here representing Willow Glen neighborhood association. I'm also a member of the good neighbor committee and one of the founding members of save our trails. So I'd like to say that safe neighborhoods are necessary to foster common values and communities, quality of life, neighborhood crime, on the other hand, creates a fear and distrust among the residents. Because of this reason, I would like to support the Planning Department's denial of the license at this location. But I'd also like to clarify one thing. That Walgreen's is a good employer. They do support the community. They've supported councilman Ash like I said, they have also worked with us on the holiday promotion for the sacred heart Natividad church in that area for the

people that are homeless and they are a good employer, I wish we had more employers like them on Lincoln avenue. They do support the community. And I hope respect is here with everybody here tonight including the Planning Commission. They are a good employer. Thank you.

>> Commissioner Jensen: Thank you.

>> Hi, I'm Allison Rouge, I'm a reiterate the point that was made earlier about the nature of the site. With a discount cigarette store being the most popular store attorney Walgreen's, you have a nail salon and a soccer store it is at this tipping point that I fear that the kind of people who are attracted to those establishments will continue to not represent the neighborhood such that the neighborhood is homeowners, very friendly, social community, and I would just like to think that we wouldn't be tipping the character of that parking lot in the direction of making it a welcoming place for people who are out of work, unemployed, have nowhere else to be, are angry with life frustrated and supporting addictions like cigarettes and alcohol at that location. I'm also concerned that the -- if what happened before happens again with how the people who get drunk, move into the neighborhoods which is all Walgreen's security proposal is attempting to do is just get them out of their parking lot which means flush them into our neighborhoods. If those folks are flushed into our neighborhoods the likelihood of increased demand on Public Safety services is going to be at taxpayer expense. And so I know that demand already exceeds supply of public services so I just wanted to make that note. Thank you.

>> Commissioner Jensen: Thank you.

>> Good evening, my name is Stephen Kline, I'm the president of the Burbank Del Monte NAC, chair and commissioners. I want to let you know that our NAC which is not part of this area but very close and neighboring to it supports the Planning Department's recommendations. We also support the greater Gardner NAC in their area and their cause and the neighbors that are bringing this issue to the forefront as to how severe and perhaps dangerous it is. The city has just recently suffered some very serious fatalities, of young people, around alcohol. That may -- and as we enter the holiday season, we know that that always becomes a real serious problem. The easy dissemination of beer and alcohol, aligned with cars, causes serious problems and we need to

be very prudent and carefully in allowing a perhaps good company in Walgreen's but nevertheless more dissemination of that substance to all the area. we stand in support of it. The letter that we proposed that we submitted and was sent to hopefully most of you by e-mail was circulated and reviewed by all of our membership and approved unanimously. So thank you very much.

>> Commissioner Jensen: Thank you.

>> You don't need to call my name, right?

>> Commissioner Jensen: Nope. But may I ask that you introduce yourself?

>> Gary Jansen, San José resident. When I first saw the sign they posted at the site, I almost ignored it. Then when I read it I was shocked they are asking for liquor sales again? This has been tried before. You should have no problem in your consciences denying this, it's been tried before, and it's been awful. It's already been found to be detrimental to the surrounding neighborhood. It's been detrimental in the past for many, many years, detrimental to the peace, morals, health and safety of the neighborhood. Why? Every time we went there when they were selling liquor we got accosted, whatever you want to call them, Hobos, bums, winos, whatever, it got so bad we stopped shopping there. The prime parking space, the parking space in the front didn't become prime. As soon as you took your seat belt off you were being accosted when you were rolling down your window. We were scared, the gentleman mentioned, security guard, well, having the security guard, is a sign of failure. Think about that. Then, all of a sudden, they removed the liquor, I don't know why but they removed it and the site became better. We like Walgreen's. They have good sales. The site became better and we started shopping again. So that's why I just couldn't believe that sign when they were proposing alcohol sales again. It's already been tried and it hasn't worked. Like people have mentioned, you got the railroad trail, et cetera, et cetera. You also have the mini storage right behind. I know people aren't supposed to but they were renting spaces and living in those mini storage units, occasionally, okay? Nobody knows that but we saw it.

>> Commissioner Jensen: Thank you, Mr. Jansen.

>> I respectfully request that you deny the project on as close to 7-nothing if you can. Thank you.

>> Commissioner Jensen: Mr. Cramer, you have five minutes to respond to anything that you have heard. Again, you are not obligated to take this time.

>> Thank you. I just want to say we respect greatly respect the members of the community and their opinions night but a lot of the things that were addressed that happened happened 20 years ago. Walgreen's hasn't sold liquor at this location since 2000. It's a different offering, a different environment. Today currently there is no pharmacy that sells alcohol within almost a mile of this location and therefore, this will add a convenience that the neighborhood currently doesn't have. And we respectfully request that you support the issuance of the public convenience or necessity and the conditional use permit. Thank you.

>> Commissioner Jensen: Thank you. Motion to close public hearing?

>> Commissioner Platten: So moved.

>> Commissioner Jensen: All those in favor? Thank you. Staff.

>> Thank you. I think there's one thing that I'd like to clarify relative to the findings required for the Planning Commission or the city council on appeal to grant a determination of public convenience and necessity. There are four more factual findings that all four of them have to be played in order for them to even position you to even consider granting a determination of public convenience and necessity. So there's a second set of findings if you get past those first four factual findings and all those four factual findings have to be made before you can move on. In this you can make them as opposed to the other one you couldn't make one of them concentration within a certain radius you are able to move on and consider granting this determination of public convenience and necessity. But as we've stated in our staff report you have to make -- you may issue the public convenience and necessity only after first finding one of the following: We went ahead and said maybe you can find a couple of

them which are more factual in nature. But the two that are more substantive in nature, and we -- you know, we've analyzed and determined that we really can't find our way to them, and so which is why the recommendation is, what it is. And those findings are that again for the piece you're in the proposed outlet for the offsale vitality of an existing commercial area without presenting a significant impact on the Public Health or safety. You know I think again, you know the addition of alcohol to suggest it would enhance the or facilitate the vitality of this, I think we've heard that when it was there before, it didn't necessarily, you know, enhance that shopping experience or, you know, the vitality of that shopping center. And again, the proposed offsale of alcoholic beverages is incidental and appurtenant to a larger public use it is more of an incident or appurtenant to a larger retail, you know complete we are really looking to add this convenience to the larger full-service grocery stores which we feel is more complete and not necessarily the general retailers. And again convenient shopping experience? I think you've heard again from the neighborhood that they know what is or isn't convenient to them and here it's not necessarily being able to pick up everything at one stop. They've got the ability to you know move throughout their neighborhood and get what they need where they'd like to get it. They don't feel a compelling reason to do it at one place and go home. Again in response to a couple of the comments. Again, just to bring out and we hear it every so often is that there is a proposal that they'll only -- here we are limiting it to beer and wine because we do that through our zoning code but through our use permit we can't further limit that they only sell certain grades of wine or certain sizes of containers or in certain configurations. That really again is the purview of the ABC. So although it may be the intention of an applicant, we're not positioned to, you know, control that and that really comes through the licensing process and whether or not the department of alcohol beverage control receives enough evidence or information from the neighborhood and/or police that would allow them to condition alcohol license to restrict them to those things. I think it is worth noting that this application is very different from the one that you looked at two weeks ago for the supermarket. That will provide a full, complete shopping experience, again, in the area of full service grocery stores and not just you know limited fashion in conjunction with the larger retailer. So again, I think we laid it out in our staff report and you know, not to beat a dead horse but we do have legislation more specifically to alcohol because there is evidence that there's a concern when we have a concentration of it we don't yet have anything related to burger joints because there hasn't been an evidence that overconcentration of them. Who knows maybe in the future we will but again the difference is pretty clear I think. Thank you.

>> Commissioner Jensen: Thank you staff. Commissioner Platten.

>> Commissioner Platten: Yes I move that we Deny a planned development permit and determination of public convenience or necessity as recommended by staff.

>> Commissioner Jensen: There is a motion would you like to speak to your motion? Okay thank you. Would anyone else like to speak to this item? Seeing none may we vote by light? And that motion to deny passes unanimously. With Commissioner Kamkar absent. Thank you. Moving on to the 2010 fall general plan amendments hearing. I will entertain a motion to continue the hearing.

>> Commissioner Platten: So moved.

>> Commissioner Jensen: There's a motion and second. All those in favor? Thank you. There are no items on the general plan consent calendar. So we'll move directly to the public hearing portion. Item 6.A GPT 05-08-01. General plan text amendment for various text revisions to address changes proposed through the Evergreen East Hills vision strategy process including associated changes to the Evergreen development policy and general plan amendment File numbersG-05-08-01a through F. Staff.

>> Laurel Prevetti: Thank you, Madam Chair. If I may, I'd like to address agenda item A, which is the text amendment which you just reads into the record, 6B, for a site known as the Arcadia site, 6 C for a general plan site amendment for a site known as the pleasant hills golf course, agenda item D which is a site commonly known as the berg campus industrial location, general plan amendment request under agenda item E for campus industrial site commonly known as IDS, agenda item 6 F for general plan land just amendment for campus industrial site commonly known as legacy, and agenda item 6 F, for a site commonly known as the Evergreen college. This collection of general plan amendments, text amendments and land use amendments were initiated as part of the Evergreen East Hills vision strategy back in 2005. That effort subsequently concluded with the update of the Evergreen development policy. That policy is now in effect. These applications are essentially no longer needed because with respect to how much development can occur primarily residential development in

this location and now that we have a general plan update underway the city council has given us very clear direction in terms of where it is appropriate to plan for new housing. And these sites are not -- are not those locations. For this reason staff is recommending denial of the entire package of amendments but because they are separate amendments we do need your recommendation on the individual amendments, and that way also, if you have any difference of opinion, you may not recommend denial or approval of the whole group, you may have difference of opinions on one versus another. We want to afford the commission the opportunity to make your recommendations accordingly. Staff is available to answer your questions. This is similar to what we did a couple, in early November, when you considered the proposed denial of other amendments that had been dormant and on the books for quite some time. And we do have one speaker card, and if it's all right with the chair I would recommend that you take the -- all of the speakers at once so you can deliberate as a group. Thank you. We have two cards, thanks.

>> Commissioner Jensen: Thank you, staff. Are there -- is there an applicant for item 6-A here? Okay, or 6-B or 6-C or 6 D or 6-E or 6-F or G? If the applicants are here if you would come to the bottom of the stairs and you may have up to five minutes to speak to your application. We have the speaker cards and we will call the speaker cards. I'm going to take it that none of the applicants are here. Okay, all right. So I'm going to call the two speakers. I have Stan Perry. And Bonnie Mace.

>> My name is Stan Perry and I'm here speaking on behalf of the DeVino family who are the owners of the former pleasant hills golf course site. I'd like to bring to the commission's attention three main points. As they begin to follow staff recommendations to deny the pending general plan amendment application for the former pleasant hills golf course site. First, the Planning Commission should acknowledge the tremendous investment of community input, as well as staff resources that were expended over a five-year planning process for the Evergreen East Hills vision strategy. And unfortunately during the lengthy process, the pleasant hills golf course was forced to close due to lack of economic viability. Second, staff recommendations to deny the application to the general plan amendment to the San José 2040 general plan should not be a reason why the former pleasant hills golf course should not be considered for a more viable and useful purpose in the envision 2040 general plan update. Finally, the Dewino family hopes that the Planning Commission can fully support a compatible and

productive use of the former pleasant hills golf course site in the envision 2040 plan. And I have a summary and I'd like them entered into the record.

>> Commissioner Jensen: Thank you, if you would give them to staff.

>> Thank you, Bonnie Mace, representing the District 8 round table steering committee.

>> Commissioner Platten: I'm sorry I did have a question.

>> Commissioner Jensen: Sorry, I missed your light. Mr. Perry, if you would come back, Commissioner Platten has a question for you.

>> Commissioner Platten: Sorry you got all the way up the stairs there. You've asked us to recognize three points that you made at the rostrum. I just have a very simple question. Do you oppose the staff recommendation or support the staff recommendation?

>> I support the staff recommendation. I'm only asking there be some support on part of the commission if there are alternative plans submitted.

>> Commissioner Platten: Thank you, that's all.

>> Commissioner Jensen: Thank you.

>> Bonnie Mace representing the district 8 community round table steering committee. As Assistant Director Prevetti has pointed out, this is an artifact that should have been closed many, many years ago. And it hasn't. It's dormant but it's still pending and we support staff's recommendation that you deny these applications. They should be denied for several reasons. The first is that they're inconsistent with the general plan update and they are also inconsistent with the proposed land use scenarios thought therein, including implement land use

condition which is not acceptable under the current plan including the EDP policy which was passed recently which envisions residential units not envisioning any part of these sites compatible with the E.DP it would be incompatible with the general plan update it would be essentially incompatible with all the general plan policies which have been enacted in the last two years. Again this is an artifact of a time that no longer exists. Tags previous speaker pointed out there are potentially other uses for the pleasant hills golf course but not in the context of these applications we would respectfully hopefully mover on to a new stage in the history of the area thank you.

>> Commissioner Jensen: Thank you very much. Motion to close public hearing?

>> So moved.

>> Commissioner Jensen: There is a motion and second. All those in favor? Thank you. Staff.

>> Laurel Prevetti: Thank you, no additional comments.

>> Commissioner Jensen: Thank you staff. Commissioner Platten.

>> Commissioner Platten: Thank you, as I understand it, and counsel correct me if I'm wrong we need to make a motion on each and every one individually.

>> I think you could take them all as a group, you heard them as a group. I would suggest make that motion but if anyone wants to, break it out.

>> Commissioner Platten: I therefore move to recommend city council denial of each and all of the identified enacted general plan amendments item 6A through 6G for the reasons recommended by staff with one note that we note and file for council's review on item 6C the three points raised by the gentleman tonight.

>> Commissioner Jensen: Thank you, Commissioner Platten. There is a motion and a second, would you like to speak to your motion?

>> Commissioner Platten: No.

>> Commissioner Jensen: Thank you. Would anybody like to speak to these items, or pull any one of them separately? Seeing no speaker lights, may we vote by light? Thank you and that motion passes unanimously. With Commissioner Kamkar and. Moving on to item 6H. The following projects being considered are generally located on the west sides of S. Monroe Street. 400 feet north from Tisch way and between Dudley and S. Baywood avenues north of Tisch way. The configuration item is GP 10-06-01. A general plan amendment request to change the San José 2020 general plan land use transportation diagram designation from office to medium high density residential And the second item is PDC 10-018. A planned development rezoning from R-M multiple residence district and CG general commercial district to A(PD) planned development zoning district to allow for the development of up to 104 single family attached residential units and 89,342 square feet of Office on a 7.8 gross acre site. Staff.

>> Thank you, with respect to the general plan amendment 10-6-01, as we stated O&M o5.16 gross acres of the subject site is consistent with the area immediately north of the site the residential in that it has the same designation and the proposal would also retain its resignation of residential commercial to facilitate the future office construction on the remainder of the site. General Plan amendment is also in conformance with the framework for preservation of employment lands and that there is a pending planned development zoning that parcel 2 of an office building of approximately 89,000 square feet which retains the job potential on the larger site, 7.81 acres, development site and the applicant has demonstrated extraordinary economic benefit by completing a purchase agreement with an office developer at a reduced price and with such favorable terms to assure the office building is financially viable and built other office developers and to the City of San José. Again planning staff is recommending that the Planning Commission forward a recommendation of approval of the proposed general plan amendment to the city council. With respect to the planned development zoning PDC 10-018, the proposed planned development zoning is consistent with the goals and policies of the San José 2020 general

plan and that it will provide both housing and jobs in a pattern that will complete the existing neighborhood and remove a barrier and source of blight in the neighborhood and place the office use adjacent to the existing office buildings. It is also consistent with the residential design guidelines appropriate for garden town home development and the commercial design guidelines appropriate for office buildings over -- for office development. And again, you know as stated in our staff report we recommend that the Planning Commission forward a recommendation of approval of this subject planned development rezoning to the city council as recommended by staff. Thank you.

>> Commissioner Jensen: Thank you staff. Is the applicant here? Fuzz would like you may have up to five minutes to speak on behalf of this project. And fuzz would introduce yourself as you come forward.

>> Silver stone communities. Here we go. Perfect. Great. I first just want to thank staff. They've just done an amazing job on this project. And it's kind of a complex project. So I just wanted to -- okay. I just wanted to make a couple points and then turn it over to Barry Swenson builders and they're going to talk about the office. This is essentially a mixed use project. There's three components to it. Parcel 1 which is here that's where the town homes are going to go. Parcel 2 which is in a remote corner currently of the office sector which is this square here, and then parcel 3 which is going to be for the expansion of Santana park. The highest and best use of parcel 1 is for residential development. It really has no frontage or any visibility from a major arterial and it's surrounded by residential. This use is surrounded by the Planning Department, the neighborhood associations and the residents that are around it it really is consistent with the general plan 2020. And the Winchester master plan and actually this component of the project will create about 450 jobs immediately for the construction of the project. Parcel 3 we had originally proposed to develop. That's right here. But in talking to the parks department they've been looking to expand Santana park for about ten years. So we forgo -- we're not going to do that development but we are going to cooperate with the parks department to transfer the land so they can expand Santana park. Part of that, there's an existing cul-de-sac called baywood, we're going to relocate that here, it will end in a cul-de-sac with a sidewalk that connects up to Santana Row right here, this is Hatton and Santana Row main street is right at the edge here so that connection is actually critical to this project. Parcel 2 the office site currently has no direct connection to Santana Row. You'd have to walk all the way around to get to the

restaurants and the shops so this sidewalk would create a direct link to Santana Row shops and restaurants. That together with the street and the park that's going to be right in front of the office buildings will give parcel 2 which was a remote location excellent street frontage. In addition this sidewalk connects Santana Row residents with Santana park. Currently they can't get the there either. They've got to go all the way arounds. Another benefit is the neighbors that are over this way, they can't get to Santana Row without going around. They'll be able to go through our community connect to that sidewalk and right up to Santana Row. So they'll have direct access as well. So this is really a very important pedestrian link for the whole area. With that I will turn it over to Todd Curtell with Barry Swenson builders.

>> Thanks John. Hi good evening, my name is Todd Curtell project manager with Barry Swenson builders. We are a full service developer here in San José and we have a lot of experience working on commercial developments here in downtown. 150,000 square feet here in downed an other projects here in the valley so we have lot of experience on doing office developments. When John approached us we had great excitement from the onset. We clearly identified the attributes that are associated with this particular piece of property. Some of those attributes being transformation that is current in the neighborhood, the attractive land price in which Jeannie had made reference to. So although we don't have the ability to start construction on this particular project today because we are inhibited with the financial markets and also the lack of tenants in the marketplace we believe that these attributes along with our structural system will allow us to be able to get to the market as soon as there is a market which is encouraging. Based on we've already actually had preliminary conversations with grubb and Ellis, which is a brokerage firm here in town about creating a project an actual foreplate which will work, so I'm going to provide you with kind of what this thing -- I shouldn't say thing -- see if I can get out of kindergarten here. So this is basically just an idea of what this project could look like. So basically what we're currently envisioning is this would be about 90,000 square feet which would be within a 90 foot height limit. Basically, comprised of seven stories, three -- excuse me, not three, two levels of below grade parking and also two levels of above grade parking. This project would --

>> Commissioner Jensen: Thank you Mr. Curtell, your time is up but you will have up to five minutes after speakers. I'm going to call three names in advance I apologize in advance William Toll frank start and Frank Fiscalini.

>> Yes, my name is Jim Toll, I live in the homes that are directly north of this site. We are so pleased to see that the Planning Commission or planning staff anyways is recommending that this be rezoned. The neighborhood I live in and all my neighbors fully support this. The SBC building that is there is in decay, it is a detriment to our neighborhood. The expansion of the park and improvement of the park is a great benefit to all of us so I hope you do support this rezoning and I hope that our councilman does as well. Thank you.

>> Commissioner Jensen: Thank you.

>> Hi, I'm Bill Zart. I'm Jim's neighbor. I'm also president of the Villas and town and country 128 homes high development contiguous to the project there is very strong support, we need it we live there we understand the importance and John McMorrow has just been terrific in terms of working with everybody, please, let's get this thing done get it approved, thank you.

>> Commissioner Jensen: Thank you. And councilmember Fiscalini, it is an honor to have you here speaking before us. Thank you very much for coming in this evening.

>> Good evening, Madam Chair and members of the commission, staff. My name is Frank Fiscalini and I'm a resident of District 6, and had the pleasure when I was on the council of shepherding Santana Row and the housing development through the various city phases. Little did I realize then that I would be here some decade-plus later advocating further development of the area but here I am and very delighted to be here. First I want to commend the staff. The staff did an excellent job on this project. It's very complicated as you know. And particularly, in the environment that we're in at the moment and the difficulty of changing zonings on property that have been earmarked for commercial or development, to cause them a housing development to take place is very difficult today in the city as you know and probably with very good reason. But the staff working with the developer

has come forth I think with a very excellent project. It's one that provides access to Santana Row in a way that is not available today. It also provides that we have a win-win for the city and a win-win for the neighborhood. It's a win-win for the city in the fact that we get more housing for the city, we ultimately will get an office building that will provide more jobs for residents in the city and I would also like to add it's a win win for those working for work in the construction industry. That pleases me because as we all know they have had a very, very difficult time in these past years and anything we can do to increase the development of jobs in that context is good. I think you will find that this project not only yields increased taxes to the city, with very little cost if any additional cost to serve the area, and that is a big plus today. So in closing I want to encourage you to approve the staff recommendation. They did a wonderful job. And they deserve really the kudos as well as the development people that are involved. Thank you.

>> Commissioner Jensen: Thank you. Staff. I'm sorry, motion to close public hearing? There is a motion and second. All those in favor? Thank you. Staff?

>> Staff has no additional comments.

>> Commissioner Jensen: Thank you. I will wait for my commission to pipe up. Commissioner Abelite.

>> The applicant has one last statement.

>> Commissioner Jensen: I'm sorry, would the applicant like to come up and close? You have up to five minutes. The applicant is shaking their head no. So we're moving on. Commissioner Abelite.

>> Commissioner Abelite: Yes I would like to go ahead and make a motion, and then I would like to speak to it afterwards. And point of order, should I make a motion for both GP possibly and the EIR or the draft mitigated neg dec?

>> Commissioner Jensen: Counsel?

>> Let's do the mitigated neg dec first.

>> Commissioner Abelite: So I'd like to make a motion following the staff recommendation, read and consider the draft mitigated negative declaration, recommend to the council the adoption of a resolution for the mitigated negative declaration and approval of a change of the San José 2020 general plan land use/transportation diagram designation from office to medium high density residential on 5.16 acres to a total of 7.8 gross acre site as recommended by staff.

>> Commissioner Platten: Second.

>> Commissioner Jensen: There is a motion and second would you like to speak to this portion of your motion?

>> Commissioner Abelite: Yes.

>> Commissioner Jensen: Thank you.

>> Commissioner Abelite: As a matter of disclosure I met with the applicant to get a tour of the site and I didn't learn anything extraordinarily more than what was in the package. Having seen and read the package it is an extraordinary benefit to the community from a social network, social fabric as well. It raises an absolutely obsolete building at the Pacific Bell telephone complex I think it expands the opportunity to remodel the park tremendously well and I understand it utilizes dollars that came from Santana Row that are sitting in a kitty that are ready to build that park and remodel it. I think it gives great access, I used to live in Santana Row for a while and I didn't have the ability to goat the to that park. And the connectivity that this project makes brings the whole development together and it will make the whole area lift. It is actually a very exciting project. I think we should commend staff and the applicant. They've worked on it for many, many years and I am fully in support of it. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Abelite. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I also support the project. I think it's a great idea to connect not only Santana Row to the neighborhood park but also vice versa. It definitely promotes walkable communities which I'm absolutely in support of. More importantly also there is no net job logs with this development which I'm supporting economic development in City of San José and I think it's a great project overall. Thank you to staff and the applicant as well.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Councilmember Kalra.

>> Commissioner Kline: I think Frank took my thunder on the one one situation I had a little to do with Planning Commission in the Santa Clara years and years ago and one of the regrets we had although I was on the Santa Clara sides, we were keeping sales tax as much as possible access to the park and access to the extension of the neighborhood so I won't beat a dead horse here I know where this is going but it's really important to convey our vice to a passional way strong moral vote because this is the type of community with the walkability, the new urbanism, the mixed use that should not somehow get confused with housing and balance issues or something, with taking away this office building. This is a type of development we really really want this this city and that we should say so in a passionate passionate way.

>> Commissioner Jensen: Thank you, Commissioner Kline. In the interest of full disclosure, Commissioner Abelite kicked it off. I'd like to ask if anybody else has had the opportunity to speak with the applicant concerning the project? Okay. Moving on, we have a motion on the table. All those -- let's vote by light. And that motion passes unanimously. With Commissioner Kamkar absent. Commissioner Abelite would you like to make the second motion? Thank you.

>> Commissioner Abelite: My apologies moving through the motion, I'd like to recommend to the council the planned development rezoning, from RM multiple residence district and CG commercial general district to A(PD) planned development zoning district to allow for the development of up to 104 single family attached residential units and 89,342 square feet of office on 7.8 gross acre site as recommended by staff. thank you.

>> Commissioner Jensen: There is a motion and second. Would anyone like to speak to this -- would you like to speak to your motion? You got it out the first time, thank you.

>> Commissioner Abelite: I covered it thank you.

>> Commissioner Jensen: Would anyone else like to address this motion? Seeing no speaker lights, may we vote by light? And that motion passes unanimously. With Commissioner Kamkar absent. Moving on to 6I. The following projects being considered are located on the south side of Aborn Road between Alessandro drive and Ruby The first one is: Certification of the final environmental impact report for Mirassou mixed use development for a general plan amendment, GP 09-08-05, GPT 09-08-05, and planned development zoning PDC 10-001. Staff.

>> Thank you. Staff is recommending that the planning commission certify the final EIR for the Mirasou mixed use development. The EIR found significant impacts in the areas of construction related air quality, biological resources, cultural resources, hazards and hazardous materials, noise and traffic which could be mitigated to a less than significant level and found significant unavoidable impacts related to accumulate land air pollutant emissions including ozone and cumulative evergreen East foothills vision strategy plan and the Evergreen development policy revisions. Environmental comments centered on impacts to schools, traffic, traffic and the impacts from hazards related to the winery use and the winery building. None of the comments raised a new significant impact or identified a substantial increase in the severity of a previously identified impact which would trigger the impact of recirculation. Staff is available for questions. Thank you.

>> Commissioner Jensen: Staff, if you would like to speak to all three of the items at the same time please feel free to do so. Thank you.

>> Now we'll tag team.

>> Commissioner Jensen: Perfect.

>> Again, with respect to the general plan amendment, GP 09-08-05 and GPT 09-08-drive, the subject general plan amendment requests both land use and text are consistent with several of the goals and policies of San José 2020 general plan as well as the Evergreen specific plan and its intent to create a unique residential mixed use community. The approval of the village center land use designation across the entire Mirassou former Mirassou winery site will extend the village center land use designation from the existing village center itself out to Aborn Road. This will allow the site to be developed as a true extension of the village center and really become the identifiable visible hub of the Evergreen village center. Right now it's kind of hidden back behind you know the major arterial. And again, planning staff recommends that the commission forward a recommendation of approval of the proposed general plan amendment to the city council. With respect to the zoning, again, here we're dealing with the location of the Evergreen Specific Plan. And this again was the specific plan that was approved in 1991, which allowed close to 2900, little over 2900 residential units, over an area approximately 865 acres. Again, as you -- we depict on the map. And it's predominantly built out. We've got some larger areas that still have some development potential both residentially and commercially. Again the subject site has major frontages along Aborn Road, as well as Ruby and you can see by the aerial that the village center is kind of off Aborn Road. So this proposal will really work to extend that village center out to a more heavily traveled area and you know work to draw area residents into the village center. Again the key project objective of this proposal is to strengthen the existing village center ruby as well as create a new village environment on Ruby avenue through buildings and street design elements and also work to renovate the existing historic buildings on the site one of them being a winery building and the other being a residence. Some secondary project objectives are really to provide quality and unique residential development to fill in the balance of the property that is not, you know, necessarily the best for commercial. So the -- again as we stated before the primary is to get that commercial out there to kind of work with the village center and then secondarily fill in the balance of the site with residential development. And through all of the site design is to provide good cross-connections for vehicles and pedestrians to link adjacent residential developments into the Evergreen village center. Another secondary project objective really is to consider the inclusion of unique attributes of the Evergreen Specific Plan area and we'll be doing that really at the planned development permit stage. So really create this unique sense of place. Because we have an opportunity here with

a large site, a mix of uses, and the utilization of existing historic structures. So more specifically, what's included in this planned development zoning is, up to 25,000 square feet of commercial uses, and again, that can happen in individual, newly constructed commercial buildings, as well as the historic winery building and/or residence. To also Lou up to 104 single family detached court homes to upgrade the street design along ruby avenue leading into the village center to create more urban residential building form along Ruby avenue again to work more with the more urban village center concept and create walkways and frontage roads within the project area and more specifically, along the existing lake. And again, as we outlined in the staff report, we recommend that the Planning Commission forward a recommendation of approval to the city council for the subject rezoning. Thank you.

>> Commissioner Jensen: Thank you, staff. Is the applicant here? I'm sorry, is that the conclusion of the -- thank you, yes. Yes, if the applicant would like to come forward, you may have up to five minutes.

>> Good evening, chair Jensen and members of the Planning Commission, members of the staff. Summerhill homes is truly pleased to be with you this evening as the applicant for the development permit required for the building of the Mirassou family property. We have provided you with a copy of my comments this evening and three basic exhibits that we will discuss in the five minute presentation here. I am Joe head president of Summerhill land and with me is Bob Hankins, senior vice president of development and team leader for the development of this project and Vince cantori, vice president of Summerhill. We also have a number of our consultants with us if the details are something you would like to explore during your questioning period. Richard Lamby as the trustee of the Mirassou family berlinner Cohen here in San José have worked with the staff and the community in the update of the Evergreen East Hills development policy which was approved by the city council in December of 2008. Both of those gentlemen are also present this evening. As noted in the staff report, the policy update approved an additional amount of development in the subject study area, and this allowed the Mirassou family to proceed to a proposed general plan amendment, and a planned development zoning, with the appropriate EIR backup which is the subject of our hearing this evening. This Evergreen East Hills development policy set three primary goals for the Mirassou family land. First, we agree that the preservation and restoration of the EIR before you, second, is important that the Evergreen village shopping center which is owned by Chappel homes retail division is enhanced and supported and given a clear path to success. And we'll talk about that in a

moment. And thirdly that a variety of housing types that would support the shopping center and provide the fiscal resource that would make the historic preservation and restoration a reality would be the third element in the goals. We started our application with the Mirassou family on behalf of the trust in October of last year, 2009. We worked with the City's planning staff and Public Works staff from that period on, for several months, in a development of a series of alternative plans which would be the normal course of events in a project of this significance and this size. In June of 2010, councilmember Rose Herrera convened several design charrettes to ensure that all aspects of community interests relative to this site were thoroughly explored and attending the council was the councilmember, city planning staff Chappel's retail company an independent retail consulting firm a retail specialist architect, a architect that Summerhill had contracted with, civil engineers, a historic preservation architect, a historic preservation contractor who would actually execute the work that was done and a landscape architect and out of a series of these three charrettes came the major design elements that we have before you this evening. I'd like Vince to help me with the first of these exhibits. And it has to do with the historic restoration and renovation. It's the area designated is the area that fronts Aborn. And if you've lived in San José as almost all of us have for a number of years, it's been the gateway to that family's operations for over a century. The main winery building will be completely restored. It's the building in the center of the shaded area. And over to the left, where an arrow goes to it and points out to Aborn is the Peter Mirassou house from 1922. Those two buildings will be in our very first phase of construction, for their historic preservation and restoration. Additionally, all the other areas will be landscaped and parked appropriately with a replanting of a vineyard which will emulate the historic vineyard which has been unfortunately lost to time and a view to Aborn of those two historic buildings as they existed 30 years ago sort of in their prime, back there. Second element --

>> Commissioner Jensen: Thank you, Mr. Head you are out of time.

>> If I could I'd continue afterward and answer your questions your staff report has been very thorough and I thank you.

>> Commissioner Jensen: You will have five minutes afterwards and if I neglect to call you up Commissioner Platten will remind me I'm sure.

>> Thank you.

>> Commissioner Jensen: I'll call the first three speakers, I'd like to remind you that we're hearing all three items at the same time so we'll only be calling you once. James Horton Jassic Minko, Marcel Mota.

>> Good evening, my name is Jamie Horton and I've been living in the Evergreen community for the last 15 years. I'm here to ask you tonight to deny or delay the Mirassou plan proposal. My reasons are as follows: Looking at the chart above there, first, the proposed zoning change significantly contradicts the Evergreen Specific Plan to which prior developers adhered to, previous elected leaders were influential advocates of and the homeowners have made substantial investments all of which made Evergreen plan a successful one of a kind development. Simply stated why are we changing this plan now? The plan density will add profit to developers while contributing to a loss of home values that I estimate are in excess of $37 million. Yearly out of pocket expenses will increase as well, things like user taxes, transportation cost, so on. The plan in my opinion will overtax an already overcrowded school system an overcongested traffic condition and oversaturated retail and housing market. Aborn Ruby iconic recognition, as envisioned in the Evergreen specific plan, will be obliterated by this plan proposal. The plan has unanswered environmental issues that have not been fully addressed that will be discussed further by some of my fellow homeowners. The limited public notification public forums and government outreach has created a lack of faith in the democratic process. As the commissioners you have the responsibility to weigh what is best for the whole community. If this project is approved the developers will make a profit at a significant cost to the residents and decrease the property --

>> Commissioner Jensen: Thank you, Mr. Horton, your time is up. Thank you. Mr. Minco.

>> My name is Seriatc Minco. I live in that community for 15 years. I bought a house when those houses were sold for the first time. I would like to talk about two issues to support James statement about school and traffic. If possible I would like to ask for extension of time as we are representing people that are financially community that live in the community people that educate our children in that community versus people that are just making

money by building houses, much more time. Let me start with the school system. Evergreen Specific Plan specify how many houses is supposed to be built what type of impact those houses are going to have on our schools. Three schools in that region that are going to be affected and all the schools are overcrowded right now. We are sending our children to get good education, they are not getting that education there. They are already sitting in classrooms that are portable classrooms. We are the strongest economy in the world, one of the strongest economy in the world and we cannot afford to build classrooms for our children. If you go to slide number 4, there are some statistic that our school districts use to justify increase in the classroom. We look at this, we did a survey on our streets and we see that Evergreen high school district is 95 below, 95% below what we estimate. They projected only three students from 100 houses, over 100 houses that will go to high schools, we see about 60 students. The elementary school district didn't even consider middle school, they only request, they only mention impacts on elementary school.

>> Commissioner Jensen: Thank you, Mr. Minco I'm sorry but your time is up. And Mr. Motta as you're coming forward I'm going to call the next three speakers. Rama Garam. H. Shigura, I'm sorry Mr. Minco we have a question for you from Commissioner Cahan. If you would like to come back to the -- we have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair Mr. Minco on the paperwork that you handed out --

>> I am going to hand it out right now. I have four presentations about traffic and schools and --

>> Commissioner Cahan: There is one packet we have already. I'm sorry I thought that was from your -- maybe you know the answer to this in there you have a suggestion that it be deferred for three months to try to find someone to purchase it as open space.

>> Yes.

>> Commissioner Cahan: Do you know of someone that already in your mind that you think will purchase it?

>> As James pointed out this development will cost the community in the range of 20, $30 million. So I think if you look at how much impact this is going to have on our community, we constantly have additional taxes for schools. For other projects in the community. We can finance this and we can have everything the same way as it was planned in the original plan.

>> Commissioner Cahan: But I just wondered if you knew of someone that you thought was interested in purchasing it just because that was a suggestion on your handout.

>> If city is going to purchase this land, we have residents that pay taxes for this area. We are the residents that are going do finance this anyways. Not just me that is going to purchase it bust but us.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: I will call the next three speakers, Rama Garan, H. Shigura and Bonnie Mace.

>> My name is Marcella Mota, I'm a resident of Evergreen and the information you're talking about if you won't talk that time me that was part of my suggestion she could ask more questions often that. So -- so basically, we wanted to talk about the Evergreen mixed use development and the denial of the zoning and environmental certification, and not agree with the staff report on various technical and engineering items which we found out which unfortunately I do not have enough time to talk about all my 30 points. But on the most important part is, I need -- so basically I wanted to talk about S disturbing part of the report, vague memory of previous owner or current owner's DDT, DDE, DDD, leaching into well water. Because it is an historical location since 1940s and beyond and the water table or the city of San José water well at the corner of Aborn and allessandro were completely kept out. So this is location of the property and this is the location of the City of San José well water. Right on that corner. So if there's a well water next to a contaminated agriculture area, wouldn't that be due diligence for our City of San José engineers to check the well water at that site? In addition, I noticed that the environmental report supplemental appendix 5.3, exclude hazardous contamination data historically from the

Mirassou report. We find this an unacceptable practice, unprofessional and lacking in the due diligence towards the public city interest. And the reason I'm very concerned is that with this if all of us recognize that DDT, DDE is a extremely highly deforming birth defect pesticide which was written by a young lady, I forgot the name of that book on that very subject. There is plenty of land too for us to put out there, I'm not against that. But this particular site being historic is the sole headquarters where DDT, DDE lead based mercury and highly other toxic birth defecting pesticides and chemicals were placed.

>> Commissioner Jensen: Thank you, Mr. Motta.

>> And I find the report very shallow. Thank you.

>> Commissioner Jensen: Your time is up. Thank you.

>> Hello, good evening everybody my name is I'm going to touch on the parts where Marcel left off and I've been Evergreen resident since ten years and I've been live very close to that proposed site. And then few things I'm going to talk about these Evergreen educational quality damage because of the proposed development you know there's teacher student teacher ratio is going to increase all the money they're going to put is not going to mitigate the number of students which is going to increase. And the quality is obviously going to decrease and second point is financial damage to the home values. Because the vast majority of Evergreen residents live in this area because of schools and low teacher student ratio is going to decrease the value of the homes going forward and there's unsubstantiated retail claims, in the report it says it's going to increase the traffic to the retail Evergreen area, which may not be you know, true. Development is going to block off all the Evergreen related square, on top of it they're going to put the signage which is going to elevate Evergreen village square they don't have any proof which this is going to add some more value to the retail space and then you know what we are recommending is you know it could be put to the best community use you know, few suggestions are you know you could use it as a historic Mirassou park or doggy park, or community center speak to six months to find likely a buyer, or you know, where he can support this kind of efforts. So well it's what I -- another thing is the traffic, you know the traffic is a mess on Aborn and the capitol expressway already and this is going to increase that as well and then

the traffic money, he they are going to give it to the city does not mitigate those as well. Enough and then so I would like to you know you guys to deny the rezoning of this, or at least postpone you know until all these can get addressed adequately. Thank you for your consideration.

>> Commissioner Jensen: Thank you, Mr. Garam.

>> And to answer your question Mrs. Cahan is that the buyer we have --

>> Commissioner Jensen: Commissioner Cahan did you want to ask your question again?

>> Can I answer the question?

>> Commissioner Cahan: Yes, do you -- three months is a very short time to even talk about trying to find a buyer so I just wondered if you had something in mind that you were referring to.

>> What we wanted to do is duplicate the Hewlett Packard foundation which basically bought a huge piece of land grant range park all the way up to Morgan hill. What we wanted to do was approach them and asked them if they would consider buying that property and using it for the community and use it for Summerhill, they invested $600,000, we wanted to especially recoup and give that back to them and make it into a historic park and maintain the honor and the value for the Mirassou family.

>> Commissioner Jensen: Thank you .

>> My name is Jaime Sutra, I basically want to talk about this project. I'm basically against the approval of this project. There is three main topics I wanted to address, the first one was traffic. Most of the Evergreen area was developed in the last ten years, the project plan that was presented show there's almost 3,000 homes that were built and most of those were developed after 2,000. So the traffic actually there's very limited access to highway 101 from this area and the primary way for people to access highway is from capitol expressway. And there is as

you know no plan, no mitigation to address this issuing. Second is schools. I think a few folks already mentioned that but basically most of the work that was presented and based on what Board of Trustees, 0.02 people attend the high schools. Two out of 100 homes are going to the high school which is ridiculous. The third one is a commercial residential foreclosure aspects of it, right now there is actually a village center with a very large commercial space. Almost 50% of this space is unused and has not been sublet. And now the promote is to add 25,000 additional square feet to that place. One thing I was 35 homes that have been built right next to that particular property. And so, there has been no demonstration of the commercial uses of this project. Thank you thank you very much.

>> Commissioner Jensen: Thank you, and Ms. Mace as you come forward I'm going to call the last speaker .

>> Bonnie Mace district 8 round table first of all I want to commend the developer. The developer has worked with the community for more than a year on this project. They have been to a number of community meetings including the ACR team meets, they've had community meetings about the schools, they've had community meetings about the traffic. The developer has really listened to what the community needs are and to us that's very important. It's been a very good partnership. Moving forward I'd like to raise seven short points I know I don't have much time, that we would like to fight for. first is density. 104 units or actually 107 units is what they are looking at now. We want no more than 107 units, as you know the GP could go up to let's say 150. But the developer is only proposing 107 and I think that's very good for the community in terms of what it can support. Important to have an iconic sense of place there and the developer has talked with this Jeannie has talked about this staff has talked about this. There is a real importance of linking critically important. If you have two disparate sites that aren't linked together it is not going to serve the purpose of that area which Councilmember Herrera said, to enhance Evergreen square. We want to make sure there's a unified vision going forward in terms of retail. We're a little concerned aobut this because Summerhill is not a retail developer, and therefore we want to make sure moving forward that the retail is consistent and there's an iconic sense of place there. The third thing is schools, and actually there's a representative from the Evergreen elementary school district here tonight two representatives. The developer has been very good with working with both the east side union high school district and the Evergreen school district in terms of what they need and working in, primary

things they worry about are schools so we wanting to make sure that moving forward the developer is having a sense of helping the schools, helping the community in terms of this consume aspect. It is very important for us that the traffic fees use for close proximity.

>> Commissioner Jensen: Ms. Anyways, there is a question for you.

>> Commissioner Cahan: Could you elaborate on your previous concerns?

>> We're saying since there were toxics there, since the previous speaker has raised the comment, make slur the EIR is very satisfactory in answering whether the toxic issue is addressed and mitigated and moving forward this won't be an issue in terms of the pesticides that were on site and the well water that is close by.

>> Think that it addresses toxic waste appropriately?

>> I did review the EIR and feel that should be assessed by an independent third party, okay.

>> Hello, my name is Sergio Essencio, real estate broker for the last 25 years, we sold a lot of houses 24 years ago in everything. One of the moke school districts and open space and my concerns are with consumption being so overcrowded and now the traffic being so congested and to get into Evergreen that enclosures and dozens of homes vacant because they're foreclosed. Adding more properties is not our solution in Evergreen. We first need to address the issues about the schools and the traffic and not take any shortcuts and making sure that if we add more infrastructure that will support it. And urge you not to take any shortcuts. And properly investigate these issues about the environment, and pesticides, and the wells, and things like that.

>> Commissioner Jensen: Thank you. Mr. Head. You may have up to five minutes.

>> Thank you. I'm going to ask Mr. Hankins to talk about some of the more ms. Mace to comment on the variety of the community and we think we spent a good year doing that . Specifically in relations to the schools, we

certainly share a need for and a desire for top quarter school. In conversations with the two affected school districts we reached an agreement to of course pay the fees required by statute. That's not a decision that just goes. We reach an additional A money. We're in the process of drafting legal agreements that would require us to contribute total moneys to the Evergreen district at $7,000. The amount of that was determined by their saying that the 55 students that would come out of this site that just completed construction, we have agreed to do that. The high school district, took a slightly different approach, they would like $225,000 to use in a more broadly unrestricted area but they wanted 60,000 to continue an after school homework program that has been very successful, and unfortunately, city budget restrictions, had to be cancelled or was going to be cancelled, and they had to upgrade some science labs in other areas, and we've agreed to do that. So that all of the elements asked by the schools to cover the impacts of the students that would be in the project, we have addressed and are formally in documentation to require us to do that, and that would happen immediately upon our commencement of construction. Mr. Hankins will answer EIR and traffic issues for you, thank you.

>> Thank you, Joe, Madam Chair, members of the commission, my name is what I'll try to do is really you know give the floor back do staffer to talk about the traffic. Again, this is not newspaper, we're not changing a plan. This plan was originally in the partnership in ESP 1 and 2. And subsequent to that two or three years ago, they had the Evergreen visioning process went through and the Evergreen development policy update, included this policy in the traffic evaluation that was done, they discuss a much again, this is not a toxic site by any means, there wasn't a lot of pesticides used in this area. The pesticides were primarily rodents and for weeds and that kind of stuff. In the vineyards themselves, you see lower levels of lead and mercury and arsenic it's you know prevalent in the valley anyway. Some of the higher levels we're taking a look at, again, we were in the area of historic counts, they will be further identified at stay,.services City of San José will take the word there that you know plenty of heart services et cetera. Appropriate mitigations will take place and it's on a very small scale as well so with that thank you very much, we'll be here for any questions you may have. I'll turn it over to staff to give you the specifics and the real details behind the EIR.

>> Commissioner Jensen: I believe we have a question for Mr. Head from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I would like to commend you on working with the schools. it's certainly of grave concern right now as the public schools are being flooded by students that would normally go to private school but are now back in the public school system, as well as an increase in the area of total students. The -- what you discussed that you're in legal agreement negotiations right now, are those for just a one-year fix or has it projected by the schools that that will help overextend Evergreen?

>> For the Evergreen school district, the permanent fix for the students generated out of 107 homes would require two classrooms. And the construction of those two classrooms would be the part of the school, of the school impact that they could not cover and that's what we are agreeing to provide.

>> Commissioner Cahan: So that's actually for the development of an actual classroom?

>> Two classrooms. Here's the money we need, here's what we do with -- we've agreed to that. We are actually not negotiating, it's the lawyers that are dropping, going back and forth as well.

>> Commissioner Cahan: And I thank you for putting that in legal documents as well to make sure that --

>> I stress that it is not a choice for us to make or not make. We will be required to do that.

>> Commissioner Cahan: And the homework center, am I correct that is a three-year -- --

>> We funded three years, and there's a substantial amount of cash over and above that with the district, it's the high school district now, believe they will put into a variety of uses but they're not specified as the elementary school district specifies. It was a fixed amount rather than a construction project now.

>> Commissioner Cahan: Thank you, I had another question about the connectivity of Mirassou with the retail and we didn't get to go into details on that.

>> If you can bear with me for just a second, I will put something up that might help with that. Basically the balance here to create an energetic and confident support for the Evergreen shopping village was to create enough retail at the corner of Aborn and Ruby and enough significant presence so that any traffic on Ruby which is a main street, identifies that's and then leads people back to the larger shopping -- the larger amount of square footage owned by the Chappell company. So what we did, in working with Chappell, and the retail architect and retail consultant, it will be about 8,000 feet at the corner and special signing, special light treatments, special paving, and a very large walkway that will go about a back and end up at the park right there at the village square. The architecture will be the same so the community will see a unified retail sign that has a reach out to Aborn for identification.

>> Commissioner Cahan: So there will be a full pedestrian walkway?

>> Full pedestrian, a very major iconic element, these are the deals that will be worked out in the planned development stage. The seam we thoroughly agree with that. It will be significant and thorough that's why that is the entire area that is subject to what we're talking about for special treatment. Not just at the corner intersection.

>> Commissioner Cahan: Great thank you.

>> Commissioner Jensen: We have another question for you from Commissioner Abelite.

>> Commissioner Abelite: I'm going to follow along that same, they have all been struggling for many, many years. I know three years ago they had a program where they were trying to get special entry monument signage off Fowler and San Felipe, I believe, to try to get traffic into that area. But I'm not asking in project, was there any kind of dialogue,.

>> In terms of the signage and interaction with Chappell retail, we have committed to a joint marking approach to our two sites, being blended into one. That's already started and Chappelle has sat in on all the design charettes that were done in the summer and are continuing and the detailed work we are doing now so that Mr. Rarardi the

Chappelle representative is in all of our meetings and is supportive of the proposal before you tonight and is looking forward to working it out. They shared with us some of the side work and design work they had a number of years ago, and we have architects working on variations which, when we hopefully get to the PD permit stage through recommendation and the council's approval they will begin to bring those forward to the community in that time frame.

>> Commissioner Abelite: Thank you.

>> Commissioner Jensen: thank you, we have no further questions for you. Thank you very much. Motion to close public hearing. It's been moved and sell, all those in fair, staff?

>> Just regarding schools, first. Government code section 65996 specifies school impact fees as an acceptable method of offsetting a project's effects on the affected school districts. As far as hazards, phase 1 and phase 2 were prepared busy strategic'on play sampling of the soils which is phase 2. The original phase 1 was performed in 2006 just after the Mirassou winery closed in 55.what one of the speakers from the neighborhood was referring to is that the technical report does indicate that fire department records were not available through the Criss system for the years 2006 to 2009 when they were updating the phase 1. That period of time is when the Mirassou winery was closed and we don't anticipate that there was anything in the fire department records that would be of value from those three years. As far as in addition to that, onsite soil sampling was done and indicated that pesticides were at relatively low levels. And as far as mitigation goes, the project mitigation includes a remediation action work plan to identify toxics and figure out a way to remediate the soils as the project goes forward. And I'll let Department of Transportation staff talk about traffic. Thank you.

>> Thank you. Madam Chair, members of the question, Manuel pineda Department of Transportation. I did want to hit a couple of points with regard to the comments that were made. The project falls within the Evergreen policy passed 2008. Traffic mitigation their fair share contribution in the Evergreen area. The project fee is approximately $13,000 per unit and the total amount for this project will be in the 1.4, $1.5 million range depending on the ultimate unit count is. There was a number of questions regarding the improvements and mitigations when those

are going to be built. The policy did not dictate an order for mitigation construction, so that was intentionally done by staff to give us flexibility to make sure that when developments come forward, we can build mitigations either adjacent to the developments, close to the developments or along major roads to the developments so we have committed both you know with the developer in public meetings that staff will work with the developer to look at the best possible mitigations that provide the best access to this site. In addition to that, the policy also gives flexibility that instead of paying the traffic impact fee, the developers might have the option to build the mitigations themselves. That would assure quicker construction of those mitigations also in conjunction with the development so once again staff has committed that they're going to work with the developer to try to implement those mitigations as part of their project and get the equivalent cost associated with the traffic impact fee. So that's the flexibility the Evergreen policy gives us and I think addresses many of the concerns regarding timing and location of mitigation. The last question was 101 improvements. As you can believe hundred units and 1 moo million of freeway improvements is pretty minimal however a small amount of funds are scheduled to go towards the 101 improvements. Aside from development, though, Department of Transportation is actively working on funding the 101 corridor project which includes 101 Tully 101 capitol and 101 Yerba Buena and currently 101 Tully is already fully funded and under construction. Due to project savings on that project we're going to be able to shift funds and start design work on 101 capitol Yerba Buena. As the gentleman mentioned of course there is no schedule for the construction funding for that project as of yet but as with any major projects kind of moving those projects forward along on a positive schedule is really what gets them constructed. It's not very often that $100 million lands in your pocket at once so you can build $100 million as one project. As part of this development staff is moving forward with pursuing funds and doing the design work associated with the 101 corridor improvements. Thank you.

>> Commissioner Jensen: Thank you staff. Commissioner Abelite.

>> Commissioner Abelite: First of all I'd like Mrs. Mace's suggestion of targeting some of the Tiff funds towards the Aborn capitol expressway entertaining and I speculate $1.5 million is not going to do it. I have accumulate of questions for you. Number one I think there is a project targeted to go and I'm wondering with these funds plus

other projects that have been approved through the 500 allocation pool is there enough money aggregating to do aborn and capitol?

>> Yes, Capitol and Aborn is on the list is part of the policy. There are something funds already available for that project that was part of previous projects and one of the things we look at is, we can combine funds to get projects ultimately completed sooner. But when all of the development happens and all the mitigations are constructed that ultimate construction of that intersection is one of them.

>> Commissioner Jensen: Thank you, Commissioner Abelite. I would just like to indicate my concern over the hazardous waste information. And I know that record keeping may not have been all of that thorough over the years. And so I would encourage staff to be as diligent as possible. We already have an instance in Downtown San José where it was discovered I have late that we had toxic waste under a community and a community park in a neighborhood and it's cost the city significant amount of money to do remediation there. So I would highly recommend overdiligence in the area of the toxic waste. Do we have any other commissioners who would like to speak? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you Madam Chair. I would like to put forward the motion.

>> Commissioner Jensen: Thank you.

>> Commissioner Bit-Badal: I would like to put forward the motion to the final EIR as recommended by staff .

>> Second.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion?

>> Commissioner Bit-Badal: I would like to do it after all. One after the other or --

>> Let's do the EIR first and then the other two items.

>> Commissioner Jensen: So Commissioner Kamkar did you want to speak to the EIR? Okay we'll hold on your comment. We had a motion for approval of the EIR. May we vote by light?

>> Can we do just before the vote one item is Commissioner Kamkar came in in the middle of the staff report and I just wanted to ensure that he had read the report prior to and was familiar with the environmental impact report.

>> Commissioner Kamkar: I did. Thank you.

>> We'll put on the record, thank you.

>> Commissioner Jensen: Thank you and that approval of the EIR passes unanimously. With all commissioners present. Thank you.

>> Commissioner Bit-Badal: I'll go into the second one.

>> Commissioner Jensen: Thank you Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Recommend to the city council the approval of the general plan amended as has been stated by staff report.

>> Commissioner Jensen: Is there -- there is a motion and second. Commissioner Kamkar would you like to speak to this item? Next item, okay. Thank you. Is there anyone else who would like to speak to this item? All right, may we please vote by light? And that motion passes unanimously. With all commissioners present.

>> Commissioner Bit-Badal: And lastly I would like to recommend to the city council the approval of planned development rezoning as it has been recommended by staff as well in the report. And I will speak to that.

>> Commissioner Jensen: There is a motion and second please speak to your item.

>> Commissioner Bit-Badal: Thank you so much, Madam Chair. Obviously, the developer and staff, city staff have been working for a long time with the community on this but first point I want to propose here is that the preservation of this Mirassou winery which I have been very fond of for many, many years. I'm extremely happy that that is something that has been a priority for the developer. And also for the community. It doesn't really belong just to the Evergreen area, I feel like it belongs to the whole city so I'm speaking as a resident of San José. Also another point that I really have appreciated is access to Ruby avenue which again promotes walkable communities and I'm absolutely in support of that. I believe also it's going to promote shopping at the current shopping center. Another aspect always important for developers is community involvement. I'm extremely happy as you have talked and you've had several community members actually one here and a couple of other pecularities stating there has been a significant community involvement. In particular bringing historic preservation architect and contractor to meetings, it hospital the seriousness of the developer's interest in historic preservation which again I appreciate that. And I think it's a.

>> Thing for the city as a whole for us to take seriously preservation of historic buildings. And the last point is replanting of the vineyard which is getting that feel of once upon a time, icon in the area. Not only just in Evergreen but also, for the City of San José. I also would like to encourage the developer to put a very nice monument or sign because I feel that Evergreen, not that I feel, that I know Evergreen village square has not been doing well because of lack of signage and that has been going on for many years, it's because of where it's located. And in order for in order for the city to be successful economically we can really work together and glad you can work with chappel homes to work on a plan that will revitalize that area. That's it.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I also wanted to express my satisfaction for the wonderful job that staff has done explaining the project. Developer have seen other projects developer has done and very

impressed by them. If the final product is anything like the presentation you know I think we're getting the better of the deal. The consultants you know excellent plans you know as I go through these usually I have one or two questions but I can't even come up with anything because everything is there. And to residents, I know we all fee el when a development is coming to our neighborhood that they're taking advantage of the wonderful schools that you've created, the wonderful community that you've been a part of but that's the price of progress. You know we need to go forward and we need to work together on when you guys moved in I'm sure some people were not happy. But I think what we have here is an excellent balance, excellent use of resources, and I think you know this is a win-win situation. So I'll be supporting the motion as a whole. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Commissioner Abelite.

>> Commissioner Abelite: I'd like to offer a friendly amendment if you would consider it and that's to do with the tax dollars and the Tiff funds and I would really like to work into the motion that we advise the D.O.T. or the Public Works department to give it their best possible prioritization, to actually implement the Aborn and capitol expressway improvements, that's one of the worst choke points in the area, I live out there and it's more of an emphasis type of amendment. I'd like to amend it targeting some of those dollars directly straight to that intersection. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Abelite. I'd like to ask staff a question referring to the conceptual landscape regarding a cul-de-sac. At the bottom of the drawing there is an unnamed street that has a cul-de-sac dead-ending. And I'm wondering if there is any reason that cul-de-sac could be turned into a through street to provide easy access there. The other cul-de-sacs in the proposal make sense because they go out onto difficult transition points or run parallel to other exits. It's the one at the bottom of the drawing. The town.

>> The town home development to the West and the South is a system of private roadways. It is not typical that we run a public street through to a private street. Because there's no way that we can require the existing development to grant public access.

>> Commissioner Jensen: Okay, are we going to have pedestrian or bicycle access through there? To allow the people on the private streets access?

>> I think Summerhill has indicated a willingness to put something there that would allow people from the private development to access the public street system, but again, there's nothing that would give the rights to people to although it's there and they access into the existing development, they don't have any right to do so. And could be considered to be trespassing and we can't condition that existing project to grant that at this point.

>> Commissioner Jensen: And one of the reasons I question that is, we had a discussion here not too long ago, regarding private streets and there was quite a hue and cry over the people on the private streets preventing their neighbors from walking on their streets or driving through their streets. Because the private road had been created in order to allow the developer to be nonconforming with public streets.

>> Which is why you're seeing in this proposed development the utilization of a public street network.

>> Commissioner Jensen: I'm not questioning that, I'm questioning, the access was it private to allow the developer to be nonconformant with normal standards or to have a gated private community?

>> The number of projects throughout the City of San José that over the years have utilized either private common open space or private infrastructure has not been supported by the city for the purposes of gating off these communities. It was a way of supporting development that may have deviated from some typical standards and to facilitate a more creative design and whatnot. In the caves Evergreen specific plan you'll experience there are not a significant number of mini private communities but a system of not only public streets but public paseos that wind throughout the community to really interconnect. You know it just so happens that we have a few of these smaller developments that are the probably more dense ones that felt the need to utilize private infrastructure to really design and develop their projects.

>> Commissioner Jensen: Right and I see that these other streets are significantly narrower that be the proposed project. And I'd like to ask counsel, is it okay for us to propose pushing through that cul-de-sac and straightening out and allowing this progress?

>> Not as a part of this project. Not as you're burdening these streets more than they ever anticipated.

>> Commissioner Jensen: Okay, all right. Well I appreciate the developer's willingness to create pedestrian and bicycle cross-access there. In order to allow people to get through to the walkways that are provided around the little lake front and over to the Mirassou area. Commissioner Platten.

>> Commissioner Platten: Yes, just back on a point of order. We had a motion of a friendly amendment which as a seconder of the motion I do not oppose if the maker of the motion does not oppose. For the record we need to clarify that.

>> Commissioner Bit-Badal: Absolutely, I am in support of that .

>> Commissioner Jensen: Seeing no more speaker lights may we vote by light? And that motion passes unanimously, with the friendly amendment. Thank you very much. And I'll entertain a motion to close the 2010 fall general plan amendment hearing.

>> So moved.

>> Commissioner Jensen: There is a motion and second. All those in favor? Thank you. Petitions and communications. Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a

subsequent meeting, or directing staff to place the item on a future agenda. We have a speaker card leer for public hearing for nonagendized items, only. Mr. Mota and if you would like to introduce yourself. Mr. Mota, we are here to hear nonagendized items. If you are here to speak to the Mirassou item, we cannot hear you.

>> Thank you ladies and gentlemen. I would like to speak to the process of how the public is informed. I would like to basically set the record straight the process, this is my first experience with it and I wanted to let you know that the process is not an open and inviting thing for the public. The -- I don't know how long it went back in the past, but I know it's more than one year, two year, where Summerhill homes and the president were talking about the snippets that they're talking with our council and representatives. For a year or two, I don't know how long. And I could see that they got the opportunity to get face-time with our councilperson, with their engineers, with their lawyers, with their planners, with their architects, with their president with their vice president and all this time and was anybody from the public invited to sit down with the cup of coffee and be there to -- and voice a civilized opinion also? No. Completely shut out. Knows now, this picture here, with this dotted line, only came when I wrote a letter to the gentleman saying that there is no exact definition of how this perimeter is drawn. Is it drawn from the center, sit drawn from the edge, is it stretching out is it drawn from the center or is there a calculation made that it's a circle? There's not. And the reason I brought that up because it is very disenfranchising that this as you heard involves the entire elementary school district which is over a mile away Chaboya Evergreen and matsumoto but in addition it involves a high school directly which is more than a mile and a half away. So it is not often to use this type of methodology when the schools are going to be impacted and we know we're on a recession so basically we have our schools sitting on the floor crying financially, because of the situation in the budget and we have developers approaching them and kicking them on the floor by paying these insufficient impact fees. So if we want to be fair with this project, every school district at the high school and elementary, needs to be informed. Not this under-submarine methodology of drawing a 1,000 foot circle when it affects the school as Evergreen was two miles away. That is gross grossly unfair. This is been there for over a decade and no one has ever changed it this is the first time for me coming to look at this process and it is so full of disenfranchising things to the public. I can't understand who's supposed to advocate for us when our councilperson is sitting for two years with these developers and not even inviting us. There is no recollection of who is registered to send this 1,000 foot, who is on it, I only received, I only live right here. I only received the last

two statements. I didn't get the April 17th. Can they prove it to me? No. Did they send it registered mail? If you got to have them go 200 feet can't they pony up a simple $200, or can they prove it? I didn't get it.

>> Commissioner Jensen: Thank you Mr. Mota. I would like staff to respond to some things you said regarding process and transparency with respect to meetings.

>> Laurel Prevetti: Let me just start Madam Chair by saying that this project was conducted according to the city council's policy on public outreach. So to the extent that you're interested in having noticing that extends beyond a particular noticing boundary, this is the rule of the City of San José. We do follow a 1,000 foot radius. I know there's interest perhaps in extending it to entire school enrollment boundaries, et cetera. As it goes city council is committed to open public process. As the staff report indicates, there were community meetings, that the public had opportunity to attend. And profit notice Website to those. The councilmember as in her role as an elected official representing the neighborhood has the right to conduct meetings with whomever she wants and by the city's sunshine laws which are also more transparent than what is required by the Brown Act and other laws, her calendar is posted. So you can see for yourself who she meets with, when she meets with them, et cetera. Her staff do open her calendars, and I know for a fact that she's the type of Councilwoman that would meet with community members if asked. So I can't explain you know all of your concerns but I can just let you know that this project was done in accordance with all of the practices and policies of the City of San José which is well exceeding all of the minimum requirements that are within the state of California. And we do appreciate you coming this evening to express those concerns and because this is not often the agenda I probably shouldn't say much more. Thank you.

>> No I was just going to add one thing with regard to your school notification concerns. And particularly with the environmental impact report here by state law we are absolutely required to provide all the school districts affected school districts with copies of everything that we're doing here and that's probably one reason the developer went to the table with them. Because under state law the schools can only levy and we can only collect on their behalf. Is consume mitigation a fee that is set by state law. There is no other mitigation. That is pan issue with the state legislature, it is a law they passed a number of yeast ago in that those are our limits. That's why the

developer here was telling us that they are paying or that they are negotiating to pay more than the state law requires them to do. The city by law cannot require any more than what state law has in respect to the fee. But the school districts were absolutely required to be notified.

>> Commissioner Jensen: Thank you, I hope that helps to answer. I understand it's a little confusing. There is a council policy on public outreach and it's council policy 6-30 which is available on the City's Website as well and thank you very much for raising the questions and your concerns and for being here this evening.

>> Thank you, ladies and gentlemen.

>> Commissioner Jensen: Thank you. Referrals from city council, boards commissions or other agencies.

>> Laurel Prevetti: We have none.

>> Commissioner Jensen: Thank you, good and welfare report from the city council.

>> Laurel Prevetti: Thank you, Madam Chair. Yesterday city council approved the first regent of the main street zoning ordinance which you considered at your last meeting so I wanted to again thank you for your comments on that, we're very excited about having those types of regulations in place. So thank you.

>> Commissioner Jensen: Thank you. Commissioners reports from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. No report.

>> Commissioner Jensen: Thank you. Envision 2040 general plan update process Commissioner Kamkar.

>> Commissioner Kamkar: No report also.

>> Commissioner Jensen: Thank you. Review and approve synopsis from 11-17-10. Is there a motion and second? There is a motion and second, all those in favor of approving it thank you. That passes unanimously. Subcommittee reports and outstanding business. Counsel.

>> Yes I have to report Ms. Gurza who isn't here right now mentioned to me that the management team in the city attorney's office is currently looking at this and that we'll get to you. We have the same workload and staffing issues that I think you're hearing from other staff here and that is taking alonger thank we would have expected, thank you.

>> Commissioner Jensen: Thank you, commission study session, consider and set a joint study session with the parks commission on the habitat conservation plan, for February 23rd, 2011 at 5:00 p.m. Is there a motion?

>> Motion.

>> Section.

>> Commissioner Jensen: Thank you. Review and approve the 2011 Planning Commission meeting schedule, provided as E-2.

>> This did come to you last time so what you are seeing before you is really a reflection of what came back, related to the originally proposed I think it was May 4th.

>> It was a CIP meeting.

>> Which was a conflict with a conference. We put it in as May 9th, we're still working with the budget office to confirm that date but we're going to go ahead and have this on there. Additional you'll see the changes in a couple of those study sessions, dates and that's it.

>> Commissioner Jensen: Thank you very much, staff. Is there a motion?

>> Commissioner Bit-Badal: Motion to approve.

>> Second.

>> Commissioner Jensen: There is a motion and second. All those in favor? That's unanimous. With that, this meeting is adjourned. Thank you very much.