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>> Commissioner Cahan: We just received a great deal of information, so I'm going to give the commissioners a moment to digest before we begin. [Pause]

>> Commissioner Cahan: Good evening. My name is Hope Cahan, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, June 6, 2012. Please remember to turn off your cell phones. or to put them on vibrate. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket 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, 4A, 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 submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. If any of you are here today to speak on the same issue and wanted more time than just the two minutes, I can allow more time for one person but I can't allow you to put your papers together, your speaker requests cards together, so you can speak one after another for that two-minute time block. After the Planning Commissioners may ask questions of the speakers. And response to commissioners' 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 raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to City Council. The City Council will hold public hearings on these items. Let the record reflect that all Commissioners are present except Commissioner Abelite and Commissioner Bit-Badal. We do have a guest from our city council, city council member Ash Kalra. He's going to come up and speak to us first.

>> Councilmember Kalra: Thank you, chair Cahan, I was about to say fellow commissioners. If you have heard me during city council, I often sound like a Planning Commission as much as I do a councilmember. It was a pleasure to have some of you before us yesterday as well. And of course the reason why was for the interviews of which one of the seats is Commissioner Platten's. And so I wanted to come here to recognize Commissioner Platten, for a decade of service on the Planning Commission. All of you that have served on any commission, but particularly the Planning Commission, understands what kind of commit that is. And anyone that has paid attention to this commission knows how important Commissioner Platten has been and the role that he has played as a seasoned commissioner over the years. And so I -- when I had the opportunity to talk to some of the sitting commissioners yesterday, I think that point was reiterated. I have full faith and confidence in our current commission and as well as the new commissioner that will be joining you shortly that you'll continue to do your great work for the city. But I certainly want to take this opportunity to recognize Commissioner Platten for a well deserved break from commission service after a decade of certaining on this Planning Commission, and I truly appreciate it, the time I was on the commission, you certainly served as an advisor and mentor and someone that I would look to in order to help better make my decisions. So if you could join me up here Commissioner Platten, I'd leek to present with you a commendation from the City of San José. In recognition for your ten years of service on the San José Planning Commission. [applause] [applause]

>> Commissioner Cahan: We will have Commissioner Platten for one more meeting, fortunately. City council member Kalra isn't able to come next week or at the next meeting so he wanted the opportunity to come to this meeting and we appreciate that. Commissioner Platten has certainly done a great service and should be well recognized for that. Our first item this evening is deferrals. And I see none on the agenda. Staff, do you have any changes to that?

>> There are no deferrals tonight.

>> Commissioner Cahan: And for consent calendar I also see no items there.

>> That's right, no items on consent calendar tonight.

>> Commissioner Cahan: For public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, due to the large public interest for 3 B and 3C, I will move 3A to the last item. We will begin with 3B and 3C. Staff we'll start with 3B.

>> Thank you, Madam Chair. My name is Leslie Xavier, and I'm with the City of San José planning staff in the implementation division, and I'm the project manager for the project you're going to hear tonight. Planning staff is recommending that the Planning Commission uphold the director's decision to approve a planned development amendment to allow for a seven bed residential care facility within an existing medical office building. Multiple letters supporting the denial of the project were recently received, most of which have been e-mailed to you, and also, all have been provided to you this evening in hard copy. The appellant's reasons for the appeal and the discussion and the majority of the comment letters that were received center on the kind of care that will be provided by the proposed facility. This is not something that the city in its permitting authority is tasked to decide. It is the state agency's decision to make the licensing decision and ultimately issue the license to any residential care facility, staff would like to point out that the zoning ordinance for the city is broad in its definition of a residential care facility and states it is a facility licensed by the state of California where care, services or treatment is provided to persons living in a community residential setting. Again it is a facility that is licensed by the state of California. The planned development permit amend contains a condition requiring the applicant to obtain that state license in order to operate the facility. Without the license the facility cannot operate. The director of planning was able to approve the requested permit as the zoning ordinance allows for a residential care facility for 7 or more persons to locate in our RM, RMH, CO, CP, CN and CG zoning districts. All of these are either multifamily or commercial zoning districts. The zoning for the subject site permits those uses of the CO district. So again planning staff recommends that Planning Commission uphold the director's decision and approve the planned development permit amendment as it's consistent with the zoning for the site. This concludes staff's presentation this evening.

>> Commissioner Cahan: What will happen is the appellant will have five minutes then the applicant will have five minutes and then speakers, general speakers will have two minutes each and then we will have five minutes

for the applicant and then a final five minutes for the appellant. So the applicant appellant, I'm even confused. Is the appellant ready? So you'll have five minutes to introduce yourself first.

>> Good evening. My name is ash Paraiu, I'm an attorney with the firm of Buchanan Tucker, I'm here on behalf of the appellant, Good Samaritan hospital. For the record I'd like to formally request that all the documents we submitted in prior hearing and for this hearing be included in the official record of the Planning Commission. I ask you to consider tonight as a planning member, is what exactly am I voting on today? This project has gone from public document saying it is a postsurgical recovery facility to being called a congee gat health living facility and as of tonight, being called a residential recovery facility. I'm still confused as to what this applicant would like to do in this facility. Contrary to what the staff is telling you, you have fundamental responsibilities under the city ordinance. You must make findings that this permit amendment furthers the general plan purposes. You must make findings that this planned development permit amendment furthers, and I quote, conforms in all respects to the planned development zoning of the property. You must take into consideration that it's the applicant's burden to satisfactorily substantiate the facts of the staff. You must also consider that you have the ability to protect the public peace, health, safety, morals of the community' and it is not and I repeat it is not a matter of right that this appellant, this applicant be given this designation, you have the ability to hear this matter de novo, to look for fresh new evidence, and look for new matters before you. If that sheet didn't convince you, the ordinance also says, there is no right to issuance of a planned development permit amendment. They don't have a right. A fundamental right to be issued this permit. And contrary to what staff says, if you look carefully under the CO ordinance, in essence it says that a residential care facility for seven or more persons is subject to a conditional use. Just to make a difference, if you look above, under where it says P, on the office general purpose, if this was P in the ordinance, then it would be permitted. We wouldn't be here. They wouldn't need an amendment application. But it's not. It says C, residential care facility of seven or more is conditioned. In other words you can say we don't believe this is the right facility for this project. The zoning doesn't automatically grant them the right to have this amendment. You have to have independent evidence in the record to substantiate the findings that this project makes sense for the city. And I submit to you the information that we've provided in the record showed that the ever evolving description of this project should really quite frankly frighten you. The reason why there's so many people that are opposed to this project is because it creates a postrecovery surgery facility that the state of

California doesn't recognize. The state of California as the record evidence some Department of Public Health letter doesn't recognize a congregate health living facility where you can go put people recovering from surgery. It cannot happen. To clear leadership on issues of bail bondsmen, on issue of predatory lending and medical marijuana and the list goes on, you have a responsibility of the residents of San José to say no we don't believe you met this burden and to reject this application. They are not as a matter of right granted this application. The fact that they're calling it a residential care facility should also be something of concern to you. The fundamental description under the zoning ordinance, of what a residential care facility is, is as follows: Residential care facility is a facility licensed by the state of California as the staff said, where care, services, or treatment is provided, to persons, and this is very critical, living in the community residential setting. You have before you in the record and I can read it on my rebuttal, where this applicant's describing patients that are coming from an existing on-site surgery center that can't keep patients for more than 24 hours, moving them down the hall, keeping them in a residential setting in the they recover, either short term or long term, God knows which one. This is not the same thing as living. This can't be called a residential care facility as submitted with the information in the record.

>> Commissioner Cahan: Thank you. We do have a question for you.

>> Yes.

>> Commissioner Cahan: From Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. I just wanted to consider and respond to, question number one is how do you respond to staff's position that this is a matter for the state to determine the licensing? And not for the commission?

>> The response is contained in the city ordinances. You have independent responsibility on appeal and we cited in the letter that we submitted which is, once the appeal gets filed, the decision of the director is rescinded. In other words, you sit as the body that will decide whether this is a good use of this property or not a good use of this property. And so it's your independent role not to just punt to the state and basically decide whether you

believe that the applicant has met its burden in proving to you that one of those three different uses I described is submitted -- is allowable under the zoning ordinance. The second point: You have a letter in the record uncontested without any other evidence from the City Attorney or otherwise, from the Department of Public Health, that was asked questions by the state assembly member, can you have a postrecovery surgery center where people are wheeled out of surgery and recover for a couple of days? Answer, no. Two, can you have a congregate living center where people can recover from surgery? No. You must have three types of people there nothing in this record illustrates that either one of those two types of facilities are allowed under law. And the concept of this city is just throw its hands up punt as a city Planning Commission and say we'll let the state worry about it. Respectfully we think it's your responsibility under the city ordinance.

>> Commissioner Platten: Second question, I think I understood your question but I'd like you to frame it as concisely as possible. Why in your view is this proposed facility not consistent with the zoning? I know you just pit the chart up there but can you capture that in one or two sentences?

>> It's not consistent because it's not a place where people will be living, one. Two, if you look at the surrounding area 85% of this area is highways and office buildings. It's no different than one of the allowable uses under the zoning ordinance as an emergency shelter. You would never ever allow an emergency shelter to be on the second floor of an office building. This is a seven story office building. There is not a single one that we could find in the 113 in the city, that has a residential use in an office building. Not a single one. So the simple answer is: People aren't going to be living there, to recover from a surgery isn't to live there and you should not allow residential uses on the second floor of a multioffice building.

>> Commissioner Platten: Third question is can you capture for me because I just read quickly through your packet, can you capture for us in concise a statement as possible your argument with respect to whether or not we've complied with CEQA relying solely on the mitigated negative declaration?

>> We believed you have not complied. You would have done an addendum before the director's hearing. You reversed it. You did an addendum after the second director's hearing. And we believe there are other issues as

we outlined in the record where the city staff hasn't truly analyzed the impacts. And the reason why again bluntly, I don't know what you're voting upon tonight. I don't know what facility is going to be used here. And to just throw your hands up and say let the state worry about it we feel strongly is an abdication. So from a CEQA standpoint as we argued in the letter you would never have a product description that was wishy-washy you wouldn't rps use is.

>> Commissioner Platten: Thank you.

>> Commissioner Cahan: Thank you, we have no further questions at this point. Okay now the applicant, would you please state your name.

>> Chairman, Cahan I just wanted to clarify. I may have put the wrong number on here, so if you could -- if that could be fixed for David Henderson I would appreciate that, sorry about that. Thank you very much. Chairperson Cahan and thank you to the staff. I also want to introduce Terry Rutledge and David Henderson who are in the audience. I'm the applicant's attorney Ray hashimoto, san José. Hopefully you had the opportunity to review the letter we provided on the 30th which touches on all the items and elements that the peanut has put forward to you. So we think we have done along with staff putting together responses to everything that the appellant has put forward. I'm going to try to talk about some things that you were submitted on jun 4th in the last couple of days. first of all let me first request that you uphold the director's decision. We think that the staff did a good job outlining if findings, conformance account general plan, conformance with the code? Conformance with CEQA. show why this facility is a permitted or actually a conditional use in the PD zoning that it's in. Let me start by saying a couple of things. The proposed project an entitlement by a congregate living facilities, a cliff many describing the project as anything else is not applicable. It is a cliff, it is akin to a residential facility, as staff has indicated. I don't want any mistake about that. With regard to the opponent's conclusion that Bay Area surgical management, BASN, is a business partner in this application, is incorrect. There has been some consultation, between smair tan and BASN and others, but there are no agreements, no understanding, no partnership, making BASN part of this application. There are many potential operators of this facility. At this time we don't know who the operator will be, nor have we specified which one of the cliff service types we will be providing. There's ones

for services for the mentally alert but physically disabled, services to those with life-threatening illness, or 3, services to those who are catastrophically or severely disabled. We have not made that decision yet. We will, as part of our application to the state, clarify that. As I said, we agree with the conclusion, findings and conditions concluded in the staff report. And we agree that the project conforms to the 2040 general plan. The City of San José zoning code. And has appropriate CEQA clearance. As outlined by the staff, the existing for the site allows for residential care use. The general plan includes many policies that support the proposal, and the ambiguities MD for the project sensitive impacts in general. The appellant's objections seem to center around the notion that it's a forgone conclusion that the proposed cliff facility is intended to serve postsurgery patients. This is not the case. Numerous letters recently sent to you and the city from various agencies, elected foibles and others really talk about the safety issues related to the facility. These are not land use issues. They are operational issues. We will go before the state who will look at the operation of the facility. I'd rather have you look at a land use decision as opposed to how this facility's being operated. That is the state's job. We will provide a home-like setting. We're confident that we can do that. And if you look at the plans as staff has indicated there are facilities that are both common and personal to their rooms and open space on the outdoors. So that we can certainly provide that home like setting that has been talked about. We respectfully request the Planning Commission uphold the director's decision to approve this project. Thank you. Here to answer questions.

>> Commissioner Cahan: Thank you. At this point I do not have any questions for you. Oops, Commissioner Platten.

>> Commissioner Platten: Marm chairperson a much pes.

>> There is no decision as to what care will be given in the residential care --

>> Commissioner Platten: Wait a minute, wait a minute, as I understood your testimony a cliff could provide only one of three kinds of services, none of which have to do with postsurgical care. So my question to you sir is will there be postsurgical care at this facility? If it's a cliff I'm assuming your answer is a categorical no. I didn't hear that. I didn't that hear that, did I?

>> Let me defer to Terry or David. Would you like to answer that question? Come on down.

>> Commissioner Cahan: We can't hear you up there. We need you down at the microphone for our record purposes.

>> My name is Terry Rutledge and I work with snare tan medical center. The question is will a cliff hold postsurgical patients?

>> Commissioner Platten: No, this is a question. The question is will this facility provide postsurgical care. That's the question.

>> And I'm not -- I honestly can't answer that because you would have a person from the Department of Health determine whether a postsurgical patient is allowed to be.

>> Commissioner Platten: You changed my words. I'm not talking about a postsurgical patient. I'm talking about postsurgical care. It's very clear from what your representative has given us and by the plethora of information we've been given that a cliff does not provide postsurgical care. So my question is really simple. Will you provide postsurgical care?

>> We're not the provider for the cliff as Ray was saying. The cliff will be a tenant who comes into the facility.

>> Commissioner Platten: The answer is you don't know?

>> Correct, I wouldn't be able to answer that.

>> Commissioner Platten: All right, thank you.

>> Commissioner Cahan: Thank you. At this point I have four speaker cards so I'm going to call all four and if you would line up down the stairs. Dave Henderson, Trudy Johnson, Joe Cafaro, and Melinda marhowitz. Each of you will have two minutes and if you introduce yourself before you begin that would be appreciate.

>> Sure. My name is Dave Henderson. I'm the president and CEO of samaritan medical center. I've been in my position now, I'm into my 24th year. I wasn't expecting to speak but as I follow this journey I thought it was really important that a face get assigned to whatever this project is because of the different innuendos and so forth that have been put forth, with that long term and probably I'd say candidly the one that caught me most was that the applicant is cagey in his answers. I want to make it clear that we've had a jeez probably a 50-year relationship with the City of San José. We've had a 45-year relationship with Good Samaritan hospital. Our organization was one of the founders of Good Samaritan hospital. I look at the people sitting to my right, who are speaking against us this evening, and I count them as friends. So there's nothing cagey about our position or attitude about what we're trying to represent. Mr. Platten to your question part of the reason why it cannot be answered is we don't know. That is really not our responsibility. As I read all of the comments that have been made about us and all the innuendos part of it is people have the perception of what it's going to be against the reality of what it's going to be. The way I say that is I take fundamental responsibility for all of the leases that are signed on our campus. Part pes I don't have any leases on my desk I'm not in negotiations with neap but when you have a campus of 300,000 square feet that's been developed in the last 45 years, and some of you have been on our campus, again it's adjacent to Good Samaritan hospital you don't 300,000 square feet to set aside 4,000 square feet for what is being representated as a cliff is being represented as a cliff medical direction going and if it's moving in a certain direction that somebody will come to our office and ask us, for the ability to put a cliff on our campus, we want to be prepared that we have the right zoning for that to happen. We also are respectful of the fact that no one might come to our campus and request a cliff and therefore a cliff would not happen. But in doing the due diligence which we have done in the past, and again, I emphasize the successful relationship we've had not only with the city, the successful relationship we've had with the hospital and the successful relationship we've had with the community at large and the patients who attend, this is a very unusual position for me to be standing in front of you representing samaritan in a way that I need to tonight. But I just thought it was appropriate to share with you

who we are and what we represent. Thank you very much and I ask that you approve what has been placed before you.

>> Commissioner Cahan: Thank you. I have a question for you from Commissioner Platten.

>> Commissioner Platten: Thank you Mr. Henderson, not just good Sam they were excellent, I just want to let you know that and appreciate you coming tonight.

>> I just want to clarify, we're not the hospital but if you have been on the campus adjacent to the campus that's what I represent. That's what we represent. Whenever it's the hospital we always say thank you.

>> Commissioner Platten: Just raise the question, on any second third fourth fifth story floor.

>> There's only four stories by the way. I'm not sure how seven gets introduced but there's only four.

>> Commissioner Platten: Do you have a residential facility on any of those floors?

>> No, it's a new adventure for us so what we've tried to do is talk to consultants who can speak to the issue of whether or not something like this is appropriate. Again, you don't create -- you don't create a lot of headaches for 4,000 square feet when you're managing over 300,000 square feet and just a simple illustration, I've negotiated upwards of 500 leases during my time there. And you just try to use good judgment so we'll go through the right protocols to receive the right approvals so we'll try to thank you again .

>> Commissioner Cahan: Thank you.

>> Good evening, commissioners. My name is Trudy Johnson, I'm the chief nursing officer of valley medical center and for 30 years I've had the privilege of taking care of patients. Over the years regulations have increased and very often we viewed them as a burden but they're there to keep patients safe. It is my understanding the

applicant's proposal suggest patients radiation oncology treatments could be housed overnight in this facility. The proposal describes care as required as less than in-patient rehab or less than a skilled nursing facility however it is questionable how this environment will be able to find that population however I hear that's a bit unclear at this time. While outpatient cancer patient oughts inconsistent with an office building to house them overnight. Health care reform has stimulated the testing of lower cost and while this proposal is unique it lacks sufficient information to ensure its safe -- a safe option for patients not well enough to go home after a treatment or require assistance. However, this assistance is not defined but as proposed, it implies care by a licensed vocational nurse that doesn't have the requisite knowledge, training or a skill to independently assess patients if they're having complications or to intervene if problems do occur. The Department of Health also requires fasts providing care to evacuate patients. Evacuation requires patients to be able to exit with minimal assistance but these are folks that could be weak or postoperative to customary with a facility that takes care of people around the clock. In addition, even routine surgical patients and certainly cancer patients are at risk for complications such as heart attack or breathing failure and rather than prevent problems the primary strategy here would be to rely on 911 to rescue a patient and then transport a compromised patient to a real hospital such as VMC where you have the complete resources. For this -- these reasons stated I respectfully request you consider rejecting the amendment until there's a clearer proposal about what the applicant will be doing to keep patients safe. Thank you.

>> Commissioner Cahan: Thank you. I have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. First let me start by saying that my mom used to be a registered nurse and my dad used to be a medical doctor so I have the greatest respect for your profession and for your words. The trouble I have is, none of us are medical professionals up here. You know, we have training in land use and you know city planning, you know, transportation type of use, you know. So what I hear you asking us is to make those medical judgments when there is a perfectly capable department at state level that's trained to do that, you know. How do you -- how do you justify, I understand your ultimate goal, patient safety is your ultimate goal. I heard you loud and clear and I agree with you on that. But how can nonmedical professionals make those calls?

>> Well, from what I'm hearing tonight, it -- the proposal as I read the information, and what's being said, it sounds like they're trying to build a structure that they want to lease for a purpose. And that purpose is unclear. And while it is true that you build a building and the state Department of Health licenses to you operate it, usually when you set out with that facility, you do have a clear direction in mind of what it's going to be used for, who's going to be coming into it. Because what you -- when you design a building and what's inside of it, you do that with the intent of who you're going to have in it. And then, that helps you determine whether it's going to be safe. And so approving a building that is unclear what it's -- the purpose is even going to be, to me, is more complex than just purely looking at the legality of the zoning of the building. I think there is a duty to consider about patient safety. And as I stated you know I think we all have to be open to different models of care and the need for you know supporting people in their care transitions. But what I'm concerned about is circumventing all the regulations that exist around keeping patients safe. Yes, they do exist at the state level and that's who licensed them. But I do think there's some consideration about them being more forthcoming about who and what they're really going to put in this building.

>> Commissioner Kamkar: So how are they circumventing it? They're not saying they're not going to go through the state process. I heard them both saying that after we get this permit that's where we're going to go next.

>> Well what I heard them say is they couldn't answer Commissioner Platten's question because they don't know who's going in it yet and they don't know what they're going to do. I read a document and I took wording about what I thought was their proposal that mentioned ambulatory therapy and chemotherapy. There is some intent in their mind. Yet when they're being asked by the commissioner, they say I can't tell you yet I don't know what's going in it yet.

>> Commissioner Kamkar: To be honest with you I would rather they be honest with us rather than talk hypothetically. Thank you for your testimony.

>> Thank you for the opportunity to address the commission .

>> Commissioner Cahan: Thank you.

>> Good afternoon. My name is Jo Cafaro, I'm representing the hospital council, northern central California represents all the hospitals from Kern County to Oregon border and Santa Clara County is one of the counties I represent and all the hospitals. The hospital council is opposed to this project because we believe it puts patients at risk. There is a letter you received from us and I just want to reiterate a few things from that letter. One of the things is it puts patients at risk and the other thing it lacks clarity. The main thing you need to ask yourself is what exactly is this going to be what am I approving and without having that clear direction I think you have to vote no. And to it lacks clarity, they're claiming it to be a congregate living facility if you can't answer that question then how do you know there are going to be given the license, you have to meet those three different criterias for you to actually get a license. And the other thing is that for a residential care facility we also believe that you wouldn't be qualified for licensing for that, in this type of facility either. So we really urge you to vote against this. Until there's more clarity on exactly what's going to happen. The other point I wanted to make is that CDPH won't license this facility as a current living care facility at all or any other facility because it's going to be proposing to house patients for more than 23 hours and 59 minutes. That's just something that they don't do. It doesn't exist in the state so thank you very much.

>> Commissioner Cahan: Thank you. I'm going to call the remaining speaker cards. Oh, I'm sorry we have a question for you now from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I had the opportunity to talk to Ms. Cafaro yesterday, you know for some time. And my question to you is, this being a land use issue, you know, and general plan 2040 is what you know the current general plan designation for the city and one of the goals is to increase employment, increase you know, accommodate businesses, high income businesses. And so you bring up a good point. We don't know what's going to be there. So why permit it? My question some I mean, we love entrepreneurs to take a chance and try to bring businesses and high-paying jobs to the city so you know it seems like that's what they're doing.

>> That's wonderful and that's great. However what they're presenting will not be approved so why approve something that is not going to be approved by the licensing department of the state?

>> Commissioner Kamkar: Right, and you're hundred percent correct if that's hundred percent known to be true. I don't know if you're correct but the other side said, they will get the permit somehow.

>> There's a letter from the Department of Public Health and it's very clear that they wouldn't be licensed.

>> Commissioner Kamkar: Thank you for pointing that out, after reading it, I wasn't as clear as you are in that conclusion. That's all I just wanted to ask you that question that general plan 2040 says increase, doesn't say increase high paying jobs and you know this looks perfect as far as the land use you know aspect of this.

>> Again you don't know how many jobs you don't know how it's going to be, what does it look like what does it smell like what it's going to be. Again I think there should be more information before you make the vote. Thank you.

>> Commissioner Kamkar: Thank you.

>> Commissioner Cahan: Thank you. And the other speaker cards before you begin. Mark Golad, Farah Costanza Monella, Cindy Chavez and mark would you line up please.

>> My name is Melinda i'm also the president of the California nurses association. The California nurses association respectfully post office the planning staff's recommendation to grant a permit for the residential care facility. We believe approval is premature because it's not clear how the project will be licensed by the California Department of Health service. Health care fasts are licensed are most important to us and we advocate for the highest standards of care for our patients and our community. There is limited information about the facility's real use and how the facility will be licensed. There are three separate descriptions in the Planning Commission staff report. The first reference is, planned development permit amendment to allow for a seven-bed residential care

facility. Then later on when you read it, it states the applicant has described the proposed as a congregate living facility further it reports in the building where the CLHF is proposed the ambulatory outpatient surgery chemotherapy and radiation therapy. These are three separate and distinct licensing categories by the CDPH. Each requiring specific standards to ensure patient safety. We cannot find any regulations that allow for an operation of a stand-alone health care facility that provides in-patient care to postsurgical patients on a short term basis. Current regulations require ambulatory surgery centers to provide surgical services and postsurgical recovery but patients cannot be kept longer than 24 hours. The CHLF more the residential care facilities are required, they are not required to have the necessary safety equipment available when patients come out of surgery. Should a postsurgical patient develop complication after surgery or overcrowded emergency rooms in the San José area would be required to treat them. And they're vulnerable patients at that point. And most important the time it takes to transport these patients could mean the difference between life and death. And I think considering all this, and there's other things that you should with the -- but I think that -- scha your time is up.

>> We need to have more assurance before we decide on this.

>> Commissioner Cahan: Thank you very much.

>> My name is Mark Gollet, I'm an orthopedic surgeon in San José. I'm not sure all of us and I'm not sure that you have to be a medical professional to understand what things are safe and what things aren't. I do a lot of joint replacement surgery, and it's my understanding that in some of the outpatient facilities that are spring up, in the state of California, and elsewhere, there is a desire to be doing total joint surgery, outpatient and recover the patients in facilities other than standard hospitals. I don't know that that's very safe for a lot of patients. It is safe for some patients. But in advance, you don't know which patients will acquire complication. Some patients have co-morbidities that affect their recovery. Very common ones include diabetes and hypertension and poor circulation to the extremities. There are issues of pain management, fluid management, wound care, rehabilitation after a total joint replacement is very important. And I'm not sure how these needs will be met in an outpatient facility.

>> Commissioner Cahan: I do have a question for you from Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. Just a note of personal privilege. I walk today because Mark did a fine job repairing my left leg after a 19-year-old knocked me down one day skiing. Mark, I want to say thank you for the work you have done on me and other patients.

>> You're welcome.

>> Commissioner Cahan: Commissioner Kamkar has either a comment or a question.

>> Commissioner Kamkar: I have a question. I just wanted to make sure I understood your test. Is your testimony more under actual surgical centers, practices or under postop care you know part of it?

>> I operate in an outpatient surgery facility as well as at Good Samaritan hospital and I choose my patients based on the complexity of the surgery as to who should go to which facility. Total joint replacement patients traditionally have required longer-term hospitalization than outpatient surgery. At least one day, but typically two to three days in hospital, with people available such as medical personnel, nursing personnel, to manage any unexpected events that might arise. But even a patient who recovers without unexpected events requires considerable care. In particular, the need for immediate rehabilitation to mobilize the patient for ambulation, for motion, to manage fluids, and particular, pain management. It's very difficult to have a total knee replacement and go home when you're in pain. And I can't imagine doing procedures like that in an outpatient facility and not being able to deal with the consequences afterwards.

>> Commissioner Kamkar: Right, you know that's excellent segue to my next question. Before performing surgery you don't know which patient is going to have issues, postop or not, right?

>> Some of them are likely -- you do have a preoperative examination in your office and you have an idea who is more at risk and who isn't.

>> Commissioner Kamkar: So how are they more safe and more cared for in their homes after outpatient surgery than in a facility like this? That's close to the hospital, it's -- you got a you know nurse that you know --

>> But you wouldn't do procedures like this and send people home is what I'm saying. I can do simple arthroscopic surgery as an example and send someone home because it's a relatively minor surgical procedure. A joint replacement which I'm given to believe is what's intended for this and some other facilities is a much more complicated surgery with a much higher complication rate and basic needs that for the patient that you wouldn't deliver at home and I don't think can be delivered in an outpatient or residential facility.

>> Commissioner Kamkar: So your testimony then is more geared towards more invasive type surgeries than the less invasive surgery maybe a nose job if you will.

>> Yes. But you have the ability perhaps or at least you feel appliquÈ you have the ability to perform more complicated surgery if you have a facility to which you can transfer the patient immediately afterwards. My contention is this is not common practice and it provides for unnecessary risk.

>> Commissioner Kamkar: Thanks.

>> I work at Good Samaritan hospital --

>> Commissioner Cahan: Please state your name.

>> Sara Castellanos. because the situations that were talking about today that could happen. My concern is that if we allow something like this to happen, how many patients that are being taken away from a facility that is already trained and licensed to -- and staffed to take care of situations that happen, because everybody doesn't

know when you go into surgery what could happen. You could have a stroke, we just don't know, you know, from the anesthesia you can get pulmonary edema which is a clot in your lung from the surgery, you just don't know. A center that is post-operative, you could have it within hours after surgery. that is why we have at our hospital a 23-hour short stay which is postoperative, at least you have at the a licensed facility where there's already safety taken care of for the patient my other concern is that they're saying they have a relationship with Good Samaritan and they've had for years. Well why is it that we're all here speaking about it? I have other fellow people here from Good Samaritan that are also against it. My fear is that safety for patients is the most important thing and this type of facility they're not even telling us what kind it's going to be. My understanding for any kind of permits you're going to get for building permit you have to let them know what it's going to be what it's entitled. You have to have permit for different types of equipment being in there. So they have to know what it's going to be. So to submit those permits in you have to know for een the you know anesthesia machines, all those types of things, you have to have the equipment for it so they know ahead of time what's going on. They're just not being up front about it. My thing is I think we need to have more information, we need to look into it as not just -- I think just as a community. Because right now, there is so much out there that is at risk for patients that are coming in and having minor surgeries and then coming into my department, because they've had some type of --

>> Commissioner Cahan: Your time is up. However, Commissioner Kamkar has a question for you.

>> Commissioner Kamkar: Thank you, Madam Chair. Very quick question. So if you had the ultimate say, you know you were king for one day, would you open up all occupations surgery centers because of the risk that you mentioned postopen?

>> I would outlaw most surgery centers but I would want to know, why is it not being licensed as a postoperative surgery center, they're not bringing that forefront. They're saying -- they're just wanting it so they can see what they can see in the future what they're going to use it for. We all know today that everything gets paid outpatient mostly. In the hospitals where insurances don't pay a lot because they want to keep the money. But when patients are outpatients the facilities get paid a lot more money.

>> Commissioner Kamkar: My understanding is, there's definitely not going to be anything unless there's a permit for it. So operating without permit is not an option here you know. So just want to you know be clear about that.

>> Well --

>> Commissioner Kamkar: But thank you, thank you very much.

>> Commissioner Cahan: Excuse me. If I'm hearing you correctly and please let me know if I am. What I just heard you say is that it's your belief that the lack of clarity could essentially, what they actually want to be permitted as, could be against the general plan because it could hurt our house system as a whole, which is for the good of the community, is that correct?

>> No, what I'm trying to say is that hospitals in the community have been trained and staffed for years to handle traumatic situations that happen from just minor surgeries. This type of facility, which we don't know what it's going to be or what they're going to do did, has not been up-front about what the requirements are or what kind of patients they're going to see. And I know from working with people in the hospital 35 years, even a nurse being here, two nurses being here, that they would not work at a facility that is not safe for patients. So if they were going to build something that was safe for the community, and okay for you know them to go forthwith it, they should be up front they should be more than up front about the whole thing. But because they're not, we all sit here as working for safety of patients, want clarity. And so we have to protect the community. And protecting them is standing together and saying, be honest with us. So we can be honest about what's going forth for the patients and that's what we're here for.

>> Commissioner Cahan: Thank you.

>> Good evening, my name is Cindy Chavez many, I'm the executive officer of the South Bay labor council, I want to thank the commission for allowing me to speak this evening. What we have call me and say we're really

concerned about this, we want you to come and speak on behalf of the labor movement, to share what our ideas are, and I want to start by just answering a question about why should the Planning Commission take a position if the state -- if it's ultimately the state's responsibility? In the time that I served in public office the one thing I learned is, I didn't want any decision to be made by another jurisdiction if we could make the ourselves. The reason is you are closer to the ground play in this community and ultimately it is absolutely your responsibility to do what is in your bandwidth to protect your community. The second thing I wanted to comment on, Commissioner Kamkar you made a point, aren't we following the general plan in job creation so let me say two things about that. One is that the general plan is a document that's meant to guide us and there are times we change it because we think we need to make new decisions about how big emphasis in the general plan this year was around Public Health and so you could choose any two issues and juxtapose them together. But I don't think that addresses really what the underlying issue is here. And that is if you approve this you are essentially gulping the good housekeeping seal of approval by the City of San José to a facility that you do not know what its long term intent is, and I new new thing and what invocations we have. Those are always balanced against the safety of the people who live in this community. So thank you for letting me be with you.

>> Commissioner Cahan: And Commissioner Kamkar has a question for you.

>> Commissioner Kamkar: First of all it's very nice to see you, haven't seen you for a long time and it's a pleasure to see you again, Ms. Chavez. You know the issue you bring up is very good about the general plan you know and it's general you know, it's bound to change. But we just changed it. You know, I mean it's like a 28-year life remaining, you know and we just did it four months ago, you know. So as a member of the task force that worked on it, you're absolutely right, you know Public Health and safety was a major portion of it. My concern is, you know, let's say we don't approve this. And they were going to use this for invasive surgery or for you know, some kind of issues that permitting wouldn't have been an issue. Then we deny some high-paying jobs from being created from San José. On the other hand, if we do provide this not knowing exactly what's going to be there and they go to state and state says you know, I'm not going to license it for this proposal but I would license it for this proposal, I don't see what we're risking. I don't see how we're Ricking patient safety or patient well-being.

>> So let me respond to that in two ways and say this. First of all, let me not be even remotely scary to any of you saying I think we should look at the general plan more often or again, because I had a lot of staff who participated who would harm me. I get it, it's done, weem leave it to the next generation to zero risk to saying no and having them come back with a completely well designed proposal that you can examine as the Planning Commission. Zero risk. If you let it go, right, to then what we risk is, we do risk safety, we don't know what the state will do. But number 2, and this was probably the most important thing, is we don't demand people to come before and explain to you as representatives of the public what they're going to be doing. And that's what your job is, part of it, right, for people to be able to come and you're the folks where people can go and see later, what were you thinking or thank you, that was wonderful. And I've been beaten up with both of those statements. I think you have an opportunity to get everybody back to the table and get the information that this community is asking you to get on their behalf to make sure what we're doing is not only innovative but safe as well.

>> Commissioner Kamkar: I understand your comments and everything. My response to that would be, we have experts that we count on and they're called staff. And staff are advising us what our codes allow. And they're telling us our codes allow this. You know and so that's why --

>> Right.

>> Commissioner Kamkar: And that's why it's --

>> Except here's the thing. If it were only up to staff you wouldn't have a job. My point is I have to say this respectfully, the staff here is amazing and some of them I had a chance to work with. But your job is not to agree with them, your job is to assess. As smart as these folks are, I'm counting on you to make the right decisions, and.

>> I'm coming up for another issue so I'm going to be here for a while.

>> Commissioner Cahan: Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson.

>> Is it your understanding because this is my understanding that all the general although the general plan may permit a residential use in a commercial zone area it's not required.

>> That's correct.

>> Commissioner Platten: And that's our decision to make as to whether or not a particular project should be approved, to come in in a commercially zoned area as a residential use.

>> I believe it is your obligation.

>> Commissioner Platten: Thank you.

>> Good evening, Madam Chair, commissioners, my name is Richard Polanko. I'm the author of a bill the 92 today is part of the discussion. I had the distinct pleasure in honor of representing part of California for 16 years and when this piece of legislation was debated and discussed with the input from all parties concerned it was very clear the intention was to provide a passionate, with compassion, for three levels of patient care. Those that have been identified terminally ill, do not belong on second floors. As it relates to this legislation. It is very clear that the setting is residential. The debate, the law would not have been passed. We would not have this discussion but for the may. And your question, commissioner, let me acknowledge you for the service, it's that kind of the may and the home, versus residential setting and what is in statute. And you have the opportunity and the authority to look at staff and say thank you very much and my letter addressed two points that I won't elaborate on, where they are wrong based on law. I authored the bill at a time when it was important and today even more so. We were not interested, the intention was never to put residential -- this kind of service as classified in this category of congregate living health facilities on second floors of medical buildings, on second floors of warehouses on second floors with anything other than in a residential setting. Why, because that is in the best interest of those

who get cared for. And the fact that there is still uncertainty as to the use, should be great concern to all of you. It's not about jobs. It really isn't. It's about what's in the best interest of these patients and what is consistent with law as it relates to the statute. And I'm here to tell you that it was a very well discussed, with all the parties, league of cities, all the parties, and I'm asking that you deny and get clarity before you move further. In any direction. Contrary to the statute. Thank you.

>> Commissioner Cahan: I have a question for you from Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. Again, no question. I'm familiar with the senator's work and I just wanted to acknowledge his work and say thank you sir.

>> Thank you, commissioner.

>> Commissioner Cahan: Thank you. Okay, now, the applicant has five minutes. And after that, the appellant will have five minutes.

>> Thank you, Ray hashimoto representing samaritan medical. Again we believe the staff report appropriately and adequately addresses findings and conditions that make our project approvable. There is again a lot of discussion about the safety of patients. Believe me, samaritan medical believes in patient safety and safety of everybody. So that's not our intent. We just -- we've indicated that we are unable to tell you exactly what's going in there. But let me talk a little bit about time line. We've been on file since January of this year. So it's taken us till June to get to this hearing. If we want to now wait to go through another hearing process, to get the entitlement for the CLF and then come in with all of the plans we're talking about being a year out. So what samaritan is trying to do, samaritan medical is trying to do is get ahead of the curve, be ready to go and knowing that, and I believe the state is a good regulator, it is strange to talk about the state having the inability to regulate anything. I think that's an incorrect statement. I think the ability to be ready to go and have something available in a timely manner so when we are ready to go we are able to do that. Think about that time line it's all about the speed of business as Mayor Reed said. We want to be ready to go. David.

>> I want to make one other comment also. Part of the reason there's not clarity and I can't emphasize this enough, we are not hiding anything. I'm responsible for all leases that are signed at samaritan medical center. The reason why we are not able to communicate some of the information you're asking is because we're not the developer of this center. All we can state, clearly, is that our intention is to have the zoning changed so we have the ability for an operator to come to our office and say we will develop a CLF and this is our expertise. So we're not trying to present something that we cannot deliver. If it's not supported by state legislation or by licensing or whatever, then it's not supported and we go away. But all we're asking for is to have at least the opportunity to give somebody the option to go on that journey. And the Planning Commission and the groups that I've worked with, I've never seen you deny that. So again, if we were the developers, if we had a hidden agenda I couldn't agree more with some of the comments made and some of the innuendos you heard from. But I think it fairly or unfairly misrepresents what our intentions are. We are only the landlord trying to make an opportunity possible for someone who could come to our office and thank you very much again for supporting this position and also the time to hear some of these positions offered to you.

>> Commissioner Cahan: Thank you.

>> Commissioner Platten: Madam Chairperson, if I may, I have one question for Mr. Hashimoto or one of the other gentlemen. Sorry gentlemen I just want to get your response to the assertion that the mitigated negative declaration is either not sufficient or that there's an improper procedure here, in creating an addendum after the fact.

>> I think that might be something better responded to by staff. There was a negative declaration that was issued for the zoning. In my mind, the addition of the use in my mind was covered but let staff answer that question. I think that's appropriate.

>> Commissioner Platten: Okay, then we'll deal with that with staff. Thanks.

>> Commissioner Cahan: And we do have another question from Commissioner Yob.

>> Commissioner Yob: Good evening, Mr. Hashimoto. I want to understand what the applicant applied here is a PD development for a residential care facilities which is specifically defined in the municipal code, is that correct?

>> That's correct, and that's what the applicant put the CLF akin to. When we first submitted there was a technical I think error in my part where there was an ill lues to full surgical care everything that went out in terms of a hearing notice signing of the property always referred to a CLF. Ytd and sit also your understanding Mr. Hashimoto that there is no provision for a congregate health facility?

>> That is my understanding .

>> Commissioner Cahan: We do have another question from Commissioner Kline.

>> Commissioner Kline: Since this was a technical issue of problem then of us putting a conditional use restriction on this to say that there would not be a postsurgical care?

>> I can't answer that because I'm not the user.

>> Commissioner Kline: When you find a user come back and ask him?

>> In all fairness I think that would be appropriate .

>> Madam Chair if you for give me for one second I want to find something before my clock begins. If you don't mind. The cageyness put on as our responsibility. Let me begin by going through the public record. Number 1, the technical error of the newly filed projects list this application as postsurgical care facility. Number 2, at the hearing, on April 4th, when asked what this was in response to our multiple pages, here's what the applicant's representative said. This portion of the building will be low key and residential in character. For the short term use

with no impact to the surrounding neighborhood that includes a medical office retail commercial and residential uses. Again, if you look at the residential care definition, put aside the license by the state, it says the word people living in these facilities. You don't live in the facility that you're there for a short time. Let me continue to April 4th hearing. We believe this facility which was at the April 4th hearing called a congregate health living facility which apparently is still called today, we believe this facility will have a residential care perfectly suitable for the people that are recovering there. And it is this facility is about recovery for the patient, whether it's long term or short term. So we're going to provide the best care we can for those patients who are coming out of surgery. Let me continue. E-mails to the staff, describing what a congregate health living facility is, the CLHF is another service that will be beneficial to patients who are ambulatory and, and I quote and it's in the record we submitted, do not need 24 hour intensive care as determined by a physician in the family but are in need of assistance until they can return home. And CLHF provides less intensive care than a skilled nursing facility or an in-patient health facility. Their words not mine. Continuing at the end. This facility additional time to recover to be able to settle into a facility with residential setup where family can be involved in assisting in the recovery process before going home. California Department of Public Health Website describing what a congregate living facility is, is very clear. It says 24 hour skilled nursing home and supportive care and at least one type of the following service that Commissioner Platten mentioned. Even today before you at this hearing conducted de novo nothing, let me repeat nothing in the record is before you that says what three things are being offered there. This is tantamount to me use are everrer of a retail space saying, I don't know what's going to be going here. Trust me. Just trust me. We conducted a complete analysis, they're in your packet. There's 40 brochures of forgive me for saying seven story, seven story, four story, it doesn't matter. It's multistory. There is not a single residential care facility in the City of San José that is providing postsurgery recovery facility in a multistory building, not a single one. And yet today before you we want to talk about economic development. Let's talk about the general plan. The general plan has ES 6-1 that we put in there the goal is to and I quote facilitate the development of view and this is really important since we're talking about how hard the people worked on it. Promote the health care facilities that meets all the needs of the entire San José community. Not just a developer or landlord or whatever they are tonight. You have evidence before you from the county of Santa Clara, no one knows what this thing is. And it keeps changing and no one's telling you what it is tonight. I have never in 15 years of land use ever witnessed something like this. You have a responsibility under your own ordinance to conduct a hearing, make the findings. The last thing I

will say is the burden is not on me to prove to you that the findings should be made. It's on them, that's clear on make the findings that this thing complies with your general plan and zoning in the mountain of evidence that we presented I don't believe that there is. And if you're in doubt then the next possible step, the most responsible step is to deny this application, as Commissioner Kline mentioned, asked them to come forward with who their user operator developer whatever they're calling him is and tell you what that is. On behalf of good Sam I respectfully request that you deny outright this permit application, thank you.

>> Commissioner Cahan: Thank you. Okay. With that I will take a motion to close public comment.

>> Commissioner Platten: So moved.

>> Commissioner Cahan: Motion and second, all in favor? Any opposed or abstaining. Okay staff.

>> Thank you, Madam Chair. It is true that we don't know exactly what type of medical use will be in this facility. We are calling it a residential care facility. Based on the description by the applicant which most closely fits into our zoning code. A residential care facility could offer a variety of uses. Often you hear them as facilities for people who are recovering from alcohol addiction. Our code doesn't differentiate between exactly what that use is. Just as like we allow a medical supposed to be. So staff is coming from the position that a zoning ordinance allows a residential care facility in the commercial office district. The PD zoning for the site dictated that the uses for this site would be those of the commercial office district. Therefore, staff is recommending approval of the project. Additionally, the office building itself will meet fire and building codes as a standard. There is a condition in the PD permit amendment that does require for the facility to be state licensed. Regardless of what it is, because it's the definition of a residential care facility, is it is a state-licensed facility. In response to the environmental for the project, staff initially did use the mitigated negative declaration for the zoning. We felt that this was appropriate, as it was a zoning that was prepared for a medical office use. The use is medical in nature, upon further review, after the director's hearing we did issue an dapped just to clarify that there were no additional environmental impacts with the further description of the residential care facility, een though the residential care facility was a use that was allowed in the CO district. This concludes staff report.

>> Commissioner Cahan: Before we begin deliberation I would like the pluck to know that Mr. Prayo and I met on a completely unrelated matter and he did let me know that there would be future discuss the item at that time, I had to wait till this meeting because it is something that we are the final say on this item. Commissioner Platten.

>> Councilmember Pyle: Thank you. Two questions to staph no other residential facility in the city operates in a commercial building such as that proposed here?

>> I don't know the answer to that question. The zoning ordinance allows for that type of facility in a commercial district but I don't know whether or not one actually exists. I would have to research to see if we have ever approved a C.U.P.

>> Commissioner Platten: So you have no basis to take issue with that tonight?

>> Correct.

>> The only other potentially have been approved for second story or the second floor of a building. And I would just add that the residential care facilities are also a conditional use, multistory building. If this was an apartment building the zoning code is silent as far as what floor the residential care facility could be in. Could be on any floor as far as the zoning code is concerned.

>> Commissioner Platten: Right but that wasn't the representation. The representation was no other facility of that nature was in a commercial office building. And as you sit here today you have no basis to contest that assertion? Correct?

>> I don't have that information.

>> Commissioner Platten: Okay. Second question, with respect to the mitigated negative declaration, and the addendum, as I read this, the addendum does not take issue with the claims made in the NOVA analysis is that correct?

>> I'm not sure I understand your question.

>> Commissioner Platten: Certainly. Attached to one of the letters from Mr. Parayu, is the analysis that is done with respect to compliance that is done by I believe it is NOVA and that indicates seven or eight different areas where the mitigated negative declaration is not Apposite with respect to issues that arise with respect to either a CLF facility or a postsurgical seven or eight issues, is that correct?

>> I would agree. Yes.

>> Commissioner Platten: Good, thanks.

>> Commissioner Cahan: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So in light of all the testimony, all the discussion, is the staff's opinion still that the director's decision should be upheld?

>> Absolutely. It's again, everybody knows that we are not health experts. As far as conformance to the zoning code, residential care facilities are allowed in the CO commercial office zoning districts. The permit includes a requirement for the applicant to congregate health living facility. You have approved several conditional use permits for the sale of alcohol. But subsequently I think applicants do go to the state ABC and whether they're approved for beer and wine or some other alcoholic beverage, there is normally a subject of discussion here. So we have also approved several commercial buildings that basis and subsequently there may be restaurants and retail and other uses go in there. It's true that at this point the applicants may not know exactly what is going to go

in there but as far as the zoning code is concerned to the extent it is a residential care facility and consistent with our zoning code requirements that's fine by us.

>> Laurel Prevetti: Madam Chair if I may, I think while we are recommending upholding the director's decision based on the testimony, if it is the will of the commission, we would certainly be open to strengthening the draft permit by perhaps adding additional conditions, or additional phrases. And additional facts to the record. So you have that ability as the Planning Commission. If you wish. So while we are presenting a particular permit, you have the ability as a de novo action to strengthen it as needed. Thank you.

>> Madam Chair.

>> Commissioner Cahan: Yes.

>> May I respond to Commissioner Platten's question regarding CEQA? I just wanted to make sure he mentioned the NOVA letter. Was it the seven items that were mentioned under the California Environmental Quality Act section at the end by --

>> Commissioner Platten: Yes, pages 5 through 7.

>> The air quality, hazardous materials. I just wanted to make sure the addendum attached to the staff report did go over each of those items. I'm not sure if you had a question about our response to those items or if you wanted to know if we have looked at them.

>> Commissioner Platten: Give me a moment and I'll take a look at it together.

>> Commissioner Kamkar: Madam Chair, if I could --

>> Commissioner Cahan: I'd like to wait just a moment so staff doesn't get distracted and lose the response to this.

>> Commissioner Platten: I found it. Let me take a look at it Madam Chairperson I'll get back to it.

>> Commissioner Cahan: Commissioner Kamkar.

>> Commissioner Kamkar: In light of the response from our director, so I mean I've always assumed the condition that they need to secure a health permit from the state Department of Public Health. I don't see that written in our staff recommendation but when it says recommended by staff, I would assume that that condition is already there. So a state health perlt is part of the condition that's already attached to staff recommendation.

>> Laurel Prevetti: Yes, it's condition 7 in the permit, and if the commission wishes to again have more clarity about what the applicant intends that it could -- this condition could easily be edited, for example, the subject should be conducted in full compliance with all state laws including the attainment of all required permits or licenses forthe CLHF. So if the commission wishes to be very clear about what the activity is that's being proposed that most closely mirrors our zoning code with respect to the residential care facility, I think this is the type of clarification and strengthening that the permit could employ.

>> Commissioner Kamkar: Thank you.

>> Commissioner Cahan: Okay, Commissioner Platten.

>> Commissioner Platten: I'm looking at this and I have to confess, I want to go over this with staff. I still don't see you coming to grips with the point. Let's take as an example the Terra Nova report, addresses the hazards and hazardous materials. And the response is essentially we don't know. I don't think that's a sufficient response. We don't know what the project's going to be so we don't know whether there's going to be anticipated storage or transport of hazardous materials. That to me doesn't come to grips with the question next on land use

terra Nova says, existing approved medical office building will not conflict. That doesn't respond to the point raised by terra Nova. Staff goes on to say the proposed use on the site was found consistent. Based on the designation of office. But the raised by terra Nova. Population housing, the 2008 seven bed facility will not induce substantial population growth. I don't think that's the point that's being made in the terra Nova report. Transportation and traffic not really addressed. Other than to talk about the medical office use. Again, this is different. We're talking about a residential care facility of some nature, we're not sure yet. So I understand the response that was filed but respectfully I don't think it comes to grips with the issues raised by terra Nova. If I may madam chairperson I'm prepared with a motion.

>> Commissioner Cahan: Great I'm happy to hear your motion.

>> Commissioner Platten: I move that findings that this particular project unknown and unclear though it is, dot no, sir sufficiently give us the ability to discern whether or not there is complete feathering with the general plan. I also mitigated negative declaration and its addendum is not sufficiently consistent with CEQA and move that we deny the application. Understanding that the applicant, if the applicant so chooses to come forward with a clear explanation of what it is they want there, they can do so. I also note that although the applicant made a point that this has been in process since January, in my ten years I think that's a pretty quick rocket docket adequately discern whether or not it is truly consistent with the zoning that exists out there they can do so. So on that basis I make my motion.

>> Commissioner Cahan: Commissioner Kline.

>> Commissioner Kline: Second.

>> Commissioner Cahan: Commissioner Kline would you like to speak to your second?

>> Commissioner Kline: I'll give it a crack, real short. I'm making -- I'm supporting this motion not because of safety issues. I think that really is the, in this particular case, and we all have responsibility of safety. But on the

licensing I've that really is a state level. I'm making this really on the land use. Clearly we have the capability of of proving this under a conditional use permit. It is our responsibility to make the decision if we have findings. My decision on this is very clear. I don't consider this a residential use, period. No matter if it's the second floor or not. Would I never approve this as a residential care facility. I know that area quite well and there's no definition you can come close to defining that, no matter how nice you make the rooms look that this is a residential area or can be considered a residential use. So this is just simply a land use decision on my part. Because I can't make the findings that this really is consistent with that definition. And we can go into all kinds of legalities and call it malice and loose and whatever, but common sense has to prevail at some point here. We can fix aall the issue in CLF because to my definition of residential use it does not fit. Unless it fits I can't approve the conditional use.

>> Commissioner Cahan: Thank you. I would also like to take argument with the comment that as a commission, we have never denied something that's kind of unknown, what the future use would be. We have actually denied a number of things when we knew what the use was going to be. But we didn't know what the future for that particular land area was going to be. So that includes alcohol, the ability for places to have alcohol, it also includes our industrial, our light industrial for changes to those areas, for allowing daycare centers in there for allowing church uses in there. For the facility itself which was existing in a nonlegal conformance we wouldn't give them the legal ability to do that, because even though that particular existing activity was working well, and being - it seemed to be g good for the community, as a land issue it was not appropriate for the land area. So we have in fact denied things based on potential future use. And I will be supporting this motion. With that, we can take a vote. Okay and we have three in favor and two opposed. So that's not enough to move forward. So commissioners, does someone else have a motion that they would like to put forward? Commissioner Yob.

>> Commissioner Yob: I would like to make a motion to consider the mitigated negative declaration in accordance with CEQA to uphold the director's decision to approve a planned development permit amendment to allow for a seven bed residential care facility within an existing medical office building in the A-PD planned development zoning district on a 5.4 gross acre site as recommended by staff.

>> Second.

>> Commissioner Cahan: Commissioner Yob would you like to speak to your motion?

>> Commissioner Yob: Yes, I think it's important to focus on what we are here to do, to apply and the general plan. The applicant here applied for a PD permit amendment to allow for a seven bed residential care facility. A residential care facility is defined by title 20 of the Municipal Code, as a facility licensed by the state of California where care services or treatment is provided to persons living in a community residential setting. There is testimony here today that the tenant who ultimately occupies space may, we repeat may have a CLHF that is not a land use definition. This use most clearly aligns with the definition of a residential care facility and I think that the application meets the requirements of the code, and so I would like to uphold the director's decision.

>> Commissioner Cahan: Commissioner Kamkar would you like to speak to your second?

>> Commissioner Kamkar: Yes, thank you, Madam Chair. I support the motion mainly because when working on the general plan 2040, we wanted to provide a little bit more flexibility. We wanted to provide options for applicants to come forward and try different models. We know this is an open market system, more vendors, more providers, creates competition. We like competition. And you know, so I think, you know, when a suitable tenant is found for this place, and they understand what their options are, they will get whatever permit they need to get, start providing care and if market doesn't like it, if people don't like it, they won't patronize that business. So for that reason, I believe they should be given the opportunity to put the expertise to work. One example I want to bring you know, which is on a different industry, we always thought NASA is the only industry that can take payload to space station. And we found out there's private sector that could do the same job for much, much cheaper. They were first laughed out when they proposed to do that but later on when they proved it with a flight, people realized oh, there isn't only one way of thinking there is different ways of thinking and getting the job done. So I think we should take heed of that lesson, and allow entrepreneurs, allow private sector to do its magic and see what they come up with, you know, so that's why I support the motion. Thank you.

>> Commissioner Cahan: Commissioner Kline.

>> Commissioner Kline: First I, Russia, Japan, a few other companies never thought NASA was the only organization that could take supplies to a space station. Just a correction there. The definition of a residential care, let's assume it's a residential care facility I guess we have to do that in a bigger setting then the definition that can apply in a community residential setting. A community residential setting. Can we look at this and, in any stretch of the imagination, call this a community residential setting? And I cannot and therefore can I not make the findings to actually approve this. And it's a very clear distinction for me. And although there's great concern on my part about the definition of the project that's going to go in here, it's straightforward, doesn't fit that community residential setting cannot be strictly an office building, that's designed to be an office building. This is not designed to be a mixed use setting environment with shops on the first floor and cute little apartments above it. This is an office building.

>> Commissioner Cahan: Thank you, Commissioner Kline. I was going to make that very same argument. Commissioner Platten.

>> Commissioner Platten: I just wanted to indicate Commissioner Kline is quite, quite right.

>> Commissioner Cahan: Okay. So we will now take a vote on the new motion. Okay, and that motion also fails. And just to advise the commission, we will continue to remain here until we come up with a motion that, at least four of us support. Unless it is deferred to the next meeting. Continued. Commissioner Platten.

>> Commissioner Platten: Yeah, I move we defer this since we're obviously lacking a sufficient number of individuals.

>> Commissioner Kline: Second.

>> Commissioner Cahan: Okay, a motion to continue to our next meeting and a second. And we will vote by light on that. Okay, and that motion does pass with all commissioners present voting in favor of. And just for

clarification, staff, on the next meeting, will there be a re-representation from all of our community members, will they all need to attend? Just to let our community know?

>> Laurel Prevetti: Our past practice has been that we -- that this is a hearing continuance. So our commissioners who were not here this evening will need to reconstitute themselves which means they will need to watch the entire video of this proceeding, have the benefit of all your testimony and then the public will be able to put in speaker cards for two minutes of additional testimony. But we will not be reopening the entire hearing. So you've done a fine job, putting your cases together. So it will just be continuance of the new public testimony. Thank you.

>> Commissioner Cahan: Thank you for that clarification. So we will move on. To 3C. Staph.

>> Thank you, madam chairperson.

>> Commissioner Cahan: Excuse me Commissioner Yob.

>> Commissioner Yob: I need to recuse myself on this matter. Joan gallo. I'm recusing myself simply to avoid any appearance of a conflict .

>> Commissioner Cahan: Thank you.

>> Commissioner Cahan: Okay, staff.

>> Good evening, madam chairperson and Planning Commissioners, my name is Sylvia do of planning staff and I'm the project RM multiresidence and APD planned development zoning districts to the ABD nuke island sanitary landfill and recyclary. The purpose of this project is to , land filling, recyclable processing composting and other related waste diversion activities. The rezoning also establishes postclosure uses upon closure of the landfill capacity to 25.82 million cubic yards. The increased capacity would increase a portion of the landfill height from

150 feet to 245 feet. This project would not increase the footprint of the existing landfill or increase the quantity of daily waste currently permitted to be brought to the landfill site. The environmental impacts of this project were analyzed as part of a draft EIR that circulated in fall of 2009. Planning staff received comments including concerns regarding aesthetics, odor, nuisance species and impacts to sensitive species. Given the substantial number of draft EIR comments, the city took a longer period of time to respond to comments and prepare the final EIR. Substantial time was also spent by city staff, consultants and the applicant to refine the mitigation measures that implemented the nuisance species abatement plan. The First Amendment to the draft EIR circulated between May 23rd and June 2nd of 2012. The environmental mitigation measures identified in the EIR and nuisance species abatement plan have been incorporated into the two public comments received after distribution of the staff report. The first letter is from the applicant's consultant and the second letter is from the city of Milpitas. With that planning staff recommends approval of the proposed rezoning in that it conforms to the San José 2020 general plan goals and policies. The City's Green Vision and the compatible land use and lastly the project includes sufficient mitigation measures so that the project has not significant unmitigated environmental impacts. Thank you.

>> Commissioner Cahan: Thank you. And the applicant. You will have five minutes to present and then you'll have another five minutes at the end.

>> Okay, thank you. I probably won't even need all that time. Good evening, madam chairperson and members of the commission. I want to thank you for the opportunity to present our project to you today and for your consideration. First of all we support the staff report and the staff recommendation of certifying the EIR tonight and also, approving the rezoning. Now it's important to understand very briefly what this project is. And also, really, what it's not. Because I think there's really more confusion around what the project is and isn't, as much as anything. And so what the project is, in its simplest form, despite massive amount of studies, a great deal of technical analysis, and a lot of hours that went into studying this project, at the end of the day what this project is, is it's an increase in the elevation of the landfill. And what that allows us to do is simply continue our operation. There's really no change in our operation. We will continue as we have for decades serving the community in their waste solution needs in the recycling and diversion needs for the community. And what the

project is not is, it's not a change in any of the materials that we accept. It's not an increase in the amount of daily daily tonnage that we accept and in any capacity. Also, what it is not is, this is not a permit for the composting operation. The composting operation is a permitted facility, it's a permitted operation and if the landfill were to close tomorrow that operation would continue this is simply about increase the vertical height of the landfill and rezoning, that's what this permit is. With that, I would like to speak for just a moment about some of the mitigation measures that are recommended. As I said, we support the staff report and many of the recommendations for mitigation measures. We're already doing ourselves voluntarily. We have been doing some of them for years. We embraced mitigation measures and we towards any issues that have come up. For example in 2008 when I arrived at the facility I invited U.S. fish and wildlife to the facility because they operate the facility immediately adjacent to the north. I asked them how can we be a better neighbor? They said we are struggling with the seagulls in the area and if you could prevent them from feeding at the landfill that would be a tremendous help. We undertook this experience under no requirement to do so, we wanted to be a good neighbor, it's important to us, it's important how we run our business. And we've had struggles and challenges but we have made a lot of headway and I think anyone who would come out to the facility today would probably be amazed at the success we've had on this. This is part of the nuisance species abatement plan dispute we have been extremely successful. That's one example. We've had other issues about without any requirement to do so, because it matters to us. And we can speak more to that in any detail but I won't go into anything more on that. So again, we respectfully request that the commission follow the staff recommendations and certify the EIR. And approve the rezoning. I'm available for questions, as is other members of our team. Thank you very much.

>> Commissioner Cahan: Okay, we do have a few questions for you. Commissioner Platten and then other commissioners.

>> Commissioner Platten: Thank you. I just wanted to make sure that this emphasis is correct. As I read the development standards on the project, as proposed, there are a number of off-site mitigation measures that you are committing to. My understanding is, I read it, these are off-site mitigation steps, you've already been putting in place volitionally and we just included them in the development starts is that right?

>> What we committed to doing as far as off site mitigation is at some point in the future before we reach our permitted capacity, that we do biological studies in the surrounding wetlands, have that evaluated to determine if there are impacts and if there are impacts based on comparing it to other similar wetlands we would take the appropriate mitigations at that point.

>> Commissioner Platten: It's sort of cleaning up as you close down operations if you would?

>> It was tricky to evaluate and others can probably speak to this more eloquently than I. But I can tell you that it was tricky to evaluate really what -- the tricky thing was that when we submitted the project, the baseline conditions were our existing operations.

>> Commissioner Platten: Right.

>> And all we're proposing to do is continue our existing operations.

>> Commissioner Platten: Right.

>> The question is how do you evaluate that and that's the solution that was come up to and agreed to by the biologists in the city and we agreed do it as well.

>> Commissioner Platten: I just wanted to note that and say I appreciate it .

>> Thank you.

>> Commissioner Cahan: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I just want to confirm that the footprint is not changing you're just going height wise is all you're asking for .

>> That's correct. I will make one slight adjustment to that. The actual, that little portion, that little hump down below there that's called the D shaped area. That is currently permitted for composting and recycling 17 acres but essentially I would state that there's no change to our footprint. We can't get any bigger, we don't ask to be any bigger.

>> Commissioner Kamkar: Thank you. The second question is are you at liberty to tell us. Which cities and what percentage do you know of the landfill is for what city approximately Milpitas, San José, Fremont, you know, is that something you can give us an idea on?

>> I can't give you specific percentages but I will tell you that the City of San José is our biggest customer and the City of Milpitas is also a large customer. We service also materials from the city of Cupertino, Los Altos, unincorporated portion of Santa Clara County and the surrounding Bay Area.

>> Commissioner Kamkar: Okay, thank you.

>> You're welcome. Anything else?

>> Commissioner Cahan: I would like to thank you for providing a thorough tour of your facility for me. It was very enlightening. On the tour you gave me some information about some of the smell, the improvements you've done to lower any unsightly, that's not the right word but bad smells essentially. Would you describe those?

>> I'd be happy to and I'm glad you asked that question because we have done a great deal of efforts and modifications over the years in that area. And a lot of it's been driven by the community and the residents of the City of Milpitas who is our neighbor to the East and we've been working with them for years to address their concerns and we've done a lot of things. And a lot of things that were, A, not required, B, cree expensive and C, we're happy to do. front parcel and moving it entirely to the back of the facility so it would be farthest way from my potential receptors or anyone in the community. modify how we accept biosolids from the City of San José

wastewater treatment plant. We usually take those about once a year and we modified the procedure because initially there were some complaints when that happened. We looked at that and worked with the city and asked what could we do to improve that and working with the city we came to solutions that virtually eliminated those complaints. We've also added a number of odor neutralizer devices on site and we have two stationary and one mobile device, call them giant breeze fans. They sophisticated chemical and it is a nontoxic biodegradable chemical, it is very concentrated, very effective, should there be odors generated in a certain location we have the devices there to minimize or eliminate those odors. We also track our complaints so if there's a complaint to the BAAQMD and the person identifies it as potentially coming from the landfill then we follow up on that. We track weather data and we track whether or not based on where that complaint was if it could have been coming to us, we reach out to the complainants and I personally head them out to the site and set I talked to one gentleman he was pretty upsaid honestly and I said and as always the case you know when he left I'm not going tell you that he loved us and he was thrilled to death but I will tell you that he was -- he had a much different perspective on thing things and he called me back and set you know what I was smelling was what I think you don't have there. We are very open about it. We try to work we're working with the City of Milpitas to address their concerns. We've been pretty proactive about that. There's more we can do, there's more we've committed to doing but we've been doing a great deal over the years. And I think it's been very successful because I think our odor emissions have reduced significantly. There are still complaints, but a lot of that is also due to heightened awareness and better availability of calling it in. And so it's not an easy one. But we're committed to it and we'll stay committed to it.

>> Commissioner Cahan: Now at your facility you also capture the methane well it's underground essentially and you are turning that into electricity. When you are no longer able to continue with the landfill, so when you capped out, will you still be continuing that methane capture and how long will that be able to go on, to produce this alternative electricity source?

>> Sure. And you're right, we do have a state-of-the-art landfill gas collection facility, air district requirements are extremely aggressive to ensure we run that thing exactly properly all the time. And have -- so that we do not allow methane emissions from the landfill. Very strictly controlled, I could tell you all about it if you would like to hear. But I can tell you 30 years and so from the time the last waste is placed, that waste could generate gas for

around 30 years. We're going to lows closure requirements to run that system run our leechate system, our our cover maintenance our cap maintenance. For as long as it presents, for as long as it's needed basically is way the regulations are written. And that's going to be our responsibility. And our requirement and we're fully funded to do that. We have to prefund all those maintenance items under the current regulations.

>> Commissioner Cahan: So am I correct in assuming that the longer you're able to add to the landfill and the longer you'll be able to create that alternative energy source?

>> Yeah, that's exactly right. I mean the waste in place is what creates the methane gas which we use as -- it's a green energy source and with full tax credits available and it's a renewable energy and it powers up to 3,000 homes in the community. And it's a great resource to be able to tap into. So even the waste once it's disposed of isn't truly wasted because we still turn it into a resource for making electricity for the homes. We're in the process of building a brand influence plant with our partners that are the landfill gas to energy side and we hope to within the next year have a brand-new plant on site, state-of-the-art, noise controls and everything so that is a long term projects for us.

>> Commissioner Cahan: Greatly, thank you.

>> You're welcome.

>> Commissioner Cahan: Okay, I will call the first three speaker cards. Dan Monosule, David Huffton and Michael Ogoz. Line up you will each have two minutes to present and before you begin your presentation please state your name.

>> Dan mannasaw. I've lived a little over a mile in the landfill since 1978. 35 years. The stink has been there for 35 years. I have been looking forward to the closure date for a long time. To have to pay every month, to have my yards trimming hauled to the composting area, then I have to smell the stench, too. You charge us, then you make us endure the stench. You can and should move the composting site to another location. Expecting the

residents of Milpitas to continue to live with a significant impact to the quality of our home life, is not acceptable. And I expect you to end it, not extend it.

>> Commissioner Cahan: I would just like to make clear that before us this evening has nothing to do with the compost. It's the landfill.

>> I understand that. But you're also talking about extending the landfill. All right? It goes to the same place. It stimpation. I think you should stop it. You get it?

>> Commissioner Cahan: And we do have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I understand your sentiments. They provide a very valuable service. Any way you put it there's going to be issues with the neighbors. When you purchased your home was the landfill operation ongoing there? Or did it start after you bought?

>> The landfill was there. Changes have happened. When I first lived out there, or first moved in, there was also a brickette factory out there and they had a huge pile of apricots. And that smelled. But they got rid of that. I don't know if that had anything to do with the landfill or not. I don't think it -- I think it was a separate company. Then, it wasn't so bad for a while. And then they came up with this composting thing. And it's -- comes and goes. Every afternoon, around 2:00, the wind comes up in Milpitas from the north. And it brings it right in to Milpitas. Every day. Virtually. And I know you can talk around it, but it still stinks. And you guys, I know, are getting the benefits, and we aren't.

>> Commissioner Cahan: Thank you, thank you very much.

>> Because you're in San José. You know you can set up, if you don't think it's a bad thing --

>> Commissioner Cahan: We appreciate your comments. Thank you, your time is up. Thank you so much, thank you, thank you.

>> My name is David Huffton and I have lived in Milpitas for 50 years. I don't have any political or commercial aspects there, but Milpitas is one of the most delightful places in the world, except for one problem: It stinks. And it stinks because of this guy up there who gives you such a lot of nonsense about what a wonderful operation he's got. He's taken you all on visits up there. And your staff okays this. And says that it's all right to increase, this is what we're here for now. They want to increase by 100 feet this pile of stinking garbage that we have to put up with. You know, when I first moved here, the reason was that it was probably the least expensive place in the area. When I told all my work mates at Fairchild that I was moving to Milpitas they all gagged and said, "oh, it stinks there." But over the years we've managed to contain it by closing down the pig farms that were there and the Briquette factory which like Dan said had heaps of rotting -- well, the peach pits were put there to dry to process, and that used to attract every kind of living bug that you could think of. But -- and also another thing at that time which admitted they don't have now, they used to be burning the garbage. It actually smouldered away all the time.

>> Commissioner Cahan: Thank you, your two minutes are over.

>> Pardon?

>> Commissioner Cahan: Your two minutes are up. We appreciate your comments.

>> Well I hope that you will consider the citizens of Milpitas.

>> Commissioner Cahan: Thank you. I'm going to call the next -- the actual the last speaker cards. Daniel de porto, Tom Williams, Eileen McLaughlin and Cindy Chavez.

>> Good evening, chair Cahan and members of the commission. My name is Mike Ogaz, I am a resident of the City of San José. I am the City Attorney for the city of Milpitas. I used to be in the city attorney's office for the City of San José. I'm here to object to the proposed project, and particularly, to the certification of the EIR by this commission. I want to address one comment that was previously made. I think by chair Cahan that this does not have anything to do with composting. It does have to do with it. Because the original EIR proposed to allow the composting operation, which is on the western portion currently, to be anywhere on the site. Now, this created a problem because that could be bringing it closer to the City of Milpitas and to the residential areas of our city. That was revised in the addendum to create a line where the composting would only occur on the eastern side. So this does, this EIR certification does involve the composting operations. As well as the landfill operations. I think I'd like to address something that has been addressed, but one of the issues here is, is there a problem there now? And I think the applicant would like to say, well, what's there now is okay. And it's not okay. You've heard from speakers, it's just not okay out there. You drive north, drive to Oakland, lower your window, instead of having the air on when you approach Dixon landing road, and you will know there is a problem there. Some days it's mild. Some days it's not. Depends on which way the wind's going and it depends on whether the wind rows are being tilled at the time. But when there is a problem, it --

>> Commissioner Cahan: Thank you. We do have a question for you. Your time is up but we do have a question for you. I would like to clarify that my comments about the composting, there was a citizen who wanted to eliminate the composting. And we do not have the ability, with this, to eliminate the composting. So it would not affect the ability of the site to continue its composting. Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. I just wanted to tell the commission I've known Michael from several years and I just want to acknowledge and appreciate his work as City Attorney for Milpitas. Michael I just had one question for you.

>> Certainly.

>> Commissioner Platten: And it's in the letter that Tom signed, when Tom gets up here, if he wants to address it that's fine with me too but I'm curious on page 2 there is an assertion that the Planning Commission cannot certify the EIR from this project A citation to the California code of regs. I'm just wondering if you could explore that or explain that a little more, that's a new assertion after ten years, you always learn something new after ten years but I just wanted to defer to that.

>> I will actually defer to another speaker who will speak later on the CEQA issue. Our position is it's incompatible with the process of CEQA. I know planning Commission level and then approve the project later. We believe that that is not supported by law.

>> Commissioner Platten: Thank you, Michael. Thank you for being here tonight.

>> Thank you Chris.

>> Commissioner Cahan: Thank you.

>> Good evening, chair Cahan and members of the commission. My name is Daniel de porto. I am the gentleman that Michael was referring to a moment ago. I'm an attorney, I'm special counsel to the City of Milpitas on CEQA matters. And we appreciate the opportunity to speak. I guess I'll first respond to your question. The regulations referred to is the CEQA guidelines. You may be familiar with the CEQA guidelines. They clearly state that the decision making body for my project has to be the body that certifies the environmental impact report. And as this is a rezoning, the decision making body is the city council. The decision making body is defined in the regulations, and I can give you the regulation number if you like. It's CEQA guideline section 15356. Which says the decision making body is the person or the group of people that will approve or disapprove the project. Section 15025 of the guidelines clearly states that the decision making body may not delegate review and certification to the delegate body . Practice in other location but it is plainly contrary to the regulations. And so that's the basis of the assertion there. Obviously, this body is free to take whatever action it wants tonight. And in our view that action should be

limited to making a recommendation, one way or the other to the city council. But obviously, you will take whatever action you see fit. If I may proceed with my two minutes?

>> Commissioner Cahan: That --

>> Commissioner Platten: Would I respectfully request we grant the speaker two minutes. I think he was responding to the question I raised, if that is in order --

>> Commissioner Cahan: Type.

>> I was asked to explain a couple of the issues that we have identified that were problems with the EIR, there are two in particular that tend to permeate the entire EIR creating problems with the analysis. The first one relates to what's called the environmental baseline in the EIR. That, you may be already familiar with. It's supposed to reflect the existing conditions on the ground. And the environmental baseline is used to then assess how the changes that result from the project will change the environment, and is used to determine whether the impacts are significant. In this case, the project description breaks the project area out into three areas. One of them is the area that the applicant referred to earlier, which is called the D-shaped area in the EIR. And the D-shaped area is currently used solely for parking. There I believe is an office trailer there and some employee lockers. That's the description that's in the EIR. But for purposes of the document the D-shaped area is lumped in with the landfill. Now, part of the project proposes to relocate activities from the landfill to the D-shaped area. And the EIR analysis because it considers the D-shaped area part of the landfill, it doesn't accurately reflect that moving those activities to the D-shaped area could have impacts that will change the environment there and it could have impacts that are felt by the residents in Milpitas. Odors would be one such impact. Noise might be another impact. So rather than recognizing that the environmental baseline with respect to the D-shaped area is different than that of the landfill, that creates a problem that then infects the analysis of.

>> Commissioner Cahan: Thank you your time is up. Do you have a question? Commissioner Kamkar has a question for you.

>> Commissioner Kamkar: Thank you, Madam Chair. I want to be clear about the first part of your explanation.

>> Right.

>> Commissioner Kamkar: When you say the body is responsible for certifying the EIR, you're referring to city council, they couldn't delegate that responsibility to us the spored that the.

>> Right.

>> Commissioner Kamkar: I just wanted to be sure I was clear.

>> I could read the regulation --

>> Commissioner Kamkar: No, no, I just wanted to be sure I understood your testimony clearly. Thank you.

>> Commissioner Cahan: And we'll get clarification from the staff on that D-shaped area.

>> Thank you.

>> Good evening, Madam Chair, members of the Planning Commission. My name is city of Milpitas. I submitted a letter earlier and I'd be happy to answer any questions you have regarding the contents of the letter. First of all I would like to state, we enjoy relationship with environmental document as it relates to the issue of odor. As you've heard, and as I know, because frequently I walk out of my office at City Hall and I smell the landfill. It does stink. It does smell. Although there's been quite a bit of work done, to remediate the odor, the environmental impact report for the expansion of the landfill is inadequate. So the expansion of the landfill as you may be familiar with, a condominium air rights map as an example certainly the base footprint hasn't expanded but the landfill is expanding and that's why you have an application before you this evening. So I'd like to clarify that the landfill is

expanding. The remediation and mitigation that's lacking in the environmental impact report, to adequately address odor, is state I believe it's paragraph 3 on page 8 of the staff report. I think there's a quote in there that states that the approval of the landfill will add significantly to the odor problem. And again, that has not been adequately addressed in the environmental impact report. We are requesting that you continue this item indepartment, direct staff to go back, review and analyze the issue of odor and come back with adequate mitigation and remediation of that particular impact. So I thank you for consideration and again I'd be happy to answer any questions that you have.

>> Commissioner Cahan: Do have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So as I heard the representative from the landfill explain that the City of Milpitas was one of the cities that is served by this landfill. So let's say they were capped out, and they couldn't service Milpitas anymore. I mean, what would you do? I mean, you're getting some of the benefits of this you know expansion and I do agree with you, the landfill is expanding but if you are referring to my question, I was referring to the foot print, the footprint wasn't expanding, volume was. What would Milpitas do if this landfill was capped and no more capacity for Milpitas let's say?

>> We do what a lot of cities do, they would end up and transparent the waste out to the Central Valley or some other location. But that's not the issue. The issue is the adequacy of the environmental impact report addressing odor. I'll go as far as to say we love the landfill. But that is not the issue. The issue is the inquais of the environmental impact report. We request that more work is done, more remediation in the document is studied, and you continue the item so we can adequately address it under the California Environmental Quality Act. A lot is said about the environment. I can tell you that 70,000 people every day live in an environment that is adverse to their quality of life. And this is an opportunity for us to work together to mitigate that issue once and for all and that's what we're requesting this evening.

>> Commissioner Kamkar: Thank you.

>> Commissioner Cahan: May I ask you how you analyze the smell from the landfill versus the smell from the droig fonds?

>> Yeah, that's a great question. This whole issue of odor is unique. I asked some of the representatives from allied, how frequently this issue occurs. And it's very infrequent. So it is a unique issue. We know that odor exists from the sewer treatment plant. And I believe the City of San José is studying that as we speak. We also know that odor exists from the landfill. Not only from the composting but from the garbage and debris that has been dumped at that facility for years and years. So this is, again, why we believe that the environmental impact report is inadequate. The EIR states that odor is not significant. We know it's significant. So we're just asking that you know, more time is spent, and we can go back and adequately address this issue. That is what the City of Milpitas is requesting. We know it's an issue. No question about it. We ask allied, they point the finger at San José. We ask the City of San José treatment plant and they point the finger at allied and nothing gets done. So now is the time --

>> Commissioner Cahan: I have a question for you from Commissioner Platten.

>> Commissioner Platten: Again I want to acknowledge your presence here tonight. It's a treat to have you here tonight. You do good good work at Milpitas. I guess what you're telling us is, the smell is in the nose of the beholder, is that what you're telling us?

>> I guess so but the smell is of 70,000 smellers thank you very much.

>> I'm Eileen Mc [Laughter] lib, I'm here to represent the citizens committee to complete the refuge. Back in draft EIR. I'm here tonight to say, thank you, to the city, because as I read through the text revisions again and again and again, I saw that the Planning Department and I'm sure the Newby island management had taken those comments to heart. And we're very pleased to see how much has changed in that document from then to now. So it's a thank you that I come here to bring. I also want to, we work closely with the refuge and this is the first time I've seen the City of San José actually put the refuge in as part of the biological management team, directly

involving it as a partner. Again and again I've seen that people avoid working with the refuge because they're the fish and wildlife service and we've got to stay away from those reergts. But this is the division of the fish and wildlife service that is charged with the mission of taking care of managing lands for their ecosystems. That is what these managers want to do and they want to do it by being a partner. So I'm very pleased to see this and I hope it repeats itself in future shoreline projects. The other is, I noticed that the EIR seemed to shift to a programmatic form from a project EIR, checkpoints in order for this to happen you've got to go through this review and so there would be various parties involved in each of those. That is a good shift. It probably is the way it should have been in the beginning. So we're pleased to use that. We also saw a piece in the land use description where I've never seen this in another environmental document. There's the best description of what a refuge is value and mission is in this land use description I've ever seen anywhere else. And I'm going to be cutting and pasting it into so thank you for that little bit we enjoy it.

>> Commissioner Cahan: Thank you, your time is up but I do have a question for you from Commissioner Platten.

>> Commissioner Platten: Thank you. I do want to acknowledge you've appeared before us before and you're quite right, the EIR is a step in the right direction and thank you for coming to make that comment. I'm impressed the mitigation commitment we haven't seen a lot before in a lot of bay-related projects so appreciate it.

>> Thanks.

>> Commissioner Cahan: Thank you.

>> Good evening again, Cindy Chavez, South Bay labor council. First let me say garbage always seems so simple. I remember being just a kid and my job was to take it out and wait for somebody to get it. I remember people have very defined ideas about everything from where landfill should go to how much we pay. I do really sympathize and empathize with the people who live in Milpitas and who are impacted by this and you know I appreciated your question. Commissioner Kamkar about what was there first because in some ways we're trying

to continue to urbanize an area because we think it's good for the environment long term. And there are going to be winners and losers and our objective should try to have as many winners as possible but in this instance not everyone will be pleased. Ooch got the tour and that but the real reason I'm here is I really appreciate the way this company operates. Not only are they trying to be good neighbors, not that they can't do better, we all can. But they try to be good employers as well and they try to be on the cutting edge for innovation relative to the environment. And when you have an institution that's functioning like that on all cylinders I think we have an obligation the best we can to support their efforts one to keep functioning and again to force them to continue to talk to the community although it sounds like they're willing to do that on their own but really to acknowledge that kind of leadership by allowing them this privilege from all of you so thank you.

>> Commissioner Cahan: Thank you. Okay, so you have another five minutes.

>> Good evening, Donald Gamblin representing Newby island just a minute or two and answer some specific questions or issues that were raised. Commissioner Kamkar. The landfill opened in 1938. Give or take a year. At which time it was a dump. It was an open place that waste got put, burned, done whatever with it. It's since evolved into a modern landfill where we have lined cells it goes into, it's covered routinely and almost consistently and constantly with dirt, landfill gases are removed, green energy is provided to 3,000 homes in the community. That's kind of the evolution of it, to answer your question. There was an issue on the baseline description about the D shaped area, I did want to clear that up, it is not just parking. It is a fueling restation, a baseline included there was a wood grinding operation there. Sitting there for decades is an old landfill as well. So the present use of the D shaped parcel is landfill and then things on top of that landfill. What the project proposal would be is to remove our ability to continue land filling on that D shaped area so it takes that away. I also want to note that in about 2003, up until 2003, there was quite a bit of composting operation going on in the D shaped parcel. Lot in response to Milpitas and others, we moved that off of the D shaped parcel into the West of the landfill site to move it away from sensitive receptors. So that's some of the history on the D shaped parcel. You know a lot of comments about odor. Okay? And I think you know I'm thinking to myself well what is this EIR that you're taking up to certify? What does it do? Well, the EIR really analyzes change, it doesn't analyze existing conditions. So a lot of the discussion points a lot of the questions a lot of the comments were associated with odor

and what's out there now. I appreciate the concerns and Rick King addressed the efforts that we undertake to control those odors. Again I look at it from the EIR perspective and say well again, what are we supposed to do with that EIR, analyzes change not the existing conditions. We're under what the AQMD what we call this rapid response sort of environment with the air quality management district, we're one of those privileged facilities that gets extra attention from the AQMD. Again commenting on the odor and the air quality issues, we could debate all day whether they're real or not. I tend to leave it up to experts, right? rapid response associated with this landfill. There's no lack of activity, there's no lack of complaints being issued, we keep a log of it, I was just taking a look at it in during this discussion period and in 2011 160 complaints to the air quality district and I believe one was confirmed coming from the landfill. And I think the track record for the landfill is that out of hundreds of complaints every year, that the AQMD comes out to investigate again in a rapid response mode, I think the track record is about one per year as actually coming from the landfill. Again, those are the experts coming out there, they are the ones that really evaluate where the odors are coming from. And again I want to I guess the question that comes up in my mind is really if all these complaints are associated with odor from the landfill really why hasn't the air district confirmed more of them then? I would expect them to confirm more than one per year. There was a number of items associated with the composting and the compost and whether or not it's in the project. I guess the easy way to understand that is this: If there's no action taken on the project, that's in front of you that we applied for back in 2007, submitted the application on, so again there's been ample time for analysis and questions and answers and everything else. If it wasn't approved let's understand what still continues at this site. Land filling continues until the landfill is full. Composting continues both now and after the landfill is full. The composting operation is allowed to continue after the landfill is full. So that activity continues. Regardless of your vote or your decision this evening. The recycling facility, nobody talked about the recycling facility. And I invite you all to come out and have a look at it. We just invested \$35 million commercial waste coming out of all the businesses in the city. That's our commitment, that's what we invested in. That continues.

>> Commissioner Cahan: Your time is up but if you could just quickly summarize what continues.

>> Certainly. Recycling continues composting continues energy generation continues. Even after the landfill is closed. Thank you and I'll take any questions if you have any.

>> Commissioner Cahan: And the number of jobs that you create in your existing, and once you're done with your recycling upgrades?

>> Yeah, I always have so many numbers floating around in my head. But you can address from the recycling facility with the investment we just made I believe we've got a couple hundred employees if not a little bit more that are returning to that recycling facility once it's reequipped. It's going through equipping rick runs on his landfill but 300 jobs at the site in total would be a reasonable guess.

>> Commissioner Cahan: Thank you. And I see no other questions. Thank you very much.

>> Thank you. Motion to close public hearing and a second. All in favor? Okay. And staff.

>> Thank you. John David SOP, senior planner for environmental review. I just wanted to clarify about the idea about certification. Since it's something we just talked with our City Attorney about. As far as delegation of responsibilities which is CEQA guideline section 15.025. It states that the decision making body of a public agency shall not delegate the following functions. Reviewing or considering a final EIR prior to the approval of a project and the makings 15091 and 093 and certification is actually in 15090. So the Planning Commission does have the capacity to certify EIRs. Thank you.

>> Commissioner Cahan: Director.

>> Laurel Prevetti: Thank you. And let me just add that as the legislative body, the city council will be making the findings on the final EIR. That is a typical part of their process, so they have not delegated the findings to this body.

>> Commissioner Cahan: Thank you for that classification. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you. I just wanted to make a comment about the testimonial regarding the refuge and I want to make sure that the credit goes to the correct body, and that would be Mr. Davidson I believe. He and his staff are responsible for creating that section of the future for all sections specifically, I just want to make sure he's acknowledged for that comment, thank you.

>> Commissioner Cahan: Okay, I will entertain a motion on this item. Commissioner Kamkar.

>> Commissioner Kamkar: Okay, I will offer to consider the EIR resolution to be considered for adoption in accordance with CEQA, recommend approval to the city council of a planned development rezoning from RM multiple residence and A planned development zoning district to A planned development district to allow a landfill, recyclable processing composting and other related uses on an existing landfill and recovery facility. To increase the maximum height of the landfill from 150 feet to 245 feet, and to increase the landfill capacity, by 15.12 million cubic yards on a 352 gross acre site and recommended by staff.

>> Commissioner Cahan: Thank you. I have a motion. Comeap.

>> Commissioner Kline: Second.

>> Commissioner Cahan: Motion and second. Commissioner Kamkar would you like to speak to your motion?

>> Commissioner Kamkar: Actually, no. I think you know, we discussed it, you know quite a bit during the testimony. Thank you.

>> Commissioner Cahan: Commissioner Kline would you like to speak to your second? Okay, great. I would like to thank the company for doing such a phenomenal job of turning waste into a usable product for our community. The electricity, the composting area, the wood chips, the concrete, all of that, I am very impressed with the work that you do to make sure that that waste does not continue to be waste. But is reusable for our community, that it's extremely helpful for our environment and our cities around here. And I'm also appreciative of

all the jobs that you continue to have for our city and surrounding cities. So I will be supporting this motion. And seeing no other comments, we'll vote by light. And that motion passes with all commissioners present voting in favor of. Of course Commissioner Yob had to abstain and leave the room for that. And now we will move on to 3A. Which I believe we need the director back for.

>> Laurel Prevetti: Thank you, Madam Chair. For your consideration this evening is a very brief staff report on the capital improvement program. I'm distributing the memo that summarized the Planning Commission's comments to the city council, there should be enough for everyone. There may be extras on the other side, if -- okay. Thank you. The council held study sessions on the operating budget, and then they also do the same for the capital budget. This year, the capital budget essentially had no discussion by the council. So we can look at that in a couple of different ways. And I think as the Planning Commission, I would urge that you see that your role actually becomes all the more critical in terms of really ensuring that our capital improvement program is in fact consistent with the general plan, and that we are making those strategic investments in the right place. So the purpose of putting this on the agenda tonight is that Joe and I and the staff were interested in your feedback about how that May study session went, if that worked for you, if you'd like to do something similar next year, and then importantly, that we would really like to start our discussions about the 12-13 capital budget during the summer. And so maybe later under the study session item on the agenda we can talk about setting, when would be the appropriate time, and to really work with perhaps our Public Works department or environmental services department about what are the specific investments that are going to be coming forward in the next five years that are directly facilitating the envision 2040. So again, this is really just an item to get your feedback about how the process went, and how you would like us to move forward. Thank you.

>> Commissioner Cahan: Commissioner Kline.

>> Commissioner Kline: That's a broad request, actually. I mean, I think an approach could be that you create a subcommittee called the CIP subcommittee analysis or whatever, and have two Planning Commissioners who are really interested in it dive into it not to give you feedback on next year's CIP but to create a framework and then come back with that framework so we can decide how to approach it. I mean all different kinds of frameworks. We

could split the CIP into categories and subcommittees of the Planning Commission could attack each category. We could create one CIP subcommittee for the whole thing and work as the drafts start being prepared or we could do it by some other things I can't think of at the moment but that's what the CIP subcommittee would do, go out and try and figure out an approach that makes sense. And that's what I would recommend.

>> Commissioner Cahan: Commissioner Platten.

>> Commissioner Platten: I think Norm's idea is excellent. The only question I have as a parliamentary issue is the Brown Act issue. Can a chair formally simply adopt that suggestion, appoint a subcommittee in the near future? I think that ought to be done, I think that's an excellent idea.

>> Laurel Prevetti: Excuse me we do have a standing idea regarding subcommittee formation under good and welfare so that might be an opportunity for this evening, but just to clarify, typically the staff and the public doesn't really have access to draft CIP documents. So we could certainly make available to you the staff who are preparing the materials. But until the City Manager herself issues the CIP, we would be really relying on the city departments to clarify and characterize the type of improvements that they would be putting forward.

>> Commissioner Platten: That's right, clearly, I've gone through ten of them, they seems to be a lot dropped on us at the last moment and I think norm's idea is great thematically when we get to that portion either tonight or at our next meeting we should suggest the chair make a subcommittee appointment.

>> Laurel Prevetti: Thank you.

>> Councilmember Campos: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I would also like to say Commissioner Kline has come up with a great idea. You know, some of us may have expertise in certain categories, you know, comeablg may be expert whit comes to libraries or some of the other city functions, city apartments. I may have expertise when it

comes to Public Works or transportation. Dori with you know legal and so we may be able to you know pick and choose what we're expert on and then divide the rest. You know, to complement what Commissioner Kline said. But then also as to what Commissioner Platten said, because it comes to us at the last minute it's almost impossible to you know give meaningful feedback. So my recommendation is, can some of those sessions be videotaped so we could watch those, you know, sessions being videotaped, so when it is being presented to us we have some meaningful understanding and some meaningful questions to ask. So that's one way to catch up on time. Because I know, the city staff would do it sooner if they could. But you know some of these last -- some of these budgettings are last-minute items so anyway that's my suggestion.

>> Laurel Prevetti: Thank you. If I could ask a clarifying question, what videos are you referring to?

>> Commissioner Kamkar: The staff when they are discussing these if those session can --

>> Laurel Prevetti: They typically don't, that would be part of our administrative process so we would need to see if the -- if it is the will of the commission to set a subcommittee, how we could create a framework to ensure your getting the benefit of the information.

>> Commissioner Kamkar: I see, thank you.

>> Councilmember Campos: Commissioner Kline.

>> Commissioner Kline: Yeah and I didn't want to suggest for an instant that I knew a solution to it. I wanted to suggest a subcommittee to find a framework solution to it. There are clearly a number of solutions to this, that's what makes this fascinating. vast majorities of the CIP is already done, 90% completed projects or projects that are legally required et cetera, et cetera et cetera. There's 5% that's really interesting that we could actually make a substantial recommendation to council and because it's not committed. But how do you find that 5%, when we only have a week's time to analyze the CIP? And the 5% changes every year because that's the cream. That's the extra stuff that comes in that gets thrown in the CIP that owe wait we can do some road work now, great how do

we do the road work, it should be consistent with the general plan, how could it be consistent. That's a way we could do it. I'm not proposing that that's the way we should do it but those on the subcommittee could go after and find out whether there's three or four things we could do substantially that would make the week and a half really substantial for us when we get the CIP.

>> Commissioner Cahan: Commissioner Platten.

>> Commissioner Platten: Been I agree with Commissioner Kline. I just want to indicate I have never felt that I haven't had meaningful input. I mean there have been occasions that I had two pages ever notes that I probably boringly read into the record here. I also want to thank the director because the notes that are made in this memo actually are accurate and are much more -- much more flattering than how it was verbalized by me so I appreciate that. I think norm's point the real point is not only that 5% but also the interconnection between the general plan and the CIP and there are assumed values in there that I don't think the commission has given the opportunity will do a better job and I think you know ferreting those assumptions out. So I think norm's idea is a very good idea structurally.

>> Commissioner Cahan: Okay, is a this is just a discussion item so we're not taking any action on it. Unless we do it elsewhere in the agenda, with the subcommittee formation that we discussed. So I see no other discussion on that so we will move on to petitions and communications.

>> Laurel Prevetti: We have none this evening.

>> Commissioner Cahan: Referrals from city council boards commissions or other agencies?

>> Laurel Prevetti: No referrals this evening.

>> Commissioner Cahan: Good and welfare report from city council.

>> Laurel Prevetti: Thank you. It's my pleasure to announce that yesterday the city council reappointed commissioners Yob, cam and Kline to another four year term with us so we're very pleased with that and also, want to acknowledge that Mr. Brian O'Halloran has been appointed to fill Commissioner Platten's seat and he will start as of July 1st. So these are all four-year terms. I know some of you came on filling other spots. So these are all four-year terms. Councilmember Kalra and others repeated this that they were really pleased with the quality of candidates and they were very proud of the San José community that came forward. And I think your appointments really reflect well on the City of San José. So thank you, and on behalf of staff, we really look forward to continuing to work with you, and also, there was a lot of acknowledgment of Commissioner Platten's role. As really a role model, so as we think of how other commissioners participate in the commission process, there were some of the candidates who were asked rather pointedly whether or not they would be attempting to step into your shoes. So really, you -- not in the eyes of the council. So those were the primary comments and really reflected very well on the entire commission. Thank you.

>> Commissioner Cahan: Commissioners report from committees, the Norman Y. Mineta San José international airport noise committee did not meet review and approve synopsis from 5-19 and 5-23. Commissioner Platten.

>> Commissioner Platten: I think that's May 9th if I'm correct. I move adoption of the May 9th action report.

>> Commissioner Cahan: Thank you for clarifying my error there. So we have a motion and second. We have enough to pass it if we all vote in favor. All in favor? All right that motion passes and Commissioner Yob abstains from voting on that. And May 23rd?

>> Commissioner Platten: I will not be voting on this. I did not reconstitute myself with respect to the 23rd.

>> Commissioner Kline: I also will not be voting on this, I didn't review the tape.

>> Commissioner Cahan: Due to a lack of quorum ability to vote on this one, we will continue that to our next meeting. Subcommittee formation reports and outstanding business. So per the discussion on the CIP, and the

agreement that the subcommittee would be a good idea to review the CIP, and figure out the best way, I think what I heard was, the subcommittee to figure out the best way for the commission to get a better understanding of the parts of the CIP that we can really have an impact on.

>> Commissioner Kline: I'm sorry, I probably should have phrased that a little bit better. I wasn't clear. We should form a CIP subcommittee to analyze how the commission can better recommend changes to the CIP. Which through different approaches, to come back with those different approaches. That allows then the Planning Commission obviously to choose one of those approaches or maybe there will be multiples. So it should be a short time frame they could come back with.

>> Commissioner Cahan: Okay, so that sounds like a motion for a subcommittee to me. And second to that motion?

>> Commissioner Platten: Second.

>> Commissioner Cahan: Okay, and all in favor? Any opposed? Okay. So that motion passes. And now we need to appoint some people to that subcommittee. Commissioner Kline volunteers to that. The maximum number that we can have for that subcommittee is three. Unfortunately, Commissioner Platten won't be able to be on that committee because I know he would be a great contribution but. So is anyone else interested? Okay, Commissioner Kamkar. And Commissioner Yob. Excellent. I would like to just do a brief discussion with the three of you on when you think you can report back on just where -- have a chance to meet and report back to how you're going to proceed. So if you could just give me a general time frame. Commissioner Kline.

>> Commissioner Kline: I'd hate to speak for the other commissioners but I would imagine that we could get back within 60 days, that would be a reasonable target. And that allows us to get together three, four times at least.

>> Commissioner Cahan: Commissioner Yob?

>> Commissioner Yob: I think that's fair and reasonable.

>> Commissioner Cahan: Commissioner Kamkar? Do you agree with that?

>> Commissioner Kamkar: Yes.

>> Commissioner Cahan: Up to 60 days, just for a general answer you don't have to have a full answer at that point. Commission calendar and study sessions. At our next meetings we'll be voting on the chair and vice chair, please all be aware that that will be coming up and that will be Commissioner Platten's last meeting. Staff? Oh, Commissioner Yob.

>> Commissioner Yob: I just want to remind my fellow commissioners and staff that I will be absent at the next meeting, I'll be out of the country. I'm sorry Commissioner Platten I won't be here for your final meeting, thank you for your service and I'm glad I was here to see you receive your well deserved commendation.

>> Commissioner Cahan: Okay, staff?

>> Laurel Prevetti: We have no suggestions for the commission's calendar other than the printed calendar, I do note, though, that in July we will be meeting in a different location in the wing rooms, as we were last July. But otherwise, at this point we don't have any study sessions. We will need to start thinking about our retreat. And now that we have a new commissioner, we should probably think about some of the topics that we've been talking about during the year that we were deliberately putting off until the appointment of the new commissioner. So we will remind ourselves what those are and bring those back on the 20th for your consideration. Thank you.

>> Commissioner Cahan: Makes sense to me to wait to decide on the retreat until we have the full new commission.

>> Laurel Prevetti: Yes, yes.

>> Commissioner Cahan: In the wing room will we be having a video transmission as well as audio?

>> Laurel Prevetti: I think we need to verify that. We'll at least have audio, the room is set up for video, I'm not sure what our capability is but the public will always have the ability to watch or listen to the archived material.

>> Commissioner Cahan: Great, thank you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. In light of the disclosure by Commissioner Yob would you back in July I guess? You would be here for the last meeting in June. So is it possible -- would it make sense to delay the chair- vice chair appointment when the new commission is sitting?

>> Commissioner Cahan: The commission prefers and has made practice of voting for the chair and vice chair with the full commission that has experience of the commission, the duties, responsibilities and requirements of the chair and vice chair. So we will continue to have that at our next meeting so that all of our commissioners that are voting on that have a full understanding of what the chair and vice chair position requires.

>> Commissioner Kamkar: I see, okay.

>> Commissioner Cahan: Okay, we have more comments.

>> Commissioner Yob: I just wanted to add that the commission's bylaws to require that those appointments be made prior to July 1st.

>> Commissioner Cahan: We do want to uphold our bylaws. Okay. And with that, is our final item so we are now adjourned. Thank you.