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City of San José Planning Commission meeting.

COMMISSIONER DO: Good evening. My name is Thang Do, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, July 8, 2009. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed cards in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD 06-whatever. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearing on these items. The first order of business tonight is roll call. And all commissioners are present. Next order of business is deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items past 11:00 p.m, continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. so staff, on deferrals.

SPEAKER: Thank you, Mr. Chair. Darryl Boyd, planning staff. As noted on the agenda, item 1A, file number PDC 09-0111, which is a planned development rezoning for a project located at 1356 Morrill Avenue, the applicant has requested that that item be deferred to July the 22nd. And then in addition, Mr. Chair, item 3C, which is file number PDC-09-003, this is a planned development rezoning for eight single-family detached

units and an office building for property located at 4203 San Felipe Road. That item has also been requested by the applicant for deferral to July 22nd, Mr. Chair. That concludes staff-recommended deferrals. Thank you.

COMMISSIONER DO: Thank you. So there are two items to be deferred, both requested by the applicant. Are there any comments or questions from the Commission? Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I move that we accept staff recommendation on deferrals.

COMMISSIONER DO: There is a motion and there's a second to defer item 1A and 3C, as requested by the applicant. Let's -- all in favor? [ ayes ]

COMMISSIONER DO: All opposed, the motion carries unanimously. The next item of business is consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of those items individually, please come to the podium at this time. Staff, on consent.

SPEAKER: Thank you, Mr. Chair. One comment regarding item 2B. Staff, before the meeting, did distribute to each of you at the dais a revised resolution for that project and the one change, Mr. Chair, we have added condition number 21 which deals with the garage condition, should the daycare center go away, and if this should be returned to single family residence, the garage should be restored, Mr. Chair. Otherwise this is the only comment, thank you.

COMMISSIONER DO: Any other comments from the commission? Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I have just a couple, three questions about item 2B. So if I could, just to pull those, to ask staff some questions as opposed to taking the time now. I'm asking to pull 2B.

COMMISSIONER DO: So we will pull 2B.

COMMISSIONER ZITO: And further I'd move that we accept staff's recommendation on the remaining item, consent, 2A, CP 08-09.

COMMISSIONER DO: There is a motion and second. There are any comments from any other commissioners? If not let's vote by screen. The consent calendar with item 2B pulled, has been passed unanimously. The next order of business is public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission

may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. So the first item is going to be the item that was pulled from the consent calendar, which is 2B, CP09-013. Conditional use permit for conversion of an existing single family residence to a child daycare center and an associated offsite alternative parking arrangement on a .12 gross acre site in the R-1-8 single family residence zoning district located at 2041 Nassau drive. Staff.

SPEAKER: Thank you, Mr. Chair. This conditional use permit is for a daycare center and the proposed parking is to be provided off site at that time most holy trinity parish, it is the same owner as the church location so it would be all under one ownership and operation. This property is found to be exempt from CEQA and was supported at the NAC meeting that it was presented to, and therefore, staff recommends approval. Thank you.

COMMISSIONER DO: Is the applicant present? You may, if you would like to make a statement to the commission, you may approach the podium, and you have up to five minutes to make your comments. You don't have to, but you are allowed up to five minutes. Okay, so the applicant does not wish to make a statement. Are there comments or questions from -- Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I had just a few questions. First of all, I just wanted the commission to know that I'm fully supportive of the use of this facility as a daycare center. I just have some procedural questions. I'm glad to see that staff has included item 21 which is the conversion condition. And I just want to be sure that not only the garage conversion, but if you look at that time plans, it looks like the total house is essentially gutted and only having offered space classrooms and bathrooms, right. I'm assuming that if it does convert back to residential it would need if amenities that a typical residence would have, like kitchens and whatever else that's necessary to qualify a regular residence, right?

SPEAKER: Yes, thank you, Mr. Chair. This is a different occupancy from a residential use, and so therefore they would have to get building permits to convert to this use and meet all current building code regulations, including seismic upgrades. And in reverse, should the property be reverted back to single-family residence, there would have to be a subsequent change of occupancy per zoning ordinance regulations as well as building code regulations which would require all the facilities you would find in a house, kitchen, bathroom, all that.

COMMISSIONER ZITO: Help me understand one thing. This is a C.U.P. but we are not asking for a zoning change or general plan change or anything. So technically it's still a residential zoning and residential general plan, right?

SPEAKER: Yes.

COMMISSIONER ZITO: So in all -- seeing as the condition, the C.U.P.s go with the property, if somebody else moves in there and wants to do something else with it, what was the procedure?

SPEAKER: If somebody else were to purchase the property and were to maintain the offsite parking agreement with the church, and if all those contingencies continue to be met, it could continue to operate as preschool daycare center. Should someone want to change the use, they would have to conform to the development regulations per the land use table and the zoning ordinance to one of the enumerated uses, if they chose to do some other sort of conditional or special use, they would have to apply for those use permits accordingly.

COMMISSIONER ZITO: And seeing as they've got the alternate parking agreement with the church -- by the way, for reason of disclosure, I was married in that church, so I'm familiar with it. And I just want to understand, they end up crossing the street with kids. Is there a safety plan in place? I saw on the drawing that they outlined a crosswalk and they had talked about being agreeable to having a crossing guard there. Briefly spoke with the director and he said that technically we cannot condition a crosswalk because of the D.O.T. requirement?

SPEAKER: D.O.T, we did coordinate with D.O.T. on this project. D.O.T. will allow a ramp -- an ADA access ramp be put within the public right-of-way. They are not required to do striping for a crosswalk. The ramp is also to help meet their ADA requirements for the building code. You do not need a striped crosswalk in order to have a crosswalk in the public right-of-way. And the applicant is willing to have -- to put in those amenities so that people can cross if they have a stroller or are in a wheelchair, to cross safely. There are two driveway apron faces as noted in the staff report that are available for people to use for dropping off their children. We just can't count them towards the park requirements for the Municipal Code.

COMMISSIONER ZITO: I was just wondering from a conditional -- from the permit perspective, what conditions would staff feel comfortable with to ensure safety in crossing the street? That's really what I'm going after here.

SPEAKER: We could potentially condition that during peak hours, whatever is determined per the operations of the preschool that someone be available --

COMMISSIONER ZITO: Like a crossing guard?

SPEAKER: Right, like a crossing guards.

COMMISSIONER ZITO: And if it pleases the commission I'd like to move that we do, in fact, let me read it here: Approve a conditional use permit to allow conversion of a single family residence to a child daycare center and an associated off-site alternative parking agreement with the additional condition of having a crossing guard at peak hours, okay, and that the conversion, if it's stated okay already, that's fine, but that conversion is

full conversion back to residence, assume that that's the case. Also have a question for the applicant, if I can get a second, on the duration of this permit. I see it's a two-year permit. Okay. The -- there's a two-year. Is there a reason -- did they suggest two years or are we suggesting two years? Seems like a lot of work for two years.

SPEAKER: Are you referring -- what -- are you referring to --

COMMISSIONER ZITO: I think there's a condition that says they have to come back in two years on this.

SPEAKER: That permit is -- the validity of the permit, for them to get the building permit, is required so the issuance of the permit from the building division indicates that they have validated their permit and then it is good for the life of the land.

COMMISSIONER ZITO: Okay, so did I read that -- it says here, permit expiration, the conditional use permit shall automatically expire two years from and after the date of adoption of the resolution by the Planning Commission. That's number 20.

SPEAKER: Right, it is within such two-year period that the closed use of the site or the construction of the building has not commenced. It's not a time limit condition as with monopoles. This is -- this gives them two years to get the building permit.

COMMISSIONER ZITO: But it's an unlimited conditional use?

SPEAKER: Right.

COMMISSIONER ZITO: Okay, that's fine. I was reading that to say that they only had it for two years, that's a lot of work for two years. Okay, great. So my motion is that we condition for having a security or crossing guard for peak time which I think probably makes sense, they're going to be in operation from, what, 6:30 to, I want to see what it says here. Drop off --

SPEAKER: Joe Horwedel. While you're looking at that Commissioner Zito, I would ask that any such condition be left to the discretion of the staff of how best to do this. I do have a real concern of the way it's heading, that the implication is that they're providing crossing-guard duties, that is a city function that has a lot of legal requirements to, and I want to make sure, if we're doing something, that we're doing something that is absolutely required as opposed to it feels good. Because when it goes into the use permit it will live forever. And it has cost ramifications and we've seen this with some of the restaurants that have come in for late-night use that have had a requirement for security, that the only way to do that, and that the Commission was concerned that it be done by an off-duty police officer for the two hours open, while they have a limited number of hours that you have to buy, and it becomes extremely expensive to do those things. I want to be sure that we are able to go and meet the objective which is to ensure that there are a large number of kids that are crossing the street, and during those busy hours that there is some

supervision of that. But what is staff going to figure out what is the best way to accomplish that goal?

COMMISSIONER ZITO: So that's fine. Let me state it this way, and this might be able to alleviate your concern. That there be a dropoff and safety plan submitted such to the -- and what to they say -- to approval of staff, okay, for the purpose of ensuring safety.

COMMISSIONER DO: Is that a motion, Commissioner Zito?

COMMISSIONER ZITO: That's the piece of the motion instead of saying a crossing guard, accessory -- including a dropoff and crossing plan that will ensure the safety of the attendees, if you will, to the satisfaction of the director or staff.

COMMISSIONER DO: Is that clear enough for staff in terms of the --

SPEAKER: Yes, Mr. Chair, we've got it.

COMMISSIONER DO: There is a motion and there's a second. Is there any discussion on the motion, please? Seeing none, let's vote by screen. The motion pass 7-0. The next item on the public hearing agenda is item 3A, PDC08-057, planned development rezoning from R-1-8 residence zoning district to A(PD) planned development zoning district to allow expansion of an existing religious assembly use by the construction of a 6310 square feet, two-story rectory. Demolition of an existing 2300 square foot one-story rectory, construction of a 140 square foot memorial tower and addition of a 356 square foot porch/stairway to the front of the existing sanctuary building on a .49 gross acre site located in the Northwest corner of East San Fernando street and South 34th Street. Staff.

SPEAKER: Thank you, Mr. Chair. Staff just wants to refer you that there was an error in the staff report, regarding the size of the main worship area, in the staff report it was listed as 650 square feet. And it's actually in reality it's about 1,110 square feet. In the previous conditional use permit that was issued for this site, it was established that the parking existing on the site was legal nonconforming, and basically, met the requirements for the existing sanctuary. I handed out, prior to the hearing, our revised development standards, or at least the first page of the revised development standards. If you've just looked at it there's a modification under the park requirement which says a minimum of 22 parking spaces, and that's the amount that's currently existing on the site, for the existing 1110 worship area. Any expansion beyond that will require one parking space for every four seats, or one parking space for every 30 square feet which is the standard zoning code requirement for parking for religious assembly uses. Basically, just as mentioned in the description, there's three kind of additions that are being made to this use. The front porch and stairway to the main sanctuary area, there is a memorial tower being built, and then there's the rectory-monk quarters which are being replaced as well replacing the existing ones. None of these three additions would actually affect the parking site, so the staff hadn't specifically focused on the parking requirement, which is probably how I slipped up and made this error. But other than that staff is recommending

approval of the planned development zoning. The zoning was only required for some minor setback issues where the stairway and some of the buildings that overhang and are creeping into what would normally be the standard residential lot oops. This is considered exempt from environmental review and again staff is recommending approval. Thank you.

COMMISSIONER DO: Thank you, staff. Is the applicant here? If you wish to make a presentation to the Commission, you may approach the podium and state your name and you have up to five minutes to speak. Thank you. The applicant does not wish to speak. I have a number of speaker cards. And each speaker will have up to two minutes to speak. I will call three names at a time. And as I call them, please line up at the bottom of the stairs, for efficiency of time. The applicant may have up to five minutes to rebut these comments, if he or she chooses to do so. So the first person -- I apologize if I mispronounce the name. It's Josue Apolenar, Jose Prieto, and Michael Lu. Please approach the podium and state your name, please. Thank you.

SPEAKER: Hello, everybody. Okay, I used to live -- I live in the house in the back of the temple. I have nothing against my Buddhist friends. They are my neighbors. However, there is really a very serious parking problem. However I find when the church wants to -- somebody wants to build a church, the main thing they ask for parking. They will not let anybody build a church unless there's plenty of parking. We have a serious parking problem there. There is too much congestion, too much traffic there. People come from the heritage plaza all the way to park in our area. I cannot even park in my own front of my house sometimes. The congestion is really bad. If I wanted to start a church in my house, would the city let me do it? Huh? Where are they going to put all the cars? I ran out of things to say.

COMMISSIONER DO: Thank you, sir. Thank you.

SPEAKER: Good evening, my name is Joseph Prieto. I appreciate you giving me time to talk. My concerns, I'm a neighbor to the assembly place. And I know he told us you have 22 parks. You need to know when there's people, those persons have a convention, it's sometimes, I don't know how many times a month, or year, it's not 22 persons, it's 500, 1,000 persons, sometimes more. I know you try to deal with the heritage plaza but sometimes heritage plaza have another convention, cannot rent the place. We have proof, we call police, we call towns, you can see from the assistance it's very older people. It's not like a new church, where younger people, no, it's people who need parking close, need to stop to drop off or not. Another reason is, I don't have pictures to show you but we have various neighborhoods, very tight, very tight neighborhood. The street is very small. All the houses is 5 foot by 20. My house is 20 foot from the backyard of the church. We have music, all day, not loud, but it's like bing bing bing bing, something typical of that culture. Every time make you -- you have one party, it's like make food for everybody. It's the smell of food everywhere. It is very nice very kind people. Make smile for us, bring chocolate to my house all the time but it's impossible. The tower is over 50 foot. Now you want to building another tower and it's not reasonable to have it like that and the mirror of the neighborhood so tiny and so small. If you have another

place where you can building I understand. But right now, right now it's so hard for us to live with this situation. But we try to live with this situation. Now you want to extend? I know this house, it's to bring more nuns to the house. You want to bring conditions to the nuns. If you bring more nuns to the house you have more people to live in the house and I don't think it's fair. I don't think it's fair.

COMMISSIONER DO: Your time is up. Thank you for making the comments.

SPEAKER: I don't think it's fair.

COMMISSIONER DO: Thank you for your comments. I will call the next three names. Avila Carnono, Nyung Ki Nguyen, Hung Do. Please, sir.

SPEAKER: Mr. Chair, members of the Planning Commission, my name is Michael Lu. I'm the current chair of the Santa Clara County Planning Commission. I'm here on a personal basis to appeal for your sense of decency to approve this PD rezoning. This institution have taken over this old decrepit church that was build back in 1950s. They've done wonders with it but it's still a 1950 structure. It's inadequate plumbing, the faulty pipes, and lot of things wrong with it. Over the years, many things been done to patch work to make it up to code. But what's in front of you is an opportunity to really create a sanctuary, you know, a livable sanctuary for the nuns. They've done some good work around the neighborhood. I've known them for over 30 years, my family's worshipped there. And they've always helped events, they've always do community outreach. And obviously there will be problem from time to time but they've tried to address it as best they could. And again, I'm here to appeal to your senses to approve this PD zoning. Thank you.

COMMISSIONER DO: Thank you, Mr. Chair. Next speaker, please. Is -- is Avila Carnono here? Let's see -- yes, that's the next speaker on the list. Okay, if the -- okay. Is -- does he wish to speak with the translator? Is a translator present? Okay. Is there someone with her who can translate with her? We don't have an official translator here present. I speak Vietnamese but I cannot translate, I don't think. Okay. Then -- that's okay. Thank you for coming here. And we wish we had heard your testimony. Can we move to the next speaker, which is Nguyen Ki Nguyen please.

SPEAKER: Thank you. I've been a member of the temple for many years, couple of years I was full staff voluntary to do the paperwork. And we are concerned about the parking, because the traffic was jam, and thing like what he say that we have been resort by making the reservation at the heritage parking and one every year, one register ahead of time, reserve ahead of time. And we also pay, and we also have a team at least like ten or seven -- from seven to ten people, to guide the cars, not congestion. The building we mentioned, the power was too high, I think the owner, or the action, which is revised the plan. Thank you.

COMMISSIONER DO: Thank you. Next speaker, please.

SPEAKER: Good evening. My name is Hong Do. I'm one of the Vietnamese and Buddhist Youth Association leaders in the Silicon Valley. I'm also one of the personal members of the temple An Lac. I'd like to share with you the benefits that the temple have brought to the city and the neighborhood as well. I've been to San Jose the last five years, but in relation to the temple for the last ten to 15 years. The head nun of the An Lac temple is a very compassionate person. All she wants to do is to bring happiness and to help people around the neighborhood. Over the past 15 years or so she have done many things. She has opened a Vietnamese language class at that time temple to help the Vietnamese children to retain their language and also the culture. She also allows the Buddhist youth group to hold meetings there on a Sunday. And she organizes spiritual retreat sessions annually, and she provide food for the homeless and also for the neighbors during the special holidays. She establish a dedicated burial area in the Oak Hills Cemetery. Those achievements have speaks for themselves. The benefits is, she gives them a place, the children, the young and old, a place to come to for the -- for the youth, they have a place to go to, to learn, and stay away from drug and gangs. For the elderlies, with the spiritual retreats, they can release their stress on it daily. Also, she is talking to other people who come to the temple and say with the economic situation now do you know jobs, how can we help the neighbors? So those are the information that she has in her mind, that she want to help. The community she want to help the neighborhood. So I am sincerely asking that you could approve the plan, and by approving the plan, you are contributing to the outcome.

COMMISSIONER DO: Mr. Do, you have run out of time.

SPEAKER: Thank you.

COMMISSIONER DO: Thank you for your comment. I just want to clear for the record, Mr. Do and I are not related. Do is a fairly common Vietnamese name. Does the applicant want to provide rebuttal? You have up to five minutes for your statement. Please approach the podium and make your statement.

SPEAKER: My name is Tuin Nguyen, I'm the architect and also the applicant for the project. I would like to respond to some of the comments of the people. Number 1 is the park and the traffic problem, number 2 is the noise problem, and number 3 is the height of the tower. Talk about the park. We have parking and traffic problem in any -- in every project that we do, in anywhere in the city. In this particular project, we understand the problem which happen only dealing with a big event in the year happen like three time a year. And the temple realize the problem, and the director of the temple has made arrangement with the Mexican heritage plaza to make parking spaces behind the plaza so we can have additional parking. I think it's been -- the rent receipt has been submitted to the Planning to prove that we have been renting the space for some time. Number two, is the noise problem. We understand that we have some noise problem before. The church is to have some outside loud speaker, and we understand that that bother some of the neighbor. And that's been corrected, and it's no more loud speaker outside. Number 3, is the height of tower. Originally, we proposing the height of the tower as high as the existing ridge line of the main building, which is about 32 feet to the

top of the tower, plus the Ottoman on top. Normally, the Ottoman is not considered into the building height, but for planning recommendation, we have to cut the whole thing down to the total of 30 feet, which is within the limit of the residential zoning requirement. Actually, we try our best to respond to the neighborhood comments and concern, as well as the planning recommendation. Thank you.

COMMISSIONER DO: Thank you, Mr. Nguyen. Is there a motion to close public hearing? I'm sorry. Mr. Nguyen, there's a question for you. Please return to the podium, thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, chair. Just have a quick question, here. I just noticed in the staff report that your most recent conditional use permit was back in 2000, and at that time, they were supposed to be in agreement to remove an existing entry sign, which was not removed at that time, and is now an additional condition for this particular site. For this particular zoning. I'm just curious, why it's nine years, and you haven't removed the sign as per the original conditional use permit.

SPEAKER: I -- I mentioned that condition to the director of the temple and she agree that with this review here, that she'll -- would be complying with the condition of the city.

COMMISSIONER ZITO: Okay. But my question more had to do with, why wasn't it done sooner?

SPEAKER: I think that's an oversight from the temple, yeah.

COMMISSIONER ZITO: Okay. And so I'm just being sensitive to that, because you've got some neighbors who are a little bit concerned about how the use of the temple affects their quality of life, if you will. So just want the directors to be sensitive to the conditions that are being put forth as you go forward.

SPEAKER: That's true, yes, sir.

COMMISSIONER ZITO: Thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. There's another commissioner who would like to propose questions. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair.

COMMISSIONER DO: Mr. Nguyen please return to the podium. There are more questions. Thank you.

COMMISSIONER KAMKAR: The question I have is parking. We heard from the neighbors that parking is an issue. As I look at the plans, and I don't know this for sure, but there may be some opportunity to increase your parking by simply restriping your parking lot and introducing, I may dare say, tandem parking. You know, I don't believe

in tandem parking usually, but in some instances, when you know who the car belongs to, or if you can set the schedules correctly, it may be -- it may make sense. Have you looked at that, to, you know, try to do more with what you have, trying to --

SPEAKER: I think between the solution of tandem parking and renting additional spaces from the plaza, I think that the solution for renting additional space is more efficient and more convenient.

COMMISSIONER KAMKAR: Excellent. Especially when you have conventions, especially when you know you will have a larger crowd, it shows consideration for the neighbors and that you have concern for them. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Is there a motion to close public hearing? All in favor? All opposed? So staff, would you please respond to the points that the speakers brought up, merely having to do with parking, noise and height, as the applicant responded. I think on the park issue, I do have just a quick question, which is that whether the fact that it's the site is near the Alum Rock transit corridor, whether that influences the calculation of parking requirements. Thank you.

SPEAKER: Thank you, Mr. Chair. I'm still -- still a little speechless that Commissioner Kamkar would suggest tandem parking. But I'll try to address the issues. Sir, the development standards did build in or attempt to build in some flexibility for the church. While it did kind of establish a flexible cap on the amount of people onsite, basically regulated by the amount of parking they have. However, when they do have festivals or conventions onsite, they would have the opportunity through a PD permit to secure an offsite parking arrangement and thus permit for a larger number of people to be onsite. As far as I guess the noise issues go, the applicant mentioned that they have had some amplified sound outside. At the PD stage, there would be conditions that there would be no outdoor amplified noise outside. And as the architect mentioned, the ceremonial, memorial tower has been reduced in height and basically is currently proposed as the same height as what would be the maximum height for a single family residence. And it is worth pointing out that the zoning code does allow exceptions for towers relating to religious societies to be much, much taller than normally would be. But in this case, they're trying to keep the tower low and try to keep as a good neighbor. I believe that concludes staff's additional comments. Thank you.

COMMISSIONER DO: Thank you, any additional comments from the commission? Seeing none, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I'll start off with a motion and if that spurs additional comment, we'll go ahead. Recommend the city council approve a planned development rezoning to allow expansion of an existing religious assembly use by the construction of a 6310 square foot two-story rectory, demolition of an existing 2300 square foot one story rectory, construction of a 140 square foot memorial tower and addition of a 356 square foot porch/stairway to the front of the existing sanctuary building on a .49 gross acre site, as recommended by staff.

COMMISSIONER DO: Motion and second. Would you like to make an additional statement?

COMMISSIONER CAMPOS: Yes, I think that the temple has met the community half-way in terms of making sure that they're compatible with their neighbors, that they're being good neighbors. I think they've proved it by reducing the height of the tower. Also acknowledging that amplified speakers, you know, outside, you know, the sound's going to travel and that could, you know, cause a nuisance to the surrounding neighbors and removing that and putting everything inside shows that they're willing to continue to be good neighbors and meet each other half-way. I also think that the proposed architecture of the temple is going to enhance that community. You know, not that the existing building, what you've done to it, I mean, it's an old building. I mean, it looks good, it looks nice. I mean, I haven't been inside, but what you have planned I think is just going to be an improvement to the community. And I think that the plan to have park at the heritage plaza, given that that is currently a city-run facility, makes it a lot easier and better to negotiate having space there, when there isn't anything going on at the plaza. So those are my comments. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I've got a question for staff regarding an item in the General Plan notes, half-way down about parking requirements. It says parking is not required for onsite staff residents. Understand that maybe the impetus for that is the proposed use is for staff that probably won't have vehicles or won't need vehicles. But I'm just concerned or am curious, being that this is a zoning, and it's staged with the property, is that something you want to memorialize in the general plan notes?

SPEAKER: Yeah, it's certainly on there because no -- the users of the site wouldn't -- would not have vehicles themselves. This is a fairly specific zoning, so it's likely that if this were to change to a somewhat significant use with a different type of residents, they would probably have to rezone and this condition would fall out. But I mean, it's certainly the Commission's discretion. If they want to recommend removing that condition, I would certainly understand that.

COMMISSIONER ZITO: I'm also thinking with, as has happened with other religious communities, they've gone from religious staff to lay staff, where people either had temporary living or whatever, and they may have needed the vehicles to park there. So for that reason, I'm going to ask the maker of the motion if they'd be willing to remove that condition. I understand the current situation doesn't affect the parking, but just not to memorialize the idea of no parking for the onsite staff. So I'd like to see that removed from the general plan notes.

SPEAKER: Commissioner Zito, can you repeat what -- the condition you're talking about? I was --

COMMISSIONER ZITO: Okay, sure. Halfway down the first page of the general plan notes, on the parking requirements, it specifically states that no parking is required for onsite residents. The current conditions, that fits, that works. Who knows what's going to happen tomorrow, if they switch to lay staff or whatever. They may have -- they may exacerbate their parking conditions with a turnover in staff or a different use of the site, so I just don't want that to be part of the general plan --

COMMISSIONER DO: I just want to ask staff, does that create any complication in the approval, in the sense that that changes the parking calculation in any way?

SPEAKER: That's certainly something we can look at, at the PD permit stage. I guess there's other conditions in here that talk about or that will be about basically when the main worship hall is going to be university. There would be no, I guess no subsequent use of any other facilities on site so one would assume at that time, any staff that would be parking onsite would actually be in the main worship hall. So you know, technically they would be counting towards the park requirement at that point so you know, staff is neutral to whether -- leave that condition in or remove it.

COMMISSIONER DO: Thank you, so Commissioner Campos.

COMMISSIONER CAMPOS: So your proposal just to remove it completely?

COMMISSIONER ZITO: Right. I don't want to basically say that in all cases they don't have to include parking for staff.

COMMISSIONER CAMPOS: Okay, I'm fine with that.

COMMISSIONER DO: So do we need to restate the motion or -- we understand, there's a motion and there's a friendly amendment, just to remove one clause from the planning statement. So -- any further discussion? I'm sorry, Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Parking is a challenge in the neighborhood and I'd like to encourage staff to work with the neighborhood and help them understand how to obtain permit parking for the neighborhood. In the event that continued -- because the two speakers both made it very clear that there are overflow events from the heritage plaza as well as overflow events from the church itself and helping the neighborhood obtain permit parking would help greatly to alleviate that parking. Thank you. Oh some and in the sake of full disclosure when I did my site visit I did meet with Mr. Lu and the minister.

COMMISSIONER DO: Thank you, Commissioner Jensen. Any further comments? If not, let's vote by light -- by screen. The motion pass 7-0, [ In Vietnamese ] I just congratulated the Vietnamese crowd, that's all. The next item is item 3B. PDC 09-007, planned development rezoning to allow up to 35 single family detached residences on a 19.13 gross acre site located on the Northeast side of San Felipe road, approximately 800

feet Northwest of Silver Creek road and at the Northwest terminus of Grand oak way.  
Staff.

SPEAKER: Thank you, Mr. Chair. I'd like to start with three clarifications. The first one in the staff report being on page 8 under the Evergreen-East Hills development policy section. The staff report indicates that the project will be using 14 residential units from the pool of units in the policy but actually only 13 are needed because the site currently has 22 units already allocated to it. Secondly, I would like to note that the plan set that was distributed on the tree removal plan, it indicates that tree number 45 is going to be saved. However, that tree is actually going to be removed. And thirdly, staff understands that one of the proposed floor plans in the plan set offers an optional suite on the first floor. We'd like to note that this is not intended as a second unit, and to be clear the development standards will include a statement that second units are not permitted as a part of this development. Also, I'd like to note that at the planned development permit stage of the process this project will be conditioned to comply with the green building policy that the city has which will require that the project achieve a green point rated or LEED certified status. Finally, staff is recommending approval of the proposed project with a staff alternative site plan which includes a through-neighborhood street, the applicant's proposed site plan does not provide neighborhood connectivity, but creates a barrier, and a new isolated residential development. The applicant's proposal is for two dead-end cul-de-sacs. That does not take into -- that does take into consideration concerns that are raised by several neighbors about cut-through traffic and noise associated from such traffic. Staff's proposed alternative site plan provides a circuitous route through the site and does not make a straight thoroughfare through. The adjacent Grand Oak Way street is a street that stubs into the subject site and is not a cul-de-sac, and indicates that grand oak way was always intended to connect to this site with the adjacent residential development, thereby creating a whole neighborhood and not a disconnected isolated development. In addition there were comment letters received recently that were not included in the staff report but were handed to you at the beginning of this meeting. All of those letters are in opposition to staff's proposal for a through street on the site plan. Finally, for the reasons stated, planning staff recommends that the Planning Commission forward a recommendation of approval to city council.

COMMISSIONER DO: Thank you. Is the applicant here? You have up to five minutes to make a statement. Please state your name state your name for the record.

SPEAKER: Good evening, Chairman Do, members of the commission. My name is Mark Lazzarini, managing principal for DAL Properties, the applicant. We are here this evening to ask that you approve the planned development rezoning to allow 35 single family detached homes with a recommendation to the city council to approve the applicant's proposed site plan. We believe that this site plan best addresses the community goals which are to preserve the rural character of this neighborhood, enhance Public Safety, create a greater sense of neighborhood connectivity through pedestrian and bike-friendly site design. We believe that this site plan better addresses the spirit and intent of the City's general plan policies of neighborhood identity and urban design which was well articulated in the Meadowlands feedback that has been provided to you. These

elements are accomplished by site design that prevents through-traffic connection between grand oak to San Felipe road, thereby minimizing traffic levels and speeding through neighborhood interiors. I'd like to point out that grand oaks already has two access points on to San Felipe road. This plan also provides for emergency vehicle and emergency access to all residents. It creates a safer, more pedestrian and bicycle friendly environment. It enhances and expands existing riparian areas. It promotes and encourages pedestrian use, and interaction, in public open-space areas, especially recreational use within riparian corridors. It creates a softer riparian edge with rear yards alongside the riparian corridor, preventing the opportunity for dumping that might be encouraged with a public street alongside the riparian edge. It provides for similar and uniform lotting patterns in character with the neighborhoods and avoids flag lot conditions. And the site plan best incorporates the abandoned 25 foot access road that runs adjacent to our site from San Felipe road all the way down to be maintained per court order as public use and without creating a blind or dead end alley effect. I'd like to emphasize that this plan was a result of numerous, and I mean numerous meetings, e-mails, phone calls, over the past several years with neighborhood leaders. And builds on the previous approvals for this site. Most recently was in April of this year with the planned development permit and tentative map approval of 22 lots which enjoyed neighborhood support. I'd like to take a few minutes, if I can, to summarize five years within the five minutes allotted but if I run out of time I'd like to be able to complete those remarks after public testimony. Begins in December of 2006 we entered into a memorandum of understanding with the neighbors about the ultimate buildout and design of this site, incorporating the number of units and many of the design elements that were of concern to the neighborhood. At the time of that zoning approval, which was for the 22 lots which consisted of 15 lots along San Felipe, and an additional six lots off of the grand oak way extension, culminating into two cul-de-sacs. At that time, the two outstanding issues had to deal with the road abandonment which is highlighted in the blue area and also how we might be able to better access Mr. Sidhu's parcel which was interfacing with us and highlighted in yellow. I want to remind the Planning Commission that it was the Planning Commission's direction back in November of 2000 -- excuse me, of December of 2006, with their approval to ask that we work with Mr. Sidhu and the neighbors to come up with a better access if we could. This was again reiterated in the council hearing for the zoning approval in January of 2007. Later in 2007, after several efforts with Mr. Sidhu and neighbors and planning staff, we came up with this extension of grand oak way which would allow for six lots culminating in a cul-de-sac. And at that time, the only concern we had from the neighbors had to do with an easement, private easement issue.

COMMISSIONER DO: Sir, your time is up.

SPEAKER: I knew I was going to run out of time.

COMMISSIONER DO: Is there any questions of commissioners? Oh, let's see, I'm sorry, I –

SPEAKER: I guess I'll wait.

SPEAKER: Okay, so anyway, I would hope that after this public hearing and questions that you'll be fairly disposed to our position. Thank you very much.

COMMISSIONER DO: Thank you. Is there a motion to close public hearing? Oh, I'm sorry. It's my first day, so -- there are a number of speakers. And I will call -- I will call three names at a time. Larry Carlioni, Bonnie mace and Michael mace. And if you would, please line up at the bottom of the stairs with the first speaker, Mr. Carlioni, you have up to two minutes. Please approach the podium and state your name, please.

SPEAKER: Mr. Chairman, we have some slides that are in order. Is it possible to change the speaker order?

COMMISSIONER DO: Sure, I wasn't aware that there is an order.

SPEAKER: Bonnie first, and then myself and then Larry.

COMMISSIONER DO: Okay, that would be fine. Okay, so Bonnie Mace and then Michael Mace. Okay, great, thank you.

SPEAKER: Thank you. I'll just wait for my slides to come up. Bonnie mace from Meadowlands community. Okay, we have several slides here so let's just go in order. First of all we support the applicant's proposal to build no more than 35 units on the entire parcel as per our memorandum of understanding. Next. But our recommendation is that there is no direct vehicle access from grand oak to San Felipe due to traffic speeding and other concerns. We do want emergency access of course. We do want bicycle and pedestrian connectivity which is important to link the neighborhoods. We want to protect the riparian resources which are very special to us as much as possible. There are two road layouts to consider in this regard. There's the applicant's proposal or a separate road at the riparian corridor. One of these was labeled 3.1 in your packet. The impact of staff's proposal is that all the houses highlighted in yellow will have a closer route to go through the shortcut what we call the shortcut to San Felipe if it's a direct road than around the current way. This would basically put 100 times per household or 200 cars going through that short small narrow piece of pastureland which in our mind would create a thoroughfare, and you can see the road is relatively straight. The developer's proposal would have the lowest impacts on Cal Oak Creek, as Mr. Lazzarini has pointed out, terminating in two cul-de-sacs with emergency access in between. There would be pedestrian, bicycle, and emergency connections between the various parts of the community. The other alternative which is this one or 3.1 is what we call maximum riparian. In this sense there is an emergency connection to San Felipe as you can see highlighted in blue however there are two separate roads with the riparian separated in between. Basically, this allows for a huge amount -- I think we've calculated 7,000 square feet of extra riparian that can be preserved. There's much less riparian impact, there is much less road impact in terms of what the city has to build, and we prefer this in terms of protecting these various resources. So once again, these are the two road alternatives that we would like to see, one or the other. Preferably with the least impact

on Cal oak creek and the Meadowlands as possible, and we don't feel that a direct road being that is so straight would achieve this purpose. So thank you very much, and we'll continue on with the slide deck.

COMMISSIONER DO: Thank you, Ms. Mace.

SPEAKER: Thanks, Mr. Chairman. My name is Michael Mace. I live next door to this development. To understand why we are pushing for the things that we are pushing for, you need to know the character of the development. We are designated in the general plan as a semi rural area, meaning that you've got a lot of streams, you've got hills separating houses, and houses tend to be naturally in little clusters because there are natural features between them. Narrow twisting roads are a normal feature of our development, so it's a little bit different from what you'd see in other parts of San José. Staff has talked a lot about connecting with other developments in the area. This map shows all of the different housing areas that are already around it including several clusters of homes that connect directly to San Felipe. No matter how you set up the homes, this community is going to be connected to the other homes around it because there are homes that connect to all of the roads around it. The real question is, is the connectivity to the rest of the community going to be driven more arounds cars going through, or bicycles and pedestrians? Which are you choosing to optimize for? Now we tried to look at the city planning guidelines and all of the different options that are out there and talk about the pluses and minuses that are out there and we tried to be as objective as we could. This is the way it came out when we did that evaluation. Now, I doubt I'm going to have time to talk through all of these, but I'd like to address a couple of them if I could. So first of all, city policy is against putting through traffic through a neighborhood. Going with staff's plan would cause about 100 houses to traverse this new development in order to get in and out of the area in order to get to their homes and to their work. That actually we think reduces the livability of that neighborhood rather than improving it. Another area is riparian protection. If you really want to protect riparian, as Bonnie already talked about, the best option is not to build a road across the riparian area. And there's an option that doesn't require you to do that. Now, city policy also talks about protecting the livability of current neighborhoods. If you want to do the most to protect the livability of the current California oak creek neighborhood then you want the fewest houses coming out of this new development going back through the existing California oak creek place. The thing to remember about those folks is that today, they're living at the back of the development where there's no traffic at all. That's why they chose those houses. If you create a through-road you're going to change that dramatically. So there's one choice that is a little bit better for riparian, there is another one that's a little bit better for the California oak creek community. But understand that both of those options are far better in a compliance with city standards than the staff's proposal is from our perspective. And I see that I've run out of town so I'll shut up sir, thank you very much.

COMMISSIONER DO: Thank you. Is is -- I'm sorry, is Larry cardioni here?

SPEAKER: Kathleen. I'm speaking first.

COMMISSIONER DO: You're speaking in place of him?

SPEAKER: My name is Kathleen Helsing. I'm from California oak creek.

COMMISSIONER DO: Okay, I'm sorry, so is Larry Carlioni here?

SPEAKER: But I'm speaking first. That's the way the slides work. California creek is a rural community and we're free of traffic. There's been some confusion about the grand oak extension. With phase 1, there was no other way out. Therefore there were no objections. With phase 1, it was also segmented development, which hampers community input. This a bad way to plan a community. With phase 1 there was no allowing for speculation on phase 2. Bad way to plan a community. Now, with phase 2 in the mix, this adds a new dimension, and new way out. And now we can see the big picture, therefore, I believe we need to re-think the California grand oak extension opening. In addition, the city has opened the door for some discussion by saying any variation of the street layout is certainly up for discussion. They, today you're only being presented the two best options. We think there's a third best option which Larry's going to discuss. Our feedback on what the developer is proposing, which you heard a lot of it. We do not want more traffic coming up and down running springs which this will create to get to the back side of this property and to Mr. Sidhu's property. Speeding is already an option and it's only going to get worse. There will be increased noise and traffic that goes past Hematite and that grand oak area, and it is close to phase 1. Our feedback on what the city is proposing is that as Mike said, it's going to bring a whole flood of traffic from California oak creek into the area and past our homes there at grand oak and Hematite area. More concerns about speeding on this extension, whatever it is. It provides another exit for burglars which is becoming a problem in our area. And you know, the DAL property owners would not want California oak creek residents driving past their homes just like California oak creek doesn't want the DAL traffic all that going

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COMMISSIONER DO: Your time is up. Thank you very much for your comments. Let's see, you have two cards filled out. I assume it's a duplicate by error.

SPEAKER: I'm sorry?

COMMISSIONER DO: You have two cards filled out.

SPEAKER: I think one might have been filled out on my behalf, so I apologize for that. Hi, my name is Larry Carlioni. I am a resident of California Oak Creek, and we have been working very hard with the Meadowlands neighbors and Mark Lazzarini with DAL. I think basically our first choice recommendation would be to go back and reevaluate the extension of grand oak. I think we really value the connectivity of the communities and we don't believe vehicle traffic is the way to connect communities. And I think what we see as the benefits of creating an alternative to the extension is that we'll have some green connectivity, we'll keep the park like look and feel of California oak creek and we believe

this will solve, resolve a lot of the community's traffic and safety concerns. Basically, here's kind of a picture. If you see kind of in your lower left, the little black hatched area, that's where we look to see kind of a green park-like connection kind of built. I should note and point out that just below the border there of the cross-hatch, that's where we have our block parties. That's the safest part of the development today. And what staff is recommending is we actually do a flow, full connectivity between that hash mark all to the California-San Felipe and that's kind of the wrong thing. And we really don't understand why it is that staff will not go back and reconsider the need to extend that. So basically, what we want to do is, our second choice would be if we can't have a green connection is for planning council to support the developer's recommendation, =what we do is put some traffic calming remedies in place, because we do want to resolve and mitigate those concerns. I think in summary, what we don't want is the full connection between grand oak way to San Felipe. We do want to work with the Planning Commission -- excuse me the planning staff and DAL to go back and reconsider grand oak. If we don't get that I think we'll support the developer plan if we can get calming mitigation, traffic calming mitigation and we don't want anything extended beyond what's already there.

COMMISSIONER DO: Your time is up. Thank you very much. Applicant, you have five minutes to rebut.

SPEAKER: Thank you, commissioners. I'd just like to point out that in the applicant's proposed site plan, which received PD to the map approval, be clear that at the time that we received our zoning application, or zoning approval, it was uncertain what phase 2 was going to be like because simply, the Evergreen development policy hadn't been completed. So we were uncertain-

COMMISSIONER DO: Could you move the map up so that the entire image shows?

SPEAKER: Oh.

COMMISSIONER DO: The other way. There you go. Okay. Thank you.

SPEAKER: There I go. What we wanted to accomplish, this was the phase 1 approval and at that time, we were uncertain as to whether or not there would actually be an Evergreen development policy that would allow us to complete phase 2. I also should mention that is, that option was presented to the neighbors, because that's the only option we had to work with at the time. And that proceeded to trigger some events relative to lot line adjustments, land swaps with Mr. Sidhu, legal agreements and arrangements, so forth, relative to the access. We feel that while staff is recommending a through street, we understand that and sympathetic that California oaks would like no traffic. This is a good compromise. We are only adding six houses from our development that would actually traverse through California oaks. Furthermore, the 25 foot abandoned road which runs along our property and the back of the Meadowlands property would remain a public access, and we did not want to create a situation which is evident in the staff's recommendation and what Cal Oaks was referring to, to create a blind alley or a dead

end. We want to be able to create pedestrian and bicycle access that would connect to a public street, and create some loop activities or recreational activities for the residents and neighbors. It is one thing to take your neighbors through a land use development process. Keep in mind that we also had to work through a legal process to get a court judgment that would affect the use of that 25-foot road. And with 13 neighbors, seven heirs of the original property of the City of San José, we were successful to get an in-court judgment that really dealt with this no-man's land and now allows us to incorporate that as part of the development. And I should mention that most of the neighbors, all the neighbors had some prescriptive easement use. Mr. Sidhu had a recorded easement over this property. So it was important for us to be able to work with everyone throughout this process and come up with the best solution that we possibly can, being mindful of the concerns and character of the neighborhood. I just want to acknowledge, too, and thank the neighbors for their time and energy and effort in working with us. I also wanted to thank staff throughout this entire process. And something I don't do very often, I also want to thank the city attorney's office because they helped us through the legal process with the court order. Again, I'm happy to answer any questions. We feel that our plan is best suited to deal with the concerns of the neighborhood. I also should point out that we are satisfying the riparian corridor policies with a 100 foot setback on the Northeast side, which is the side with the 20 units on it. And I think that's going above and beyond what you might typically see with developments especially with this type of riparian area which is a lower area tributary, in fact an intermittent stream. So the improvements and the enhancements are going to go way beyond what's existing now and I think we'll provide a nice amenity as we proposed for this development and this neighborhood for everyone to enjoy. With that I'll be happy to conclude my remarks and answer any questions that you might have.

COMMISSIONER DO: Thank you, there are questions from several commissioners.  
Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. The question I have is regarding Mr. Sidhu is not in the audience, is he?

SPEAKER: (inaudible).

COMMISSIONER KAMKAR: The question I have is I wanted to hear from him regarding the staff alternative. If I had all these cars coming down my street shining their lights into my house, you know, I know he didn't choose to speak, but you know, do you know what his opinion was on that?

SPEAKER: Um -- I haven't specifically asked him that question. As far as that, I think it's a good observation of that site plan. I probably, if I was living there, would have the same concerns, as well. And again, I think from overall neighborhood livability standpoint, that certainly would impact it, as would traffic in general, through the interior of a neighborhood.

COMMISSIONER KAMKAR: Perfect, okay, that was item number 1. Item number 2 was regarding the green building requirements, you know, and do you know what level you are shooting for? I know you are -- I know what you're given as the minimum. But

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SPEAKER: Let's approach it from this standpoint. It's a little premature. We haven't really thought that far ahead. Given direction of the city in terms of its green policies and objectives, obviously we're looking at that very closely. You know, our preference would be to maximize, to the extent that we can. We also know that it's, quite frankly, a strong marketing component. And I think in this environment we're going to be looking for every edge that we can get, considering that we have to have -- we've really experienced some deterioration in the housing market.

COMMISSIONER KAMKAR: Perfect, thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Hello, Mr. Lazzarini.

SPEAKER: Good evening.

COMMISSIONER ZITO: I just had a couple of questions for alternate 1, not addressed by you or by staff. I appreciate it's in here. What is your feeling with alternate 1 plan?

SPEAKER: This is with the cul-de-sacs or riparian enhanced —

COMMISSIONER ZITO: No road over the riparian.

SPEAKER: I think first of all there's a tradeoff here. And the tradeoff is, are you getting a 7,000 square feet or whatever of additional riparian enhancement, which already enjoys a 100 foot setback on this site, versus putting 20 additional units of traffic through California oaks. I mean, and that's really what it comes down to. And to me, the lesser impact to California oaks with respect to the two plans, the better. And that's why we feel that our alternative's a better one because it has a minimal impact as opposed to having 20 homes exit through California oaks which could generate up to 40, 50 trips per day, versus our alternative which minimizes that.

COMMISSIONER ZITO: Which is what, six homes?

SPEAKER: Six. Plus Mr. Sidhu, which would be seven.

COMMISSIONER ZITO: Let me ask you about a couple of lots here, and all the plans seem to show these lots similar layout. Lot 26 actually has the property lines going almost all the way up to top of the edge of the riparian. Yeah, if you look at —

SPEAKER: I tell you what, you guide me a little.

COMMISSIONER ZITO: Sure, so –

SPEAKER: Are you looking at -- (inaudible).

COMMISSIONER ZITO: Yes, I think 26. My eyes are really not so good.

SPEAKER: Maybe this one?

COMMISSIONER ZITO: Further up on the other side of the creek. The one that has the 175 right through it.

SPEAKER: Right there, that one.

COMMISSIONER ZITO: There you go, right. So my concern a little bit is that you actually have private property that goes all the way up to the edge of the riparian. I'm wondering if there's any way to realign the lot so you could triangulate that and draw the lot line adjacent to the 75 foot riparian, if you understand what I'm saying, cut the corner off the lot.

SPEAKER: I see what you're saying, I think that would be something we'd be willing to look at at the PD permit stage and come up with a better alignment there.

COMMISSIONER ZITO: We don't want people building gazebos up there.

SPEAKER: I get your point. It's a good catch.

COMMISSIONER ZITO: Okay. The other would be on the other side of the creek where you had started, lot 5 and lot 15, again you look at the riparian, if you go to the bottom of the -- right almost where your middle finger was there, lot 5, let me get -- other side of the creek. Right, yeah. So that's five. And again, similar situation there. And then lot 15 is at the edge of the bulb.

SPEAKER: Let me point out that on that side of the creek, we have a 75-foot setback. So there's a 100-foot setback which, you can see, kisses the property -- the building's actual footprint. And the 75-foot setback would be the next hash-line in. So we have 100, 75, and then 50.

COMMISSIONER ZITO: Right.

SPEAKER: So we have essentially a buffer between the buildings and the 75-foot setback. And the 75-foot setback was what was approved in the prior hearing. Fully entitled.

COMMISSIONER ZITO: Even the lot encroachment into the 50?

SPEAKER: Yes.

COMMISSIONER ZITO: Whatever's there. But how about the buildings itself? The lots might be but there seems to be –

SPEAKER: (inaudible).

COMMISSIONER ZITO: Okay, looks like we missed the both on that one. Okay. All right, then that's pretty much my concerns. If all I can concern myself with is the road alignment in the east side, then that's all the questions I have. Thank you. For disclosure let me just state for the record that Mr. Lazzarini and I have talked about this project over the years, various times, half a dozen times or more, and that Ms. Mace and Mr. Carlioni and I sit on the District 8 Community Round Table officers board together, but of course this has nothing to do with the District 8 Community Round Table. I'd like to make that disclosure for the record.

COMMISSIONER DO: Thank you, Commissioner Zito. Is there a motion to close public hearing?

COMMISSIONER ZITO: So moved.

COMMISSIONER DO: All in favor? Opposed? Staff, could you have any clarification please?

SPEAKER: Thank you, Mr. Chair. Staff would like to reiterate that we're recommending approval of our site plan because it does provide connectivity for all modes of transportation whether it's pedestrian, bikes and cars. In addition, the road adjacent to the riparian will provide for a more pleasant experience for pedestrians and for people on bikes, as well as provide more eyes on the creek to enhance protection of the creek. And also, our road access will provide better access to the Sidhu property at the East, the triangular shaped property for its eventually development as well.

SPEAKER: Thank you, Mr. Chair. I'd also like to add to that too. I was the staff person involved in the review of the California oaks project about 18 years ago. I was heavily involved in the site plan of that. As we laid out the site plan for that, we realized that the DAL property at that time, before they owned it, was going to have some access issue because it was relatively flat and a quarter-mile deep. We always intended to have Cal oak connect through, that was the plan, although obviously it couldn't be formalized because DAL Properties was not part of that original approval. But that's the reason that Cal oak was designed as a stub street, you know, with a barricade, as opposed to a cul-de-sac bulb. Because we never deemed that to be the final design for that. I would just like to add that you know, in review of the applicant's plan, staff feels that the staff plan is actually probably frankly much better from a pedestrian-bike friendly standpoint because of the fact the applicant's plan is extremely circuitous. If someone is leaving, say right at the very edge of the Cal oak property and frankly, most urban activities that probably anybody would want to go to are going to be north of the site and north along San Felipe road. You'd have to go out running springs driver and it's probably almost an extra quarter of a mile to get to anywhere. And also, you'd under the

applicant's proposal you'd have to ride down the end of the cul-de-sac, essentially ride down an alley and then back on a cul-de-sac. On the staff's mind that's not particularly well -- an area that's got particularly good surveillance, and doesn't really represent a tremendously direct connection. We did look at the issue of traffic and how much traffic would go down the street and recognizing the fact that there was a plan, I think that Mr. Mace had put on the board that would have identified, you know, half of the project that's shown on the screen, California oaks would be cutting through this project site and staff doesn't feel that that's the case. If you look at running springs road next to the creek, it's probably a much more direct route, and all downhill, with very few turns onto other streets to get to San Felipe Drive to continue to go down that path. And it would be much more circuitous to go uphill, make four or five turns and cut through the project site. And so it's not just a question of the distance from point A to point B, but what is that experience. And the staff's opinion, it's frankly going to be a much better path of travel for folks to go down running springs because it's a single-loaded street, there's many areas where it has no houses at all and once you get to San Felipe road, there are basically no houses fronting that street at all. Maybe it's arguably an 8th of a mile longer, it's going to be a much more direct and faster path of travel. And finally, that staff feels that the plan that we have indicated with a frontage road that fronts onto Misery Creek provides better vistas into the creek area which is something that is supported by our General Plan, which encourages frontage roads next to creeks, as opposed to having private backyards backing up to creeks. It also provides better safety because there's better opportunities for the police to survey and provide surveillance into the creek areas than the applicant's proposal. And this concludes my comments, thank you.

COMMISSIONER DO: Thank you, there are several commissioners who wish to speak. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Got a couple of questions for staff. Just curious, what the -- assuming the commission, and certainly we're not there yet, assuming the commission wants to split that road, so that there isn't a direction traverse for California oak creek, the developer's preferred does cross the creek, does build a road over the creek, whereas alternate 1 essentially leaves the creek alone and possibly allows for some rehabilitation of the creek in that area, which I think would be a real benefit to that area. Is there any -- assuming that you wouldn't have a straight-through, I understand staff's recommendation, but assuming you don't have a straight-through, does the staff have a feeling either way about either alternate 1 or the developer's proposal?

SPEAKER: Thank you, Mr. Chair. Alternate 1 is a little bit complicated, and one thing to remember. There is a roadway that does go across the creek currently, that does needs a lot of repair, because there is a culvert there that gets clogged up all the time and creates some problems to the property to the north, which is lands of Hunt, which is directly off the sheet. If you look at the vicinity map on the page, it's -- there's three lots that border the north side kind of close to San Felipe road, Hunt's own two of those properties. It is not like we're building a road on virgin land that's riparian right now. So this is an opportunity to really get in there and approve that culvert and approve that situation. Staff does feel that there's probably some development potential on lands of hunt, maybe

a potential reconfiguration, on lots 2 or 3, in some way, shape or form, and it's probably going to be better to have a public street in front of that property in order to facilitate making that happen.

COMMISSIONER ZITO: Okay, I'm trying to -- so, okay, the three closest to San Felipe is Hunt and there's already some homes on those properties, if I'm not mistaken?

SPEAKER: I believe there's a home on each of those properties, yes.

COMMISSIONER ZITO: Do they have additional allocations?

SPEAKER: No, there's no allocations, but under the general plan designation, which is two houses to the acre on both of those sites, the acreage is such where there's probably an extra unit to be had, although they will have to deal with riparian corridor setback issues, which might require a clustering of those a little more to the West to make that work.

COMMISSIONER ZITO: All right. Would there be the possibility in this zoning, if it's such the wish of the commission to preserve that creek, to essentially require or request additional upgrades to that portion of the creek which includes an upgrade of the pedestrian pass over that? You say there's a road there, but if you build the homes and the actual roads for the development, then there'd be no need for an actual vehicular road, in other words, a car or truck access, right? But it's -- and there'd be no way to really access that.

SPEAKER: As Mr. Lazzarini pointed out, there was a court action and there was an order for that to be kept open. So getting rid of that altogether would be a little bit more complicated. And under that scenario there wouldn't be emergency vehicle access. And so it would be an awfully long route around from San Felipe Road to get to the other end of that cul-de-sac on the other side of Misery Creek if there wasn't that connection somehow for the vehicles.

COMMISSIONER ZITO: So what you're stating is, is that the legal requirement, that it has vehicular access, and I say vehicular not bicycles, that it has car and truck access?

SPEAKER: That's my understanding and that's the reason this is shown being preserved as part of this plan. Staff had looked at opportunities to try to eliminate that altogether and were unsuccessful and unable to do that.

COMMISSIONER ZITO: If it pleases, not that I doubt staff, but I want to make sure it's also applicant's understanding of that judgment. If it pleases the chair, can I just ask Mr. Lazzarini the applicant if that is his understanding as well?

COMMISSIONER DO: I think that's fine. Mr. Lazzarini.

SPEAKER: The court action specifically was a judgment of abandonment for public use. With an implied dedication to the City of San José.

COMMISSIONER ZITO: You say abandonment of public use.

SPEAKER: Abandonment to public use. However, I'd like to point out with respect to the culvert re-build and how that functions, it's important that the width of that street for the proposed culvert solution would result in a reduced or manageable flow of water in a storm even. So that that road and culverts operate as a Wier so as not to impact downstream properties. In other words if there was no culvert there, downstream properties would likely become flooded in a storm event. And so we're trying hard to create a solution that doesn't impact the downstream properties as well, yet manage the flow, both in terms of quantity and velocity. So the culvert design is really critical in controlling both.

COMMISSIONER ZITO: And I wasn't trying to suggest that we get rid of the culvert per se and I'll deal -- I'll ask with staff about this but it has more to do with improving it to the point where you have a two-way -- how can I say this -- accessible roadway.

SPEAKER: But to go back to the original question.

COMMISSIONER ZITO: Please.

SPEAKER: The court order was for abandonment to public use, whatever that might be.

COMMISSIONER ZITO: Abandonment of the public use, in other words.

SPEAKER: Abandonment to public use.

COMMISSIONER ZITO: Oh, to public use.

SPEAKER: To public use.

SPEAKER: Commissioner Zito: So that it then needs to be available for public use?

SPEAKER: For public use.

COMMISSIONER ZITO: That's it.

COMMISSIONER DO: Thank you, Commissioner Zito. Are there other questions of other commissioners?

COMMISSIONER ZITO: Yes, I had a question about -- there are other developments in the Evergreen area, and we're constantly, being a resident there, we're constantly dealing with the appropriate number of homes and so on for these kinds of properties. And unless you go out and visit the sites you really wouldn't get an appreciation of what you

can really bid build on these sites as far as the appropriate number of homes. Because there's lots of hilly areas, lot of low -- density -- the San Felipe road and I was just discussing with the director for a second there, is not proposed to be widened at all, so it's still going to be one lane in each direction. So putting a number of homes in there that would have access could essentially cause, you know, a little bit more delay along San Felipe, and it is a twisty windy road with trees along the way, which you can't take that at 30 and 40 miles an hour. You have to be very careful there, so there's a safety issue as well. The other concern is that we have a couple of development sites that have gone through and started to develop the land, have gotten easements, I shouldn't say easements, but approval of going up to 50 feet, in some case less than 50 feet into the riparian, and now that those sites have gone fallow. There is a Pinn brothers site on San Felipe that they were building up to 30 homes or so, and they've stopped. The heavy machinery is still there, the improvements, and they've torn up the area close to the riparian, and they're nowhere to be found. There's another development close to a school by us and they have all the roofing tiles still up on the roof and they basically abandoned it. Is there any way to -- and this is why I'm concerned about encroachment into the riparian, because there's never really an assurance that you can get the kind of improvements necessary. So from my perspective it's better to be safe and stay away from it, than build half of it and walk away and you have a mess. How can the city condition a property such as this, so that cannot happen again?

SPEAKER: Well, that would be difficult to predict you know, what the economy may hold forth as far as the ability for developers to finish any project. But then brothers project, we probably could not have anticipated that and that was nothing that was thought of or discussed at any of the public hearings. Clearly, the best way is to make sure that we stay clear of the riparian areas, we got those appropriately fenced off, but that those areas are not allowed to be used for staging areas or storage areas for construction materials and so forth. And I think that's something we need to make sure we include in the PD permit as we move forward.

SPEAKER: The last piece of it -- maybe Public Works can chime in on this -- at the grading stage, which I think is where the Pinn brothers project is, they are required to maintain a grading permit and with that a stormwater erosion control plans. That we do do inspection during rainy season to ensure that all the erosion measures are in, the sedimentation basins are in, that the slopes have been hydroseeded off and like straw put on to keep erosion from happening. So even with an abandoned site, that is something that you raise an important point, that as we come into this year's rainy season, that's one of the things that we need to probably start sooner on, rather than in the past when we've been able to deal with that in an August-September time frame of kind of prewarning people is to go look at that time sites that seem to have lost the developer, and that -- because it will take a while to figure out who actually owns the property and has responsibility. So that's something that we can work with code enforcement and with Public Works on to make sure that Public Works in fact does have somebody that they are in contact with on all the sites that they're aware of the responsibilities, but that we've also got code enforcement spun up to speed that they can go and issue the citations on a daily basis if their sites aren't under control.

COMMISSIONER ZITO: I appreciate that. If it pleases the commission, I'm going to make a motion. Basically, this is 3B, that we find the MND complete and in compliance with CEQA and recommend the city council approve a planned development rezoning to allow up to 35 single family detached residences on a 19.13 gross acre site, as recommended by staff, with the following changes, and that is, that they use alternate 1 which basically avoids improvement over the creek, and second item would be, lot 26 be realigned such that to allow a maximum setback from the riparian. Right now it encroaches over the edge, allows at least a 75-foot setback over the creek. So that would be my motion.

SPEAKER: Second.

COMMISSIONER DO: There is a motion and there's a second. There are further discussion. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I won't be supporting the recommendation. I agree with staff that connectivity is important in this. I think there are many cases of bridges being put over creeks, most notably in downtown, that are sensitive to the riparian corridor, create an opportunity for the community to partake in the beauty and the wonder of the natural creek beds. Alternatives 1 through 3 all create circumstances of privacy, and a lack of security along the creek side, which actually leads to greater dangers, in that they become natural homeless encampments, they're inhospitable to the making of trails and corridors for natural pedestrian access, and the alternative 1 also has multiple parcels on the west side of the creek that encroach very deeply into the 100 foot setback, as well as bumping up against the 50-foot setback, whereas alternative number 4 on the East side leaves out all of the -- stays well outside of the 100-foot setback, it allows for future trail-making along the creek, it allows for the creation of a park like setting where all of the residents of the community could enjoy the creek and the riparian corridor, and it creates a situation with much more eyes on the creek, a much safer and more secure atmosphere. I'm not a big fan of the cul-de-sac, and I am disappointed to see that there are as many cul-de-sacs as there are on all of the -- and I think community building is extremely difficult when you don't have access to your neighbors. Thank you.

COMMISSIONER DO: Thank you, vice chair Jensen. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I wanted to ask somebody if they knew about the "abandon to public use," if that -- if there was a specification that that had to be automobile use, or if it was just left at public use which could be then interpreted as a bike path or something that is not -- doesn't impact as much as an automobile road.

COMMISSIONER DO: Counsel.

SPEAKER: I know our office was involved in that litigation but I'm not familiar with the specifics. But typically an abandonment to public use would be, it would accommodate all forms of vehicular, pedestrian, bicycle travel.

COMMISSIONER CAHAN: Is it something that just -- it's generally done that way, or is there case law that specifies that it has to be for all use?

SPEAKER: Well, again, I'd have to actually look at the case law. I'm sort of giving you the -- typically when we receive rights of way, we don't limit it to any particular type of mode of travel.

COMMISSIONER CAHAN: So then possibly, 3.1 could be done if it -- if there was some sort of public use allowed there?

SPEAKER: I'm not a lawyer, and I don't play one on TV. But I'll give you some of the practical realities. It's very rarely and I don't think I've ever seen an easement where we've been dealing with whether it should go away or whether it's preserved, to be preserved for bicycle or pedestrian, where it is abutting properties and intended to provide access to it. That this easement or access way is abutting the rear of a number of large lots that have no other access, and to only have pedestrian access in there really would be useless for those property owners to try too maintain those properties to be able to do things with it. Is that easements are typically, in these kinds of circumstances are there to be able to bring vehicles in and develop property. And so unless there's something different that Mr. Lazzarini has, that is the expectation that I have with it, that's how it's been talked about with my staff about how the -- why this is here. And unless there is something from the property owners that say that it is only, that it could be restricted to only pedestrian, I am working with the -- kind of that worst-case expectation that it needs to be maintained and the ability to bring vehicles in and out open that easement. That's what makes that really challenging is working with that. And I don't want to go down a path where we're assuming it's going to be a bucolic sidewalk or trail along Los Gatos creek kind of thing. Then when it comes back there's a paved 20 foot asphalt roadway out there and everybody is disappointed as to how that could happen. I don't want you to kind of look at this in an optimistic manner, because I have no confidence that it will be anything other than that. And I don't want us to have to spend a bunch of city resources defending litigation if we restrict it to that and then have to go through and fight the battles over that.

SPEAKER: Mr. Chair, if I may add, as well. Darryl Boyd from Planning. I was somewhat involved with the city attorney's office, with Vera Todoroff. And my understanding when this was all being put together that because of the particulars of this situation, that the intent really was for this to be, when we say for public use, that it was intended to be for street purposes, that that was the only way, that the -- you know, the property could be disposed of and the particular legal mechanics that were used in order to unclear, uncloud the title of this property, was such that when we said, for public use, that it intended for -- was intended for -- in dedication for street purposes.

COMMISSIONER CAHAN: Would you clarify again for me, the specific reason why, in 3.1, you were -- did not approve of that, as far as the road goes? You said there was an existing roadway there, and it was poorly maintained?

SPEAKER: Thank you, Mr. Chair. That existing 25-foot roadway that runs along the entire northern edge of the property, you can see it sort of as a thin white strip if you are looking at the map up on the screen. That's an existing paved, of sorts, roadway that is currently used by Mr. Sidhu, by the other sort of white square in the middle of the property, and by the residents that back up to it to maintain their property. So it is existing, and our goal was to achieve a site plan that still kept as much roadway as possible because it still needs to stay maintained as a paved road. So to the extent that we could provide much of the circulation along that, then we are not double-paving things that don't need to be double-paved. We can co-locate the paving to the extent possible.

SPEAKER: I think one of the things that's important to remember is that's an existing 25 foot right-of-way, road, kind of what we want to call it. But to put the street in there, we need a 20-foot paved surface for fire access, that that's the code requirement for a fire lane and then we would put a sidewalk in. But we don't need to have anything else there, even though we might have a 40-foot right-of-way, to meet the state requirements for a right-of-way, we don't have to build on that, we don't need to put park through the riparian area, so we could keep that pinched down, within the width there for the most part. So that's why staff left that connection on that north property line, is that if it already has to be maintained as this public right-of-way, but it really doesn't truly function like a street in there, we're going to spend a bunch of money to rebuild it so that it will meet an emergency vehicle standard which will put it to street standards. The only thing that's missing is a sidewalk. So why not put the sidewalk on, call it a street and so it looks like everything else and be done with it. And so from our standpoint we didn't see it was a big difference between the two scenarios other than, you know, it does have the -- you know, it is a more formal connection through there. It wouldn't be potentially gated or something like that, but again, it is open to all of those residents, or those property owners that have legal rights to use that. So realistically, it is going to be open. It is going to be pretty hard to have that gated and then remain locked up, except for those property owners with that large number that have legal rights to it. The more we looked at it, as the street became the obvious answer for that piece of it, and you know, it-on-meet many of the other objectives of connecting the two halves together, tying the larger community together, and without creating a major, I think, change in the flow of traffic, that you know, staff would disagree with California oaks about how that watershed of traffic would move through there. Especially if the plan on 3.1 with the number of right angle turns on that, that has traffic calming built in, every 200 or 300 feet, traffic calming built in. Putting the bridge, not even the bridge, putting the bridge into the Misery Creek area with the culvert design really does not impact the riparian area much more than what is already today impacted, in fact, with the new design we think from having been out at that site, after a major flood or major rain, with the work we're going to do, will actually make it better, because the wetlands today get silted over every time it rains because of the amount of silt that comes down the hill. So there actually really is not riparian in that area, there is a kind of a groove in the soil that the water moves down, but it is not a creek, it is not a major riparian area. We will create one there, but in looking at how all the tradeoffs with these things, it is really staff's opinion that putting the road connection through there does not create major traffic impacts, does not create safety impacts, it makes things better connectivity, better response time for fire and police to get into this

area and it doesn't add additional riparian impacts, we think in fact that makes things better.

COMMISSIONER CAHAN: So am I hearing correctly that you believe that you must have a paved road in there?

SPEAKER: That is correct.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I actually see this a little bit differently. I -- I -- I do agree with the staff recommendation, for the most part. However, I like the applicant's proposal, for a couple of reasons. One is, I think it creates the middle ground in terms of not creating such a great impact of traffic on the grand oak neighborhood. And I think what it does is, it leaves the burden of the trips coming in and out to potentially new residents that would come in. So in other words, they're going to move into that neighborhood, they know what the traffic is going to be like, those that live at the beginning of the road know that potentially you could have a minimum of 18 trips per day, a minimum of 18 trips per day. I think when you look at the traffic going over the riparian corridor, there on an improved road, again, could you conceivably have a minimum of 18 trips. Obviously people, you know, make other, you know, trips out of their home. But it's not going to have that much of an impact, in my opinion. I think the other reason I like the applicant's design is, I look at a road abutting the riparian corridor almost as an opportunity to dump. Because it's accessible. You get someone to drive through with a -- in the back of a pickup truck at 3:00 in the morning, and you just dump off to the side. And I think that's the reality. You know, I mean, I've -- if you just drive up Mt. Hamilton road, you know, all the way up to the observatory, you see dumping all over the place up there and I think that's probably what people do. So I think this provides a better alternative to actually protect this Misery Creek area. So I will not be supporting the motion, and, you know, I would hope that my colleagues would look at, then, and consider the applicant's alternative. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Yeah, I -- very interesting conversation back and forth, and I can see both sides. I agree with Commissioner Campos about, in my opinion, what I've seen over the past few years with riparian, it is probably the least desirable to have a roadway abut a riparian for several reasons, that that would be my person feeling on that. In as such, I understand the accessibility for those three lots, I think that, you know, currently those folks are getting in and out somehow already. And what we're trying to -- what I read that to be is that we're going to put a road in there just in case they want to develop later on. I think that eventuality is not there. And frankly, you're basically encouraging them to do so if you do put the road there, and frankly, you may not want them to do that. You know, let nature take its

course is essentially what I'm saying. As far as improvement of that roadway, if you look at all the drawings, there is a significant frontage of that roadway, if you will, that will not be improved regardless of how you draw it. If you look at the developer-preferred, there is a significant part of that roadway that once you go over the creek and go past those couple of houses, it veers off. You've got essentially half that road that's not being improved at all. If you look at the staff's recommendation it's actually even less of the road that's being improved along that way. So to say that we want to improve the roadway, I mean I actually believe that the culvert needs to be repaired and upgraded, no question about it. We must ensure the flood control in that area. We don't want to do anything that's going to cause flooding or any other inhibiting of water flow. So that would be an assumption, that would be a given in any scenario, I would hope, that we do whatever improvements are necessary to take that into consideration. You know, I'm going to stick by my motion, but I do agree that we do need to ensure that cut-through is minimized and that the riparian has the least impact. And that's the reason why I made the motion that I did, thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. Vice chair Jensen.

COMMISSIONER JENSEN: Thank you. I neglected to mention, I sent a note to staff, I'm not sure if staff actually received it, regarding the landscape and the tree removals. There are two trees that are listed, numbers 31 and 71, which are both tree of heaven, and they are indicated as being saved. And in the e-mail that I sent to a number of staff members, I indicate the tree of heaven is a widely recognized weed species. And it should not be retained. And if you only have two on 19 acres, count yourself very lucky. It is recognized as a weed species both by the USDA and the National Park Service as well as numerous others, and I would highly recommend that you get rid of them as quickly as you can. Thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. There are no other comments. I, too, I -- I'm in agreement with Commissioner Jensen, in that I think that for me, connectivity is the key to all of this. And I think that I can understand the residents of the local area wanting, not wanting the connectivity. But I think from a citywide, larger regional planning point of view, connectivity is important. And we are -- actually we are a victim, it's all over, not only in San José, but in many cities, where there's a collection of dead-end cul-de-sacs that just pour traffic onto the connector roads that create a lot of problems and I think cities are trying to correct that. I will not be supporting the motion. Without any more comments, let's vote by screen. The motion fails, with Commissioner Do, Jensen, Campos, Kamkar and Platten opposed. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I'm going to go ahead and propose a new motion, although fairly similar. That we find the MND complete and in compliance with is CEQA and recommend the city council approve a planned development rezoning to allow up to 35 single family detached residences on a 19.13 gross acre site as recommended by staff. With one caveat, that we recommend the applicant's site plan 3.3.

COMMISSIONER DO: Is there a second? There's a motion and second. Commissioner Campos, would you like to speak further? Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I won't be able to support this motion. I agree with Commissioner Campos, that on Mt. Hamilton road there are huge challenges with people dumping along the side. I think there's a tiny bit of a difference between Mt. Hamilton and this roadway. There are no houses directly facing on Mt. Hamilton road with visibility, whereas there's going to be a significant number of houses and residents facing here. There is a proposal to put a trail in and connectivity via trail and utilize the park, or the creek in a way that would allow the community to use it, when you have neighbors back up directly onto a creek, that makes that incredibly difficult to accomplish because nobody wants people walking on trails behind fences for whatever reason. Additionally, there are numerous parcels on both the east side and west side that encroach well within the 100 foot setback and butt up against the 75 foot setback if not encroaching into the 75 foot setback as well. The environmentally sustainable, the green alternative, both in terms of good urban design, riparian corridor protection, and neighborhood connectivity is actually, sheet number 3.4, and so I will not be supporting the motion.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Question of the maker of the motion. Does that also include that lot 26 would be realigned for the -- sounds like you've been thinking about that.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Yeah, actually, I put my request to speak, to ask staff to work with the applicant at the PD permit stage, try to reconfigure that property so that we can lessen the impact on that riparian --

COMMISSIONER ZITO: Could we state that -- would you be amenable to an amendment that states it stays within the 75-foot setback?

COMMISSIONER CAMPOS: I would be fine with that.

COMMISSIONER DO: Thank you, commissioners.

COMMISSIONER ZITO: So just a further. I think that this is the best second alternative from my perspective. And I think as far as what the director just whispered to me is, there would be improvements along that roadway if you will for at least pedestrian access. And so I think allowing for -- allowing to essentially disallow the cut-through and allowing the pedestrian to get back and forth is an important aspect of that project. And I know that in the -- just a couple of weeks ago, maybe a couple of months ago, there was a project that had 14 homes and there was an easement that we could have sent through, to allow access, and not to essentially isolate 14 homes near a fire station. Staff had said, you know, we don't want that cut-through because there was an easement, there

are other complications there. But even with a pedestrian and bicycle pathway, I think most of the commission was in favor that, but for some reason that didn't go through. So want to be consistent here that we don't want vehicular cut-through, but I think that bikes and walkways and such is absolutely important, and to Lou a contiguous way for people to be healthy and get around. So I'll be supporting the motion.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. To speak to the concerns that Commissioner Jensen raised about people not wanting to have anyone behind their home and 3.3, you would only have to walk behind two homes maximum to get to the next roadway. So it would be very minimal impact to pedestrian footage. And additionally, I want to make sure that we work with the neighbors. And this is what they have requested, and much discussion and consideration has gone into this. And I think it's very important that we take that into serious consideration when we work on passing something here. I do have additional concerns with 3.4, where it has the road abutting the riparian corridor. I think it is absolutely possible that people would come and dump things off the side of the road, and 3.3, there are many houses that are between the road and the corridors that would prevent much dumping or just general littering. And I think it's also a safer area for the residents in there to have the home in between. Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. To me, it also speaks volume when the neighborhood comes out and makes a recommendation. I feel that, you know, there's been enough collaboration between the developer and the neighborhood, and when neighborhood comes and says we'd rather have this alternative to me, that's a very good indication that a consensus has been reached. And also, when I compared this to the staff's recommendation, I keep putting myself in the position of homeowners who were all the cars coming up and just the lights keep coming into my bedroom or whatever rooms there are, that are in front of the garage, I just don't see how that would make sense. I think this is a perfect balance of connectivity and emergency access, but not increased traffic. And to me, as long as we try to strive for higher green points and higher sustainability, I think this would be the way to go. So you will have my support on this, thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Director.

SPEAKER: I just wanted to remind the Commission, and it's something I think staff we can put on our idea list of potential study sessions for the Commission, is to walk through some of the riparian policies that exist in the general plan as well as the riparian corridor policy, that the general plan has some very clear policies related to creek frontage roads that is a foundation concept about how we build near creeks, actually what we found is people protect creeks more when they can actually see creeks, that when they are out of sight, they're out of mind, they're less likely to go through and while there are some challenges, that dumping does curve large items, and that it's actually the smaller things

that are much more dangerous to our creeks. The oils that go in, those kinds of things will kill a creek more than a sofa will. If those people don't have a sense of stewardship for our riparian areas, that is when things like that will happen. The city has worked very hard, we are different than a number of other cities to actually open our front doors to our creeks, celebrate them as partly of our community, make them as an amenity. It is part of the celebration of the creeks in our community to go through and use the creeks as a corridor to connect our community. We do have real concerns, rechallenges, where we have homes that back up to creeks, you heard some concerns in the community about burglaries. That we have seen this, and the police department's pulled out the statistics of higher burglary rates for those homes that back up to creeks versus that front onto creeks in the middle of the neighborhoods. Because actually it allows perpetrators to jump over the fence, be in and out, no one ever knows that they are in fact in the homes, they've come into the homes, and are able to get back out again without a lot of surveillance. So it is something that we do think a lot about, and it is as I said, a foundation in our policy structure. And if you look at the location maps that has gone along with our project, you can see at California oak creek we did the majority of the homes, and the streets along the creek are front-ons. There are some places because of grading, the severe grading that went on with that project, we've moved probably a million yards of dirt to do that subdivision. There are some places where there are some backups but it's something we worked really hard to do as well as throughout the Evergreen area.

COMMISSIONER DO: Thank you, Director. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I would like to make a friendly amendment and it's to sleet 7, the tree removal plan and that is to specifically call out trees number 31 and 71 which are identified as the tree of heaven. And have those removed. I don't want them -- the maker of the motion, okay, thank you.

COMMISSIONER CAMPOS: I'm going to Google tree of heaven when I get home. I want to see what those look like.

COMMISSIONER JENSEN: All you have to do is look outside. They're all over. In fact there is one growing on Coleman Road, on the overpass.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I agree with the director in that there is a little bit of a, I will say, from my perspective, a contradiction. The riparian corridor policy and the general plan policy do talk about street frontages to riparian. I can say my home backs up against the creek and all my neighbors do, as well. As a matter of fact on the other side is a road, it's what used to be Sheboya road, now Shemenda Revere. And there has been issues with kids mostly hanging out back there and littering the place, and there was a time when there was a fire as well. And I can tell you that there was a lot more attention paid because of the fact that the residents back up against that creek and a lot more participation in dealing with the upkeep of that creek, as a matter of fact people have gone in and taken ownership of going back there and cleaning it up, even though

there's a special assessment to do that work, the residents do it because they feel it's an extension to their backyard and they are sensitive to the fact that it's a security issue and they are more conscious of it. Nobody on the other side of the street that I'm aware of participated in that or called in issues of crime because it was too far away, 40, 50, 60 feet from their front door whereas this is in our backyard. While the policies do state as the director stated, I believe that from my person experience, and you know, firsthand experience, there's more ownership when your yard backs up against that property because you feel that it is an extension of your property. And also if you look at phase 1 there's hardly any of the properties or should I say most of the properties back up against the riparian, in the first phase, whereas hardly any roadway against that riparian. And with all due respect to Commissioner Jensen, her intentions, I agree with her 90% of the time. I'm just saying in this particular case my experience in living against a house that backs up against riparian differs with hers.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no other lights. So let's vote, by screen. The motion passed with Commissioner Do, and Jensen, opposed. The next item, item 3C has been deferred. So the next item is 3D, CP 09-004. Conditional Use Permit to allow for the daytime operation of an adult behavior management Program or daycare, in an existing office building on a .35 gross acre site in the CO Commercial Office Zoning district located on the Northwest corner of north 10th street and East Julian street. Staff.

SPEAKER: Thank you, Mr. Chair. The subject site is zoned as commercial office in which a daycare use is permitted with the approval of a conditional use permit. A conditional use permit is imposed on certain uses including daycares to ensure the site is able to accommodate the proposed facility and it is compatible with the existing uses in the area. The proposed adult daycare facility including the number of clients and staff meet the requirements of the zoning ordinance for parking. The site also provides sufficient onsite client dropoff space and has operating hours that are consistent with the typical daily office use. The traffic generated by the use of the site as a daycare is no more intense than what was previously generated from the medical office use at the site. Finally for the reasons sited planning staff recommends that the Planning Commission approve the proposed conditional use permit for an adult daycare facility. This concludes staff report.

COMMISSIONER DO: Thank you. Is the applicant here? Please approach the podium. You have up to five minutes to speak. Please state your name for the record.

SPEAKER: Good evening, everyone. My name is Mary Ann Lorel. I'm the executive director of Apollo adult day care program. Our program serves people who are developmentally disabled. Ages 22 and above. These people have, as I said, developmental disability. And some of them have impairment in auditory and visual impairment. Our program is actually a community based program. We have like 12 components, and each one of the components would have trainees and three staff. Our consumers or our trainees don't actually drive to the site. We transport them. All of them will be transported, so there won't be any problem with regard to traffic or, you know,

congestion in the area. So from their home, from their residence, they are being transported by our transportation service to their work area. The reason for the plan is that we also have programs where we would have to reevaluate to assess the progress of our clients. So that is the purpose of the venue, the site. It's not actually to hold them there, all 120 people. In any given time. The most that we usually keep in the venue is like two components, which has like 10 people each, and the three other staff. And actually, where we are situated now is also a residential area. We have been in operation since 2001. And we have not in our record had any problem with any of our neighbors, not even once. We have a very good rapport with our neighbors. That's it.

COMMISSIONER DO: Thank you very much. There are several speaker cards and I will call three names at a time. Please line up at the bottom of the stairs. Joseph Florez. Craig Chivatero. And T.J. Kenny. Please approach the podium. You have up to two minutes to speak.

SPEAKER: My name is Joseph Florez. I want to thank you in advance for hearing my concerns. I'm a resident on 15th street. I have lived there with my family since 1982. The proposed development irregardless of who it's helping, or -- I don't really think that's an issue with many of my neighbors. Our concerns are that the quality of our neighborhood be maintained. And that the -- Ms. Loral was talking about the traffic. And I really believe that we -- just too often we just overlook that situation. None of the homes in our neighborhood have a two-car driveway. So parking becomes an issue immediately. And when it becomes an issue on one block it just pushes down. We currently have a, at two blocks up, we have, at the city park, when we have a function there, that just really impacts the entire neighborhood, for a block and a half. Now here, with the people, if any type of daycare is going to be very dependent on modifying vehicles in and out, if you've been to that location, and I know staff has, but you'll see that that is right adjacent to a main artery, bringing a lot of traffic into town, and then during the day, it's quite busy. Now, if we have everybody doing exactly what they're supposed to do, which is bringing the people in, offloading them, taking them out, then we're living in a perfect world, because that's just not going to happen. And if we have more staff come in because of greater needs, parking becomes an issue, we've got people offloading out in the street, and so it just becomes an issue of where we have an awful lot of cars there, it becomes a safety issue, in the morning, when I anticipate most of the people would be coming in at the beginning of the day, that road is just really bis. And so --

COMMISSIONER DO: Thank you, Mr. Florez. Your time is up. Thank you sir.

SPEAKER: Thanks.

SPEAKER: Good evening. My name is Craig Chebeterro, I live in the north block of 215th where the facility is located. I serve on the boards of both the Julian St. James neighborhood association and the 15th street NAC but I'm not representing them today. There are a several list of unanswered questions, in fact, with respect to what the operation is going to be, what services are provided. I am if that information were

presented to the neighborhood, there would be significantly less opposition to the proposed -- currently my understanding is that there is a significant amount of opposition and based on the e-mail traffic that I've seen and some of which is appended to the staff report, I'd ask you to consider that right now, this neighborhood is entirely residential with two exceptions. One is the liquor store on the corner and opposite the site and the site has been vacant since the San José medical center closed. With the two-way Julian we're trying to make this site more quiet, more residential, fully residential in fact and so that's why we're concerned what is going on in the facility. The facility is vacant, that's obviously not a good situation, we want to get something in there suitable. My concern is that 160 people is too much intensity for the site, that needs to be considered before we go forward. On that basis I would ask you to reject the proposal before us as written. Thank you.

COMMISSIONER DO: Thank you sir. And please approach the podium. The speaker to follow is Ed berger.

SPEAKER: My name is T.J. Kenny and I live on the corner of 14th street and St. James. It is my opinion that it would seem that this facility's design is inadequate for its intended use and the neighborhood would adversely affected by the traffic flow and parking as a medical office facility it seems that roughly, the facility issue seems the 5200 square feet occupied by 160 persons daily that I imagine are going to be dropped off, go out to other facilities and return, that that's not just 160 people coming and going, they're going out and coming back again and the day will be an adverse traffic impact. There is 5200 feet occupied by 160 persons boils down to 4 feet by 8 feet per person and our correctional institutions are not that crowded. And when you look at the fact that this is a population that has barely challenges, I think that exacerbates the smallness of the space, isn't suited for the population that it's serving. As a former VTA driver -- let me -- in Orange County, I serviced these places. What I found was that frequently the traffic is not just the traffic that's coming and going. Especially at the time that these people will be departing the facility during the day it's a low-flow time. You are going to have buses idling on the street, running their heaters and running their engines, waiting to take these people home They'll be lined up on 15th street, Julian or St. James. When this conversion goes through making our Julian Street and St. James Street two-way again that will impact the flow southbound 64 runs twice per hour only in the southbound direction. People wishing to use the other bus are going to at least traverse one block possibly four or five reach a major bus line.

COMMISSIONER DO: Sir, your time is up. Thank you for your comment.

SPEAKER: All right.

SPEAKER: Good evening. My named is Ed berger. I'm with the north side neighborhood association. And what I would like to do is request a pause in the whole process, such that the entire neighborhood can be engaged in the discussion. Up to the present time, nobody in the surrounding neighborhood was really informed of this situation, until June 26th. And even in the Planning Commission hearing here, it's not

too clear to us what the actual address of the property is, in fact. Where it's at 10th and Julian or 15th and Julian. It's listed at 10th and Julian but it's listed as 303 Julian which is a vacant building . I think it's difficult for the entire neighborhood to be involved in the process when we're not certain where it is. What we'd like to have the applicant do is engage with the neighborhood in a series of meetings so we can get on the same page with what's going on. Thank you.

COMMISSIONER DO: Thank you, sir. The applicant has up to five minutes for rebuttal, if you so choose.

SPEAKER: Well, in regard to the parking spaces, we have 14 parking spaces that are being allowed. And as I said, we do not have not even one consumer or trainee that drives. We are all transported. We provide transportation to and fro. The most that we allow at the venue at any given time is like 20 people or 24 including the staff. We are community-based. It is in our program design that we are community based. The place is going to be for reassessment of the clients and the vans, as I said, we have vans that would pick up and drop off the clients. Again, they're not going to be even passing by the venue. So as I said and reiterated, we are not going to be passing the venue. The only cars that will be parked in the area is my car, my executive assistant and also the manager, the janitor. Other than that there won't be any cars parked at any given time during the programming hours and we only provide five and a half hours. As I said, they don't even have to pass by the area, I mean the site. So there shouldn't be any problem with regard to people being dropped off, or big vans that are being parked at the place.

COMMISSIONER DO: Okay, there are questions from several commissioners. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Did I hear you say that you would be serving 24 people at a time, including staff?

SPEAKER: We have -- usually we schedule two components. In a component, we have 10 trainees, and there will be like three staff to 10 people. In a component, there will be 10 trainees and three staff. So usually we have two components in a day, at the venue. Everybody else would be at their scheduled activity out in the community. When they pick them up from their residence, they go straight to where they're supposed to be conducting their activity. And from there, you know, when they consume the five and a half hours they go back straight to their house or residence.

COMMISSIONER JENSEN: So you'll never -- you just said 13 people, you said you'll never have more than 24 people on site at any given time?

SPEAKER: Usually at any given time. It's usually just me, my assistant, and the receptionist. Other ones who drive their car, we have our cars parked in the parking area.

COMMISSIONER JENSEN: Great, thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Question: You have one, two, three, four, five, six, seven, I want to say eight or nine activity rooms specified in the building itself, right?

SPEAKER: Yes.

COMMISSIONER ZITO: At worst case scenario how many would be the maximum number of clients you think you could probably have?

SPEAKER: Well, actually the bathroom is -- how many bathrooms?

COMMISSIONER ZITO: I'm not asking about bathrooms. Activity rooms.

SPEAKER: Oh, activity rooms. The nine activity rooms --

COMMISSIONER ZITO: How many people can that hold assuming you --

SPEAKER: I'm sorry like this, they are designed like we have one for arts and crafts, we have one for packaging, sorting, other kinds of staff, I mean, activities. We have a small library, we have a small storage. We tried to simulate the workplaces that they go to. It's basically just like a simulator. So they move from one area to another, depending on the activity schedule.

COMMISSIONER ZITO: So is the goal of this facility to provide some level of training?

SPEAKER: Actually, yeah, to polish the skills that they have already acquired. Because most of the time or basically we do our training out in the community. In the real environment. But for the ones who have -- if we have new trainees that have just been placed in our program, we do our assessment, and that's where the need for the venue comes in.

COMMISSIONER ZITO: Okay, so --

SPEAKER: We can't just stick them out in the community and be trained there.

COMMISSIONER ZITO: If I could, let me finish my question so I can get a feel for what's going to occur here. From what you said, you bring in your clients, you give them some level of training to enhance their skills, five, circumstances, seven different areas and then they go outside and essentially apply their skills.

SPEAKER: Yes.

COMMISSIONER ZITO: And that's what you're doing with the vans.

SPEAKER: Yes.

COMMISSIONER ZITO: The whole purpose is a little bit of snide training and then once they meet there they'll be metally transported to an outside site?

SPEAKER: Actually that's what they do.

COMMISSIONER ZITO: Is there any time you need, as the commissioner mentioned, 20, 25, 30 people in the building, clients?

SPEAKER: Well, actually at times when somebody has to go back to the venue, like if he's not feeling well.

COMMISSIONER ZITO: Sure.

SPEAKER: Yeah, we take them back to the facility until you know, the family comes to pick them up.

COMMISSIONER ZITO: Okay. The other thing, it says you'll be operating Monday through Friday, 8:00 to 2:30.

SPEAKER: Yes, 2:30 that is. Actually we have a five and a half hour program. For those who come from 8 o'clock, they get to stay until 1:30. Or 8:30 until 2:00. The only one that stay in 8:30 to 4:00 are those in the assessment or the job or the.

COMMISSIONER ZITO: I read in the staff report they are making the analogy that this is like a childcare center in the sense that you've got developmentally disabled adults that you're working with. But my curiosity is if you end your services at 2:30, if there are working adults that need to take the care, how does it work? Assuming that the working adults work a regular day which will be to five or 6:00, what happens between 2:30 or 5:00 or 6:00?

SPEAKER: Well actually, usually as I said we transport them, so we pick them up from the house, and we take them back to their house. So the only people that usually stay at the venue, at the building, are the ones who are scheduled for assessment and reevaluation. And for those people, as I said, we also provide transportation. So -- unless there is nobody at the house, at their residence that would accept them. And when we drop them off, that we take them back to the venue, and rarely does that thing happen.

COMMISSIONER ZITO: Where are you currently happening? Right now you're not at this site.

SPEAKER: Actually opposite Julian, at McKee, we've been do doing this since 2001.

COMMISSIONER ZITO: About eight years already?

SPEAKER: Yes.

COMMISSIONER ZITO: Did you have this number of clients, 120?

SPEAKER: Actually yes.

COMMISSIONER ZITO: How big is the facility?

SPEAKER: The facility is really small, half the size of this one. The reason we are trying to find a place to relocate, is we are trying to develop more programs for those people so we will have more space inside.

COMMISSIONER ZITO: So you've worked with this number of clients before in half the space?

SPEAKER: Yes.

COMMISSIONER ZITO: And how about the parking at the current facility, is it -- just curious.

SPEAKER: We have parking, we don't have any problem with the parking as I said.

COMMISSIONER ZITO: How many spaces do you have at your current facility, give or take?

SPEAKER: We also have 14.

COMMISSIONER ZITO: About 14.

SPEAKER: About the same number.

COMMISSIONER ZITO: Sounds like you've been doing this for a while with the same number of clients, you're just moving to a new area, offering how can I say, new areas of training?

SPEAKER: Yes.

COMMISSIONER DO: Thank you, Commissioner Zito. I have one question to clarify. Is there ever a time when all 120 of your clients are here at the property at the same time?

SPEAKER: Actually, we never had to do that because -- the only time that we had experience having all the clients at that time venue was when we had the annual sports fest, which we held at the parking lot. That's the only time that you would have all of the people.

COMMISSIONER DO: Once a year?

SPEAKER: Yeah, it's only once a year, it's an annual sports fest.

COMMISSIONER DO: Thank you. Question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I had basically the same question. I was getting confused for the project description, that asks for up to 123 clients and 20 staff.

SPEAKER: Each one of them would have 10 people, including the staff, there would be like 13 of them in a component as I said auxiliary them, most of them would be outside in the community. So as for the ones who would be at the venue, are the only ones that are scheduled for reassessment and reevaluation of their progress. That includes also the staff. The three staff.

COMMISSIONER KAMKAR: I understand. My concern is the condition says not more than 120 plus 43, that would assume they do get together at one time.

SPEAKER: Actually, yes, if they would allow us to accommodate all of them at any one time that could be there, yes. But that's not our program. Our program is community based.

COMMISSIONER KAMKAR: My concern is that maybe the condition should be adjusted to –

SPEAKER: 140?

COMMISSIONER KAMKAR: To relieve the neighborhood you know of their concern of the clients and the staff getting there more often than once a year. So that's my question, you know, if you were to limited it to 30 so you could have your two components there and then with the exception that once a year you could have your annual get together and treat or whatever, sports fest, you know, the name of the occasion is, if that's something you can live with.

SPEAKER: Yeah -- (laughing) -- maybe -- I will look into that.

COMMISSIONER KAMKAR: Because there's a big discrepancies, there's a big difference between 130 people and staff of 43.

SPEAKER: 163 altogether.

COMMISSIONER DO: Maybe staff could -- (inaudible).

COMMISSIONER DO: Would you please approach and spike into the microphone please.

SPEAKER: Hi, my name is Rebecca.

The facility is approved for 120. Right now we have 80 clients. And we will be applying for additional 40 clients. That totals 120. And for the level 4I -- I'm sorry about that, the I-4, the space of the facility is approved for 120 maximum clients. But like we said, our program is community based meaning they go to the community, they go to the park, they go to the work side. Because our program is like this. They're not really working.

COMMISSIONER DO: Could you answer directly to Commissioner Kamkar's question, which is, has to do with whether the conditional -- whether the conditions of use could be changed? But I wonder if that's something better dealt with staff, rather than in public.

COMMISSIONER KAMKAR: Thank you, Mr. Chair.

COMMISSIONER DO: So thank you, Mr. Chair for clarification.

SPEAKER: Actually, Mr. Chair if I may, I think related to Commissioner Kamkar's questions, perhaps one of the questions that might be appropriate to ask the applicant is, what sorts of conditions they're required to maintain in order to be in conformance with state licenses and so forth. I think staff's understanding is that perhaps in order maintain their licenses from the State that they have to be able to have the ability to provide service or an area for 120 clients or something like that. So I think that that may be the question that might more directly get to --

COMMISSIONER DO: Yes, please.

SPEAKER: Usually what they require is the number of restrooms, toilets, with a number of our clients. That's what they look at. And the safety of the structure. And also, how many people can be allowed to be accommodated at any given time.

COMMISSIONER DO: Okay, thank you. Is there a motion to close public hear? (inaudible).

COMMISSIONER DO: So public hearing is closed. Staff. Thank you ma'am for your comments. Staff, you can clarify any of those issues?

SPEAKER: I hope so, thank you, Mr. Chair. Staff is recommending the approval of this conditional use permit. It does meet the requirements of the zoning code as well as parking, as well as the project will be required to meet building code and fire code for occupancy. In addition, the facility currently maintains a community care license from the state of California and their current capacity for that is 80 people. So they'd be applying for new licenses for 120 people and it is my understanding that this license has certain requirements which they're talking about as far as the number of bathrooms, open space that the facility has to maintain. So the license assumes that the facility will have all of those people onsite at one time.

COMMISSIONER DO: Thank you.

SPEAKER: That concludes staff report.

COMMISSIONER DO: Thank you. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. If we approve this conditional use permit, does that then allow the space, if someone else were to purchase the space, would they then be allowed to have 120 people plus their staff members all in there at one time?

SPEAKER: Thank you, Mr. Chair. That is correct. The conditional use permit does run with the land so a new user could come in and be in compliance with the conditional use permit and meet the number of people and staff, yes.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. It sounds like there's a little confusion right now what the requirements are of the state permit versus the permit onsite. I would certainly like an opportunity to get clarification. Because I heard the applicant say that at most there would be 24 people on staff -- on site with three staff members. Then I heard the applicant say that at most there would be 10 people on site with three staff and then I heard the applicant say that sometimes there are people who become ill in the field and return. And if there are never going to be more than 30 people onsite and if that requirement is not tied to the state license, it would be very nice for us to be able to appropriately limit the amount of people who are going to be onsite and give them an exemption for their annual sports event which allows them to have all 163 people visiting onsite. I note that staff identified neighborhood -- I'm sorry general plan neighborhood identity policy number 5 which states increased neighborhood childcare options, the city encourages the location of childcare facilities in neighborhood schools, churches, and other suitable facilities. And as staff points out, this is not a childcare facility, nor is this a school or a church. This is a commercial, viable commercial building and, in the past, we had some challenges providing space for a church in an I.P.-zoned area and rejected that. They are currently in a residential area, this is surrounded by residential area but a commercial zoning. We are currently turning over a commercial building for a residential use which I have a concern with. I have a concern with the swaying numbers that go up and down. There doesn't seem to be a clear understanding about whether or not the State requires the facility they have to have all the people involved and the community facility and I would like for staff to be able to go and research that.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Commissioner Jensen articulated a couple of my concerns as far as the numbers at the site. But I have a question again, and if I could ask the chair to make one exception, and ask the applicant to come down and answer a specific question about the buses.

COMMISSIONER DO: Yes, would the applicant please come down to the podium again, please. Motion to open public hearing. All in favor. [ ayes ]

COMMISSIONER ZITO: My specific question, you mentioned there were buses that pick up the clients from their homes and return them to the work venues. How many buses are there?

SPEAKER: Actually we have ten.

COMMISSIONER ZITO: Where are they disorder?

SPEAKER: The driver, designated driver actually park them at their residence so in the morning they don't have to go to the venue, they pick up the two staff that go along with them.

COMMISSIONER ZITO: They go on a route, they pick up the staff members, they pick up the clients, they bring them to the site, right?

SPEAKER: Yes.

COMMISSIONER ZITO: Do they wait at the site for the clients to finish checking in?

SPEAKER: No, the driver who is staff, picks up the other two staff, after that they go pick up the consumers, the trainees. After their day is complete they go to their designated workplace. After that –

COMMISSIONER ZITO: They don't go to the office necessarily?

SPEAKER: Not at all.

COMMISSIONER ZITO: Is there ever a part of the day that the buses are parked on site?

SPEAKER: They will be parked there if he they go to raft, resource area for teachers. But the raft's building.

COMMISSIONER ZITO: Raft is offsite?

SPEAKER: Offside. They go to urban ministry.

COMMISSIONER ZITO: So you never store the buses –

SPEAKER: No, not at all.

COMMISSIONER ZITO: You never park the buses onsite?

SPEAKER: No.

COMMISSIONER ZITO: That is the question I needed to get to.

SPEAKER: Also the trainees, the trainee aides go with the vans.

COMMISSIONER DO: Do the vans sit there waiting for a client to finish the program?

SPEAKER: Oh, yes, yes.

COMMISSIONER DO: How many vans would wait there at one time?

SPEAKER: Actually each van would have one component.

COMMISSIONER DO: How many vans would wait at the same time?

SPEAKER: Well, each one of the components would have a scheduled activity in one of the different sites that we have, so they won't be like converging in one area.

COMMISSIONER DO: At any time is there three vans waiting there at the same time?

SPEAKER: No, actually, one component, component 1 goes to raft, component 2 goes to urban ministries, component 3 -- they go do different places. Those vans go to different places.

COMMISSIONER DO: The other question is if we change the condition of use to say that at no time you can have more than let's say 40 people or something like that on the site, except for the one annual event, would that work for you?

SPEAKER: Yeah. Yeah, that's easy.

COMMISSIONER DO: Okay, thank you. Commissioner Kamkar has an additional question.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I wanted you to address one of the comments that one of the speakers talked about and that was community input.

SPEAKER: I'm sorry.

COMMISSIONER KAMKAR: Could you please talk about the community outreach that you've had for this application and the community input that you've had? Could you please describe the process you went through, to get community consensus for this project?

SPEAKER: Well, actually, you mean the places that we take them too?

COMMISSIONER KAMKAR: No, no, I'm talking about talking to your neighbors to get them to support you in your application to get our approval?

SPEAKER: Well, actually when we went over there before we opened the day program, we talked to the neighbors and we told them the kind of people that the population that we serve. And we told them the disabilities. And we also discussed with them that the training program, the educational program is going to be conducted out in the community. And we also explained to them that we are only going to be using the venue for assessment and the evaluation of their progress. And we also said that there would be time in the year that all of them will be there. As I said, that's the annual sports fest. And also, like for things like -- sometimes the Christmas -- Christmas party is held at the venue also.

COMMISSIONER KAMKAR: How many community meetings did you hold?

SPEAKER: Pardon?

COMMISSIONER KAMKAR: How many times did you meet with the community, how many community meetings did you hold?

SPEAKER: Well, actually, our neighbors, since we do not have cars parked after the office hours in our parking area, they actually park their cars there. Because we don't use it.

SPEAKER: Mr. Chair, if I could answer that question for her. We did not hold a noticed community meeting for this project. Staff felt that the proposal met all the requirements of the zoning ordinance and it was therefore considered a small project, and did not see any value added in bringing it to the neighborhood given the type of facility that's proposed. The applicant is talking specifically about their current facility and not their proposed facility.

COMMISSIONER KAMKAR: Thank you for the honest answer. I'm actually very disappointed to hear that but thank you for the answer.

COMMISSIONER DO: Any other questions from any commissioners? Commissioner Zito.

COMMISSIONER ZITO: I want a motion to re-close public hearing.

COMMISSIONER CAMPOS: Second.

COMMISSIONER DO: All in favor? [ ayes ]

COMMISSIONER DO: Thank you. Thank you very much. Public hearing is now closed.

COMMISSIONER ZITO: I just have one clarifying question to ask staff, and then I'm ready to make a motion.

COMMISSIONER DO: Please.

COMMISSIONER ZITO: I want to be sure, the only question at hand here that I see going back and forth is, given the number of parking spaces in a commercial facility, right, what would be the maximum number of occupants that building could accommodate, given, what is it, 14 spaces or so that they have?

SPEAKER: The zoning code does not regulate occupation based on that's really the operative question here, the staff does have things they need to do based on this occupation, but it is based on that type of construction, whether it's sprinklered, not sprinklered, the type of construction itself that will tell the number of people that can occupy this building and the individual rooms in that building and that will tell you how much total will be allowed in that building irregardless of the amount of parking.

COMMISSIONER DO: If I might clarify on that issue, certain occupation group, on classrooms used would be roughly 20 square feet per occupant. So for a building of 5,000 square feet or so, the occupancy would be 250 this is not generally out of whack.

COMMISSIONER ZITO: I just wanted to, parking is only regulated by the size of the building for instance with commercial, then what I need to ask is, the size of the building is -- it's here --

SPEAKER: A little over 5000 feet.

COMMISSIONER ZITO: 5200 feet.

SPEAKER: 5200 square feet.

COMMISSIONER ZITO: Given the 5200 square feet of the building, I believe there is a correlation between square feet and parking spaces, right?

SPEAKER: That is correct.

COMMISSIONER ZITO: Is that right?

SPEAKER: The math we are working is 5200 feet at 85% efficiency or work. Divided by 100 (inaudible) so four, like 16 spaces I think is what would be required for that.

COMMISSIONER ZITO: So they have 14, if I'm not mistaken.

SPEAKER: Joe Horwedel:

COMMISSIONER ZITO: Begin the fact that they most certainly would not have the 120 people there except once a year, that we consider the conditional use permit, to Lou for the conditional use permit to allow for the daytime operation of an adult behavior management program daycare in an existing office building on a .35 gross acre site on the CO commercial egg office zoning district as recommended by staff.

SPEAKER: And they would be off by a couple of spots.

COMMISSIONER DO: Thank you, Commissioner Zito. Do you have any further comments?

COMMISSIONER ZITO: Given this goes with the land, they may be a couple or three spaces shy, I don't think that's a horrible situation, you know, under the circumstances this is probably -- you know staff's recommendation is certainly adequate.

COMMISSIONER DO: Thank you. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I have to say, I was very disappointed by the staff's comment that they did not see any value added in reaching out to an extremely viable and active and thoughtful neighborhood association who's been very active in the improvement of the collective neighborhood on that side, I'm very disappointed in hearing that. I also hear I have clearly that the community was interested in meeting with the applicant and that there is a strong possibility that the neighborhood would in fact come out in support of the applicant, if they fully understood what was going on. I can count. I know this motion is going to pass, and so I won't be able to make any alterations to it. But in the future, I would strongly suggest, first, that staff never consider that it's not value-added to reach out to a community. And second, that when you have a community that is as thoughtful and committed as this one is, that you reach out to them immediately and work with them. Thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I echo Commissioner Jensen's words, you know, I would not be able to support the motion, simply because you know, I mean, how could you not have a use like this, which is so different than the community it's located in, without having an interest in what the community had to say. To knee it would be great if they did outreach to the community. You never know, sometimes two minds are better than one and you might be able to get consensus from the community. I would not be able to support the motion as stated. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I'm wondering if we could go to the idea that was suggested at one of the other, the previous items, of putting in a couple tandem parking places, I'm usually not in support of tandem parking either, but in this sort of facility where actually there aren't many cars there and maybe it's a van or two that

could then park behind the staff car, that isn't going anywhere, to make sure that they're in compliance with the number of parking spaces that they need. Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. There are no additional comments. So let's -- we have a motion and second and let's vote by screen. The motion passes with commissioners Jensen and Kamkar opposed. That is the end of the public hearing session. The next agenda item is petitions and communications. Public comments on nonagendized items. Do we have any? We have none. So we're moving on to the next topic. Number 5 is referrals from city council, boards, commissions or other agencies. Director.

SPEAKER: The council is on vacation. The one thing I will note is when the council comes back from their July recess, they will be going to looks like one evening meeting per month. So I think you'll see some changes in your schedule with commission agenda, what items are on what agendas, as we try to kind of probably put more agenda items.

COMMISSIONER DO: Good and welfare, I assume that's the same. Report from City Council. Commissioners report from committees, Norman Y. Mineta San José international airport. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. We haven't met for this month, probably won't meet for the summer, I believe our last meeting will be in the fall, given the airport has complied with its variance of insulating the homes in the contour.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Kamkar on the envision San José 2040 general plan update process.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. We have not met, I believe our next meeting is on Monday, the 27th, which I can report after that date. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. The synopsis from the last meeting, any comments on that? Motion to adopt?

COMMISSIONER ZITO: So moved.

COMMISSIONER DO: Thank you. All in favor? [ ayes ]

SPEAKER: Commissioner Do: All opposed, so the synopsis is adopted. The proposed study session dates or topics? Staff?

SPEAKER: Thank you, Mr. Chair. We still need to revise the calendar, the schedule on the back of your agenda. In regard to the synopsis, you'll note that at the last meeting you all decided that on August the 26th that there would be a study session on environmental issues, it's a brainstorming session, so we'll add that to the calendar. I think the other question that came up at the last meeting is trying to identify a possible retreat date, the commissioners were going to check your respective calendars for whether the week of

September the 7th, or September the 21st, would work better because we usually try to have the retreat at that time same week that there is a commission meeting, to disrupt your schedules as little as possible. Usually we try target one of those weeks and we'll try get that effort underway, Mr. Chair. Thank you.

COMMISSIONER DO: Thank you. Commissioner Cahan.

COMMISSIONER CAHAN: I believe the 7th is Labor Day.

SPEAKER: The week of the 7th. But that would bear on whether you want to do it then or not.

COMMISSIONER DO: Could that be sent out in e-mail or something like that?

SPEAKER: We can try that Mr. Chair. We can certainly try that.

COMMISSIONER DO: At other commissioners' pleasure, that works well for me because I don't have a calendar here with me.

SPEAKER: Sure, okay. If that's the wish of the commission we can send out an e-mail, and do an e-mail poll for which week you guys prefer.

COMMISSIONER DO: Is that okay with everybody? Thank you. Are there any other comments on the study session?

SPEAKER: No, not on study session.

COMMISSIONER DO: So then, the –

SPEAKER: And I was going to back up on the council discussion. I understand that at that last meeting we didn't give a report of the council meeting of the 19th or 16th of June. That at the council on June 16th, the council did approve the general plan update study session, or growth scenarios, that in those growth scenarios, the council concurred with the task force and staff recommendations that we not plan for housing in north -- or in mid Coyote Valley, in the Evergreen industrial area, or the south Almaden urban reserve. The council did hear some testimonial from property owners regarding that, but concurred that we should not, for the life of the plan, or for purposes of the 2040 plan we should not plan for housing in those areas. The council also approved amendment to the north San José area development policy that allowed staff to extend development permits because of the downturn in the economy and also make changes for inclusionary housing, to encourage those within the individual housing projects. We will be coming back to the council in August or September on some additional provisions for the North San José policy. You may have remembered and it's been in the paper about the amount of regional retail and hotel rooms, that those were ones that there was some more concern or community interest on, so we are going to hold an additional task force meeting this month that's being scheduled right now for the end of July, early August. And then we're doing additional outreach to a number of different organizations to walk through those

issues, so that we'll go back to the council in the September time frame. And then there were some other land use items that we're going through, and scrolling through the agenda here right now to see -- it's been a couple of weeks -- we did have the general plan hearings that were also heard. Commissioner Zito did remind me that the item that he was the lone vote on, the one of the church proposals in the Oakland road area, the council -- staff had asked for denial, staff had asked for denial of that, the council allowed that to continue processing and the proposal for a reverse conversion on Parkmoor that staff had initiated, that amendment was denied, the council stopped processing that. The message on that that council really felt that if we are going to be doing reverse conversions, it wasn't so much that they were opposed to doing reverse conversions, they wanted to essentially have something similar to our housing initiative program that we've done previously, that we should have a more comprehensive view of what we were trying to accomplish with those reverse conversions, and that really, we're looking at a citywide policy issue and working down to individual properties. They felt we were focusing on individual property kind of too early in that process so that is something we're going to relook at how we bring forward additional reverse conversions. Because it is something that is going to be required to implement the general plan. And then the Almaden Road general plan amendment at Redmond, council concurred with the recommendation to deny that amendment from moving forward. And the Alum Rock form based code, the council accepted the staff presentation on that. They're looking forward to seeing the actual ordinance come forward back to the council this fall. The general plan amendments for that were also approved so that is a real exciting project that we've got coming forward, that as I said we're looking forwards. And the karaoke facility on de Anza boulevard, you remember that, it was a long hearing, the council did uphold the decision of the Commission to approve the karaoke bar, that one of the neighbors or some of the neighbors had appealed the decision. The council did hold a hearing on the appeal and did uphold the decision of the Commission. And lastly, the rezoning that we did for the landfill out on Los Esteros road and Zanker road, the council did approve that. That concludes the belated report.

COMMISSIONER DO: Thank you. Counsel is concerned that we would be violating the Brown Act if we were to communicate by e-mail regarding the time of the retreat. That I suppose is out because of Brown Act violation or concerns. So back to the two possible weeks of September 7th or September 21st. Is there a preference among commissioners? Should we vote by each week, if there's a preference? So either one is - - okay. So is there a preference for the 17th? I mean for the 7th? For the week of the 7th, I'm sorry. Okay, so there's a matter of Commissioner Campos, Commissioner Zito, that doesn't matter, Commissioner Cahan.

COMMISSIONER CAHAN: I usually go out of town that weekend. So maybe absent on the Tuesday, but would definitely be back by the Wednesday. But also, the following week, I may be at a conference on the 14th and the 15th. So -- never mind.

COMMISSIONER DO: So far, there are two commissioners that expressed a preference for the 21st, the week of the 21st. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you. Per the staff request I really actually reviewed my calendar. I'm available for either week. But I'm going to go ahead and make a motion so we get this over with, that we do it the week of the 21st.

COMMISSIONER DO: All in favor? All opposed? So staff, please check your calendar on the week of the 21st.

SPEAKER: Generally, I think Mr. Chair, generally I think we've usually done these on Thursday, I think, right? So if it's that week, then we would be shooting for, we would be trying to have that study session on Thursday, the 24th.

COMMISSIONER DO: On that day, okay. So next item is subcommittee reports and outstanding business. Offsale of alcohol process. Any update?

SPEAKER: No report Mr. Chair.

COMMISSIONER DO: Okay, thank you. Is there a motion to adjourn? I'm sorry, Commissioner Jensen would like to speak.

COMMISSIONER JENSEN: I think -- I thought we had requested that staff come to us with a date when there might be a possibility of starting the alcohol discussion.

SPEAKER: Yeah, from staff standpoint, we aren't looking at stuff for months out. With the sign code right now, that is 100% what staff's working on for my one staff person.

COMMISSIONER JENSEN: Your one staff person. So does that mean September, October, November, December?

SPEAKER: Reneé, what are we thinking from actually the drafting of the ordinance? Because we're coming to council in like August -- in September with the framework and then we're drafting the ordinance. My thought was it was like November.

SPEAKER: Yeah, I mean, the informal work plan of that has us working on that through the balance of this year. I haven't seen a formal one.

SPEAKER: A part of the expectation of the commission of what would like to occur, to the extent I don't need to have Carol work being on that, that it's Darryl or I to have the history and that sort of thing, we can advance that sooner. If it's something that is substantive work, then I have to work plan it and it goes into the hopper with --

COMMISSIONER JENSEN: I'm fine with whatever schedule staff wants to have. I just would, rather than every time us saying, we don't have anything, and we're not going to do anything, if we could just say we're going to start looking at this in December, January, and that way we can take it off of here and just say schedule it for January or something.

SPEAKER: Okay. Well, actually, what I'd like to -- maybe one of the things we should put on for the retreat when that happens, is actually the list of what we have queued up, for ordinances and stuff, that we've been sharing with council. Because that is up on the top of the pile, but our challenge is that as we get it there, they dream up other things. So we're doing right now bail bonds moratorium that is the latest thing that came out that we're having to respond to.

COMMISSIONER JENSEN: Okay, thank you.

COMMISSIONER DO: Again, is there a motion to adjourn? All in favor, thank you.