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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, April 6, 2011. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, please fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chambers. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is advisory only to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all Commissioners are here with the exception of Commissioners Cahan -- there is Commissioner Cahan. Commissioner Platten is the only one absent this evening. 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 wish 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 the remaining agenda items past 11:00 p.m., continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning

Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. At this time I have no items listed for deferral. Staff.

>> Staff has nothing to add to deferrals tonight, thank you.

>> Commissioner Jensen: Thank you. Consent. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. We have two items listed on the consent calendar. CP08-092. A C.U.P. to allow Tire sales and installation at an existing commercial building And CP 10-064. Adoption of a revised resolution for a conditional use permit to allow a drinking establishment late-night operating with hours until 2:00 a.m. Staff.

>> Thank you, Madam Chair. Staff has nothing to add, just a point of clarification. Item 2B is the conditional use permit CP10-064, this is the conditional use permit for the agave restaurant proposal that we heard last meeting. The agenda identifies 2:00 a.m. because that's what the applicant had requested. Although just for point of clarification, that is not what the resolution is that we're asking to adopt tonight. We're asking you to adopt the resolution based on your motion last meeting, which was the closure at 1:00 on Friday and Saturday.

>> Commissioner Jensen: Thank you. And counsel.

>> And if I could also just clarify. The reason that staff decided to put this item back on the agenda is because there were extensive comments from the commission. Normally if the commission either doesn't make any comments, the resolution is here for signature. If the commission makes very minor comments, the staff will sometimes simply go back to their offices while the remainder of the hearing is occurring and make the minor changes and bring it back. So the signature occurs at the same meeting. However, this time I should say last time

the comments were so extensive that staff wanted to bring it back and put it on the consent calendar. So the only issue before you tonight is did staff correctly memorialize the decision you have already made.

>> Commissioner Jensen: Thank you counsel. Commissioner Kamkar. Oh, I'm sorry, Commissioner Kline.

>> Commissioner Kline: Move to approve consent calendar 2A and B.

>> Commissioner Jensen: I would like to make a request. Commissioner Kamkar did you have an opportunity to reconstitute yourself? Excellent, okay, then everybody can vote on this. Commissioner Kline. Okay. You're up there many times. And I'd like to remind the commission, we have people in the audience as well as in the television viewing audience. So if you could use your microphones. There is a motion and second to adopt the two consent calendar items. All those in favor? Opposed thank you. And those are adopted unanimously with Commissioner Platten absent. The 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 agendas for public hearing time management purposes. We have a single item on the agenda this evening CP 11-017 and ABC 11-003. Conditional use permit and Determination of public convenience or necessity to allow the Offsale of alcoholic beverages at an existing grocery store on an approximately 14.10 gross acre site in the CG commercial Zoning district located On the Northeast corner of south white road and Story Road. Staff.

>> Thank you, Madam Chair. This is a conditional use permit and determination of public convenience or necessity to allow the full range of offsale of alcohol at a full service grocery store in the CG commercial general zoning district in an approximately 39,000 square foot existing tenant space within a neighborhood shopping center on white road. Planning staff recommends that the Planning Commission deny the requested conditional use permit and not grant the determination of public convenience or necessity as mandated by the municipal code. And this is for the following reasons, that staff is not able to make the mandated findings that the project is within 150 -- is greater than 150 feet from existing residence and also because the subject site is located in the

East valley 680 strong community neighborhood area. As a follow up as well staff wanted to indicate that the applicant did coordinate this with the NAC, to present the item to them, a representative of the Lindale neighborhood association board did state opposition to the proposal and commented that the neighborhood is already well served and inundated with businesses selling alcohol. Also we've received a letter of support from the alum Rock village business association supporting the proposed use. This concludes the staff report.

>> Commissioner Jensen: Thank you, staff. And is the applicant here? Thank you. You may come down and if you would introduce yourself you may have up to five minutes to make a presentation.

>> Thank you and good evening commissioners. My name is Berla Rodriguez, and I'm vice president of public affairs for Mi pueblo food center. We are a San José based company, headquartered here, have been here for 20 years, we have just celebrated our 20th store opening just last week, and we are honored to be here this evening. We opened this store as you heard last November. And we are very delighted to be in this community. I wanted to mention a couple of things and primarily express the importance of having this license or this conditional use permit for the convenience of our customers. All of us lead very busy lives and when we go grocery shopping, being able to purchase alcoholic beverages or any type of beverage is part of that experience. And so if you can imagine going grocery shopping and wanting to buy a bottle of wine and not being able to do that at your grocery store is a terrible inconvenience. There were a number of retail outlets listed in your report and I wanted to mention a couple of them are no longer in business. One is the big lots that is in the same commercial shopping center and then the other is listed twice. There's a Mercado Mexico, which went out of business four years ago and has been taken over by Santa Fe. They are both listed in there two but in reality it is just one. I wanted to point that out. I wanted to also mention that the mi pueblo has an outstanding record in this community as being a clean, safe, responsible operator. We have a great track record with ABC and with our local police department. We don't sell alcoholic beverages in single-serving containers which I think is very important to mention. We don't sell malt liquor, we prohibit loitering, we have onsite security at all our store locations, generally one or two, during store operations and so we go to great lengths to make sure that our stores are very family oriented. That's what we do, we serve families every day. Lastly I want to mention that I have reached out to the Lindale neighborhood association. I've offered to meet with them personally, have sent

them a copy of our policy on the sale of alcoholic beverages and I hope to be able to have further discussion with them. I also have another letter of support that I'd like to share with you put on the record and this is a letter of support from our landlord, the white road partners. And they -- I won't go in great detail, I'll share a copy with you but they also talk about the importance of the convenience. There was a previous grocery store, unfortunately, it went dark for so long that the license lapsed, and that's why mi pueblo wasn't able to secure it in time. And they also talk about how critical it is for the success of the entire shopping center that Mi Pueblo also be a successful anchor tenant. And so from that perspective they also asked for your consideration. So I'll pass this to -- should I hand this up here? So with that I would just like to thank you for your consideration. Again we're a full service grocery store. The store is about 40,000 square feet and it's a very, very small percentage of our sales, less than 4% that we would possibly expect to generate from the sale of alcoholic beverages. It is purely an issue of convenience for our customers.

>> Commissioner Jensen: Thank you and we do have a question for you from Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. My question is the two stores that you said are the same, is it Santa Fe Mercado and super-Mercado in that same location?

>> Super-Mercado went out of business a number of years ago and it is now Santa Fe Mercado.

>> Commissioner Jensen: According to this there are currently six offsale facilities within that particular census tract and according to ABC the authorization level is for four licenses. So I just wondered if you might have -- did you know that or did anybody let you know that ahead of time that it's already over-concentrated?

>> We are in contact with ABC have a very good track record with them. If this conditional use permit is granted we believe we'll be successful in obtaining that from ABC. Again, being a full service grocery store, pretty common so we think that that -- we can overcome that challenge.

>> Commissioner Jensen: And is there any possibility of you obtaining any of the licenses for the firm that has closed?

>> That's a very good question. I don't know the answer to that question. I know that they're very costly. I don't -- I don't know exactly the process of that but certainly it is something that we can look into.

>> Commissioner Jensen: Okay, commission? We have no speaker cards. So this is your only opportunity to speak to the applicant. Okay. We have no further questions. No, I'm sorry, I was wrong. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I was wondering if you attended the NAC meeting that was mentioned in the report, neighborhood action committee meeting?

>> No, we were not invited to the meeting and there's a meeting happening that they already had a full agenda so we've not been able to make a meeting. But I have offered to and I'm in contact with them and hope to do that.

>> Commissioner Bit-Badal: Okay, thank you.

>> Commissioner Jensen: Thank you. Is there a motion to close public hearing? There's a motion and a second. All those in favor? Thank you. Staff.

>> Thank you, Madam Chair. The only thing I'd like to add is, that a lot of times when we do get our information from ABC. That that's what we use to generate the map that was provided in the packet, that identified the location of offsale establishments within the 500 and 1000 foot radius areas within the census tract, sometimes we do have situations where businesses go out of business, and it's important to know that other businesses could conceivably go in there at a later date, reinstate the legal nonconforming use with respect to offsale, they can also buy the existing licenses, the license from ABC does not vanish by virtue of the business going out of business, the person would still maintain that. So there are circumstances where a use could, for example, like in the big lots which is in the same shopping center, move into that either take over the legal nonconforming status

or conditional use permit whatever they may have had and then also buy the license and not be subject to conditional use permit or review by this body.

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

>> Commissioner Kamkar: Thank you, Madam Chair. My question for staff, does the 150 foot basically the main reason why you're suggesting denial or are there other reasons?

>> Thank you, Madam Chair. There's actually two different sets of findings that relate to 150 feet. There's 150 feet with respect to the finding in the conditional use permit which talks about the orientation of the use, to nearby residential uses within 150 feet. That is a fairly flexible finding, in that the commission can make a determination that because of the orientation of the business, to the use within 150 feet that it doesn't constitute an issue, with respect to the determination of public convenience or necessity there is also a 150 foot dimension identified as part of one of those findings. And that of course is not a flexible finding. That finding simply states that if the proposed use proposing the offsale of alcohol is within 150 feet of residential that staff is obliged to recommend denial. The Planning Commission would be obliged to recommend denial. It doesn't have anything to do with the orientation, the fact that this backs up to the residential use, and it might be a quarter mile to walk around the sound wall or street to get to that, that's irrelevant with respect to the determination of public convenience and necessity. And in this case we're obliged to make that recommendation of denial because the business does in fact back up to residences and that residence is within 150 feet of the use.

>> Commissioner Kamkar: Thank you for the explanation. If I'm not mistaken we had the same situation for whole foods at the corner of Blossom Hill road and Almaden expressway. And Planning Commission was forced to you know vote denial but the city council has the prerogative to change that right?

>> If that situation occurs, and this might happen with this should the applicant appeal this to the city council, the city council is obliged to consider the recommendation of the planning staff and Planning Commission, with this respect, they need to make findings, which are different from the ones the Planning Commission makes, within

their jurisdiction. There is a little more flexibility within their realm of their findings. They can very well make a finding -- they're required to make one of three potential findings and one of those findings could be if the use is part of a larger -- I'm not sure I remember the exact language, the director can help me out -- but if it's part of a larger grocery store or larger retail use and incidental to that use then they would have the ability to approve that.

>> Commissioner Kamkar: It would be okay, got it.

>> Commissioner Jensen: Director.

>> Joe Horwedel: Thank you, Madam Chair. I just wanted to add to where Mike was going. This is one of the quirks that's in our alcohol regulation that for full service grocery stores we do get put in the position of both staff and the Planning Commission recommending denial as something that I think everyone would say is normally a good thing. And that as a result of that, the council in February did prioritize a code change that would go and deal with grocery stores and offsale alcohol to get rid of the mandatory denial process that you're facing tonight, that would allow us to function more like a zoning and make a recommendation of how staff and the Planning Commission feels on an individual request. That is something that's moving forward. So my suggestion is, is that I think put anything on the record that you think is relevant for the council to consider on this. I think we're in a situation where we need to do the mandatory denial but advise the applicant to file the protest, essentially that with no prejudice against the application, and to pursue moving forward to the city council for action on anything that you think is supportive around that.

>> Commissioner Jensen: Thank you, director. Does that -- okay. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'd like to make a motion and speak to that motion afterwards. Motion to deny a conditional use permit and a determination of public Convenience or necessity to allow the offsale of alcoholic beverages at an existing grocery store on an approximately 14.10 gross acre site in the CG commercial general zoning district as recommended by staff.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Is there a second? There's a second. Would you like to speak to your motion?

>> Commissioner Cahan: Yes, thank you, Madam Chair. I'm only making this recommendation because we are forced to make the recommendation. As our director stated, I do hope that you'll take this up to city council, and my intent is to not have any prejudice against this application. Thank you.

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

>> Commissioner Kline: I'm going to support that recommendation but I wanted a few pieces of information on the record. Question for staff, if this chain had gone in 30 days after the old chain closed and filled out the proper paperwork and filed the fees and renewed, they'd still be a legal nonconforming use and they'd still be operating with a license, is that correct?

>> That's true with respect to the conditional use permit. They still might have been subject to the determination of public convenience and necessity if they didn't actually buy the license from the previous user.

>> Commissioner Kline: Correct?

>> There's an opportunity to reinstate that within a timely period. If they had properly bought the license we wouldn't have been at public hearing tonight.

>> Commissioner Kline: So it's a procedure thing. Is the other stores under the same conditions, like Big Lots, if they just went under, and would they be in the same jurisdiction?

>> They could, it depends on the timing of how long they've been out. There's a limited amount of time in which you can reinstate the conditional use or the legal nonconforming use.

>> Commissioner Kline: Do we know how long the amount of time?

>> Probably 12 months.

>> Commissioner Kline: So they have a little bit of time, probably, I'm not sure.

>> Staff doesn't have information on how long they were out.

>> Commissioner Kline: I'll be supporting this motion for the same reasons.

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

>> Commissioner Bit-Badal: Thank you, Madam Chair. I have the same question that I asked from the applicant, what was the result of the NAC meeting? Because it is mentioned in the report that they did have a NAC meeting with East valley 680 communities I assume staff was there but there's no result as to what the comments were. Other than one comment from a neighbor.

>> I believe what it was is staff was asking to coordinate with the NAC and as was indicated by the applicants that the NAC had a full agenda and they weren't actually able to consider the items specifically.

>> Commissioner Bit-Badal: Thank you.

>> Commissioner Jensen: Thank you staff, thank you Commissioner Bit-Badal. So I hope you understand the position that we're in and that this does not say anything about how we feel about a full service grocery store who promises to have less than 5% of the floor space. So I would like to, if it wasn't already in the recommendation, to include a recommendation that the resolution that council have, have a requirement of less than 5% of the floor area. Since the applicant had already indicated it would be less than 4%. Is that okay with the maker of the motion and the seconder of the motion? I received yes from both of them. Counsel.

>> So just a clarification on the motion, the motion would be the mandatory denial which is what you are required under the code to could. But it sounds given the commission's recommendation that you would also like to forward a recommendation to the city council that you are recommending that they do consider a determination of public convenience and necessity and if they do they should include the cap on the floor area that the chair just referenced. But implied in putting conditions is the fact that it sounds like you would recommend, because this is a full service grocery store, that even though you have a mandatory denial, you know that this could go to council and you have your thoughts or your recommendations to council on their determination.

>> Commissioner Jensen: That's correct.

>> Madam Chair, if I could just add, just to clarify. The applicant indicated that the offsale of alcohol was going to be 4% of the sales, not necessarily 4% of the floor area is what their proposal was.

>> Commissioner Jensen: Okay, perhaps staff could work with them on what that might be in compliance with what we've been doing with other grocery stores, that would be great. And then also, if someone from staff would like to and please if the commission disagrees with me on this one, someone let me know, send forward this does highlight the issue that we're having with the mandatory denial, especially in the case, specifically in the case of full service grocery stores and that we look forward to the motion -- the movement going forward by council on revising the policy so that we can have more leeway in making a determining on zoning based on the appropriateness of a full service grocery store having full service sales as well. Commissioner Kline.

>> Commissioner Kline: I just wanted to make a comment, that from the schematics of the floor plan, they're well under 4% of floor area.

>> Commissioner Jensen: Great, so it sounds like you're way under what you -- all right, so there is a motion and a second. I see no additional speaker lights. May we vote by light? I'm sorry, let's hold -- okay, counsel has another comment.

>> Just for the applicant. The reason this is taking place in this way is that our city council has actually requested this commission when they do denied they still want their thoughts and their recommendations on if they didn't have to deny what would their thoughts and recommendations be? So even though it's a mandatory denial, the commission still wants to forward their comments to council.

>> Commissioner Jensen: Okay, thank you. And -- thank you. And that motion passes unanimously. Commissioner Cahan did vote yes. And Commissioner Platten has joined us. A little bit of a hiccup. So thank you very much and we look forward to hearing that you have filed a protest against our decision. Petitions and communications, Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a Subsequent hearing, directing Staff to place the item on a future agenda. We have no speaker cards. And our guest doesn't look like he's interested in jumping forward. Okay. Referrals from City Council, boards, commissions or other agencies. There are none. According to the director. Good and welfare report from city council. According to the director there is no report from city council. Commissioners' report from. Committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. This committee has not had a meeting. So no report.

>> Commissioner Jensen: Okay, thank you. Envision 2040 general plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: Next meeting is in June where the EIR I guess is going to be distributed, I guess, and comment.

>> Commissioner Jensen: Great, and when is this committee going to be done?

>> Commissioner Kamkar: I believe in November if I'm not mistaken.

>> Joe Horwedel: Our estimate is November. And that's assuming we have an EIR that hits the streets in June.

>> Commissioner Jensen: Only four years!

>> Joe Horwedel: I think we're meeting number 49.

>> Commissioner Jensen: We had to ask. Review and approve the synopsis from 2-23, 3-9 and 3-23. So we have a variety of absenteeisms on these. So let's start with 2-23, commissioners Cahan and Platten, did you have an opportunity to reconstitute yourselves on this commission meeting?

>> Commissioner Platten: I did not.

>> Commissioner Cahan: I did not.

>> Commissioner Jensen: So I will request you not vote on this one. Is there a motion to approve this?

>> Approve.

>> Commissioner Jensen: There's a motion and a second it will all those in favor, thank you. That passes unanimously with commissioners Platten and Cahan abstaining. March 9th, 2011, Commissioners Abelite, Bit-Badal and Jensen were absent. And I'm going to speak for the three of us and say we did not have an opportunity to reconstitute ourselves since there was no sound. So the three of us will be abstaining from this one. And Commissioners Cahan, Kamkar, Kline and Platten may make a motion and vote on this.

>> Move to approve.

>> Commissioner Jensen: Motion and second. All those in favor? That passes unanimously with Commissioners Abelite, Bit-Badal and Jensen abstaining. March 23rd, Commissioner Cahan, Platten -- sorry, Cahan, so sorry, they keep, there's two of them here. Commissioners Kamkar and Platten were absent. Did you have an opportunity to reconstitute yourself?

>> Commissioner Platten: I did not.

>> Commissioner Jensen: Okay, Commissioner Kamkar reconstituted himself, so Commissioner Platten will be abstaining. Is there a motion to approve? There is a motion and a second. All those in favor, thank you and that passes unanimously. With Commissioner Platten abstaining. Thank you very much. And subcommittee reports, and outstanding business. Continued discussion on the report to hiring outside consultants for environmental reports. We continued this discussion from our previous meeting. And specifically, so that we could have as full complement of commissioners and I'm delighted that we do have that, and I hope the commissioners have had the opportunity to review the recommendation by commissioners Cahan and Kline, and I want to thank commissioners Cahan and Kline for their excellent work on this. Commissioner Kline.

>> Commissioner Kline: I don't want to go over the presentation again, because we've done it twice now, and so I think everyone has had a chance to actually hear this. But the report still has two errors in it. It's under the chart on the first page, under San Francisco and Santa Clara, it says consultants picks, and it should say actually developer picks from preapproved list. So I want to make sure everyone's clear on that.

>> Commissioner Jensen: I'm sorry, instead of consultant pick?

>> Commissioner Kline: It's developer picks from preapproved list of obviously consultants.

>> Commissioner Jensen: Developer picks, okay.

>> Commissioner Kline: The developer picks from preapproved list of obviously consultants, and he pays consultant directly. Thank you very much and I want to thank my cohort in crime, think she did a great job. Thank you.

>> Commissioner Jensen: You guys did a great job, thank you, yes. And I'd like to clarify with counsel as to the process. Do we make a motion to forward this recommendation to council or what is our process at this point?

>> I thought the recommendation would be to forward it to the director.

>> Commissioner Jensen: Okay.

>> For his consideration in terms of making recommendations on how to change the process.

>> Commissioner Jensen: Okay, director.

>> Joe Horwedel: That's one of the things I was wondering, is.

>> Because you are the administrator of title 21.

>> Joe Horwedel: For the California Environmental Quality Act I am the lead for the city, the designated person, as the recommendations coming to me I think is where that would belong.

>> I think you could attach it to any recommendation you bring forward on how to modify your processing. But I think the recommendation for consideration is to the director as the designated administrator.

>> Joe Horwedel: The one thing I was wondering is how do we go back through and connect with the liaison for the council, for the Planning Commission making them aware of that so whether there was something in the motion that forwards that to the liaison or is that something I would just go do directly? So I really would defer to the commission around that as to your preference.

>> Commissioner Jensen: Okay, this is open for commission discussion. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. So if I'm hearing correctly then we're not going to have the last sentence here, from the first page right? Because the subcommittee is recommending a certain --

>> Commissioner Jensen: I think we want to keep that.

>> Commissioner Bit-Badal: You want to keep that?

>> Commissioner Jensen: That's our recommendation. My question is who do we make our recommendation to? My understanding is we are making it to director Horwedel.

>> Joe Horwedel: As the commission you are recommending to staff that we would go through and implement these process changes. The one question I was asking, would you want to go through it also and directly refer that to the council liaison.

>> So really I think what the director is asking the commission is do you prefer to designate one of your membership to meet with the council liaison and explain the issue and why the commission developed such a report or do you prefer to designate the director to do that based on your report.

>> Commissioner Jensen: Commissioner Kline. Please use your mic.

>> Commissioner Kline: That is what I put my mic on for but thanks for your question. I think both would be in reality, I would appropriate probably and explain the background but I really appreciate any support from the director in the same regard. I don't think there's a conflict there at all. And as far as the motion is concerned, this letter here is really to the commission. And then the commission would actually make a recommendation on top of this letter basically, and not in replace of it to the director. With a copy or a documentation going to the liaison I think and then we could follow up with them. I think that is appropriate.

>> Commissioner Jensen: Would you like to make a motion?

>> Commissioner Kline: I probably should have just said the motion, right? That would have probably been a very smart thing to do. I'll make a motion to support the recommendation from the subcommittee and make a recommendation to the director to implement sometime in the near future, 18 months or 24 months something like that, sounds reasonable, given what's going on right now, a best practices following as state and letter, read it. To allowing with best practice found in other communities, found by reports as documented by this subcommittee report with a copy of their support going to the liaison and a subsequent meeting of the subcommittee with liaison. And any assistance the director can provide.

>> Commissioner Jensen: There is a motion and second. Commissioner Abelite. I'm sorry would you like to speak to your motion?

>> Commissioner Kline: No thank you.

>> Commissioner Jensen: Commissioner Abelite.

>> Commissioner Abelite: I do want to talk in further length about the whole process. In general I'm not in favor of going down this particular path, without maybe some more public comment on it, maybe outreach to the developer community. Let me tell you a couple of reasons why. I'm not totally saying no to this, but I want to talk about some things. And one of them is, and the reasons I'm not that excited about doing this is, this city in my

view is 99% developed. If you carve out Coyote valley and you carve out Almaden reserve which would be done under a master EIR by itself just like this proposal is what remains is, is very small pieces that may require an EIR. So we're not talking about a lot of work product necessarily. And just being here since July I haven't seen a lot of EIRs come through. At all. So I'm worried about frustrating the process. Also, I want to also say that we already are going down the path of addressing a couple of items in the EIRs that are pretty critical I think in this commission's eyes, number 1 is the riparian corridor which is going to be going through its own process. So we're talking about a perception issue about how does the public perceive how we handle the EIRs. The riparian corridor policy, there's going to be something working its way through the system. The second one and the big one is the Santa Clara Valley habitat plan, and that one's going to take -- we had a session no long ago, and that one is going to take 21 endangered species and plants off the list. So again, what are we protecting? We've got 99% of the city developed, you've got a couple of levels of protection that are coming in and are going to become automatic mitigations for some of these large, large issues. And so those larger ones are going to go away. And then let's look at the level of oversight we already have. We've been doing business like this for decades and some may say well we've got some of them wrong. Well a lot of people might say we've got a lot of them right too. We've been doing these for decades and there's a lots of levels of scrutiny, you've got really good staff, except Darryl Boyd has now gone away. You've got good staff that's generally used by the applicants You've got good staff. I don't think this commission, nobody can say they're just in the business of laying down and approving EIRs when they come in. The public has plenty of time to do scrutiny and they come here and then if all of us are wrong then it still goes to city council and you've got appeals courts, you've got all these levels of scrutiny. And the reason I'm saying this also is because we just don't have a lot of staff time. And I don't know if this is where we need to be dedicating staff time right away. Then we need to look at cost. You know, it's not just the cost of doing a markup of EIR as it goes if it comes through the staff. Whenever there's a cost it also means man hours. Because it's man hours in and man hours out. That's going to delay a project, you know I don't want to be in the business of frustrating the development community more than there already is. And it's not just planning staff's load. You're going to be pulling in the city attorney's office, possibly, possibly the finance department, manager's office to create documents or contracts. Depending on how this all gets shaped. And so these places are -- these departments are already taxed. So -- and also there's another layer of cost that we need to consider. When these EIRs are done there's hydrology reports that are done within those drafts. Those are very

expensive and lengthy. And if a third party or if there is a consultant used by staff, it's not necessarily the civil engineering firm that's going to be used by the applicant or the developer and so you're going to have redundant hydrology cost and those are pretty expensive. So I'm not terribly excited about moving forward with this with rapid speed. I think what we should do is do some outreach to the development community and get input from them. I got some of these things from people I knew in the development community and that was just the tip of it. You know maybe we can direct Joe Horwedel to go down the direction of doing outreach to the development community. Maybe we do a study session with them and try to figure out a way to make this program work. And on a one final note we're going through a very large EIR on the general plan process. I think we should also somehow figure out how to make, if we are going down the road of doing urban villages with high density, three or four over one projects, which is -- should be an environmental person's dream then we should somehow figure out how to pull back from making those sort of large projects that are right on transit corridors that fit all the general plan's EIR guidelines then they can have a lesser level of scrutiny when they actually come before us to do a project. So what I'd like to see is maybe the commission consider directing Joe to do some public outreach, maybe do study sessions and we kinds of build the plans a little bit first. I'm not opposed to it but I want to -- I don't want dollars to run amok and I don't want to frustrate the development community and I don't want to frustrate staff. So those are my comments.

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

>> Commissioner Kline: I tried to write all those down. You want to disclose what developers you were talking to to feed you that information?

>> Sure, I talked to Mark Lazarini, and I talked to -- I talked to Mark Lazarini, who works for Charlie Davidson, and then I didn't talk to a developer, I talked to Tom Armstrong at HMM.

>> Commissioner Kline: I don't think anything you say is actually inconsistent with this proposal. This is simply a start. This is a recommendation to staff to actually start investigating, which would include everything you just said. So I don't think there's any inconsistency at all. So a comment on a few items. The level of percentage of the

buildout that's already in San José. I can guarantee you the percentage of buildout in Sunnyvale and Cupertino and Sunnyvale is far greater than anything San José has, so I don't know how that catches that. The general plan that's our EIR doesn't really apply and the same thing with habitat. That's our EIR, that's not -- you know it's not a developer coming in, it's not an applicant coming into us, we are the applicant, we're the developer. Cost once set up the cost should be self-maintaining. Again, the cities we're talking to some are big, San Francisco, Sacramento, some are incredibly low service cities such as Saratoga which has almost no capability of maintaining anything outside the Planning Department to take care of legal et cetera and they would implement this without any problem at all. As far as frustration of developers I'm really more concerned with the general business environment in San José. I don't think we're really that anti-developer here in San José. I haven't had that feeling at all from the outside world. If anything, it's probably the opposite. So but again percentage of staff time I'm really concerned with that, that's why we put such a long lead time into this. Otherwise I'd say three to six months, I'm really sensitive to that so I think 18 to 24 I think is more appropriate. Habitat and all that habitat will come back to us after the Gilroy vote last week and the Santa Clara County vote this week and probably two weeks from now so we'll get a chance on that but we can't talk about that. I think all the concerns are correct, I'm supportive, I don't think they're inconsistent with what we're saying. Seems like we're saying the best practices from large cities, small cities seems like what we should do because it's a logical fairness issue, people looking at small traffic reports et cetera, we want to make sure that an independent body actually handles this, a registered consultant, that's all. Again, I hope you support it because I don't think it's inconsistent.

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

>> Commissioner Bit-Badal: Thank you, Madam Chair. I actually hear both sides and first I want to thank both commissioners Kline and Cahan for putting this forward. I wasn't here for the first time when you made the presentation, and I couldn't hear it of course and I was home. But as a former employee, as a city employee who has done RFPs, and who has worked on hiring environmental consultants actually and I managed their contract, and worked with architects and engineers and managing those contracts, I would feel much more comfortable with the fact that with going forward with the San Francisco-Santa Clara model, personally. One reason is, because it gives -- it really accomplishes the independent body that we are trying to reach here, as Planning

Commissioners, we want to have somebody here who is an independent consultant who is not being paid directly and hired by the applicant. But at the same time, it gives that flexibility to the developer, to hire from the list of preapproved and those who have gone through the RFP process, those who have had great track record of producing valid and ethical product. I personally and again I'm not trying to say that your findings are not correct. I actually respect and thank you so much for putting this amount of time into this. However, again, I'm saying that out of my own experience. Another thing is, we do have wonderful staff here, the City of San José, and I want us to be the best and remain the best. I feel that if we're having staff do the respectfully and they're choosing the consultants, we're giving too much -- the power is shifting too much, I personally feel. I feel that there needs to be a balance for both sides, both the developer side and also staff. Again I'm not speaking you know I think we have great staff and they've been doing a great job. Again as a former employee who has done RFPs, looking and I read the -- I read the document and really thought about how things went on before and I think that would be the best. That's why I personally don't feel comfortable from my personal experience and having managed consultants contracts to have recommendation that is set forward. I actually would like us to recommend both of them and gives the choice to the Planning Department, for him and his staff to really realize which way they want to go. I personally again would prefer the San Francisco and Santa Clara style and that is the consultants pick from preapproved lists. Thank you.

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

>> Joe Horwedel: Thank you, Madam Chair. I think the discussion is really good, and I really appreciate the questions that Commissioner Abelite asked because I think it helps clarify kind of where we're going and Commissioner Kline's kind of comment back. I'm very appreciative of is that how staff sees this is that the commission has spent a lot of time looking at this issue and you know certainly tonight and prior meetings the debate about how best to do this. And giving guidance to me and my staff about how we should implement CEQA in the city. Very much the values of how my staff think about this is, we are going to go through and take this and go do outreach about it. So actually we're scheduled Friday with our developers regularly scheduled round table agenda we put this on to start that conversation officially. We've already started some unofficial conversation and let them know that the commission was already starting with these conversations. But it is one that I think you

know a 12 to 18-month window is realistic of where we are with Darryl leaving, I really don't have somebody to put into his spot right now. So we're going to take a while to kind of work through that. And it's something that why I was asking for the role of liaison to the council, ultimately I think this is something I would like to bring through our council committee process and really walk through with the council about how we're thinking about this. Because it is a fundamental change about how we do business. In the comparison between cities I think is really good and the debate about you know, is it an approved list or not, is the city picking or is the developer picking. In some ways I think if we've got an approved list to work from is important and then who picks from that is kind of less important, but I think the next thing that is really critical in that we sometimes get criticized about is document control. And that under today's process, the developer finances the study, contracts with the consultant, the consultant prepares a report, and it comes into the city. But I don't know how much that the consultant has been or has not been involved directive of that study. So in some ways it does put the staff in a bit of an Easter egg hunt to go and look for things. So that's been the one concern of how staff has looked at the environmental process. That said the comments from the commission tonight, very appreciative of your esteem that you've held my staff in doing this work. We do take it very seriously. We do throw down, where we think that something has not been done well. We're not 100% perfect, you know that's what the courts are there for and kind of working through that. But we do take it very seriously, the role of the environmental process, in San José. Of why it was created by the state, and its purpose in helping the community really understand development and other actions of the city. And it's not just so private development. This affects other things in the city that we also put other city departments through. So it's one that I want to make sure that we're going through in a measured process. But I think there's a lot of great ideas in here and I am appreciative in the work you've done on that and so working through that process it may be one that part of that public process may actually be the role of the Planning Commission also, of actually the Planning Commission holding study sessions with the community and development community around that. We've done that for creating guidelines and that sort of stuff. I can certainly do it through my processes and invite the commission into that if you're interested and like I said I think ultimately this is one that would probably go through one or two of our council committees and it's the same thing we've done with the habitat conservation plan, how we do development in the city. Just to make sure all those vantage points are on the table. I don't see this as a directive to say Joe go do it this way tomorrow but you should really think about it of these concerns and do ourselves better.

>> Commissioner Jensen: Thank you director. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair and the director's interpretation is the spirit with which this was written. I would like to touch on something that Commissioner Abelite said, which was that there are many layers of review and already in place. And my concern to that is, part of the catalyst for this is the public's perception of whether the EIR is actually an unbiased document. And that's I think that's also a concern for the commission, when it comes to us, already in play, as-is, we have to trust that it's completely unbiased and done by independent review. And as the system stands right now I captain say that I always feel that way when I look at it. I sometimes have questions. And we at our first -- the first time that this came before the commission, we had members of the public speak and share their concerns, the same exact concerns. And then thank us for bringing this to light. And really trying to create an absolute unbiased document. And so the public, if they believe that it is biased, they don't really have many layers to go through, to try to overturn the document. Maybe they could sue but the cost of that, the time of that, it's really not practical, that that would happen. And so it behooves us as a city to make sure we are presenting fair unbiased documents as much as possible. That is why I think this is really important. I think that's all I had to address for that, thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Commissioner Kline, prior to the next time you speak, can I ask if the commissioners who worked on this could kind of outline the scope of what environmental consultants means. We've heard a lot of discussions this evening about EIRs and that's one very specific part of some of the environmental reports that we get. Does this take into account other types of environmentalist consultants that might be hired for biologic reports or things like that?

>> Commissioner Kline: We used that term at the behest of the counsel, who recommended that term to us. We were going to use something more specific, but that was supposed to be an umbrella term that covered all environmental reports.

>> Commissioner Jensen: Great, thank you. And then Commissioner Kline.

>> Commissioner Kline: Just again it's that San Francisco and Santa Clara chart says developer picks from preapproved list not consultant. Want to make sure that's clear to everyone. I don't think the subcommittee really had a hard feeling as to whether the city stuck to a specific consultant or selects a list of consultants. I don't think there's any issue there. So we're not really -- whether it's San Francisco or Santa Clara or Saratoga's procedure. We're basically saying that this seems like it's generally the best practice approach and we're going to leave it to staff to roll up their sleeves and do the structural work they're more than capable of doing. That I should come back to say we've been due diligence, we have looked at all these systems. Santa Clara County looks great than San Francisco vice versa and we're going to come back with a process where we can get the developer input and everyone's input and we'll see it here again probably several times supporting any action, or we will let staff actually do that level of work. We just basically put the surface level and said let's put our head up there and see what's going on. Looks like best practices is a little bit different than what we're doing. Our recommendation is let's go and see what we can do there.

>> Commissioner Jensen: Thank you, Commissioner Kline. Counsel.

>> Just a quick note for the commission. With regard to the staff work involved no matter who repairs that or is paying for the consultant, the staff with the city attorney's office review that document no matter who prepared it, and I can assure you that if there's anything that doesn't look right, it's sent back and they're told to do it over. So I would echo the fact that it is in large part a public perception issue because no matter who is paying the bill, the same people are going to review it and I have confidence we're going to have the same comments and we're going to have the same ripped up document and different portions to do it over. So -- but the more nuanced aspect getting to what Commissioner Kline said, let's say there is a traffic report and traffic counts. It's true I couldn't know the accuracy of those counts. If we are talking about accuracy or bias, it's going to be deeply embedded. But in regard to reading the documents, in reading the documents this excision has read several EIRs and sometimes have raised an eyebrow and had said wait a minute, that doesn't sound right. I know Commissioner Platten has raised issues in EIRs, former commissioner Campos has raised issues in EIRs. So the commission itself, because you're the one that's certifying the document, when you read it, you can say, I

don't buy this, this doesn't sound right, and you can direct them to go back and do more work. Before that document comes to you it's already been thrashed just so you know and it will continue to be no matter who's paying the bill it will continue to be. I just wanted the commission to know that.

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

>> Commissioner Cahan: Thank you, Madam Chair. I also wanted to note that this is our third time hearing this issue. And clearly, some of the development community knows about it because Commissioner Abelite has been speaking to them. And we have not had a single developer come before us to speak on this recommendation. So I hesitate to say that there's a major concern in the development community about this particular recommendation to further review. Because nobody's here talking from the development community.

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

>> Commissioner Abelite: Yes I just want to say, I do thank you for your work product. I'm just saying if we do go down this path I want to make sure we shape it properly. The development community just because they're not here tonight, it's a little early for them to start showing up. As this starts shaping they could be in the partnership with all of us to shape it. I'm not saying outright no, I'm not against this, I just want to make sure we take our time, get it right. We've been doing it this way for decades currently. Of course that perception issue is going to be there no matter what way or shape that ends up being, that's not going to change. Let's work with staff for a long period to get it so it works for all of us. So I just wanted to bring up some of these points to make sure we all understand we have our eyes wide open. Thank you.

>> Commissioner Jensen: Commissioner Abelite. Commissioner Platten.

>> Commissioner Platten: Thank you, I think we're reaching the point of consensus that we should probably take a vote. I want to state that I fully support the statements made by the director here. There is a commitment in this city and a commitment precedes certain reforms in the last couple of years for the nine years that I've been on

this commission, that the stakeholders are always invited in the front door, not the back door, the front door, to take a look at things. The stakeholders here include not just the development community but the environmental community, the labor community, the entire community at large. And I know this director is absolutely personally professional and the staff has absolutely personally and professionally committed to that as has every single colleague that I've had the privilege of serving on this commission. So I believe Commissioner Abelite's comments tonight are excellent and in good faith. I also believe Commissioner Kline is correct that this introductory proposal encaptures all of those concerns and that the process will go forward and I expect everyone will be at the table when these issues are discussed and they do not take nonappearance or silence as consent. I know our community responds when they're given these issues. Having said that I don't want to have to make a motion to call the question but would I like to call for the vote.

>> Commissioner Jensen: Well, you have very good timing because there are no further speaker lights. So if we may vote by light on this. And that motion passes unanimously. And again thank you very much to commissioners Cahan and Kline for the tremendous amount of work that they've done on this, thank you. The other subcommittee that is meeting is the riparian corridor study group. And we have had a second meeting, and the committee members are doing field study work. And look forward to having fun pictures to show at the end of all of this. Commission calendar and study session. Does the commission have any recommendations for additional study sessions? Changes to dates? I believe we have a potential, I would like the commissioners to consider that September 22nd is the proposed commission retreat. Generally, we try to have that meeting the day after a commission meeting. So just a question as to why it got put there. If anybody knows or you can think about it later. I see no lights. No hands. Okay. Great. All right, and then with that we are adjourned. Thank you very much.