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

>> Commissioner Cahan: Good evening. My name is Edisa Bit-Badal, 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 11, 2012. 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 ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. Roll call. Let the record show that all commissioners are present with the exception of Commissioner Cahan. At this time I would like to welcome Commissioner O'Halloran to the Planning Commission. We commend you for choosing to serve the city in this capacity. 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. Staff.

>> Thank you. No items are being recommended for deferral tonight. Thank you. Do I have a motion?

>> So moved.

>> Commissioner Bit-Badal: Second? All approved. Consent calendar.

>> There are no additional staff reports.

>> Commissioner Bit-Badal: And for consent calendar?

>> Move for adoption.

>> Second.

>> Commissioner Bit-Badal: All approve, thank you. Public hearing, item 3A.

>> Joe Horwedel: Thank you, Madam Chair, items 3A and 3B are both items that staff has brought forward for denial for the commission's consideration. These are items that do not have environmental review completed for the respective items, so the only actions that the commission can take tonight are to either deny the item, or if there is some reason that you believe this item should be considered for approval, then would be to defer the item to a later date with direction to the applicant to complete the environmental review process on the project, make the necessary modifications to the project itself, and then staff would bring that project forward for later consideration. Staff does bring these forward to the commission without environmental completion because in staff's opinion, the projects have significant deviations from adopted council policy. And that because of the cost of processing projects, staff feels it's beneficial to essentially see if there's concurrence around the major policy issues without going through the full review for the individual projects. So on both 3A and 3B those are items that do not have environmental review tonight. And Mike Enderby has a presentation for 3A.

>> Thank you. This proposed conditional use permit is to consider the addition of a new drive-through use specifically an automated car wash facility at an existing smog check station at 2270 Camden avenue. The site was originally developed with a service station back in 1962 under the former C-1 commercial zoning

designation. An existing smog doctor facility has been in existence since 1990 and is considered legal nonconforming in that it does not have a conditional use permit. Prior to the filing of the conditional use permit, the business owner filed an application for an enhanced preliminary review in 2008 with the city. Staff responded that in order to pursue this proposal, it would be necessary to first secure a rezoning to the CN commercial neighborhood district, because the current zoning district at the time didn't allow drive-through uses and then secondary, a conditional use permit would be required to actually allow the car wash use. In short, staff noted that the proposal would not conform to the city council policy 6-10, which is the policy for drive-through uses, and that the uses within 200 feet of residential properties and could cause noise impacts. Later in 2008 the director of planning sent a letter to the business owner reiterating that the initial response from the preliminary review request, that while the city would probably be willing to entertain support of the rezoning, itself, there would be issues with the conditional use permit because of the conformance to the drive-through issue. And it was further noted that other alternative uses should be sought, such as the addition of some retail sales activities on that site. As noted in the staff report we are recommending denial of this conditional use permit, the project doesn't comply with the fundamental principle of the City's -- city council policy 6-10, the drive-through policy and the car wash uses, drive through uses such as a car wash should be located at least 200 feet away from a residential use in order to limit residents from direct noise impacts. In this particular case, there are single-family residential uses located directly behind the subject site. Staff has serious doubts about the long term effectiveness of some of the noise mitigation proposed as part of this project which includes bifold doors at the entrance to the car wash tunnel to contain noise. Their effectively is highly dependent upon meticulous maintenance and the sealing of these doors at all times during the actual operation of the car wash. If the doors are later disabled and the car wash is used with the doors open, there would be serious noise impacts on additional residential uses. Additionally, the car wash stacking lane is proposed directly adjacent to the residential property line. This has the potential to further generate unpredictable noise impacts, that could result from idling of cars and playing of car stereos which is beyond the direct control of the business owner. Additionally there are two separate unenclosed stations for car vacuum areas which are directly adjacent to the residential property line. The site has many vehicular circulation inefficiencies, as discussed in the staff report. And the project does not include any upgrades to the site including permit or landscaping needs that are along the street or adjacent to the residential property line and there's no remodel proposed of the existing building. In conclusion, the addition of new noise generating activities is

fundamentally problematic and could negatively affect residential uses. Staff has been very forthright with the applicant from the earliest proposal back in 2008, as well, well before the filing of the subject application in 2010 that the addition of a car wash would not be suitable at this location. Based on the proposed site design, the addition of the car wash use is not likely to enhance the appearance of the site. Staff has considered -- has encouraged the applicant to consider alternative proposals to improve the economic viability as I mentioned and thus far the applicant has not come forward with any such alternatives. It is for this reason and the reasons stated in the staff report that staff is recommending denial of this conditional use permit. This concludes the staff report.

>> Commissioner Bit-Badal: We have -- thank you staff. We have several speakers on this matter and I wanted to call out Mr. Leo Segal and the applicant actually. We have two cards here stating the applicant or representative of the applicant, I was wondering if Mr. Segal is the one or Mr. Bill. Okay. So applicant please come forward. Okay please come forward sirs. And I'm going to call out the next two speakers as well so please line up. Mr. Daniel Segal and Mr. James Keckle who is the architect. Please state your name to the microphone.

>> My name is Bill Bahony. I'm the owner of smog doctor. I want to thank the City of San José for this meeting and all my customer and neighbors that they take their time that they come to this meeting. I've been doing same kind of work, automotive repair station for the same years, the smog doctor at 2278 Camden avenue. I have provided the needed service in the area and helping the community with low and reasonable rate. I have never had any problem with the City of San José, or neighbor, regarding the noise or traffic or hours of operation. I have a plan for a small car wash to be built next to smog doctor. This project would not be an inconvenience to anyone. The noise level would not exceed my current operation. I have sent over 80 letters to my -- to 500 square feet of my neighbors, as city did. And invite them to come to this meeting and see what we have to offer. The state-of-the-art car wash for people of San José and Campbell. 95% of my neighbors are agreed and sign a petition. Now I would like to go over this car wash proposal, with you and I have given the city, I have the copy that I would like to give you. San José, copy of all letters that I received and a petition that the people signed. On May 2007 I submit my car wash application to City of San José. About 14 months later, on September 2008, I received a letter from City of San José regarding my proposal. There was two condition in this letter. One, CP zoning commercial does not allow car wash facility. Must change to CN zoning. That was done on June

2009. The second condition was noise impact of the car wash mechanical equipment. Company called Edward PAC association has sound level report for City of San José. And Rico car wash factory has its sound report. That meat or beat my car wash operation. The automotive repair has been there for other 40 years. I submit all my documentation to City of San José for review. On May of 2010 I received another letter from City of San José that required me to make changes such as parking from 15 to 20 feet and stacking lane 22 to 26 feet number of available parking and so on. We made all the changes that the city required. On August 2011 I received a letter regarding my status from our city chief engineer Ms. Laurie Muniz, she wanted specific information regarding car wash and the hours of my operation. She also said in the event that I'm able to demonstrate that due to the special consideration with the respect to the building orientation and design, hours of operation and proposed quiet equipment, that the car wash proposal would meet the intent of the policy and meet the city noise standard staff would be willing to reconsider our position. Now, I would like to present my architect, Mr. James chow, that he has over four years experience in the car wash business.

>> Commissioner Bit-Badal: Thank you, sir. So next person is Mr. Chow, and then after that is Mr. Leo Segal, and Ms. Cheyenne Camaleen.

>> Good evening. My name is James Chow, I'm the architect for this project. And first of all, I want to express gratitude that we are finally able to appear before you since we submitted our first submission in may of 2007. Anyway, I was listening to staff's presentation. I didn't hear any comment regarding the acoustical analysis that was done and that the acoustical engineer had evaluated this use and recommended mitigating measures that will eliminate the potential noise level to the adjoining residences. In fact, by putting up the sound wall it would mitigate the sound coming from Camden to the residences. So in some ways it would make the experience of living in those houses more quiet with the sound wall than without. And of course, I don't need to could into details, we've all seen those along the highway and we know that they cut a lot of sound out. We had to redesign because along the way of processing December of 2010 a new ordinance was adopted which compelled us to redesign the whole project to comply with those and we met and exceeded all of those requirements including stacking for ten vehicles without getting on to the sidewalk. We thought we had a good design and thought it would be a good thing. In addition to that, I don't think I need to go into detail. Most of you are aware of the fact

that having a car -- washing a car in a car wash is substantially better than washing the car in the driveway. With all the water and detergent going into the storm system and into the bay. The system that's proposed for this particular project would, of course, the water would go into the drain, then it goes through what's called the sand oil separator, then to the purifier. Then approximately 80% of the water is recycled, and they're so pure, they can go through the nozzles of the system. And less than 20% of the water actually going to the sewage system which then would be treated by the sewage plant and then of course be discharged to the environment, which is substantially better than the average household.

>> Commissioner Bit-Badal: Excuse me. Sir, your time is up, but we have a commissioner that has a question for you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So I don't think anybody has an issue with the environmental part of the car wash. I think that's always a plus. The issue is the sound. So I'd like to ask you a question about the sound. In your opinion, is the sound from Camden because Camden is a pretty major street, is that --

>> Yes.

>> Commissioner Kamkar: Is that you know, is that as much as what this, you know, car wash structure would -- with your mitigation in place. I understand --

>> Well I have the copy of the acoustical report.

>> Commissioner Kamkar: Sound report and what does it say?

>> It talks about existing noise level and projected noise level. And I would just, thumbing through it, it did mention that Camden -- and by the way, the acoustical report was done in compliance with the noise standards of the City

of San José. And the noise level of -- anyway, the -- in -- essentially what it amounts to is after the wall is built the sound from Camden would be substantially mitigated.

>> Commissioner Kamkar: Who will build this wall? You, or is it --

>> The client, the applicant, it's on the applicant's property. We're dealing with 8 inch by 8 inch by 16 inch concrete block wall solidly filled with rebars and concrete, talking about something -- minimum of six feet is what the report recommended.

>> Commissioner Kamkar: Minimum height?

>> Six feet high. We are prepared to go to eight feet high. He says you don't really need it.

>> Commissioner Kamkar: I see.

>> But some people seem to feel better if they have an eight foot wall. It's purely psychological. Just his words. I'm not an acoustical engineer.

>> Commissioner Kamkar: Thank you.

>> I realize some others think of themselves as. Do you have any other questions?

>> Commissioner Bit-Badal: No we don't have any other questions. Thank you for your time. Next speaker is Leo Segal and following is Kamil Shagi, please line up, and also Parviz Mahadi.

>> Good evening, ladies and gentlemen. My name is Leo Segal. I'm an attorney and I represent Mr. Baybahani and the smog doctor. I've been a real estate attorney for 28 years. I'm not going to burden you with repeating the position with respects to the environmental benefits of this project. But I'd particularly like to address the benefit

to the community of this project. As you've just heard the sound levels would be attenuated by contribution of this project, not only attenuated with respect to the car wash itself but the ambient noise present existing noise today from Camden avenue would be decreased if this project is allowed to proceed as explained by Mr. Chow and the environmental engineer or the sound acoustical engineer. There are additional benefits to this project, however. I understand there have been at least one objection by a neighbor, a direct neighbor to the project, and his objection would be to logically the decrease in value to his property of allowing this project to be constructed. Well if his objection is the sound level we've just addressed that. If his objection is because it's not going to look good to have a car wash next to his property, it needs to be considered what is it going to look like if my client goes out of business which is likely without this project, if he's got an abandoned building to the next of him with transients and waste. That's going to decrease the value of his property far more than having a operating car wash there that benefits the community not only the environmental aspects but because of the sound level aspects. I would argue that his value would go up by construction of this project. And then there's an additional position that we have. One other thing. Mr. Enderby brought to the commission's attention the fact that the ordinance 6-10 dealt with the noise impact that could result from construction of the project. Well I'd argue that isn't as important as what would result. And yes, there will be an impact by construction of this project. But it would be a positive impact as we've explained. And finally --

>> Commissioner Bit-Badal: Thank you sir, your time is up.

>> Thank you very much.

>> Commissioner Bit-Badal: The next speaker is Kamali, Mrs. Kamali.

>> Hi, my name is Shan Kamali. Citizen of Campbell. I would like to have a car wash near to our home because really we need it and that's all I'm here, thank you.

>> Commissioner Bit-Badal: Thank you. And next speaker is Tiriz Matadi. Would you please come forward and restate your name.

>> Good afternoon ladies and gentlemen, my name is Parviz Mutavi. I've been a citizen of San José for over 40 years. I used to have a business and go to college of San José State. I've seen lots of improvement in the city especially in downtown area and the rest of the city has been neglected. Putting a car wash in that area is going to improve the looks of the neighborhood. Not only that, especially I have a property in the vicinity and it's going to improve, and bring the value of my property high. Also it good for the business, because we need the business in that area, because a lot of unemployment going on. And also, maybe city needs some more income, and by this means, we have some more means of income for the City of San José. That's all I have to say. Thank you.

>> Commissioner Bit-Badal: Thank you sir. We do not have any more cards on this matter so I'm going to call the applicant again. You have five more minutes to address any additional issues that you are not or comments that you were not able to address in your earlier presentation.

>> Madam Chair, my client would defer to me to finish his presentation.

>> Commissioner Bit-Badal: That's all right. Please come forward and state your name again.

>> My name is Leo B. Segal and I'm the applicant's more than this matter. There was one thing I didn't get to address and that was in the public community meeting that was held several months ago in this matter. My client wasn't even invited to that meeting. And if he had been invited he would have been able to explain the benefits of this project to the community members that appeared. And in fact it was at that meeting that one individual apparently voiced a concern about that project. The important thing about that is that it's our understanding that staff did not explain to the community, because it's not their position to do so, that this project would involve construction of the eight foot sound wall and if that had been brought to the neighbors' attention he might not have voiced any opposition to this project if he understood this impact of his property on the property he has, I would argue that this would increase the value of his property not diminish the valve his property. So again I think it's somewhat unfair that my client wasn't given the opportunity to explain this project to the community at that meeting. And is another reason why this project should go forward. The community just wasn't aware of the

benefit that it would have both environmentally, on the impact on the neighboring properties, and the sound levels in particular. It will be a benefit by diminishing the sound levels that already exist. And we know there will be an impact but it will be a positive impact. Thank you very much for your time.

>> Commissioner Bit-Badal: Thank you sir. Staff. Oops, sorry, excuse me sir. Would you please come back? We have a question from a Planning Commissioner. Planning Commission O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Actually I have a question for the applicant about the equipment. And also, I haven't seen the noise report, but did that take into account the specific car wash equipment, vacuuming station and then also, how does it address the issues of the stereo-playing, you know the things out of the control?

>> I'd like to defer that question both to Mr. Chow the architect and to the gentleman sitting next to him who is the representative from the car wash manufacturing company who has a wealth of experience with respect to the sound levels generated by his equipment, if you would permit me to do that.

>> Commissioner O'Halloran: Thank you. Madam Chair I also have a question related to this, to staff. When would I do that?

>> Commissioner Bit-Badal: After this.

>> I'm James chow, the architect, I'll try to answer the question for you. First of all the study was by Edward L. pack associate, Hamilton avenue San José. What they did was, they took all if tests from the site, the acoustical with the noise from the church across the street and Camden and throughout the day. Of the kind of traffic. Secondly they went to a comparable car wash facility with similar equipment in San Mateo to measure all the ambient level the decibel levels and so forth throughout the day through federation through various part of the operation. I'm a little disappointed that you didn't get a copy of this that it was submitted. But you just came on the commission. This was done September 11th, 2009. So we used this, we specifically had these people do the

acoustical analysis, because they are from San José. They understand the situation. They understand the City's regulations and standards. And that they would do a thorough job because they are familiar with the environment, the climate and all these other things which affect sound levels. Different times of day, temperature of the air effects, when it gets hotter there's a different amount of transmittal of the sound, whit gets colder there's a different level. That's why we picked them. We didn't pick somebody far away. Okay? And based on their recommendations we then put those things in the design. Now, four weeks ago we had a meeting with staff. And at that time, they wanted us to have the same people evaluate the new design, which we had to do after the December 2010 guidelines. And they reviewed it, and said their recommendation stands, because there is no significant difference in terms of sound emittance. But again I want to point out that the neighbors would have a quieter experience after the wall was built from the traffic on Camden and that's quite a bit of noise. If you have ever been out there I think you will know. It's really, really, we're talking truck traffic level, 85 decibels and higher. With this car wash equipment by the time you get to the sound wall we're down to about 40ish anyway which is completely very common noise level. If you go on the street that's what you hear and people aren't closing their ears screaming saying, "I can't bear this," okay?

>> Mr. Chow are you saying that --

>> Commissioner Bit-Badal: Excuse me sir, do you have more questions, commissioner O'Halloran?

>> Commissioner O'Halloran: Follow up. What is your response to the more qualitative issues of the stereo playing, for example, the vacuum operations, as far as the management and operation that's been addressed, what's your response to that?

>> Okay. First let me just talk about the cars and stereo. The stereo cars, we look at the plan that you may or may not have. The driveway, the queuing up is what they call it as you queue up, you know, and by the way I don't know why you guys set the standard for like McDonald's at noontime because we don't get ten cars. I've only been doing this for a few decades. We just don't, especially for a small facility like this. Regardless. These cars will be within three or four at the closest feet from the sound wall. As you know if you have a wall right here that

goes way up, eight feet high, and I'm talking when you're the other side of it you're not going to hear me. Because we're talking about eight inches of solid concrete. We're not talking about a plywood wall here. We're not talking about what we call acoustical perfume trees and shrubberies. The sound can only go in a straight line. Therefore the sound will bounce off the wall and go towards Camden. Now, he's the expert on car wash, so he can address the car wash doors. So if I may.

>> My name is Carlos de Jesus. I work for Ryko Manufacturing. I am a representative of the manufacturer. Several items that were mentioned by staff and also by this gentleman on the operation and also on the equipment. The car wash itself is quiet. It's the dryer. So the dryer travels with the wash system. And that sound stays within the building, because the doors, the bi-folding doors are closed during that process. Now, there was a comment mentioned earlier about maintenance and operation. If the doors were to fail, the doors actually, when you approach a vehicle-washing system, the doors are closed. So if the doors were to fail, there would be no car wash. The doors would be closed. There would be no operation. It does not start in an open position. For safety concerns. The door itself is at least two inches thick. It's primarily made of aluminum, for construction. But the outside is made of soft plastic material similar to Rubbermaid products. In between it are insulating material. Which deadens the sound which we have already provided to the acoustical engineer to make that test in a similar facility in San Mateo. Similar over to your question on vacuums, our vacuums also have sound deadening material. That was addressed as well. Hours of operation were also discussed in regards to sound. A question you had had about music and sound from cars that are waiting in queue. That could be addressed from an operational perspective. They will have people on the site that would be assisting the people in queue. And obviously they would have signage in place to have those, their music off, during the hours of operation. But again, as you had heard from Mr. James chow on how he has addressed the sound with the eight-foot wall. Thank you.

>> Commissioner Bit-Badal: Any more questions? You're welcome. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. What are the hours of operation? Are we talking anything overnight, 24 hours or basically --

>> No I believe the proposed hours of operation are for, and I'll look to my client for correction, 8:00 a.m. to 6:00 p.m?

>> We are open every day 8:00 to 6:00 p.m.

>> Commissioner Kamkar: When would you open for the car wash?

>> 8:00 a.m. to 6:00 p.m.

>> Commissioner Kamkar: You would only operate the car wash when you were there. Thank you.

>> Commissioner Bit-Badal: Thank you so much. We appreciate it. So now we're -- okay. I'm starting to get used to this, too. Commissioner O'Halloran.

>> Commissioner O'Halloran: Question for staff. First of all, a general question. Okay, can't ask a question of staff yet.

>> Commissioner Bit-Badal: I'm sorry, what's your question? Oh for staff.

>> Commissioner O'Halloran: Can I, or not?

>> Commissioner Bit-Badal: Is there a motion to close the public hearing?

>> Commissioner Kamkar: So moved.

>> Commissioner Bit-Badal: Staff.

>> I'm -- thank you, Madam Chair.

>> Commissioner Bit-Badal: Now, commissioner O'Halloran.

>> Commissioner O'Halloran: Should staff speak first or should I ask my question?

>> Commissioner Bit-Badal: We will allow staff to speak first and then you can ask your question.

>> Thank you, Madam Chair. Just to bring up a couple of points. Just to make it clear, the proposal under the noise report, Edward Alpack's recommendation is that the sound wall along the residential property line be six feet, not eight feet. For point of clarification, the eight-foot wall that's been identified as actually on the property line next to the commercial and it has to do with the nature of how the car wash is oriented. For some reason, the sound wall along that side has to be eight feet. You know, as you heard, staff does have concerns about whether or not, in an ideal world, the car wash can be mitigated, and perhaps it can. But just from a point of clarification, you know, staff's aware, we've done sound walls on freeways and so forth. We've seen them on expressways. And people standing on the other side of the wall can still hear the hum of the freeway, even if they're on the other side of the sound wall. Sound does travel generally in a straight line, but it reverberates on anything that's adjacent to it. It will reverberate on taller buildings that are adjacent. There's a retail building that's right next door, that's probably close to 20 feet tall, on the corner of Bascom and Camden. So it has an ability to reverberate off of that. In the event that two-story houses are later built on this site the mitigation that's being proposed would not mitigate the noise impacts to that second story. And so the proposal as the applicant or as the noise consultant would identify would bring it just to the threshold of acceptability. That's assuming the bifold doors operate well. The City of San José doesn't have experience with this particular manufacturer of doors. We've approved a lot of car washes over the years. Most cases it's never been an issue to have to have bifold doors, because we haven't approved them both within 200 feet of residential and most of them have been approved without any type of door. This would be the first one that I'm aware of in the City of San José that would have such a thing. And so the doors would have to seal well in order to do their job. Should the seals the rubber seals you know between the bifold doors wear out over time or should there be a problem with the mechanics

obviously we have car washes all over town that operate without car wash doors. It is not inconceivable to believe that at some point in time maybe those doors may not work and the system may be retrofitted to modify to just allow if the car wash is to consider the way they do at every other car wash, at a gas station that's similar to this that doesn't have doors. So the only other -- and the other thing I wanted to mention, with regard to the community meeting. Normally we have the applicant take the initiative to set up the community meeting. But we had some difficulty in getting them to actually do that. And so this is a rare instance where staff actually had to take the initiative to set up the community meeting itself. So we reserved the room, we sent out the notices and so forth. We send those out the same way we do for the public hearing. I do have -- and I was not at that meeting specifically, the staff person that works for me that's on vacation today was actually at that meeting. But the real intent of that is not so much to hear from the applicant. But really, to hear you know what the neighbors have to say. You know do they have concerns. Do they have concerns with the existing operation? And one of the things that was pointed out and we noted in the staff report, there was a lot of concern with the existing operation and just the smog check facility. When we were at a meeting with the applicant about a month ago the applicant had indicated in his opinion that the smog facility itself was actually a noisier element than the car wash. So to suggest that we add additional noise generating things strikes us as being something that's somewhat problematic. So anyway, in conclusion, you know we feel that there's enough elements of this that are certainly unpredictable. The applicant doesn't have the ability to control car stereos. The report made no mention of that because obviously it is well beyond the control of what the operator could realistically be expected to do but those are real world realities in drive-throughs, be it drive through for a fast food restaurant or drive-through for a car wash or pharmacy or any type of drive-through. So for that reason given the close proximity this is only 39 feet away I believe from residential use, just doesn't seem to make good sense to approve a car wash so close.

>> Joe Horwedel: And I will just put a kind of cap stone to that. The reason council has adopted council policy on drive through uses is because of the problems that come with that. And so the policy has been set of where it works well, and it does not put an undue burden on the city to go through and ensure that it complies with the conditions of permits on a continual basis or put the neighborhood at the risk of nonconformance or noncompliance with permit conditions. The reason we have separation requirements design requirements about stacking in those guidelines that the council's adopted. As you heard from the applicant staff has said that we

were willing to look at different options but it had to be one that really worked on kind of a day in day out sustained basis and to design a project that only works if everything works every day perfectly, is not in staff's mind a reason to violate council policy.

>> Commissioner Bit-Badal: Commissioner O'Halloran.

>> Commissioner O'Halloran: Madam Chair, I had a general question to staff about what constitutes council policy on drive-throughs. It's pretty obvious what the intent is but there's 26 criteria. And you know, does a project have to meet all the applicable criteria, or is it possible for the commission to find that a project is in substantial compliance with the policy or complies with the spirit of the policy? This is just a general question related to this.

>> Joe Horwedel: No, it's a very good question and it is one that is why it is policy or guideline that if there is flexibility about how to meet the intent of the design guidelines, or the policy that the council has adopted we do not go through and do kind of line by line, pass/fail or hit it 90% or 110%. We really look at, does it achieve the major guiding principles? Because not even all the 26 or whatever number are in here are equal. Some are more important than others. So as staff looks at and when we come forward with a project recommendation on any project with council policy and guidelines, we'll walk through of how we think it conforms with the major ones. And if there's a discrepancy, our thoughts around is that a good thing, bad thing, are there some other mitigating factors that would address what the intent was when the council adopted those rules.

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

>> Commissioner Kline: I'm going to get this rolling here and make a motion. I'm going to make a motion to deny the conditional use permit to allow the addition of the auto-mate car wash at an existing smog test facility on a .40 gross acre site in CN neighborhood commercial zoning district for reasons stated by staff and I will follow up if there's a second. Okay.

>> Commissioner Bit-Badal: Go ahead sir, second by Commissioner Cahan who is here present in the meeting.

>> Commissioner Kline: I take this denial very seriously because this is someone's business, it is their livelihood, I don't take it lightly at all. But we do have an existing city council policy. And whenever there is a policy that's surrounding a specific permit we have got to kind of use our judicial hats, our pseudo-judicial hats here and really focus on, is there any exceptions to this? Can we make findings to get around this particular policy? It looks like this policy was exactly designed for this particular type of situation. Yes, there is technology issues that are being brought up. But that's really probably not our position to look at the technology point. We're looking at a policy and a particular permit and is there findings, physical findings to allow an exception? I can't find any. I know sound walls fairly well and sound walls, you know just depends. It's just a lot of factors going on there. And I don't know the technology. We're not experts in that but a policy is a policy. So I would recommend that we deny this and let you appeal it to the city council. It's the council's policy and let them amend if there's an exception to that particular policy.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Unfortunately I would not be able to support that recommendation for the reason that I live near a gas station that has a car wash that's closer than 200 feet to residential. So I'm troubled, you know, that we apply the standard so strictly here, the car wash I'm talking about here is at the corner of de Anza and 85. There is an ARCO that just changed their brand to independent. But that ARCO is less than 200 feet to high density residential that in commission approved a few years ago. So it has happened before. And what I see, I see a businessman who is going over and above what any other reasonable businessman would go, to make sure his neighbors are taken care of. You know we can make it a condition that the six-foot sound wall recommended in the acoustical report to be eight feet. You know, so that we get that extra attention to our neighboring city I's resident. If I'm not mistaken, right behind this gentleman's business is the city limits between San José and Campbell if I'm not mistaken. But if it's not there it's pretty close. And so I feel in the economic times that we are, you know this is a business. I wish he would incorporate retail. I really wish woe come here and say fine I will start retail too. I would love that. But he knows his business better than we do and I think we shouldn't micromanage you know, when it comes to these things. You know this was a public forum. We

didn't hear from a single person that says they're opposed, you know. And we even got a letter if I'm not mistaken, I think everybody got that letter, e-mail from the Planning Commissioner, Planning Department, that one of the neighbors had said the noise in Camden is much larger than the noise that this facility would generate, you know. For those reasons, you know, I would not be able to support this motion. I urge my colleagues not to support this motion, and you know, hopefully we get a chance to put a motion to approve this application. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Abelite. [applause] I respectfully ask you to please do not clap or cheer during the hearing. Thank you.

>> Commissioner Abelite: Thank you. I am going to support the motion. I'm more concerned with supporting the integrity of the intent of the policy 6-10. You know, when they talk about having the opportunity to mitigate sound, I think all of the policy 6-10 has to do with high traffic corridors that are going to invite drive-through uses for pharmacies or for fast food or for car washes. So I don't think that the fact that Camden avenue puts out a lot of noise trumps the background issue. I think that was already part of the 6-10 policy. I think it's very important that we maintain the 6-10 policy. In this particular case, this is way too close to any residential. The site is also rather small for a car wash facility. It actually is designed in a cramped manner. And I see no compelling reason to actually go against the motion, I think it's right on and I'm happy to support it.

>> Commissioner Bit-Badal: Any more comments? And I personally will not be supporting the motion as well. The applicant seems like he is going above and beyond trying to mitigate the neighborhood by providing the sound wall. If he want we should also put forward eight-foot sound wall proposal, just like Commissioner Kamkar said. Also, this is a public hearing. I am very surprised that not even one single neighbor has come to the public hearing to oppose the project. Usually, it's opposite. You would have many people coming opposing a business such as this coming. And it seems like not only this business owner is a good neighbor but also his proposal is a good one. So with that, I will not be voting for the motion that's placed forward. Thank you. With this, I will ask for lights. For members to vote. This motion passes by 5-2 and those opposing are commissioners cam and Bit-Badal. Now we're going to item 3B. Conditional use permit, staff.

>> Thank you, Madam Chair. This conditional use permit is to legalize an existing drive through use for a restaurant. Site, landscaping, and facade improvements are not proposed as part of this project, other than legalizing a drive-through red no added onto the building without the benefit of permits. Staff is recommending denial of this project because it does not conform to the City Council's drive through policy for the following reasons. One, the city policy requires drive-through uses to be located 200 feet or more from residential use zone or general plan properties. This drive through use is 55 feet to the adjacent residential use zoned and general planned property and is 130 feet from the nearest residential building which is a two story multifamily residence. Second, the policy specifies that drive through speakers should not be used when the drive-through lane abuts residential used, zoned, or general plan properties. This drive-through use proposes a speaker. Third, the policy states that drive through stacking lanes shall be separated physically from the use of parking lot and pedestrian crossing of the drive through lanes shall not be allowed. This drive-through configuration interferes with onsite vehicle and pedestrian circulation. Staff is also recommending denial of this project because CEQA review is incomplete. A noise study has not been completed to verify the noise levels, that noise levels will not exceed 55 decibels at the residential property line. As previously mentioned by the director of Planning, staff is concerned with the use of direct adjacency to residences and inconsistencies with the city council's drive-through policy therefore staff did not feel it was beneficial for the applicant to spend time and resources on preparing a noise report. Lastly staff would like to point out that the applicant submitted an alternative drive through configuration which is attached to the staff report. While this scenario improves onsite circulation compared to the existing configuration this alternative would create an even greater noise impact given its closer proximity to residential properties. For this reasons, staff is recommending denial of the project. This concludes staff's report.

>> Commissioner Bit-Badal: Thank you staff. We have the applicant here. Would you please come forward? Either Connie Lozon or John you would have five minutes to speak on behalf of your project and please state your name.

>> Yes, thank you, good evening. My name is John Lozon. My wife Connie and I inherited this property from her parents when they passed away about five years ago. My father-in-law acquired the property in about 1977. It

was originally a Taco Charlie's and very quickly taken over by a Taco Bell franchise. We don't know when the drive through was installed but we do know it has been there in operation for at least 20 years and we know there has never been a complaint filed with the city. We have recently been told that the drive-through may have been installed without the benefit of city approval. The current tenant the Taco Bell franchisee has been there for a long time and now wants to completely renovate the property at their expense. Yum corporation, the parent company of Taco Bell, wants this location updated and will not allow the current operation to continue as is. They want the new look. The drive-through is critical component, as it generates 30 to 40% of their income. We're requesting the city to grant us the values permit to continue the drive through and we can then renovate the property generate more property taxes for the city and keep 17 people employed. This property was left to us to help us with additional retirement income. Without the approval the property will become vacant as of December 31st of this year. Their lease expires. And Connie and I do not have the resources to fix it up. Taco Bell is going to pay for all the improvements. We have negotiated a reduced rent from the fair market value to make it worth their while. Community meeting was held on June 25th at a location across the street from Taco Bell. No one from the residential complex next door attended this meeting. As a matter of fact the only other person besides my wife and I was the owner of the Mexican restaurant property next door to our location. He also had his real estate broker with him as we did. No one else was there. I conclude that there is no objection from the community to allo the drive through to continue. The owner of the restaurant next door is the financial conglomerate from India buying up properties here in the United States. He does not live in the community. I made it clear to him that my property is not for sale. I have followed another project in the city that regards a drive through with conditions that don't meet the city rules. I recently saw an article printed in the Willow Glen Resident that says the city council voted unanimously to change the zoning for a portion of a triangular shaped retail location on Bascom and Union and Curtner. Both the Planning department staff and the Planning Commission approved the project. However, some of the residents were unhappy with the addition of the McDonald's drive-through and the traffic they expect to generate. Also it noted this project was within 300 feet of an existing Wendy's drive-through when the code calls for 500 feet. There is only 180 feet between an apartment building and the far end of the McDonald's drive through when it should be 200 feet. In the words of District 9 councilman Don Rocha, who represents this area, he said he was aware of the community concerns about locating other fast food drive through in the area and increased traffic that may generate.  But he added that developers can't always provide communities with a

perfect fit. He says there is some public benefit and approval because the project introduces landscaping and rebuilds crumbling sidewalks without public assistance. That's exactly what we want to do, including rebuilding of an aging structure, and we have no community dissent other than the Mexican restaurant owner next door, and we are not located within 500 feet of another drive through. The major problem is we have the 200 foot rule to a residential complex. The property is adjacent to a residential complex but the nearest residential building is 130 feet away. We have proposed a high sound wall -- excuse me -- and we have also agreed to put in double pained windows in the few units that face the Taco Bell property. Please give us a chance to improve the can property. Thank you very much.

>> Commissioner Bit-Badal: Thank you sir. Next speaker is Connie Lozon and the following speaker is wish Agarwal would you please come stand in line.

>> Hi, I'm Connie Lozon, I'm John's wife, it is my parents who owned the property who are now deceased and left it to me. It was four of us children, that is the property that I got and now I'm real upset about the fact that we're going to lose the Taco Bell. They have given us notice that they are leaving, that they are challenged by the dissent that the city is telling them and are leaving so we're going to have an empty building that has a drive-through that we did not know anything about. And want to help these people. And we questioned them this week would they stay, and they said they would, but yum, the corporation who granted them the -- you know to stay there but are saying no, they have to leave. Because they want it remodeled. I want it remodeled. So everybody can enjoy a beautiful building. McKee avenue is nice, it's a nice street, it's got some beautiful buildings there. Lot of plenty of other drive-throughs and fast-food places and I'd love to have my place look that way. But -- and their lease says that they would -- they'll do that and they plan to spend the money. We don't have the resources to fix it up. And so we're quite upset about this so we're pleading to see if we can move forward and keep our tenant. I thank you very much.

>> Commissioner Bit-Badal: Excuse me we have a question for you from commissioner Matt Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. As far as the timing, you know, if this, you know, application went through, you know, to your favor, what kind of assurance can the city have that they will go in and get this done so it's not going to be delayed another five years?

>> Well, they want to stay. They make good money from this location. And they told us they will stay, and we will write up a new lease for them to stay.

>> Commissioner Kamkar: I know. But my concern is they are operating on an unpermitted drive through.

>> We are unaware so that's what we're asking for.

>> Commissioner Kamkar: It needs to become legal. You know assuming that it has to become legal, question is, is there some kind of assurance it can be done quickly and not three, four, five years down the road.

>> No, it will be done and I can get whatever assurance that you need because yum the corporation says they have to leave if they can't do it. They don't want to leave but they have to leave.

>> Commissioner Kamkar: Thank you.

>> Commissioner Bit-Badal: Thank you. The next speaker is Mr. Avish Agarwal. Would you please come forward and restate your name.

>> Thank you. Good evening, ladies and gentlemen. My that is Vish Agarwal and I'm the adjacent property owner. Let me correct it. I'm a first time buyer of real estate property I'm a marketing professional, just want to clarify for the record. As adjacent neighbor we are very concerned about the illegal drive-through. It's a code enforcement issue, and city should follow the guidelines, and enforce the code to prevent the subject violations. Number 2, when you look at the illegal drive-through, it's looking very unsafe. If you look at the ingress and egress they're crossing each other. So essentially, incoming traffic, coming like this and outgoing traffic going

like this. You know I've seen many drive-throughs. I'm a U.S. citizen living here for about more than 20 years. And I've never seen a drive-through which crisscross like that. The accident can easily happen in such a circumstance hence the legal drive through should be immediately shut off, to prevent any such event. I've heard that it's been there for a couple of years, nothing has happened, we don't know for how many years it has been there. If you approve it two wrongs doesn't make a right. You know, if you look at the structure on the site I've been there a couple of times and it's very dangerous when you look at it, the way the entry and exit are. Both the current plan as well as the new plans. The illegal drive-through currently, as well as the new plan, is also causing unwanted commotion, noise, and safety issues in and through our parking area. As well as to the adjacent property which is the residential property. We would like to avoid the traffic impact on our property, since this adjacent property does not seem to have wide enough space to facilitate a drive through.

>> Commissioner Bit-Badal: Thank you sir, your time is up but we do have a question from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Mr. Agarwal, are you familiar, are you aware of any accidents that have taken place as a result of the current configuration?

>> I am not aware of any accidents. But I'm aware of an issue that this drive-through and this Taco Bell facility has not been updated in the last 20 years. In fact I am aware of like it's my understanding that there's been ADA noncompliant lawsuit against the owner. And if you visit the property you look at the broken tiles, you look at --

>> Commissioner Kamkar: I'm sorry, my question was about the accidents as a result of the current configuration of drive-through and you're telling me you are not aware of any?

>> I'm not aware of any. But if you look at the drive-through the way it is at the waiting to happen any time.

>> Commissioner Kamkar: Got it.

>> And two wrongs if you approve it we're again going to be going wrong and two wrongs won't make it right.

>> Commissioner Kamkar: I'm also a transportation engineer so I understand what you're saying.

>> One thing I could say --

>> Commissioner Bit-Badal: Is it in response to his question? If it's not you can't. We have Commissioner Abelite.

>> Commissioner Abelite: One quick question. Are you the property owner immediately to the east?

>> On the ride inside Taco Bell, yes. I am the property owner.

>> Commissioner Abelite: Are you aware, do you have any mutual driveway easements reciprocal? Is there any reciprocity between these properties?

>> There is none on record.

>> Commissioner Abelite: Thank you, have no more questions.

>> Commissioner Bit-Badal: Thank you sir, no more questions. At this time the applicant has five more minutes to respond. Up to five minutes.

>> My name is John Lozon property owner. I wanted to say the objective here I realize the existing drive through the way it is it has been there for 20 years or more. The traffic flow is probably not the greatest but our objective is to really tear this down completely and build it from scratch and reroute the drive through in a conforming manner. But because of the problems we had with Taco Bell and the city we were trying to get a legal use for the drive through before Taco Bell is going to make a commitment to spend the half a million dollars or more that they

have to spend to knock this building down and build a new one. This gentleman mentioned a lawsuit. The only lawsuit we have had on the property was the ADA came by and noticed the bathroom door wasn't wide enough. We are going to take care of that. The problem is we hate to spend the money to upgrade the bathrooms in a building we might be tearing down in a few months. We were trying to get a decision so we could bulldoze the building completely flat and build one with ADA compatible bathrooms. The noise issue, again, the sound wall, the double paned windows, there was nobody from the apartment complex at the community meeting and the community meeting was held right across the street from the apartment complex. Right within walking distance. The gentleman mentioned the noise, I don't understand the noise concern for him. His property is the Mexican restaurant, they have mariachi bands playing in there that is much louder than the speaker we have. And when we do put in a new speaker, the new technology on the speakers is different than it was 25 years ago, and the sound doesn't carry as far as it used to. So we can fix a lot of the problems if we're allowed to scrape the building to the ground and put up a brand-new one and reroute the traffic. We were having dinner tonight at a pizza place, and we looked across the street at the Taco Bell -- I'm sorry -- at a jack in the box, and they had a drive through. And the traffic comes in one side of the building and goes out the other side. But as the traffic comes in for the drive through, the people that are parking to go into the restaurant has to cross the traffic pattern of the traffic going in to get to the restaurant. There is no way to alleviate that. Every building you go into, you park your car and you have to cross the parking lanes to get to the building. But if we could move the building over, and put the drive through on the other side it eliminates the problem. So we think it can be fixed. The Taco Bell people want to do it. They're willing to start construction as soon as they get the go-ahead that the drive through is legal. It all hinges on the drive-through. Without that, we're left with a decaying building that we can't fix up and we'll have to find maybe a Chinese place to put in there. I don't know what we can do but we ask your help to get the drive-through legal so we can put a state-of-the-art Taco Bell in there.

>> Commissioner Bit-Badal: Thank you, we have a question or two from commissioners. First commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I want to get to conformance with the intent of the policy. Obviously you're within the 200 feet so you can't meet that. But it seems like you're willing to do things as

far as noise mitigation. You mentioned the windows, can you tell us a little bit more about what you're prepared to do on that?

>> There's only a few units that have windows that face this complex. Most of the units are much further away. And we're willing to replace those windows with double or triple pane windows to help with the sound.

>> Commissioner O'Halloran: Okay so you would be open to that as a condition. Also, can you tell us anymore about the changes in technology for the drive-through, the squawk box I guess? It's probably pretty old. Has it been there 20 years or --

>> It has been there at least 20 years. I would venture to say it was there from the 1979 time frame, 1980 and it's old technology. I'm not an expert in sound technology but the expert indicates the technology has changed over the years and the noise is directed to the car and doesn't spread. And we were planning on putting it -- we can't get more than 200 feet away. So we thought if we brought it closer to the wall and actually put it on the wall facing away from the apartment complex it would mitigate the sound better than putting it on the other side and facing it towards the apartment complex.

>> Commissioner O'Halloran: So and finally all these issues that have been brought up about the state of the property, the unkept parking lot and the broken tiles et cetera, all these would go away if you are allowed to redevelop and essentially what you're proposing is a state-of-the-art brand-new Taco Bell?

>> That's correct.

>> Commissioner O'Halloran: But that's not subject of this. You haven't submitted plans for that, you're just looking forward to legalization of the existing drive through in order to proceed?

>> In order to have a legal drive through on that property before we start spending half a million dollars on that property.

>> Commissioner O'Halloran: That's what yum corporation requires from you?

>> Yes.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: Do you have an LOI, a letter of intent from Taco Bell to continue the lease or a lease that's conditioned on successful approval?

>> I have a lease that ends December 31st with an option to continue and yum has come back and said no they won't exercise the options without the drive through. At the time we had the options we had a drive through we thought was legal. They were going to exercise their option and now we find out the drive through is not legal and they're not willing to exercise their option unless the drive through is legalized.

>> Commissioner Abelite: Thank you.

>> Commissioner Bit-Badal: We have no more questions for you but we do have one more speaker. The final speaker is Tony Verde. Would you please come forward and restate your name.

>> My name is Delocha Verde. I go by Tony Verde. I'm a real estate broker who sold the property to Mr. Agarwal. He wanted me to clarify a few things. And I wanted to step up and clarify a few things. Number one, I have been talking to Taco Bell and the franchisee. Number one, Taco Bell is gone. There is no letter of intent, there is no LOI, and in my knowledge, in our knowledge they will shut that door by the end of this year. And the issues you probably know, the condition of the property, not a legal drive-through. And several other issues. And on the cost, that Taco Bell will not spend any money to fix up the property. That's the big issue between these two

parties. That's not my business. We have no interest in this one. But for some reason, and we had the architect on site. There is an issue that impact this property, and that's the reason my client came over and wanted to kind of bring it to your notice. This is a pretty tight, dangerous drive-through. I understand there has been no accidents. But you know that doesn't predict that there cannot be any accidents in the future and I think city should -- I know you're transportation engineer probably you know that better. But the accidents can happen any time. That's why they call it accident, okay? So but you know, and I guess you guys know better. But any questions I can respond to that. I mean we did -- I think we do have an application in for the drive through at our location. We don't want this drive through, whether proved or not, affect the drive through applied on the corner. Any questions?

>> Commissioner Bit-Badal: It does not seem like there are any questions at this point. Actually O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. To be clear, do you say that you have another application for a drive-through?

>> You should have received an e-mail today that my client did submit an application for a drive-through on the corner.

>> Commissioner O'Halloran: On where?

>> On the corner. On the corner. My client owns the property which is on the corner of McKee and JosÈ Figueras.

>> Commissioner O'Halloran: You have submitted an application to have a drive through on an adjacent property.

>> Yes, sir. To answer his question, there is no LOI from Taco Bell to anybody else.

>> Commissioner Bit-Badal: Thank you sir, thank you. And at this point I will have a motion to close the public hearing. Oh, okay. Thank you, Commissioner Cahan. Actually I want to ask the applicant. I'm just going to give you two minutes to respond. This was unusual because we had not closed the public hearing and after your rebuttal, you had someone make additional comment. So two minutes only.

>> All right. My name is John Lozon again. I'm shocked at what I heard here. Mr. Tony Verde has approached me on several occasions to want to buy my property, I told him time and time again it's not for sale. I just heard, he is applying for a drive through on his Mexican restaurant, I don't understand that at all. And he says that we don't have a letter of intent from Taco Bell. How would he know what I have from Taco Bell? I have a lease agreement with a 20-year option that they want to exercise with the drive-through. I have that document, and he hasn't any idea of what I do have or don't have. So I have what I said I have. We wanted not only to fix the drive through, but we're going to relandscape the entire piece of property, new parking facilities, everything on that entire half an acre of ground would be brand-new. Thank you.

>> Commissioner Bit-Badal: Thank you sir. With that I'll entertain a motion to close the public hearing. Second. All voting please say aye. Thank you. Staff.

>> Thank you, Madam Chair. Staff analyzed the proposed drive-through on its own merit and consistencies with the drive-through policies, but for purposes of clarifying staff's implementation of the drive-through policy, the difference between this proposed drive-through and the one that was recently approved, or the rezoning rather to allow a drive-through at Bascom Union and Curtner, that project proposed a drive-through that did not interfere with pedestrian circulation, and second, no residentially zoned or general plan designated properties were located within 200 feet of that drive-through use. Furthermore the closest residential unit was 260 feet from the drive through speaker. Secondly again the C.U.P. is for the drive through use. It doesn't preclude the property owner or tenant from making site and facade improvements which planning staff could support and approve through an administrative permit adjustment process. And lastly with regard to noise mitigation conditions the property owner indicated that he was willing to install double pane windows on the adjacent residential buildings. However it's still staff's concern that on warm days such as today, if the residential units don't have any air conditioning units, the

windows would remain open throughout the day and the evening. So there would still be noise concerns with relation to that. That concludes staff's comments.

>> Joe Horwedel: Madam Chair, I would also note that as you heard today, there is kind of a question of what the project description is with this use, what staff has brought forward is a proposal to legalize the existing drive-through. The applicant is doing that in attempt to satisfy Taco Bell corporate of what their national standards are, or expectations of communities to approve their businesses. It does not preclude the applicant or Taco Bell to filing an application for putting a drive-through on this site with the new building. Staff does not have a proposal of what that new building is. It's been talked about. But there is nothing of which to react to. So staff's recommendation for denial is that the building and drive-through as proposed. And just as Commissioner Kamkar noted, the drive-through out on de Anza boulevard, that an exception was made along the way. This would be the most glaring exception the city would have ever approved for a drive-through. So it becomes the new bottom of what we would be expected to approve across the city. So it is pun from staff's line there is no compelling policy reason to support this other than the fact that somewhere along time that a prior property owner went through and made these modifications to the property. You know we are willing to go through and look at something that works differently on it. I think one of the challenges is I heard two different things also in relation to the property because the property line goes through the middle of the driveway. And are there or are there not recorded easements against that, that would preclude building on top of that? Are there prescriptive easements so there are a number of issues that when you look at moving the building and the drive-through lane different than what it sets today? Staff has not really had an opportunity to look at that. That would be through a use permit proposal for a new building. And Taco Bell has moved forward on those on other properties where they have not had a drive-through, and some staff have supported, and others staff has not supported. But it is one that just my closing piece would be, not every fast food restaurant has a drive-through. It is not the City's policy that every fast food restaurant gets a drive through and fast food companies want to make a decision, do they want to be in San José and serve their clients and their customers and there are different ways of doing that and in some cases drive through makes perfect sense, and staff supports those, and other places it is wholly inappropriate from a general plan basis all the way through council policy and zoning to not do that, regardless of what a national company's expectations are.

>> Commissioner Bit-Badal: Thank you. We have Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. What are the current hours of this drive-through?

>> Joe Horwedel: It operates to midnight today staff says The drive through.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan. Commissioner O'Halloran.

>> Commissioner O'Halloran: So to be clear, staff, once a new proposal is submitted, as long as it has a drive-through, staff wouldn't be able to support that, is that correct?

>> Joe Horwedel: No. And so the project that was talked about on Curtner and Bascom was a site that did have some inconsistencies with the council policy. Staff analyzed those, looked at what the intent of the policy was, and separation of two drive-throughs was one of those. We looked at it and said the drive-throughs operate on different faces of the site, the circulation moves in a different direction, and therefore it was not a fundamental flaw with conformance with the policy. But that was analyzed in our staff report, we looked at the traffic implications of that, and the council ultimately had that consideration when they made a decision to support it. We also looked at the separation to residential and functional and technical conformance with the policy and again looked at how the residential buildings were situated, the interface which was a public street that separated the two uses, and so the residential kind of went the other direction. And where the drive-through entrance of the stacking versus where the actual activity that really occurs in the stacking lane which is at the ordering box and at the pickup window. Those are the furthest away as opposed to the entrance which was the Carlos to the residential in which case we supported it and the council supported it too. So it is one that staff does not have blind kind of allegiance to the policy, we look at what the intent underneath that is in places where we think it makes sense. I don't know if we would end up being able to support one, because I don't know what that -- where that building would go where

the drive through would go. I have my druthers of how I would sketch it out to try to get the best conformance with the policy, but it would be at a substantial probably expense of potentially negotiating with the adjoining property owner over easements or prescriptive easements, relocating electrical distribution systems that completely scrape the site and start over.

>> Commissioner O'Halloran: Staff has recommended denial and I appreciate staff doesn't want to waste the money of the applicant's but do you see a path forward that we could allow the applicant to get the commitment they need in order to advance that project?

>> Joe Horwedel: The application that is in front of the commission is for approving this drive-through as-is. And staff our opinion is, there is no business reason no policy reason no fundamental reason why we should approve this drive through as it exists today. If there was an application that was filed for a totally new from the ground up building drive through that is a different question. That has not been analyzed. That is not the purpose of the application, that is to legalize this drive-through. So we've done our analysis, we've done the outreach we've brought it to a layering.

>> Commissioner O'Halloran: Okay.

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

>> Commissioner Kamkar: Thank you, Madam Chair. If you had a letter from Taco Bell in your hand that said if you know this drive-through was legalized, we will be staying in this place, because what I see, I see like a vicious circle, like a chicken and egg type of thing. We want commitment to you know give this gentleman what he wants and at the same time, Taco Bell wants the commitment from us first, you know according to testimony. You know so if you had such a letter in your hand, let's say this case were to be continued for you know two weeks and you got such a letter, would the department change its recommendation?

>> Joe Horwedel: No, we would not, it would not. Yes because they're saying it would be to continue to operate this drive-through and that's what this application is about and we think it's inherently unsafe and it just --

>> Commissioner Kamkar: There would be no push for them to legalize it and to upgrade it?

>> Joe Horwedel: Again if there was a application for a brand-new drive through, brand-new building, that dealt with all the issues of this property, that's a very different question. But that has not been what has been presented to the city.

>> Commissioner Kamkar: Makes sense. Thank you.

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

>> Commissioner Kline: Question of staff. It is my understanding that we really cannot approve this tonight, we have to either defer or deny that, because the environmental reports are not been done? So we don't actually have the capability of approving this?

>> Joe Horwedel: Correct.

>> Commissioner Kline: Thank you.

>> Commissioner Bit-Badal: Commissioner O'Halloran.

>> Commissioner O'Halloran: Is there a mechanism to give approval for a sunsetted period, say for two years or something like that?

>> Renee Gurza: Again, the question for you this evening, the two options are either to deny or indicate to staff that you think there's a reason to continue processing. So because the CEQA has not been completed your only

option tonight would be to deny. However, if you thought there was some reason for staff to continue to analyze the project and continue to process it, then that is another option. As the director mentioned at the start of the meeting, where a proposal is so deviant from the policies in place, in the staff's opinion to try and save everyone time and money they'll bring them forward, to ask the commission's question before a lot of money is spent, it's sort of similar to Taco Bell saying before we spend all this money we would like to know, can we have a drive through. So in the similar vein staff is saying that we so strongly can't support it, that rather than have the applicant spend the additional time, money, resources to continue to process it, when the staff is indicating to the commission that they don't see a way to support the project, this is an avenue to save some of that time and expenditure of money.

>> Joe Horwedel: Kind of can I add one piece to your question Commissioner O'Halloran about the two year time line, if we continue processing and brought forward the C.U.P. with a two-year time limit, that C.U.P. then the applicant has the ability to come back and continue to extend that, essentially forever, is that the presumption in our Muni code is there is no such thing as a temporary use. When you approve it, it is allowed to continue even with a five year time frame or two year time frame for a use permit. The code says that the only reason we can deny that is if there were fundamental changes that have occurred that would fundamentally change why that was approved to begin with. But if we say it's good enough to approve a front the doing code the City's rules have a presumption that that will continue in perpetuity. That's partly why we take a more conservative approach then. Because we really don't have the ability to say go away in two years.

>> Commissioner O'Halloran: Thank you.

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

>> Commissioner Abelite: I want to go ahead and make a motion. I am going to make a motion to follow staff's recommendation to deny the conditional use permit to facilitate a building remodel and legalize a drive-through use for the existing Taco Bell restaurant on approximately .55 acre site ton commercial CN zoning district for the reasons stated by staff.

>> Commissioner Bit-Badal: Do we have a second?

>> Commissioner Kline: Second.

>> Commissioner Bit-Badal: And would you like to speak to your motion?

>> Commissioner Abelite: Yes, again, I want to -- I think my primary focus is policies 6-10. I think we're just -- there's a lot of things that don't add up to showing me great hope for having success in the long haul. The site is narrow, the site has complications with a driveway easement nonexisting between the adjoining parking lot, it's too close to residential. It would be setting a new low bar for policy 6-10 and it's also frankly not a class A site for a Taco Bell in my view, my personal view, and so I just don't see enough items coming together in a perfect storm to motivate Taco Bell to come here, and even if they did, we'd be all faced with policy 6-10 and so those are the underlying reasons for my motion.

>> Commissioner Bit-Badal: Thank you, Commissioner Kline. Do you have -- would you like to make comments to your motion or your second?

>> Commissioner Kline: Sum up pretty quickly. The main thing the issue is we're not looking at the project we want to look at. We really want to look at project that scrapes the site and comes back and does what I think the land owner actually wants to do but they've run out of time or resources or Taco Bell is not as committed as they really want to be. If Taco Bell is really committed, they would have a team here. The project I want to approve and say yes to isn't here. We want to approve this area we want to approve this corner. It is all about design. There could -- design is everything. If great design can fit a drive through here probably if design was great. I don't have a design so I can't tell that for that reason. I'm going to support the motion because I can't support a drive through continuing use drive through because we are basically encouraging breaking policy and breaking rules. Which we can't do. There's a reason for these rules. There's a reason for policies and I can't find any findings at all to allow it to continue.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I am very sympathetic with the situation you find yourself in and I wish that I could approve the existing drive through so that you could pursue your negotiations with Taco Bell. Unfortunately, if those negotiations didn't work out, and Taco Bell ended up pulling out, then we'd be stuck with this existing location with the drive-through that is not as it should be for this spot. And because of that I cannot -- I can't support what you want out of this. I have to go, I have to support the motion. And I agree with my fellow commissioner that we would like to see a really about plan for this area and I would love to be able to support a good project here. And I'm hopeful that you will be able to come up with that. Thank you.

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

>> Commissioner Yob: I just wanted to echo some of the comments my fellow commissioners have made. That we are very sensitive to the situation the applicant finds itself in, that having inherited this property with the nonconforming drive-through, the application that's before us was one that we -- I personally am not able to support. But I just want to encourage you to work with the city and with your tenant and with Taco Bell to see if there's something you can come up with, and hopefully we've made enough comments here that you can take those comments back to Taco Bell and explain to them that you know, if we had a different proposal in front of us, we would be willing to consider that. So with that, I won't be able to support this motion but would be open to looking at it again in the future.

>> Commissioner Bit-Badal: Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Yes, I just wanted to say that I will reluctantly be supporting this. I agree with my fellow commissioners, that it's really the other project that we want to see. And I just hope that Taco Bell will take the comments that are being made here as an indication of our willingness to work with them. I think an improvement on McKee road would be very beneficial and I hope that happens.

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

>> Commissioner Kamkar: Thank you, Madam Chair. Same with me. I will vote no just to be different but it will be basically for the same reasons. I do hope that you will come back with a better project. You've got a great site, busy McKee street. I think Taco Bell would be lucky to you know get this side so I encourage you to forge ahead, you know tell Taco Bell read between the lines, you know, they got what they want. Thank you.

>> Commissioner Bit-Badal: Thank you. And I will be supporting the motion. The reason is because we do not have a project in front of us, in order to approve this I would like to see some sort of an improvement to the site, whether it's building and proposal from business. So to me that is what I would like to see before I vote for such project. So I will be voting for the motion to deny. With this, I will ask for commissioners to vote with lights. The motion passes with Commissioner Kamkar voting no. Thank you. Next item is, item 3C. Conditional use permit to allow a new private club. Staff.

>> Thank you, Madam Chair. This is a conditional use permit to allow a new private club for the Alano club west with an existing 1310 square foot commercial building with associated landscape and parking improvements on a .49 gross acre site in the CP commercial pedestrian zoning district located at the Northwest corner of South Winchester boulevard Cadillac drive. Planning staff recommends that the planning commission find the project in conformance with CEQA, and approve the conditional use permit on the subject site, for the following reasons as described in the staff report: The project is consistent with the City's general plan the envision San José 2040 plan and the land use transportation diagram of neighborhood community commercial. The project complies with all applicable provisions of the CP commercial pedestrian zoning district and has sufficient parking for the use. The project is compatible with the surrounding land uses and will promote the renovation of the existing site which is tired and need of remodeling and refurbishing. In addition to the approximately 790 mailed notices for this public hearing, notices were sent via e-mail to neighborhood leading representatives of the Winchester NAC, Edenvale, Lindhaven, and other neighborhood associations within this area. Staff would like to add one minor condition to this permit which was discussed with the applicant and that's with respect to the use of the outdoor

patio. There is an outdoor patio that is along the northerly side of the site, facing the adjacent commercial use. But given the proximity of residential uses and the applicant has expressed willingness to accept this condition, that meetings for the facility be held indoors and not outdoors and that any activities on the patio cease at 9:00 p.m. This concludes the staff report.

>> Commissioner Bit-Badal: Thank you. At this point I will call the applicant. Would you please come forward. You have five minutes. And I only have one card so far which is Gary Mead.

>> Thank you. My name is Gary Mead. I'm the act club president of the Alano club board of directors. Thank you for your time tonight and the staff's willingness to look at our permit application and give us a favorable recommendation. The Alano Club west has been in existence since 1974 and has done a lot of work in the community in San José. Unfortunately we lost our facility on Minnesota avenue and we've looked for a new home ever since and we found this one in a community we believe we can impact in a positive way and we're welcome to the staff's recommendation about the closure of the patio and the minimizing of the noise after 9:00 p.m. in the evening. We have also, in addition to this, been approached by some of the NAC and community groups that staff mentioned and ask if they could use our facility as well for their meetings, and we are open to that and are willing to discuss that with them at any time. So I want to thank you for your time tonight and Mr. Enderby thank you very much.

>> Commissioner Bit-Badal: Thank you, actually we have a question for you, sir would you please come back, we have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. What are your hours of operation?

>> We typically hold meetings various times of the day. Right now the TV schedule is four times of the day, 7:30, noon, 6:00 p.m. and 8:00 p.m. Meetings typically last for an hour.

>> Commissioner Cahan: You would typically be done with all your meetings by 9:00, 9:30, at the latest.

>> Yes, we have people who like to hang around and communicate, commiserate.

>> Commissioner Cahan: You would make sure those were inside?

>> Inside not outside.

>> Commissioner Bit-Badal: We do not have any other questions for you. We do not have any more speakers card on this item. So instead of having public hearing and other comments from the application I will entertain a motion to close the public hearing. Do we have a second? All those approving please say aye. Thank you. Staff.

>> Staff has nothing to add. Thank you. Thank you, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Would I like to make a motion to approve the conditional use permit to allow a new private club within an existing 1310 square foot commercial building with landscaping and parking improvements as recommended by staff with the condition that the outside patio would cease being used by 9:00 p.m.

>> Commissioner Bit-Badal: Thank you, do we have a second? We have a second from Commissioner Kamkar. Would you like to speak to your motion?

>> Commissioner Cahan: It sounds as though the project would benefit the community and that the noise level will be low and so I don't see any negative issues with it.

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

>> Commissioner Abelite: I do have a quick question for staff with respect to the added condition. You know the site is on a very busy road. And the neighbors, which is the apartment complex behind it, you know, they're

basically all closed windows or closed off. I'm just curious why the condition was added. It seems like the background voices that you might have emanating from the patio would be completely trumped by the road, and I just didn't understand why the condition was brought in.

>> Well generally this is not done, the noise report is very difficult to measure the voices of the individuals that might be there based on how many are there. The circumstances is that the adjacent apartment complex on Cadillac which abuts the parking lot and also has a direct view of the patio has a five foot setback from the property lines. And there are second-floor windows, and all of the second-floor windows are bedrooms. And so while it's true Winchester is a noisy street at some point in the evening the traffic does die down a lot. And based on information we have reviewed in noise reports for drive-through restaurants on other busy streets and trying to analyze at what point in time does the street become the quieter element from a drive through learning from that we found that the traffic noise subsides substantially usually around 9:00. And so for that reason 9:00 seemed like a reasonable amount of time that happened to coincide with the meeting times that the applicant had identified and so it seemed like a logical condition to include. There had been issues with the Minnesota facility, years ago, which was close to residential. And issues and sometimes with people gathering outside, and impacts on neighborhoods. So I think it's prudent to include a condition that at least attempts to try to address that.

>> Commissioner Abelite: Thank you.

>> Commissioner Bit-Badal: Thank you. I will also approve the motion. I am very familiar with the organization. I used to live in Willow Glen so I'm very familiar with the previous location that they had. I'm also extremely familiar with the SNI area, Winchester so I know all the neighborhood leaders over there. I'm so glad that you're actually opening your club for neighborhood meetings because they truly need a neighborhood place, a neighborhood meeting area. And they usually go to elementary schools. I think your place would be the perfect place to have the meeting in, for you to get to know your neighbors and the neighborhood to get to know you as well. So with that I welcome you to District 1 on my behalf and I will ask Planning Commissioners to vote by light. Well maybe we'll vote by hand. So all those approving of the motion, please raise your arms. And it's unanimous. Thank you

so much, and thank you so much for your time this evening. Now we will move forward to item 3D which is rezoning. Staff.

>> Thank you, Madam Chair. This is a planned development rezoning from the A(PD) district to the A(PD) district to allow for the development of 16 single family detached residential units. And a religious assembly use. On a 7.24 gross acre site. I'd like to start by saying a revised set of development standards were provided to you this evening and there is a section highlighted in yellow. We're providing you these revised standards for two reasons. First, the religious assembly use the development standards for that use itself were inadvertently left out of that document so those have been provided for you. And second a revision to the cultural resource mitigation measure was made to more clearly state that the sandstone rock wall that is located on the site is to be retained as part of the project. As discussed in the staff report the planned development rezoning for the 16 single family detached homes and religious assembly use is consistent with the goals and policies of the San José 2040 general plan and the site's residential neighborhood land use designation. The project as proposed matches the development pattern of the surrounding area and is at a density less than the maximum of eight dwelling units per acre. The project also utilizes lot sizes setbacks parking requirements and height limitations that are comparable to the existing surrounding residential development. Therefore staff recommends that the Planning Commission finds the project in conformance with the California Environmental Quality Act and recommend to the city council approval of the proposed rezoning on the subject site. This concludes staff report.

>> Commissioner Bit-Badal: Thank you. And do we have the applicant here?

>> Wow! Is that power! I guess I could turn myself off, too. Members of the commission, Madam Chair, members of the commission, Jerry de Young Ruth and Going, representing the applicant Joey Lowe. I'm here to answer any of the questions that you may have. This has been going on for a while. The other thing that I would like to do is I would like to thank the staff, I remember Leslie Xavier. I don't know if you know it but the Planning Department is working on a customer service program, and in the conversations that I've had with staff as a part of the chamber, one of the things that the input that we've had is a little bit of good, little bit of bad little bit of constructive criticism. One of the things that I and others have indicated is that we on the private development side don't take

enough time thanking the staff for their hard work. We tend to be a little more critical and a little less positive so I want to stand here tonight and recognize Leslie Xavier for her work on this. And when I mean work on this work to me is, that's important to me is communication. She communicates early, she communicates often. She communicates effectively. Which is always important. So at all times during this process, I understood exactly where we were in the process. I understood generally and that's a good word what the issues were at any given time and it allowed us to move forward and resolve the issues that we had. This site did had have issues at the beginning. We've come a long way baby in terms of what we were able to accomplish here, so Leslie, thank you. I wanted to let you know she did miss one point in terms of community outreach. That is I did go out to the district 8 round table in March of this year to talk with them about this project. I had been out talking to them at the time we did the general plan for this several years ago and they had no particular comments on this project which is also good. So I stand ready to answer any questions that you have and I hope can you move this forward to the city council with a favorable recommendation thank you.

>> Commissioner Bit-Badal: We do not have any questions. Thank you for your time. It looks like we don't have any speaker cards. And with this, I will ask --

>> My five minutes in rebuttal. Actually, I don't want to rebut anything. I want to use, with your indulgence, I want to use this as an opportunity.

>> Commissioner Bit-Badal: Okay. I'm going to ask the clock to start, you have five minutes, you don't have to use the entire five minutes.

>> I will not. It will be very quick. Actually, I'd like to ask your indulgence. I'd like to point out to you tonight, I think you have an annual study session. I would like you to consider looking at agenda management a little bit. The reason I turned around to look to see if anybody was here beside my client was, you know, there were two items that were on this agenda this evening, that certainly this project, staff was aware that there was no particular community interest in this, I believe Mr. Horwedel spoke to the only people who came to the city the day before, 4th of July, and I think if you -- if staff brings forward to you an opportunity to move somebody in the agenda to get

everybody home earlier, doesn't get you home any earlier I appreciate that but I would ask your consideration on behalf of many, many people who approach you over the years. Thank you.

>> Commissioner Bit-Badal: Thank you for the earlier compliment and constructive criticism later on, thank you. With that I will entertain a motion to close the public hearing. Second. And all approving please say aye. Aye. Thank you. Staff.

>> Thank you, staff has no additional comment.

>> Commissioner Bit-Badal: Thank you. I will entertain a motion on this item. Commissioner Kline.

>> Commissioner Kline: Move to approve 3D as recommended by staff.

>> Commissioner Bit-Badal: Do we have a second?

>> Second.

>> Commissioner Bit-Badal: Commissioner Kamkar stated the second. All those approving please vote by light since it's working now. Oops, excuse me, actually we have a comment by Commissioner Cahan. Excuse me, sorry.

>> Commissioner Cahan: Thank you, Madam Chair. I will be supporting the motion because I believe that the project fits in what the goals and policies of the general plan. However, I would like to caution that I'm concerned about us building such dense areas along highly traveled, I know we want to have the transit corridor built, but I'm concerned about the air quality of people residing right next to such a busy highway such as 85, especially condensed buildings along Interstate freeways and highways. I think that we will find in the future that those people that live there will have an increase in problems with lungs and asthma, and other issues that that would cause. Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan. And now we will take the opportunity to vote on this motion. And the proposal was -- had passed, unanimously. Thank you. Now we're moving forward to petitions and communications. Staff. There are no petitions and communications. And item 5 is referrals from city council boards commissioners and other agencies.

>> Joe Horwedel: None for tonight.

>> Commissioner Bit-Badal: Thank you. Good and welfare, item 6A is report from city council.

>> Joe Horwedel: City council is on hiatus for the month of July. They did approve the capital improvement budget and we did forward the extensive comments that the Planning Commission had on the CIP. I think Laurel talked about that at a previous meeting. That was part that was woven in and I'm trying to remember we had a zoning item that came through but it's been a couple of days and I've totally forgotten about last week which is good so I apologize for that.

>> That was the last city council I think there was an appeal, C.U.P. appeal Walgreen's that went to council if I'm not mistaken which the council upheld the Planning Commission's recommendation to deny the --

>> Joe Horwedel: The off-sale of alcohol for Walgreen's which was in I think District 9.

>> I think so.

>> Joe Horwedel: Princeton plaza was I think that one so that one was denied by the council.

>> Commissioner Bit-Badal: Thank you. Item 6 B. Commissioners report for committees, Norman Y. Mineta. Commissioner Cahan.

>> Commissioner Cahan: The commission did not meet.

>> Commissioner Bit-Badal: Thank you. 6 C is review and approve synopsis from 6-20-12. Those commissioners that were present could approve and Commissioner Yob if you have reconstituted yourself.

>> Commissioner Kline: Move to approve.

>> Second.

>> Commissioner Bit-Badal: All those voting yes say aye. Commissioner Yob will be abstaining and also O'Halloran who was not on board at that time. Thank you. And we will move forward with 6 D subcommittee formation report, any other report from Commissioner Kline.

>> Commissioner Kline: Just noting that the CIP committee will be meeting next week and hopefully we'll accepted it back to you four weeks after that.

>> Commissioner Bit-Badal: Thank you. And 6 E, commission calendar and study session. Do we have any updates?

>> Joe Horwedel: Just and we not to go through and schedule it tonight but just to put on the commission's radar we are working right now on the schedule for the habitat conservation plan coming through city council and council committee in August, September, October. And so staff is trying to figure out where would be the right time to bring the Planning Commission in to reviewing the draft plan of the concepts. The council has had an extensive amount of review of that over the last several years. But the commission really has not been involved in that. We also are working on an EIR-EIS that would be a joint multiagency document that would be required for certification. So that's one that we're also needing to work on the logistics of that of how that comes forward. It is not ready for final review at this point but it is one that is coming to a conclusion. I'm looking at probably

September 12th, and October 10th as dates for the HCP at the commission, though I would say at next meeting we would be able to go and start locking those down for the commission.

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

>> Commissioner Kline: No, I recommend support of the staff's after looking at the last go-round of it, it's very complex and has a lot of issues. And I'm actually involved in some things at the county and the county splits hairs out too and so it is something we really have to pay attention to.

>> Commissioner Bit-Badal: Thank you, commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I was just curious is the city the lead agency on the EIR-Eis?

>> Joe Horwedel: Trick question. There are six public agencies that are joint leads for this document. It has been prepared on behalf of the liaison group for the Santa Clara County Habitat Conservation Plan, of which we are participant. So I think we qualify as lead agency, but I think there's five others that are lead agencies. And so the goal is for all six agencies to be moving forward together with a goal of certification of the EIR-EIS and adoption of the plan in the end of October or mid October.

>> Commissioner O'Halloran: Those six agencies include federal agencies as well?

>> Joe Horwedel: No. This would be the County of Santa Clara, the Valley Transportation Agency, the Santa Clara Valley Water District, the City of San José and the city of Morgan Hill and the still of Gilroy. And it is prepared on behalf of the U.S. fish and wildlife service and the California department of fish and game.

>> Commissioner O'Halloran: But they are not --

>> Joe Horwedel: They are the approval agencies, and of the EIS they actually are the certification body so as I said it's a little bit of a trick question about it.

>> Commissioner O'Halloran: Interesting. And so when do you expect that that will start to be circulated?

>> Joe Horwedel: It has gone through public circulation. It has not been brought in front of any of the lead agencies for certification. I'm looking at that in the September time frame as we're still waiting to get the final drafts finished up.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. And that was the last item on the agenda. With that I will adjourn the meeting.

>> Joe Horwedel: The last piece I would just -- Jerry just came back in. About we of the agenda management, we have the retreat of the commission, September 27th is our annual retreat. That is one of the things if the commission wishes staff could go through and put on as one of the agendas items for the commission discussion.

>> Commissioner Bit-Badal: Thank you. And with that I'm calling for adjournment. Thank you.