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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, May 11, 2011. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, please fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make up to a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chambers. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is advisory only to the City Council. The City Council will hold public hearings on these items. Roll call. Let if record reflect that all commissioners are present except Commissioner Bit-Badal and Commissioner Platten. Next item, deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you wish to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with the remaining agenda items past 11:00 p.m, continue this hearing to a later date, or to defer remaining items to the next regularly

scheduled Planning Commission meeting date. The decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. There are currently no items on the list for deferrals. Staff.

>> No items on deferrals.

>> Commissioner Jensen: Thank you. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. Consent calendar. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I would like to pull both of the items off of consent.

>> Commissioner Jensen: Thank you, Commissioner Cahan. These items have been pulled. Item 2A, CP10-060. Conditional use permit to allow for the demolition and reconstruction of a fast food Restaurant, taco bell with a drive-through use and hours of operation until 2:00 a.m. on a .79 gross acre site in the CN commercial neighborhood zoning district located on the East side of South Bascom avenue, approximately 450 feet northerly of Fruitdale avenue. staff.

>> Thank you, yes, this is a conditional use permit that's deals with an existing restaurant with a drive through and 24 hour operation and a proposal is to demolish it and build a new restaurant and drive-through with a reconfiguration of the side and operation only until 2:00 a.m. So 6:00 a.m. till 2:00 a.m. In addition to the discussion and staff report, staff would and hearing from some area residents, relative to the landscaped area between the sound wall and Del Mar avenue which is kind of the eastern edge of the site, we've actually modified our conditions or clarified our conditions in the proposed resolution and on page 10 of the resolution, item number 29, condition related to building and property maintenance, staff has included the language at the end and I'll read the whole condition now. The developer shall maintain the property in good visual and functional condition. This shall include but not be limited to all exterior elements of the building such as paint roof paving signs lighting and

landscaping including that area behind the sound wall along Del Mar avenue. And then item number 32 related to antigraffiti. Staff again further clarified this condition to read, the applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement. This includes, but is not limited to, both sides of the sound wall located along the property line adjacent to Del Mar avenue. This includes staff report.

>> Commissioner Jensen: Thank you staff. Is the applicant here? You may have up to five minutes to come down -- okay, great, thank you. Motion to close public hearing? All those in favor? Oh I'm sorry. On this one? Okay on this item, okay, there is a card coming down from the public so we will not be closing public hearing, sir, if you would like to step forward you can hand your card to Ms. Hamilton and -- thank you very much and if you would just introduce yourself as you come forward.

>> Commissioners, and staff Michael La Rocca and I'm with the Sherman oaks neighborhood association and the Burbank Del Monte NAC. I'm probably the person that went and talked to Ms. Hamilton at City Hall today because I was notified by a neighbor that lives within 500 feet of the applicant, concerns about what was happening. I looked at the staff report, seen the different things and I echo what staff has said related to the things. What I would also like to add, and have the commissioners consider, is you have three fast-food establishments that have drive-throughs. On Bascom, same side of the street. McDonald's, at the corner of Fruitdale and Bascom, closes their drive-through at midnight. Taco bell is now asking till 2:00 a.m. Wendy's who does not have any residential properties behind their establishment, has hours of 1:00 a.m., Sunday through Thursday, and on Friday and Saturday, they're open till 2:00 a.m. I think it should be considered for the neighborhood and the residents of the area, to establish some hours that are common to all three. Thank you for your consideration. And I'll answer any questions.

>> Mayor Reed: Thank you, Mr. La Rocca. We don't have any questions for you. Thank you very much. Would the applicant like to -- you may have up to five minutes now if you would like to. You're not obligated to.

>> Hi, I'm Steve Polsion, construction manager for taco bell corporation. In response to what staff has on their conditions, we're okay with all of those. Closing at 2:00 a.m. was a concession that taco bell agreed to to rebuild

this store, because currently like she said we're able to stay open 24 hours. We're willing to shut down at 2:00 to be able to rebuild and put a new store up. And Wendy's gets to stay open until 2:00. We think it's not an unreasonable request to be able to stay open to 2:00 a.m. Other than that I'm here to answer any other questions you have.

>> Commissioner Jensen: Thank you, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Would you be amenable to the same closing hours as was just discussed? Apparently it's 1:00 a.m. for the other drive-through that's open past midnight on certain days of the week and then 2:00 on the weekends?

>> I could take that back to taco bell, I don't think they would. They'd like it. If it's the only thing we could do to rebuild the store they might consider it. They might say we'll just paint the building and keep it like it is and stay open 24 hours. If that's what the city want. As it is I would say we want to stay open until 2:00 a.m. seven days a week.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Thank you very much. Now a motion to close public hearing? There is a motion and second. All those in favor? Thank you. Staff.

>> Thank you. You know, unfortunately staff is not in a position right here to confirm closing times. Some of these restaurants were built where they are legal nonconforming 24 hour. They may be choosing to close at a certain time but they may have the ability to have a 24 hour operation. So unfortunately I can't confirm that the McDonald's or the Wendy's have those conditioned hours of closing. I think in the case of taco bell again, you know clearly, it does have a residential interface to the rear, you know, that the restaurant is forward, the drive-through is to -- facing the nonresidential. And again, you know, it annoys condition number 11 on page 6 of 11 is the volume of the speaker system for the drive-through. You shall be appropriately adjusted so it does not exceed

the city's adopted noise standard and not nearby any residential unit. Bringing it 24 hours to 2:00 a.m. having that condition there, staff felt was, you know, a good direction to go in, to kind of enhance that stretch along Bascom, still have the drive-through on a major thoroughfare, and have the appropriate conditions to protect the residential interface to the East.

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

>> Commissioner Cahan: Thank you, Madam Chair. I do think it's beneficial for the neighborhood to have this area updated. I was a little concerned, then just not with this store specifically, but we're trying to become a community that's a little more walk-friendly and getting us out of our cars and this is promoting being in the cars once again. But actually the reason why I pulled this off is, I wanted some furthering explanation about the environmental review. It doesn't seem like this meets the new green building ordinance or that it's not mentioned in our paperwork. However it's a new project. So would staff please explain if that falls into the new green building ordinances and your reason for not having that in there?

>> Yes I think relative to the green building ordinance, we haven't been consistent including a standard condition. All development is subject to the green building ordinance whether there's a standard condition in our permits or not. So this one, the size of it, pay just require it to submit a checklist. So relative to the green building ordinance requirements, when they go through the building permit process, that's when those kick in. This size development, similar to the other drive through that's on tonight, would -- my understand is, really just be subjected to the checklist given the size of development. As far as any environmental and triggering of greenhouse gases, again, this is really have an existing drive through and the new project isn't any greater than it. So it's not tripping a threshold that would require a new analysis. So that's why you're not seeing that. So it is subject to the green building ordinance, and at the building permit stage if they submit for a building permit, that's when those -- the appropriate things will be asked for in this case again I think it's just a checklist.

>> Commissioner Cahan: We have seen in some of our staff paperwork before, it mentions specifically that projects fall under the new green building ordinance, and this one doesn't. I'm wondering if we could have --

>> We're going to be more consistent.

>> Commissioner Cahan: Okay.

>> Again that's -- we tend to put those conditions in more for information as an informative. The ordinance doesn't say that if -- doesn't require that a condition be in a permit, to subject to. It is. So we -- as a standard are trying to get in the habit of just including it more as information. The fact that it's not in this one but it's in some others that you see tonight doesn't get it out of adhering to the green building ordinance.

>> Commissioner Cahan: Right. Thank you.

>> Mayor Reed: Thank you. And thank you, Commissioner Cahan for raising that. I was also interested in learning a little bit more about why some of the projects list it and others don't. And thank you staff. I recognize that staff reviews a lot of things and considers a lot of things that we don't actually see. But it would be wonderful just as a request if you could make a note so that we would know something was included or something was applicable to the green building ordinance and if not, if there were exemptions that might be useful for us to know about, and I agree with Commissioner Cahan's issue about us trying to increase the opportunities for pedestrians and the opportunities to get out of cars. So hopefully, we'll be able to move forward on not having drive-throughs at some point in the future. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'm ready to make a motion. I move to approve a conditional use permit to allow for the demolition and reconstruction of a fast food restaurant with a drive through use and hours of operation until 2:00 a.m. on a .79 gross acre site in the CN commercial neighborhood zoning district as recommended by staff.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Is there a second?

>> Second.

>> Commissioner Jensen: Would you like to speak to your motion?

>> Commissioner Cahan: No thank you.

>> Commissioner Jensen: And please let the record reflect that Commissioner Bit-Badal and Platten arrived just at the beginning of this item so they will be voting. Is there any further discussion? May we vote by light? And that motion passes unanimously. Thank you very much. 2B. CP10-063. Conditional use permit to allow the development of a 4560 square foot public eating establishment with a drive through use on an approximately .34 gross acre portion of a 38.7 gross acre site in the CG commercial general zoning district located on the north side of headquarters drive approximately 180 feet east of North First Street. Staff.

>> Thank you. Again this is a conditional use permit to allow for a new approximately 4500 square foot public eating establishment with a drive-through use. This is part of a larger center that's been approved previously and this conditional use permit is basically now really detailing out one of the buildings out there. Again, staff's recommending approval of this in that it does conform with the 2020 land use transportation diagram of general commercial. It is consistent with the general plan's economic development strategy as well as the North San José area development policy. It substantially conforms to the intent of the city council's drive-through policy and it meets the requirements of CEQA. There was a community meeting held for this project on January 13th of this year. And the community members present stated that they looked forward to having new dining options within walking distance to their residences, so for the community that was there they were excited that they would be able to walk to something. We're also working with the applicant to ensure that the final revised plans meet the minimum required setback. You will see a condition in the resolution requiring that, and that's really, you know, not an issue and is not going to -- it's not really changed the project. It's just a you know squeezing a few inches out of a couple of aisles. So it's something that we can take care of after the fact. That concludes staff report.

>> Commissioner Jensen: Thank you staff. Is the applicant here? If the applicant is here you may have up to five minutes. If you would like to make a presentation. We have no other speaker cards. Okay, thank you. Is there a motion to close public hearing?

>> Move.

>> Commissioner Jensen: All in favor? Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I pulled this one in addition to 2A, because once again it's another drive-through. This is up to ten cars. That's a lot of time the car can be setting there idling. And letting out extra pollution that our city doesn't need. Not having a drive through and have people even if they're not going to go through the drive through, go inside while their food is cooking I think is healthier for the city. But the bigger reason that I pulled it was the environmental question about the new -- the green building ordinance, and whether this falls under that. And it sounds like, from staff's explanation of the last one, that this one is in the same category where it is under the new green building ordinance, it just wasn't listed that way. Is that correct?

>> Yes, I thought I did see -- for this one, CP 10-063, on page 12 of 13, you will see a condition, green building requirements it shall comply with the applicable green building standards at the time of building permit submittal. This one does include it. So that's kind of the standard condition that you'll be seeing. So at the time of submittal, so again even if we did change the green building ordinance, you know, in a year, if they submitted for a building permit after a year, it's whatever in effect when they submit a building permit, not when the plan is approved.

>> Commissioner Cahan: Sorry, I missed that I was looking elsewhere.

>> I just saw it when I was flipping through.

>> Commissioner Cahan: Thank you very much.

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

>> Commissioner Cahan: Thank you, Madam Chair. I'm prepared to make a motion to approve the development of a 4560 square foot public eating establishment with a drive through use on an approximately .34 gross acre portion of a 38.7 gross acre site in the CG commercial general zoning district located on the north side of headquarters drive approximately 180 feet easterly of North First Street. as recommended by staff.

>> Commissioner Jensen: Any further comments?

>> Commissioner Cahan: The reason I support them at this moment, our community is still in the drive-through mode and this is what's expected and as a mom when I had young kids in the car and they were asleep it was really nice to have a drive-through to go through and not have to wake them up to get them out of the car. So for where our community is right now, I'm supporting this. I hope that our city, in the future, sets itself up in a way where we are not as dependent on our cars and that includes not having as many drive-throughs.

>> Commissioner Jensen: Thank you, Commissioner Cahan. I see no further speaker lights. May we vote by light? And that motion passes unanimously. Thank you very much. Public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. I don't think that's going to be an issue this evening. 3A. CPA 08-057-01. Conditional use permit amendment to allow the 24-hour use of a fitness center within an approved but not yet built shopping center on an 8.19 gross acre site in the CN commercial naked zoning district located at -- neighborhood zoning district located at the Northwest corner of Brokaw road and Oakland road. Staff.

>> Thank you. This is a conditional use permit amendment for a 24 hour operation, in this case it's for a fitness establishment. We have approved a commercial development at this site, through a site development -- or

conditional use permit, but there's a new commercial development approved here. The nearest residential is across Oakland road and again, as we discussed in the staff report, although there is residential, in proximity, the location of the commercial use really at the edge of that, we don't feel, is going to have a negative impact and its orientation within the center. There was a community meeting held. There was a single person in attendance. It happened to be a high school student to complete a homework assignment. But again, there were no other community members in attendance. So again, we recommend that it be approved in that it does conform with the San José 2020 general plan. It does conform to the council's policy related to 24 hour use. It's compatible with the surrounding land uses and is conformance with the requirement to CEQA. That concludes staff report.

>> Commissioner Jensen: Thank you staff. And is the applicant here this evening? You may have up to five minutes to speak if you like. We have no speaker cards. Does anyone have any questions for the applicant? Seeing none, may we have a motion to close public hearing?

>> Move.

>> Commissioner Jensen: All right. There's a motion and second. All those in favor? Thank you. All right. Would someone like to kick the ball off here? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I'm putting a motion forward to approve the project as proposed by staff. As recommended by staff.

>> Commissioner Jensen: There is a motion and second. Okay, I will raise Commissioner Cahan's questions from earlier. I don't see in the staff report any mention of compliance with the green building. I'm going to assume that this is, as it's more than 45,000 square feet, which is greater, a tier 2 project and therefore required to be LEED silver, I believe?

>> This is a permit not dealing with new construction so those issues have been taken care of relative to previously approved. This is use going into an already approved building, the project is under construction. Once

that permit is issued at that point they will be subject to whatever green building requirements that are in effect. You are not going to see it in this permit because this is use specific and not dealing with new construction.

>> Commissioner Jensen: And the previous project, the shopping center it was going into was in compliance with that?

>> Again, it is subject to it. When they -- the building permit was issued. I think building permits have been issued for some portions of it, foundations and whatnot. They've cleared the site and done stuff. So it's -- it's being looked at relative to what's in effect when those building permits are issued. I'm not going to sit here and say I can recite the exact conditions in the site development permit, the director of planning but again, absent anything anything in the permit it is still subject to the green building ordinance and the building division traction nap.

>> Commissioner Jensen: Great, thank you very much, staff. And seeing no further speaker lights may we vote by light? Oh, I'm sorry, is there a motion? Yes, there is a motion. Yes. I'm sorry, I got a question from the director. And I --

>> Yes, there was.

>> Commissioner Jensen: Yes, great, thank you very much. And that motion passes unanimously. Thank you very much. Petitions and communications. Public comments to the planning. commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. Seeing no speaker cards is anybody interested in jumping forward and -- okay I'm going to assume that means no. Referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: We have none.

>> Commissioner Jensen: Thank you. Good and welfare, report from city council?

>> Laurel Prevetti: We have no report tonight.

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

>> Commissioner Cahan: Thank you, Madam Chair. The committee met on Monday, and there were some noise changes. So noise reporting changes. And one is that the monthly noise report will be changed to a monthly noise summary that's found only on the Website. And complaints will be responded to the next business day, instead of the previous, within 24 hours, the noise complaint phone line will no longer be monitored if anyone wants to make a complaint it will have to be through the Website. And the noise office will no longer send postcards to residents informing them that their complaints were received.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Envision San José 2040 general. Plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. We had no meeting. And next meeting is scheduled in June.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Review and approve the synopsis from May 4th, 2011. We received this via e-mail and have a hard copy here this evening. Has everyone had the opportunity to review it? I see -- okay. Is there a motion?

>> Motion to adopt.

>> Commissioner Jensen: There's a motion to adopt. All those in favor -- is there a second? There's a motion and second. All those in favor, thank you. That motion passes unanimously. All right, moving on. Subcommittee, formation reports and outstanding business. Do any of the subcommittees have anything to report? Seeing none, moving on, commission calendar and study sessions. Director.

>> Laurel Prevetti: Yes, thank you. Since our last meeting, when the commission expressed interest in having Kim Walesh come and provide an update on economic trends I have been in contact with her. She is available in June and July, and we have four meetings during that time frame. She said all of them worked for her calendar. So just interested to know which, if there was a specific meeting that the commission would like to invite Kim to make that presentation.

>> Commissioner Jensen: Commissioner Platten.

>> Commissioner Platten: I know historically I've taken part of July out for vacation. So I'd prefer a date in June if possible. Let me also indicate a point of order, madam chairman, on the adoption of this motion approving the synopsis, it should reflect for commissioner, my good friend here, that he abstains because he was not present at that hearing. So when you said unanimous I just want to mention --

>> Commissioner Jensen: You're absolutely right. And I assumed that you had an opportunity to fully reconstitute yourself. Thank you, Commissioner Abelite. A June date works, is everybody okay with a June date? So if staff -- the June date of your choice. 8th or 22nd.

>> Laurel Prevetti: I would recommend the 22nd because that will be after our budget has been adopted and I think she'll be able to take a breath and be able to join you in a little bit more relaxed manner. So we would set that one at 5:00 p.m. at -- for June 22nd. Thank you.

>> Commissioner Jensen: Thank you, director. And please express our appreciation to Ms. Walesh as well. And I believe that brings us to another brief meeting, to a close. Thank you very much.