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>> Commissioner Bit-Badal: Good evening. My name is Edesa Bit-Badal, and I'm the vice chair of the Planning Commission. I'm here on behalf of Commissioner Cahan, who is not here this evening. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, December 14, 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, 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. 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 the 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 the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. Orders of business, roll call please. Let the record reflect that commissioner Cahan and Platten are absent. 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 want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting we have one item for deferral which is CP 11-002. Conditional use permit for an elderly and disabled housing. Staff.

>> Staff is recommending that item be deferred to January 11th, 2012, per our request.

>> Commissioner Bit-Badal: We do have a speaker for this item, Valentina Lemond, would you like to speak, on the matter of deferral only? You would. Can I entertain a motion from -- awl accepting say aye. And no no noes, thank you. The item has been deferred. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. do we have any speaker cards for --

>> Staff does wish to pull item 2A, CPA 97-011-01, staff has a comment on one of the maming consent calendar items.

>> Commissioner Bit-Badal: Opportunity public hearing. Okay. So item 2A has been pulled. May I have a motion by commission to accept? And all accepting say aye? Great. So we will be hearing item 2A under public hearing. Staff, go ahead.

>> Staff also has one update to item 2B which is CP11-034, conditional use permit to allow for a residential service facility for up to 135 residents. In the resolution submitted to you, I think it's condition number 6 we've modified that to read that the developer shall secure and agree to implement a permit adjustment within 60 days, to improve the design quality of the western side and Northwest earn corner of the elevations that are most visible for those traveling westbound from highway 87. So again as you're traveling, westbound, whatever is in the view looking forward in the car, those are the views that we are looking to have included in the adjustment. I do believe that we've discussed this with the applicant, and they are okay with that and in fact their design is moving towards that resolution. That concludes staff's comments.

>> Commissioner Bit-Badal: Do I have a motion to approve staff recommendation? As stated?

>> Commissioner Kline: I'd like to move to approve the consent calendar, B through E and including the modifications by staff in B.

>> Commissioner Bit-Badal: Do I have approval? Consent calendar has been approved. Okay, can I go to 2A first or (inaudible) 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. For this evening's meetings we will be discussing item 2A which was pulled from the consent calendar. And first I will start with staff.

>> Thank you, Madam Chair. This is a proposed conditional use permit amendment which is for an existing recycling facility located at 260 Leo avenue. It is to increase the amount of material received and/or transferred onsite from the previously approved 300 tons to 550 tons daily, and to extend the operation hours to 24 hours a day, as well as extend operations to Sundays. Also, to add outdoor conveyor and material sorting equipment to the facility. It's on a 1.75 gross acre site. There will be no new construction other than the installation of the sort line as proposed. Premier recycling is contracted by various construction contractors to collect construction debris in roll-off boxes to be retrieved by premier and returned to the site for sorting and recycling purposes. Recyclable materials including wood metal cardboard sheetrock concrete plastic and those he others typical of sorting are sent to other sites for processing. Residual waste is sent to local landfills for disposal. The current hours of operation are 3:00 a.m. to 4:00 p.m. Monday through sat. The proposed hours of operation would be 24 hours a day and seven days a week. Transfer loading will be done between the hours of 3:00 a.m. and 6:00 p.m. and the main sorting activity done between the hours of 3:00 p.m. to 3:00 a.m. The proposed project would also include the ability for this facility to accept public dropoff material not in rolloff bins. The subject site is located in an industrial portion of the city surrounded primarily by industrial uses. As with the subject use, most uses in this area include outdoor storage yards for equipment or other purposes. Subject yards area which is filled with recycled material is screened from adjacent uses by perimeter walls and the project will be conditioned so that no pile is

greater than 25 feet in height and/or visible from a public right-of-way. I'm going to hand it over to Andrew Crabtree to discuss the environmental review that was done and any response to comments we received on it.

>> Thank you. A mitigated negative declaration was circulated for public review on November 10th, 2011 and the circulation period ended on December 12th, 2011. The mitigated negative declaration or MND states that the proposed project will not have a significant effect on the environment, with the incorporation of mitigation measures that will be included as conditions of their permit. Subsequent to the staff report that was provided to the Planning Commission two comment letters were received on the declaration, and they've been distributed to you in a packet at the beginning of tonight's meeting. The first letter is from the Department of Resources recycling recovering Cal recycle and the second is from an attorney representing some of the other property owners or operators on Leo Avenue. So also included within the packet you'll see that there is a response of -- provided by staff to the comments in those two letters. As well as an updated initial study that includes some information primarily responding to comments from the Cal recycle. The letter from the attorney representing adjacent property owners addresses four major areas of concern related to potential environmental impacts. Traffic congestion is one, visible particulate matter from the use, especially sheetrock is the second, diesel particulate matter, and the City's greenhouse gas analysis. The staff has carefully reviewed these letters and also reviewed our analysis, and concluded based on that, that there would be no significant environmental impact for the project. Related to traffic, it's -- we based on the City's standard policies and procedures for analyzing potential traffic impact the project would not result in any level of service impacts per city's policy and would in our analysis the project would need to be really several orders of magnitude larger to even have the potential for an impact just based on the scale of the operations traffic and nearby intersection and their conditions. Related to visible particulate matter, the project already includes mitigation measures that address dust coming off the site and those mitigation measures are adequate to address that potential impact. The types of materials that are being accepted at this recycling center continue to be the same as those that were approved previously in the 1997 conditional use permit for the site. Related to a diesel particulate matter, there -- this is something that's exempt from review under our procedures. And it's a minor low-impact source, this type of source that's qualified, categorized that way. In related to greenhouse gas analysis, we used the Bay Area Air Quality Management District established methodology. There was some questions about the methodology we

used on established methodology in our analysis that again concluded that there was no potential for environmental impact. And so with that, thank you.

>> Commissioner Bit-Badal: Thank you staff.

>> I wanted to add that we have added two additional conditions different from what you received, we have added two conditions related to additional signage, one being solid waste handling facilities sign. The condition reads, per statement of minimum standards, the operator shall post easily visible signs at the main entrance of the facility indicating the name of the operator, schedule of charges, hours of operation, and a listing of the general types of materials accepted at the facility. And then an additional condition related to other informational signage. The operator shall post a sign at the front entrance recommending the use of hearing protection by the public during dropoff. That concludes staff comments.

>> Commissioner Bit-Badal: Thank you, staff. I'm going to be calling the applicant. The applicant has five minutes to speak. The applicant is Mr. Brock Hill from premier recycle company. Sir you have five minutes right now and please introduce yourself.

>> Thank you I'm Brock Hill, with premier I recycle one of the managers there. I want to thank the Planning Commission for hearing our proposal. We have been in operation at the same site since 1997. We recycle currently 92 million pounds of material diverted from the landfill. We have 50 employees most who live in the City of San José. We ask that you improve the tonnage increase so we continue to do the good work that we have done for our environment for our city. And can I address some of the concerns that were brought up already?

>> Commissioner Bit-Badal: Yes you can.

>> As for particulate matter, we have a hose system that goes around our yard. We are wetting down everything that could possibly produce any type of dust. We've gone so far as to buy a street sweeper. We sweep the street about twice a day making sure that all the white dust that may be of concern is sheetrock dust. We go ahead and

take care of that for all of our neighbors, not just for our part of the street but for the entire street. We never park any of our cars out in the street. Those are the neighbors cars. Everything can be done in our own facility for our own employees. We don't have anybody park out on the street. That's it. Thank you very much for all of us at premier recycle company. We appreciate it.

>> Commissioner Bit-Badal: Thank you. I will call up the next three speakers, if you could line up that would be great. Martin Eber, and then the next speaker is Howard Bloom and then after that is Jeannie Eber. If you could introduce yourself.

>> My name is Martin Eber, I am an attorney. I represent a number of property owners across the street from the applicant. We take strong exception to the idea of granting this as a mitigated short matter. First question, have commissioners received and had a chance to read the letter that I submitted? Yes? We raised lots of issues that are critical, I understand Mr. Hill said they wet down some of their -- or all of their area. Our clients talk about coughing, burning of their eyes, they may wet down, but if staff had gone and taken a look at the tree in front of their building, it is covered with particulate matter. And that's the kind of thing that goes onto the building, the cars, and the employees across the street. For your information, the businesses like this transfer stations, recycling stations, in many cities, are mandated to be indoors, for example Marin county, Richmond, Los Angeles, all have requirements that these facilities be indoors for the reasons that I laid out in the letters. I don't have the time to go through all the subjects that I covered, but what's being asked for is doubling, in effect, virtual doubling of the number of trucks, virtual doubling of the tonnage and therefore of the particulate matter both from the trucks and from the drywall.

>> Commissioner Bit-Badal: Sir, your time is up. Thank you so much for your time.

>> Do I get time at the end?

>> Commissioner Bit-Badal: No only the applicant get five minutes at the beginning five minutes at the end. The rest receive two minutes. Mr.-- thank you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I have a question for you. How long were your clients -- how long have your clients been there? Were your clients there before the operation moved in or were they there before?

>> I -- I'll find out.

>> Most of this was before --

>> Commissioner Kamkar: The recycling operation moved in?

>> No one knew what impact the business would have at that time. And so the conditional use was granted. Now, the clients -- the businesses and the people know what kind of impact it has, and they've retained me to try to get this across to the commission. It's --

>> Commissioner Kamkar: And then you're representing how many clients at this meeting?

>> Three properties, and three businesses. There are one or two other businesses that hadn't been able to decide. So three and three.

>> Commissioner Kamkar: So is that a total of six for sure and then maybe one or two more?

>> Yes, and those six are all signed on the back page of the letter.

>> Commissioner Kamkar: And are they here to speak for themselves too?

>> The property owners are, the businesses are owned by minority folk and they were probably uncomfortable with the idea of coming and speaking before a public body. I tried to convince them.

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

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

>> Is it possible for any of the other people who are on the cards to cede their time to me?

>> Commissioner Bit-Badal: No, they can't, sir, only two minutes per person. Sir want to inform you that we do have your letter, thank you. Howard Bloom. Would you please state your name.

>> My name is Howard Bloom. I'm the owner of the three parcels directly across the street, part-owner. I started on the street in 1966 so before it was even paved. At any rate, one question, when the wind is blowing, what about clean air day? The residual dust is all over the automobiles, the trees in the area. The employees can't eat outside because the grit gets in their eyes. The only remediation I've seen on that site is somebody's got a garden hose spraying water on that pile of industrial waste. I think that Leo avenue is one block long with a cul-de-sac on the end and it's a solid, everybody on that street is automotive customer oriented, everybody. And I think enough is enough for Leo avenue. Thank you for your time.

>> Commissioner Bit-Badal: Thank you, sir. The next speaker is Jean Eber, would you please come to the podium and state your name. You also have two minutes.

>> My name is Jean Eber and I'm a property owner of 237 and 275 Leo avenue. And and I'm very concerned about the increase in tonnage of this facility. Leo avenue is one block so there's no way for trucks to exit, other than to you know back up down the street. It's very, very difficult for my tenants to do -- conduct business there. And the fact that the applicant has to sweep the streets twice a day sort of confirms the fact that there's a significant amount of dust and debris that is floating around the streets. We have a lot of landscaping as required by the city and county in front of all of our properties and they are absolutely white. They are just covered with soot and with debris. And as part of the letter that Mr. Eber provided was a safety data sheet on -- on sheetrock

and the hazards of that particulate matter in the air and onto my tenants. And my tenants can't protect themselves from this. The recycling facility has the ability, their employees can wear masks. They can -- they can wear protective gear that can protect themselves from all of the hazards. We can't. So I would respectfully request that you not agree to the consent at this time and you allow us to meet with staff and to discuss ways in which we can mitigate the effects of this increase in tonnage. I know that they're doing good work. But this is one -- a one-block street. And you've got 588 truck trips per day on this street. They said two -- I might be a little bit off, 200 and whatever it is. But it's round trip. There is no egress off Leo avenue so all these trucks that come down, these 288 trips that go into that facility, go out as well. So we would just like the opportunity to discuss the mitigation efforts.

>> Commissioner Bit-Badal: Thank you so much for your time. Your time is over with. At this point, the applicant has five more minutes to continue his presentation, or to discuss the matters. Would you please state your name again.

>> Once again, my name is Brock Hill manager with premier recycle company. I want to go ahead and address some of the concerns. We have been in business since 1997 doing exactly what we do now and we have never received one complaint. We have never had an employee complaint about dust or the particulates or not even one. We think this is a 11th hour tactic trying to stop the proposed project. We've had our sign up for over three years that this has been in planning and never once received a complaint. In regards to the garden hose we have a 5,000 gallon tank that is pressurized, that runs almost all day mitigating dust. All traffic flows into our yard. We only use one-third of the street. So all traffic is not turning around in the street. It's coming into our yard, turning into our yard and going right back out. Any of the sheetrock dust that does touch the street we do own and operate our own street sweeper which we do clean up not just our portion but the entire street all the way to the end of the cul-de-sac. And we do that with respect to our neighbors like I said we have never had a complaint, not once. The 588 truck trips I wrote that portion of the program, excuse me the permit application along with the traffic engineers. That includes all of our existing employees. Coming in to work going to lunch and leaving throughout the day. So the material coming in, that's less than half of those truck trips. Those include all of our employees. And once again I'd like to reiterate, we've never had a complaint not once from our neighbors and thank you again.

>> Commissioner Bit-Badal: We have a question actually from a commissioner. Excuse me Mr. Brock would you please come back? We have a Planning Commission Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I have several questions. You are planning to expand to 24 hours a day, is there anywhere that these can be scheduled after hours so they don't --

>> The reason we wanted to go for a 24 hour operation is not because we are actually going to be doing business for 24 hours. Our business revolves around construction schedules. Construction really goes from 6:00 a.m. to about 3:00 p.m. in the afternoon. We wanted that time to allow for sorting. Right now we're capped at a certain period of time to what if we have to sort extra material for that day because literally we are capped by our conditional use permit right now. We just wanted the most broad language in the permit to allow for us to at least experiment with our operations to figure out if we can be more efficient or not. We've never had the opportunity to be able to do so.

>> Commissioner Kamkar: Okay. Then the second question is, you talked about owning your own sweeping and how you sweep the street. You didn't address the dust that sits on the landscaping and on the sidewalks and the places where a sweeper can't go. You know can you address that, please?

>> I don't know if I'd allowed to give you photographs but I have photographs of the sidewalk and the street, I can pass those around. Can I --

>> Commissioner Bit-Badal: Absolutely, if you could pass those around and present that to the commission.

>> Commissioner Kamkar: The third question is have you considered tenting the area, tenting where the dust starts from?

>> We've brought this up with the planners that we were working with, Ms. Jody Clark. It's too large of a yard to be able to do this and really the tenting isn't going to stop the dust from going under the tent. That's why the hose technique we found works very well. We really don't have a problem with dust other than right when the truck is being loaded. But we've got two hoses from two different directions focused straight on that material, dust really doesn't leave that portion of that right there and that's in the very back of our yard away from the tenants across the street, it's in the exact opposite side of the yard.

>> Commissioner Kamkar: An exhaust system wouldn't help to take out the particles and pass it through a filter whereas a hose you know --

>> I don't know of any vacuum technology that would really work for anything like that.

>> Commissioner Kamkar: Okay.

>> The photographs if you look, I put the one on the upper left it says no parking from 12:00 a.m. to I think it's 5:00 a.m. I can't read it from here. That goes to show that there's -- every car parked on street is there during the day none of which belongs to any of our employees. Those cars are parked by the wrecking yard across the street and by the body shops 50 mechanic shops. If you look on the upper right-hand corner that's the sidewalk which I think if you've been down south 7th street some of it is pretty much a dirt road at some points. If you look at our sidewalk I think that's one of the best looking sidewalks in an industrial area. The lower left, that's the only portion the heaviest that it gets I took those photos today, of the white dust that they're rearing referring to. That was cleaned about a half hour later by our street sweeper. If you go out right now it's not there. Right next to our yard we have that green landscaping right there you can't even see into our yard if you are standing in the street. If you look straight in from the driveway you can see in it but we have very nice landscaping down the front portion of our yard. You wouldn't even know what we do inside.

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

>> Commissioner Kamkar: I'm sorry can I ask one more question Madam Chair, sorry.

>> Commissioner Bit-Badal: Sure.

>> Commissioner Kamkar: My last question, would you be willing to meet with your neighbors and see what solutions they could suggest? You know some of which you may be amenable to implementing and some may say I'm sorry this is not feasible?

>> Absolutely.

>> Commissioner Kamkar: Is that something you would consider?

>> As I say we have never heard from our neighbors before. It has never been an issue. If we knew there was an issue, we are good neighbors we want to get this permit passed, we haven't heard one complaint, and the sign has been there for three years. It's news to us.

>> Commissioner Kamkar: How quickly do you want to ramp up to the heavier schedule? Is that immediate or can you wait --

>> No, it's not immediate, it's based on market forces. I mean, if we can get the business, we can get the business. Right now we're hovering around the 285 to about 300 tons that we're capped at range right now. This is just for future business.

>> Commissioner Kamkar: The reason I ask is if the rest of my colleagues agree to maybe a -- well I guess it would be next January, it would be, you know, to continue this until next January, where you would have a chance to meet with them, and then bring any concerns to us, is that -- is that going to affect your operational plans as you are --

>> Well, it does effect us in the point where we're capped on house business we can do. We've been trying to expand for three years now and have been capped by our conditional use permit. We have to stop our trucks some days at the end of the day and bring them into our yard because we cannot legally do more business. It is hard for the business being capped and not service our customer base that we try to build every day.

>> Commissioner Kamkar: We are definitely sensitive to that but I just wanted to know what the possibilities are to make both sides happy.

>> We would be more than willing to meet with our neighbors, that's not a problem.

>> Commissioner Kamkar: Thank you very much.

>> Commissioner Bit-Badal: Thank you, sir, you also had four pictures that you had displayed. If you wish you can describe those as well as part of your exhibit.

>> These are just views of the street. Like I said, the sun's going down here so the reflection on the street, every street looks like that, I don't see a difference between this street and any other street you look down in an industrial area. And like I said we do clean it at least twice a day.

>> Commissioner Bit-Badal: Great, thank you. Thank you for your time. Do I have a motion to close the public hearing? Second? All accepting say aye. Staff.

>> Again I was just going to reiterate our recommendation for support. It is in an industrial area and does meet our general plan industrial use policies relative to supporting solid waste programs including recycling and it supports our Green Vision of the city. We have included resolutions related to dust control. Clearly, if for any reason the applicant isn't complying with those or even with that, there would appear to be a nuisance, there can always be calls into the city to alert us of that. I'll turn it over to Andrew if he has any additional comments.

>> Also a bit of a reiteration, but brought up in testimony, first traffic and Public Works staff is here as well to provide more information if needed that the nearest intersection with a potential for a traffic impact that's a signalized intersection is 7th and Tully and the project was analyzed and it was well below the level of a threshold that if you made a number of worst-case assumptions, responded to some of the information provided by the milk, and started to get a worst-case look at it, you wouldn't -- you would -- you know the project would need to be ten times bigger than it is to reach a level of service impact at that intersection. We're confident that there isn't a traffic impact per the City's standard per CEQA. Related to that as Jean has mentioned there are a number of mitigation measures in the project requires that awe the active areas be watered twice daily, more if there's wind, particularly windy areas on the site, have to give special attention, requirements to cover trucks that are hauling materials. The daily street sweeping of the site, sweeping daily or more if necessary and covering materials on the site if necessary, all included within the project. So with that our analysis would conclude that there are no significant environmental impacts with this project with the mitigation measures included in the project were -- our conclusion is that a mitigated negative declaration can be issued for this project.

>> Commissioner Bit-Badal: Thank you, staff. I will entertain a motion from my colleagues. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I understand staff's point of view and I understand the applicant's point of view. My suspicion is you know, as responsible as they are with their sweeping, once the water you put on the ground dries up and the wind blows you know whatever is on the ground pay be flying off. And so no matter how hard you try, that's just stuff that gets away from you, and it's not intentional but it's still I think affects the neighborhood. I've seen your pictures at the entrance and thank you for showing us you know how it looks and how it was cleaned, the driveway. But I still see some of that dust on the same landscaping that's right next to the entrance you know and I don't know unless you hose that off, I don't know how else you would do to clean that up. And even if you hose that up that's just going to go into storm drain. So I'm wondering if there is a good solution. Maybe there's not. But assuming that there is, and the citizens have a solution that's amenable to them I would like to propose that we continue this for the next -- the next Planning Commission meeting for consideration, being during the holidays, I don't see construction projects that active so I don't know if it's going to

have much impact on the business. And so my -- I move that we continue this to the next Planning Commission meeting to give the chance for client -- I'm sorry for the applicant and the citizens to meet.

>> Commissioner Bit-Badal: Do we have a second on this motion? I do not hear a second. So we will move to the next commissioner, Abelite. Commissioner Abelite.

>> Commissioner Abelite: I want a little clarification on the traffic issue. I don't think there's an issue but I would like staff to confirm it. Most construction projects in the City of San José are confined to certain construction hours, like 7:00 a.m. to 5:00 p.m. Monday through Friday because we're mostly near residential construction. We're already most of our projects are already around residential housing developments and you usually have a staff condition that limits the time that you can construct houses which means it also limits the time that these dropoff boxes can be picked up and dropped off from construction sites which in turn means that their operations you can't shove these trucks into these terminals at off hours just to mitigate traffic. Would that be an accurate assessment in terms of when those trucks can come in?

>> Well, I would add that, maybe Jean has more on this, that there are certainly construction projects that occur during the nighttime CalTrans in particular, often does I know from past experience that there is a demand for the ability to take materials to recycling during the nighttime hours, related to those projects.

>> Commissioner Abelite: But, okay. In my opinion I think the majority of the construction projects are pumping in materials during the day because a lot of them are coming from residential projects. But that's fine, I was just trying to get a --

>> I think you know, just in comment, if something is covered by a development proposal, I think what you are alluding to is we would have a condition that if there's any construction within 500 feet of a residential. We do have a lot of industrial construction going on. It may not be new, but it's interior improvements. So again, a lot of this construction that they take some from stuff is not just new construction, per se, it's demolitions. And we actually do have a lot of that going on in the city. You don't know of it because it's not through permits that come

before you. But you know, I would want us to recommend that there is a much broader range of construction going on in the city than just residential construction, that may because of its proximity to other residents should only happen between 7:00 and 5:00 p.m.

>> Commissioner Abelite: Got it, okay. Also, these sort of facilities are a big part of our permitting construction recycle programs that are mandated at the building department. There's construction debris deposits and this particular facility is exactly what that does. So it does a -- it has a big value to the city and to the state in terms of environmental issues. So I think it's a very positive project in general. And also on a final note I want to say that you know drywall is one of the dirtiest one of the dirtiest phases of building any project, when projects are being built and there's a lot of dust out there and a lot of people get exposed to it and I'm very seriously doubtful that it has any sort of impact from a health perspective and that's always done in a very closed environment. So frankly I'm actually more than happy to -- and I will be making a motion to support staff's recommendation for approval of the project as it stands without any conditions. I think it's environmentally sound. I don't think there's any hazards there and I don't have any problem with the traffic. So that's my motion. I'm making a motion to support staff's recommendation.

>> Commissioner Bit-Badal: So we have a motion. And my question to you is, also, are you accepting the conditions that were stated during this evening?

>> Commissioner Abelite: Yes, with staff's additional conditions, yes.

>> Commissioner Bit-Badal: Just to clarify and the maker of the second do you agree with that? Okay. We have a comment from the general counsel.

>> Renee Gurza: I also wanted to note for the commission you are actually taking two approval actions under the language of approving the staff recommendation, it would be to adopt the mitigated negative declaration which would include a finding that after hearing all the testimony that you did not hear any evidence, substantial

evidence that an impact would occur. There would be no possibility of environmental impact and then also, of course approval of the C.U.P.

>> Commissioner Bit-Badal: With that I will ask you to vote for this item. It's one motion, actually, so. The motion passes 4-1, with Commissioner Kamkar voting no, and we have two not voting since they're not in. Thank you. We have a little bit of an unusual situation. We had a speaker card for item 2C which was under the consent calendar. Sorry, sir, this -- this item is -- this -- sir, this item is done.

>> Laurel Prevetti: Thank you so much for your interest. You can work with staff at the side, Andrew can assist you. Thank you.

>> I think he's just asking for a copy of the paperwork, the resolution that includes the findings. I think that's what -  
- right. Right.

>> Commissioner Bit-Badal: Okay, moving on, we have item number 2C, we have a request from a citizen to speak. Unfortunately we just came across the card and the name of the person is Mr. William Goss. Is this -- okay, sir, I will have to open that item for public -- for a hearing. I will ask my -- or fellow commissioners to open the item to hear it so we can listen to Mr. Goss's comments. Counsel.

>> Renee Gurza: The motion that is being requested is, is there a motion for reconsideration of that item, since it was a unanimous vote, the motion needs to be made by someone in the majority. But that shouldn't be a problem. So is there a motion to reconsider that item?

>> Commissioner Bit-Badal: All accepting, say aye. Great. So with this I will ask Mr. William Goss to please come forward. Sir, we apologize we did not see your card until now but you will have two minutes to speak on item 2C, CP 11-057. Please state your name.

>> I'm William Goss 1310 saddle rack street San José, midtown plaza. I'm the president of the homeowners association representing 250 families across the street. I'm a little deaf so if you have a question please make sure I understand it. I just want to bring a few things to your attention. The maps that you sent out are not correct. Auzeais does not go through, to meridian, therefore that will have an effect on the flow of traffic in that area. The sidewalks along Auzeais on the south side only go as far as the property in question. There's no sidewalk from there on over to Lincoln. On the north side of Auzeais, the sidewalk is the same length, but it does pick up again in front of A.J.'s bar which is normally double-parked in the evening anyway. There's two businesses across the street. Robbie's auto repair, and electrical distributing facility, has a large parking lot, but it's filled to capacity every day, even the driveways are parked full. And the streets, both north and South on Auzeais normally are parked fairly full. Within a half mile of this facility, there's another medical facility. They have 15 position cars parked there every morning and 38 employees. I did take the trouble to go over and look at the parking around this building. There appears to be plenty of parking in the back. As long as there's additional handicapped slots for that. Actually, that's basically all I really have to say. I think there's a few things that the Planning Commission needs to take into account, when they approve this facility. It's a clean facility, therefore, it's not like manufacturing, and I have no idea how many members in our complex, the 250 families received this letter. I have heard no objections to it at this time.

>> Commissioner Bit-Badal: Thank you, sir, for your time, we appreciate it. Thank you.

>> Thank you.

>> Commissioner Bit-Badal: With this, I will ask commissioners to close this item and approve the consent item, 2C only. Do I have a motion? Second? And all accepting say aye. Great, thank you. The motion passes. Moving on, to -- or continuing our public hearing item. The last public hearing item for the evening is, or for the year, CP 11-20. Conditional use permit to allow a drinking establishment and outdoor areas including approximately 1200 square foot patio and sidewalk cafe, to operate with late night hours until 2:00 a.m. in conjunction with existing 2100 square foot public eating establishment. Staff.

>> Thank you, this is a conditional use permit for what is more commonly known as Peggie Sue's it is an existing full service restaurant and the request is to allow a drinking establishment with late night operating hours until 2:00 a.m. in conjunction with the existing public eating establishment. Staff is recommending approval of this. The addition of the drinking establishment just gives them the opportunity to serve alcohol to patrons who do not order a meal. And we have conditioned that the eating establishment be operating at all times. We have not heard anything from the community in this, and so again, staff is available for any questions.

>> Commissioner Bit-Badal: Thank you, we have the applicant here. I will start with Marcelo America. Would you come forward and state your name and also you will have five minutes, sir.

>> My name is Marcelo America and I'm one of the owners of Peggie Sue's on San Pedro square. I want to state that basically in going over the police memorandum we have discussed it and we want -- we want to abide by everything that's on the police memorandum, the only thing that we want to see if we can agree upon is, aside from the just Friday and Saturday, if we can have the flexibility to have all days open to us, till 2:00 a.m. That's not to say that we will open every single day but it will give us the ability when this great economy of ours turns around, as events come through, more people moved into downtown, it will create of course a revenue source for us which we deeply need because we're really depressed in what's happening in our economy locally but it also gives people the opportunity to go to another venue, because we are primary eating, it's incidental that we also have a liquor license. But we -- that's about 5% or 7% of our sales. The rest is all food. We operate family style. We are always there. And like I said, we plan to abide by every other condition. With the police memorandum. And so we just ask that we get hopefully approved for seven days a week. And thank you.

>> Commissioner Bit-Badal: Thank you sir. And we have Commissioner Abelite has one question. Would you please stay?

>> Commissioner Abelite: Thank you chair. In operating past midnight to 2:00 a.m. in the morning do you also want that for special events possibly at your own facility or just general hours for general walk ins?

>> Well special events like for instance let's say I know the jazz, the winter jazz festival is a thing that we're trying to push through San Pedro square which we had a meeting about, about three, four weeks ago and for instance, we would be hopefully a venue to bring in like a jazz type of band, a one-time or one weekend, but of course that might go then to the after-hours after midnight. And so by limiting ourselves to you know midnight we would be limiting business and limiting to as -- limiting ourselves as to a venue where people could possibly go and dine and listen to music. That's not to say that we want to be a venue to have entertainment. Bus we just like to be able to -- but we just like to be able to provide service to patrons, let's say they are out at a concert at the HP pavilion, let's say they get out after 11:00 or sometimes they do, by the time they stroll into our area it's closer to the midnight hours, and so we would be closed at that time. We would like the opportunity to see if we can serve them as well, to help ourselves along the way.

>> Commissioner Abelite: Thank you.

>> Commissioner Bit-Badal: We have one more question from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So I just want to be clear. You're not just asking for extended hours to serve alcohol, you are asking for extended hours for the kitchen to be open and serve food not just alcohol?

>> Yes, absolutely.

>> Commissioner Kamkar: So is it possible that you may change your mind and close the kitchen early but leave the bar open?

>> No.

>> Commissioner Kamkar: So whenever the bar would be open the kitchen would be open too?

>> It would be open all hours our kitchen.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Bit-Badal: Thank you. The next speaker is Gina America. You have two minutes, ma'am and please state your name.

>> My name's Gina America. Thank you for allowing us to come this evening. And so I just wanted to reiterate basically we just want to stay open primarily as a restaurant because that's what we are, a restaurant. We're not a bar, although you know we are in an area where there are bars. So we want to be able to serve people food. Just like Original Joe's is open 7 days a week till 1:30, we want to be like on the original Joe's on that side of town where people come to eat, not to drink. Because like we are not really a bar, even though we do have a liquor license, we serve beer wine liquor primarily though it's food. That's why we want to have the opportunity to be able to serve the community and be another option to people in downtown that are there so people won't get in their cars and leave, after an event, or after going to a bar, they can go to the bar and eat. I think it would be a huge benefit for San Pedro square and just in Downtown San José in general so to have a place open late night for people to go and eat. Thank you.

>> Commissioner Bit-Badal: Thank you. Since we do not have any other speaker cards I don't think Mr. America would like to speak again, would you? No. Thank you. At this time I would ask actually close the public hearing? Do I have a motion? And all accepting? The public hearing is closed. Staff.

>> Thank you. As we did present in the staff report although the police did suggest a limited after-hours you know staff is recommending that the facility be allowed to operate between the hours of 6:00 a.m. and 2:00 a.m. seven days a week, consistent with the other venues in that area. We also do have a condition in there which I think you know is an agreement with the applicant. It's condition number 13 related to meal service, full kitchen service and full menu service shall be offered during all hours of the operation daily and I think that's really just reflective of what their intent is. So -- and really, with a lot of these -- this permit does not allow them to be just a bar. They can

serve alcohol independent of a meal, as long as that restaurant is up and operating. So it gives them a little flexibility technically if someone's sitting in a table and they don't want to order a meal they can just order a beer and everybody else in their party can order meals and then this maximum it legitimate. So that concludes staff's comment.

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

>> Commissioner Yob: I wanted to note we did receive letters of support, Michael Mendez, Al Shlarman and Nicondro Berreta, and I also wanted to make a motion to approve item 3A as recommended by staff.

>> Commissioner Bit-Badal: Thank you, do we have a second? We have a motion and second. Actually we have Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Question for staff. Does the other venue in the vicinity have the same condition, that you know, their kitchen has to be open during all hours of their --

>> Not necessarily. We actually do have just outright drinking establishments. And we have establishments who, their -- because of the type of venue they are, maybe their food service isn't really what people are looking for after hours. Again, it is dependent on the facilities. O'Flaherty's is predominantly a bar from sometimes 11:00 on. So again, we put this in there, it's consistent with their intent, and the applicant is okay with it. Because like they said, they are a restaurant. I think getting the drinking establishment is similar to an applebee's or a Friday's. Their kitchen is open all hours, but they want the flexibility to serve alcohol independent of a full meal.

>> Commissioner Kamkar: Is Britannia arms the same way, are they a full kitchen open, or they are more like a bar --

>> I would have to do that research. If I said yes or no, it would be based on my memory which isn't necessarily that good.

>> Commissioner Kamkar: Thank you so much.

>> Commissioner Bit-Badal: Thank you, commissioner Kamkar. Before we put our motions in, I wanted to say that I have worked with Mr. and Mrs. America several years ago. They are truly an asset to the Downtown San José area, it's a pleasure to have worked with them in the past and I know they have been really responsible business owners and a great example to others. With that please take a motion or vote on this item, please. The motion passes with five yes, sirs and two commissioners are not in. Thank you. Moving on to 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 and placed on the agenda. In response to public comment, the Planning 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 the matter at the a subsequent meeting or directing staff to place an item on a future agenda. Do we have any items or petitions?

>> Laurel Prevetti: No, thank you.

>> Commissioner Bit-Badal: Thank you, staff. 5 is referrals from city council, boards, commissions or other agencies, do we have any?

>> Laurel Prevetti: No thank you.

>> Commissioner Bit-Badal: Good and welfare. 6A is a report from city council. Do we have a report from city council?

>> Laurel Prevetti: Yes, yesterday the city council convened for its last meeting of the calendar year. They considered the zoning code changes that you saw earlier in the month and they recommended and acted in an

approval way so now all of those items will have their second reading in January. In addition the council also made modifications to the sign code. That code doesn't typically come to you but as you talk to businesses that are interested in signage we appreciate your assistance in being our ambassadors that San José is now working to create opportunities for more signage. The council also approved zonings which came before you earlier, the Paula Street zoning and the one on Bascom avenue. And that concludes staff's report, thank you.

>> Commissioner Bit-Badal: Thank you, item 6B, commissioners report from committees, Commissioner Cahan is not in, so we will defer until next meeting. Item 6C is review and approve synopsis from 12-7-11. And all approving, the item is approved. And 6D is subcommittee formation reports and outstanding business, I believe there is no report.

>> Commissioner Kline: We do have a report.

>> Commissioner Bit-Badal: Oh, you do, great. Commissioner Kline.

>> Commissioner Kline: The retrofitting shopping centers committee met at the end of last planning commission meeting, and in consideration of the progress and approval of the 2040 plan and how the village concept and the reurbanization seemed to be so much approved by the stakeholders of the city. And considering how well the 2040 plan project worked with so many stakeholders involved, it was our recommendation that the retrofitting shopping centers is really kind of a vital part of the urban or suburban village centers that's documented in the 2040 plan. So it was our recommendation as a committee to dissolve this particular subcommittee, but our recommendation is take the three Planning Commissioners that are really dedicated to these causes and concerns and put them into the larger 24 context and recommend these plannings be the representatives to this ongoing set of policies initiatives that is the outspurring of this 2040 plan. And we don't know exactly the details of that at the moment but as they come forth we recommend that these Planning Commissioners play that role. And if three is too many then it might be that one could be a substitute or something, along those lines. It is our recommendation if we need that vote we can put that on another agenda but this raises that item.

>> Commissioner Bit-Badal: Do we have second? Do all the commissioners approve this report? Say aye. Great, thank you so much, Commissioner Kline. Item 6E, commission calendar and study session.

>> Laurel Prevetti: There's no change, just want to note that we did distribute to you the 2012 calendar under separate cover. So I want to just make sure that you do have copies of that. If you have any questions about the 2012 calendar, it will be posted up on our Website or you can contact staff. Thank you.

>> Commissioner Bit-Badal: Thank you. We have item 7A, second amendment, Almaden ranch subsequent environmental impact report distribution. There is none. And with that, I would like to wish City of San José and its residents a prosperous 2012. Do I have a motion to adjourn? And all accepting, say aye. Thank you. The meeting is over for 2011.