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>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for August 17th. 2010. I'd like to invite Councilmember Nguyen to introduce the invocator.

>> Councilmember Nguyen: Good afternoon. It gives me great pleasure to welcome back pastor Arnold Perez from Cryy Out Christian fellowship to provide the invocation for today's council meeting. Pastor Arnold founded Cryy Out Ministries in 1988 with his band, the Cryy. They started the ministry through writing and playing Christian music which led to preaching to families throughout the community. This small group of ministries gained a large and dedicated following which led to the creation of the Cryy Out Christian Fellowship. Together they built a fresh and vibrant place together for people to come and worship. The Cryy performs at churches, fairs, correctional facilities, and anywhere that the gospel can be shared. Thank you, pastor Arnold, for being with us today. Welcome.

>> First of all, I want to thank Mayor Reed and also District 7 Councilmember Madison Nguyen for giving me the opportunity to bring the invocation. Let us pray. Father in heaven, first of all I want to thank you for saving and changing my life. I want to thank you for your grace, your mercy, and your peace. Lord, I want to thank you for blessing us with the privilege and also the gift of prayer. So lord I pray for this council meeting as they discuss city issues, that you would give Mayor Reed and the councilmembers wisdom beyond their intellect, and wisdom beyond their education to make the right decisions to protect and to prosper and to bless our city. Give them the resources to fight against hate, crime, violence and drugs. Lord, lead them as they lead us. And lord, I pray also for unity within this council and unity within our city that we would look beyond our political and cultural differences and beyond ourselves and to work together for a stronger community, cleaner environment and a safer city. And so heavenly father we also pray that you would protect our law enforcement officers, that you would protect those in the military who are fighting to preserve our freedom, I pray for our families that you would protect them, protect our schools, protect our marriages, bless the less fortunate. Bless the disabled. Bless the elderly. Bless each business owner. And lord, give us hope and strength in these tough economic times, help us to trust in you, encourage us not to give up and sustain us for another day because lord we need you. And so I commit all this into your loving hands and I thank you in advance for the answers. I pray this in the matchless wonderful awesome name of your son Jesus Christ, amen.

>> Mayor Reed: Thank you. Now all stand for the pledge of allegiance. [ pledge of allegiance ]

>> Mayor Reed: First item of business is consider the orders of the day. Do we have any changes from the printed agenda? I have couple of requests to defer Item 1.3, the commendation to Moreland little league to September 21st. Defer items 2.3A, 2.3D, council committee reports, Rules and Open Government Committee reports for June 9th and July 28th, to have some additional time to distribute. Any other requests for modifications? We have a motion to approve the orders of the day. All in favor, opposed, none opposed, that's approved. Closed session report, City Attorney.

>> City Attorney Doyle: Mr. Mayor, the council met in closed session this morning. There is no report.

>> Mayor Reed: We'll now take up our ceremonial items. I'd like to invite Hans Larsen, our director of transportation, to join me, along with some other folks who work on our trails programs. Is everybody down here? I think Albert Balagso, our Parks, Recreation, and Neighborhood Services director, is going to talk a little bit about the great trails program that we have here, with multiple departments getting engaged in it. Albert.

>> Albert Balagso: Thank you, mayor. Good afternoon, everyone. Last year, city council approved the updated greenprint strategic plan for how we would guide the evolution of our parks and recreation program, and in doing so it adopted a new vision. And I'd like to read that. It says to create -- become a national leader of parks recreation in cultivating healthy communities through quality programs and dynamic public spaces. And consistent with that vision, recently we've received a designation as having the first go LEED certified amusement park and zoo, in Happy Hollow, the best rose garden in the nation now resides in San José, and today we're the recipient of the award for the national transportation planning excellence award for our trail program that was received -- we received this July. This award is administered by the federal highway administration, federal transit administration, and American Planning Association, and is given only two years. This is truly a partnership of many departments involved, and I'd like to introduce Hans Larsen, from the Department of Transportation, Dave Sykes from Public Works, and the staff that really makes this all happen and is deserving of this award, Yves Zsuty from PRNS, Jan

Pelachek from Public Works, and John Brazil from the Department of Transportation. We would like to thank you, Mayor Reed, and the whole city council for your continued support, as together we strive to make San José the most walkable and bikable city in America. We'd like to present you with this award, on behalf of city council. [applause]

>> Mayor Reed: Thank you. I'm certainly very proud to receive this award. Our staff has done a great job trying to carry out our trail program. We have a very ambitious goal to have 100 miles of trails in the City of San José. I think we're around 55 now, and every mile is difficult. We did all the easy stuff a long time ago. But the tenacity and the persistence of our staff helps us deliver more and more trails. I'm permly very interested on the trails. I'm on a trail somewhere with my bicycle every week. My wife and I love a Sunday afternoon ride on one of our creek trails. This Sunday I was in Alum Rock park for one of my favorite short rides. I'd like to have it to be a little longer ride, but we got a couple of trail segments in the middle that we've been working on to get connected. But we have wonderful trails in the City of San José, and it's great to get the national recognition for the staff that have done the work. Council and the mayor are just saying, we want more trails. These are the folks that have to do the hard work to deliver them. So thank you very much, you've done a great job. [applause]

>> Mayor Reed: I'd like to invite Councilmember Herrera and members of the Kamali'i O Ke Kai outrigger canoe club to join me at the podium. Today we're going to commend this outrigger canoe club for teaching not just unusual and unique sport of outrigger canoe paddling to our San José community, but working to help us keep Lake Cunningham open, to keep the marina open.

>> Councilmember Herrera: Thank you. Thank you, mayor. And along with our wonderful trails we have a lot of great assets in our city, and one of those is Lake Cunningham over in district 8. And so I'm very excited today to bring the Kamali'i O Ke Kai outrigger canoe club today. And this means -- the name means, children of the sea. And I think that's very appropriate, because they reach out and have programs that teach children about this wonderful activity. They've made Lake Cunningham Regional Parks Marina their home since 1988, and they are dedicated to spreading the Aloha spirit through outrigger canoe paddling and encouraging the diverse cultures of San José through family-oriented gatherings at their competitions. They're one of 20 Northern California canoe

clubs that compete at diverse lakes and oceanside surroundings. They are not only a competitive outrigger canoe club, but a community organization that promotes a strong family environment. They demonstrated their commitment in the 2010-2011 fiscal year by advocating to preserve funding for the Lake Cunningham regional park marina during the city's difficult budget process. It was their testimony that motivated me to find creative funding alternatives to preserve the marina at Lake Cunningham Regional Park. I'm proud to acknowledge your dedication and commitment to public service in our community, and I also want to thank the PRNS staff, our PRNS staff here for their work, and the entire board of the Kamali'i O Ke Kai board and their members. Thanks for your passion and for being here today and I look forward to joining you this Saturday, August 21st, at your community appreciation day taking place at Lake Cunningham from 10:00 to 3:00. Everyone is welcome, adults of all ages. It is a great opportunity to come out to the lake and try a little paddling. So with that said, I'd like to invite Mayor Reed to present this commendation to Kevin decote of the Kamali'i O Ke Kai outrigger canoe club. [applause]

>> Councilmember Herrera: Thank you, would you like to say something?

>> Yes. Thank you, mayor and city council members, and Rose Herrera, for this, and for the Kamali'i family, for this commendation. We look forward to working with Rose Herrera and Lake Cunningham on other functions at the park to help make it a nice place for everybody to go and have fun. We're also looking forward to the Dana Park, the multicultural festival that's coming up and work closely with the lake and to make it a successful event. Kamali'i, like they had mentioned, we're having our event this weekend, and everyone is invited and to have some fun. There will be food there, and come and enjoy the outrigger canoe paddling. Again we pride ourselves on family oriented sport, and we just hope that we can make this a more community club so people can come out and join us and be part of the community. So thank you. [applause]

>> Mayor Reed: Now we'll take up the consent calendar. I have a couple of requests from the public to speak on the consent calendar. We'll take that testimony up first. David Wall.

>> David Wall: Good afternoon to you all. This is in reference to 2.3, there were five reports. I will speak on four of them. First report is the rules committee for July 28th. This was a unique meeting in which the ballpark land was discussed. I believe that there was testimony tendered by the public that an apology be tendered to the public for the purchase of ballpark land using redevelopment property -- or moneys prior to a municipal vote. The next issue that was talked about that has garnered tremendous public discussion is binding arbitration with our police and fire department. As a taxpayer I support the binding arbitration that was so entered into years ago and for the reasons stipulated years ago why it's still in place. The other third issue on this report deals with why the free trade zone discussion has not moved forward with relation to Your Honor's appropriate move for an import export bank. These two are interchangeably linked, and I do not know why that discussion is not moved forward. The community and economic development meetings is the next one to talk about. There were two issues, one of which will be talked about later today, the habitat plan, which is a tremendous error, and also should merit a sewer hookup to save hundreds of millions of taxpayer dollars and to protect all the fowls and all the lord's creatures. The next one will be the transportation and environmental committee. The environmental innovation center looks like a good idea. To me, it is nothing but a garbage hole of waste of taxpayer money, and a misuse of the land out of water pollution control which would be better used. Why this wasn't discussed in more detail is problematic, but in keeping with the shenanigans put forth with this type program. The last report that I will talk about will be the rules and government for June 9th --

>> Mayor Reed: Sorry your time is up.

>> David Wall: Very good.

>> Mayor Reed: That concludes the public testimony on the consent calendar. Are there any other items the councilmembers would like to add to the calendar for discussion?

>> Councilmember Nguyen: 2.11.

>> Mayor Reed: 2.11. Any others? We have a motion to approve the balance of the consent calendar. All in favor, opposed, none opposed, that's approved. Item 2.11, that's the grant from the California office of traffic safety for programs in the Franklin McKinney children's initiative area. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I just wanted to take a moment to thank staff for their work on this project, and also Councilmembers Liccardo and Campos for their letters of support. This is a wonderful program and it would add value for students who live within the Santee Fair neighborhood. As my colleagues know the City of San José is collaborating with various organizations such as Catholic charities, Franklin McKinley school district, the county and other community-based organizations to replicate the Harlem children's zone model, in an effort to revitalize this particular area in my council district which we hope to bring a lot of different social change as well as educational programs programs for these children and the families. So I hope that moving forward the city continues to play a key partner in this effort. So with that I'd like to move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve, all in favor, I have one request to speak on 2.11 before we take a vote. Mark Trout.

>> Thank you, Mayor Reed, council, nice to see you all. You know, I think this is a good idea, I really do. I remember when I was a little kid I was part of the traffic patrol in Lincoln elementary school in Redwood City and we'd march out there and put our stop signs just to be sure that our fellow students would be protected from drivers and such and I think this is just a great idea to accept this grant. You know along these same lines I'd like to mention the fact that not only should we be concerned for our children in regards to traffic, but we should be concerned for our children with regards to what we found out for the child protective services in the somewhat recent assassination and murder of a senator in Georgia by the name Nancy Schaeffer. You can learn more about this on infowars.com. But nancy Schaeffer was murdered by the child protective services because she uncovered the fact they were full of pedophiles, and she was passing legislation to get rid of them and to prosecute them. And I think we definitely need to look into these very real allegations of this woman that was a

member of Phyllis Schlafley's eagle forum, a Baptist Christian, and there's no way this 72-year-old grandmother you know popped her husband in the heart as the media spun it. So this is much more important than traffic safety, although that is important. I pray to God you'll look into this because government is ordained by God to protect us. That's why I ran for city council. That's why I wasn't afraid to even though Vice Mayor Chirco had this big sign up when she was promoting what's his name, I even forgot his name. I shook everybody's hand and said I'm Mark Trout, I'm running for district 9, I hypovote for me. I'm a Christian and I try to get to you obey God. Whether you're a Republican or a Democrat. I'm a Republican all the way but you know whoever is here is here. At the almighty's appointment. This is what the Bible teaches me so --

>> Mayor Reed: Your time is up. That concludes public testimony on item 2.11. We have a motion to proven. All in favor, opposed, none opposed, that's approved. That concludes the consent calendar. Our next item is 3.1, report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of council, I have one report today, which is an update on the City's effort to reach agreement with IAFF local 230, the union that represents the city's sworn fire personnel. As you know, earlier this month the city requested that Local 230 ask its membership to vote on whether they would be willing to take an 8.91% total compensation reduction. This reduction would save the city \$10.6 million, enough to rehire the 49 firefighters that have been laid off, and thus restore one fire truck and four fire engines back into service. Last week, IAFF informed the city that the City's request will be presented to the membership, although there is no indication of when this might happen. And in response to requests from local 230 the city has also provided information showing the total compensation cost for each rank and the impact of the proposed reduction on each rank. This information along with all other labor related documents as posted on the City's Website under the office of employee relations, and that concludes had my report.

>> Mayor Reed: We'll now take up item 4.1. Santa Clara Valley habitat conservation plan status report. We'll have a staff presentation.



>> Joe Horwedel: Thank you, Mr. Mayor and council, Joe Horwedel, director of Planning, Building, and Code Enforcement. Wanted to go through and spend a little time talking to council about the latest habitat conservation plan, that we are moving forward with the draft plan and some questions we wanted to talk through with the council today and we did a couple of supplemental staff reports to provide some more information as it was coming out. Just a quick reminder why we are doing the habitat plan, it is about helping facilitate development both public and private in the city, over the next 50 years. So it is a long term vision document related to the endangered species here in Santa Clara County. It looks at our development needs of building infrastructure as well as private development, and we think it really puts together a comprehensive strategy instead of a piecemeal basis and allows us to go and be much more efficient for the mitigation that our private development partners do as well as the city in the obligations that can live on with that. Today there's some key questions, that we think are appropriate for the council, as a policy making body for the city to be considering, and as we go forward with the adoption of the plan there will continue to be important questions. It's always good to just check plan in, is the plan itself worth doing. When we first started the plan about four years ago there was a different economy, different assumptions. It is always good to check in on that. Can we afford the plan ultimately when it's put together. Especially in the tight economy that all local agencies are facing, all of us that are working on the HCP are wanting to make sure our general funds are not at risk. As a result of doing this we want to talk about that a little bit, and today we want to spend most of the time talking about the western burrowing owl, which really is mostly a San José issue. And one of the questions we have is, do we want to deal with the western burrowing owl under the plan or deal with it separately. We do think the plan is worth its cost. It is certainly a long term investment where we're going and we think that it will only get more difficult in the future and we've made tremendous progress. So we do think it is worth moving forward and getting the draft plan out later this year around the November time frame. The plan is going to provide a tremendous amount of certainty about how we deal with private development as well as public infrastructure. So every time we ask for money from the federal government, in the past we were getting waylaid by the U.S. fish and wildlife service who had commenting authority on our request for reclaimed water moneys, we were asking for highway moneys, any time we were asking for federal dollars we were at risk of being stymied with that. So it is an important piece there. As I talk about the owls, the opportunity to lock in mitigation today and have that run for 50 years is a really important feature, we think, and so we'll continue to push forward as well as the no surprises so you don't have the rules

changing over the next 50 years. It's also important to remember what the plan doesn't do. It's not a silver bullet that fixes everything, it does not replace the environmental review we do at the City of San José or other public agencies do. It does not supercede our land use authority. It only helps augment how we deal with those issues. It does not provide the water quality or wetland permits, otherwise known as army corps permits, or the regional water quality control board. It does simplify that process. They've been involved as we've been working through these issues and will provide a road map to get those permits but at this point it's not part of the plan. The strategy for the HCP will result in about 45,000 acres of land in the county being preserved in perpetuity. We will be doing that through willing sellers, through conservation easement so it is an important legacy activity. It enhances about 13,000 acres of land that are already in the county park system to make them more appropriate, suitable for habitat and it does create a reserve system with better management of those and restoration of important features around the area. We do believe that we can afford the plan. This is not a plan that will put our general plan at risk. We spent a lot of time over the last couple of months at the resource agencies making sure that is not going to be an issue. It is predominantly funded through development fees, and those fees are based on impacts caused by that direct development. So it's kind of if you cause the impact you have to pay to fix that but it also does allow to us chase after federal, local, state level, and private grants for habitat acquisition at a the HCP is kind of a road map that they use to decide where to invest in. Where the money is coming from, we've seen this one before. It's just a reminder, it a big piece of the puzzle about how we're going to recover species as well as mitigate, so I'm going to get through this a little bit faster. So the money is -- the red box is the relevant part, being able to get the state grants, about \$150 million we're anticipating over the life of the plan, being able to use some of the county park moneys that they obtain. That overlap with this and then we are working with the open space board to see if we can marry up with them. That one's still in question. As well as the private. On the owls is what we really want to talk about today. We did put a supplemental memo out that included some guiding principles about how we should think about the western burrowing owl in San José, is that most of the habitat is in San José, it is not today an endangered species under the federal government or the state government. But we do anticipate over the next five to ten years that will occur both at the state level and the national level. What that means is that projects that today have habitat that have not had a reminder to go and mitigate will have obligations put upon them and it will be dealt with on a project by project basis. What we've been seeing is the mitigation has been escalating over the years and we continue to see that happening. The state has changed how

they deal with the western burrowing owl. Before we were able to buy habitat in the Central Valley as replacement for western burrowing owls. That is no longer being allowed, that that mitigation has to occur in the valley. With our goals about how we are going to build in the city with the general plan today and the future general plan, there are serious consequences about not dealing with the burrowing owl, to where we may lose parts of North San José if we don't have a strategy around that. It is we say the land that the habitat is a scarce resource, it is essentially valued as development land. So when we were seeing market land going for several million dollars an acre, well, there's burrowing owl habitat is now getting into that scale of value. So it is a serious issue from a land standpoint, from a development standpoint. We think it's important to address in the habitat conservation plan. What this map is showing the green areas is where the burrowing owl's habitat is occupied today and you'll see on that map that is predominantly in San José. It is in North San José up near the 237 first street corridor, it's around the airport and then it's in the Evergreen area around regional view airport. There are other areas that you see in yellow which is their nesting habitats, wintering habitats, as well as areas in orange where they only winter. But we are not finding burrowing owls in those areas in south county. Today they are predominantly left in San José so that's why it's really a San José issue. We have about 1350 acres, it's a ballpark number of land that is habitat in the city. As a part of our buildout of the general plan, just looking at private development, we are expecting that 200 acres of that would potentially be subject to development. We also have a number of public projects, such as the San José International Airport, the WPCP, the Water Pollution Control Plant, are both habitat areas, and we have dealt with that with the airport expansion, that we do have habitat now designated on the airport grounds, and it is essentially self-mitigating. But with the major effort we have going forward with the water treatment plant, we do need to anticipate how we deal with the burrowing owl because of the major work that we want to accomplish with those upgrades. We also have some habitat in the Guadalupe gardens, in the approach zone, and then some of the landfills themselves could potentially become habitat. So as a partly of the guiding principles today, what we're looking for some feedback from council is one, should we go and consider dealing with the western burrowing owl in the habitat plan, and staff would say yes. Should we go through and have some basic guiding principles about how that proceeds? And so staff has put forward a series of principals that we think are critical in going into this process. That because the stakes are so high with this, it is one that we want to make sure that there's early acknowledgment and starting the buy-in process around that. We are looking at how we use land and not just thinking of it, this is burrowing owl and this is frogs and this is wetland. Is that how

do we joint-use of properties as well as like the airport where we have run-in airport and have habitat. But the guiding principles themselves we think are really critical, because there's going to be, we feel, a lot of pressure put on the city to mitigate a habitat for other parties, and we think it's critical that the city land should be used for mitigating city projects, that the treatment plant lands should be mitigating treatment plant lands. And to the extent that there are additional lands that are left over as we go through that process, that we should be valuing those essentially as development pricing rather than as open space pricing. That there is tremendous value that's there, and parties are already trying to already jockey around and go forward with low values on this. As it relates into San José specifically, the yellow circle you see are the half-mile radius around where burrowing owls are currently located at today. This is important because of the mitigation fees that we're building in. The plan does put a mitigation requirement on development of current habitat that is near where the owls live today. So the price for development in these areas would ultimately go up as a part of the plan because it is potentially destroying habitat where owls are living at today, and we would need to replace that. We are working forward with the other parties in the habitat conservation plan. We have a liaison group meeting this Thursday with councilmember Ash Kalra and Councilmember Chu, that are representatives of both the city and the VTA. But we wanted to make sure that the council, full council is aware of where we're going with the habitat conservation plan, specifically with the owls, and that we anticipate come back to council over the next several months on a more regular basis as the plan itself has come together to make sure that before a full plan is presented that we'd be able to work through specific issues. So today we want to talk a little bit about burrowing owls and see if council concurred in our recommendation to keep it in the plan but to make sure that we're doing it in a cost effective, balanced manner that we go through and move forward with the preparation of the full valley habitat plan and that we would be moving forward with the release of that plan by all the local partners in this fall. And staff is available for questions.

>> Mayor Reed: I have a couple of questions to start out with. You made mention of the fact that this is mostly a San José issue. The only place I've ever seen a burrowing owl was in Mountain View at Shoreline. And I think pretty sure it was on the Mountain View side, not the Palo Alto site. The issue is part of the habitat, the part that's within the HCP as opposed to the entire valley. What's happening in the rest of the valley around the burrowing owl?

>> Well, two things, one, you are correct as the assessment of what's in the boundary of the habitat conservation plan, which stops in San José and then goes southward. We are working on a strategy that includes the South Bay. It would actually cross into -- our proposal is in Alameda County up to the Dumbarton Bridge, so we would pick up burrowing owl habitat and Northwesting pairs that are part of, burrowing owls on the property would have to get permits through the fish and game department and they are considering mitigation, last I heard was six or seven acres for each pair of owls on the property that would have to be acquired. And that's the same that we're doing today, in South Carolina.

>> Mayor Reed: It's not clear from your recommendations and the consultant's report how much of a commitment we need to make towards this. If you read the language of the consultant's report, this is ICF international report. They're saying that we have to have a willingness to designate lands, we have to commit to doing certain things, and I don't know that I'm willing to commit any of our particular lands to something today, not having evaluated what it might be used for particularly landfill lights that we've been looking at for possible parks or solar installations or other things. How do we sort out how we want our land to be used for and what might be suitable for burrowing owl habitat in time that we can make any kind of a commitment?

>> Joe Horwedel: You know, one of the challenges that we're facing right now is both the local partners, say the cities and the Water District and the VTA are deciding who we want to go through and address the burrowing owls. And at the same time, you have the Fish and Game Service deciding whether they want to even allow it to be in the plan. So we're both doing a little bit of a dance right now to see, is there a combination of kind of the piece of the puzzle that would satisfy both objectives. From our standpoint, we obviously don't want to overcome to lay-ins an costs, that really we wouldn't have to do. And on the other side, fish and game is under a statutory requirement to ensure the survival and kind of resurgence of the burrowing owl in the South Bay. And they're not confident that that's going to be possible no matter what we do. So that's partly why it's written the way it is. Should we go through and see if it's possible to find a solution, but we're not committing today or next month to say we're going to put all our landfills, put all these lands into the puzzle. We're saying, should we go through and explore it to see if there's a reason to do that. Then come back to the council and say here's the deal that we think

is the best we're going to get, and should we do it or not, yes or no. But today we're not asking yes or no, you know, put it all in.

>> Mayor Reed: I don't want to mislead these folks about the level of commitment we might have. I'm just thinking about how long it's taken us to decide what to do with some of our surplus lands that we even decided are surplus, let alone those that we don't know if they're surplus and we don't know what we might do with them. And the time frame for that could be years, based on what are we going to do if we close a park, kinds of things, or what are we going to do if we close a golf course, or what are we going to do with our landfills which do have other potential uses. But I'm not going to mislead these folks to think that they're going to have a solid commitment from us, that we're putting -- I don't know how many acres but I think the consultant report says we are going to need 500 acres or something like that.

>> Joe Horwedel: Well, and the consultant's report is a snapshot that was done. It was not something that we had an opportunity to peer-review it before it came out. And so it's one -- that's why you'll see the caveat in our report. It's a consultant's view of -- based on the information they had at the time. We think the numbers are actually a little bit high for what the potential impacts are, so we're working back from that end of it. But I think the concern is a real one, that it is going to take a while for the city to figure out, do we want to go through and put solar collectors on landfills, versus putting burrowing owls in it. We haven't found the way to put them both there. We've been looking at that, but we're going to have to make some decisions, and we can't commit to them today around that. We're trying to see would that make a difference or not, and then we can put value to it. Because if it makes a difference, then I can go through and say well I can develop this land and put something on it that's worth \$4 million an acre, versus if I put owls here. And if it doesn't work, then it gives me a totally different value for land for owls. So that's where we're just trying to work our way towards that middle.

>> Mayor Reed: And I'm curious as to what city projects there might be that we should be concerned about. One of the things I don't want to do is for us to pay for the mitigation for private projects that should take on that burden themselves and pay for whatever needs to be paid for. And it appears that water pollution control plant lands

really aren't part of that HCP consideration because that's going to be handled as a single standalone kind of analysis. What else do we have that we are thinking about doing that we need to be concerned with?

>> Joe Horwedel: Well, we have had to deal with burrowing owls on park projects, where we're doing big improvements, where we had fallow land and we're now finally coming into the improvements. T.J. Martin park is one of those that has had those issues. We have other projects that run in where we're going through and doing a road widening or we go through you know building a building where it's in an parking lot. And so we were precluded from doing any work in that park lot until certain times of the year until the owls left. So it is something that we have city projects that you know have to deal with it on a regular basis. The airport's been the biggest in the past that we've had that issue with, as we did all the taxiway work out there. We'll definitely be dealing with that with the treatment plant. Because we're looking at doing more than just the treatment plant. We're also looking at recreational, commercial, employment-type uses. When we were looking at attracting Tesla to San José, we were going to have to deal with burrowing owls, because the Tesla was burrowing owl habitat. So it's one that we have that issue today and we will continue to have that escalating issue in the future.

>> Mayor Reed: With regard to private sector development, wherever they may be, I don't know how much of the 200 acres the consultant identified that might be at risk, how much of it is city and how much of it is private? But if we decide to participate in this, how does this help us add value or get value for our land? Does it mean that we can have our -- as referred to by the consultant's report, a habitat bank? But my bank that the money goes in two directions. It doesn't all just come out. And if we have a habitat bank, how do we get paid for the fact that we've done something that benefits a private sector project?

>> Joe Horwedel: So there's kind of two layers to that. One is with the habitat plan, we're identifying where prime habitat for acquisition should be -- or where it is at in the county, and therefore, the strategies as we go and acquire impact fees, dollars from projects, where those lands should be acquired. But remember, the habitat plan is a plan of willing sellers. So it isn't a piece where the city, because we would say, we're willing to set aside this portion of some land we own as potential habitat. That then doesn't force us to go through and sell it. What we're saying that it goes into -- that's part of the system, and then it's more of, what's the price for land worth, and that's

where we've been working hard is to raise the expectation that habitat land has tremendous value. It's not been seen that way in the past. So I think from a negotiating standpoint, even as a part of the buffer lands for the treatment plant, staff is now looking at, that there actually could generate dollars, a significant amount of dollars, for lands that otherwise we're not going to be able to generate revenue from. But it would take a commitment really from the city to go through and insist on those prices, as opposed to a developer came in that had a nice, pretty picture and we said we'll give it to you for a dollar to go do, because we really like the pretty picture. So that I think will be the biggest challenge we'll face in the future, where we are kind of a -- if we get into the habitat bank, is to really make sure we are really selling it for what the market is.

>> Mayor Reed: How do we protect ourselves from what we say changes in administration in Washington, which do happen occasionally, if we say we have X number of acres that we believe would be suitable burrowing owl habitat, that we're willing to put into some sort of a designation, a bank or something? How do we know that they don't just say, well, that's good, you've now mitigated the stuff that you want to do, but anything new, you've got to do more.

>> That is really one of the powers of a habitat conservation plan, and the state version of the NCCP, is that it says that we analyze some--what is the amount of impact that we project will occur over that 50 years? And so that's been quantified, and then we go through and do the analysis that the biologists have done, what does -- needs to be acquired and enhanced to offset that, and where should that be? So essentially, what we've come up with is a preapproved mitigation and species rehabilitation list that says as long as our impacts are less than what we showed over here, and we deliver the mitigation over on this side, we have a permit to do those activities.

They can't come back and say well, we said last year that we wanted five acres for this, but now we want ten acres. When you do it on a project-by-project basis, every project is an escalation, and that's what we've seen. It starts with one thing, and then they go, well, let's get it 10% more, 10% more, that is the no-surprises, locked-in, 50-year advantage of a plan.



>> Mayor Reed: Okay, I have some requests from the public to speak. I think I'd like to take public testimony at this point. Thank you, Joe, for the presentation. Please come on down when I call your name. There's plenty of room in the front. David Cook, David Wall, Bob Power and Brian Schmidt are the speakers.

>> Thank you, Your Honor for the chance to speak to you and the council. My name is David cook, and I'm a volunteer for Santa Clara Valley Audubon. We are particular concerned my group about the fate of the burrowing owl what's left of them in Santa Clara County. I've lived 50 of my 60 years here. And I've seen the changes in San José, as you have. Some for the good, some maybe not as good but I prefer to live here. This is a great place to live. And I think that you're alt here out much choice. Welt, as a city, we've soon it grow from a small town feel to now a large, large city with a lot of responsibility. But the heart and character of a city, and you as the representatives of the city, is not just to hear the needs and wishes of maybe the large voices in the community. It's also to hear the small voices in the community because you represent them also. And this would include maybe some that don't have a voice at all and we're speaking about the burrowing owl which at this time is less than 50 members of its tribe left in our area. So I'm asking you as a city council to hear those who have no voice, to make that part of your decision making process and to consider this HCP plan as a way to help ensure the burrowing owl's survivor in Santa Clara County. Thank you.

>> Mayor Reed: David Wall, Bob power and Brian Schmidt.

>> David Wall: You cannot rely on any federal money. Or any state money. Any of you that pay the slightest attention knows that the world is in a state of contraction economically. This program will cost literally hundreds of millions of dollars, either from the federal government, from the state government, but let's call them just the taxpayers. President Obama said, we must pick ourselves up and dust ourselves off. In other words, we can't -- we have to do with what we have here to protect the environment, to protect the habitat. The only thing that you can do locally is to to cease and desist from any other sewer hookup moratoriums. In other words, a cessation of all residential housing projects. In addition to that, that will cause not only greater habitat for the animals that surround around here, it will increase jobs as far as the number of high paying jobs but what you refuse to talk about is the fact of the water supply. It's disappearing. And there was a long time ago when another

administration that sat before me also dealt with the habitat issue. There was also a lie. And that predicated the foundation for the reclaimed water project. Which should never have occurred using the environment. Thank you.

>> Mayor Reed, councilmembers, I'm Bob Power, executive director, Santa Clara Valley Audubon Society. You make decisions in an era of great uncertainty and I know you wish things were simpler and more straightforward. Here is a case where you can be certain. Don't set aside land for burrowing owls and they will disappear. The City of San José has taken burrowing owl habitat very seriously. In the late '90s the city passed a zoning ordinance to protect vacant lands for the benefit of burrowing owls. A decade later, despite all of our efforts, the development of vacant land bordering the bay has caused the extraordinary demise of the burrowing owl. From hundreds of nesting pairs in the '70s to an estimated 30 to 40 pair today. The HCP is the owl's last best chance of survival so that you and I and our friends, and families and our constituents can still see burrowing owl families outside of Mountain View, and in the City of San José. Where they have thrived in the Alviso air for decades if not centuries, to see them living in the wild in our parks and open spaces. The general guiding principles that you're taking a look at today with all due respect are missing a key principle. And that would be, we the people, staff and leadership of what happens in San José, will do all within our power to ensure this beautiful animal does not disappear under our watch. The recommendations from ICF staff to city staff regarding burrowing owl conservation under the HCP did not come about from a late night strategy session over some lattes and a couple of doses of cappuccino. A team of professionals consisting of DFG staff, experts in burrowing owl breeding ecology, ICF staff and HCP staff have been meeting monthly for over a year to develop this strategy. Strategies presented to city staff are the best thinking and most knowledgeable in this field.

>> Mayor Reed: Your time is up. And Mark Trout.

>> Good afternoon, Brian Schmidt for committee for green foothills. We're generally supportive of staff recommendations with the clarification that the airport lands should be brought into this pot of land that could be used for burrowing owl habitat. And that the city should enter into negotiation with its partners at the water treatment plant to include those lands as well. As a presentation you just saw said in five to ten years the burrowing owl is likely to be listed at that point if not before then, the partners at the water treatment plant are

going to have their own concerns for burrowing owls and their own reason for wanting to see some consideration and potential mitigation. So to that extent we actually support the recommendations of the ICF team. In answer to Mayor Reed's questions about flexibility and the ability to using lands the more lands that are brought in the more potential flexibility that you'd have. So a city landfill would not be restricted to just burrowing owl habitat. It could be used for park land and other land like the water treatment plant could be used for burrowing owl habitat. So for those reasons we support that. And in general the environmental groups have supported the habitat plan process for this county. That is actually pretty unusual. Generally, environmental groups have been very critical of habitat plans. If the plans are done well, then that can make a difference, and that's why we've supported, with some important reservations, what's going on so far in this county. You could see the burrowing owls as almost a first test for this habitat plan. They are going to be challenges in the future, where species are not doing well and they need to figure out how to handle those. So this is a challenge that we're facing now, and it's important for the city to take out that challenge, and we think you can do that by including the -- these lands, especially the airport and treatment plant lands. Thank you.

>> Mayor Reed: Mark Trout.

>> Well, I couldn't care less about the burrowing owl. I really couldn't care less. We lose a bird or two it's no big deal. We are important to God. God made us in his image not the burrowing owl. And I would -- I would counsel you not to think of helping the burrowing owl. It's really humorous is what it is, that we've had some people come up here and talk about you know how the animals are important. When, you know, our nation was attacked on 9/11 by -- as an inside job I just learned that last year, you know and we're not even discussing that. We're talking about the burrowing owl. I mentioned at the Rules Committee meeting a month or two ago I think that there's a movie made by Jason Bermis called fabled enemies on the Internet that can you watch. And we're concerned about something that's totally unimportant, you know. The good guys in the government have to go against the Dick Cheney and George Bush guys in the government that are phony Republicans that were actually members of the council on foreign relations, it was an inside job, you know. I think that we should totally forget the burrowing owl and get more important things. We had 3,000 of our own people murdered by our own government, that's a fact I hate to come to that conclusion. As soon as I learned that, I ripped off, I support our troops bumper

stickers. And I will pray for our troops. I didn't know this. I still believe it's the sixth trumpet, and I believe it's the prelude to judgment day. But on a human level it was certainly murder of the first degree. And we as a city ought to totally forget the burrowing owl and these nonimportant issues. You know, and pray and say God, give me wisdom, you know. Certainly the lord said thou shalt not murder, thou shalt not murder. And this was a very important issue as a city. You know, I was reading Daniel 9 as I came up here, and Daniel was praying, you know, to the lord about how the city --

>> Mayor Reed: Sorry, your time is up. Our next speaker is Linda Ruthruff.

>> Hi, I'm Linda Ruthruff. I wrote like to thank the mayor and the city council for giving me this chance to speak. It is clear that you the mayor and the city council are aware of the need to establish permanent habitat for the western burrowing owl. The owl's numbers have dwindled to an alarmingly small nesting pairs in our county. As we all know this is due to habitat loss and habitat degradation. Creating a land use plan that looks 50 years into the future is a daunting task. It requires you be both visionaries and pragmatists. How can we look on our crystal balls and know what we need in place to maintain habitat with all the wonderful creatures with which we share this amazingly beautiful spot on the earth. Well considering the burrowing owls they've done the work for us. Out of the currently available land, they have shown us where their needs are being met. Now, as pragmatists, can we do what they have shown us needs to be done? Can we set aside the land where they are making their last stand in the county? Of course land is expensive. We don't need a crystal ball to know for certain that it will only become more expensive in the future. If we fail to set aside the land now land that as a city we already own our children will be forced to buy land in the future at a much higher cost. I suggest that as the people we take the long view that we work together, and come up with solutions that work. Thank you.

>> Mayor Reed: That conclusion concludes the public testimony on this item. Back to see if there's any additional council discussion, any other questions? I think maybe my speaker lights aren't working. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Appreciate the information and all the testimony. And I support the plan in general because I like the idea of it being comprehensive in that we're not going to piecemeal and I think Joe brought out I think the development community too that will be one of the positive things that there will be certainty on this going forward. I guess I just want to understand the process a little bit. I was at -- this piece of it was not brought to the economic development committee right?

>> Joe Horwedel: Right.

>> Councilmember Herrera: But it seems like there's been quite a lot of effort going on on this for a year. I guess I want to know why it hasn't come to committee, I guess we're hearing it here a lot of this first time hearing it here so I kind of want to know how it's going to make its way back to a committee so we can have a little bit more discussion at that level before it comes back to council maybe.

>> Joe Horwedel: Right. Councilmember Herrera, the ICF memo came out during the July recess so we did when we went to committee we didn't have the benefit of the report. We have been working on a number of issues related to the plan, and so have -- that's what we were bringing through to the committee. When we saw the memo that came out from ICF, it really raised concern in staff's mind that, you know, one, this is on an important critical issue with the plan. We knew that question about should we put the owls in or out was out there, but it kind of crystallized it for us. So that's why we put together the guiding principles which we had been talking through and had in our mind as staff, but we had never put really down to paper, and so we wanted to bring that forward. Ideally, we would have put this on the CED committee and kind of roll -- or the environment committee to have that conversation. As I said earlier, this is not the end of the discussion related to any of the issues with the HCP. But we are moving forward, in the drafting phases and negotiations with the resource agencies, and the owls is one of those questions that we just wanted a little bit of check-in time with the council rather than just staff having those conversations to make sure there was not, you know, a major concern that councilmembers may have, rather it was our sense that based on previous conversations we have talked about the owl, that the council was agreeable with keeping all of the species in. But now that we had this memo we just kind of wanted to emphasize that.

>> Councilmember Herrera: And two other questions just related more to my district area. I saw meadow fair located on there. That's the meadow fair I'm thinking of, meadow fair park?

>> Joe Horwedel: Yeah, I'm sorry, I said T.J. Martins. Meadow fair meant something else. It is meadow fair park out in District 8 is where we have that, and we also have had burrowing owls out at Reed-Hillview airport, around Eastridge mall, and including at some times the Arcadia land south of Eastridge.

>> Councilmember Herrera: So I guess -- and you don't have to answer this now. We can talk offline or somehow I can get some information back from staff on any impact this would have, this recommendation on proposed future community centers, sports fields and other things that are underway out there. Because financing is a real critical piece of that, so I want to understand how that will impact because -- concerned about children out there too and make sure we have habitat for them in the community.

>> Joe Horwedel: As I noted that the city does have projects that are impacted you know that have to deal with burrowing owls living on the properties. And being used as habitat. So we deal with those on a project by project. So every project that's been going forward in that area we have been dealing with the burrowing owl and looking to see, are there nesting pair on the property. Is it being used as habitat for foraging. And dealing with it on a project-by-project basis so Public Works and parks and rec staff have to deal with that.

>> Councilmember Herrera: You're dealing with it anyway. It's not anything new, it's just that there's a plan now, and now you understand the limits, I understand that. So all these projects, we would have been contemplating that as go on anyway, so there's no difference, it's not a surprise or anything like that.

>> Joe Horwedel: Right, correct.

>> Councilmember Herrera: In terms of Reed Hillview, just those areas that you mentioned, we have found nesting pairs there recently, they are there, just for information?

>> Joe Horwedel: As a part of the most recent survey work that was done, they had found owls, and that's what you see on the map that's up both right near Reed Hillview airport, as well as meadow fair park, that there had been nesting pairs out there.

>> Councilmember Herrera: In terms of Reed Hillview I just would be and again you don't have to answer me now but I'd be interested in there's been talk about activating areas around Reed Hillview to have retail and other kinds of things and I'd want to understand how that would -- if that's potential or what kind of issues there would be.

>> Joe Horwedel: That is lands that potentially got owls living on it or being used as foraging. So we would have to address burrowing owls to do like the car dealership that's been talked about on the other corner.

>> Councilmember Herrera: Okay, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Joe I understand that the reason why we're not primarily looking to private land in the areas near burrowing owl sites or in the buffer areas is because of cost. We believe that land is too valuable. But we certainly have some role in determining the value of land, by virtue of our land designation authority. And so my question is, is there a place here, since we're going through a general plan update now for us to be looking at all the land particularly if you look at that map that actually has the potential habitat with the yellow mark and I think it's for a couple of slides back, I'm sorry. It seems to me there's not an all of lot of land to look at and it doesn't have to be public. Yes, that's it, thank you. So as we look at this certainly some of that potential burrowing owl Northwesting and overwintering habitat will be in areas currently designated for open space, current there's joint use opportunities, certainly there's a big splotch down there in Coyote Valley. Obviously, I know some of this is going to be in private ownership, some of it's going to be held in trust or whatever. But to our land use authority, it seems to me that we have enormous impact over whether or not that

land's going to be developed in some way. And we shouldn't simply look at the public sites configuration. I think we look at a lot of those public sites as being -- having enormous potential upside, environmentally for such things as you know, everything from a trash to a methane recycling plant to a, you know, if you're look at Guadalupe park and gardens, to community gardens. There's all kind of great environmental, social and economic values that we can get out of our public lands, and I'm just a little concerned that it seems like we're rushing to the let's-look-and-identify-public land-first strategy.

>> Joe Horwedel: That is a very fair concern. That is one of the issues we've raised with the resource agencies, that the development policies in San José, and to the county itself, really has been about protecting the hillside areas. And so majority of what you see in the yellow and the orange on this map are actually the areas of the lower parts of the hills around the valley. There's some of it that's on the valley floor. But the green that you see there is predominantly on the valley floor.

>> Councilmember Liccardo: Right.

>> Joe Horwedel: Whether that's private land or public land, that that's where the owls prefer to live is down on the flat lands toward the bay. We have looked at the ability to get credit for protecting hillside areas, as well as even things like Alum Rock park, where we have large stretches of land where we're not developing. We have trails through there but it's very good you know joint use. We have not taken credit for that thus far in the HCP, because of the management responsibility that goes along. Ultimately we could decide that there may be value for us to partner like county parks is looking at to put more of lands that the city owns and will continue to own into active management and then being able to essentially sell those mitigation rights into the plan. I think the why we looked at the city-owned lands like the landfills and the buffer lands around the plant and even areas like Columbus park, those are areas that have a number of other restrictions on them already for development of the landfills. It is extremely difficult to put buildings on them. We've seen one in Alviso, it's extremely expensive to do it though. The Columbus park lands, we're looking right up on 880, on the approach to the runways, very noisy area. Luckily owls are not concerned about noise so they exist very well in that area. But it is not a place where we would put ball fields or we would put active-type uses. So we've tried to go and look at places where there



already would be other operational restrictions for uses that would prevent us from putting residential, putting commercial, industrial on it, and that a burrowing owl type habitat or other habitat would be a way for the city to actually see a return, economic return on those lands that today we really don't look at as having economic return.

>> Councilmember Liccardo: And I appreciate that. I guess I hesitate to put too many of our eggs into the basket of hoping that we'll be able to get value out of a sale of mitigation rights. Because the value of those rights changes enormously if the rules change. Just like a cap in trade system, as soon as Congress or state legislature or somebody else decides, you know, developers are the flavor of the year so we're going to change the rules, all of a sudden what we thought was valuable is suddenly not so valuable. So I have concerns about going, relying too heavily on that approach. Particularly also recognizing that there maybe economic value to the public lands too that we own. I guess that brings me to another question that was alluded to by the mayor. As we look at the landfills and the potential for solar arrays and other energy-generating uses there, I know you said you are looking at potential joint uses there. Do we have any feedback from solar companies as to whether or not, hey, we could actually do that and use these lands for burrowing owl habitat?

>> Joe Horwedel: I don't think it's been an issue from the solar companies when we've talked with them. It's more of the biologists looking at how those lands are configured, and whether the owls would want to even nest there or forage there because of all the obstructions that we're in. But our primary goal is looking at the ability to put solar collectors on it and how could we go and provide habitat for the owls that would go through and give them more options? So that's something environmental services staff's been looking at that question and I think it's still an evolving question. But right now we're not assuming that both work. We would like them to, but we don't see it at the moment.

>> Councilmember Liccardo: Okay. And then I know there's several areas around the airport are identified as you mentioned. And I don't know much about burrowing owl so I look them up on Wikipedia, that not only do they burrow but they also fly. And I know there's issue around having a lot of birds around an airport. So are we getting concerns from the airport about collision risks? I mean I know there were past issues with geese, for instance.

>> Joe Horwedel: Yeah. We actually have a population out at the airport today.

>> Councilmember Liccardo: Right. But I don't know if it's a good thing to have more. That's the question.

>> Joe Horwedel: We in the past have had larger numbers out there as we've done the construction, it's -- the population has shrunk. The airport staff do manage the lands to deal with FAA concerns about, you know, wildlife around. But they also manage the lands to make it suitable for owls. So how they mow the grounds, dealing with ground squirrels and those kinds of issues so it actually is more viable. And I think have been a pretty active partner to help preserve that population as opposed to letting it kind of just die off. Which could have happened.

>> Councilmember Liccardo: Okay. And then the last question I had related to the Don Edwards national wildlife refuge which is listed on page 4 of the memo from the consultant. But it just seems to be, if I'm not mistaken, Northeast of a large area of occupied habitat now. To what extent could we leverage that incredible natural resource to help us with habitat? Are the biologists concerned about that?

>> Joe Horwedel: That is what we've been look at, of actually taking the habitat and coming all the way around the East Bay to the Dumbarton bridge. There is a large amount of marsh lands that could provide foraging habitat for the owls, that there are suitable grounds that they could nest in. So it's not just a North San José Alviso issues that you could actually build a much stronger population up there by enhancing that habitat. So the biologists have thought that there is merit in that and that's why they're looking at the Don Edwards as one of those connecting pieces to that. I think at the end of the day, we're going to have some challenges of things like the salt marsh harvest mouse which is an endangered species, on the food change what the burrowing owl is looking at. But then again, the burrowing owl is food for other raptors, so it kind of -- we're balancing a lot of --

>> Councilmember Liccardo: Well, depending on your perspective, it could be a good thing, but depends on which -- yes, I understand. Well, I appreciate it. I know there is a lot of work to be done, but I know these are not easy problems to fix. Thanks, Joe.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I have a question. I was on the HCP for a very short period of time. Could you refresh my memory, what -- because I know it -- if I recall right, I didn't think it went all the way north to the boundary of San José, the northern boundary.

>> Joe Horwedel: The northern boundary for the habitat plan stops at 237, right in that edge. We have included the burrowing owl habitat looking north of 237 because we -- it is a place where the burrowing owls live today and it's an opportunity to reestablish the population. But we did not include, in the HCP, all the bay land species because of the issues where with that. So we generally stopped at 237 as where that dividing line was.

>> Councilmember Chirco: And that's what I remembered. And so I was wondering, is like, if I recall right -- geographically challenged here -- the WPCP is actually north of 237.

>> Joe Horwedel: Correct.

>> Councilmember Chirco: And as we're looking at possible uses and reuses of that property, that's not in the HCP plan, so there would have to be a whole plan done, if I am right, to mitigate whatever impact we have on the environment up there.

>> Joe Horwedel: That's correct. We're doing an EIR and EIS document for that project, once the master planning finishes up we'll do our own environmental review and we'll have to do our own permitting as the city's tributary agency.

>> Councilmember Chirco: When I looked at this and I saw significant acreage of that being considered, I thought, that is not how I remember the conversation. That we're talking about something as a mitigation technique, when we may well need it for just that very project. So I really -- you know, am concerned that where

are we doing the mitigation and are we look out beyond just the HCP, which I know you've talked about. And then also open this map you have currently -- where there is the potential burrowing owl, what makes them less desirable? I mean, that's a large area and what could be done to make it a more attractive burrowing owl habitat? Move the marsh mouse?

>> Joe Horwedel: Well, that is some of the stuff that the biologists would be looking -- have looked at in the past and it would be getting included into the plan. Because the goal is to diversify the habitat. And if we have areas that are shown in the yellow that could be that habitat, are there things that we could be working with property owners to do about how they farm their fields, or how they maintain open space, mowing versus disking, leaving in not eradicating ground squirrels. You know, not suppressing field mice population. Things like that, that could help create a viable habitat so that as the pressures in other parts for the owls, that they would have places we could relocate them to, that would work.

>> Councilmember Chirco: And I would be very interested when this comes back you know, that kind of be the part of the conversation that we look at the whole HCP area and possibilities of enhancing environment areas, so that we could get that multiple use for different species rather than just looking at the city as the only resource that we can really investigate.

>> Joe Horwedel: Yes.

>> Councilmember Chirco: I know I heard Sam and the mayor both speak about the value of kind of like mitigation lands. And I don't think San José's in a position that we can really risk a lot. So when this comes back to the council, I think that would be an interesting conversation to bring forward.

>> Joe Horwedel: And that's what we tried to weave into the guiding principles, as that philosophy, we didn't want to be seen as the safety net for everybody else in the county. That we really wanted to put -- to make sure we were protecting the interest of the citizens of San José for our facilities.

>> Councilmember Chirco: I know it's Morgan Hill, Gilroy, San José, Santa Clara County, VTA and the Water District. That's a large geographic area, and to just, you know, while we may be the largest, except for the county, I really think the partners need to do some collaboration in bringing proposals forward. Thank you very much, Joe.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Thanks, Joe, for your work and Ken Schreiber, as well as the whole team. This has been years in the making, we're coming down somewhat to the final stretch on this issue of the burrowing owl. If your suggestion going forward, how does that -- it's my take based on both discussions with you as well as the presentation here today, that doing nothing may in some ways put us in a more disadvantageous position than actually going forward with the plan. That includes some of the concerns that the mayor rightfully raised regarding the use of some these lands. So how would you -- how would you frame that idea, that we're actually putting ourselves in a better position to at least in advance of the burrowing owl being made an endangered species, giving ourselves even more flexibility going forward?

>> Joe Horwedel: Yes. Staff very clearly believes that it is in the City's long-term interest to have the burrowing owls in the long term plan and to negotiate as a mitigation strategy, preservation strategy for the owls with fish and game. That said, we don't think it is a blank check approach to it. And so that's why we've tried to kind of box it in and sayists got to be one that makes sense. But very clearly, we know we're going to have to deal with burrowing owls on projects the City's going to be doing for the next 50 years and that if we want to have any level of control about being able to deliver those projects in a cost effective manner, in a time schedule, you know, with some certainty around that, we think negotiating that agreement now, before it becomes an endangered species, is critical.

>> Councilmember Kalra: And in general, as far as the HCP, by developing this plan, does it help in our relationship of the federal and state agencies in terms of the city relationship, in terms of how we're sustaining our habitat?

>> Joe Horwedel: Well I think it helps in a couple of ways. One is, that on a just application basis, that since we've been working on the habitat conservation plan, the fish and wildlife service has really treated us as a partner and how we have moved projects forward. Prior to that we were seen as an adversary. We would argue for a year or so on every one of those environmental documents. He secondly since we've been doing the habitat plan the fish and wildlife service has identified and actually moved federal moneys to the plan area, to, one, prepare the plan, but also, start putting dollars towards how we can start acquiring land. And so we're not competitive for those dollars, without being in, having a plan put together, and ultimately once it's adopted there are moneys that come out of the federal government every year for habitat acquisition preservation, that this would allow us to compete for.

>> Councilmember Kalra: And in developing the HCP, there's been, at least from large segments of the development community, some support of putting it together. Because ultimately, the fees could have helped them in terms of putting together the EIRs and mitigating, mitigating especially in some of the open space areas in Morgan Hill and Gilroy. Taking that same -- taking that same point and transferring it I guess or considering the burrowing owl and considering what Sam has said about the general plan update do you think it would be an advantage as well of broadening the scope of which we look at the burrowing owl habitat? Do you think there may be advantage to the private sector in doing that, the private development, so that at least that component of their EIR or that component of their mitigation is not necessarily covered, but at least studied under a broader plan?

>> Joe Horwedel: I think Councilmember Liccardo was correct about the habitat bank and value of habitat, that with the plan, it has value. You know if the resource agencies back off the net value drops, we have seen private parties come into the county and start acquiring land and selling habitat shares. That along the Coyote ridge there are several that exist there today. So I think you will see more of that type activity that's going on. That's partly our concern is that we would like to go through and acquire more of the lands now, rather than once the plan's in place and kind of says here's the places to go buy and kind of the market starts rising for those lands. But ultimately I think the private sector will get involved in habitat acquisition and selling those rights.

>> Councilmember Kalra: And do you think it's necessary for us to go forward at this point with the recommendations given the fact that we still don't know exactly if fish and game are going to include the owl as part of the plan or is it just as a separate notion that it's still relevant for us to incorporate the owl?

>> Joe Horwedel: Staff believes very strongly that the owl should be included in. But as we said in the guiding principles, it's got to be on a basis that makes sense. And that's the same way I think fish and game is approaching it, that they would like it to be in but it's got to make sense from their side of it too. So right now really the discussion the council has had today is really helpful for staff because it gives us some sensitivity about where we can negotiate and where places we should hold back or retain more flexibility in those discussions with the resource agencies. But at the end of the day, we're going to come before the council and say you know, we should adopt the plan or not and you know we should include owls in it or not which should only be in HCP and not a state plan. We've been through -- those are the types of questions we've been looking at so far and ultimately will --

>> Councilmember Kalra: I sense that is what some of the concern is about boxing ourselves in. It sounds like that we're not necessarily doing that but going forward and allowing ourselves to still valley the burrowing owl habitat as part of the plan, not -- but we'll have the opportunity ultimately to make that determination?

>> Joe Horwedel: That's correct, to go through and say at the end this really doesn't make sense because we really want to go through and maintain flexibility to do X on the landfill. But it allows me to go into the -- those discussions and recognize that you know, what might have been that seemed to be a simple idea actually has you know more layers to it that we just need to make sure that the resource agencies are aware of that.

>> Councilmember Kalra: Okay, yeah, I'm comfortable with including the burrowing owl, and including the staff recommendations. But I do recognize some of the concerns from the mayor and others that we don't limit ourselves prematurely. And so it seems like we can -- we can at least avoid that at this point and we're still -- we still have some room for discussion and we still don't even know if the owl is going to be part of the overall plan. But I think it's been made pretty clear by many of us up here that we want to make sure that we don't in any

way kind of handcuff ourselves in terms of the ability to use the land the best way we see fit as long as we're complying with the appropriate mitigation. So with that I'm comfortable putting forward the staff recommendation on the habitat plan, if that's appropriate at this time.

>> Mayor Reed: Okay. We have a motion on the floor to approve staff recommendations. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I also wanted to thank Joe and Ken Schreiber over there for your work over the years on this issue. The question is about the timing. I also want to thank the mayor for raising some good questions. My question is about the timing of making the decision today on this guiding principle. If we defer our decision today, can we put a place holder into the draft plan and so we can kind of vet it out, this guiding principle, through committee as well as coming back to the council? Just on the burrowing owl, on these guiding principles.

>> Joe Horwedel: So Thursday at the liaison group meeting, it is on the agenda about burrowing owls and should it stay in the plan or not. And so our recommendation will be that it should stay in the plan.

>> Councilmember Chu: Okay, I agree with that recommendation. But I'm talking about --

>> Joe Horwedel: So the guiding principles we have included here I think are more about the City's interest on how we would ultimately decide to adopt the plan or not, if owls were in it. We're trying to lay out what are those deal points that we should be thinking about before we get there?

>> Councilmember Chu: Okay so the decision point today is whether to include owls in the public draft plan or not?

>> Joe Horwedel: Correct.



>> Councilmember Chu: And we'll have plenty of opportunity to work on the language and the guiding principle, am I correct?

>> Thank you. Darryl Boyd from PBCE. Councilmember Chu, I guess in response to your question, it's important that we be able to convey some of the City's concerns, the council's concerns, to particularly state fish and game, so that they can then be weighing our deal points, and decide whether they think they can live with our deal points or not. So that's really the other timing consideration that's important at this point in time. We need to give them some FEMA feedback so they can decide whether from their perspective or not they think we should include owls in the plan. So that's the other timing consideration is to give fish and game some feedback. Thank you.

>> Councilmember Chu: You heard the mayor and the council and you will there be seriously?

>> Correct. .

>> Councilmember Chu: And I will be supporting the motion on the floor.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I will be supporting the motion as well. I just wanted to let staff know I share the same concerns that the mayor outlaid. I don't want it to surprise you, to be doing work and coming back to the council, oh, he didn't say anything. I share those same concerns. I like, you know, open space and not build on the hillsides and all the things of that matter, but I want to make sure that we can have economic development in the city that continues to employ people house people have places to work and I just have some reservations on the implementation and how that will work. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I support the motion but I guess I still want to know, is there any piece of this that is coming back to committee? And I think Councilmember Chu is sort of asking about that. So it's apparently, I understand the guiding principles and that sort of thing needs go through to vet it with fish and game.

>> Right.

>> Councilmember Herrera: But is there any other decision point here where we are going to discuss this in committee before it comes back to council?

>> Councilmember Liccardo: There are several things that we need to come back to council, and we'd like to come through committee on. One is, we are continuing to have discussions on the fee structure with the home building industry and other development partners about how that would work. That is something we want to bring back to the committee. I would say as we find out more about fish and game and their strategy whether they are willing to do the burrowing owl in the plan or not, that is something we would want to bring back to the committee as we're learning that. And then both of those would be coming back to city council. And I think there are some other implementation things that are in the plan that we're working through still the drafts on that I think would be good to at least introduce to the council through the-d starting with the committee and then to the council, just so there's no surprises in November, when a -- ultimately when the plan gets to the council next November.

>> Councilmember Herrera: And are you thinking T&E committee or Economic Development?

>> Joe Horwedel: Flexible as we've kind of worked both ways. The fee stuff we've been bringing through CED. Some of the other habitat issues I think we have brought through T&E.

>> Councilmember Herrera: So I would just ask the maker of the motion if we could -- if you would be comfortable, maker of the motion, if you would be comfortable adding just that it would -- some these implementation things would come back to committee, the appropriate committee?

>> Councilmember Kalra: Yeah, that's fine.

>> Mayor Reed: The seconder accepts the friendly amendment, okay, I have a motion slightly modified. Okay, further discussion on the motion? All in favor, opposed, none opposed, that motion is approved. That concludes item 4.1. We'll now turn to 6.2, school zone speed limit on Dana avenue between Hester avenue and Naglee avenue. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. I don't know if director of transportation wanted to present anything or --

>> Mayor Reed: He's coming down, we'll find out.

>> Councilmember Oliverio: Okay.

>> Hans Larsen: Mr. Mayor, members of council, the recommended action before you establishes a 15 mile-an-hour speed zone on Dana Avenue near Trace Elementary School. This is a tremendous effort to pull this together. I just want to highlight a few key individuals that worked on it, but instead I might defer to Councilmember Oliverio if he wanted to make some initial remarks.

>> Councilmember Oliverio: No, part of my comments were going to be to thank Department of Transportation. There's a lot of things that we had heard about, or priorities of the residents during the budget process but one of those things that are right there in the middle of a core services Department of Transportation. So Hans Larsen, Laura Wells, lieutenant Jeff Smith from the police department, down to the sign crew that put up the signs. So I'm very appreciative of the fast-acting. We had a unique situation of Trace having a fire and having to build on both sides of the street of Dana avenue which means teachers parents and kids are going to be crossing Dana Avenue many more frequently than they have in the past. And probably one of the best gifts I've seen come out of our state assembly was assembly bill 321 which allows cities the flexibility, in appropriate situations, to lower the speed limit in front of schools. It is something I support. In this circumstance it

makes a ton of sense, based on what's happened at Trace, and the only way we are able to do it anywhere else in the future is with funding to Department of Transportation. But obviously in the budget as well as every other service in the city, we took a substantial cut, in traffic calming. But I think it's appropriate for this place right off, where it has a junior -- a middle school, elementary school and a high school. And I really appreciate Hans, that the ability to move so quickly on an administrative level outside of Rules to get this going and now we're here before the council. So I'm appreciative D.O.T. and I appreciate my colleagues' support in enabling ideally a safer way for people to be by the school. And I just say this final thing. Whether it's an adult or a child if you're hit buy car at 25, you most likely will die or severely be injured forever. If you get hit by a car at 15 you live. And I think that's a real component about school safety. Thank you.

>> Hans Larsen: I just might add, well put. Just -- it was less than two weeks ago this item came to the Rules Committee. Lastfully we installed the signs. School started on Monday. Today we have the action before you, to formally adopt the legal and official actions to put this in place. As Councilmember Oliverio mentioned, Laura Wells did most of the work, and with support from Jim Bittner. You mentioned the other folks. I also want to give a huge amount of credit to Johnny Phan, from the city attorney's office that greatly assisted us in this. Thank you very much.

>> Councilmember Oliverio: Thanks for rounding out the thank-yous. And obviously, I need to make a motion. So motion to -- thank you.

>> Mayor Reed: We have a motion to approve the staff recommendation. Councilmember Pyle.

>> Councilmember Pyle: I think this is just great. Especially good tribute to what did happen there and since. And secondarily Subject to the fact that these elementary school kids are going to have to go into an area walking where there's a middle school and high school and I think one other school as well, this is a little bit of whatever can be done to help them out and I truly appreciate it and I think it's a wonderful thing and I'd like to second the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just wanted to add that as someone who has been hit at 15 miles an hour I wouldn't want to be hit at 15 or 25. But nonetheless the point is well taken. I want to commend Councilmember Oliverio for his leadership and want to thank the staff for your flexibility in making this happen here, thanks Hans.

>> Mayor Reed: We have a motion and second. I have one card from the public to speak, David Wall.

>> David Wall: Anybody that is liable to get hit on the road for not obeying traffic regulations -- [ Laughter ]

>> David Wall: But I would like to give the kudos to Rules Committee as well as Councilmember Oliverio. What is really at issue here is the state law is mandating, unfunded mandating of transportation studies to lower speed limits for regularly traffic flows in the city. That has to come to an end. I think also great thanks should go to our beat cops. Not just the police department as a whole but the actual beat cops assigned to your district Councilmember Oliverio. And I would hope that you take the necessary time to ferret them out and thank them personally for that. As far as this safety issue goes it should have been a no-brainer from the start and again I give grade kudos to the rules committee and to our acting director of transportation, who should probably just a regular director, and hopefully there will be rules of the road being obeyed somewhere in District 3.

>> Mayor Reed: Any other comments from the council on the motion? We have a motion on the floor. I have one last comment, if you want to know what it feels like to get hit at 15 miles an hour get a good hard run at a brick wall. Hit it as hard as you can. Yeah, and then double it. So 15 is still not safe for kids. So don't hit the kids, folks. Whatever speed it is, don't hit 'em. All right on the motion, all in favor? Opposed, none opposed, that's approved. Our next item is 7.1, public hearing on the municipal water system's 2010 Public Health goals report on water quality. This is a special public hearing. I think the City Clerk has some information to include.

>> Lee Price: Thank you, Mr. Mayor. Members of the council, the public health goals report on water quality for the San José municipal water system's evergreen, Edenvale, and Coyote Valley service areas has been prepared

in accordance with section 116470 B of the California health and safety code. A public meeting was held by city staff on augmentation the 5th, 2010 and no comments were received. This public hearing serves to receive and respond to public comment prior to accepting the report as required by the health and safety code. I believe you have one speaker card. And after hearing from the public then I will have a conclusion for you.

>> Mayor Reed: Anybody here who wishes to speak on this item, please come on down. There is not a lot of people in the room. I have one card so far, that would be Mark Trout.

>> Well, I don't want to puff Alex Jones on info wars.com again but I do because he is so good. He leaves Rush Limbaugh even in the dust. He was talking about how our water is being systematically poisoned under the guise of caring for us. They're putting in fluoride, lithium, even Fox News, I think I mentioned this to you months back, Fox News reported that they're putting Lithium in the water. That's for people who are psychotic, right? For those of you who voted against Arizona, consider the burrowing owls will get poisoned by the water when they drink it. I know about half of you are constitutional and half of you are treasonous with Obama and Eric Holder, so you don't care about us. But you care about the burrowing owls that will drink this poisoned water with lithium, sodium fluoride and other poisons in it. So think about that. You know I'm getting to you, because this is the truth. When I ran for city council, I upheld the constitution, that is my boss, before got, the constitution says to deport them and you know it says that, that's why I made that comment. How much more time do I have? 51 seconds. Okay. According to Alex Jones sodium fluoride that's being put in our water, okay, is a catch all phrase for over 200 different poisons. It's amazing. Poisons put in our water, why is this being put in? Because of eugenics. Eugenics is a word that isn't frequently used, but it is the idea of people like, well, Bill Gates, if you listen to him on Radio Liberty.com who believes we have too many people in the world. And so we have to reduce that by putting poisons in the vaccinations to get rid of 15% of the people. Or if you go to the Georgia guide stones like Dr. Stan Monteith. I know, councilmember Campos, you don't believe this, I didn't believe this a few years ago. It sounds wild and it is wild, if you go to Albertain Georgia, Dr. Stanley --

>> Mayor Reed: Your time is up. Is there anyone else who wishes to take a shot at commenting on this health goals report, however remotely it may be? No, that concludes the public testimony on this. We have a motion to approve. City Clerk, do you have additional informational to give us?

>> Lee Price: Thank you, mayor. I was just going to add that we have received no written comments, so with this one comment the council has now conducted the public hearing, and you may take action.

>> Mayor Reed: We have a motion to approve the report. All in favor, opposed none opposed, so that's approved. That's the agenda for this afternoon's part of the day. We'll take up open forum, please come on down when I call your name David Wall, Mark Trout. Joan Todd. And Jim Piso.

>> David Wall: Last Thursday afternoon, at the treatment plant advisory committee meeting, testimony was tendered to Mr. Mayor's chairman of that illustrious group, as what happens to all the moneys taken from city employees, in this budget reduction scenario, there's 14.76% I think in total of all their moneys, whereupon you directed the director of environmental services department to come up to me and tell me where this money's going. Now we're talk millions of dollars here. And this is directly related to the sewer service and use charge. And more importantly, proposition 218. And how the sewer service and use charge is first decided and then put forth to the voters or the ratepayers. Now, the director was truthful. I have no problems with his response to me. I have a dramatic problem on the creation of what I personal personally, person opinion, would call this fund, is a quasislush fund. Slush in the sense that it was told to me truthfully that it would be used to pay down increases of the sewer service and use charge or costs at the plant. This is not congruent with the sewer service and use charge or proposition 218. And this should not be done, period. But this gets to the bigger issue about how this budget reduction scenario that you put forth, Mr. Mayor, to the public, and the money saved, the public doesn't understand these restricted use funds and how they are used and how they're collected. And subsequently, everybody on these restricted use funds should be allowed to keep their money. Now with reference to the 49 firefighters. There are other sections of the city government that could be eliminated in my opinion to restore these firefighters to their full service and pay.

>> Mayor Reed: Sorry, your time is up. Mark Trout, Joan Todd, Jim Piso.

>> 44 days after the sabbath year ended I walked into the City Clerk's office and asked Mrs. Price if I could have the papers to run for city council. And she said I could, be the write-in candidate if I would get 50 or 60 signatures. So I went from everywhere to flood street to wherever, got the 50 signatures and brought it back and ran for office, I lost. But I thought it was interesting. I didn't even know this would happen but everybody sworn in even if you don't win, I don't know I thought you got sworn in after you won. And we held our hand up before God, right here we can't see him, he can see us he can hear us. We can't hear him unless we read the Bible. To uphold the United States constitution and the constitution of the state of California. Which is very, very similar to the state of Arizona. Now all Arizona was doing was trying to keep the law. You know, it really -- so my boss, if I won the council, would be first God. Second, the constitution, okay? Well likewise, on judgment day, God is actually going to use the Bible. That's his constitution. He's going to uphold his word. He's magnified his word above his name. So apart from God's feelings you know he's going to go by the law. And if you are not in Jesus Christ, if you're not covered by his blood, you'll feel his wrath. God says I will have mercy on whom I will have mercy, I will have compassion on whom I will have compassion. It is all up to God, and God will go by the book. And Jesus himself said, which of you convinces me of sin? Which of you convinces me of ever violating the smallest precept of the law of Moses and the law of Moses was pretty severe. You know, the law of Christ was even more. You know, the law of Moses says, don't commit adultery. The law of Moses said if you even look upon a woman with a high dress on and lust after her, you have committed adultery with her. The law of Moses said don't kill. But the law of Jesus says, you're --

>> Councilmember Herrera: Your time is up. The next one is Joan Todd, followed by Jim Piaso.

>> Ladies and gentlemen, in my work I travel the world. Especially in eastern Europe, where the emerging countries are trying to get out from monopolistic controls. The number one tool they use are permits, and grants. To try to encourage and reward innovation, entrepreneurship and creativity. To try to break the strangle hold that the larger monopolistic world had given them. In order to do this, the permits are to be expedited. The grants are to be focused. We, too, have been talking with PG&E. I see you are having some innovative talks with



them. And at green enterprises we are offering them our purely green, the greenest and cleanest of all energy, the wood chips. We're about to open. After almost a year and a half of nothing but struggle. The permits have not worked for us. They've cost over \$41,000. They have not been speeded up. And most of all, our more than half million dollar Obama stimulus grant for green jobs, green energy, and small business, has somehow been told by -- to us, that it is lost, given to someone else or reduced to \$75,000. We'd like to know why.

>> Mayor Reed: Jim Piso.

>> I'm Jim Piasso with green earth enterprise and you know I've been doing some investigating. City of San José they say everybody says that they're looking for you know companies to come around and stuff and that come invest in the City of San José and stuff and California and stuff. Well, you know I've done some other investigating on these other states like Texas and Arizona and stuff, their permit fees, they're not even -- they're a thousand dollars compared to we got invested over \$41,000 in permit fees. Where is the City of San José's Mayor Reed, especially your state of address, this year especially, you know, to cut permits in half and stuff. So that what is that tell me? That tells me that the permitting cost is \$82,000? Because if you cut it in half, then that means \$41,000. I think, you know, you should go back and really look at your, you know, your speech and well I think walk the walk, and talk the talk. Thank you.

>> Mayor Reed: That concludes the open forum. That includes the agenda for this afternoon. We'll recess until 7:00 p.m.

City of San José city council meeting, evening session.

>> Mayor Reed: Good evening. Going to call the San José city council meeting back into order for the evening session. We have a ceremonial item to start the evening out with. I'd like to invite Councilmember Liccardo and Don Gagliardi to join me at the podium.

>> Councilmember Liccardo: I think those of us who have been around City Hall know Don pretty well. Don, come on down here. Don has been an incredible advocate for the community, starting with his Northside neighborhood. The oldest neighborhood association in the city, I'm told. Don has been president of that organization, the head of the 13th street NAC, recently just stepped down as the head of our district 3 neighborhood advisory group. Which we affectionately call it the nag. Don has ably led that for three years. His enthusiasm has been infectious. He has been able to engage so many people in supporting a whole host of causes, all the way from libraries to pools to community centers and parks, and we're certainly grateful for all that leadership. But you know what gets Don perhaps most animated and excited is soccer, as we all know. Soccer Silicon Valley is a brain child along with a couple of other folks, and he also started soccer Silicon Valley foundation, which the community foundation, under Don's leadership, has a long list of innovative philanthropic initiatives, such as recruiting young adults to serve as role models and chaperone dozens of at-risk youth to Earthquakes games, building a youth recreation center in Uganda with funds raised through the foundation. Providing Jerseys, cleats and soccer balls to youth teams in countries ranging from El Salvador to Iraq and South Africa and Ghana. His foundation helps raise money for causes ranging from autistic children to simply getting kids more involved in sports. It is a wonderful foundation. We're grateful for his advocacy, certainly for soccer, for getting earthquakes excited, earthquakes fans excited about their team, for historic be preservation and everything else else he has been involved with. Some know Don is a lawyer. If we are responsible for paying the equivalent hourly rate of all of Don's time here at the city our deficit would probably double and we would be another \$40 million in the hole. Don I want to thank you for all your leadership and ask the mayor to present with you a commendation on behalf of the city. [applause]

>> Well, thank you. I didn't realize somebody was going to put this on Facebook. I was going to get in and out quickly. My shorter eggs council meeting. As everybody knows I'm a regular. Thank you mayor and Sam and the entire council. I'm very humbled by this, and I want to say thank you to all my friends and neighbors who are here tonight. I love San José. I can't tell you how much I love this city, and it's because of the great people in the city, the wonderful people we have on this council. There's no city like it on earth. And my soccer foundation is built on the idea that soccer fans are just another neighborhood. And we can do what neighbors do in this city. And so thank you very much. I love to live here and I really appreciate this award and I'm very humbled by it. Thank you. [applause]

>> Mayor Reed: First item of business is item 6.1, public hearing on appeal of denial of stop sign installation. Take a minute for staff to come in place. We'll have a staff review and then we'll hear from the appellant and then we'll take public testimony.

>> Hans Larsen: Mr. Mayor, members of council. I'm Hans Larsen, acting director of the Department of Transportation. And joining me here for this item is Laura Wells, our deputy director for transportation, parking and operations. And captain Jeff Smith from San José police department. This item tonight is about conducting a public hearing to decide the status of two stop sign requests from the Hathaway park neighborhood association. You have two opposing recommendations on this item, one from staff prepared by Department of Transportation and the police department, one from Councilmember Constant, and that's okay. You'll also be hearing from the community as well on this topic. The process that we're following is a procedure specified in the city's muni code regarding stop signs, in which the Department of Transportation receives requests, does a study, provide our determination based on professional practices, the community has an opportunity to appeal that decision through the council-appointed traffic appeals commission, which we have gone through that process. The appeals commission upholds staff -- upheld staff recommendation and the Muni code does provide an opportunity for council to hear the item as well if they want to continue to pursue it. And that's where we're here today. Whatever the direction that council takes today, staff will follow through with that direction diligently. Our purpose is to provide the council with our best professional guidance on the topic. We'll provide a little bit of background and context in terms of the City's policies, our perspectives, some details of the particular requests

and then open it up to other input and the public hearing. As council is well aware, the Department of Transportation and the police department have an outstanding safety record for this city for transportation. We have a very high level focus on safety. We follow best practices in the industry. We look at, and collect, data and use that to provide the best direction for the city in terms of safety. This council has seen this data here over the last two decades. We have seen year by year improvement in terms of San José's safety record and we're currently half of the crash rate that we have within the nation. Something we can all be very proud of. Traffic control devices which stop signs are part of, there is a very strong regulatory framework that guides the decisions on where and how to place control devices like stop signs. San José Muni code requires adherence to the state vehicle code and CalTrans standards. Likewise, the California vehicle code requires local agencies to adhere to CalTrans standards. This is important in order to provide a consistency both within our community and other cities, and there are similar practices across the country. So that people are familiar with the kinds of regulatory devices we have on our roadway system, and by having consistency you can help insure familiarity and safety. Council policy that guides how we evaluate stop sign requests, and implement those. Again, it's consistent with state law and CalTrans standards. I think it's important to note that in 2001, that council acted to make our policy more liberal than statewide practices. And this was an effort to accommodate SNI requests, interest from schools, and San José's movement towards being much more of a multimodal city in which we pay higher priority to pedestrians, bicycle traffic, neighborhoods and schools. So we should know that our policies are a bit more liberal than statewide standards. Some of the factors that we consider in evaluating stop signs include crash history, is there a record of problems or concerns at a particular intersection? We look at the number of vehicles that are conflicting at an intersection. So how many volumes on each of the two streets, and does that create a probability of conflict that requires a certain level of regulation? We take a specific focus on the proximity of schools and other special conditions, and among the special conditions are, pedestrian and bicycle activity, the visibility at the intersection, proximity to special generators for pedestrian activity like parks and retail areas. So we do take that, the land use considerations, into account in addition to schools. For stop signs, as obviously, this is a 24-7 traffic control device. So it is there at all times. It can be very effective, when appropriately used. But if unwarranted, it can create some issues. There can be problems with compliance with the stop sign, in cases where the stop sign is not perceived to be needed. I'll talk a little bit more about that. Pedestrians may have a false sense of security with an expectation that people are stopping and, if they're not, they may not be paying as

much attention as they might otherwise. And so that can create issues where pedestrian safety is compromised and/or increase requests for enforcement. This table here kind of illustrates the perspectives that we have with a stop sign. And the first column here shows kind of a scenario, if you have an underregulated environment. If you have an open street system, no stop controls, no crosswalks, no guidance you can have a situation that's confusing, there is conflicts that are unresolved and you can get crashes. So an underregulated environment is something you don't want to have because it's unsafe. You want to provide the appropriate level of guidance for pedestrians and motorists at intersections. What we look for is warranted regulations. And those that are considered to be reasonable for all of the users of the intersection. And they tend to be self-enforcing. If people think this is an appropriate device they'll respect it, they'll follow it and that creates a condition in which you have a more safe environment. And what we call kind of the sweet spot. There can be issues with overregulation. If you put too many regulatory controls in an area, they can lead to disrespect of the signage or regulatory advice. This may be the case of you have a stop sign and people don't perceive if you drive through that that they actually need to stop, most of the times that they get there. And that can create an environment and we have data and national studies have indicated that, if people don't perceive the need to stop on a logical basis, there's a high incident of running the stop sign or rolling through it. On the other side, for pedestrians that are crossing the street that have a stop sign, they have an expectation, perhaps a false expectation, that cars are going to stop. And they pay less attention in terms of crossing, because they feel a sense of security with the stop control. And when you have the combination of disrespect for the signage, and a false sense of security, that can create conflicts that create a less-safe environment. Also, that kind of environment can create a higher demand for enforcement, because people will want more enforcement for stop signs that aren't being followed. So again, what we're looking for is really, the sweet spot of the appropriate level of regulation, and based on professional research on this topic, that is what the warrant system is based on. Determining that environment in which you can achieve the best safety. The particular case that we're looking here is the Hathaway park neighborhood. And it's bounded within the major streets of Saratoga avenue, Hamilton avenue, San Tomas Aquino Road, and council District 1. The red circles indicate the locations in which stop signs have been requested. At those locations there are in place now two-way stop so Vallejo drive traffic stops on its route, but there are not stop signs on latmer or Colombo at the Vallejo intersections. Those are the location that are requested to be looked at for stop signs. They are also kind of the main gateways to Hathaway park which is really the central area of the

neighborhood. I was out there yesterday observing the conditions and it's quite a wonderful park where kids are playing baseball and soccer. There's a playground, lots of young people are playing at, adults walking around the park, for exercise. I mean, it's the kind of park you know, we like to have and love to see in San José. And certainly, the interest in providing safe access to a park like this is certainly something we all strive to achieve. I'm going to walk through the specifics of the stop sign request. The Department of Transportation initially received the request in November of 2008. We prepared the studies reached our conclusions which were denial for both of the two locations. The neighborhood followed up. As Muni code allows, is an appeal of the department's decision to the traffic appeals commission. Commission hearing was set for October of 2009. The appeals commission upheld the staff recommendation and denied the stop signs. In our staff report we do acknowledge that there was a misunderstanding about whether the decision of the traffic appeals commission could be appealed to council. Frankly, there has been no, sir many of the stop signs that have been appealed, and so there was an assumption by both the commission and staff that were working on it that the commission's action was final. This was pointed out to us by Councilmember Constant and the attorney's office. No, the Muni code says this is appealable to council. So we notified the community that that is the case, and that's what brings us here tonight. The specifics of the evaluation that are included in the staff report, indicate a point process that we have to determine whether stop signs are warranted. A warranted stop sign requires a total of 20 points. And it evaluates the factors of crash history, volume, schools and special conditions. The two locations had a point-total of 3 at Colombo, Vallejo and Latimer and Vallejo. In terms of crashes, there are no crashes from the last two years. Looking back in the last two decade there was a mid block accident about six years ago and there was an intersection last year -- nine years ago. In terms of volume conflicts, this is the issue in which it's perceived the need for volume control based on the number of vehicles crossing through the intersection in both directions. On a relative basis, the volumes are very low, and they actually don't score any points on the volume conflict category. There is not a school within the near vicinity of the area to generate points. The points that the two requests generated were related to the presence of the park, as well as the pedestrian activity from the neighborhood to the park location. And you can see the point totals there. Generally, the sense is that with the relatively low traffic volumes, there are sufficient gaps for cars and pedestrians to be able to safely cross the street. We have heard from the community a concern that crosswalks that are there at the two location there is a concern that cars are not stopping at the crosswalk as they should. But there are sufficient gaps on the street for

pedestrians, if they're watching, to make sure the cars stop. Or if they don't, they should proceed only when it's safely, and that there's sufficient gaps for people to be able to cross conveniently from the park to the neighborhood and vice versa. Wanted to just note in terms of alternatives. The issue of not getting the level of compliance at crosswalks that we would like. There are other devices that we use in the city that are part of our traffic-calming tool kit to enhance the compliance at crosswalks. They include high visibility crosswalks, so we add additional paint, so that they're more visible. We also have what we think is one of our best devices, is a pedestrian activated flashing beacon, and these are solar-powered devices that we can place there . So when the pedestrian wants to cross, you push a button, a beacon activates, gets the car's attention, and we get much better compliance with those. Both the enhanced crosswalks and the flashing beacons are part of our traffic calming program. Unfortunately, with budget cuts, we do not have a program that funds those items presently available. You can see the list of some of the locations that we have. The flashing beacons and enhanced crosswalks at several parks around the city. The other thing that we do have is our street smarts traffic safety education program where we get out to elementary schoolchildren on a rotating basis to teach them how to behave properly and safely within the streets and that includes messaging and learning about crossing at crosswalks, don't assume that cars are going to stop even if you have a stop sign. Make eye contact. And assure that vehicles are stopping and you have a safe opportunity to cross the street before you proceed. That includes our overview remarks. I think captain Jeff Smith may add just a couple of additional comments and then we'll open it up to the public hearing and hear as a resource for the council as you debate this topic tonight. Thank you.

>> A couple of the concerns that we have over stop signs being placed in areas that may not -- where they may not be necessary are the conflict that can develop, the crashes, the disrespect for the signage itself and then the request for increased enforcement. As the council knows, the police department, specifically the traffic enforcement unit along with the Department of Transportation, has worked very hard to revamp our enforcement strategy as it applies to the school and neighborhood enforcement zones. And as things like this come up, and signage is placed in areas where people have an expectation that there's enforcement, it has been our experience that without that enforcement, it leads to disappointment and increased requests for that enforcement. We are currently -- our traffic enforcement unit is currently operating at 1986 staffing levels. And that

has put a strain on their ability to conduct the required enforcement. But with the school enforcement neighborhood plan, we are able to hold our ground and I think provide as much safety as possible. One of the concerns we also have is that if this signage is in fact installed, with the disrespect for it that may occur, there's going to be a dramatic increase in those requests for enforcement from this area, and in fact they may qualify for school neighborhood enforcement. But I think our main concern is that that may be pulling us away from areas that are perhaps more dangerous and more in need of that enforcement. We can always try to rely on patrol to do that. But we're you know currently at such a low staffing level per capita it's not likely patrol would be out there as often as people would like to see them. So from the PD standpoint we would have some concern over the request that would come in for that and possibly the disappointment that would lead from a lack of enforcement from our perspective.

>> Hans Larsen: That includes our comments and presentation, Mr. Mayor.

>> Mayor Reed: Thank you. At this time I'd like to hear from the appellant, and then we'll take public testimony on matters of appeal, we allow the appellants five minutes for their presentation.

>> Mayor Reed, honorable councilmembers, residents of Hathaway park, and ladies and gentlemen. Thank you for the opportunity to speak with you this evening about the issues in our neighborhood. My name is Richard Hendrix. I've been a resident of the Hathaway park neighborhood association for the past 11 years and have noticed these issues and brought them to the attention of Jim Cogan of the chief of staff for Councilmember Constant. We'd like to bring your attention to a few things that may not have been brought up by the D.O.T. and the city traffic engineer. Because we've provided handouts, as some of the material, I'll be skipping ahead to a couple of items. The first is, this is you know, why do we need the four-way stop signs at Latimer and Vallejo and Colombo and Vallejo? The three areas are enhancing pedestrian safety, providing fair access to Hathaway park for our children, handicapped and seniors, and accident occur knowledge high speed cut through traffic through our neighborhood that really should be on Saratoga and Hamilton and San Tomas Aquino and it's creating a dangerous situation around the park. There is also a personal reason I'm here tonight. A year ago my cat was run over by a car. You may laugh at that but my fear is that next year, it will be a child. And my worst fear is that it will



be my son, Michael, who is turning six a week from today. And is starting kindergarten at country lane elementary school. So the other reason on top of the reasons that we've given, basically, is prevention of a tragedy. So what I'd like to show you is that we feel that the city traffic engineer didn't somehow the full picture of what's happening in our neighborhood. First of all, the half-mile, little more than half-mile straight away on both Latimer and Colombo are basically enablers for speed. And they didn't tell you that the average speed is above the speed limit in our neighborhood. Secondly, the high visibility signs, quote unquote, that they've put in and installed don't work very well, if as you see on the right over here, or I'm sorry, on your left -- go back, to the left here, you can't see the high visibility sign and the 25 mile per hour sign if it's hiding behind a tree. Similar things are happening with the high visibility signs at the park intersection. Again, behind trees. Now, if people don't see the signs, they're inclined to speed. If they don't see the signs they're inclined to be confused. Here is a picture of a driver where there are no pedestrians in the intersection, but they're braking, because they're not sure what this sign means with the pedestrian and the arrow. And that's why we're seeing skid marks in the area which were not included in the tally. We're also seeing the traffic. You went on a Monday. I went on Sunday, and in the upper right-hand corner you notice the entire line of cars right next to the park. But the park is only the tip of the iceberg for the problem. As you notice from this picture that I'm showing you right now, we have the issue of lots of destinations that are very popular for folks throughout this area. We have high occupancy apartments that are on Atherton and Hamilton. We have Westgate shopping center, El Paseo shopping center. We have five schools that all of the students -- all the children from this area must go to that are outside of our area. So Latimer and Colombo are used as pedestrian corridors and traffic corridors to get to those schools, including prospect high school, country lane elementary school, EDS, Latimer elementary school, Moreland middle school. Two preschools that weren't even factored into the calculations that are on San Tomas Aquino. We've got the post office, the library, malls, 7Eleven, so as you can see, this is much bigger than just Hathaway Park itself. So that's why we've done our own calculations, based on testimony from neighbors, from police reports, et cetera. There have been two collisions in the past year at the corner of Latimer and Vallejo. One of those collisions was witnessed by my neighbor Rosa in the audience this evening. The second Latimer onto Vallejo and he was side swiped by a motor scam going 70 miles per hour trying to pass him at that intersection.

>> Mayor Reed: Sorry your time is up. So I'll take some public testimony on this matter. I know there are other people who wish to speak.

>> Thank you for your time.

>> Mayor Reed: Please come on down close to the front when I call your name so you are close to the microphone. Jason Clawiter, Wade hall, Rosa Pelliter. I'm having a limb trouble reading the handwriting but you know who are. You'll correct me when you get here.

>> Mr. Mayor, city council, thank you for hearing our appeal of this issue. My name is Jason Clawiter. I'm a local resident. I live four highways down from one of the street signs in question. I'm also the president of Hathaway park neighborhood association which represents over 800 households in the area and roughly 1200 people, 1200 residents, many of which in our neighborhood are children. I'd like to introduce some of the members of our community who have come here in support of our appeal tonight and I'd like to ask them to stand. Most importantly, I am the father of a four-year-old child, Isabella Clawiter who loves to go bicycle riding in the park. I myself have witnessed near accidents at the intersections in question because these really truly are the main access points to Hathaway park which is really the heart of our community. It is heavily used by all the families in our community, whether they have children or not. On weekends, it's the site of a lot of soccer games, softball games, a lot of out of the area residents will flock to the area. This creates a dangerous situation when you have high speed traffic using Latimer and Colombo as a cut-through, as a long straight away going from Saratoga to Hamilton along Latimer or Colombo. So that's why, when we formed Hathaway park neighborhood association we asked some neighbors what our top concerns were, and repeatedly at all of our meetings over the past two or three years, safety was the number one issue. And one of the number one aspects of safety was this issue at the park. So we do believe that the four way stop sign in this area will enhance pedestrian safety, provide fair access to the park and also discourage this high-speed situation which is creating a dangerous --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Wade hall, Rosa Pelliser.

>> Councilmembers, Mr. Mayor, thank you for the opportunity to speak. I am very much in favor for this too stop sign. I am a resident of Latimer street. I am within a block or less than a block from one of the intersections in question. And I have seen too many close calls to live there comfortably. I don't let my son go to the park by himself because of those intersections. He has to be with an adult. And I think it's unfair, for somebody to conduct a study and just say that it is not necessary, or it's going to increase the potential of people disobeying the law. If a stop sign is placed, I am a responsible adult. I obey the law. I stop whether I like it or not. I stop. So if somebody just comes down, and disobey a stop sign, that is something bigger. But I have witnessed so many people barreling down between Hamilton and Saratoga, and they just gain enormous amounts of speed. It is very uncomfortable to see that. And I really feel that these stop signs are the least we can do to prevent something major from happening, like a fatality. Thank you very much for your time, and I yield the rest of my time to somebody else who may want to speak.

>> Mayor Reed: Wade hall, Andrea Miller, Tina Morrill.

>> Hello, I'm Wade hall. I actually live in the Vendome neighborhood. I drive through this neighborhood twice a week. I'm pretty familiar with the street. I'm involved and I have been for 11 years involved in the traffic committee in our neighborhood, we were beating our heads against the point system involved in qualifying for traffic mitigation. We got lucky in a strange twist we had an accident two weeks before one of the final meetings, and it popped us up over the threshold to be considered for a mitigation. We had some challenges with our intersection. The board or the D.O.T. was able to come across a design to get around that intersection problem. The -- I think what comes down to for me is, we're the neighborhood, we know the neighborhood, we know the traffic, we're there walk our dogs, see the close-calls. And they're not -- they're constrained to looking at the police reports when there's a report made on an accident which is hardly ever the case. That's what they get to go by. I think it's important that we just trust the neighborhood in these situations. That's probably the only thing

I wanted to ask, was that you consider the difficulty and the pain in the butt this whole process is for neighborhood. They've gone through two years of this, and now we're in appeals, and that should say, okay, we made the bad call. I respect the neighborhood, they must know their neighborhood. It's their children. There's certainly no one wants more stop signs than they need. I trust, and I ask you to trust. Thank you.

>> Mayor Reed: Andrea Miller, Tina Morrill, Ann Wild.

>> My good evening, my name is Andrea Miller, I'm the vice president of the Hathaway neighborhood association, and I'm also a resident who happens to live on the corner of Latimer and Vallejo, that's one of the corners in question. When we first organized the neighborhood association about two years ago it was suggested to us by the district 1 office, that we put together a top-10 list of concerns. That would pull us together, have us talking on the same page. Traffic volume and speeding, specifically, on Latimer and Colombo came up often enough that it rated 1 or 2 on our top 10 list so obviously we collectively share the concern about these two streets. There have been five actions since November 2008. This must be important to us. No matter what decision is reached tonight, the concerns about traffic volume and speed will continue to be top priorities for us as a group. We hope you support us tonight obviously and in closing on behalf of the Hathaway park neighborhood association, I want to thank the councilmembers and Mr. Mayor, for hearing us tonight. It makes living in a big city feel like living in a small town. And that's the point of getting some stop signs put in for our neighborhood. Thank you so much.

>> Mayor Reed: Tina Morrill, Ann wild, Richard McCoy.

>> Good evening. My name is Tina Morrill and I live in the Vendome neighborhood in district 3. I'm here to show support of pedestrian safety and a neighborhood's right to quality of life. I'm not here to question the expertise of the Department of Transportation. But I would like to point out as it has been point out neighbors who live and play in their neighborhood generally have a better feel for the traffic and traffic patterns, and the many different nuances that make their neighborhood unique as well as problematic. Traffic studies can provide some general numbers, but they don't give a consistently accurate picture of a street nor do they show changes. Plus traffic studies are a drain on resources. There is a perception that stop signs create a false sense of security. I

disagree. As Wade hall had just said, there was an all-way stop put in at that time intersection of north San Pedro and Hawthorne. And I can tell you now that people who are approaching this intersection, the cars now slow down. The pedestrians still watch the cars, to make sure it's safe to cross. But the cars slow down significantly, enough so that it creates less of a hazard if there were to be another accident. Stop signs are cheap. They're self-enforcing and a solution for the neighborhood. So again I support these concerned neighbors in getting their stop signs and I support you, the mayor and the city council, in voting to make this neighborhood a safer place for people to cross the streets. Thank you.

>> Mayor Reed: Ann wild, Richard McCoy, David wild.

>> Thank you for hearing our appeal. I'm Ann wild. I'm a 24 year resident of the Hathaway park neighborhood. I am a health and safety educator so I have an eye for safety. I have noticed several things in the particular in the intersection of Colombo and Vallejo. So I'd like to speak to that. One is that that intersection is the most used corner of the park. It's a very open park which we love. It gives us great access. But the lack of fences obviously makes it possible for balls to run into the street, children to run into the street, cars to park, and lots of traffic of pedestrians and people. The other point I would like to make is that currently there is a two-way stop, and that is very confusing. I use that throughfare to get to my house on McKinnon Drive all the time. I'm on the part on Columbo that doesn't have the stop. I always slow down because I understand that it's confusing for the people on Vallejo to stop, and they assume it is a four-way stop, and that is in particular very confusing. So I'd like to see a four-way stop just for the safety of our children. That park is used by soccer players, basketball players, kids, two different age groups, parties, softball. I could go on. Thank you very much.

>> Mayor Reed: Richard McCoy, David Wild, Nancy de Mattei.

>> Good evening Mr. Mayor and city council members. I'm a 30-year resident of this area. And a vice president of the Hathaway park neighborhood association, one of its founders. When we first moved into this area 30 years ago it was very quiet, very low key and the traffic was down to a minimum. There has been an increase in the auto traffic due to the delays that are imposed in the intersection of Saratoga, prospect and Hamilton, and many

people trying to avoid that by taking the path of least resistance down these shortcuts. There has also been an increase in student traffic because the school districts have eliminated a lot of the buses and the students use these areas to walk home during and after school. There's also been a narrowing of the road at Vallejo base of the number of parked cars there both for the residents on one side and those attending the park so it's just been narrowed on Vallejo down to one lane which creates more traffic congestion. We've seen the positive results that the stop signs can produce by the one we had installed on southwood a couple of years ago which was a major thoroughfare from the students at the high school there at prospect and it has definitely improved the traffic flow there. The current signs are confusing and this was even noted last week when I had an interview with a reporter from KCBS radio right there in the corner and he noted how the confusion of the current signs are. There's yellow signs up there. And the commission even suggested yellow signs. These are advisory only. They're not the law. And even the education is great for the pedestrians, but it doesn't help the drivers. They come through there at high speeds. Sometimes they stop sometimes they don't. A stop sign would clear that up for them. Education is great and if we can get that out to the community and make them understand that this is a family area, family usage park and we want to make it safe for our families. Thank you for your time.

>> Mayor Reed: David wild, Nancy de Mattei, Robert Benscoter.

>> Thank you, Mr. Mayor and members of council thank you for the opportunity to speak tonight. My name is David wild, I'm a resident of San José and I live about a block away from Hathaway park on McKinnon drive. I'm a health and safety professional, I'm a volunteer instructor for San José Prepared disaster preparedness course, and I promote disaster preparedness in the neighborhood. So safety is always on my mind, and I frequently see cars that have been down Latimer and Colombo, using those streets as thoroughfares to pass between Saratoga and Hamilton. So I'm a strong supporter of installing the all-way stop signs at those two corners already specified. I've got two kids. They're grown up now. We cross the street to the park at Lamoore and we felt that was very safe. We did not have to venture across Latimer or Colombo. I would like to see the kids of the other people in the neighborhood to have safe access to the park as my kids did. Thank you very much.

>> Mayor Reed: Nancy de Mattei, Robert Benscoter.

>> Hello. Hi, I am from the Vendome neighborhood and we have been dealing with severe traffic and speeding issues for over 11 years. Recently we were able to get a four-way stop at Hawthorne and San Pedro. I'm just here to say that the safety at this corner has significantly gotten better. Even if a car doesn't come to a complete stop, it has significantly slowed down enough to have better judgment. And as an emergency vehicle operator, a stop sign is a preferred traffic mitigation tool. It's safest to maneuver through and doesn't slow down response times. Thank you.

>> Mayor Reed: Robert Benscoter.

>> Thank you, Mayor and honored council. My name is Robert Benscoter, I'm the president of the Stevens Creek Neighborhood Association, a few miles from the Hawthorne park area. I don't actually live in that neighborhood. However, I'm also a 12 year cyclist for AIDS and other charities, and I do ride my bike down Colombo to get between San Tomas Aquino and Saratoga frequently at least a couple of times a week and it's very rare that I don't see pedestrians and kids out along the street and it is very rare I'm not seeing cars speeding down Colombo. And as a cyclist I have on occasion felt threatened by that myself. So I have a personal interest in this particular issue. I do feel that even if D.O.T.'s estimates that cars may not stop and only do a rolling stop, that again raises their awareness level. Even a rolling stop slows them down, even if they don't come to a complete stop. I also have to question what is the cost of a life worth? I mean, my understanding, it's about \$7,000 to be able to install these stop signs. And all it takes is one light, one kid being killed. You know, what is that life worth? Less than \$7,000? I am fully in support of installing stop signs in this neighborhood, especially around this park. I also feel this is a side note, that the representative that was giving the presentation on behalf of Hawthorne park should have been allowed at least as much time as the representative of D.O.T. It seemed like he was cut off prematurely and wasn't able to say everything he needed to say. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We'll now bring it back for some council discussion. I'd like to start just by noting that one of my first assignments as a new councilmember nearly ten years ago was to chair the ad hoc traffic calming committee. And I developed a healthy respect for the

complexities of trying to figure out what to do in these situations. And have really learned over the years that our professional evaluation and professional judgment by our police department and our Department of Transportation staff is excellent. And all you have to do is look at that time data. The crashes, and the fatalities and the injury accidents in the City of San José have come down year after year after year and we are half the national average I think is what Hans Larsen said earlier. And that is a result of good solid engineering work, professional staff work. And so I really respect their opinions. But I don't always agree with them. All I can say is that there are times when I have disagreed with the staff some and this maybe one of those. But I'm going to turn it over to Councilmember Constant as this comes from his council district.

>> Councilmember Constant: Thank you, mayor. First off, if we could get the aerial photo that staff used in their presentation I may refer to it a couple of times and may actually annotate, if I could figure it out, last time I tried it it didn't work. First I want to thank not only the Hathaway park neighborhood association for coming out today and for really sticking out what you believe is right for such a long period of time. I want to thank the other neighborhood associations from district 1 and the individual neighbors that came out to support you. But also, a big thanks to those of you from other districts. Because it really means a lot to the neighbors to see you out here. Let me get my screen on the right one here. I don't know if I have the patience but I'll figure that out in a new. First, a couple of comments. We know that the engineering studies are necessary and they provide a basis for an independent analytical decision making. But we also know that pure numbers and charts and graphs don't always give a clear and accurate picture. And I think that's why our process in the City of San José and our Muni code recognize that we have the appeal process that goes through the traffic appeals commission, and then ultimately the city council. And I think the reason that those exist within our policies is, so that there can be a more thorough review of not only the math and the science, but also all the other factors that are involved in coming to a decision. When you look at that time tack that traffic appeals commission, you'll note that they were split on a 3-2, because they also had some difficulty in wrestling with this issue because none of these thing are clear cut. But I think there are a number of things that I want to point out to you. First of all, when you have these traffic studies, they're really a snapshot in time. And as one person pointed out, they're generally done during the weekdays, which is great if you're counting commuter traffic. But if you're dealing with neighborhood parks, if you do a traffic study during the middle of the day when the kids are in school and the parents are at work, you're not going to get



the same information as if you do it on a Saturday or on a Wednesday evening or other times where parks are high in use. I think that when you look at the studies they do pedestrian traffic but it doesn't count pedestrian traffic where you can see what the volume of pedestrian traffic really is. It also doesn't really look at things like the actual physical layout of the park. When you look at the park, I'm not sure if -- I'm not sure if the annotations are work here, it doesn't seem to be. Let me try it again, yes, see if it gives them to me. No, well, that's okay. If you look at the picture of the park you'll see the upper right-hand circle which is Colombo and Latimer or Colombo and Vallejo. The area between that and the baseball diamond is a children's play area. A very highly used children's play area. It's also the picnic area and the restroom area that gets the highest use in the park. I think that when you -- if you take an opportunity -- his works. So it's nice to see that he can draw a fancy picture. But anyway, that's okay. I can be very descriptive in my words. So of course, I completely lost my train of thought, though. Thanks. Let me look at my notes, sorry about nap when you look at the physical layout of the park, and the highest used areas, that changes your perception. When you have an opportunity to go out to the park like I do on a regular basis because of the number of events that the community holds there and also the fact that my kids love the play lot at this particular park and we go out there, you have an opportunity to see firsthand the interaction between the pedestrians and the cars. And I tell you I personally have seen one very close call at this intersection. And when you look at the number of incidents that do or do not happen here, you have to remember in a city like San José, we do not respond to all traffic accidents. Most traffic accidents, in fact, don't get reported. In fact most not injury accidents where cars bump into each other do not get reported to the police department. And so I don't know if we always have the accurate information to go into the scientific determination on whether we should have a stop sign. When you look at the map you also see that those two which I just lost the map, the two stop signs that are in question there, see if I can get it back here. The two stop signs that are in question or the intersections have two-way stops. And not four-way stops. And it was mentioned by several people in the audience, and in fact I think that may actually contribute to the problem. Because people are so used to cars stopping in the other direction, they know they don't have to slow down. And they keep going and they don't look for the pedestrian traffic, because they're used to the controls being in the perpendicular direction. I think that when we look at this, there are many situations that need to be taken into account. We saw the map with all the stars in it from the community that showed all the other things in the immediate area that bring activity to this area, none of which are reflected in the traffic study. When you look at the picture it is also

interesting to see that Colombo and Latimer connect some of our busiest streets in West San José. Hamilton and Saratoga Avenue and San Tomas Aquino and Saratoga Avenue, which has created the perfect cut-through traffic area in our district. Now, while the traffic does not warrant the signs by a pure numerical aspect, what troubled me is not the fact that D.O.T. says it doesn't score properly. You know, we did here, that perhaps traffic calming would do a more effective job, or increase enforcement would do a more effective job, and by all means, if we could get traffic circles at both of these intersections installed and have police officers enforce it I would vote for that instead of the stop signs. But we have to face the reality that we don't have that. We don't have any money in our traffic calming budget and I doubt that we will next year, or potentially the year after that. We know we don't have as was pointed out by the captain, we don't have the officers to respond to proactively enforce the changed driver behavior. We could go out and teach the school kids at the school to be careful of the cars, which is important, but here it's the cars that are the problem. And as was pointed out by one of the residents, it's almost impossible to go out and educate all those drivers that are coming through the neighborhood. But what bothered me most quite frankly about the presentation is the three things that were emphasized repeatedly, was disrespect for signage, requests for enforcement, and disappointment for lack of service. Well, these were brought up to me before, and I started thinking about the disrespect for signage. And I went to some of the stop signs that I personally think are the most useless ones that we have installed in our city. And we have quite a few of those. And one is in Pierluigi's district. It's on -- I drive by it every day, and I wonder why it's there. And it's on Monroe between Tish and Stevens Creek boulevard where there's virtually no pedestrian traffic whatever, and there is a moderate amount of vehicle traffic, but I don't think it would score anywhere near warranting a stop sign. So I decided the other day to stop. Because I know, I have even commented to my wife a number of times about how much that stop sign irritates me. But I stop. So I pulled over and I watched for quite a while. And I did not see one person run the stop sign completely, and just show utter disrespect for it. Most drivers do pay attention to the stop signs. They may not come to a complete stop every single time. But they come darn close. And you can see that when people do, they do take that look to the right, and look to the left. And I observed that for quite a while. I think if we make decisions based on whether people are going to be disappointed in our level of service, we're not going to be approving anything for the next couple of years. Because we have continued to reduce our level of services. We just did it in our budget. And we'll be doing it for the next several years as we continue to have deficits. So I don't think that should be a reason that we tell the residents, we're not going to provide something

that could provide additional safety because you might be disappointed that nobody gets a ticket for it. I think they probably would be a little more disappointed if we don't put a stop sign in, and there's an injury accident there. I think that we get a lot of requests for service for our traffic enforcement team now, because the problem is such a significant problem here, and in neighborhoods, in every single one of our districts. We all know the neighborhoods. We know the ones that we get the complaints on. I don't think there's been a neighborhood meeting I've gone to yet in my time as a councilmember or in my time as a police officer, where traffic was not a number one concern. So we get those requests all the time. Simply the fact that we're afraid that we're going to get more requests from enforcement, I don't think should even enter into our decision making on whether a stop sign is warranted or not on this intersection. And just one more comment on the disrespect for signage. Remember that not long ago we outlawed smoking in the parks, and we put signs up in the parks that said no smoking, even though everyone pretty much agreed that self regulating were almost zero but we did it anyway. So I think that stop signs do work. They don't work to reduce speed necessarily. They don't necessarily keep people from wanting to drive down that street, unless it's like Blaney avenue in Cupertino, where there's one stop sign every 25 feet and you get sick of driving down the street. That's clearly not the case here. There maybe some people who drive slower and there may be some people who choose not to cut through and I look at those as bonuses, quite frankly. But what it does do is give opportunity for the drivers most of which respect the law and respect signage to stop and to look and to see those families and children that are going to the park and give them an opportunity to see those people standing there, and stop. So that they can cross the street when they need to. I think that is critically important in this neighborhood, particularly because of the stops at the park. And again, it may not slow down traffic. But what you have heard from the residents and what you have heard in my memo is nobody is saying that this is going to slow down traffic and solve the speeding problem in this neighborhood. But we do feel it's going to make a major contribution to the safety of pedestrians and giving people the opportunity to see pedestrians as they drive by. Must also point out that we heard that traffic accidents and injuries could increase because of a stop sign being put there. You know when I was a police officer I spent many years on the star team, which is the serious traffic accidents response team, and I was a fatal investigator in the traffic unit. And all the accidents I went to, which are far more than I ever would have wanted to go to, not one was a pedestrian killed in an intersection at a stop sign. There were plenty of pedestrians that were killed crossing streets midblock. There were plenty of pedestrians that were killed crossing against a red light. But I never went to

one in those years, in both of those assignments, which spanned quite a number of years, where a pedestrian was struck severely injured or killed, crossing at a stop sign. And I think that's what we should be weighing here, and that the safety should come first. And I know it's easy to say, well, let's way ant maybe we'll be fortunate as one person said, to get an accident before the council decides to put a stop sign. I think its would be very unfortunate if we waited for this to come back next year or the following year with a significantly higher score because somebody got hurt. And remember what Pierluigi said earlier today. I think the mayor told him to run into a brick wall, but before that, it was, getting hit by -- being a pedestrian, and getting hit by a car. Even at a slow speed of 15 miles an hour causes serious damage. And at 25 miles an hour which is the speed limit on these roadways, will break both of their legs, and that's if they're lucky. And if they're not lucky, they'll be -- they'll have severe head injuries or death. So I hope that my colleagues will join me in supporting the neighborhood, overturn the decision, and grant the appeal, and that's the motion I would like to make, is to move for my memorandum. Thank you.

>> Second.

>> Mayor Reed: We have a second by Councilmember Campos. We have motion on the floor. Councilmember Campos.

>> Councilmember Campos: Well, that was easy for me to second. And I was reminded that I am the senior councilmember which got me thinking about how I am very familiar with this issue that you have brought before us. Because as a councilmember, in 2001 and 2002, and 2003, I went through the same process with my community. No matter if you live in the west side, the east side, the south side, downtown or North San José, we all want the same things for our community. And that's to make sure that our children are safe, that our seniors have the ability to walk across or get across from point A to point B, and to make sure that as we're walking from point A to point B that we're safe. So this is very familiar. And I know how Councilmember Constant must be feeling right now. And you must be feeling pretty proud. Because for your neighborhood association to get this far, means that they're determined to make sure that they accomplish what they set out to do almost two years ago, and that's to make sure that you create a safe place and a safe environment for your children. So I will be

supporting the motion. I think that the process does take a long time. But the fact that you're here today is a testament that it does work and it allows you the opportunity to be able to come to the full council and state your case. And I think you did it very well, all of you. So with that, I encourage my colleagues to also support this motion. Because I think at some point in your career, you're going to be facing the same thing, and we know our communities very well. Our neighborhoods know our communities very well. And I have to share, on a personal note, on those two stop signs that went up in my district, believe it or not, we had a celebration for both times. Because it meant that much to our community, to be able to unveil a stop sign in a four-way or a two-way, around a park and around a school. So I commend you for sticking with it and staying very focused to what was important and what is important to your community.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to follow up on some of the comments you made mayor earlier in discussing the role the Department of Transportation and the police department. I do give a lot of validity to what D.O.T. says, and what their studies show, as well as the opinion of the police department. There is a need for some objectivity, some objective standards to not just inform us, but to ensure that we have some consistency around the entire city. And I absolutely do believe that neighbors who live in the neighborhood do know the needs of the neighborhood best. However, there are situations and we've probably all been to those towns where there's a stop sign every 50 feet. And it's really not -- they're not all necessarily serving a purpose and every stop sign that's there at least -- at least five fold energies pollution in that neighborhood because every time the cars stop they emit much more exhaust. So there are situations in which you know we really need to appreciate the role that the Department of Transportation has. I don't think as I've seen in some of the comments letters that there's some plot by the Department of Transportation to just put barriers up for the neighborhood. They have a specific role and they have guidelines they have to follow. So I just wanted to make that comment, so at least the neighbors that have taken the time to show up here don't feel that there's just obstruction for obstruction sake or that somehow there's a sense that resources have been wasted because D.O.T. has just been trying to stop what the neighborhood wants. I think that really, the Department of Transportation does a phenomenal job and they are extremely professional in their work. And so I do think that there is a value of looking at these cases, though, on a

individual basis, as well. And I hope that the neighbors, regardless of what the vote is, the neighbors feel that a due process has been met and that you've had an opportunity to actually bring this forward as Councilmember Campos has said it's taken some time but you are here. And in looking at -- in any neighborhood when I was looking at pictures of this neighborhood, there are neighborhoods like this all across the city. And many of the neighborhoods that I talk to just like Councilmember Constant indicated that's a major issue we hear about is traffic. And more often than not it's the behavior of the drivers and more often than not the drivers that live in the neighborhood. This neighborhood certainly is unique in that it has a number of cut-through streets. But even then, I would bet that a number of the violators do live in the neighborhood. And so I always stress whenever I speak to the neighborhood, first start with yourselves. Start with your own neighbors. Make sure that all of you are abiding by the rules and making sure that you're being as safe as possible when you're rushing to work or dropping your kids off at school. I have been to this park and I do know it's heavily used like most of our neighborhood parks are. I think that in particular, if you look at Vallejo, Vallejo is a cut-through street all the way through and there was a need there. And the D.O.T. and others may have seen a need to put the stop signs there. Colombo and Latimer seem to have the same unique characteristics in that they cut all the way through. Particularly Colombo and Vallejo with the park right there I think with the neighborhood's concerns and their excellent presentation that was made, coupled with the -- just the characteristic of the street, I think that this is a situation where a stop sign would be warranted and I think that Latimer and Vallejo as well. I do appreciate the opinion of the Department of Transportation and the police department. But in this case I will be supporting the motion. I do think that this will enhance the safety of the neighborhood.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I'm probably going to support this motion. I've been going back and forth in my head and the reason why frankly the most compelling point was made by Wade Hall initially. Which is, I think a neighborhood knows its neighborhood better than anybody else, and as people who live there understand and see what's going on, it's very difficult to capture those sensory perceptions with a single survey. But I am concerned, and let me explain why. This hasn't been as clearly vetted, I think we need to be explained about. We have been through this process in my district Lord knows, I have to commend your neighborhood for your

incredible perseverance. The process is absolutely mind-numbing. But when we went through this one thing I learned was we abide by the California state standards because -- for two reasons. One is there seem to be a lot of studies out there that say if you put stop signs in where they're not warranted you actually get an increased rate of crashes. I don't think anybody doubt that safety is the primary consideration here. You know when Jeff Smith spoke I think when he was talking about disrespect for the sign he wasn't because he believes inanimate objects deserve respect, it's because disrespecting the sign results in more crashes. And that's bad. That's, I think, implicit in what he said. The other issue is, if we don't follow the state standards as I understand it we subject ourselves to liability when those crashes do occur and of course taxpayers pay for that in addition to by the way crashes are bad things for people. And I assume that is still part of the thinking. If I'm wrong about that, Hans, please correct me.

>> Hans Larsen: I'm sorry, would you repeat the point?

>> Councilmember Liccardo: Yes, that's one reason why we follow the state standards, is because if we have a problem --

>> Hans Larsen: Absolutely yes. From a liability perspective, we're -- when an incident occurs, you look at have you put in the appropriate devices? And have you placed them based on the proper warrant, that's certainly a factor.

>> Councilmember Liccardo: Right. So I guess what, you know, I've grappled with this quite a bit before because we've fought these battles over and over in some of our neighborhoods downtown. And so this last one just prompted me to actually look up the studies to see what's going on with this. Because we hear this issue about studies showing there are greater accident rates. I just finally got through on the Website to one Canadian study that was on the institute for traffic engineers Website. And it recites that evidence to date on safety effects of stop signs placed for volume and speed reduction purposes is somewhat mixed. Isolated studies in Pleasanton and El Monte, California show increases in the number of accidents in the range of 500 to 600%. A larger study in Palo Alto showed little change. Other studies actually showed drops. And I would imagine an awful lot depends on the

context of the intersection and everything else. Can you help, as a layperson here and I'm looking at this obviously I walk away from this somewhat confused. Trying to understand, should we, what studies should we be following? Is there some -- can you give us some guidance in understanding or interpreting how we're supposed to view what appears to be mixed literature out there?

>> Hans Larsen: Well I think Councilmember Liccardo your first point about there's certainly a dependence on the context. I think in -- as a new acting director of the Department of Transportation, this has been a learning experience for me on some of the details of some of our operational responsibilities. So it's something that I personally did some research in and talked with our staff. And I found that the -- sort of the professional literature and judgment on it is that comes down to, if you have -- you have a stop sign, and you don't have a sense that, say, the majority of the time, that you need to stop, there is a human nature sense that, not everybody, but enough people, will disrespect the stop sign. So whether it's a rolling stop that has been talked about or people will run through it, if there's not a sense that there is an intuitive need to stop, that there are issues associated with that. And I think there are a lot of studies nationally, and you know we have our -- there are some unwarranted stop signs in the city that have gotten you know through on some kind of process and our own data shows that you have a higher rate of noncompliance in those situations than you do otherwise. So I think -- there's you know solid amount of research on that topic. But I think I go back to and I think the purpose of this hearing, you know there are some special circumstances at this location or site that aren't factored into the council policy and the procedures that we follow, that make this a unique circumstance.

>> Councilmember Liccardo: Thanks Hans. I would add this. I think -- I know that Laura and your whole team works incredibly hard. I feel bad that the process that was created, whatever process we've created over time and I know we've revised it even recently is so incredibly painful for the staff and the neighborhoods because there is an enormous time and effort that goes into this. And at the end of the day, it does beg the question for me whether or not the investment of time and money is worth it if we actually get a better product in the end. But one last issue I guess for me is, that you know when neighborhoods ask for stop signs overwhelmingly what they're concerned with is the speed of traffic. It's not about regulation of the intersection, it's about calming traffic. Inevitably it raises in everybody's mind, why can't we get a speed bump? Is speed bumps cause problems



with fire trucks and lumps or humps, I can't remember the latest term we've used have we made any progress on this lump hump or bump product that enables us to have a relatively cheap way, relatively painless way, unless the bureaucratic method of just putting something out there that will actually slow a car down?

>> Councilmember Liccardo, Laura Wells. We have that we use council policy, the policy that you've given to us as you've lewded to was recently updated a few years ago. That based on that policy the speeds although granted, you know, there are cars that do go fast, it almost happens on every street in the city, every city in the state, it happens. Per the policy, the speeds on both Colombo and Latimer do not rise to the top per the policy of being considered adverse to where they would warrant a device such as a road lump, hump or bump.

>> Councilmember Liccardo: Could you tell us what the speeds were?

>> What we use in the policy is what's referred to as the 85th percentile speed. Prevailing speeds. The prevailing speeds on both those streets were around 31 miles per hour. The policy sets the criteria of adverse at 33 miles per hour.

>> Councilmember Liccardo: Okay.

>> On a typical, I know it because I can't count the number of speed surveys, speed data that I've looked at over ten years. On a typical 25 mile per hour posted street, the average 85th percentile is going to be around 31. So they have an average --

>> Councilmember Liccardo: Most of us are scoff laws, in other words?

>> Yes.

>> Councilmember Liccardo: We all drive too fast.

>> Yes.

>> Councilmember Liccardo: So then I guess to get at that issue, then, Laura, just about humps or bumps or whatever we're calling them, I understand the risk involved in putting signs where they don't belong. What's the risk of putting a speed lump where it doesn't belong? Does that create any additional safety concerns? Or can we do that -- can we make a mistake safely there and just put one in there if somebody's asking for it?

>> The issue with putting the speed hump or lump on a street that may not have adverse speeds, I mean it's not going to necessarily create an unsafe condition. We do coordinate with the fire department on the location of speed humps, lumps, and I'm not sure if these streets are considered the primary response route.

>> Councilmember Liccardo: So that's the question, about the fire trucks.

>> If I could just maybe add from a personal perspective.

>> Councilmember Liccardo: Sure.

>> I am a mother. I have three children of my own. I definitely appreciate and understand the community, the neighborhood's concerns. I vividly remember being a mom of a baby in one arm, and the five-year-old on the other hand, carrying them, or walking them across the street, to an uncontrolled intersection, where we're going to little league. I remember the days of saying no, we need to wait for the car to stop, no, it's not time cross now. And using it as an educational experience. Because I'm not always going to be there. I wasn't always going to be there. Every intersection was not going to have a control, whether it's a stop sign or a signal. So using that as an educational opportunity to teach some patience, to teach them about traffic safety education. And we have a wonderful program in the city, street smarts, to provide that. To not just children at schools but also bringing it to the neighborhood. We could have an event at the park. The other personal experience that I have is, I walk my dog at night when it's dark, 9:30, 10:00 at night is when I get done working. There are cars out there who come to an all-way stop location. Who when they don't see the opposing headlights of another car, they don't slow down,

they don't stop. Whether it's turning around the corner or going straight through. And so I know, as a walker, as a pedestrian, that even though it's an all-way stop I have to be extremely careful when I'm walking at night. So the stop sign doesn't necessarily create the safe condition that may be wanted.

>> Councilmember Liccardo: And if it creates a false sense of security it's less safe.

>> Yes.

>> Councilmember Liccardo: Okay, well thanks, Laura.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all I want to thank the residents for coming out and spoke to us. Is -- I didn't know it was such a difficult decision for me. I was switching back and forth. I easily say yes to support a motion I don't want to have an accident and then regret it for the rest of my life. But then on the other hand, by supporting the motion, I'm looking at the point, the scores. This is like 3, 4, versus a 20 of a minimum points. So there's huge gap there. By supporting the motion, am sending a signal to my resident that is our point study has a big flaws in there? And the sign to -- is it we should probably review, revisit the policy 8.1, so we have a scientific way to apply it, fairly and equally, across the city? And because we're lack of funding for traffic calming, does that mean that we're just going to have more stop signs in the city? It seems that most the residents in the neighborhood can accept a rolling stop, and say well, if it's a rolling stop is acceptable, is it also acceptable to any other stop signs around the city? That hey, we can -- if it's rolling stop we're happy. So I'm really, really debating which way to go on this. Shall I -- my vote not to support the motion on the floor, and what I really want to send a strong message to the staff, as well as the mayor and the council here, that we should definitely revisit 8.1, the policy, so we do have a scientific way to apply across the city. And I have to admit I'm pretty much rely and depends on the professionals, the D.O.T. staff, to do the study, if the request is from District 1 or the request is from District 4 or District 10. And so to making the exception here, I'm concerning about sending the message to the residents that, hey, you know, we're having some budget problem, and just go

through this process. You will get this stop sign. So I, at this point I really haven't make up my mind. So thank you very much.

>> Mayor Reed: Thank you. I'm going to support the motion, and basically the extraordinary circumstances are just look at the map. And the triangular nature of all of those really heavy used streets, with these two cut-through streets is an extraordinary circumstance that I think warrants the stop sign despite the points that are focused just on that intersection. That you look at the geography and the way the geometry works out. So that's why I'm going to support it. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I've been going back and forth too as I'm sitting here listening to all of the discussion. And I appreciate Councilmember Chu sharing the debate in your head because I thought of some of those things. I'm leaning towards the community, though. And first of all I just want to say that I appreciate D.O.T, and everything D.O.T. does and the police department. And in District 8 we sure know about traffic. Traffic is the number one issue in District 8 and D.O.T. has been incredible in the traffic calming efforts there over the years. So I've been in lots of discussions about bumps and humps and people, neighborhoods wanting stop signs, and so the comments that Councilmember Chu just made, are definitely a concern to me. But I also have to say that look at the community that's come out here tonight and look at the work and the number of years that they put into this. And I have greatly respect for this community and for the common sense and the intelligence of the community. And when they put this much effort in, to a subject like this, have gone to the trouble to put together the presentation we've seen, and you've made a very compelling case. So some of the points that are make me want to go with the community on this and I would say this is really really an exception. And I don't know how many times we make the exception like this and it would be an exception for me, because most of the time I definitely defer to Department of Transportation into what the traffic engineers are saying. But I don't think we have cases every day where we've had two, three years of work involved in this and the kind of case that's been made today. So I think there's definitely, this is an exceptional kind of presentation and case. So here's the kind of things that are leaping out to me. The analysis of the pedestrian traffic. I'm wondering how, I'm thinking how, the amount of pedestrian traffic that's going around this park may not be necessarily as reflected in this study as maybe I would like it to be. I think that stop signs do slow people down. I

think speed is a concern in these streets around this park, as already been mentioned how there's cut-throughs there. I think in terms of the cost, this is a relatively low-cost solution to solve this problem that the community has been talking about, in coming here and working through this process for years. And also in looking at the calculations because I appreciate the fact that in the presentation, although we didn't get to hear all of it, you looked at the actual point counts. And so I think even if there was a process to go back and say, the calculations might look differently if we'd taken this into account, this might have even passed the appeals process. Because it wasn't a unanimous vote in the appeals process. So I think there's enough data here that make me question based even on the points system, if there were accidents that weren't taken into account, if the unique conditions that they're describing here were not taken into account by the appeals process -- and I really want to look at this as this might rise to that, to meet those standards, rather than saying I'm look at really some totally different unscientific way of looking at it, I think even scientifically, I think there's some question there. And as I have been involved in some of the traffic issues in District 8 I know that for example in District 8 we have traffic seven days a week and traffic calming comes, they measure the traffic on certain days but they don't capture the traffic at the time when it's really happening. So it's not a perfect system. And I think the reason why we have an appeal process and the final appeal to the council is to recognize that. So that in certain circumstances, and they should be few, that the issue doesn't quite meet, doesn't quite fit into the exact detail that we have laid out here. Doesn't exactly fit that situation. And so it comes to the council, to that. And for me you've met the test and I'm going to be supporting the motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. I'd like to make a more simple approach. I'm with the community and God bless you that you've come here so many times to make your point and show your spirit of democracy. I'm really impressed with that. Number one, can we look at better prices for these signs? It seems to me 3600 bucks for a sign is absolutely ridiculous. Number two, couldn't we look at higher fines for anyone who goes through a signed intersection? I would imagine that would be a way of recovering those costs. And we would also have the law more on our side, if there were signs, than if there were not. And then, three, allow other ways for funding for these signs. For example, if I asked any of you who said you had a thousand members in your group, wouldn't

you rather pay \$7.20 a member and get the signs than go through everything you've gone through? So I'm asking us always, try to find a simpler, faster, cheaper way to get the job done. And I don't know if you'd incorporate any of this into a direction for D.O.T. to go. But I would like to see this in future, so that we don't have other groups coming here over and over and over again, for something that we could handle internally. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I think a lot of comments have been said and I agree with all of them. But here's the deal for me. One of our City's top priorities is to ensure that residents live in a safe environment. And whether we're trying to protect them from crime, from gangs and in this particular situation is traffic. And to see many of these residents come out and telling us loud and clear if you just install this stop sign we feel safer living in this neighborhood. So I think we should honor that, to have these many residents living in this one neighborhood coming together fighting for an effort to install a simple stop sign, rather than us putting more police officers out there to patrol the neighborhood to make them feel safer, I think I'll go with the residents, and I don't mind spending \$3600 too, and installing a stop sign rather than putting more police officers in a neighborhood. So I congratulate you and commend you for working really hard and sticking with your conviction and coming tonight, for us to hear you loud and clear. So thank you.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I want to say that I think -- I want to respect staff for what they have done. They are guided by our policy which is guided by the state requirements. So you have absolutely done your job. The appeal process is an appropriate process. And that is what the community has engaged in. The council through the appeal process which protects the city's liability, if the council finds special circumstances, that protects the city. And the community must prove the special circumstances. I heard the mayor say that the two streets, big enough to read, Colombo and Latimer are obviously cut through streets. Having had a son that went to prospect I know what he means. But also when you put up the map that had the stars of kind of all the traffic attractors within the community, I felt that that was a compelling data point also. So I want this to be an exception. I don't want the

exception to become the rule, and the process is appropriate. It is not supposed to be easy. And I respect the community for what they have done. But I also respect the staff and the council and the process and the policy. So I will be supporting this motion based on the data that you presented and the special circumstances that have been clearly outlined in your presentation. So I will be supporting the motion and thank you very much for taking the time to do a thorough and complete presentation.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I as well wanted to thank staff that you obviously know where this is going but at the end of the day you have to stick with your figures to give us some level of consistency across the city and you are using scientific methodology and your best practices, but with that said, I want to thank the Hathaway neighbors. I want to also thank the Vendome neighbors. That you know, you feel the pain for one neighborhood, and you want to express it, and I think that really helps out. I do want to thank my Councilmember Pete Constant, for laying out very much so, and I want to thank you for your observations of traffic in my district. I really appreciate that. And councilmember Pyle, you are speaking my language when you are talking higher penalties and self-funding. And I think we can actually self-fund with the current policy if the city falls short, so I appreciate it. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. Just a couple of brief things. One I wanted to address the comments, some of Sam's comments and Kansen's comments. We are basically talking about two different issues here. There's signs, signals and markings and roadway improvements for control, and there's sign signal markings and roadway improvements for reducing speed. The objective of this neighborhood and of me particularly in this case is not necessarily to change speed. It's to provide controls at the intersection. And I think that is of utmost importance. And I think that the study doesn't necessarily account for that. And I think that's one of the things that makes this different than a lot of what we hear when we hear people screaming for lunches, bumps, humps, turn arounds, all those other things, is that that's primarily for speed. And what we're talking about

here is about control. And I want to bring one example. You may remember when I first came on council there was going to be over a quarter million dollars spent to put a full signalization in an intersection at Eden and Williams. Because of the high volume of accidents there. And I worked with the neighborhood, the Eden neighborhood and the Lynhaven neighborhood and D.O.T. to say, let's try and save some money and let's put stop signs, four-way stop signs in that intersection, so that the actual signalized \$300,000 intersection could go somewhere with where it would be more appropriate. We did that. And we put in the four-way stop sign. And that control measure alone has reduced accidents like 90-something percent. It's an incredible difference. I drive by that intersection every morning on my way through Pierluigi's district, by the way I plan on taking from you when we redistrict that part. And I used to see skid marks and broken plastic and glass in that intersection every single day and it just doesn't exist anymore because four way stop signs provided the control. I wanted to address the comments that Kansen and Nancy made about changing policy. I don't think we need to change policy. I did D.O.T. did exactly what they should have done in a traffic study and I think that's why we have the appeals to the traffic appeals commission and ultimately to the city council. There's a place for science and there's a place for art. And we have the ability to have more latitude to look at more -- a bigger picture and take other things into consideration. And I think other than the little hiccup on the procedural thing which we fixed, other than that, the process worked exactly as it should. We just have a difference between the art and the science of this particular intersection. So I don't support necessarily going back and revisiting the policy. Because I think it worked. I'll be more confident it worked after we take the vote. But I think it worked. And according to the pricing, you know, I happen to go to I forget, one of those acronym sites, MUTS -- something one of the national traffic things and it says the industry standard for installing a stop sign is \$280 per sign. So we are significantly more than that. But it is what it is. When it comes to that, San José, we do seem to charge a lot to do everything. But with that, I hope that those that are sitting on the fence will jump in my direction, and that we can have the vote and grant this request. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: I was actually going to make a friendly amendment to direct the staff to revisit the policy 8.1 to take into consideration much all the stars that are showing up on the neighborhood meeting and also, the --



considering the special circumstances, so I don't know, if I can get some feedback from the staff, on revising the policy to take into consideration that has been discussed tonight.

>> Hans Larsen: Councilmember Chu, I guess my personal recommendation would be to not do that. I think some of the comments from the councilmembers are, it's impossible to craft a perfect policy. And I think what we're experiencing tonight is the appeals process, and that allows you to take into account other factors that are very difficult to fit into a perfect administrative policy. So I think I mean, the fact as I understand this is the first time we've been to council with a stop sign appeal hearing, for about a decade. So I think that, you know, I think we have a system that works well. The traffic appeals commission appropriately evaluates if there's some other factors. And so I think the policy, I think, has been serving us well. And I think that council, in this particular case, has identified a number of unique circumstances that make this different than the kinds of things that we usually deal with. So I think from -- so again, I think we probably will be fine with the policy unless we find you know we have a lot of these coming in, for some similar circumstances. I just want to add, before the council votes as I mentioned at the beginning is that we will -- we respect the process that we're going through, the council policy. Ultimately what the council direction and I think I can count the votes here as to what that will be. We will be installing the stop signs, and we'll put together the work orders for this right away. And we could expect to celebrate with the community new stop signs in these areas next month, in September.

>> Councilmember Chu: Thank you very much. That really helps a lot. Regarding to the complaint, because I heard that many, many times, every time the D.O.T. went out to do a study, is the time of the study. You know, the D.O.T. always missed the peak hour, you know. So is that something that you will be able to accommodate, the change of the time of the study?

>> Hans Larsen: Yes, actually for the warrant studies for the stop signs, we do consider a full day of traffic. So it's not just limited to a certain peak. And we also, in this case, had weekend traffic volumes. So we have kind of the full complement of information to look at special circumstances. So I think we have the discretion to take a look at those things. So I don't think that that's a particular issue we have in this case.

>> Councilmember Chu: Okay, great, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Yeah, I'm going to jump on the band wagon certainly as I indicated previously. But I did want to go back to one point, and it was an important point that Pete raised which is why we go through all this. I really do believe this is about traffic calming and the speed of traffic. I know Pete you're being exactly straight with us, but three times you mentioned slowing the traffic down, you said that the neighborhood request, quote is reasonable and reducing the speed at these intersections. The resulting speed will improve pedestrian safety. Furthermore the installation of the signs at these intersection will reduce high speed cut through traffic. So the reality is we are always looking to stop signs as traffic calming, even though the best information we have from engineers in the industry is, this isn't a good traffic-calming device, because if it's installed in the wrong place, it creates more hazard. What I really think this all points to is, can we try to find a more liberal approach towards traffic humps, or other traffic calming, that doesn't pose the downside risk that stop signs do, so that we can address these kinds of community concerns without all this painful process that gets us to this point? Because I know it's an enormous amount of staff time, and I know it's not often that we even have the amount of money to install a lot of these. In selected developments where we have developments or some kind of developer fees or something. But it seems to me that refocusing our effort to true traffic calming rather than fighting whether or not staff -- stop sign is really warranted at a particular intersection could save everybody a lot of aggravation and a lot of resources. Thanks.

>> Mayor Reed: I think we're concluded with the council discussion. I'm glad this only happens once a decade. With that I'd like to call for the vote. We have a motion on the floor. Councilmember Constant? All in favor, opposed, none opposed, so that's approved unanimously. Congratulations, you get your stop signs. [applause]

>> Mayor Reed: We'll now move to the land use items on the agenda starting with 11.1 which is a consent calendar with a few things on it. Are there requests for anything to be removed from the consent calendar? None.

>> Motion to approve.

>> Second.

>> Mayor Reed: We have a motion to approve the consent calendar. All in favor, opposed, none opposed, that's approved. 11.2, rezoning of real property at the West side of north third street. I'm sorry, that was deferred. We'll move to 11.3, rezoning of real property at the north terminus of grand oak way. We have some cards from the public on this item. Is there a staff presentation?

>> Joe Horwedel: No, Mr. Mayor.

>> Mayor Reed: Staff is here if we have any questions. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I would -- I had a memo that I distributed to -- earlier and I would like to move my memo. And that is basically to support the Planning Commission's recommendation to allow for the dish units, and to move the driveway access to the northern part of the property.

>> Mayor Reed: We have a motion and a second, so we have a motion on the floor. Councilmember Herrera did you wish to speak to that?

>> Councilmember Herrera: Yes, and then have the public weigh in. I have met with the applicant, I've met with the neighbors of hematite court, I have seen the site and actually walked the site. After taking in all the information about this project I felt that the Planning Commission was correct in approving the project and moving the access road to the northerly side of the property. I feel the driveway access road should be moved to ensure a higher quality of life for the residents of Hematite Court. The neighbors on the corner of Grand Oak Way and Hematite Court would be severely impacted by a paved 20-foot road on the back side of their property. Moving the road to the northerly side of the property will not have a negative impact on any existing neighborhood based on the slope

of the land. And I've also consulted with the Planning Department and feel like the Planning Commission's recommendation is the best for the current and future neighbors. In addition to that I would like to direct staff to work with the applicant who is also a neighbor in that community, and we are certainly not looking to add more burden to the applicant in his moving forward with this project. And it's my understanding and maybe Joe could weigh in on this, there is some possibility with working on the applicant to minimize the impact on the applicant's existing structures.

>> Joe Horwedel: Thank you, Councilmember Herrera. One of the options that staff wants to look at, at the permit stage, since the driveway only serves two dwelling units, we do think we may be able to narrow that driveway. There is a new building code provision that will take effect in January that requires all new single family homes in the state of California to be sprinklered and that normally the mitigation for a narrower driveway of less than 20 feet is to sprinkle it so at the end there would be no difference. So that's something that we want to talk to the fire department staff when the permit comes in, look at the specific dimensions of the driveway and see if that's a solution that would provide more space to the swimming pool.

>> Councilmember Herrera: I think that's great and hopefully the applicant will be able to work with you and possibly then even make the 20-foot driveway a little more narrow and give more room for the existing structures there. Thank you. And that's all I have. I'd like to hear from the public.

>> Mayor Reed: All right, we'll take the public testimony at this time. Please come on down to the front when I call your name so you're close to the microphone. Craig Clemons, Carmen Rose, Dana Rose.

>> Joe Horwedel: Mr. Mayor, the applicant is here, he did not put in a card, they were requesting.

>> Mayor Reed: Let's hear from the applicant. Who would that be, come on down. On this rezoning we allow the applicants five minutes to make their presentation then we'll take testimony.

>> Thank you, Mr. Mayor, members of council, my name is Peter Smith, from Charles Davidson Company. We are the civil engineers representing Mr. Sidhu. I have a site plan. So the proposal is to rezone this 2.07 acres of land at the end of Grand Oak Way off of San Felipe Road. And we're requesting to rezone it to two dwelling units per acre which matches the general plan designation. I was going to go through a explanation of the site, seems like everybody's familiar with it. What I'd like to do is address the comments about the driveway location. Just to clarify, if you look at the site plan the triangular green shape is the site plan. The pink area is a proposed driveway that we would propose to build on the site for the two units in the back. Along the bottom is a tan line which is the tan is a private driveway that's owned by a person to the East of this site. It's not our property and we don't have control over it. We worked hard with that property owner to try to get him to share the driveway so we wouldn't have to build a secondary driveway. That did not come -- work out. So we did utilize the blue area is part of this site so that's an easement to the landowner, Mr. Bruce who owns the tan piece. So that driveway is going to stay in no matter what we do with this project, whether we put our driveway on the other side or this side. The reason we felt this made more sense on this side was primarily for open space and visibility. On the top will be our proposal, on the right-hand side of the photo is the existing fence and then the grass area is the existing driveway for Mr. Bruce. We've added with the computer a low fence and a paved driveway and then the proposed houses so that's what we would propose to have so there wouldn't be any blockage of that area, it would be open for our proposed homeowners would be able to see it and other people from their backyards. We think that's a safer condition. If we move the driveway, if we move the driveway, we would have the existing fence on the right, Mr. Bruce's driveway and a six-foot good neighbor fence. Our concern is we will create this alleyway that nobody really can see, that's blocked off and could create some hazards or nuisance issues for both our future residents and the existing residents. So that really was what drove our decision to have the dual driveway. We would like to defer this to the PD permit so we could work again with staff and maybe with Mr. Bruce to try to get him -- to convince him to use the common driveway approach. We'd rather not have that tied in at the zoning stage if that's possible. I think that concludes my comments, Mr. Sidhu, if you wanted to discuss.

>> I think there's going to be some neighborhood testimony and I would like to speak to that later on, afterwards.

>> Mayor Reed: Okay. We'll reserve a minute and a half for you at the end. Back to the public testimony. Craig Clemons, Dana rose.

>> Thank you. My name is Craig Clemons. I live at 6313 Hematite court and my home backed up to the proposed development site. We ask that you approve the unanimous Planning Commission recommendation which includes the development standard requiring the driveway access be moved to the northern side of Mr. Sidhu's property. The neighbors also support a memo issued by Councilmember Herrera which is consistent with the Planning Commission recommendation. And I'm not going to go into detail, because the applicant just covered what the site looks like. I do want to point out from this two things. This clearly shows the southern, the southern property line, which is the lower red line is very close to the hematite homes. The upper line and the distance to the homes that are on the northern boundary. This also shows the openness of the area that he's proposing to put those three homes into a very small area. There are 22 neighbors that share and support our position on Hematite Court. And our concerns with the current plan is the new driveway is too close to the hematite homes. The rose home on the corner would have a street on three sides of their home. Six hematite court homes would have a street on the front and back of their homes and the issue of the Bruce land that was pointed out will be discussed by one of my neighbors in more depth. All of these issues increase the noise and decrease our privacy. And it's not consistent with the open feel of the neighborhood. One thing that's also pointed out if you look at homes 3 and 4 on this map on the right-hand side they look directly into the back of hematite court homes. The picture on the left side of this diagram was taken from the southern property line of Mr. Sidhu's property where he's proposing to put the driveway and you can see it looks directly into the bedrooms of the hematite court homes with a 30 or 40 foot setback depending where the home is located on that street.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Carmen rose, Dana rose Kathleen Helsing.

>> Hello. My name is Carmen rose. I live at 6307 Hematite Court, which is the corner house on Hematite Court. I'm opposed to a driveway or road being built behind Hematite Court. The proposed driveway would simply be too close to my house. If you look at the plans, there on the right, there would be no clearance and no setback between my backyard and the proposed driveway. The road would literally be set right up against my backyard fence. I have a small backyard, there's a picture of my backyard. The road would only be only 32 feet from my family room and my bedroom. It would be inches from my patio table where my kids sit and play. I'm also concerned about the number of vehicles going up and down. The long road would lead up to two large homes with multiple car garages. But there also would be additional vehicles going up and down, family and friends visiting. The plans have even accommodated for those extra vehicles by putting four extra parking spaces at the top of that driveway. At night there also would be headlights in my backyard, my family room and my bedroom. It's also been stated that there currently is already a driveway behind my house. But this is not true. Right now, behind my house, there is a fence, and there's a big open field and an easement where the cows graze. So that's a picture of what's behind my yard. There is no driveway currently there. It's just a big, open field. I'm also concerned about the decrease in property value and my home's desirability. The proposed driveway would surround my home by three roads. Who wants to have a house like that? I don't. So I ask that the easement behind my home be left as-is and I ask that you support the Planning Commission and councilmember Rose Herrera's recommendation to place the driveway on the north side of the property. Thank you.

>> Mayor Reed: Dana Rose, Kathleen hellsing Jackie Clemons.

>> Dear mayor and city council, my name is Dana Rose, and I live at the corner house of 6307 Hematite Court with my wife Carmen Rose. I'll be addressing the Planning Commission's dialogue of combining roads and two points from Mr. Sidhu's rebuttal letter to the Planning Commission. The Bruce property is a nonurban 18 acre plot, no more than one house on the property. The dirt ingress behind hematite homes, the cow path, leads to this property. Farmers use this path to access cows, horses, and this doesn't cause a privacy or noise issue. The planning staff solicited ideas of combining Mr. Sidhu's driveway and the Bruce ingress as one. Commissioner Zito from the Planning Commission meeting said the following: I understand the situation with the lands of Bruce, but we've been told many times that we've always gone with the fact that you can't plan on the future, especially

with lands that are not part of this application. My concern is it won't line up and I think the folks that came to speak here tonight make a pretty compelling argument. We don't want a combined road behind our homes, as this would add greater than 300% traffic increase with cars stopping, starting, parking versus someone driving by. Mr. Sidhu's rebuttal letter to the Planning Commission states two homes of the driveway will not lead to significant noise. We disagree. What about deliveries, visitors contractors and occasional parties. Four additional stalls of off street parking are also in the proposal, car headlights will shine directly in the back of hematite homes including my master bedroom. What about future development of the driveway William who knows about the future. Commit to no future development? The second item, is there are homes in the neighborhood that have similar situation of corner lot with public streets and a decorative way in their backyard. We disagree. Buyers made informed decisions, homes were developed that way, generally larger lots with further setbacks including sidewalks. Hematite homeowners with have no choice. Typically driveways like this lead to one house and not to three.

>> Mayor Reed: Sorry your time is up. Kathleen Hellsing and Joyce Clemons.

>> Hello. There is concern that moving the road would turn the Bruce's path into a long dark alley hidden by fences on each side. We disagree. This already exists for two Hematite homes on the cul-de-sac. They have the Bruce path and meadow lands homes behind them with no complaints. Also, there is a street light and a gate on the West side of the path. Hematite homes can see into this path. We have no crime issues in our neighborhood. These pictures show the Bruce cow path between the Hematite and meadow lands homes. My first neighbor writes, we do not agree with the concern about the access road behind our house being a dark alley. Our house is in the eastern Patel and be in the 14 years we have lived here we have never been concerned about its safety because of its location. Here again is the cow path between the Hematite and meadow lands home. My second neighbor writes, I feel safe with the existing cow path behind Hematite court behind my house. This is our view at the tip of the development triangle. We feel the cow path behind our house is not an alley hidden by fences. We enjoy the horses and cows that walk the path. Thank you.



>> Good evening. I'm Jackie Clemons. I also live at 6313 Hematite Court. Just quickly in summary, I'd like to reiterate that the Hematite neighbors are not against the building of the three new homes. The Hematite neighbors simply want to protect our privacy and our home values. And again, crime is not an issue in our neighborhood. Hematite neighbors request that the city council approve the unanimous Planning Commission recommendation to move the driveway across to the northern property line as part of rezoning. We are also in support of Councilmember Herrera's memo that was shared with us earlier this evening. So that's all I have this evening. I'd like to take this opportunity to thank you for your time and attention to this very important matter for our neighborhood.

>> Mayor Reed: That concludes the public testimony on this item. We do have a motion on the floor made by Councilmember Herrera based on her memorandum. Any discussion on that motion? Property owner wanted to speak again, I think so we'll take that at this point.

>> Thank you, mayor. Councilmembers. There has been a couple of things said here, that are just not true. Mr. and Mrs. Rose have come up here and said there is no driveway behind their property. It is a matter of legal record that there is a driveway there. So I mean I'm not sure what that all is about. Also people are coming up there and describing the Bruce driveway as a cow path. I don't know what a cow path is. Do people take their cows for a walk and then take them back home? This is their ingress egress. That is their only way back into their 18 acres of land. It is their driveway. In relation to some of the other things, in moving the driveway to the northern side, there is an issue what you see there is my well water system and propane tank. That is where the neighbors are recommending that I should put my driveway. Now that is going to cause a bit of a problem. Homes with backing onto streets, there's nothing new and here we're talking about two homes. Here you see back onto San Felipe road and there's a house with three roads on the side.

>> Mayor Reed: Sorry, your time is up. Thank you. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just wanted to ask Joe to characteristic this southerly driveway, versus northerly, and what impact it would have or how it would relate to the adjoining neighborhoods in either instance.

>> Joe Horwedel: Councilmember Herrera, putting the driveway for the two new homes on the north side does move that driveway further away from residential units on the north side the parcels are much larger. The homes are built at the on the other top of a slope, so there's a great differential also as opposed to being at the same grade.

>> Councilmember Herrera: So would you be able to see the he road from the homes on the northerly side? Would they even be able to see the road?

>> Joe Horwedel: I think that they, you know, from the home itself, no. When you're standing in the back yard, looking down, you would see it.

>> Councilmember Herrera: So it would be much less impact on the other residences on the other side?

>> Joe Horwedel: It would be a much less impact to have the road on the north side than on the south side. The other thing I wanted to note is that Mr. Smith had noted about the solid versus open fencing on the driveway, and while they do have proposed open fencing between the two driveways, the fencing between the driveway they would build and the yards for the new homes, 75% of that is solid good neighbor fencing as opposed to open fencing. So I think no matter which solution you are going to have solid fencing. It's whether it's 20 feet further away in that corridor.

>> Councilmember Herrera: So that description of the corridor and the wall and the fencing on both sides really would happen with either proposal?

>> Joe Horwedel: Yes, it would be a little bit wider with the applicant's proposal but it would be a solid wood fence for majority of that distance.

>> Councilmember Herrera: Thank you. I also had a chance when I met with the applicant we talked about the structures and the tank that was there and it was told to me that that tank could be moved and obviously that tank would have to be moved if indeed the other route, the other driveway northern side was used.

>> Joe Horwedel: And the other piece, the applicant I think noted that that was a well water tank and that with the development of the property we would be hooking the properties up to municipal water services. That would be natural gas that's coming in through the street extensions. So the need to maintain a separate propane tank for the heating would not be required, that operating on well water, my memory is, it's been a while since I've dealt with it, that there actually would be a requirement to hook up to city water versus using well water for that home.

>> Councilmember Herrera: Okay, so the tank might not even be of use but we have discussed that it would need to be moved and it has been discussed and acknowledged by the applicant. And the other discussion that I had before we had the public discussion again, I want to reiterate that, I hope that the applicant will work with staff, because staff's very motivated to try to see what kinds of things can be done to minimize the impact on the applicant. I don't think that anyone here wants to add increased burden to the applicant in this process. And in fact it sounded like that road might end up, the driveway may end up becoming more narrow which then would have less impact to the applicant's property. So I hope that will happen and I wish everybody well on this. They're all neighbors and I hope everybody's able to move forward with this project. And I congratulate the applicant on this project.

>> Mayor Reed: That concludes the council discussion. We have a motion on the floor played by Councilmember Herrera on the motion itself, all in favor, opposed, none opposed, that motion is approved. That concludes item 11.3. We'll now turn to item 11.4. Rezoning of property on the West side of Guadalupe Mines Road.

>> Joe Horwedel: Thank you, Mr. Mayor. Staff does have some comments to make on this rezoning application. The city council and staff received a letter this morning from the Silicon Valley Audubon society regarding the environmental review for this project. In the letter the Audubon society noted that they had requested that they be notified of activity moving on this project, including the environmental document. In looking at our notification for this project we noticed that we did not notify the Audubon society. That is an error on the part of staff. Normally with all projects adjacent to riparian areas, we notify seven different environmental groups and that did not happen with this negative declaration. The Audubon society is asking that the item be deferred two weeks so that they can provide -- have adequate time to review the project and the environmental issues with it. They provided a substantial amount of comments in the letter that came to council today. Staff is prepared to respond to the issues that are raised in the letter. We think that there are a couple of things that we should clarify. But in consulting with the City Attorney, this evening, it is our collective opinion that the application should be continued from tonight's hearing for two weeks. We do recommend that we open the public hearing because the community is here tonight. And that the applicant and that they should have the benefit of the hearing. And take that testimony and then, at the end of that testimony, that we would consider a motion for a deferral to a later date.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I was just notified at 6:30 tonight that this huge mistake regarding the notification or the fact that the Audubon society and several others were not notified. So because that didn't happen I was one of the last to know. In fact at a meeting last night, several of the people who attended did say there had been a problem with the Audubon society. It's very embarrassing when the people in the neighborhoods know this information before I did. And I just thought oh no, we've taken care of that. So for tonight, I would like to outline your suggestions again. I think some of this happened, Joe, because you have a short staff at this point. I mean, I think everybody that's here and who's waited until some of them have been here at 8:00 at night, 7:00 I think, am I right, 7:00? They need some kind of an explanation. So sit because of the short staff?

>> Joe Horwedel: No. This is something that I have a really, really talented planner who's been working on this project, and we're asking a lot of that planner. And, you know, I think just missed in checking some boxes in our process. I think the one thing we've been having challenges on is we used to do quality control of things going out and that has pretty much stopped. We find out about things --

>> Councilmember Pyle: Which refers to the short staffing that I was referring to.

>> Joe Horwedel: We're asking a lot of the staff right now. Unfortunately this is the third one we've hit this year and that's not a track record that Laurel or I are proud of.

>> Councilmember Pyle: Thank you. Appreciate that. And so with that, would you mind repeating one more time or let me see if I have it here. I haven't had time to type anything up. So forgive me if I'm not as prepared as I would be. We're going to have a hearing tonight. You can speak tonight so we can get all of your concerns and continue the item until the 31st.

>> Joe Horwedel: Is we would continue it. One of the options the council has is what the deferral date would be. The Audubon society has asked for two weeks. The applicant is concerned about that based on contractual issues.

>> Councilmember Pyle: Based on their concerns it would be the 31st.

>> Joe Horwedel: That's correct.

>> Councilmember Pyle: All right, but that's debatable, okay? So then the rest of what I wanted to double-check with is moot until we work that out.

>> Joe Horwedel: I would suggest we hold the public hearing and close the public hearing and have some discussion at that point.

>> Councilmember Pyle: Very good. With that I'm ready to go ahead and hear from the public. Unless there --

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just wanted to make explicit something that was said but probably helpful for the public to know. Joe, your department's lost 100 positions in the budget cuts over the last few months; is that right?

>> Joe Horwedel: In the last two years we've cut about 100 positions.

>> Councilmember Liccardo: Okay.

>> Mayor Reed: Before we get started with this I want to disclose in preparation with this meeting my staff has had conversations with Eric Shanehauer, the Shanehauer group representing the applicant. What I propose we do, what we will do is have a hearing. Then we'll decide whether to act or to defer. The staff's recommendation is to defer, up to the council, ultimately it's the council's decision. We'll hear from the applicant, Eric Shanehauer representing the applicant. Five municipals. Then we take public testimony. I have a lot of people here who want to speak. Everybody in the audience it looks like has signed up to speak so I'll have to limit public testimony to one minute so we have some time deal with this.

>> Good evening Mayor Reed, members of city council my name is Eric Shanehauer and I represent truemark companies on this application. We have come to the point where we have found a good balance between riparian protection and allowing new development so let's get San José's economy moving forward again. Our project represents hundreds of construction and other related jobs. It represents a \$46 million investment in our city and \$82 million of total economic activity. Overwhelmingly if you read the staff report our project conforms to the policies of the city. The general plan, the density, the layout of the homes. The common open space, the private open space. The fire access. According to your professional staff the project overwhelmingly is the type of

neighborhood that you would approve elsewhere in the city and is appropriate in this location. Councilmember Pyle has issued a memo asking that the project achieve greater riparian setbacks, and tree protections. And we concur with her memo. We have done a simulation that is indicative of a new greater setback than our original proposal. The revised plan includes -- original proposal represents the green hatched area. And with the additional setback, requested by Councilmember Pyle's memo, and that is included in the darker green area being added to the riparian setback. And so what that means statistically is the site plan you see before you is 72.8 feet of average riparian setback. The homes are setback an average of 111 feet from the riparian edge. The project will remove 2.3 acres of impervious surfaces. Parking lot, building, and equipment from the riparian setback, and it will restore 3.83 acres of riparian vegetation along the creek. Riparian policy is fairly clear in that it allows exceptions for certain circumstances. On page 28, it speaks to the purpose of the guidelines. And the purpose of the guidelines are to establish a balance between protecting the riparian policy and having not unreasonably limiting the economic use of property. That's the purpose of the guidelines. And the setback exceptions say that sites with disproportionately long creek frontages which ours clearly has and also projects where the new use and design is as compatible or more compatible than the existing conditions, could warrant a lesser setback. With regard to economic feasibility, this is a simulation. If you were to apply a strict 100 foot setback along our entire frontage it would eliminate 33% of our property as usable space. And it would cut 35% of our units from our project. 94 down to 63. That doesn't seem reasonable in this circumstance. Another consideration, in the policy is improving on the existing conditions. In this simulation we've put our site plan, actually the older site plan over the existing office buildings. And you can see all along the frontage, parking lot pavement will be removed, a two-story home will be removed, diesel generator and pavement in here, a three-story commercial building here, and parking lot paving all along here will be removed out of the riparian setback and restored. Here are a few pictures to show you what it looks like. Large swaths of pavement right up against the creek with no setback. In some locations more pavement and a diesel generator and a diesel fuel tank right up on the creek's edge. A two-story private home literally built into the creek will be removed and restored to natural habitat. And at the other end of the property more, more pavement right up against the creek. Another circumstance to consider, in the policy is what's happening downstream in adjacent properties. So as you can see once again this is our setback. Downstream, there are single family homes literally built up to the riparian line with virtually no setback. We've begin them ten on this exhibit as sort of a benefit of a doubt. This this location, the

road is right here, and across the creek, Hicks road is immediately adjacent to the creek. So this is not a big wide wildlife area. This is a very narrow creek area and our project will substantially widen the habitat. Another part of the policy says that you should rely on professional biologists. The biologists evaluated the creek and our project and found that it conforms to the policy and proves the biotics of the creek. In the full 16 years that this policy has been in place the council has regularly considered exceptions because that's what's in the policy. We would appreciate your consideration in finding that balance point tonight. Thank you.

>> Mayor Reed: Your time is up. We will now take public testimony on this project. Again I'm going to have to limit everybody to a minute so we can get everybody an opportunity to testify. I know you have been waiting a long time, and I want to make sure that everybody gets a chance. Please come on down when I call your name. Libby Lucas, Brian Schmidt, David Cook. That will be followed by Brent Graham, Craig Brian. There's lots of room in the front row if anybody wants to edge on down.

>> Hello, I'm Libby Lucas, I'm with the California native plant society. I'm not sure how this works. Basically what I would like to show you here is a sycamore tree. There are 11 sycamore trees that will be removed --

>> Mayor Reed: There you go, that looks more like a tree.

>> Well, it doesn't show all the way. That is one large sycamore tree. There are 12 heritage sycamore trees that are to be removed from this project. I think there's one that's rather close to the creek that is being retained. All these sycamores are within the riparian 100 foot setback. And they are as I say they're heritage trees with five foot plus diameter trunks and they're in good health and they're handsome and they're phenomenal habitat for the very elaborate number of species that I believe Audubon has submitted to you the different birds that can be found in this area.

>> Mayor Reed: I'm sorry your time is up. Brian Schmidt.

>> I did submit a letter. I hope you've had a chance to read it.



>> Mayor Reed: Good. Brian Schmidt, Brent cook. Brian Graham.

>> Let's see how fast I can talk. Brian Schmidt, committee for green foothills. We appreciate staff recommendation to delay this project. And quick communication from Councilmember Pyle's office as well. We support the hundred foot setback throughout this project. The new draft general plan says, ensure that the 100 foot setback is a standard to be achieved in all but a limited number of instances. And the existing riparian policy which was not quoted by the applicant says development adjacent to riparian habitats generally should be setback 100 feet. So you need to look at the exceptions that are listed and see whether or not if you applied the exceptions with the leniency that the applicant was asking, you would still have a general 100 foot setback. That's not the space. You need to keep that in mind. Thanks.

>> Mayor Reed: Time to spare. Way to go. David Cook, Brent Graham, Craig Breon.

>> Two points would I like to make. One is that Audubon has found 82 species of birds nesting in this area and we people this project will have an adverse effect and no real study was done to see what the effect would be on the number of nesting birds there. One is a species of special concern such as the burrowing owl was is yellow warbler. Above this issue and how the removal, possible removal of a dam above this and the effect it would have on the watershed below has not been addressed by this report. So we feel that these issues alone warrant a revisiting of the rezoning. Thank you.

>> Mayor Reed: Brent Graham, Craig Brion, Alicia Gulch.

>> Mr. Mayor, councilmembers, thank you for listening to us. I live directly across the street on the southern end of the project, which they were initially going to cut back to 30 feet. I think it's going to be modified now up to 70 which helps, but I believe the 100 foot is still recommended. The density in that area of 94 houses in that project does not match anything in our area. I was thinking the closest thing I could come to would be the Pierce ranch project that I believe are zoned 4.4 or 6.2 units per acre. I think that would be more appropriate for this area if you

look at all the zoning maps. Also I was wondering I know, I haven't heard anybody talk about the city's Guadalupe trail master plan. I had a letter back in '05 from the district water and they were talking about this master plan, including this trail behind that project. I just haven't heard anybody talk about that. Thank you.

>> Mayor Reed: Craig Brion, Alicia Gosh, Tian Fay Shaw.

>> Former executive director of the Santa Clara Audubon society, I can speak even faster than Brian. I was up in front of this crowd for 12 years, I haven't been for a few years. This is the first time I've spoken in this room. Thanks for this opportunity. I was one of the people who was around here when the riparian policy was passed. One of the biggest problems is this exception that you're seeing cited here tonight: The abnormally long frontage. It has come over time to me to be claimed as any property along the creek has an abnormally long frontage. It is a tremendous loophole in the policy. And it needs ideally to be addressed in the end. I would say this is not the project make an exception on. This is not economically vital to the city. It's not the right sort of housing that the city absolutely needs. There are places where exceptions to this policy are very warranted. This is probably not the best one. You've got your Planning Commission, your planning staff, the community, the neighbors I mean and the conservation community all trying to urge you to do what your general plan task force said and uphold this kind of policy and I hope you can do this, thank you very much talk to others.

>> Mayor Reed: Your time is up. Alicia Gauche, Tian Fay Chow, and Gary Wiener.

>> Thank you. Honorable Mayor Reed and city council members, my name is Mallavika Gosh, right across from the proposed development. Over 50% and that is more than 100 of our residents have sent you e-mails or signed petitions against the development. None of the residents wrote in support of the development. We live close by and we want the City of San José to avoid repeating past environmental and urban planning mistakes. We want a development that conforms to your own and vision San José 2040 guidelines, your own riparian corridor policy, your approved San José Planning Department staff report and Planning Commission recommendations. And also, the Santa Clara valley habitat conservation plan which will leave a legacy for our future. Jobs will be temporary but the environment may be lost forever. Thank you.

>> Mayor Reed: Tian Fay Chow, Gary Weiner, Ron Jacob.

>> Mayor and councilmembers, my name is Tian Fay Chow. I come to live in this area. This is Guadalupe Mines Road and this is the project area. This end of the Guadalupe Mines is open space. This is lot next to open space. This currently project it's the home of over 900 well grown trees. This we can see the relaxing horses, this is a farmer. This is the intersection of the Campagna and Guadalupe Mines Road is rural. This is the view from project site, we can see a live and floating creek with endangered species. We see across did creek.

>> Mayor Reed: Sorry your time is up. Gary Wiener, Ron Jacobs, Debra Jacobs.

>> My name is Gary Wiener, Mr. Mayor, councilmembers, this beautiful area we live in I hope you took a look at it. Just ask you to affirm what your staff report said recently and also your commissioners also had a firm to keep the riparian setback to 100 feet. We want to preserve the beauty of the area. Here is a comment from commissioner Kline about this. It is pretty much an urban sprawl development, speaking about Brookside estates, this is just a big subdivision shoved up against one of the nicest communities in one of the most natural environments that we have. Chairwoman Lisa Jensen said, I agree with my commissioners that large, expansive houses on teeny, tiny lots are not respectful of the people we're asking to move there, nor of the people who already live there. Thank you and good night.

>> Mayor Reed: Ron Jacobs, Debra Jacobs, Jen Weng.

>> My name is Ron Jacobs, I live at the very end of this project also next door to Brent. Experts H.J. Harvey and associates wrote a document for you in 2009 stating that the steelhead trout a federally listed threatened status migrates up from the ocean past this development to the habitat far upstream area. They also said that steelhead populations are declining because of barriers to migration. They also said to this document in envision San José 2040 general plan update that you should enhance restore and reestablish habitat. Santa Clara Valley Water District was asked about this, they said we strongly urge adherence to the strict application of the city's riparian

corridor policy on this site. Redevelopment of this area should provide 100-foot setback. This site is directly adjacent to a rural undeveloped hillside area of the valley where development has a high potential for impact.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Debra Jacobs, Jen Wang, Susan Diddler.

>> So I'd like to talk about the loss of the greenspace and the effect on the wildlife. As you saw on the video this is not strictly an urban area, the actual site is more accurately rural, abutting to the mountains both behind it and on the Los Gatos side of the creek. The creek is a water source for many animals. We see deer frequently, bobcats, wild pigs and coyotes. The new residents surrounding the walls have blocked their path to the water source. A 100-foot riparian setback is needed so that these species can access the riparian corridor. The endangered tiring salamander has been seen at the site of the development despite what the developer's biologist says. I would like to leave you or make a comment on the Planning Commission chair Jensen. I assume you're aware of the special status of Santa Clara Valley with respect to it being a wildlife corridor and the need to provide wildlife corridors within the area by way of riparian corridors and other transition paths above the ground as well. There would be nine --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Gen Wang, Susan didder, Jen Z. Whang.

>> I'm a resident in the community, very close to the project. I'm here to protect the proposed change made by councilmember Nancy Powell regarding the riparian project. The project if developed going to be with an average

70-foot riparian setback. This is a violation of the policy. It doesn't address setback averaging. What does average 70 foot mean? This word does not specify a minimum, which is what the policy specifies. I have a card from the petitioner which is a former city staff member who participated in writing the riparian part in 1990. She said, if it's 70 foot setback discussion about both the long and the short age then incredible policy lapse going on here and the project needs to be reconsidered. The memo listed three reasons for the exception. Even if they are two per policy they are more restrictions need to be made.

>> Mayor Reed: I'm sorry your time is up.

>> Thank you.

>> Mayor Reed: Susan didder, Gen C. Wang, Zack Wang.

>> I've distributed a letter to the coin. My name is Susan Diddy, I'm a resident of the area, but I also have a master's in Public Health with a specialty in injury control. I'm talking about evacuation during a disaster, if there was a fire, earthquake or other disaster, there would be hundreds of people trapped. There's already a problem for us now, but the new development is going to add about 400 people and 200 cars. I want to show you Guadalupe Mines Road. This is what it looks like with the parking where they have the private street, the parking is going to go onto Guadalupe Mines Road, on both sides. It is now a two-lane road. It is going to go to a one-lane road. It is the only evacuation route that we have. I want to show you right at the top is, we can get out by Puerto Vallarta. And there is Via Campagna. We just recently had a fire, as you can see right at that line there, and the fire -- the whole of Guadalupe Mines was completely trapped off and going out of Puerto Vallarta. If there was a fire closer, we would have been completely entrapped and not able to get out. We lie on significant faults, and this is Loma Prieta --

>> Mayor Reed: Sorry, your time is up.

>> Thank you.

>> Mayor Reed: Jen Si Wang, Zack Yank, Suman Gauche.

>> My name is Jen Si Wang, I came here to address actually I guess the developer list three reasons for the exception. Actually for the reason one given by the developer, actually, we got two experts opinion about this one. One is from Lawrence, 20 years riparian advocate. He says the reason for the exception for the unusual geometry was to not penalize individuals who own a long, skinny parcel along the creek, and who wanted to build a home, not 100 homes. It was included in the policy. So that its introduction back into the 1990s would not constitute a taking of the land. It was not intended to allow exemptions for the appendage to a parcel or as a bargain chip to encourage developers to buy land cheap after the policy was adopted and then negotiate to build more than was allowed. And also from Helen Chapin, I don't think should be exempted, and for the reason 2 given by the --

>> Mayor Reed: Sorry your time is up. Zack Yang, Suman gauche, Pradip Chandr an.

>> My name is Zack Chen. I'm here to against -- to reduce the setback to smaller than 100 feet. So actually we just mentioned this is especially so we are talking about, will be -- will be affected by such intensive project. So staff in Planning Commission meeting last week, saying that in locate of this project, the remaining area for the development is still able to provide a large project despite 100 foot riparian setback. And the city staff, Patricia Colobe, saying the total amount of the site should be calculated following the riparian, they are not losing units, this 33% of units are not intended to be there. Commission Norman Kline saying unless this is the type of project that should provide full 100 foot setback because it is located at the edge of the city and there is in a rural area.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Solman Gauche, Pradip Chandra, Lydia Wheeler.

>> My name is Solman gauche, thank you for the opportunity to speak. My main point is looking at the proposed development of 94 house, and if you look at the surrounding how many similar houses we have, and we did a research and found out from the listing that we have about those 14 listings found and if you find that all those houses, they do not have any kind of a private street with one side street parking. So that basically if you have one side street parking, the visitors or anybody comes to visit their homes they will overflow on the Guadalupe Mines Road and that will further create the problem. So that's one particular point. There are many, many private streets inside the development. So those are one-sided parking. Thank you very much.

>> Mayor Reed: Pradip Chandra, Lydia Wheeler, Larry Ames.

>> My name is Pradip Chandra, I'm a resident of Campagna, in fact, I live just opposite where the development would be basically I have two concerns, safety. It is a narrow road, Guadalupe Mines. We had a fire, one of my neighbors has already mentioned that earlier and the other concern is the natural area. So if the council is going to give permission we request that there be no deviation from the policy and that 100 foot setback should be insisted on. Thank you.

>> Mayor Reed: Lydia wheeler, Larry Ames, Courtney Barrett.

>> Hi, my name is Lydia Wheeler, I'm a resident at Campagna at Almaden. I'd like to start off by thanking the mayor and the council for your service. I realize these past two years have been challenging and have required a lot of difficult choices and sacrifices. So I definitely appreciate the council's continued commitment to improve the future for San José. What we are asking of the council again is a difficult decision. We are asking san José to maintain its recognized environmental leadership and apply its 2040 general plan directive for a minimum 100 foot setback along the entire lengths of the project. I think commissioner Kline said it the best. This is a buffer zone this is where you protect and you put a 100 feet here. If you can't put it here it doesn't make sense to put it in other places. It is a gorgeous area in the foothills of Los Gatos. These homes going in there will not be gorgeous. It will be horrible. It will be a disaster. This is one big subdivision shoved up against one of the nicest

communities and one of the most natural environments that we have. So this project, although it will create jobs for San José --

>> Mayor Reed: Sorry, your time is up. Larry Ames, Courtney Barrett, Jean Dresden.

>> Larry Ames. I e-mailed you a letter this morning. I hope you got it. It's a fairly nice project. The frontage along the creek is good. And the development will replace pavement with landscape and residences for this less runoff. This is a chance to rectify a mistake that circulate not have been made years ago. You should never have allowed a park lot so close to a riparian corridor. Now is the time to fix it and do it right. You need to have adequate riparian setbacks. The envision 2040 policy is reinforcing the 100 foot setback. This is a beautiful creek corridor here. It has a wonderful habitat and it connects the hillsides to the valley below. Don't constrain and constrict it by having developments too close into the setback. For the next 50 years you have to little with whatever you approve here now. Thanks. [applause]

>> Mayor Reed: Courtney Barrett and Jean Dresden.

>> Hi, I'm Courtney Barrett, and I'm with Guadalupe Rubbish Disposal facility and I just wanted to point out that we do support the 100 foot riparian setback. We own the property just south of the proposed development along the creek and one thing to mention is every time the applicant has mentioned the neighbors having less than 100 foot setback we have over 100 foot. We have a bunch of open space to the South that will not be developed in the future that is home to a lot of wildlife. And so therefore we do -- excuse me, we do side with the Planning Commission's conditions on the project. Thanks.

>> Mayor Reed: Jean Dresden. That's the last card I have. Anybody wants to speak please get your card in now.

>> Good evening, my name is Jean Dresden, if not here, then where? What parcel would qualify for a 100 foot riparian setback? If this one doesn't? It's near the urban growth boundary. It's next to an area that's being kept



wild. Importantly, the riparian policy guidelines does not have the concept of average. It has a statement that our policy shall be 100 feet. With some specific exceptions. An extraordinarily long frontage, for example like one where the creek wiggles, this is a straight line. The developer gave a list of other exceptions, notably, most were from long ago. More than a decade ago. Only one was in '09. And previously, this has been presented to the earlier members of this council, and your Planning Department was able to debunk each of them.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Sorry. [applause]

>> Mayor Reed: That concludes the public testimony. We'll let the applicant have a minute to reply.

>> Just a couple of quick -- sorry. Couple of quick responses. Just a reminder, this is a fully developed site, almost entirely covered by pavement and buildings. This is not pristine wild land. With regard to the abnormal creek frontage, our creek frontage is 2088 feet long. If that's not disproportionately long I don't know what would qualify for that. With regard to birds and trees I wanted to note that the biologist that evaluated the creek for the project is in the audience. If the council has questions directly of the biologist, also the fire marshal is in the audience if you have questions about the fire access. And with regard to the trail. Our project proposes to install the pedestrian trail along the entire frontage along with benches and other pedestrian amenities, just like other creek trails in San José. And lastly, with regard to the density, the existing neighbors live in a neighborhood that's 9.2 units per acre. Our development is 6.7. So we're less dense than the people who are complaining about the density. And finally, the policy that you have adopted, if it were as simple as 100 feet is the rule and it's always 100 feet, why do you have a 50-page document to describe your policy? Clearly, this policy is more sophisticated, more complete and more flexible than the testimony here tonight. Thank you very much.

>> Mayor Reed: Thank you. We will bring this back now for a council discussion. In light of previous recommendations from planning staff on how to handle this, is there anything the staff wants to add here before the council takes this up? City Attorney.

>> City Attorney Doyle: I just want to note and I'll echo what the planning director's has suggested, the reign because the public resources code and the notice requirements and the courts are very strict when it comes to CEQA's procedural requirements and demanding compliance. I think the Audubon society has requested a two-week notice of the continuance, we support that. It allows you to extend the appeal process until Friday and then have a hearing on the 31st. I want to note for the record, though, that since this would be on the 31st, the first reading of the ordinance. The second reading wouldn't come back until September 14th, given the fact that September 7th is not a council meeting, so it would push it back a couple of weeks.

>> Mayor Reed: All right so the recommendation of staff is to continue this matter for two weeks. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. Developments in my council district are often years in the making. The first time I saw a development proposal for this site, as a councilmember was in 2006. At that time, a developer wanted to convert the commercial property which had the properties still intact, to a residential area, and develop up to 16 town homes on an acre. I was opposed to that. And in 2006, my colleagues and I approved the rezoning of the property to 8 single family residences per acre. A decision to reduce the number of units per acre came after hearing from my community, and the staff, that the density for this site should be comparable to the existing homes in the area. And when we get back, for the proper hearing for this, that will come up again. So now, in 2010, we're deciding what appropriate development will be on this site, four years later. Once again, I've heard from my community, the developer and the staff about what they would like to see developed on this site. I've listened carefully and put forward my recommendations amending the staff and Planning Commission's recommendations. I would like to say too, that one of the recommendations, things that I feel are a little above and beyond but necessary, would be for example, working with the fire department to work with the Campagna neighbors and our office emergency services to develop a emergency response and evacuation plan. There's a

big problem there that needs to be addressed. And the developer has offered to put money in towards bringing this about. So this is something else that has been done along with the point. I wouldn't go into the points because I think I'll be violating the law if I do so. But I want to move, and hope I get a second, for this to come back on the 31st. Appreciate your forbearance with this.

>> Second.

>> Mayor Reed: All right, we have a motion on the floor to defer this to the 31st of August as recommended by the City Attorney. Discussion on that motion?

>> City Attorney Doyle: And Mr. Mayor, I'm sorry, I just wanted to clarify for the benefit of the audience that that is an afternoon session so we can work with Rules Committee to put it near the end of the agenda to make it easier for the public to attend but it is not an evening session.

>> Mayor Reed: On the motion to defer it to the 31st, all in favor, opposed, none opposed, we'll take this matter up and continue the discussion on August 31st. [ Pause ]

>> Mayor Reed: I think we have a card under open forum. Which is the last item on the agenda. I'm sorry. Councilmembers, we're not quite -- Mark Trout. Not here. Yep, there he is. Mark Trout, come on down. Mr. Trout, this has to be relevant to the jurisdiction of the City of San José. This is not free speech time.

>> This has to be relevant to the City of San José. Okay.

>> Mayor Reed: Yes, something that we have jurisdiction over. This is not about -- this is not a free speech forum so go ahead.

>> Okay.

>> Mayor Reed: The free speech zone is out in front of City Hall any time you want but this is open forum in a hearing so you got to talk about something within our jurisdiction.

>> Well, the agenda is dated for August 17th, 2010. Is that correct? From whose birthday? Whose birthday is that dated from?

>> Mayor Reed: Your time is running.

>> I'm asking a question, you said it had to pertain to the --

>> Mayor Reed: This is not a dialogue session. You have one minute and 41 seconds left. We don't do dialogue. This is -- if you want to talk, talk.

>> Okay. I'm Jesus, I'm now persecuted. Now when Paul heard those words he was shocked. He was on his way to Damascus and -- to persecute Christians and what he did was, he --

>> Mayor Reed: Mr. Trout, this is not a time for a sermon. And you have -- if you have nothing to say within our jurisdiction, God is not in our jurisdiction. I'm sorry. I'm going to terminate this open forum. We are adjourned.