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>>> Please include the agenda item number, not the file number for reference. Example, 4.8. The procedure for the securing it is as follows. After the staff report, applicants and appellants may make a five-minute presentation. The chair may call out names. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicants, the appellant, may make closing remarks for an additional five minutes. Planning commissioners may ask questions of the salespeoplrs. The additional questions will not reduce the time allowance. The public hearing will then be closed and the commission may take action on the item. If you challenge these land use decisions in court, you may be limited to only those issues you or someone else raised in written correspondence delivered to the city at/or prior to the public hearing. The planning commission's actions on re-zoning, pre-zoning, general plan amendments and code amendments is only advisory to the city council.

>>> Roll call. Let the record state that all commissioners are with the exception of commissioner Abolite and Kamcart. A list of deferrals is available at the staff table. If you want to change any of the deferral dates recommended or speak to the question of deferring these or any other items, you should say so at this time. Staff, do we have any deferrals?

>> Yes. Thank you. This item is concerning 11-012. The applicant has requested deferral. This deferral would give the applicant the ability to face construction of the site to the time of the construction of the requirement of a new culvert. This is recommended to November 7th, 2012.

>> November 7th, you said?

>> It's November 7th, 2012.

>> Great. Thank you.

>> I would like to have a motion on this item? Motion has been approved to be deferred to November 7th. And, at this point, we also have commissioner Camcart among us.

>>> Consent calendar. The consent calendar items will be one motion. There will be no separate discussion by member of the planning commission, staff or the public item concerned separately. If you wish to speak on one of these items individually, please come to the podium at this time. Commissioner?

>> Thank you, madame chair. I'd like to pull 2A.

>> Thank you. We will have that item pulled for request from commissioner Cahan. And, at this point, I will start the public hearing. We will, of course, start with the item that was pulled first. But, first, generally, the public hearing items are generally considered in the planning commission in the order which they appeared in the agenda. Please be advised that the agenda to accommodate significant public testimony or may defer discussion of an item to later agenda. For public hearing time management purposes. So the first item we're going to be hearing this evening is item 2.8.

>> Thank you, madame chair, allowing late-night operations until 3:00 in the morning for an existing restaurant located at 2569 south king road. This restaurant, the noodle house, is adjacent to south king road. The project does not include any physical expansion or exterior modification of the restaurant or the shopping center. Staff is recommending approval of the project for the following reasons. For zoning code section, this project is considered a timely renewal and the use can be considered unless there's evidence of noncompliance with the original permit. Number two, the project complies with the conditions set forth in the original permit. There have been no code violations or noncompliance issues. Number three, the project conforms to the city council policy 6-7, evaluation of 24 hour uses with regard to land use compatibility, noise, cleaning, maintenance. And, number four, the police department has indicated they are neutral to this proposal. The operations were scaled back to 3:00 a.m. due to concerns by the planning department, police department and the west evergreen neighborhood action coalition. So -- and as noted, staff is recommending the renewal of this permit. This concludes the staff report.

>> Thank you. Is the applicant here? You have up to five minutes to speak, if you wish. And you'll have another five minutes afterwards, if you wish to respond.

>> Good evening. You have up to five minutes to talk about your business or the proposal. And it doesn't have to be a full five minutes. Please introduce yourself by stating your name. Hold on for one second. Do you need a translator? Well, thank you so much for your time. Can you communicate about your project or no? Okay? I'm going to do that. Thank you so much for your time. I really appreciate you being here, thank you.

>> Thank you, thank you.

>> What I'm going to do right now is close the public hearing and we're going to have staff respond to commissioners' concerns. Do I have a motion to close the public hearing? And do I have a second? I am -- all who would like to close the public hearing, please say aye? Thank you. Also, we did not have any public hearing cards on this item. That's why we did not ask for any other testimonials. Staff? Oh, you did?

>> This is 3E.

>> Okay. Okay, staff?

>> Staff is here to respond to any questions the commission may have.

>> Thank you, madame chair. I'm slightly concerned on voting on this issue when the owner doesn't have a translator to help her with any questions and just understanding what's going on. If I could get some legal advice on that?

>> So we definitely want her to be able to participate in the hearing to the extent necessary. If staff cannot address your concerns, then we would need to defer it. If staff is able to address your concerns and you are inclined to go with the staff recommendation of approval, than that is her application. So it depends on how the commission hearing progresses. So step one would be to see if your questions can be answered by staff.

>> Okay. Staff, I understand that they have the existing time until 3:00 a.m. And, currently, they have a security plan where they have a security officer on staff?

>> That's correct. They had a fair amount of concern because this was the only late-night use at the time. So they have been in operation for a number of years, for five years. They've shown that they can police their situation that there hasn't been the need for security. They've abided by the conditions and the police department and the staff have concurred that the security doesn't need to be necessary at this point. Staff feels it's appropriate to probably reduce the burden of this business owner from that obligation from hiring their own security.

>> And am I also correct that all the other uses in this area close by midnight?

>> Within this section of king. There are some businesses that I think are open late on Tody road. But they're probably a quarter mile or more away from the site.

>> Okay. So I notice it's a little unprecedented. Do we need to have open public hearing? Yes, it looks like the applicant is here. If you found you'd like to have the public hearing item be heard, please state so at this point? And all approving, please say aye. Thank you. Now, the applicant, we opened the public hearing portion again. You can come forward and speak to your item and maybe answer questions.

>> In talking with the applicant's companion is here, that the applicant is okay with the staff report, concurs with it, was confused with the questions that were kind of just the need to speak had no desire to speak. But came down because she was asked.

>> Everything okay. Everything okay.

>> Thank you. And we have commissioner cline?

>> I just wanted to know if you wanted to close public hearing?

>> Okay.

>> Thank you.

>> I just wanted to restate what the applicant stated. She stated that everything was okay.

>>> Commissioner Cline?

>> Thank you. No, I appreciate the commissioners -- all the commissioners -- to make sure that the communication is as best as possible. I just want to make sure that everyone knows that there's no obligation for the applicant at all to talk or answer questions or even be here, as a matter of fact. And, you know, sometimes this happens. And it's not a negative or positive. Just part of procedures.

>> Go on.

>> Since there's no cards in opposition and I'm in favor of what the staff recommends, I'd like to move to approve staff's recommendation.

>> And do we have a second? All approving, state aye?

>> The motion is to approve pursuant to the staff recommendation. Okay. The lights came after commissioner cline. But what I will do at this point, I will -- okay, I will not vote on closing the public testimony at this point. It's my understanding that commissioner cline vote today go with staff's recommendation. While public comment was still open, I don't think it got closed, and I didn't get to finish speaking when I was speaking but then stopped because I opened public comment so that we could hear from the applicant who didn't actually want to speak.

>> Okay, I'm so sorry. Then it's my mistake. Commissioner?

>> First, I'll make a motion to close public comment.

>> And we have a second? And all approving, please say aye? Thank you. And commissioner?

>> Thank you, madame chair. I know this is completely new for all of us. So I appreciate you bearing with me here. I looked at the report and saw that the police didn't take a positive or negative. They were a neutral stance on this. So I called the district attorney's office and spoke to a representative from the gang unit because there's been an increase in gang shooting in this area. And I was very concerned about the location and it being open until 3:00 a.m. and discussed the location gang area which probably, for the most part, it was said to me that members of that gang would not be visiting this facility. But it was allowing it to be open until 3:00 a.m. and not having security on site and all of the other businesses being closed was creating a scenario for an increase in crime at that particular location. The advice was that having a security guard there actually decreases the risk of gang activity. And if we take away that security, we're taking away, A, security and, B, extra witnesses that would be used in a court hearing. And when you take away those items that the district attorney's office has found that gang activity increases in an area. Especially that's opened until 3:00 A.M.. A.m. so I cannot support this motion as recommended by staff with taking away the security. It seems as though being opened until 3:00 hasn't caused problems with security being

there. But I think that we'd be putting the neighborhood at risk and the people who are going to this restaurant at risk by taking away the security.

>> Thank you, commissioner. I appreciate former chair setting the record straight here. Commissioner?

>> Thank you, madame chair. I have a question for staff and, again, mostly this is being relatively new to the commission. But the commissioner is bringing new information that isn't in the record. This is very interesting information, but we're not hearing directly from the district attorney or, you know, the original sources. So I just have a question to staff about how this kind of information is handled.

>> Thank you. I was just going to say pursuant to city council policy, if a commissioner learns of something that they consider to be a material fact outside of public hearing process, it must be disclosed on the record. And that is what the commissioner is doing. So she discovered information not at this public hearing and wanted that information to be placed in the public record so that all commissioners and the public could have an opportunity to hear that information and address it. Although, again, the formal rules of evidence don't apply. I think what you're getting at is hearsay and the fact that we don't have anyone from the D.A.'s office to provide information. Since formal rules of evidence do not apply, you have to decide whether or not it's reasonable for you to consider that information. I believe that the commissioner is simply placing it in the record because she learned of it, she wanted the rest of her commissioners to have an opportunity to consider it. But, again, you are correct that it is secondhand information.

>> Great. Thank you.

>> Commissioner?

>> Thank you, madame chair. I'd like to pose the issue that the commissioner brought up to the staff? You know, are you aware that security is actually going to go down compared to previously as a result of this application?

>> From the comments we get from the police department, they are our go-to comments to identify whether or not there's an issue. And, you know, their memo says specifically that this is an area where the crime index where the crime is higher than 20%. So they are not saying that being opened between the hours of midnight and 3:00 would create a problem. So, therefore, I think that while there may be disagreements and there may perhaps be officers that might have different opinions of the situation, the official police department recommendation is that it's not an issue, and, therefore, they're neutral. I do want to point out that we do have some conditions in the permit. There is a condition, number 9, that deals with security improvements and it does indicate that the applicant does have to take appropriate security measures if not already provided on the site including to but not limited to alarm systems, well-lit address and numbers and signs along with no trespassing and loitering signs to the satisfaction of the police chief. And so to the extent that some of those need to be bolstered up, we would have to do that. We do include conditions as a matter of standard for condition use permit that identify if there's any kind of nuisance associated with this property, they're not abated, we do have the ability to bring this back on an order to show cause. Through that process, we have the ability to add different conditions to the -- or the commission has the ability to add different conditions to the project to address those issues. And we also have a condition number 14 that allows us the opportunity to provide a compliance hearing at the discretion of director of planning if it's determined that's appropriate and that would give us an opportunity to go back and amend conditions to this project, which could include the reinclusion of security personnel if it's deemed today be appropriate at that time.

>> Okay. I thank you for that. I would like to say that if the commissioner likes to add the condition of having the security -- live security guard to the current permit condition, I am able to do that. So thank you.

>> Thank you. Commissioner cline?

>> I'm not sure what the evidence is to enforce the security guard. So I'll just take the comments at face value. So the comments I heard was basically removing none of the gangs would probably go to this place. But the fact that there is a security guard, removing the security would decrease security. I think that's a pretty obvious statement, if you think about it. But a very obvious statement. Also, within making this business pay for the security of the neighborhood when they're not causing the security issue. To me, that seems unjust and unfair. But I'm only commenting towards the comments. I don't have real evidence in front of me. So I would tend to support the application as it's stated unless there's some other documentation that's more authoritative and gives more facts.

>> Thank you, commissioner.

>> I would like to make a motion to approve this project as recommended by staff with the addition of having the security guard on as previously required.

>> We have a motion to second. Would you like to speak to your motion?

>> Yes, thank you, madame chair. I actually believe that contrary to what commissioner cline said that because this restaurant is being opened until 3:00 a.m. when everything else closes at mid night, that it is potentially creating a danger to the neighborhood. Now, there's, you know, the large parking lot that's not being managed. It is a gang area. There are a number of gangs that are -- have activity in that area. And it could end up being a bad situation. I understand what staff says, that we could come back and amend and require that they have security. But I would hate where there's a situation where we said okay, we don't need to have a security guard there and then there's a drive-by shooting, someone dies and then it comes back to us and we amend it. I don't want to see that happened. The shooting activity in that area has increased and our police -- there was a whole hour-long conversation on NPR this morning where our mayor was talking about how our police don't have enough police officers and they can't monitor the city as strongly as they used to. Until we get enough police officers, it's not going to be as safe a city as it used to. With

that, I cannot say to our community to take away a security guard in a location that is potentially a hot spot for active, criminal activity.

>> Commissioner?

>> Thank you, madame chair. And I agree with that one hundred percent. I believe we all know our police department needs help and this is the time, you know, when we can do a little bit to help them out. With them being the only business that's open after midnight, it becomes a draw. And the distance from the police department and, you know, from our dwindling officers, I think this is the prudent way to go. And with the given safety, their business is going to pick up. I'm very cognizant of the cost of extra security. But I believe it pays off not just in customer safety and client safety, but I think it's the right way to go. Thank you. Thank you, commissioner.

>> I just wanted to state that I will not be able to support this motion, while I understand the sentiment behind the commissioner's comments, I'm looking at the staff report and I see that the police are neutral in this. There's been no indication of a problem in the past several years at this particular location, and I don't feel that this particular business should bear the burden of the crime that's occurred in the neighborhood in general. And, also, there's no public testimony here by anyone in the community talking about an issue in the neighborhood. So for those reasons, I will not be able to support the motion of an additional requirement of a security guard.

>> Thank you, commissioner. And we have one more, commissioner cline?

>> I will not be able to support the motion, either. I do have a question for the applicant on the applicant representative, if they can come to the Mlc? If that's okay.

>> I will have to reopen that.

>> It's a pertinent question.

>> Okay, do I have a motion to reopen the public hearing?

>> So moved.

>> And all approving, please say aye? Please come forward and please state your name?

>> Hi. My name is Jennifer.

>> What's your last name?

>> Trunk.

>> Thank you.

>> Jennifer, do you realize your application is removing the security guard and the proposal is to put it back on. Is that an issue to you at all? The cost of the security guard going into your operations?

>> I'm sorry. I don't understand.

>> Do you want the security guard or not?

>> You mean the policeman?

>> Yes.

>> Yeah, we have policemen.

>> Do you want to keep the policemen?

>> Yes, we do.

>> Do you want to pay for the policemen?

>> Yes. Do we want to have it? Usually, they request for us.

>> The application now is no, you don't have to have it. But --

>> Oh.

>> But the proposal before us, the changed proposal is we're going to put it back on, maybe. So is that an issue to you at all? Do you believe you need the security guard?

>> Do you need a mic?

>> I apologize. I don't have firsthand information. I'm assisting. The project manager is not here this evening. So I don't have direct knowledge of whether they've been in contact with the applicant or perhaps a representative that was able to speak on that issue.

>> Okay. Thank you very much. No further questions for you. And you can close the public hearing.

>> Thank you. Do I have a motion to close the public hearing again? Second? And all stating yes, aye?

>> Aye.

>> So following up with my conversation would be that I generally think that I would not be able to support this motion. But I could, now, understand the concerns to support a motion to push this back a couple weeks to get additional information since we are lacking a little bit of staff here that was on the project.

>> Thank you. Commissioner.

>> I don't know if I can make a motion to defer. But I just wanted to sigh that I would also be in support to make a motion to defer this item in light of the fact that it doesn't seem that the applicant fully understands what's going on and because we don't really have an understanding from staff that helps clarify. Although I can't support the currently pending motion, I would vote in favor of a motion to defer this item.

>> Thank you. Commissioner?

>> I would like to withdraw my original motion and make a new motion to defer until after the applicant has had translation and is able to discuss the security guard issue with staff and get a good understanding to have a security guard and what it means to them.

>> Thank you so much for putting that forward. Communication was a huge challenge and in order for us to make the best decision, I think that's the wisest course of action. And I really appreciate the fact that you withdrew your original motion. Commissioner, do you agree?

>> Yes, I do.

>> Thank you. At this point, I will -- excuse me, commissioner cline?

>> So with the cause of the motion, I do want to make sure they do understand that this is just because the communication with the applicant is such that we're not able to figure out whether or not this is an issue. I'm

getting signals that maybe that might be true. But I'm at this stage having to support this motion. So we have a motion for deferral.

>> And do we have? A second? Actually, commissioner?

>> Can I ask -- thank you, madame chair. Can I ask staff for clarification of whether they think it should be deferred tonight?

>> I would hope that would be an answer. Again, because of lack of communication, I truly believe the applicant will need to bring a translator for the next meeting if they want to speak on the next project.

>> Okay, thank you, madame chair.

>> So we have a motion to deferral and a second. But we didn't vote on it.

>> Thank you, madame chair. In light of the director's information from the applicant that she would like us to proceed this evening, I would like to withdraw my motion to defer and reinstate my motion to approve this as recommended by staff with the addition of the security guard.

>> And we have a motion and a second. At this point, I will ask for all of you to vote by light. Thank you.

>> And just for the audience watching, I did speak with the applicant and her companion and asked kind of very direct, kind of short questions. And that she does have security today. And that she is interested in continuing that into the future. And I clarified that that is her cost, as it is today. And that is her expectation that she would continue to do that in running when she's opened until 3:00 a.m. 3:00 a.m. I was wanting to make sure she was understanding that. I apologize for the confusion tonight. But thank you.

>> Thank you. Just wanted to state it in the record that it was passed unanimously by all of the commissioners present. And the commissioner was not here, obviously, was not able to vote. Next item -- and also, I would like to thank staff for this. This was a complicated issue because of the communication and language barriers and someone who's first-generation immigrant to this country, I always want to make sure people are able to voice their opinions. So thank you to the applicant for being here. Item number 3A, staff?

>> Thank you, madame chair. This is a conditional use permit amendment to allow after midnight use to 1:00 a.m. on Friday and Saturday nights for an existing movie theater, AMC, at the 31.75 acre shopping center. Staff recommends that the project is in conformance with the California environmental quality act for the following reasons and, as further described in the staff report, number one, the project conforms to the 2040 general plan, land use transportation diagram designation of regional commercial. Two, the proposed project adheres to the policy and the proposed project is exempt from environmental review. This concludes staff's presentation.

>> Thank you, staff. Is the applicant here? Please come forward. You have up to five minutes to make a presentation. And, please, state your name.

>> Hi, my name is Kevin Lin. I'm the general manager. At this time, when we had the public hearing notice by now, I think we want the work with the neighbors and we want to have more time to talk about their needs because they had some concerns that they didn't have enough time to talk with us. At this time, we'd like to work with the neighbors and support this. We don't want to move forward without their support. So we are going to negotiate with them and hopefully we can work something out. And we wish to express a continuance for this item?

>> Thank you. I do have four speaker cards on this item. Since the neighbors are already here, we can ask for public testimony and then ask for the item to be deferred? And then we will not vote on the item. You can come back when the item is ready to be heard.

>> Okay. I look forward to hearing from our neighbors.

>> No problem. Thank you.

>>> So since this request was not made in the beginning of the meeting, we've had residents waiting here all of this time, I'm going to call out names and you may come forward and speak up to two minutes. And, please, state your name. Restate your name. I have Robio Chang. And I'm going to call out the next two speakers. Would you please line up? Thank you, please state your name.

>> Good evening. I'm an attorney in San Francisco. We're actually here on behalf of AMC. So I have nothing to add to Kevin's request. We're here to request a continuance and are glad to hear any testimony that's provided by members of the public tonight. Thank you.

>> Great. Thank you so much. Would you please come forward, sir and state your name?

>> Yeah, I'm here on behalf of baker west neighborhood association which is approximately 400 residences. In a nutshell, our main concern is a lack of proper security measures that's going to protect the neighborhood if AMC stays opened beyond midnight. Effectively, the back area of AMC, where the exits open to is what's against the residences. There is a Burm separating us. They have installed metal bars that prevent cars, but it doesn't prevent foot traffic. What we need is a proper security plan where let's say half an hour after the theater is closed, there's a permanent security guard in the back to ensure they manage the crowd that's coming out. If people are looking for trouble, they can move them along or, hopefully, call the police and have the police respond. One of the challenges in this climate, the police necessarily doesn't view noise disturbances or even minor fights as something they need to respond to when they're dealing with more serious crime issues. That's the reality of our city today. So, again, critical for us to add. They're monitoring the crowd inside. They don't manage the back of the theater. There is a security guard for the entire shopping center. I don't have the number, but it's pretty big. One person can't

cover the entire shopping center and, especially the back area as people exit and potentially cause problems.

>> Thank you, sir. We have a question for you.

>> Thank you, madame chair. Thank you very much for your testimony. I've been to that cinema or theater many times. I never knew there was a back entrance or exit?

>> There are people that exit through the back. And they are -- if you look at the building, there are -- there's one tunnel where just it -- people can effectively use to come to the back and hang out. So, you know, I suspect you're not somebody who, after the movie theater, is looking to hang out to party.

>> Okay, so it's not just closing the back doors of the theater and asking everybody to move to the front.

>> No, effectively, they're fire exits. I think their hands are tied from a fire code standpoint.

>> So you're asking if they can station some, you know, like how many are you asking? How many security?

>> Well, we need -- I think one person is enough the challenge, to be honest with you, the security guards effectively need to know what they're doing. So we're asking for a high quality security guard. At some point, we had the discussion that can the movie theater or the shopping center effectively hire an off-duty officer who is properly trained and can manage the crowd. Today, when there is an issue, half of the time the security guard tends to turn the other way and walk away and leaves it to the neighbors to call the police. When they do interfere, I've seen people walk in the back and don't take them seriously. We need someone who really knows what they're doing.

>> With authority. Okay, thank you very much.

>> Thank you so much, sir. And the last speaker on this item is Phillip.

>> My name is Phillip Piot. I live on elmwood drive which is right behind the proposed site or the site that we're in question for extension of an hour. So I think I'm going to have a really unique perspective on this. The reason I wanted to come here and talk to you is I think I take some exception to the staff report on page four of five of the beginning of the staff report, it talks about there's 270 feet from the nearest residential property line to the front. And the requirements were only 300 feet. But they said all the entrances are on the front. Well, the issue is that there are these exits on the back and there's a breezeway from the front entrance to the back parking lot. So I want to bring your attention to some things that are on the report that are a misnomer. One is on that page four of five, there's not this 270 foot break with a big building in place. Basically, there's no break because the people can come in the back. So if you look at the decision here -- let me tag it here. It's sheet number three, page one. There's a little call OUT that says CE detail. You can notice that the metal barricades on both the east and west sides of the mall cut off a big portion of the parking. But it doesn't cut off all the portion that's behind the building. So there's this little triangle cove. Those parking spots are still available at night. And if you look at the detail between item 700, building 700, which is AMC theater and then the other buildings, I believe it's 910 and 950, right in between those buildings, there's a breezeway. So there's an actual walkway from the front of the building to the back. So patrons don't have to go all the way around. They can actually use that breezeway. Now, while I agree that increased security would be a nice thing, there's no one who's going to be writing tickets to say things that are like noise. The back of my property faces that outcove. That's like an amphitheater. You guys are structural engineers, you understand how acoustics work. It comes straight back. Our Burm may be 12 feet tall, but it doesn't cause that to abate the noise.

>>> So my biggest concern is not only the people who are loitering back there, and I welcome the council here to look at the police reports to see how many people have been called for disturbances back there. I have called them personally. Also, car alarm that is go off and just noise and people moving to their cars. These are the type of disturbances that take it back into my backyard and to my neighbors behind me. I

really feel like while I think the staff has done a good job in trying to characterize what's going on here, it really doesn't take into consideration all the noise factors and the disturbances to the neighborhood behind. Believe me, I hear it all of the time. I know I'm over time here --

>> Thank you, sir. Actually, a couple of questions for you so you will have plenty of time to answer questions, as well. Commissioner? Thank you, madame chair. What is your request for that?

>> My request is that they not.

>> So you want them to close at midnight.

>> That's right. In fact, I would love it to be even earlier. But it's already there.

>> Thank you.

>> Thank you, commissioner.

>> Did you buy your property after AMC was there? So you knew it was there?

>> No u I bought it before.

>> Before?

>> That's right, I was there before it was the mall and they reconstructed.

>> So AMC was not there before.

>> That's right.

>> Okay. Thank you. That's question number one. Question number two is what if the breezeway was to be closed so fire is not an issue? If the breezeways were to be closed and no one was able to access that area in the back.

>> I'm not too sure about that and the implementation of that. My suggestion, if you really wanted to stop people from parking there, you actually block the ability to park anywhere from the entrance on Campbell avenue on the next side of 8 -- 950 to the back section. Now, I've seen it in other malls across the street, like west gate west, they have some of these ways to show gates that basically close and that anything cannot get through there. There's basically no reason to go back there. Usually, the noise is related by people going back to cars who don't decide to go anywhere. And they're generally teenager who is don't have anywhere to go to. It's 1:00, they can't go to bars or anything that's open and so they hang out there. And then it's just general people. Car alarm and that goes off and that's right in my back door. So I would suggest that that entire parking lot be blocked off and then, again, security could do walk throughs to make sure nobody is loitering back there without a car.

>> Going back to my suggestion for an off-duty police officer being there, you don't feel that would be effective?

>> I don't think it would be effective. It would be effective against some things, maybe loitering. But it's not effective against noise pollution which is basically people starting their cars. Some people have motorcycles. Some trucks, F-150s come around and they're loud.

>> All of this stuff reverberates. Those are the type of disturbances that I think are an issue.

>> Thank you. You're welcome.

>> Thank you. We have no further questions for you.

>> Okay. Thank you. At this point, I'll ask for commissioners to close the public hearing? Thank you. All approving, please say aye? I've asked those who have placed cards to come and speak because they've been here for over an hour and I wanted to make sure that their hour was not wasted. However, the applicant has asked for a motion for deferral. So at this point, I'm going to ask if we have a motion for that? Do we have a motion? Oh, actually, hold on. Commissioner? Would you please speak to the mic?

>> I move that we defer this item to the next meeting of the planning commission which I defer to staff as to what the date is.

>> The next meeting would be October 10th.

>> Motion deferred to October 10th.

>> Do I have a second? And all approving this motion, please say aye? All of those abstaining? Oh, sorry.

>> Thank you, madame chair. I just wanted to state because I had a conversation about this property. And I wanted to put it on the record when I talked to the district attorney's office, I was asking about the other project, I mentioned this one to see if there was potential gang activity and the answer was nay didn't think there was any increased gang activity. I just wanted to put that out there. I didn't think I'd remember by the next meeting. Thank you.

>> Thank you for the comment. So for the clarity of the motion, I would like to ask all of those supporting the motion to defer to October 10th, please restate aye. And all of those abstaining? Oh, commissioner cline.

>> I thought I heard the applicant wanting to defer to November 7th? Did I just hear that? No? Okay. So you don't need that. Okay, so, good.

>> I do not see any issue coming from the applicant.

>> Thank you, the item passing unanimously. Planning commission meeting, thank you. We will move forward to public hearing item 3C. Staff?

>> Commissioner?

>> My company, CH2M hill prepared the EIS for the HCP. And particularly given that there's been questions about the adequacy of the EREIS. I'm going to recuse myself. So I'll be waiting outside and hope that someone will come get me when you're finished.

>> We sure will, thank you so much for disclosing that. And at this point, I will call out staff.

>> Thank you, madame chair, members of the planning commission. We have a brief presentation for you tonight. I'll just say the commission had a session on this previously with the members of the community here tonight that maybe this is their first time attending the meeting. So, for their benefit, we'll recap some of the information related to the plan. As you know, it's a 50-year plan that addresses mitigation measures, conservation measures for a variety of plants and animal species. And, also, based on that plan, anticipate being able to receive a permit for a take of the injured species. It could have an impact on those species. It's habitat conservation plan and also for federal and state laws. It's been prepared by a group of local partners. It includes the value transportation agency and water district and working together with wildlife agencies, U.S. fish and wildlife service, national marine and fishery service. We're also continuing to work with the army core and the regional water control board and the goal that all of those entities would be issuing permits that would then be used by the city and other local partners. The planned time line going back starting 2001, we really had some important points to keep in mind that this effort began when the U.S.

fish and wildlife service really started raising the issue with the city that there were a variety of impacts that needed to be addressed in a more comprehensive way. That's the goal that's been guiding the plan's preparation. Basically covers most of the San José county, the part of San José that's not directly addressed as some of the lands within the city.

>> This basically covers nine animals and nine plants that would be covered by the planned 18. One of the creations would be a 50,000 acre reserve system. We also include long-term management monitoring of those lands for the benefit of those species. We'll talk about some of the issues that are of particular interest to San José. There's always the question of how we're addressing impacts. The plan, really, is the issue to do that. So it gives us the available mitigation that we haven't had in the past. And, also, it's a change policy with a set of mitigations. It helps us know with more certainty what we'll be doing and how we'll be doing it in terms of those mitigations. And it also provides a benefit in terms of quality of life and other issues related to long-term preservation. This chart illustrates when we're thinking about that, that over time, the level of regulation is going to be increasing. They've been increasing their level of requirements for the issuance of their take permits. And they monitor that the condition of the species have growing concerns. The plan essentially would set a level that would be followed and that's potentially a benefit to the city in terms of the locking in the costs and regulatory requirements. The plan issues different fees. Some of those are related to different types of land. I'm not saying that it's an urban site, but, also, we have it within the city. Small sites are agricultural and land sites. In most cases, those are nonnecessary ones that the general plan anticipates. But, in some cases, there are sites that are still vacant within north San José, east San José and the parts of the city that would be subject to the fee. And then there's a very general fee, the emission fee that we really pertain to all development in San José and how much traffic it generates. Going through to the next issue is really one of the main goals, I think, for the city and potential benefits of that in terms of having streamlined permit process. It could lead to development of projects both public and rye vat within the city. And, in some cases, having a large, comprehensive strategy is more efficient than trying to implement mitigation by project by project basis. This shows within the policy plan area where the different fees are located. We can see most of San José is. But there's a dark, grey color which is not one of the zones that zone C is playing to a small, urban site -- excuse me, with a small, agricultural land site within the

urban area. Again, you can see that most of San José is the urban site that would be the urban site. Most of the green areas relate to our repairing corridors, some of our long term, open space areas, parks and so forth, but some of it does relate to development sites. In terms of case studies, the first is project with Dudlea, a plant that's covered by the plan on the site. Through the course of development, if there is a loss, without the plan, the project would really be on its own to try to figure out how to make those up. If there's really no way, the developer would try to find land somewhere which would be very difficult for an individual property owner to go and convince someone to sell them land for that purpose. So with the plan, this is a case where that he basically write a check and that could be a benefit to their development. We talked a little bit about nitrogen deposition. But, again, this is an issue to the city. And, with the plan, approval wants it really under implementation projects that happened within San José would be subject to this \$3.60 per fee as it's proposed. Without the plan, there would be this fee but there would be risk as the city has mitigation in plan for future impacts of development beyond habitat. Case study number 2, it wouldn't be subject to a fee that gives you a sense of a scale of that fee.

>> There would be a fee of about \$12,000. There's a large plan to go through and name the process where various federal agencies are reviewing that process. So there's a very strong goal here of turning around that trend and bringing those populations back. It's kind of on going and shows around north San José in the airport. This is what we've shown before that currently has some occupied burros. It provides for any relocation of owls living on those sites. But, generally, there is a process that's been worked into the plan where let's see if we can go on it. So this is a project that has brought out habitat. So just imagine the full development of a 20-acre site. It might be over a course of 1.5 million fees. And it wouldn't be clear what the mitigation available to the project would be for those impacts. This is essentially the same site. But once you add in the presence of owls, it increases the fees and they would have to go through the process of trying to get permission. But this would definitely be subject to getting a take permit from the fish and game and subject to whatever conditions fish and game thought to impose upon the process. And in the past, it was mentioned that face and game has asked officer about several acres of land to be required by the project developer. Generally, inside existing the urban surface area. Usually, it's the same as the city's independent policy set back in the general plan set back standards. So outside the urban service area,

there's differences where you'll have a greater setback. Again, what the habitat plan does is it has a fee associated with it. The city's long standing policy is to provide corridors, wildlife protective species that live in those corridors and so forth. And so it wouldn't pay the fee. If the project is consistent with the city's setback requirements or not. I'm not sure of the implication of the habitat plan. There's a bigger stick, if you will, in terms of having projects be consistent with the city's repairing quarter setback standards. We talked about this before, but the joint powers authority with the governing board with eight members from the floor, that three cities from the county as well as an implementing board from the BTA and the water district. The plan is being brought forward to city council. They've made a motion to adopt and other cities are considering to schedule it next month. Really, there's quite a bit of work that would still need to occur in terms of what's called creating the implementing entity which the staff is responsible for administering the plan, the wildlife agencies to issue their permit.

>> There are pipeline provisions included that are based on a year after the wildlife agencies issue permits. There would be a deadline to permit the issuance of building permits. So the staff recommends that the plan be adopted. Other options that the planning commission or the city council want to consider? More time with the plan. It's been a long process and a complicated process and it involves five other partners, as well as other local agencies. So there's challenges continuing to work on the plan. We can choose not to adopt the plan and allow projects to continue on their own, if they can, and include those who don't need to come to the federal or state regulatory. Just a little bit about the environmental impact report. It is prepared by the local partners. The habitat plan implementing it would be in those agencies and so we're each asking you to take action on the item. The cities have evaluated potential alternatives in the air and reduce the permit ulterior motive. It's mentioned that the other plan has essentially intended to be a way of mitigating potential impacts to species. Research agencies, these impacts are with reserve and include loss of habitat restoration and construction restoration such as noise, a need for traffic control during construction, the discovery of hazardous materials on the restoration site. All of these impacts are rendered less than significant. It came out through the negotiations of the past year. It would be undertaken, but they've reduced the overall impact of the plan. So for any given restoration site, the environmental impacts is analyzed within the draft environmental impact report remain the same and do not require further analysis.

So, as mentioned, previously, the habitat plan intends to result in by the on going monitoring of those measures. There's one alternative in the EIR which has reduced the term alternative. It has a smaller scope and basically lesser benefit associated with that. There's also a no-action alternative, which was nonadoption of the plan which was analyzed.

>>> Staff has not had time to really wade through the issues relating to that correspondence. So that concludes our staff report, thank you.

>> Thank you, staff, for that thorough presentation. We do have two speaker cards on this item. I will call out the speakers. Will you please come forward and line up? First speaker is Greg Kareca. And the second speaker is Wayne Costa. You have up to two minutes to speak.

>> My name is Greg Perkins. I'm with the autoBonn society. We're here to support recommendations on the habitat plan and hope it is adopted by the city of San José. As applicants for the city and the open spaces surrounding it, we believe that the plan was focused and developed less ecologically sensitive areas while streamlining the lengthy and costly permitting process. The plan will take a comprehensive view instead of a piecemeal process. Please adopt staff recommendations. Thank you.

>> Thank you. Next speaker, please come forward and state your name.

>> Good evening, madame chair and commissioners. My name is Wayne Costa. We are the owner of the ranch, a 2,150 acre property about one mile east of Hollywood 101. Our property represents private hands in the area. We believe they have the potential in Santa Clara valley. Our property can facilitate habitat in substantial development. We are on our proposal to create a small, rural community that includes a 1950 acre habitat preserve and a host of other threatened and endangered wildlife and plant species. Under our proposal, there would be hillside preservation. As the owner of a large, rule property, we recognize that HCP provides us with potential opportunity. We must object to approval of HGCP in current form. Separately, as was mentioned earlier, our environmental lawyers submitted on our behalf. It is our intention

through this process to address the concerns we have raised in the hopes that young ranch could be needed.

>> So what is the average slope on your lot.

>> Our property is above the 30% line. But there are areas that are above that. As Joe knows, there's probably two ridgelines. And if you go over the initial ridgeline, there are areas of the property that are kind of -- not a plateau, but more of a sway as you go in. Where there are areas that are below 30%. And how about coming over the 15% line that also surround San José.

>> I'm sorry. I'm not familiar.

>> There's part of a 15% slope line. So thank you very much for your testimony. Hopefully, they will look favorably to your offer. Thank you.

>> Thank you. Thank you, sir.

>> I have questions for you. At this point, I will ask for a motion to close the public testimony. Do we have a second? Second. And all approving, say aye? Thank you. Staff?

>> Thank you, madame chair. As you heard from the last speaker, they did provide for the planning commission and staff with an 18 page letter that we are working through. So the length of that letter and our ability to work through that in time for tonight's meeting, we do think it's appropriate to defer this set of items to a future date and we would suggest the October 10th planning commission meeting for us to go and continue this discussion.

>> Thank you, staff. Commissioner?

>> I have a question for staff before we take up the director's -- I guess, you know, offer to defer. And the question is this may be an excellent time to instead of thinking about a flat fee to incentivize people to come in by skewing the fee a little bit the sooner you come in, the better deal you're going to get. These are a way to recommend partners and the speakers before us. And, you know, become partners. Especially given the economic times we live in. The more we can spare responsible development.

>> That is one of the issues that staff is continuing to look at. It's one of the concerns that the council has raised, is the cost of fees, the case studies that you saw. Andrew is looking at where the fees really hit. So it is one of the things to look at. I think the one thing to remember is that because we do need to live within the world's of Nexus findings, anything that we discount today, specially need to use nondeveloper fees to offset. That means using general funds or restricting to not be used for mitigation. So that's one of the challenges you're looking at. Artillery taxes for water and sewer, San Diego has already done that. So we're continuing to look at the plan that actually allows that it just puts forward that these are the fees that, today, based on everything we know, this is what the fees would be. I think we can be very honest that over the 50 years, those fees will go up because land values will go up, cost of gas will go up. And so those are the costs in today's dollars. Ten years from now, I think they will be more. We are very concerned about our competitiveness with the communities to the north of us that do not incur these costs that clean our clock with employment. And our goal is to be much more competitive of employment. So as the mayor said yesterday, we signed the MOU to support this effort to achieve in environmental sustainability to protect the species and recover. But we also did it for economic development. So it's balancing both of those.

>> One thing I wanted to add was the MOU for the joint powers authority here. Specifically states that none of the local partners will have put any money into this plan. There's also a guarantee that there would be specific funding to this plan. So it would be hard to discount fees below what the actual part of providing the land mitigation measures and the monitoring would be. So that's been considered but it's not there. Many were community colleges that wanted to expand. We have expressed an interest in doing so. Other types of publy entities that you didn't expect who came in with large projects, who wanted to take advantage of coverage under the plan, actually provided a lot of funding. This is a question procedure. All of the

agencies are going through the process, I believe. There's no real projects here, physical projects going on. So is this like the general project, EIR? Or is this more of a project where if we don't sign it off can the actual city council do anything if it stops here? That is why we scheduled the commission date tonight. In our discussion with the council yesterday, we talked about an hour and a half for a plan with the study session form in a plan to have tentively scheduled the option for October 23rd for council. That we did talk about that that date might actually move into November based on the questions that we continued to do research on.

>> And if we don't approve it, it dies?

>> If you don't certify the EIR, you would be asked to explain why, explain the deficiency that you find in the EIR. And then the staff would make any uses to come back. So it's not that you would die, but you would identify additional work to be done to feel you can certify. If I could add to that, I don't believe there is funding available. So on the assumption, we would have to ask the other partners to this project whether or not they would be willing to go back and do so. And if there isn't that desire, then, yes, the project would die.

>> The question is not asking the letter from the lawyers. So I just wanted to bring it up. Does this eliminate any future that the JPA will be doing fees on? Eliminates? Is this a replacement EIR?

>> All projects, including future projects has to be in addition.

>> So it would depend upon the impact. If you have a later project and it doesn't have any impacts, than you don't need to use the CIR. But this would put a plan into place to allow mitigation for impacts to buy logical resources. So it's when you have that impact that you can use this mitigation measure if we have the habitat plan in place. But if you have a future project that obviously doesn't have those impacts, than a CIR wouldn't come into play.

>> Thank you.

>> The interesting year here, too, is we've all talked about the plan life. But under HCP law, there is a no surprises vision from the wildlife agencies which means if you do everything required by the plan, mitigate in the correct way, you're monitoring in the correct way, whatever. They cannot add conditions to your permit. Or require more from you during that 50-year period. And that's one of the values in terms of a mitigation measure in terms of this plan is that it gives you certainty. And project-by-project types of applications don't do that. So that is one of the advantages. If you're looking for, you know, timeliness, shorter period of time for approval and no surprises, this provides that for most projects. So I want to make that comment, as well.

>> Thank you. Commissioner?

>> I loved what you just said.

>> I do not see any abstaining. Thank you so much, the item has been deferred until October 10th. Item 3D. Actually, we will wait for commissioner Ohallan to join us since he had to abstain. And as soon as he is in the chamber, we will move forward with item 3D.

>>> Thank you, staff. Item number 3D.

>> I guess I can provide the report on that one. To refresh the commission's recollection, gosh, it must have been almost a year or so ago that the commission discussed amendments to his bylaws to discuss sessions without a quorum because a while back, we had had a couple of study sessions where commissioners who were present were only two or three and they couldn't proceed. And it was a little bit frustrating for the commission. There was a question that it takes a quorum to conduct business. So the challenge would allow you to conduct the study session without a quorum. So that change came forward and then was deferred because it appeared that it was going to be part of a more global analysis of boards and

commissions and board and commission work that was being assigned to staff in a reduced resources environment that now appears they are not part of that. So it looks like it wasn't going to be a part of the city clerk's larger analysis.

>> Thank you. I will introduce a motion on this item. Commissioner cline?

>> I move to approve 3D. And we have a question? Actually, would you like to make a statement based on the motion?

>> I could just briefly.

>> Absolutely. Go forward.

>> Yeah, this is simply a procedural issue that probably doesn't do the best accesses of not having a quorum with a study session and staff being there. Sometimes a lot of staff being there for 15, 20 minutes. And then, on top of that, we were crunched at the very end to get the planning. So we were able to finish our training session, et cetera.

>> Although, even with the adoption assist, I just wanted to know that on behalf of all of the staff, we do take them seriously. We do put in a lot of time and effort. If you are going to request a study session that's going to require research and, you know, quite a bit of time to organize the session for you, it's important enough for the commissioner to show up.

>> Thank you, staff. With that, I would ask you to vote with lights. Thank you. Thank you, and the motion passes unanimously based on the commissioner's presence. Items four? Petitions and communication. Public comments? Please fill out the card. The commission cannot take any formal action without the item being properly noted and placed on the agenda. In response to the public comment, responding to

statements made or requesting staff to report back at a subsequent meeting. Do we have any public comments?

>> No, no Mr. Speaker.

>> Thank you so much. The city council is working on the rules for different exhibitions as well as some operational rules about how they conduct their meets. Traditionally, the council has considered land use items in the evening. The council would retain it in the afternoon session. Some community memberings have asked about that policy that's being now formalized by the city clerk so the council is getting ready to discuss that, like, October 2nd. It's coming up on an upcoming agenda.

>> I've just wondering if you were interested in that. I did mention that the council held a study session in the regular session.

>> Thank you for the referrals. I'm going to go onto item six. Good and welfare. 6A, reports from city council.

>> There we go. So the council has had about an hour and a half discussion. As I said, we'll be continuing that discussion in several weeks. There were probably about 30 kinds of questions or comments that came up during that meeting, as well as several letters that we received coming into that meeting. So staff is in the process of essentially doing a Q&A response for EIRs. Each of the councils will have the benefit of that. So that should be prepared. I think it's right about the time we'll be trying to finish up the council meeting. But we'll be able to share with you the information questions coming from that. And then the last thing I wanted to go and share with commission is the council on October 9th. We'll be conducting a policy on ordinance policy-setting session. It is an annual and semi-annual activity where they take all the different ideas that they generate, the community generates and staff generates and they go and rank those. And the goal is to come up with the top ten. And then that is what the administration goes and works on. So some of the ordinances, I want to make sure that you are aware that there are issues that are near and dear

to your heart. There is a report that came out with about 25 items that are listed. So if there was any that was interested, you might talk to council members or community members and share those thoughts. The last piece of that session is prioritization of study sessions. Study sessions are important component of the council's work calendar. That there are topics that really warrant the council investing that level of time to study and understand issues. But there is not necessarily clarity about what items go for a study session and what items do. Or can it happen individually? That will be an agenda that may be of interest to commissioners just to the things that we deal with that are policy-related. So I wanted to make sure that you are aware.

>> Thank you, staff, for that thorough report.

>> Thank you, madame chair. The next meeting is October 1st. I'll have a report after that.

>> Oh, commissioner?

>> Madame chair, since I've been here, I haven't seen a report. How often does that committee meet? That committee meets very infrequently. It was formed as the committee was increasing, expanding the neighborhood around it to do upgrades, windows, different various noise abatement as well as monitoring the noise ordinance. Because of everything that has been done, this committee was probably going to be disbanded. Because everything is pretty much done, we're not meeting very often.

>> Good. Thank you.

>> Thank you, commissioner. Reviewing option from 9/1. . Have you had an opportunity to review the tape?

>> Yes, I have. Thank you. Do we have a second? All approving, please say aye? Thank you.

>> Item 6E, commission calendar and study session.

>> I just wanted to confirm. My calendar was showing 9:30. But the printed is saying 8:30. And I haven't been working on it directly. So well, looking at the agenda, it says 8:45. I'm assuming that it's the right time.

>> So the public is duly noted.

>> Yes.

>> And I would like to also thank staff for making the accommodations on bringing the police department on behalf of the planning commission. I see no questions on this comment. I look forward to seeing you tomorrow. With that, I conclude this planning commission meeting. Thank you and have a great evening.