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>> Commissioner Bit-Badal: Remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record show that all commissioners are present with the exception of commissioner, actually vice chair Kamkar. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on items for which deferral is being requested. If you wish to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

>> Thank you, there are no items recommended for deferral tonight.

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

>> There are no additional staff reports.

>> Commissioner Bit-Badal: Do I have a motion on this item? And all approving please say aye. Thank you. Moving on to the public hearing. Item 3.A CP 12-008.

>> Thank you thank you, Madam Chair. This is a conditional use permit request to allow after midnight operation of a restaurant with an a .28 gross acre site on the north side of East San Fernando street approximately 110 feet westerly of South 3rd street, the address is 87ee San Fernando street. I have a couple of things I would like to distribute, a supplemental memo of correspondence we have received from the public, and in addition, I wanted to clarify that on the agenda, we had said planning staff is recommending approval of late night hours until 3:00 a.m. We are actually recommending approval of late night hours until 2:00 a.m. The applicant is asking for late night hours until 3:00 a.m. There were some comments from the police who have indicated that they are opposed to the late-night hours. And I wanted to clarify a couple of conditions that the police recommended. So they -- the police had recommended conditions for nuisance, security, full menu service and a cover charge. Planning staff has included conditions in the draft permit for the first three conditions, for the cover charge, that is not really a land use item. And not really under a purview of a conditional use permit. A cover charge issue could be addressed if the applicant was required to apply for a entertainment he permit through the police and they could work out that entertainment permit the cover charge issue. The police had ideally recommended that no late night hours be permitted. They said if we did propose late night hours they would like them limited to Friday and Saturday nights until 1:30 a.m. And as we mentioned in the staff report, the reason that planning staff is recommending late night hours until 2:00 a.m., which is somewhat of a compromise between what the police had

suggested and what the applicant wanted is because there are already a number of establishments within the vicinity of the tenant space and even on the same block that are allowed to operate until 2:00 a.m. seven days a week. So whatever police resources are allocated to that area, our thinking was we would have a level playing field with all the establishments on the block who are in operation. And that the level of additional police staffing we would assume would be somewhat minimal, given that they have already planned staffing for the other establishments that are operating late-night. The police also had comments on noise. And planning staff has included conditions in the draft permit resolution for noise. And for an ABC license which the police recommended. And then, the police also wanted the conditional use permit to be limited to one year. And then have a review period. And planning staff has actually departed from time limits. We used to have kind of as a standard a time limit of five years. We're starting to go away from any time limits. And the primary reason is because time limits and particularly a time limit of one year can be perceived as creating a hardship for applicants who have invested in some cases several thousands of dollars as well as many months of waiting in preparation to apply for a conditional use permit. And we're not really convinced that the time limit is a way of controlling the responsibility of the applicant. There are other ways to ensure that the applicant is abiding by the conditions of the permit. Should the applicant not operate in compliance with the permit they can be requested to apply for a conditional use permit amendment. To modify their conditions. So there are ways of getting them to be responsible for their conditions. Additionally, we have limited the hours to 2:00 a.m. with the understanding at that time applicant does operate responsibly, they can then come back and ask for an amendment themselves for 3:00 a.m., and show their track record of responsible operation. We acknowledge the constraint of staffing police to patrol late night operations, and we do maintain that the subject proposal for late-night operation as recommended by staff till 2:00 a.m. is appropriate. And it's to take kind of a balance of potential noise and security concerns into account with conditions, look at a level playing field, and look at a reasonable expectation for minimal police patrolling of one additional establishment on the block. And we have analyzed the site within the context of land use compatibility with surrounding uses, and the visibility of the site from the street on which it is located. And the surveillance should be fairly easy. It's a major street. And with the self-policing that the security guard condition has in the permit, that should help to address some of the security issues that the police have. Additionally, staff is proposing to add a fact and that would be fact number 16 to the draft resolution that states that several public eating and drinking establishments including a Zucar, Cinnabar, and Capers Loft,

operate until 2:00 a.m. up to seven days a week within the immediate vicinity of the subject tenant space. So I also wanted to point out that since the preparation of the original staff report we have received additional public correspondence in opposition to the proposed late night use that has been distributed to the Planning Commission prior to the consideration of this item tonight. Thank you.

>> Commissioner Bit-Badal: Thank you. Is the applicant here? Would you please come forward. You have up to five minutes to make a presentation. While you are come forward I'm going to call out the next two speakers. Terrence Brown and also Gee Air mow Montez. Sir state your name.

>> Organic, I'm George Sanchez, one of three operators of Chachos. I will be speaking. My other owners will be speaking after me. I've been an owner in the downtown since '94. I've had a C.U.P. since '96. It was renewed in 2002. I opted to come back to downtown. I invested in downtown when very few people wanted to come back downtown, I left Campbell. A little different than my old C.U.P.s I'm not looking for entertainment I'm not looking for dancing and we're solely looking for food and alcohol obviously until serving until 1:30 off premise until 2:00 and food until 3:00. All we're looking for is a fair equal playing field, as all the other restaurants that are currently serving downtown. You have two La Vics, you have Iguanas, San José Taqueria, and Muchos, all three of these restaurants service downtown till 3. The only difference is that Muchos and ourselves have a liquor license. The other business owners do not. The only difference is that I've been downtown pretty much longer than any of those businesses, and I have a great idea of what downtown needs and what we need to move to, create a great downtown, service the people that are down there. We also have a licensed and bonded security company, that was doing the downtown music in the park, so we're not looking at having security ourselves, these are licensed and bonded security company that is overseen by the City of San José. And I think that what we are looking to do just are going to do to modify what downtown needs. Obviously in having a C.U.P. there is provisions in the C.U.P. that state if we do not operate according to our conditions, our permit will be taken away. And that's fine with us. We're looking at being great operators. Not only are we -- not only do we provide catering for our companies we do a lot of donating. We work with the city. We work with the nonprofits. We are not just someone that you guys have used to being seen. We're not a night club. We're not someone that's a fly-by-night

business. We're looking at being an exemplary great company and that's what I have to say right now. Thank you.

>> Commissioner Bit-Badal: Thank you sir. You will also have five minutes at the end of the meeting, this item. Sir, would you please state your name.

>> My name is Terrence Brown. I'm one of the three owners of Chachos. I wanted to address one item, the financial hardship of limiting the C.U.P. to one year. When I take the cost of the C.U.P. and amortize it over 12 months it equates to about 24% of our monthly net income. If the C.U.P is extended two years, it's 12%, and at three years it becomes 8% of our net income. So I think limited to one year, the financial ramifications of that are severe to us as a company, all right? The second item I'd like to quickly address is the time. We're planning to capitalize on the number of requests that we've had to provide an eating service from 1:30 to 3:00. We're trying to address those patrons that are leaving the various clubs in the downtown area. That have compressed an interest in coming into Chachos at that time. 80% of the revenue we will earn being extended 12 to 3:00 is earned primarily in that time. If you limit us to 1:30 it has a severe impact of what we can do in a forecasted revenue standpoint. Thank you.

>> Commissioner Bit-Badal: Thank you, I am also going to call the next three speakers if you would like to line up. Jeffrey Feldstein, Pat Cochran, and Steve Libsen or Liebsen. Sir, would you please state your name and you have two minutes.

>> I am Guillermo Montez, I'm just here as a San José resident, and a supporter of Chachos restaurant. First of all, it's great to see Chachos back in downtown San José where he belongs. It's great to see what downtown San José is doing. For so many years we've been waiting for the San José downtown community to see a buzz on dining, and I think we're finally getting there, to see what San Pedro square is doing, and now to see San Fernando street and what they're doing. The foot traffic and the buzz there is better than I think we've ever seen it. So these dining experiences is becoming something for people to come out to see. And if Chachos needs an

extra hour or two for him to grow his business, I think it's a good thing for downtown San José. So I'm just here to support him and I think it's good what he's doing. Thank you.

>> Commissioner Bit-Badal: Thank you, and Jeffrey Feldstein, would you please come forward and state your name. You have two minutes.

>> My name is Jeffrey Feldstein. I live at the 88 East San Fernando Street, the highrise condo residence directly across from Chachos and known as the 88. The comments that I'm about to submit are made jointly by five households at the 88: My own, Kurt Pennington, Kathy Morey, Vlad Friedman, and Jacqueline Pegini. We believe that vibrant -- we believe in a vibrant downtown and we're in favor of improving the vitality and economy of Downtown San José. This is why we've made and continue to make significant personal investments into our neighborhood. We believe that a vital downtown is a strong combination of uses. We are however opposed to the conditional use permit you are considering as part of CP 12-008. We residents already face a host of issues from existing drinking establishments on East San Fernando street including noisy, loud, drunken patrons, fights, loud music penetrating our homes into early morning hours in violation of allowable decibel levels in existing conditional use permits, and disturbances that even occasionally close the street. The day we got this notice for this hearing, that night the street was completely closed with party buses and tons of police cars out there. Not sure what happened. We do not believe this activity and behavior which occurs several nights per week contribute to a vibrant community, and we strongly support the San José police department's comments and recommendations and ask that you consider these when you vote. Thank you.

>> Commissioner Bit-Badal: Thank you. Pat Cochran.

>> My name is Pat Cochran and I live at paseo villas. I have lived there since the place opened and I have lived both courtyard facing and street facing which is where I am now. And I can tell you that there is a tremendous difference when you have to experience the outside noise that we tolerate. And we also want support, you know, making downtown livable and vibrant. But having just exclusively bars who intrude into your living space on a regular basis does not make for a livable environment for residents who are living there. And as it is now there are

waves that wake you up on a weekend evening, you know. There is a wave at midnight and you wake up about there's another wave at one o'clock. There's a very loud wave at 2:00. To have another bar open until 3:00 there would be another arousal of residents who are trying to sleep there. And often the noise continues from 20 minutes to half hour after the hour. We would be disturbed until 3:30 in the morning. So I very much oppose the extension of the time. As far as leveling the playing field, I certainly would hate to see the other bars, if Chachos was open until 3:00 saying oh, we want to be open until 3:00. You know, that would not be a good thing. Motorcycles are a huge issue for us. And they have not diminished in number since Chachos has been opened. They sound like jet planes roaring down the street. To have to endure that until 3:30 in the morning is some we're opposed to. Profits may go up the more hours the bar is open but the livability goes down.

>> Commissioner Bit-Badal: Thank you. And I'm going to call out the next three speakers as well and if you can come forward and line up. Wendell Jones, Estelle Cados and George Sanchez. Please state your name sir.

>> I'm Steve Liebson I live at 140 San Fernando street, which is across from the proposed establishment. First I would like to say we love to have Chachos there, we like to have businesses downtown but as my wife who just spoke said, we have several issues in the evening that we want to make sure you're aware of because there's a living situation that's tough and that is that there's a tremendous amount of noise these establishments cannot control once it leaves their premises. So the noise includes people who are loud because they are inebriated, it includes motorcycles that are both loud because they are Harley Davidsons and they are tuned to be loud, but in addition they are equipped with sound systems that are louder than the sound system in our own condo, and that is six stories up. And in addition to that which has not been mentioned this evening, it is not just noise, it is also bodily functions that are conducted against our building because there are no public toilets in the area. And these people get out at 2:00 a.m. They are full of alcohol and they need to relieve themselves. They have found that our building has a few nooks and crannies in it that are very convenient to do that with. So extending operations until 3:00 a.m. as my wife just pointed out is a problem because it would create yet another wave of interruptions for us. It is already very hard to sleep through the day, and the garbage trucks come around at 6:00. So between 3:30 and 6:00, we have about two and a half hours of silence, and then the day picks up. At any rate, thank you very much for the opportunity to speak to you, appreciate it very much.

>> Commissioner Bit-Badal: Thank you, and Estelle Cados, next is Wendell Jones, and after that if we can have Mitchell Patrick O'Connor also line up, that would be great. Actually go ahead sir. Your name is?

>> Good afternoon, council, my name is Wendell Jones, one of the three owners of Chachos who's seeking the C.U.P. And I'd like to say that I've come on probably about two months ago, as an owner. And we employ right now about 36 employees. And if we are able to get the C.U.P., we will be increasing our staff by about 11 or 12 people. So that provides work for city workers in San José. Also, with respect to what the police were suggesting, in the time I've been there, we -- I don't recall one incident ever occurring at our restaurant. It's not a bar as the police report was indicating. We are a restaurant with incidental drinking. I think that distinction needs to be made, because a lot of the problems that residents are referring to are associated with a bar. We are a restaurant with incidental drinking. I think that needs to be distinguished. I think the C.U.P. would be very helpful for us, it will increase our profits and it will make downtown San José just that much more vibrant. Thank you.

>> Commissioner Bit-Badal: Thank you.

>> Hello. My name is Estelle Cados and I'm on the board of the San José downtown association and I also live on paseo villa, on the inside so I don't really hear the noise. But I hear from many people how upset they are when the motorcycles go down 4th street at 1:00, 1:30, 2:00 in the morning and the restaurant has no control over the noise coming after they leave the bar or the restaurant. It doesn't matter whether it's a restaurant or a bar. And if you were living there, you, and you had your windows open, I'm sure you wouldn't like to be woken up at 3:00 in the morning when you have to go to work at 8:00. So it's very inconvenient for residents. If we want to have a vibrant downtown where residents live and love it and they can play and work there you can't have places that are going to be open until 3:00 in the morning during if week. On the weekend, I think if you open this spot until 3:00 in the morning the other restaurant the other places are going to want to extend the hours and it's going to be really bad for the people that live there. Thank you.

>> Commissioner Bit-Badal: Thank you. Would the next speaker come forward and I'm going to call out the next three speakers in the meanwhile. Paul Texteria, Jack Kelly and Kristin Rehana. State your name.

>> I'm Michael Patrick O'Connor and I live at the 33 apartments downtown. In rendering any opinion one cannot operate in a vacuum and that said I feel it is inappropriate for any night club or restaurant to be operating beyond already established hours in San José's downtown core or in any portion of the city, for that matter. City's already down several hundred police officers, and the remaining members of our stellar law enforcement ranks are overworked. These men and women certainly do not need to spend additional time having to pull over drunks and baby-sit the inebriated that routinely exit area night spots. I am an ardent capitalist and I am normally a champion for a business making a buck. We're addressing Chachos right now staying open later other downtown establishments are likely to seek to follow suit. That has been already addressed, forgive my redundancy. This would continue to tax our law enforcement officers, bad item. Thank you.

>> Commissioner Bit-Badal: Thank you, next speaker.

>> My name is Paul Texiera, I'm a resident and the HOA president at the 88 Tower downtown on San Fernando Street, and I also live on the San Fernando side of that building. I believe that the city needs to pass this legislation and continue to pass legislation to allow businesses that are successful such as Chachos to continue to be successful and remain in the downtown growing the city. Cities that are half our size don't impose such restrictions that this city does on business and I think we really do need the business to grow downtown in order to keep this city growing and have very vibrant and economical downtown area. I'd like to point out that I think it is being quite ignored that Chachos is not a bar, they are a restaurant. They serve excellent food and being open until 3:00 a.m. doesn't mean they're serving liquor. Last call is 1:45 a.m. just like other restaurants and bars in the area. Chachos will be allowing patrons of these bars a place to do and disperse more evenly and quietly throughout the night, eat some food, sober up, and exit the facility in a more orderly and safe fashion. I believe this is a benefit to the downtown core. Thank you very much.

>> Commissioner Bit-Badal: Sir before you step away we have a question for you from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Did you identify yourself as the president of the HOA?

>> Yes, sir.

>> Commissioner O'Halloran: Are you the point in time of the HOA?

>> The HOA speaks for itself.

>> Good evening, I'm the residents have had lively discussions on the C.U.P. application by Chachos. I speak as an individual and do not represent the 88 in any way nor can any resident of the 88 claim that they speak on behalf of the 88. I am pro-business and want the downtown to become very vibrant. I want it to become economically sound and a favored destination of the residents of San José. I support many of the businesses within walking distance of the 88, and I definitely support Chachos by eating at their restaurant and enjoying Margaritas at least three or four times a month because they do serve good quality food. Unfortunately I do not support the request for the Conditional Use Permit by Chachos because of the excessive noise that is already generated by the patrons of Azucar and Cinnabar. Unfortunately for me that noise is not just street noise but loud and rude patrons who are sometimes chanting, sometimes screaming, but most times just attempting to speak over very loud companions. I understand, that the owners of the establishments cannot control their patrons once they exit the establishment and of course I would not expect the San José police to be involved either. In general, noise levels are worse at or near closing from about 1:00 until 2:00 a.m. Occasionally the amplified music is so loud that the band might as well be in my unit. Safety should also be a consideration. Many patrons leaving these establishments have no regard for traffic signals as they make their way to parked vehicles in the area. I have personally witnessed two near misses at the intersection of 3rd and San Fernando with horns blaring of course. I would ask the council to consider rejecting the C.U.P., or if approved, consider the police report to make additional conditions. Thank you.

>> Commissioner Bit-Badal: Thank you. And before I call out the next speaker I'm going to call out the final speaker for this item, Thomas Ravel. Please state your name.

>> Good evening, my name is Christa Mirhana and I live on 3rd Street and like my neighbors, I've also been woken up in the middle of the night on Fridays and Saturdays pretty much every Friday and Saturday and woke up to people either screaming in fun or fighting. There is a lot of violence that I can hear that is occurring on this street. Another thing that I'm seeing from the patrons is loitering in front of these residential buildings and the loitering is going on for hours at a time. These are beautiful tree-lined streets. You guys have done a wonderful job with what's happening down in San José but these streets are also hiding some of the loitering from the street lamps as well. I think city needs to be doing more. I do not support this extension of business hours and I'm happy to hear that the police doesn't support it either. I do support mixed use development that allows people to live, work and play in close proximity. I support that. I also support establishments like Chachos and those owners being able to make a living and people coming down and being able to have fun. My concern though arounds with why I can't support this measure is when this fun occurring in the mixed use these businesses are all of us together is kind of losing its balance right? The harmony is going away when the residents that third group is being harmed and their quality of life is going down. And I think that's what we're seeing here in Downtown San José. All this beautiful work that everybody is doing to build up these mixed use communities there's one part of the equation that's being left out and that's the residents. So if the city is going to continue to allow these businesses to coexist with the residents I think the city really needs to do more. And again I'm really happy to hear that the police are on top of this. I understand budget cuts. I understand there are other priorities but sometimes these small quality of life crimes can eventually lead to a lot more. I would encourage if the city is going to be allowing this for the city to install no loitering signs in front of these residential businesses. I would also encourage the city to implement if it hasn't already a noise ordinance and really enforce it. It's really a big problem this noise. And also to install better or more street lighting on some of these roads as well on third street especially we try to minimize the loitering in potential illegal behavior that I can see when I look out my window.

>> Commissioner Bit-Badal: Thank you, your time is up. Appreciate it. Next speaker is Thomas Ravel.

>> My name is Thomas Ravel, I'm a downtown property owner. I live within 500 feet of 87 East San Fernando Street. I would like to see the neighborhood become vibrant entertainment and commercial district, and I support local businesses and welcome new businesses. Unfortunately the neighborhood has become unruly. Graffiti, loud noise at and after 2:00 a.m. Pedestrians jaywalking, bicycles riding on the sidewalks, cars and trucks in the bike lanes, at least one near fatal accident already this month, and also, this is high crime and arrest rate in this district. People should be able to get a sandwich and a cup of coffee safely at 3:00 a.m. or at 4:00 a.m. but they should not be disturbing people who have to get up at 6:00 a.m. to go to work. We need to show a little more respect for each other. I support the police department recommendations and request that if you approve this permit you incorporate these recommendations. Regrettably, enforcement of conditions is difficult, and businesses rarely comply voluntarily. I am opposed to be conditional use permit that is under consideration. The CP 12-008. Thank you.

>> Commissioner Bit-Badal: Thank you, sir. Now I'm going to call out the applicant. You have up to five minutes to respond to -- or continue your presentation. If there are two people speaking it's a total of five minutes, up to. And please restate your name.

>> Terrence Brown. I just want to quickly talk about the and address the issue of Chachos being a bar. Currently when I exclude the catering aspect as to not to skew the numbers, we do 76 of food revenue and 24% of bar revenue. With this proposed C.U.P. extending hours to 3:00 that mix will change from our forecast to about 82% food, and 18% bar. So we are clearly a restaurant that has incidental bar revenue. And the other item that I wanted to address was, again, the number of hires that we will bring on with this extension. Currently we have 36 employees. We will increase our employees by approximately 30% with this approval till 3:00. And I think that's a significant increase to the workforce here in Downtown San José. So at this point, I will defer to George who will have the balance of our time.

>> Yes, you know, I'd like to thank all the residents for their comments and suggestions. And quite frankly, I agree with them. I agree that the downtown is loud. And it's lot of motorcycles and there's a lot of people making a

mess. But that's going to continue unfortunately. That's just the time. And whether Chachos opens till 3 or not, it's going to continue. Right now, we currently are dealing with the same situation. We close at midnight. We come in the morning, yeah, there's blood, on our door steps from fights. Yes, there's people urinating in our doors, that just happened last week. Yes, it's loud, it's annoying, there is motorcycles, there's Mrs, there's sirens, there's fights. But we can't control that. In fact by us opening until 3:00, we'll be better, we will control the noise at our doors, we will have security. We will be able to monitor our space on that block a lot better. As my associates say, we are not a night club or bar. We're a restaurant. We're there to service people that want to eat before they go home. We're there to service employees when they go home. That's it. We're not looking at being a sty in downtown's eye. If there's a problem with the downtown association, talk to us. We're there. Our doors are open. We want to work with downtown. In fact, we are the first downtown, actually I think, the first business in Santa Clara County that's opening a park-let. We're spending \$12,000 to open a sidewalk cafe because we're investing in downtown. So you know, we are trying to make downtown better. Maybe it's not what people want. And I understand that. But give us the chance to prove ourselves. That's all we're asking. Give us an equal playing field. And there's recommendations and there's -- there is rules and regulations. If we do not follow our rules and regulations, punish us, take it away from us. But don't take it from us before we're allowed to do it. All we ask is for an equal playing field. And I share the plight with all these downtown residents. I'm a downtown resident myself. We have a lot of downtown residents that come into our establishment. Thank you.

>> Commissioner Bit-Badal: Before you step away we actually have a question for you from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I appreciate your comments about being given a chance and to see how you perform. But in the staff report we have this information from the police department where they say that residents feel Chachos already displays a disregard for their residential neighbors. An example was given about recently having a live band with the doors open. A violation of their ABC license. They are not allowed to have any amplified music. Can you respond to that?

>> Actually, we had mariachis on the Cinco de Mayo, and the mariachis were playing for a police officer.

>> Commissioner O'Halloran: Well, the question is, is that a violation of your ABC license?

>> I couldn't speak to my ABC license. But my permit it didn't violate as far as my C.U.P. permit.

>> Commissioner O'Halloran: Okay, thank you.

>> Commissioner Bit-Badal: Thank you. Do I have a motion to close the public hearing? Second? All approving say aye. Staff.

>> Thank you. I'm -- believe that with my initial supplemental memo, that I've addressed the points that were raised by the public or the property owners but I'm available to answer questions. Thank you.

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

>> Commissioner O'Halloran: Thank you, Madam Chair. Staff bear with me. When you were speaking about moving away from time periods for the C.U.Ps and this one is being proposed for one year, what is the part about -- it says C.U.P. limit the use to one year then have a review period that's on page 4 of 7.

>> Thank you. That's a recommendation from the police and that was in their memo. And so I was explaining in our supplemental memo why we do not incorporate that recommendation from the police into our draft resolution and that's because of the investment and the proportionality and vest of time and money of the applicant versus the time limit for C.U.P. if it was a year. Our standard time limits for C.U.Ps were five years, and going away from that to not have time limits at all. Because what we have found is that the time limits go not really seem to have an effect on whether or not the applicant is in compliance with their conditional use permit. There are many other ways to ensure that they are in compliance. And it ended up just being more of a lot of paperwork, and tracking of making sure that for the applicants and for staff, that the time limit had not been reached prior to them -- the

applicant coming back for renewal. And again it goes to the proportionality of investment of time and money for the applicant versus granting the use.

>> Commissioner O'Halloran: So one of the applicants was talking about amortizing this over a year. The point is there is no one year time limit on this, is that correct?

>> Not as proposed by staff.

>> Commissioner O'Halloran: Right.

>> However the police did recommend a one year time limit. So I wanted to explain why staff did not implement their recommendation in our draft resolution.

>> Commissioner O'Halloran: Okay. And then finally again just bear with me so I'm clear. In the original staff report, it said the applicant can reapply in a year for an additional daily late-night hours from 2:00 to 3:00. So this has gone away in the current staff represents, is that right?

>> No. The staff report has suggested that if the applicant wishes to pursue the 3:00 a.m. closing that it may behoove them to show by being a good operator and being in compliance with their permit with the 2:00 a.m. closing to make another application in a year for an amendment to their conditional use permit to extend their hours to 3:00 a.m. At this time we do not have enough evidence that it is worthwhile to allow this one user to operate until 3:00 a.m. when the other operators on the block operate until 2:00.

>> Commissioner O'Halloran: And can they come back at any time or sit a minimum of one year they have to wait for a reapplication here?

>> I believe that if they had been denied their permit they would be limited to I think six months or a year before they came back. But they can come back any time to amend.

>> Commissioner O'Halloran: Okay.

>> If it's approved.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: Sort of along that same line of questioning. Some establishments may be eating until 3:00 in the morning and the proportion of alcohol sales versus food sales. Does that happen -- do we have that happening a lot in downtown, infrequently, a few, do you have a measure on that?

>> Thank you. Currently state law prohibits alcohol sales after 2:00 a.m. Which is why the operators of the establishment mentioned soft closing of chronological sales at 1:45 and perhaps getting some other bar patrons to sober up from 2:00 to 3:00 a.m. period. There are other establishments on south third street more focused on south third and San Carlos that are opened until 3:00 a.m. Some of them do not sell alcohol at all, they are selling beer and wine, catering more to the student crowd. Thank you.

>> Commissioner Abelite: I'm going to refocus some of the questioning to do with the police letters, and while I -- as I prepare to ask the questions, you might pull up the liquid lounge or the liquid police letters as well. I just want to look at the two contrasting reports a little bit, and maybe you can help me read into them a little bit.

>> Laurel Prevetti: I just want to say for the community and for the applicants of liquid lounge that their application is being heard later this evening. We're happy to do a compare and contrast, but the item before you is Chachos.

>> Commissioner Abelite: Understood. I wanted to ask some statistical questions. There's a column in the letter that talks about index crimes. So basically, you know, the May 7th letter for liquid lounges says index crimes for E-3 are 354 index crimes for 2010. And then it has the, in the same type of letter for Chachos, the E 32011 goes to 562. I know that sounds like a silly question or that means that crime is going up, what are index crimes first of all? I don't have an understanding of what an index crime is. And I know you're not the police so --

>> Right. And I can't comment on what an index crime is other than to say that the breakdown of data that I've seen from other reports, where they have provided categories of crimes would include things like drunkenness and disturbance of the peace and loitering, et cetera. And yes, crime has gone up. And the police are correct, in that he this have more limited resources to address crime. That being said, both although we're going to be talking about liquid lounge later on, both liquid lounge and Chachos are identified in the general plan as downtown and also zoned as downtown primary commercial. And in that area, it is understood that that's the area of the city that we do want to target for more late night, 24-7 as we call it in the general plan, entertainment uses, entertainment being loosely defined to include eating and drinking. So the police have, in the past, staffed accordingly for at least 2:00 a.m. closure in this part of the city. So yes, crimes have increased. I don't think there is any way you can misconstrue those statistics. Is it related to late-night closings? The demos that we have from police do not substantiate that.

>> Commissioner Abelite: And again, continuing down the line of numbers, I see that the arrests went from 781 in the 2010 statistic down to 444 in the new letter or in the Chachos police letter, and I know you're not the police department. But in your estimation would you say that might be related to staff shortages in the police department, is that why there's fewer arrests or do we have fewer arrestable issues?

>> We don't have the data from them to provide more information. They were going to do more research, they haven't come back to knee with more specific data so I can't comment on that.

>> Commissioner Abelite: All right, thank you, no more questions.

>> Commissioner Bit-Badal: Thank you. Commissioner Abelite. And we're ready for a motion. Unless there are any more questions? Commissioner Abelite.

>> Commissioner Abelite: I am prepared to make a motion to approve the Chachos C.U.P. as recommended by staff with no changes. As recommended by planning staff, incorporating planning staff's most recent submittal that was given to us earlier before the hearing.

>> Commissioner Bit-Badal: And do we have a second?

>> Second.

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

>> Commissioner Abelite: Just briefly. I do understand and recognize you know with the citizens that were here and that they are concerned about noise. At the same time, I don't think we should characterize Chachos as being the proponent of making all of that happen, I know additively it may increase it, but this is modeled to be a vibrant downtown. That means that we have to stick to generally approved policies. It may not fit well with all the residents in downtown, but that's the way it is. If those policies in downtown don't work, then maybe we need to talk to the city council to start shaping those policies slightly differently. But I -- you know the Planning Commission is here to enforce existing policies to the extent possible. We're not here to set new guidelines and new policies. Thank you.

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

>> Commissioner Cahan: Thank you, Madam Chair. I will be supporting the motion. I absolutely appreciate that you're an eatery. You are well respected. And are providing a good service. And in theory, to be open until 3:00 a.m., provides an opportunity for people to have some extra time to work off any alcohol and for staff people to have a place to go after they get off of work. However, I'm very distressed by all the reports from the people who

live in the 88. I'm enthusiastic about that facility being a multiuse, great combination of location, having the grocery store right underneath. It's walkable to transit. And I would hate for us to be, then, recreating the situation by altering the time, allowing people to be out, out in the streets, getting out that extra wave that was discussed. And then, preventing people from wanting to move into the 88, or other parts of downtown. So I agree that we should keep the status quo, the 2:00 a.m. Additionally, the lack of police is extremely significant. Even being out in the suburbs we're getting the late-night, we're getting more graffiti, actually, motorcycles going down our street, too. And we don't have any police officers going to our streets in the middle of the night because they just don't have the staffing for it. And I don't want to take away additional police help in other areas, because we're creating another wave that has to be addressed, that the police officers then can't disperse to other areas, so thank you so much.

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

>> Commissioner O'Halloran: Thank you, Madam Chair. I won't be supporting the motion. I'm -- give weight to the police department's recommendation not to approve. I was also distressed. I think in these mixed use areas, extra effort has to come from all parties, to make these mixed uses work. And I was kind of distressed by the applicant's view of you know how downtown is. It's just going to be that way. I am just uncomfortable with that. I'm also not convinced that it makes that much of a difference. This use is primarily a restaurant rather than a bar. The fact is that most of the patrons who would be leaving at 2:00 or 3:00 will have been drinking all night and just their last stop was to have food at this establishment. So I just don't believe that this is the right thing, and so I won't be supporting it.

>> Commissioner Bit-Badal: Thank you for all your comments. We love our downtown. We want it to be successful and that success depends on having a mixture of residents, businesses, daytime and nighttime. I am going to be supporting this motion. Reluctantly. I was not so pleased with the comments of the business owner, as well, that it is what it is, basically, that's what he stated so I was not so pleased with that. And because of that, I want him and the residents to really closely work with him. Because it's really important. You're part of the downtown. You're part of that puzzle and it takes for you to be responsible as well and it takes for residents to

understand that they are living in a vibrant community. I do feel for the residents, but at this point I will have to approve the motion as well. Our downtown is a great place to live and work and play, it's because we have all those three elements. I encourage you now that you're here to continue to be on the lookout and work with your neighboring businesses and if you are going to the restaurant to eat please mention to the business owner that you have encountered problems. Because maybe the business owner is not there all the time to know that there are problems. So it really depends on all of us to work together, in order to make this downtown a successful one. With that I will ask for all to vote by light. And the motion passes with all exception of Commissioner O'Halloran. Thank you. We're now moving on to item number 3B. Staff.

>> Thank you, Madam Chair, John baty with the Planning, Building, and Code Enforcement department. This is a conditional use permit to allow conversion of an existing vacant approximately 7637 square foot office building to a private elementary school for up to 120 first through eighth grade students on a 1.74 acre portion of a 2.5 acre site in the CG commercial general zoning district at 3635 Pearl Avenue. Staff would like to point out that the staff recommendation in the agenda is not quite correct and should indicate rather that Planning Staff recommends that the Planning Commission find that the project is in conformance with CEQA, and approve the conditional use permit on the subject site for the following reasons and as further described in the staff report. Number 1, the project conforms to the general plan land use transportation diagram designation for the property which is neighborhood community commercial. Number 2, the proposed project complies with all applicable provisions of the CG commercial general zoning district. Number 3, the project is compatible with the surrounding land uses and there is sufficient parking provided on the site for the proposed use. This concludes staff's presentation.

>> Commissioner Bit-Badal: Thank you, is the applicant here? Would you please come forward? You have five minutes to make a presentation.

>> I'm an architect with Terry Martin associates and we're the applicant along with one world Montessori the applicant. I want to briefly thank staff for its report and we agree with its conclusions and recommendations. We have received some follow-up communication and we're working with a gentleman who owns the residential lot that's the rectangle meld to the southeast of the project site to repair a fence that was evidently damaged before

our client leased the property. So we're already working with the neighbors. The client's current school location if you follow pearl north to Foxworthy, to Almaden expressway has been there for quite some time and they've been working with the community as well. So I think all we want to say is that they're already successful in dealing with the issues of having a school location for the private school near residences. And they've been hearing the neighbors there and dealing with their comments and incorporating them in their practices. They will continue to do that at this site and they have sort of already proved that they have given a lot of concern to making themselves good community members. We'll answer any questions that come up. Thank you.

>> Commissioner Bit-Badal: We do not have any speakers actually on this item. The applicant still has up to five more minutes if we have any more -- oh, there's one. Will the applicant come back please, we do not have public speakers on this item but we do have questions for you from Commissioner Abelite.

>> Commissioner Abelite: Just a minor detail question, there's a cell tower in the middle of the parking lot there. Where is the facility like the equipment racks that service that tower? I couldn't figure that out when I was there.

>> So it's actually integrated pretty well with the garbage enclosure that was on site.

>> Commissioner Abelite: That was that little --

>> It's basically just the little piece of equipment to the left of the main doors of that.

>> Commissioner Abelite: Good, that was my only question.

>> Sure.

>> Commissioner Bit-Badal: Thank you, we do not have any more questions for you. Thank you. And do I have a motion to close the public hearing? Second? All approving please say aye. Thank you, staff.

>> Staff has no further. Nothing further.

>> Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. First I would just like to state that I have been to a couple of fund raisers for this school but not within the past 12 months and I didn't actually donate any money. I just have some friends that go there and we've attended their annual event that they have. So I haven't been a contributing factor but I have attended events for this school. My question for staff has to do with the entrance for the school. The turning lane off of pearl. And the concerns with the potential traffic backup that that could cause people who are coming from the residential street, making a left onto pearl.

>> Thank you, Madam Chair. With us tonight we have Maria Angeles from the Department of Public Works who will be happy to field that question.

>> Madam Chair, Maria Angeles from Public Works. The Department of Transportation staff and Public Works staff had the same concern about vehicles entering and exiting the property making a left turn on pearl and right turn out to pearl. We had required the project to hire a traffic consultant to conduct traffic surveys to determine if there are sufficient gaps along southbound pearl avenue. And based on the results of the survey they concluded that there were frequent gaps between the morning peak hour to accommodate the left turns in and out of pearl avenue.

>> Commissioner Cahan: And when they do that sort of analysis are they keeping in mind that perhaps there might be 15 cars awaiting, to tush into the school, causing a long delay, you would need a significant amount of a gap to fit in those cars that might be waiting to turn?

>> Based on the traffic analysis that I think was also provided, and is available, they had based also on their -- on the site when they were at the site, they figured that there was about eight seconds that is required for a car to

make a left turn. A safe left turn out. So with the gap survey and it is actually they have drafts included in the traffic report, they still concluded that there was enough gaps along pearl avenue to allow cars coming out of the site, and also, I guess a number of trips from the new use.

>> Commissioner Cahan: And they did that survey from the 7:30 a.m. dropoff time?

>> Correct. They did the surveys I think in the morning during May, the month of May, one day for the morning, out -- peak hours and then another day for the afternoon peak hours.

>> Commissioner Cahan: Okay, thank you.

>> Commissioner Bit-Badal: Thank you. And at this point I will entertain a motion on this item. Commissioner Yob.

>> Commissioner Yob: I move to approve this application based on the recommendation of staff this evening.

>> Commissioner Bit-Badal: And we have a second. Commissioner Cahan did you want to speak on this item too?

>> Commissioner Cahan: I just wanted to relay that my main concern was the traffic issue. If that has been thoroughly vetted and won't be an issue then I'll be able to support the motion.

>> Commissioner Bit-Badal: Commissioner Yob, did you want to speak to your motion?

>> Commissioner Yob: Just very briefly, that when I visited the site I had the same concerns about the left-hand turn, but I was satisfied by the study that was performed, and I do appreciate Commissioner Cahan's clarifying questions and the responses. But otherwise I feel that the application conforms with the general plan and all the other land use designations, so thank you.

>> Commissioner Bit-Badal: Thank you. I do not see any further questions, so we will vote by light. Thank you. And the motion passes unanimously. With the exception of Commissioner Kamkar who is not here. Now we're moving forward with item 3C, staff.

>> Thank you, this is CP 12-015. It is a conditional use permit request to allow the continued use of an eating and drinking establishment and late night use until 2:00 a.m. on an .11 gross acre site in the D.C., downtown primary commercial zoning district on the East side of south 3rd street, 190 feet south of East Santa Clara street. The address is 32 South 3rd street. Since the preparation of the original staff report staff has received additional correspondence, some in opposition and some in favor of the proposed late-night use. The correspondence has been distributed to the Planning Commission prior to the consideration of this item tonight. The primary concern of those in opposition to the proposal is noise from the current operation. Condition numbers 5, 10, 11 and 13 in the draft permit resolution are intended to address this issue. Thank you.

>> Commissioner Bit-Badal: Thank you, and is the applicant here? Wonderful. You have up to five minutes to make a presentation. Meantime, I will call the next three speakers. We have several speakers on this as well. Ed White, Michael O'Connor and Alma Mezzo, if you would please come forward and take a queue.

>> Good evening, my name is Joe Melendez. And the liquid restaurant lounge is our family operation. We have been there approximately eight months. Point's been made tonight, I used to work for the city in the parks and rec department and one thing that I always learned is you have to work with the community. And we have tried to do that within our business. Especially because of the surrounding community and residents and that sort of thing. So we've had open houses, all our activities, during the day, in the restaurant and in the evening is geared towards that theme. We are proud of our accomplishments. We have had many mixers, we've had community events. We donate when we can and we want to be a good citizen, business citizen. So we've been excited working there. The building before we got there was the Bank of America building and it was vacant for eight to nine years, I'm not sure so it was a tough job to build our kitchen in the vault. That was a tough one but we got through it. So we're excited to be here. We've lived in San José all our life. We've been active in the community

for many, many years. So we are very conscious of our credibility and the importance of making sure that our surrounding neighborhood is supportive of us and that's our client base so we're very supportive of working with them. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, please. Ed White, 140 East Santa Clara street. I'm right across with the liquid lounge. I don't have problems with the bar being open, lounge being open until 2:00 but my concern is because I live there our windows are open, is that parking lot next to them, I've talked to him on the phone I believe and his son. And it's just like all the other places, the noise, the people using the back area as a bathroom. They have monitors there, cameras there, but they're not being watched, I guess. I don't know. But it is just our concern is the noise. We get up at 3:00 in the morning, in fact we go to bed at 8:00, and we get woken up at 1:00 in the morning. And one of the things I'm concerned about is a lot of the people that are out there partying, using that -- at the parking area, as a thing -- have staff shirts like they work at one of the clubs right there. And they're part of the problem. But not really the lounge. When I heard everybody else talking about the other places, that has to do with what I wanted this, you know, to mention about the noise, the partying, the loud music and stuff like that. But I don't think it's the lounge itself, so I have no problems them being open until 2:00. It's just all the other stuff that goes with it. Thanks.

>> Commissioner Bit-Badal: Thank you, sir. And next speaker.

>> Again my name is Michael O'Connor. I live at the 33 apartments. Just as a preamble. I'm no NIMBYist. I've lived in other parts of San José, I've lived in Moscow, Russia. Fahrenheit lounge I lived literally on top of the DJ booth. Danny was a great owner. To mitigate that noise, I get no noise from down there, in fact I'm going down there afterwards to have some dinner. The loft, another great downtown establishment. They have ample security. My experience with liquid, I've been there before, a couple of times. It was okay. Had no problem with that. But subsequent, we have had some problems with the patrons. The ownership, I'm sure they're wonderful people. But there is a real problem at liquid. Had two people come out of that establishment, and were stabbed right in front of my building, a couple of months ago. That didn't make the news, just because we had a murder on the Eastside. And fortunately those people survived. But one problem we have with the clientele there, they

scream like banshees and I'm out and about myself all the time. And the clientele at liquid are the ones that are urinating they're accosting across from where I live is the 101. I see people coming out of there and accosting, they have a private security guard and I have a problem not with the ownership, but they've got problems with the clientele. And I don't know how you mitigate that. That's a conundrum that -- I don't want to have to deal with. You know and I applaud people that have businesses like this. I mean there's a lot of liability involved. But I have a real problem with what's going on at liquid. Thank you.

>> Commissioner Bit-Badal: Thank you, sir. Oh, actually we do have a question for you right now. Would you please come back, sir, and -- Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair and thank you for your comments. Compared to your testimony with the other item, is it relative the same degree of impact? From liquid?

>> No. In fact if you recall, I mean, I was looking at things on a macro level before, why things shouldn't be you know open later because then other establishments want to be open later. And we have this domino effect and that's going to impact law enforcement. I don't have a problem with Chachos at all and a lot of the other establishments you know downtown. Liquid, there seems to be you know to me, a -- there is a clear distinction. And there's a far greater problem there, that the city, you know, should really look into. I know that's not the purview of the Planning Commission and all of that but down the road you know I would anticipate that there's going to be more problems there.

>> Commissioner O'Halloran: But what you're saying is the safety and noise impacts related to liquid are actually greater than --

>> Absolutely. It's off the charts. It's off the charts.

>> Commissioner O'Halloran: Okay, thank you.

>> You bet.

>> Commissioner Bit-Badal: Before the next speaker speaks I'm going to call out the following three speakers. Rose Amador, Ms. Niveca Amador, and please state your name.

>> My name is Alma Mesa. I just wanted to be here to support liquid lounge. It's a nice clean place and classy place and compared to other places I really love that place, I try to go as much as I can but it's a nice clean place. Thank you.

>> Commissioner Bit-Badal: Thank you.

>> Hello. My name is Rose Amador, I'm a member of La Raza round table. The Melendez family is also an active member of the La Raza round table and supports many community events including the center for training and careers. I've been there for several times for different community mixers, Hispanic chamber mixers and there's always been a very professional crowd there when I've been there. I was there last evening for dinner and a bunch of people came in and they were from New York and they were from out of town from New York and they were saying wow it's a really nice place, it did. People were commenting it looks like it belongs in Santana Row it is that type place. I strongly recommend that you approve the permit. Thank you.

>> Commissioner Bit-Badal: Thank you.

>> Good evening, my name is Monica Amador, sorry, I probably didn't write it down correctly. But it is Monica Amador. I represent myself. But I'm a business owner downtown, with the Hispanic bilingual newspaper El Observador, that's been around for 32 years. I'm also on the board of the Hispanic Chamber of Commerce and La Raza Round Table and very active in the community. I have been a patron of the liquid lounge. We've had a number of events there with the Hispanic chamber of commerce. We had a luncheon there for the state Hispanic chamber of commerce and numerous other community organizations. I've been there for dinner, they have wonderful food. It's a nice restaurant. And they do have other where you can have a drink, a glass of wine with

your dinner. So it's not a place where it's rowdy. All the people that have been there have been professional people. So when I hear that the type of clientele is terrible, I think of myself, I would never urinate outside a building or scream in the parking lot. But I have seen people come from other parts of Santa Clara and 3rd street that are parked in that parking lot. So to say that the people are coming from the liquid lounge is not really true. They're coming from everywhere, parking in that parking lot. So I really wouldn't want to see liquid lounge penalized for something like that. That there's a parking lot next to their building, and their business. And for the city to want to continue bringing in revenue from small business owners, this is a nice place that will give good jobs to people. And will encourage a nice environment for people to go to in the evenings. Thank you.

>> Commissioner Bit-Badal: Thank you. Before I call out the next speaker I'm going to call out the last and final three speakers. Laurie Emlich and Dennis King. Would you please state your name, sir.

>> Thank you, Madam Chairman. My name is Matt Lamberti, I live on 3rd Street right across from liquid. I first moved to San José in January 2004, and like Mr. O'Connor actually lived in the 33-South 3rd apartments very close to Fahrenheit. You know, what lived there for four years without any noise problems whatsoever. I moved back to San José last year with my wife and my baby. We moved to the globe right across the street to the vacant building. To our dismay the vacant building actually turned into the liquid lounge and we have been afflicted by numerous noise problems as outlined in the submission I've ordinary for the record. You'll see a number of exhibits at a indicate that right outside the liquid lounge there's actually a decibel level of 90 plus. From our balcony the decibel level is actually 80 plus. I have a small child in my apartment. Many of you actually may have small children. It's very disconcerting to have a small child come up to you and say, daddy daddy I can't sleep why is it so noisy? That's can what we're facing from the liquid lounge. I'm sure the owner wants to be a good citizen but I think in this case the liquid lounge has to do much, much more to be a good citizen downtown. The one thing I would like to emphasize is there are actually guidelines from the city council regarding night clubs, and I refer you to policy 623. There's no question that liquid has not complied with the noise guidelines. There's been no indication that liquid has monitored its premises with a qualified noise consultant. There have been no measurements taken and no report submitted to the Planning Commission. So on this basis alone I think the Planning Commission has to reject the application for a C.U.P., given the fact that there has not been compliance

by liquid with the policy guidelines. So I submitted a proposal with some additional suggestions. I'm not -- we're not actually opposed to the liquid lounge in principle. What we're opposed to is the fact that it's so noisy. I think that there's much that the liquid lounge can do to abate the nuisance that it represents and would request that the Planning Commission impose a number of recommendations set forth in the staff report, and also set forth in the document that I've submitted for the record to deal with this problem.

>> Commissioner Bit-Badal: Thank you sir, your time is up. Next speaker. Excuse me. I keep on seeing these lights come up afterwards.

>> I'm sorry.

>> Commissioner Bit-Badal: Would you sir, please come back, Mr. Lamberti, would you please come back, we have a question from a commissioner. Commissioner O'Halloran has questions.

>> Commissioner O'Halloran: Thank you, Madam Chair. Mr. Lamberti for the record, and so we're clear about what you're proposing, could you read these so that everyone else in the audience sees them? You're proposing an item about noise, hours, noise and acoustics.

>> Certainly. So this is actually page 3 of our submission. It's basically three categories. So we're proposing that liquid operate in a manner that does not create a public or private nuisance. We're requesting that the city monitor liquid's operations to ensure compliance with the city's nuisance laws and provide immediate notice to abate any nuisance. We're requesting that not that liquid shut down, we're requesting that liquid only be permitted to stay open between the hours of midnight and 2:00 a.m. on Friday night and also Saturday night rather than seven days a week. And we're also requesting that liquid take a number of measures to deal with the noise problem. We're requesting that liquid keep at least one of its two front doors shut at all times. They actually have a glass door, a double door. We're requesting that liquid keep the second door shut at all times except when individuals need to enter or exit the premises. We're requesting that to avoid unnecessary disturbance and also noise levels that rise and fall until 2:00 a.m. purely based on the actions of liquid's door staff that the night club

install a noise abating room or foyer just inside the night club at the entrance so the music being pumped from the establishment does not disseminate to the surrounding neighborhood as soon as the doors are opened. We're requesting that liquid install additional appropriate noise control systems and products. There are many off-the-shelf items that are currently available, including noise control curtains, acoustical panels, and the like. And as required by the city council, liquid must hire a qualified noise consultant to monitor the exterior noise levels and submit an appropriate report to you the Planning Commission within one year and also that liquid comply with council policy 623 the general plan and also the milk and private nuisance laws.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: I see no further questions. Next speaker.

>> Arron Bracindez from Story Road business association. We are in full support of Liquid Restaurant to keep their operation until 2:00 in the morning. I have a letter I sent today by e-mail, but I'm going to leave a copy, and this is a support from all the executive board of Story Road business association. I'm also part of the Hispanic chamber of commerce and the chamber of commerce of San José. You know, people that live over here in downtown close to the liquid restaurant, I would suggest them to come and speak directly to the owner when they have a problem. I was there last week and there was people outside. But those people don't even have money I think to go inside that nice restaurant. Now, about the noise inside the restaurant. You should know that you know, we are on the City of San José, we the Latinos many times when we eat like to just chat around, sing or be noisy but that was inside the restaurant. Outside the restaurant I don't see that much noise. Now people living downtown I suggest them next time look at the general plan. Look at the business plan of the City of San José. We cannot just pick on a small business like this. So I'm going to leave a copy, and this is full support from the executive board of Story Road business association. Thank you.

>> Commissioner Bit-Badal: Thank you and the next speaker is Laurie Erlich. Would you please restate your name.

>> Laurie Ramos Erlich. I have been a resident of San José for over 50 years. I'd like to express my support for the liquid lounge, and I think we should celebrate businesses coming into downtown San José and the employment that it brings. There's several reasons why I like the liquid: One, it brings jobs to San José. Two, once you step inside you look at the environment. It's very upscale and I think brings a lot of class to downtown. And three, the food is very good. So I would really, again, I think the most important thing is bring in business, downtown, and the employment that it brings to our community is very important. So I support it and hope you do, too. Thank you.

>> Commissioner Bit-Badal: Thank you and the final speaker on this item is Dennis King.

>> Good evening. I am Dennis King, executive director of Hispanic chamber of commerce. We are also vigorously in support of liquid lounge and for many, many reasons. The owner-applicant I have known for decades. I know him and his family come to whatever project that they bring with high integrity, high commitment to quality in terms of a dining experience. I have watched them invest their hard earned money, to take over a building that had been empty for many, many years. To be able to turn it into something that we could be proud in that particular community. I have known them well to know that they are good citizens. I have known that they made a commitment to help turn San José the downtown area into a strong and vibrant part of our community. Last year the sign above you where it said City of San José, capital of Silicon Valley, 10th largest city in the United States, I would hope that we live up to our slogan of being a large city, and that means 24-7, it doesn't mean everywhere but it does mean in designated areas. In terms of the parking issues, I park in that parking lot, we are probably the closest to it, my building the entrepreneur center for the City of San José, we work and operate out of that on the corner there. That's been a problem in that parking lot for many years long before they were there. And if anything, they've done a lot to help solve some of those problems with cameras there, security that's not their parking lot. The parking lot belongs to somebody else. They've done an awful lot to provide extra effort to actually make that parking lot more secure. They have helped the environment. They're not detracting from the environment. They are good citizens and great additions to a vibrant downtown San José. Please please for the sake of all of us, support them in their endeavors, thank you.

>> Commissioner Bit-Badal: Thank you, and now I'm going to ask the applicant to come forward. You have up to five minutes to either continue your presentation or respond to speakers. Please restate your name, too.

>> Thank you. I just talked to one of the gentlemen that was up here opposing our application, in reference to the parking lot and Mr. King made it very clear that we've gone round and round with the owner over there because it impacts us as well. That parking lot is an issue. I've talked to the councilman of the district about the parking lot. As Mr. King said we have done everything we can to help secure our patrons going into that parking lot and parking there to make sure they're safe. This is one of the issues or few of the issues that we've done to make our business successful. In reference to the other gentlemen on the noise issue, I saw that letter. And I guess he used his iPhone and I'm not sure what app that was but I just got online real quick and pulled up the app as far as reviews and they said it was inaccurate. I'm not saying he doesn't have an issue with the sound there but our building is cinder block. You close our doors and I can't hear anything that's going on in our building. I do hear all the other outside of the area clubs and establishments, their noise, is way louder than ours and I'm standing by our door. But community-minded as we are I would love to sit down with I think his name is Matt, and chat with him to see if we can resolve what issues he has. What I'm happy about is there is not more people complaining that live across the street from our venue because if there were then we would have a real problem. But our sound system has been designed to face the opposite direction of our front door. We have had a professional sound company come in and make sure that our decibels, we have a computer system on our amps to our system. We can't allow it to go too high. We don't want it to blow up our system. We regulate that. Like I said this is a new venue, state-of-the-art. It was built, we have thought about all these issues. Again I have been involved in the community for many years and I've heard complaints from different other constituents about problems in the downtown. We are here to make friends, not cause problems. So I hope you support our application. Thank you. Any questions or --

>> Commissioner Bit-Badal: Yes, we do have a question from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I'm sorry, I didn't catch your name.

>> Joe Melendez.

>> Joe Melendez. First, Mr. Melendez, I wanted to thank you for your attitude about working with the neighbors and to improve the quality of life in the downtown. That was obvious from the letters through supporters that came in. So I want to congratulate you on that.

>> Thank you, thank you.

>> Commissioner O'Halloran: I'm interested on your views that the suggestions that Mr. Lamberti had, I'll ask them one by one, as a business owner I'm interested in what you think of these. The first proposal is that late night hours would only be permitted on Friday and Saturday night. What impact would that have on your business?

>> Right now we only operate Thursday, Friday, Saturday and Sunday until 2:00. Even though we have that authority we don't always do that. Monday, Tuesday, Wednesday, Monday we're closed. Tuesday Wednesday we only stay open until midnight. So we're already limited to midnight, and we have done that. Since we're a family business we can't put all those hours in all the time, to0 be honest. But so the real nights we stay open mainly are Thursday, Friday, Saturday, and sometimes Sunday when we have special events. And again, on Sundays we start early, so sometimes we even close earlier than that. So I think at this point we're happy the way it's set up to have the option on special occasions to stay open. We just had independence high school class reunion and they did it on a Thursday and so they wanted to stay late. So it just depends, that's kind of what we need that for.

>> Commissioner O'Halloran: Okay, liquid should keep at least one of the two front doors shut at all times.

>> What we generally do is keep one door open until about 8:00, possibly 9:00, it depends if it's a beautiful night out. After 9:00, definitely before 10:00 we close both doors regularly, that's in our previous C.U.P., so we keep our doors closed.

>> Commissioner O'Halloran: Oh, really?

>> That's already in the C.U.P.

>> Commissioner O'Halloran: What about the noise abating foyer inside the entrance?

>> It's interesting if he has been inside, we do have a foyer and it does muffle the sound. But again, our system is pointed to the back of the building, not to where the front doors are. And again, I mentioned that we have a special computerized system to monitor our sound. So it can never go above a certain level. And the company that came in gave us documentation showing us how many decibels it went to and how it wouldn't go beyond that for purposes of not blowing out our amps. Because sometimes you get, if there is a D.J. or a band in there, they want to turn up the sound. And what that does is, is blow up our expensive equipment. So we didn't want to have that happen, so now there's a new thing, technology.

>> Commissioner O'Halloran: But specifically on the noise abating foyer if we included that as a condition would that be onerous for you?

>> We have a foyer. I don't know --

>> Commissioner O'Halloran: You already have one?

>> We already have one so I don't know what criteria you would use based on that.

>> Commissioner O'Halloran: Thank you very much.

>> You're welcome anybody else?

>> Commissioner Bit-Badal: Not at this point I do not see any. Do I have a motion to close the public hearing? Second? And all approving please say aye. Thank you. Staff.

>> Thank you, Madam Chair. I do want to emphasize that as the applicant himself has stated, there is a condition in the permit for doors and windows to be closed during the operation. Especially with music. And regarding sound proofing, there are always ways to make sound insulation stronger. It does require an investment. You know if you can go to triple pane windows you can do extra insulation around the foyer. But I think just even being more mindful about keeping the doors closed will make a huge difference. So a lot of what the complaints might be about may be related more to just having more attentive management. It is true as well that the parking lot is a separate operation, and it does seem to be a point of concern with the neighborhood, and unfortunately, that project is not before us tonight. But I do think that if the applicant's management can just be more visible at the front doors in terms of monitoring the frontage, of their own building, that might have some impact on the neighboring parking lot's patrons. Thank you.

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

>> Commissioner O'Halloran: Thank you, Madam Chair. Questions for staff. First, on the issue of the decibel levels, what standards are they required to meet now and these photographs of decibel levels that seem to exceed? Can you give us a comment on that?

>> So this is another project that's in the D.C., downtown primary commercial zoning district and because of the existing context, being near the airport, and just having a noisy background context, there is no maximum noise level in the zoning ordinance for D.C., downtown primary zoning district. That being said, there are general plan noise policies, and the general plan noise policies in envision 2040 also acknowledge the existing noisy context of downtown, but recommend that noise levels really shouldn't exceed 70 decibels at the property line. So you know that would be the general plan policies that the liquid lounge should be abiding by, regardless whether or not it's specified in the permit.

>> Commissioner O'Halloran: So Mr. Lamberti suggested that liquid should hire a noise consultant to monitor exterior noise levels and that liquid should comply with council policy 623 of the general plan, the nuisance laws. Are these essentially being done or required for if we wanted these would we have to include them as conditions of this permit?

>> Monitoring noise levels by a noise consultant is not in the draft permit as a condition. We typically are not requiring that for downtown establishments. And it gets back to being able to isolate what is the source the noise and also if the noise consultant is hired by the applicant, I mean I guess they can create the conditions as to when they test the noise. So I'm not sure how effective that is, in practice. And that's I think one of the reasons why we have not typically had noise consultants monitoring conditions in our permits for late-night operations for eating and drinking establishments. However, the management of the operation is important. And just with well trained personnel, monitoring what's going on with patrons as they enter and leave the establishment, and what's going on around their frontage is important. And a lot of the comments from the public are related to what's going on at the front door. So I don't -- I don't see that a noise consultant needs to be hired to address that. I think it's more just good management of the premises and keeping an eye on the patrons and knowing when to encourage them to just tone it down or monitoring their drinking levels, et cetera.

>> Commissioner O'Halloran: So those good management practices how do we get those into the conditions or are those too soft that we really can't do that?

>> Well they are in the conditions. There is a requirement for security personnel, and there is a requirement that windows and doors be shut, and that is something that is managed by the personnel on the premises.

>> Commissioner O'Halloran: So just in general, then, to Mr. Lamberti's request for changes, it sounds like most of these things are already in the proposed permit conditions, is that correct?

>> Yes. Going back to his comments about the foyer, I don't know how well that's insulated, and the applicant perhaps could be more attentive in making sure both doors are shut as specified in the permit conditions.

>> Commissioner O'Halloran: But that is required in the proposed permit conditions anyway.

>> Right. Other than that, it sounds like some of the issues that were brought up are about more the larger neighborhood context.

>> Commissioner O'Halloran: Thank you.

>> And I did want to add that there does seem to be a little bit of difference in how the applicant is operating now, versus what the neighbor has requested. So the applicant is saying that they do operate late-night on Thursdays and occasionally on Sundays, that's fairly common with late-night uses on the block. But I guess if you wanted to, the Planning Commissioners could limit the late-night hours to fewer days of the week.

>> Commissioner Bit-Badal: We do not have any more questions. Actually I do have a question. If we have a resident who wants to complain, the first course of action is going to be to contact the business owner. Which city department would they contact, if they're hearing, for example, loud noise, or such, would they call the police department, which city department, in terms of educating the public?

>> If they believe the applicant is violating permit conditions, they can call code enforcement. If there is a disturbance of the peace, they can call the police department.

>> Commissioner Bit-Badal: Thank you for the clarification. I can entertain a motion on this item. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I will make the motion, redeem myself from last time, I move that we approve CP 12-015 as recommended by staff.

>> Commissioner Bit-Badal: Great, and we do have a second. Would you like to speak to your motion, sir? Commissioner O'Halloran.

>> Commissioner O'Halloran: Yes, thank you, Madam Chair. I just want to say that I think there's the opportunity for working together here. I appreciate the attitude of the applicant, and I hope that he and Mr. Lamberti in particular can work together to solve some of these issues. Thank you.

>> Commissioner Bit-Badal: Thank you and I agree with this motion as well. I'm very familiar with this specific building as that was one of the projects I'd worked on many years ago to change the facade. And I know the property owner really never leased the building because he was waiting for a responsible tenant to come in and that says a lot. So I want to make sure the residents are working with you, and that's why I asked the final question in terms of what can they do, first course of action of course is working with the business owner and I'm glad that you seem responsive and you want to work with your neighbors. Because we, again, we are all a piece of a puzzle and together we can make this a great downtown. With that, I will encourage you to truly work hard on your next door neighbor. And I know it's not the same property owner as yours, to make sure that the parking area is becoming a good neighbor, as well. And it really depend on you to make sure that you're working with your council office and city staff to make sure that your neighbors are also complying with city laws. With that, I will ask for all to vote by light. The motion passes with the exception of Commissioner Kamkar as he is not in -- he is not with us today. And now we are moving forward with item 3D, Santa Clara valley habitat plan and associated plan. Now I will ask for comments.

>> Renee Gurza: Thank you, Madam Chair, I just wanted to note for the public and the commission, this is a study session, not the public hearing on these items. And the difference is the public hearing for these items have been agendized for your next meeting. So this is not the start of the public hearing. Again, the public hearing for these items has been agendized for your next meeting. This is a study session. And so just to remind that you the purpose of a study session is generally to provide you with some context, some background, some history. It's no action is taken. Because this is a complex matter you've seen the numerous volumes that you've received, providing our a context, providing you an explanation of the various components of those volumes can be very

helpful in your review. I just wanted to highlight for the commission and for the public that this is not the public hearing on these items. Thank you.

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

>> Thank you. I'm Andrew Crabtree with the City's planning division, also here is our director Joe Horwedel and from the attorney's office Vera Todorov who has been very involved in the habitat plan elements and Ken Schreiber who is a consultant from the audience who may participate at some point. So I will attempt to give a high level summary of this document which as you know is a fairly large one. What it is, it's a plan for mitigating impacts to specific biological resources within the plan area, over the long term, it's a 50-year plan. It allows for there to be impacts upon endangered species upon their habitat, through this sort of master plan program, if you will, that's been negotiated with the various wildlife agencies that have regulatory authority over those. Technically it's a habitat conservation plan and also a natural community conservation plan, apply with both federal and state legal requirements. I can give you a little bit of an overview on the schedule. Just so you can see there's a series of public hearings that are happening with various city council committees as well as the Planning Commission and as the attorney mentioned at the beginning of this hearing that there really will be in two weeks that we will be back asking the Planning Commission to take action on both the plan and the EIR and also a draft ordinance. I'd like to point out at this point that we just distributed the correct first attachment to the staff report for you tonight which is the draft ordinance that would incorporate the plan into title 18 of the City's municipal code. And that will be something that will be also coming to the Planning Commission in two weeks. The intent here is to bring this to the city council at the end of October for their final consideration. And at the same time, as San José is going through this process, other jurisdictions which have been participating in the plan are also going to their respective hearing bodies. Those other partner -- other jurisdictions are referred to as the local partners. They include San José, the county, cities of Morgan Hill and Gilroy, the Valley Transportation Agency and the Santa Clara Valley Water District. I mentioned earlier that this was something that was negotiated between these local partners as well as the regulatory wildlife agencies, the U.S. Fish and Wildlife Service, the California Department of Fish and game, national marine fisheries service. We've had the strong consultant team working with us on this process and there have been a number of community stakeholders, as well, who have been actively participating

through a series of meetings over several years. The plan is longer than our general plan and longer than the general plan update process was. You can see it really goes back to 2001 when we had this federal agencies saying that this is something that we should do. And it's really been fairly actively worked on for about four and a half years. But even you know, the signed MOU wasn't in 2004. It's been a long time and a lot of work has been done to bring this forward. Little bit just in terms of the plan area. As you can see the red line the boundary for the county, the cities that we mentioned earlier. It doesn't include all of San José. The very most northern portions of the city are outside the planning area. It doesn't attempt to address impacts in some of the wetlands area. And then you'll see in green some additional areas outside the plan area, but those are referred, referenced in the plan as areas to look at for mitigation purposes for the burrowing owl in particular, this sort of extends from Newark to East Palo Alto that we have identified additional areas to acquire for the habitat under the plan. These are just some of the species the plan covers. There are nine animal species, as you can see, and there are nine plant species. Many of these are related to each other. They share some more habitats and there's some benefit to addressing them collectively in that regard as well. Talk a little bit about what the plan covers. It doesn't cover everything. But it as mentioned earlier it's a 50 year term allows take of endangered species. Could mean in some case relocation of some of the species or plants or et cetera, or could refer to impacts upon the habitat that they occupy but those are offset by mission measures as mentioned. And it covers both public and private activities. In the interest of the Water District for example, or the Valley Transportation Agency that both have activities that are covered through the plan. It doesn't include small activities like remodeling of buildings. As you'll see there's some activities there that are kind of out of the plan coverage. It doesn't approve any specific new development. And this is a diagram that sort of highlights some of the geographies that are not covered within the plan area. In sort of the brightest-green area you'll see there are some areas it says rural development is not covered for San José that includes the Coyote valley greenbelt area. And then you'll see that some of the sort of outside the city but within the county some of the more rural areas are not covered as well. So one of the main objectives of the plan is to create a reserve system of approximately 50,000 acres of habitat that benefit the species that are addressed through the plan, that are acquired through a variety of means. There is not eminent domain as part of this so it's from willing sellers or from lands that are already under government or other nonprofit agency control. In addition to creating the reserve system the plan also looks at wildlife corridors and climate change issues. Some other parts of the plan it does address restoration of habitat area. And then, there are actions in the plan related to how

to build up those covered species populations to get them into a more sustainable level over the long term and that includes ongoing monitoring management activities, one of the benefits of having a plan like this is that where, if you didn't have a sort of large comprehensive plan to address species impacts and you're doing it, addressing them more on a project-by-project basis it's hard to have that long term commitment to making sure that the species are cared for and benefit from whatever mitigation is imposed upon a project. So this is one of the important features of the plan. This highlights some of the areas that have been identified for acquisition over the time frame of the plan. And so the question is, you know, how does one acquire land for the preserve system? Well, a lot of that is through collection of impact fees. The covered areas are divided up into different zones which have different fee levels associated with them. There are also some specialty fees out, sort of reflect here on the fact that the planning is brought forward in draft form about a year ago, to Planning Commission -- about a year and a half ago to the Planning Commission and city council for review and input. Some of the input that was received at that time was to reevaluate the fees to really focus on equity as well as the overall amount of the fee. So over the course of the past year the plan fee structure in particular was revised partly by scaling down the plan to bring down the fees but also by sort of looking at these specialty fees for projects that really had greater degree of impact pay greater fee while projects in general would pay a lesser fee and still achieve the overall goals of the plan. So you'll see there under the specialty fees there is a vehicle emission fee that sort of addresses the issue of pollutants coming off of cars and the impacts they have on habitat areas. There is a serpentine fee for projects that disturb serpentine soil, which is a very important habitat. There's fees related to western burrowing owl, which is again a species of particular concern in the area and there is riparian wetland areas. This shows the fee zones. As you have seen most of San José is in actually is in this dark gray area that is shown as fee zone D. Current draft of the plan, it just doesn't have the name zone D attached to it but it's the dark green area, fee zone C that is in San José that represents sort of remnant undeveloped agricultural lands that are in the city's limits. Working backwards is C is developed agricultural lands and B is developed grasslands in the plan area. Zooming in on San José, you'll see the pink line representing the City's urban service area, the planned growth area, most of the city is in -- identified as urban sites, that would be -- projects in that area could be subject to the various specialty fees, definitely the nitrogen deposition fee which is the one that deals with the vehicle emissions. You have the vacant sites less than ten acres are in that zone C category and then San José could have projects you know within the other categories as well within our city limits. If we have an agricultural site

that's greater than ten acres, within our city limits, that is through development that would be in zone B. So talk a little bit about how this is going to be implemented. The local partners, that have permitting authority, which are the three cities and the county, are going to be creating a joint powers authority that will be responsible for implementing the plan over the term of the plan. It will have a governing board which has members from each of those eight agencies and then we'll have an implementing board which is a little bit broader that includes the Water District and the VTA as well to help guide the implementation of the plan over the time. And so talk a little bit about some of the benefits to the -- to having this plan, as the staff understands it. First off is that local authority, one of the main objectives here is that by negotiating in advance with the state and federal agencies, an acceptable mitigation program by their standards, then they are handing over to the City's local partner the ability to move forward with projects without needing to go through their -- the negotiation with them. We've talked about how projects have the ability to opt out of the plan in some cases and that means that they would go off and do those negotiations independently with those state authorities and federal authorities. In the case of projects that are going forward as being covered by the plan they should be able to go through the local permitting process as long as they abide by the plan, everyone has agreed that that's acceptable. A consistency over the one thing we've seen is over the last 20 years or so the mitigation for these different species has changed over time. It's generally increases in terms of the requirements that would be imposed upon a project. And by having this plan adopted it may set a higher level now but over the term of the plan, we know that those mitigation requirements will be, so it gives a lot greater degree of certainty to property owners. Being able to go through the local authority saves time, sort of the negotiations have been on an advance. And in some cases it could be economically beneficial to property owners that they can just sort of write a check instead of having to stay on the greater individual responsibility for implementing, overseeing mitigation measures. For example, if a project had an impact upon a protected wet land area that could be a really complex thing for a property owner to have to address over the long term versus being able to turn it over to implementing agencies to take care of. Some of the other benefits, it is a way to address the cumulative impacts of development upon the species. As you know, under CEQA, projects of different scales, some might have greater requirements placed upon them. Smaller projects often get through without maybe having a contribution to mitigation measures. That's why there's sort of an equity in that everyone's participating in some way. There is really just the benefit of creating these preserve areas, and the goals that are stated in the plan they're followed through of promoting the species that are of

concern. Talk a little bit about things that are of interest in San José. Burrowing owls, mentioned earlier it's one of the -- we have a special habitat, specific habitat areas have been identified for preservation. There's a special fee associated with that. The priority around those is North San José, bay lands area first, but over the long term of the plan, there's a goal to also help reestablish those populations in the South County areas. This is a diagram of the regulatory components of the plan, related to burrowing owls. And its complexity is a good thing in that it reflects the negotiations that have gone on, between the local partners and San José in particular, with the regulatory agencies, to make sure that there's flexibility in the plan to address different situations that not all properties are equal in some regards. But we also, again, want to you know, have an agreement amongst all parties that we are going to look at how to take care of the owls. So this is an aerial photo, the yellow line showing some of the areas that are sort of the buffer around what's been identified as owl habitat. This is north of 237, owls have been observed habitat area, and similar one around the airport, populations around the airport some of the vacant properties in North San José. And one result of having a plan like this is in the past perhaps if you were lucky and the owls were on your neighbor's property you didn't have an issue. But if you were the one that had the owls you would bear the cost. And this really is sort of creating a larger bubble of or zone of properties that would be participating in some way and sort of sharing the cost if you will. Looking at a specific site where recently an owl population has been identified, two owls on the site, the plan has this sort of 250 foot buffer standard in it that says that you know there should be no construction activity within 250 feet of occupied burrow. And even past regulations, most recently have generally allowed for relocation of owls, passive relocation of owls during non-nesting season. That means from September 1st through March, sometimes, that you could close a burrow while the owls were not at home, so to speak and when they came home they would find their burrow had been closed and they would go off, in many cases they may have multiple burrows or they may move to a different one. Tracking of the owls has shown that they will move around within about a seven-mile area so that it would presumably relocate. But the fish and game has said you know it has come to a point where they no longer support that type of measure so they're looking for more stringent requirements. Going back to that flowchart, one of the things that says is that you know it recognizes that a site like this which is in sort of the middle of the Silicon Valley portion of North San José, isn't necessarily anyone's idea of long term of where owl habitat should be, that it's not the best place. And so there is some provision tied to how the overall owl population is doing, to, again, kind of go back in terms of being able to do some relocation, passive relocation or other

measures in this case. Tied to how you know the big picture of how are the owls doing. So that's the importance of the negotiations, that's one of the things that took place in the past year in particular sort of following input we've had in the past. Talk a little bit about riparian setbacks. That this is a plan that will bring in a comprehensive set of riparian setbacks. San José has been a leader in this area in terms of having our 100 foot riparian corridor said back goal policy for some time. The plan has similar numbers in some cases but it has a more complicated formula that follows bringing you know greater setback for some of the more rural areas. But generally, there's enough consistency there for us to work with. So with that, that was a fairly quick summary but just open it to questions, and discussions. And comments. Thank you.

>> Commissioner Bit-Badal: Thank you for the presentation. We have a question from Commissioner Kline.

>> Commissioner Kline: Thank you for the presentation and I want to thank also all the staff that have been working on this for 11 years, short or long term project and I actually remember it had different capacity six seven years ago in Saratoga and VTA. And it's an interesting project, because it's kind of an odd duckling, to a certain degree, what we were asked to do in the EIR, on a non-project, it's almost doing the EIR on the general plan, kind of a very consistent type of approach, where we are doing something that doesn't exist yet. So the question to staff is what is our borderline? Obviously, some of the properties don't nexus in San José, they are in Gilroy or Morgan Hill or the county, some of these issues don't have nexus for us here in San José. So we're asked two things. We're asked to certify an EIR but we are asked to approve the plan going forward. But in the report it says there are certain limitations for instance, it says, the habitat plan which does not fall within the purview of the Planning Commission. Not clear about what that means. But then again down below it says the implementation ordinance is being forwarded to the Planning Commission for recommendation because its adoption is the means by which the plan gets implemented. So the question I guess is, how much do we comment on the actual implementation, the JPA, the issues involved in the JPA, versus just EIR? I mean, are there limitations on us or do we put our legislative hat on and throw all the opinions we have at you?

>> I'll start with, so I apologize if it wasn't clear in how it's described is a little bit complicated because in some cases like the general plan, you're actually adopting the general plan. And in this case what's coming to you will

be an ordinance that adopts the plan by reference. And there are some financial actions that are taking place that staff's decision was, were really not under the purview of the Planning Commission. And we tried to focus the Planning Commission's attention on things that relate, would relate to land use and to projects, in the future would be coming forward that through CEQA process would be making use of the plan. So that was our intent, in targeting, I would defer to others in terms of you know, how much latitude you're free to take in giving comments on other aspects of the plan. But there really are -- the point for us would be to get the Planning Commission's recommendation around those items, the ordinance change.

>> Commissioner Kline: Thank you, that does clarify it a little bit. But to clarify it a little more, obviously the implementation section is part of the plan. Therefore is it allowable to make comments about the makeup of the JPA, the powers of the JPA, can it change things in the future on its own without coming back to the participants? How much flexibility because obviously we're approving a plan that is 50 years, it's a long time. We don't know what's going to go on 50 years, no one knows. So that JPA is going to have enormous responsibility in implementing a plan that we are actually approving. So are we allowed to basically walk into those issues?

>> Yes, I think that's a good point. You know certainly a part of the plan is its implementation. So to the degree that the Planning Commission sees concerns or wants to provide guidance around how to successfully implement the plan I think those are appropriate comments.

>> Commissioner Kline: That's fantastic. That's what I wanted to hear.

>> I would say that they're included, too. And if you have any questions about why the form of implementing entity was chosen, for example, I'm more than happy to address that, address that concern.

>> Commissioner Kline: That's my next question. Great. Having been on many, many JPAs in the valley, I know in issues that the JPAs are a great instrument, they are just incredibly valuable for certain instances. You have a bridge between two cities, JPA makes a lot of sense. You have a sewer line running between two cities, you can get economy of scale, makes a lot of sense. Some JPAs don't make a lot of sense, though. Sometimes they are

misused for other purposes. JPAs are usually used between two cities with a joint resource like a bridge or a sewer system. Or to get economy of scale. This one doesn't quite fit that. It's kind of an odd duckling to a certain degree but I understand why it was chosen so I've got a couple of questions on the JPA. One, and you can answer them one at a time if you want to but we can go through this. Why is there two boards? Because it does seem to be a conflict to be --

>> I can answer that pretty easily and I think Joe and Ken can too from the audience. Let me pull back a little bit if you don't mind to give you a little bit more background. We didn't know who would implement this plan. A couple of years ago a bunch of attorneys and people on the management team decided, and these are people who represented all of the agencies, that one of our main problems was who could levy fees? And there are only four jurisdictions out of all of the agencies that were involved in this planning effort that can actually levy development-related fees. And that is the county and the three cities who are involved. So that is why you see us on the governing board. And that's why you see two members from each agency. We were trying to be fair, who would levy fees. We struggled with the situation where, had we left each agency alone to adopt fees, the fees would be different in each agency, and potentially not sufficient, and create disagreement. So we would have rather had one agency where all of the agencies that can, all of the local entities that can charge development fees would have to struggle with how much is a reasonable fee, do the same fee study, do you know take a look at the fee structure every few years and decide what appropriate fees would be to support this plan. If it were left to individual partners, that would probably not happen.

>> Commissioner Kline: That's clear. I just got a quick question why wouldn't VTA and Santa Clara just not be on any of the boards then you just simply have one board?

>> Well, the Water District does not have the fee-levying authority so they couldn't be as a result of that because when you form a JPA you have the powers of the least powerful member and so they had to be out because they could not levy development-related fees. But they still wanted to have a say in this plan because they have so much involvement and will be paying a lot of fees and many of their projects are huge like the Anderson dam project like a number of the other projects they have that impact wildlife species. So they wanted to say, and

deservedly so, which is why there is also the implementation board, which includes them and VTA. VTA wasn't interested VTA wanted to pay a check basically but we wanted them to have one rule and that's why they have a minimized role of one member only on the implementation board. But that's how we layered the JPA was to attempt to address the powers that the agencies had. Or the lack thereof. And then how much input they needed and where, in terms of how this program would be implemented.

>> Commissioner Kline: Yes I remember being on the VTA board us actually not wanting, hesitantly dragging into it, better way of hesitantly being dragged into it, because obviously the VTA board doesn't give permits, fees, et cetera and Santa Clara Water District actually doesn't either, but they have a lot of projects, so they really want to be involved in it. It's kind of like the fox protecting the chickens and the hen coop to a certain degree. They want to have an impact on their own fee structure, and I understand that. But it would have been much simpler just to have one board, and those two not being on the JPA, it would have been clear that this does break the kind of the golden rule, having one boss. Who does the director report to? What happens when the two boards, which often happens in JPAs, different parts of JPA, disagree with each other, dramatically disagree with one another, and where do you go from there, and what's the escalation path, and who does the director really report to? And all those governance issues become a mess on this type of environment, and we see this at VTA with PUC, with the PAC, the -- well, we won't get into those things. But different groups that politicians and staff have strong opinions on these issues. And they will dramatically be different. So I'm just kind of concerned with that this may create a conflict.

>> Well, here what you're going to see, and to correct the implementing board slide here, the governing board is eight members with two electeds from each of the four -- you know the county and the three cities. So there is a balance there among them. They're going to have their disagreements, they may agree sometimes, they may not agree. Whatever happens, happens. The implementing boards that make some recommendations to them is 11 members. But again, this has two elected officials from the county, the cities and the Water District. It is not, it's actually one elected and one staff member.

>> Commissioner Kline: I understand that the implementation board actually doesn't recommend to the administration, but the implementation board really has power to execute things.

>> They do, they do.

>> Commissioner Kline: Not just recommend. It's a real powerful board, as a matter of fact the way it is set up, it seems like the governing board is one that will meet very infrequently, and it basically -- it kind of insinuates it, it will give most of its power to the implementing board, and simply hire maybe the director and pass the budget and --

>> That won't be true at the beginning. They're going to need to meet quite a bit the first year to set up what they need to do. So we're expecting quite a bit of work, particularly the first year for the governing board. But with the implementation board, the implementing board, what you notice is, you have two members, eight of the members, it's eight of the 11 members are from the county and the cities that are already represented on the governing board. So really, the Water District and the VTA representative those are only three members on that board. They don't form a majority. So it would be really interesting. I think what you're going to see is that they're going to have input but they won't be you know necessarily directing the work but there's a possibility there.

>> Commissioner Kline: It's really interesting that on the JPAs that I have been on the board, is that usually it is not a gang of San José versus whatever. But people do have strong opinions, and they do somehow form these little interesting or time cliques opposing.

>> It is, you know, none of these are going to be a perfect solution. I think one of the other concerns that we brought to light though is not one single agency wanted to have for example a fee challenge or the way that something was implemented challenged against them. So this is also the way to pool resource in the event of legal challenge of the plan or in the event something happened you know that it could continue, and that all of us could pool resources.

>> Commissioner Kline: I have been on JPAs and I know this is going to come up in other agencies, and I just wanted to put that on the public record.

>> Joe Horwedel: The last piece I'll add onto it, this was a significant discussion point really for about a year. That there was concerns about you could theoretically have the two JPAs litigating against each other. So that is part of the thought process as we've worked through this, is to how to avoid that. But it is you know recognize there are these two groups that the governing board theoretically is on top but really as you note most of the day-to-day work is going to be happening with the implementation board which is subservient but really is going to be where the meetings are going to be happening, I think the real work happening. But it is important the governing board, the other reason why the fee stuff sits there is that is the board that will also deal with the consequences of the plan not achieving the financial targets. So if there's not enough money to go through and pay for all the things in the plan, that is where the rubber is going to hit the road with the same individuals that are sitting the fees. And having --

>> Commissioner Kline: That's the in which question was having the fee structure and the governing board. The governing board is two entities of each of the cities, county, et cetera. And JPA has a very special capability. It has a special capability by not abiding by one person one vote. Because they are appointed you can ignore all the history of the United States and democracy, it goes out the window, doesn't apply. You can have one person representing a million people and one person representing 10 people and that's legal under JPA. Now again, the issue comes up as we have seen before on MTC, VTA has certain issues too, about proportional representative, is there an issue here where the govern board only has two members from San José, possibly -- well for sure two from Morgan hill, two from Gilroy, possibly that's one from the county who is representing the South. Doesn't it seem kind of odd that even though we're supposed to be taking hats off, you JPA members are supposed to be taking your city council hat off, put your JPA hat on. In practice, that doesn't actually work. If we all know that, in practice, they will vote the way their constituents want them to vote. And if there is a conflict between the City of San José and the member of the City of San José and the rest of the JPA board, that that could be just swallowed up in the number of votes. That the interest of San José becomes insignificant.

>> Joe Horwedel: That is a potential challenge, my memory was as part of the structure of how the decision-making is put together, is that we have built this around essentially four green lights. You know, that everybody needs to agree as opposed to split votes to go through and drive the decision-making of that this plan. It's very much around you got to bring everybody along. Even this document here tonight is a result of a lot of compromises. Stuff that San José may not have wanted in there, for what other things are doing. But it is moving the plan forward.

>> Commissioner Kline: I see the majority vote isn't in here --

>> It is.

>> Commissioner Kline: It is in here?

>> It's a huge blanking act, even though we are 1,000 population, in that area, so much less is coughed by this plan, what are the impacts by the other organizations. So for example, one of the tensions was, why is San José paying so little per vehicle trip, for NOX emission fees, where we have people paying \$30,000, \$50,000 an acre for rural development out in the county. So there is a huge balancing act in terms of benefits and burdens here. And so you know, some of the say for example for south county and for the county itself, for those jurisdictions is that some of their development will be paying a very large fee compared to the small fees on development in San José, even though more numerous. So there is a very big balancing act here, and so that was something that why we came up with the regular fee studies that need to occur to make certain that someone's not being overcharged, undercharged, or whatever, and we're trying to really keep that balancing act. Because you know we're complaining why are we paying this fee? Well, so are others. And so we needed to come up with a good way of doing that.

>> Commissioner Kline: Last general question before I go into specifics. That's a joke, before I go into specifics. A JPA has its own authority under law. Once it's quoted it is no longer at San José, it no longer is in Sacramento. Once it's created and what restrictions do we have on the list of species once it's created? Can't

they just change the planning, can't they simply add more species to it, can they simply add -- or is this a contract, but the JPA doesn't exist right now, so how can we make a contract with an agency that doesn't exist? So how do we limit the JPA to the plan, while giving it flexibility to obviously change it, because it will have to be changed in the next 50 years dynamically, and what process is that? Because I didn't see a lot of that here, it's more like, well, we'll all get along. Actually, I saw that statement, "we'll all get along."

>> This plan is implemented through an implementing agreement with the wildlife agencies. It has to be signed not only by every jurisdiction who is a local partner, it also has to be signed by the implementing entity. So that implementing agreement will not go into effect until all of us have formed that implementing entity. The permits for the incidental take will not occur until all that happens. So the wildlife agencies are looking at this as a contract. Additionally, we have a memorandum of understanding among all the local partners, in addition to this implementing agreement, that -- we kept the implementing agreement with the wildlife agencies fairly bare bones to what it needed to be legally, but we wanted to be able to play together well. And so we attempted to come up with an MOU that would satisfy everyone's concerns, which is another thing that the city council will be asked to you know authorize and approve.

>> Commissioner Kline: That sounds great. But my experience in the last 20 years in planning with cities and counties and VTA is that we don't play well together. As a matter of fact we disagree all the time. I'm concerned that we're creating another agency another JPA and we'll have a similar one.

>> Future and to address how -- what the concerns are. Now it is hard to change this plan. It will be hard to add experience, it will be hard not to comply with it because the wildlife agencies are looking at this contract in terms of what we do in order to maintain their permits. If we don't do what we're required to do under this plan, they can pull those permits. One of our remedies is, if this plan is not working is to give up the permit to the wildlife agencies and just you know just say we can't do this anymore, we're giving up the permit.

>> Commissioner Kline: I remember when I liked the continued goal of this plan, I thought it was a great plan. My concerns are over the technical implementation of plan. A lot of it was cost and the assurance of cost, if

you can escalate it out, some of the mitigations that happened last year brought a lot of the costs down, but it doesn't seem like there's any really checks -- it could go right back up without any particular check on them. Fees can go up, it seems like, state agency and federal agency doesn't really care about fees. They can go up, the cost structure can go up. And what limits this JPA to keep its costs low and keep the fees low? Where these businesses that just happen to be located there are not in a competitive disadvantage of other parts of -- what's really in the same county? This is not a regional plan, this is a subcounty plan, how do we make sure that they are not penalized just for having a piece of property that happens to fall within the study area?

>> Joe Horwedel: And that's where it goes back to having the elected officials from each of those four agencies that are accountable to the property owners, the citizens in those areas to really do their job about balancing that and not aim too high or too low.

>> Commissioner Kline: That's my main concern with creating JPAs. My experience is that a person elected in Cupertino, a person elected in Saratoga, who gets on a JPA, like VTA, which is a partial JPA, their constituencies oftentimes don't relate their vote to what goes on a particular JPA, which is maybe not even located within their area. If a VTA member happens to be from Cupertino, and gets on this board because they're a wildlife fanatic, which is great, but their Cupertino constituencies don't really make that connection, and there's lots and lots of instances like that where it doesn't go back to the constituencies, so they're pretty much free to vote any way they want to.

>> Joe Horwedel: Well, I think the one difference that will be here is that the dollars are real, and that they are coming from people that are usually standing in front of those same councilmembers for their development projects, and having the discussion about what is the cost to do that development and how it compares. It is a very sensitive issue with our council. We've spent a lot of time around that issue and it's the same issue that both it may take their single family home development and make it non-cost competitive with other parts of the county. That is something that the marketplace will kind of work itself through on and partly why the split votes I think in Gilroy about their plan and whether it achieves their goals or not. The last piece I will put on it is, this plan originally started the goal of being a county wide plan, and for the exact reason that you mentioned about having

communities that really are not into development mode, they are in the anti-growth mode. At the time we started this, we were working in Coyote Valley for Cisco, and we really did not want to put San José in a position to having north county communities telling San José what we could or could not do with land use. And that is why we specifically did not include that. That is something that we continue to look at of how some of those issues that those then communities create impacts here of air quality, of how we deal with that. But it is one that when you're the built out, you know, the issue are very different there in Palo Alto than they are in Morgan Hill.

>> Commissioner Kline: I do have specific questions about the actual EIR, but I've taken up enough time, so I think I'll hold them for later.

>> Additionally, Morgan Hill and Gilroy were fairly late-comers to this. They came in I want to say about four years ago or so and were added in as local partners later into the process because some developers in those communities were saying we can't develop because we are stuck in this dozen-year process with the wildlife agencies and can't get permits from them. This will really help our project move forward. And they flip flopped a little bit on that, they decided to try to go on their own. It hasn't worked. They've come back to the plan. It just depends on where people are in the development process, but that's why they joined.

>> Commissioner Kline: Gilroy went off the plan for a short period of time, and then came back on. Thank you very much, I appreciate the answers, they were really good.

>> Commissioner Bit-Badal: Thank you, and we have Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Just following up on that issue about Gilroy. Is there a provision for partners to leave the JPA and if they do in the next 50 years, what kind of implications does that have on the plan?

>> Joe Horwedel: The plan does allow any of the local partners to leave the plan on a 90-day notice. It would cause us to have to go back and look at the implementation of the plan. Some partners, it would be a big issue,

others, it would not be a good issue. We would have to kind of adjust, but it would be manageable. I think like if the county left it would be major, because of the amount of county-owned lands that are proposed to go into the reserve system to provide the habitat for the plan would be a pretty significant hit. If the Water District was not in, a big hit. If we weren't in, I think it would be a big hit. But if Morgan Hill or Gilroy individually dropped out, it is not individually I think a big impact to the plan, but it would be a significant impact to that other city, since both of them have a shared sanitary sewer plant that is needing permits from the federal agencies and state agencies, to which this plan would help cover. So they kind of are tied together, and I think that's why Gilroy came back into the plan after they left.

>> Commissioner, I haven't looked at that portion of the plan in a long time, but it was one that the group noodled over quite a bit. And Ken, I don't know if you know more about that provision than I do right now, but my recollection of it is, and I can clear this up for you before the next meeting, is that particular partner who wanted to leave would have to pay in advance the costs of all the benefit they have received today. And so that could be very prohibitive. So they're not going to be collecting fees perhaps you know, so you're uh looking at it on a larger fiscal. They would have to come up with those moneys and make the JPA whole for what they have already received.

>> Commissioner O'Halloran: Okay, thank you. I have one other question in the staff report, and you may have discussed this at previous study sessions, but on the issue relating to the scale and cost, this is on page 7, that the total project cost was lowered from 940 million to 657. These costs were lowered by reducing the amount of development covered by 30%, resulting in a smaller reserve system to fulfill species protection. Could you just explain to me a little bit more then about what were the implications of having that reduction in terms of protection of species?

>> Joe Horwedel: So let me first start about how we got to the original plan. When we started this effort, because this was going to be a 50-year plan, we talked to each of our counterparts in our agency. So we talked with Public Works, transportation, environmental services, and each of the cities went through and did that, saying what would we like or what would we think would happen in 50 years of the type of projects, development projects,

capital projects, that full list, put it all up on the wall and said, let's go analyze it. When we got the price tag back, it says \$1 billion, we say okay, what do we really 30 is realistic. So each of us went back and started peeling thing off of that list and said mid Coyote valley for example do we really think that's going to happen in the life of this plan, we amended the general plan to take this out and we pulled it off the list. The county looked at their assumption for single family houses out in the foothills. What was the footprint for septic tanks, roads, building footprint, originally they had a number five acres, stick a number, they looked at the size of projects, it's really three and a half. Things like that we went back and fine tuned the estimates for what we really thought we needed coverage for, let's go mitigate that, rather than a moor optimistic number that would incur a lot more cost that really there wasn't a benefit. The other things we also looked at were some of the species. Originally the plan was intended to cover fish and this was really an issue in south county in the watershed that flows out to Monterey bay. The Water District was doing some improvements out there that into the plan required conservation and recovery of those species not just mitigation. The recovery on those future fish had lots of zeros after the number. And in looking at it, we said we really can't afford to include that species. While we would like to the cost benefit is not there so we took it out. Golding eagle came out of the plan. Things that might once in a while affect one property or ten properties we said really it's not worth it to do it they can go that property or that project we'll deal with it by itself. So those were a lot of cost there. We also looked at a lot of assumptions about how to implement the plan, how much staff was going to be working for this implementing entity, what kind of facilities they needed how much was contract versus full time staff we looked at the types of improvements how many bridges would you need to build across creeks to provide maintenance to all this land. We tightened that up and lastly looked at the rate of return, pensions 7% and all that. We had a really low rate of return, we think it was 1.7% rate of return of money over the 20 years. We looked at that and said it was artificially low. By putting that to 3 or 3.5%, that took a big chunk out of it, also, of what it takes to have an endowment to be able to run this land forever. We are not projecting a 7% return, I think that would have been wrong. But we did come back and put a rate of return that we thought was reasonable, you know, over that 50 year time frame, and through all of those we were able to take about \$300 million out of the plan.

>> Commissioner O'Halloran: Good, thank you very much.

>> Commissioner Bit-Badal: Thank you and I do not see any more speaker lights up. I would like to actually -- oh, now we do. Commissioner Kline.

>> Commissioner Kline: One of the recurring complaints in the plan, seems to be the costs borne by people who bought property on purpose not to have burrowing owls or other environmental issues. Species issues. And they're being charged as if they did have it. What's the response to that from an equity point of view? You know a person basically buying a piece of property, oh I don't want to buy that property because I know it has burrowing owls, I will buy this one because I don't want to do that expense, and all of a sudden, whoa, I got the expense.

>> Joe Horwedel: The owls is probably the one that is the most relevant, too, because serpentine doesn't move, and then the riparian pretty much doesn't move. The thought really was, that over the years, we have had property owners that have exhibited bad behavior. They have disked their property to go in and kill owls. Gone out in the middle of the night with shovels to go in and fill in burrows with or without the owls still in them. So the structure that if you picked wrong, or that you know, the owl that week decided to go through and move into your property, you ended up on the short end of the straw we really did not want to reward people or encourage people to exhibit bad behavior. So it really was all things being equal are the properties equal in habitat value? And if so they should equally share in the cost of helping preserve the owls. There still is an extra hilt if you have owls on your property is one of the things that is built into the plan, we talked about the passive relocation. For properties that will not fit through the exemption that Andrew talked about, until the owl population achieves a recovery number that, that number grows every year because there's an expectation of growing population, you are not allowed as a property owner to relocate you know build in that 250 foot area. So there still are some restrictions that would hit a property owner that has owls. But we really wanted to level the playing field so that by look of the draw, ground squirrel moved in and started digging holes and an owl popped in there, we didn't want somebody out there killing ground squirrels to prevent owls from showing up.

>> Commissioner Kline: Thank you. Last question. We mentioned some issues about leaving the JPA. I view this as a forever decision, these JPAs don't go away, they never go away. Once you make a decision you're in it. So taking a long time to do it is okay and doing it right is okay. But since it's a forever decision we really have to

make sure governance is correct. And the implementing board again is interesting because of the makeup of the fact that you could have a majority of nonelected officials on the implementing board, which is interesting. And have we ever seen an example like this before? I mean MTC is a little bit like it. Have we ever seen any implementation like this where you have so much power doing policy, it's implementing but it's implementing policy, any best examples like this in the state or nation that actually does it in way?

>> Joe Horwedel: Well, the implementing board would never have a majority of nonelected.

>> Commissioner Kline: The VTA can appoint a nonelected can't they?

>> Joe Horwedel: I think the first position always has to be elected. Yeah, they only have one but it has to be elected.

>> Commissioner Kline: Of the two board members it has to be elected but VTA is not counted.

>> Joe Horwedel: They only had one position and the way I read that was it has to be elected position.

>> Commissioner Kline: The elected Frank Barnes can't be.

>> Joe Horwedel: For the others, the nonelected could be, that's one of the things it's an interesting kind of dynamic. Partly we did that just recognizing the commitments it takes to go and participate and we wanted to make sure that there is really active participation on the board. And it's one of the challenges we see with you know things like the regional board and MTC were while you may have elected officials that have positions, is the ability to actually be in those meetings and really fully engage in those discussions. So that I think is why that was put forward as a way to make sure that we had you know really 11 members actively engaged consistently in those meetings.

>> Commissioner Kline: Some of these organizations like an MTC comes to mind where you have a person on board there for eight, nine years and they get unelected, it happens, term limits et cetera but they stay on board even though they're not an elected official or a staff member anymore, because they built up expertise. Another question is these JPA members since they're members of a JPA will they get additional fee, stipends, like 256 or \$300 a meeting or anything like that?

>> Joe Horwedel: We are not trying to be the Water District.

>> Commissioner Kline: Any limitation why the JPA can't do that?

>> Joe Horwedel: That I don't know. It's a good question.

>> Commissioner Kline: I imagine they can, because I've got insights like that. So it is an independent organization, they can go out and rent an office, buy an office, pay their JPA members anything they want, basically.

>> Joe Horwedel: And that's part of where we spent a lot of time about the structure or how the JPA actually functions. In part of what we had built in was the expectations of not creating a full, stand-alone organizations, that you know has its own HR department and everything else is that this is a --

>> Commissioner Kline: It will though won't it?

>> Joe Horwedel: That's part of what and how we're setting this thing up, of looking at how we contract in for pieces of the service delivery, to not have everything duplicative. That's been a real concern of our elected officials in creating this. I think it's a fair observation is that it is going back to the cost piece, to the extent it becomes a stand-alone empire, is that that is a vehicle to drive cost.

>> Commissioner Kline: The other is escalation of conflict. If there is a problem with either two boards or with one of the entities who's building it, it had reference to the escalation path but it looked like it was pointing to 6.2 which didn't exist. What is the escalation, do you just go to court, or is there a way that a superior body can mitigate a conflict? San José just pretend has a real issue with the pricing structure that they just came out with and just won't stand for it, what do you do?

>> Good question. I guess you exercise your vote on this board and can a city sue the board for acting outside its own authority? I suppose it could if it were acting outside its own authority and that would be the case that you would have to make. We do have, though, in one of the documents, and don't ask me which one right now. It may be in the MOU. We do have a section that deals with resolving disputes among the different agencies.

>> Commissioner Kline: I tried to find that. Actually it was written in there and it was pointing to a section that didn't exist. Or I couldn't find it. I just want to have you make a note of that. I don't want to harp on JPAs, but you know, JPAs are an amazing instrument. There are actually trade shows for JPAs in the state. There is a state organization for JPAs. The JPA Organization, it's an amazing organization they've got going on, and once you create these things they kind of take on lives of their own regardless what the intent was. So I'm glad we're taking our time to go through some of these issues on the record. Thank you. I'm sure you'll find that section for the next meeting by now.

>> Well, Joe thinks it's in the implementing agreement, I think it's in the MOU. We'll take a look and we can respond to that at the next meeting.

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

>> Commissioner Abelite: I don't have questions at that level in terms of the organizational structure but I like the idea of asking questions about implementation and how it kind of works. I remember in the study session about a year and a half ago, Darryl Boyd was asking, like me, do we have any examples where he could benchmark what this plan would do versus real projects and what they've experienced. But I'll get to that in a minute. My first

question is, are there other HCPs somewhere in the state of California, and were they used as a model to build this one, good and bad?

>> Joe Horwedel: So HCPs are becoming pretty regular around especially Northern California. The consultant that put together ours put together East Contra Costa county, one of those the area of tremendous growth in Contra Costa county, San Joaquin county adopted theirs a number of years ago, that accommodates the development that's been going in San Joaquin count as you come down 580. At this point there are a number of them underway in like Solano county, Sacramento County Yolo county for plans here, in the Bay Area, have had I think the first HCP was done up on San Bruno, mount Bruno, San Bruno mountain there we go in dealing with the butter flies there. PG&E has had HCPs to deal with their utilities across county, multiple county areas. So they do exist in a number of forms, number of areas of the state.

>> Commissioner Abelite: Thank you. And so one of the -- I guess one of the big benefits for private development here is I'm assuming you know in some cases in the past you would have to do your own EIR. But if there's enough mitigations and they're covering enough of these larger sensitive issues like these species. I assume that one of our benefits is we are not going to be doing as many EIRs but rather doing I guess mitigated negative declarations citing the HCP as being the mitigation.

>> Joe Horwedel: That's correct. And it's -- the goal would be is that you would have the biologic mitigation dealt with, with the HCP and the NCCP. The one thing I will note that's different about the Santa Clara County HCP versus what is going on in like East Contra Costa County, San Diego county multispecies plans, the stuff around Sacramento, a lot of those plans were built to facilitate tremendous amount of development, urbanization of rural areas and agricultural lands open space lands and kind of rolling out subdivisions. In Santa Clara County we've had a very strong urban containment policy for 30 years. And so this plan is not built to go through and pave the hillsides. It's not built to go through and kind of fill in all the south county. It does accommodate growth in Morgan Hill and Gilroy but a lot of it is just recognizing even infill development still has impacts. It has air quality impacts, impacts to the water system. So it's a little bit different than those other plans. So it's kind of a little quirkiest from that end of it so it's not a straight comparison which sometimes people ask as well those other plans do it one way

and why don't you do it that way is because they're doing essentially a tremendous amount of sprawl with their plans.

>> Commissioner Abelite: Understood. Now I'm going to get into some detailed scenarios just for my own example background. So a year and a half ago two years ago we had this project at the Guadalupe mines about 100 units and I just wanted to know how, within -- and a read the plan and I know the answer's in there but I'm still going to, I can't connect it all and you guys have been on it for such a long time. How would that project work its way through the system given that it's already got hard pavement within a riparian corridor? So how is that handled I guess is the overall question.

>> Joe Horwedel: That's one of the things we're going to spend some time with the council here in a couple of weeks on the study session is to really drill down on the riparian piece. The original version of the plan I think would have probably let them off easier. And this is what we found with the first draft of the plan that the way the fee structure was set up and the requirement, it gave great deference to where you already had impacted areas like that. And where the developer would dedicate and create habitat in a riparian setback that we already required. Essentially would offset a whole bunch of other fees that they would essentially pay. And we saw that with the Ducat Way project that we did a cost benefit on. So that's one of the reasons the fee structure changed in this last year and a half, and the wetland fees got up to where they were potentially \$300,000 an acre, because we wanted to really put consequence to decisions to build in wetlands and riparian areas. I think on that project because it's an existing development it would not pay the acreage fees or impact, it would pay the nitrogen fee for air quality emissions based on the peak hour trips, the \$3.60 so essentially \$36 a house. There would be for the area that was less than the 100 foot setback, the plan does have an acreage, that \$300,000, that's a wet land fee, the riparian fee is less than that, but it would have an acreage fee that would get calculated. I think Andrew is coming back to that.

>> Commissioner Abelite: Excuse me even though it's hardscaped out to that edge?

>> Joe Horwedel: That's our read of that and that's how we're working through the 140,000 is to make sure that we really are in alignment around that because that's I think going to be one of the pieces. I want to make sure the HCP is not going to essentially unwind our riparian corridor policy. But there are some cases where the HCP would say the 35 foot setback is an acceptable setback and it is not intended for a situation like that where you have a thriving riparian corridor but it's more of those kind of channelized flood control --

>> Commissioner Abelite: Yeah, I'm assuming the creek was like a class 1 creek as opposed to the 35-foot class 2.

>> Joe Horwedel: Right, that's how I was treating it, would be that it would be treated as the prime riparian area, that we would be bringing that back, there is an expectation of having that full setback.

>> Commissioner Abelite: A completely different scenario, and this happened, 18 acres, Evergreen, 35 housing units. And got through all the entitlement and then found out that they have a seasonal wet land piece that was the size of this floor in front of us, that may or may not support some of these species that may or may not exist in a pond across the street. And that -- so I'm just curious what would be the mitigation for that case? In my opinion it was unfairly hit and it was a big hit and I just wanted to know what the formula was for hitting that?

>> Joe Horwedel: The wet land fee would apply if it's a jurisdictional type wet land, it would have that acreage cost, if that is 10,000 square feet, you would do the math of what that is proportionately to. And then for the larger site, depending on what that use is and the total acreage, so 18 acres, if it was ag land it would be at the \$10,600 an acre for those 18 acres. And that's where you're paying for impacts for tiger salamander, red-legged frogs that might be using that wetland, and the surrounding lands for their habitat for their life cycle. So it does account for that, and built into that is the nitrogen -- vehicle emission fee is built into that number.

>> Commissioner Abelite: Okay, thank you. Hang on. Let me just -- it's interesting when I got the plan I went through the seven stages of grieving, I got, oh my God, how am I going to read this, and then, well, I guess I

better start, and when I started to read, it got interested. And towards the end I really -- I want to say it's a great plan, I mean --

>> Joe Horwedel: The butler did it.

>> Commissioner Abelite: So I got through my stages, and I actually loved the plan at the end. I don't know all the details, I don't think anybody can, but I really appreciate the work product. So I wrote down five pages of questions.

>> Joe Horwedel: Sorry about the interruption. But the one thing I did forget to mention is related to the wet land, because one of the complaints we have heard from the development community is, you still have to deal with the army corps of engineers, you still got to deal with the regional water quality board. We are working with the army corps of engineers to get a regional general permit that would cover wetlands of less than a half acre, and that that permitting authority would move to the local agency, essentially we would have pre-authorization from the army corps to approve those. A half acre doesn't sound like a lot. It's actually enough to go replace bridges or build a bridge across the street, where you're spanning the creek. The amount of coverage is less than a half acre. Most of the activities we do in the City of San José are less than a half acre. We have got great progress there. The army corps is doing something new which they have not done here in the Bay Area but they have bought in to what's in the plan. They see it's a strategy that makes their jobs easier in achieving their goals. We've started that conversation with the regional board, I think we're a long way from getting agreement there but it is something that is important to each of the local partners as well as did development community to figure out how to get there, and so that's one even though it may be hard we're not giving up on pursuing, you know, bringing resolution to that.

>> Commissioner Abelite: So that is going to be within the boundaries of this jurisdiction?

>> Joe Horwedel: Right.

>> Commissioner Abelite: I mean, that's commendable, what they went through for 2300 square feet, and spending half a million dollars, was unbelievable.

>> Joe Horwedel: And that is, I think, the real value that comes out of this plan, is that it's going to be dealing with those situations, which is probably why the fee went up to 375, just to deal with the pain and suffering that goes along with solving those problems. Sorry for the interruption.

>> Commissioner Abelite: That's okay. Just generally for your Planning Department how much of an unload does this do for you in the long term let's say five or ten years out? Does it unload you a lot? I guess are EIR fees going to be lesser or they're probably going to hold?

>> Joe Horwedel: I think we will be doing less EIRs, one for having this done as well as the new general plan EIR that kind of have been written together. So I think that will help have less of those occur. There certainly is going to be more staff work to keep track of projects that are subject to the plan and making sure fees are collected, that the implementing entity is getting the information from us. So that they can do their yearly tracking. Helping educate our customers about how the plan works, and how to be successful with it. So I think in some ways we'll trade what we do from one kind of headache to a different kind of headache.

>> Commissioner Abelite: And I'm not suggesting we look at lowering, I just wanted to get a sense of planning staff load. If the plan goes the implementation sequence goes when does this really take effect? It's when the implementation agreement is really fully ratified, right? Are we talking about a year and a half out?

>> Joe Horwedel: July?

>> I think we're realistically looking at probably next June or July, is my understanding. We had attempted a couple of months earlier, but we decided we couldn't fulfill all the actions that we needed to in that amount of time, and so we moved it out to I believe June or July. And the way that it works under the implementing ordinance is two things have to happen for it, this actually to become operative is that we have to have the implementing entity

has to adopt the mitigation fees because they're the ones actually setting and charging. We're only collecting for them. Kind of like the school district model, where somebody comes to us and proves that they've paid the fees and we remit them, and we have to have the issuance of the take permits from the wildlife agencies. So those two things have to occur for us to really begin.

>> Commissioner Abelite: Okay, thank you. I'm good, thank you, no more questions.

>> Commissioner Bit-Badal: Thank you, Commissioner Abelite. It seems like we do not have any more questions from fellow commissioners at this meeting. Maybe at the next meeting we'll have some more. Thank you so much for the presentation, it was really well thought out. And it really, truly, proves that you've put a lot of time and effort into all this so we thank you for all that. And just again as a point of clarification we're not taking a vote on this, we're just living to testimony from staff and also public and we have no speaker cards on this item.

>> Joe Horwedel: Just clear for anybody that might be watching at home, our meeting on the 26th is when the Planning Commission would be discussing the EIR and the plan and making recommendations and actions.

>> Commissioner Bit-Badal: Thank you. Moving forward with item 4, petitions and communications. Public comments on the Planning Commission.

>> Laurel Prevetti: We have none this evening.

>> Commissioner Bit-Badal: Okay thank you 5, referrals from city council.

>> Laurel Prevetti: None.

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

>> Laurel Prevetti: The one item that I wanted to bring to the commission's attention is on the September 25th council agenda the council is scheduled to discuss the recommendations regarding boards and commissions that will be coming forward from the City Clerk. The city clerk has not yet issued its report and because this commission will be meeting after that date I just want to make the announcement, the Rules Committee considered that council agenda this afternoon and so it should be published later on this week so you'll want to look at that.

>> Commissioner Bit-Badal: Counsel.

>> Renee Gurza: Thank you. You may recall this commission had, about a year or so ago, examined, I think it was Commissioner Kline who headed up the committee to amend the bylaws to change the quorum section. Right now it says you need a quorum to conduct business, and so we were having issues with the commission study sessions where you weren't taking any action. But your bylaws language was pretty broad, rather than saying it takes a quorum to take an action, it takes a quorum to conduct business or study sessions or part of conducting business. The subcommittee had worked through and we had drafted up an actual bylaw change and it had originally got enveloped within this board and commissions signals that was taking place. I want to say this last June rather than this past June, so it's been more than a year. I want to say that board and commission effort has really focused on advisory bodies, not bodies that have quasijudicial powers. That has gone in a different direction, so I did check in with some city folks today to say since that has morphed and evolved into some different I'd like to bring the bylaws change, because it no longer seems that it was a farther of that effort. I did confirm that that would be fine so I was going to put that on your next agenda.

>> Commissioner Bit-Badal: Thank you. Commissioners reports from committee, Norman Y. Mineta.

>> Commissioner Cahan: Our next meeting will be in September so I'll have a report in October.

>> Commissioner Bit-Badal: Thank you. Synopsis from August 22, 2012, so we have a motion? All approving, say aye, and Commissioner Cahan abstaining. Thank you. 6D subcommittee formations report and outstanding business. Do we have any reports? No? Commissioner Yob.

>> Commissioner Yob: Yes, on behalf of the CIP review committee which is made up of myself, Commissioner Kline and Commissioner Kamkar, we will have a report prepared shortly, and we are approaching that that be discussed at our retreat as an item on the agenda if the rest of the commission is in agreement.

>> Commissioner Bit-Badal: Thank you and we will discuss the agenda in about a minute. And commission calendar and study session which is this following item. Thank you for bringing that up, so you would like to add one more item to the agenda?

>> Laurel Prevetti: Actually it's already on the agenda in the afternoon, anticipating that perhaps the subcommittee would be ready if you'd like we could make this more explicit as the subcommittee report.

>> Commissioner Bit-Badal: Great. I actually wanted to make a change or two to the agenda. With my colleagues here. I would like to move to meet the planning staff, to the end of the day activity. So instead of 11 to 11:55 would be from 3:30 or 4:35 or 4:30. I would also like to add something more to the agenda is a report to the police department as we have had discussions over the last couple of years, including tonight's meeting we have been getting a lot of C.U.P.s coming before us and police reports and I would like to hear more from the police department as to how is it affecting them and the staffing. We've had reports from other departments before such as streets and traffic department and parks and recreation, however because of the large volume of C.U.Ps that we are approving, I feel that it would be good to have the police department come to the Planning Commission and have a dialogue on C.U.Ps and we can ask a lot more detailed questions that we have been asking from them. Because the police department is not usually here at the Planning Commission meetings. So with your permission, I would add this item. I don't know if I need to have a motion on this.

>> Laurel Prevetti: May I ask a clarifying question? Just wanted to understand what the outcome of that discussion would be? Because right now the police department as well as others of course provide input into the planning process. And then, as you heard this evening, we weigh and balance and try and create conditions to best address the input that we receive. So you know we're happy to coordinate and talk through those mechanics with the commission. And invite our colleagues from the police department, but I think we need to remember that the job of the Planning Commission is really one to consider land use permits, not the operational effects of a particular department in the city. So I just want to make sure I understand, or we understand what the specific outcome is, so that are way we get the correct people from our police department. So for example, the memos you get come really from the statistics unit so having someone from the statistics unit probably isn't going to be the kind of dialogue that you want. So I just want to have a better understanding of what you'd like to achieve.

>> Commissioner Bit-Badal: Oh, absolutely. Thank you for clarifying that. I think the relationship between ABC and C.U.P. is something that it would be beneficial to the Planning Commission, and also, since we have had a couple of projects now come before us specifically tonight that were on downtown, it would be great to have staff member who works on downtown project, I believe we have a staff who reports to the City Manager, and that person can come also and talk to us about if there are really adverse affects of increasing or having additional C.U.P.s approved. So it is a land use issue that I'm really interested in. And it is a really dichotomy in the relationship between those divisions.

>> Laurel Prevetti: And maybe to really understand a little bit more, is it really about downtown and the night club activities in bars that the commission is interested in exploring? As one commissioner said this evening, your role is to really implement the policies and ordinances of the council, or is it the larger question about drinking establishments, and related police activity citywide? Again, just trying to understand what you would like to achieve.

>> Commissioner Bit-Badal: For me, first and foremost would be downtown. Of course, that is a -- an issue that's coming forward because we talk about 24-hour city and if we cannot have drinking establishments here and police departments coming up with reports saying that no I do not want to extend this to 2:00 a.m., I don't see

where else we would have it. So I would like to have that dialogue somewhere. I don't think it's really appropriate when a project's here besides the police department is not even here to defend themselves or speak to their memo and the memo is not detailed enough as we saw tonight's memo did not have specific numbers that we were looking for as commissioners to make good judgment. So for that reason, and more, I would like to have that dialogue. I'm not changing policy. Trying to have a better understanding of what we can do to make our city more vibrant city. And Commissioner O'Halloran.

>> Commissioner O'Halloran: Yeah, and like from my perspective, the issue like tonight they made a recommendation to have no cover charge. And if that isn't really a land use issue, then I'd be interested in getting an understanding from planning staff and the police department, you know, what is the instruction in giving those kind of you know recommendations and you know perhaps there should be better direction to the police department to only give us this information because this is only within our purview. So just more understanding the process from my perspective.

>> Commissioner Bit-Badal: Great and Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I also like to hear from the police department about potential issues that may be arising that we're not even thinking about as land use impacts that they might have. The police department is seeing a state within themselves that they haven't been in a long time since any of us have been on the commission. So I think it would be interesting to hear from them about some potential things that they are either seeing, or that they think might happen in the near future, that we should be aware of when we're making our land use decisions throughout the whole city not just downtown.

>> Commissioner Bit-Badal: Thank you. And I do not see any more questions. With that, I will -- oh, do I need to make a motion on this? Yes, so that is the motion that I put forward with changes to the agenda. Do I have a second?

>> Second.

>> Commissioner Bit-Badal: And all approving please say aye. And with that I will adjourn the meeting tonight. Thank you for your time.