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>> Mayor Reed: Good morning. We have a quorum so we're going to get started. First item on the agenda is the labor update. I understand staff has a comment.

>> Good morning mayor and members of the city council. Mark Mercado, senior executive analysis with the city manager's office of employee relations. Please find before you a package provided by the association of legal professionals on Monday, December 3rd. This proposal has also been posted on the city's website. That concludes our labor negotiations update. Thank you.

>> Mayor Reed: We have no requests from the public to speak. We are going to adjourn at this time into closed session. We'll return at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call this meeting to order for December 4th, 2012. We'll start with an invocation. I'd like to introduce pastor Richard mock from the cathedral of faith. Pastor Richard Mock serves at the cathedral of Faith in San José. He's also a member of the mayor's gang prevention task force, faith executive committee. Pastor.

>> Thank you. Let us pray. Almighty God, our father, everything we see, and everything we touch, exist because of you, and you alone. It all comes from you. It all belongs to you. It all exists because of your touch. You are grateful, compassionate and merciful. You love everyone, and everything you have made. So we say, our father, who art in heaven, Halloweth be thy name, thy kingdom come, thy will be done. On earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespassed against us. And lead us not into temptation but deliver us from evil. For thine is the kingdom and the power and the glory, forever. Father, today we stand together, in this great City of San José, with our honorable mayor Chuck Reed and all the members of this city council. We are blessed for their leadership and we are proud to be Americans. Father today as we stand together in this great city, we thank you and we give you all of the praise. Give to all our leaders here and throughout this great country the wisdom to lead us with humility, the courage to lead us with integrity, the compassion to lead us with generosity. Bless and protect them. Help us, father, to remember that we are Americans. United in our commitment to freedom and justice for all. As we focus on others, with our love and respect, we honor you, if we fall short of your expectation, we ask your forgiveness. As we close this year, and look forward to the next, there will be some difficult days ahead. May we have a new birth of clarity in our aims, possibility in our actions, humility in our approaches, and civility in our attitude. Even when we differ. Help us to share, to serve, and to seek the common good of all. May we join together to work for a more perfect, impartial, better, and prosperous city, and nation. We do remember that one day, we will all stand accountable to you. I submit this petition to you for our great city, and officials of San José. That you keep us protected and in your perfect will. I humbly ask this in the name of the son of God. Jesus Christ. Amen.

>> Mayor Reed: Thank you, pastor mock. Our next item is the pledge of allegiance, we'll be joined today by students of queen of apostles elementary school third grade from District 1. [pledge of allegiance]

>> Mayor Reed: Thank you students from queen of apostles elementary school. First item of business are the orders of the day. Are there any changes from the printed agenda that we need to take up at this time?

>> Move to approve.

>> Second.

>> Mayor Reed: We have a motion to approve the orders of the day. On those orders all in favor, opposed, none opposed, orders are approved. Please note that we'll be adjourning this meeting in memory of gunnery sergeant Harold skip Adams United States marine corps, retired, he passed away on November 12 at 86 years of age. Councilmember Herrera has some comments.

>> Councilmember Herrera: Thank you, mayor. Today we celebrate the life of gunnery sergeant Harold skip Adams. We are joined by his son Brian and wife Gina Adams and grandson Nicholas Adams and also Robert Corpus from the spirit of 45. Thank you for being here today. Skip was many things in his wife, a devoted husband to his wife of 55 years, Pauline, a loving father to Steven and Brian, and grandfather to Nicholas, Jeffrey and Melody, and many great grandchildren. And skip was also a brave soldier. Who rose to the rank of gunnery sergeant in the United States marine corps after fighting in the battle of Iwo Jima. Skip was a marine, lived as a marine and was a marine throughout his life. Skip was also a second generation San Joséan and contributed to our community long after his military service came to an end. After being stationed at camp Pendleton skip came back to San José and had a long career as a ceramic tile layer. I came to know skip through his work in the last years of his life. Skip became the national spokesman for the spirit of 45 campaign. Whose mission is to digitally preserve the artifacts of the end of World War II and that generation's collective efforts to secure the peace and prosperity that followed. The spirit of 45 campaign began right here in San José. And skip was one of the campaign's most energetic ambassadors. Because of the work of skip and others to promote the spirit of 45, in 2010 spirit of 45 day. As an opportunity to reflect on the 400,000 Americans and millions of people worldwide who gave their lives during World War II, the peace the entire world finally experienced August 14th, 1945 at war's end

and the unprecedented efforts to rebuild economies after the war. It was truly an honor to get to know skip through his work with the spirit of 45 and to help promote this wonderful cause and skip was just such a wonderful human being to know. The smile on his face would make your day. And my last public appearance with skip was at the spirit of 45 event and we very much missed him, at the Veterans Day parade where he always would proudly be there in his uniform looking as sharp as ever. Skip Adams made a difference in the lives of so many people in so many ways, in the work he did and most of all the big heart he had for everyone. Our thoughts and prayers go out to Brian and Gina and Nicholas Adams and the entire family. Thank you.

>> Mayor Reed: Thank you, Councilmember Herrera and thank you, to the Adams family for joining us today so we could honor Skip. Our next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mr. Mayor, there's no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to begin by inviting Councilmember Chu, Councilmember Kalra and Councilmember Herrera and representatives of India currents to join me at the podium. Today we're commending India currents magazine in recognition of their 25 years commitment to our community. Councilmember Chu has some of the details.

>> Councilmember Chu: Thank you, mayor. Very happy to bring Indian currents here. Very community oriented business from district 4. In 1987, Mandana Kumar and Arvane Kumar, ashack Denson Doony, cultural heritage within the Bay Area. Within months Indian currents gained widespread support amongst business and Indian community. Today, publications on the West Coast today and reaches more than 32,000 households. Indian currents seeks to provide free information and news on local Indian art, entertainment, dining, and editorial content among Indian Americans live in the United States. located today on Lundy avenue in my district District 4 Indian currents is an important part of the Bay Area's multicultural identity and continue to make a positive impact in the life individuals while providing a sound cultural foundation for future generations to come. Councilmember Kalra is here also to testify their contribution to our cultural bounds and for providing an important resources to the Indian American community in the City of San José. At this time I'd like to ask the mayor to present the

proclamation to Indian currents to celebrate their 28th anniversary here this year here to accept the publisher. her husband Eva Ravadai. Thank you very much. [applause]

>> Thank you, councilman Chu, Ash Kalra, Rose, honorable mayor. You know, first of all, I want to say a big thank you to the City of San José. That has provided the infrastructure, the support for small businesses like ours. Which make up the backbone of this country. What you have put in place has given encouragement to so many businesses just like ours. So I want to say really, a grateful thanks to all of you. India currents has been a voice of the Indian community. In the Bay Area I think there are over 250,000 Indians that live here, all of us familiar with the term Silicon Valley which again is credit to the city here, for coming up with that term. We print, mail, distribute 32,000 copies at no charge to the end user. And today, with our online and print publications we reach 125,000 readers every month. Although we started out in 1987 as primarily an organization for the arts, we have spent time educating our community about the need to get involved in the political process. I think also, a generation immigrants tend to tend to their home front first but this is our new home, the United States, California, San José. And it is important for us to be active in our local communities. And the last year and a half we have made active efforts through the magazine to get our readers to get engaged in the political process. So hopefully we saw some of that during this just most recent election and I'm hoping that the going to continue indian currents hope to be a voice of the Indian community and we look forward to celebrating many more anniversaries together. Thank you.

>> Mayor Reed: Thank you. Next I'd like to invite Councilmember Chu to stay at the podium as we have it Julie Edmonds-Mares to join us. 20 litter pickup. Julie.

>> Julie Edmonds-Mares: Thank you, mayor. Each year the City of San José participates in the great American litter pickup event. , 14 different locations throughout the City of San José. We had over 2100 volunteers citywide, picked up over 1200 bags of refuse throughout the city which was a 7% increase in participation and a 13% increase refuse collection. And really it was a greatly event. We just say thank you so much to all the volunteers who came out and helped beautify the City of San José. Each year we have a friendly competition between the council offices as to who can bring out the most volunteers on a specific day. So coming in third place this year

was councilmember Ash Kalra with 426 volunteers. Thank you so much. Coming in second place, councilmember Xavier Campos and the win are for the second year in a row was Councilmember Kansen Chu with 594 volunteers. Thank you .

>> Councilmember Chu: Thank you, Julie, thank you mayor. This is the second consecutive year but third year since the competition started, what, four years ago? So I wanted to take this opportunity to thank the District 4 volunteers, as it's not easy to mobilize more than 600 volunteers, in the cold days in March. So this really -- the plaque will be held proudly in front of my office but it really belongs to all the residents and all the volunteers of district 4. And I'd also like to take this opportunity to challenge my colleagues and all the city council, and all the residents in San José, to take pride in our community by keeping our street and our city clean and beautiful. So let's continue to work stowing. This year's great American litter pickup is falling on March 16th. So I will see you all there on March 16th. Thank you very much, mayor.

>> Mayor Reed: Next item is the consent calendar. We have some requests from the public to speak. We'll get to that in a minute. Are there items councilmembers specifically want to pull to discuss? 2.5 travel reports is one and 2.16, Councilmember Campos.

>> Councilmember Campos: 2.14.

>> Councilmember Chu: Mayor, I'd like to pull 2.2 to register a no-vote.

>> Mayor Reed: Okay, 2.2. Councilmember Kalra. (inaudible).

>> Mayor Reed: 2.11. No. 2.7. 2.11. Councilmember Rocha.

>> Councilmember Rocha: 2.16, please.

>> Mayor Reed: All right. Those -- testimony on those items we'll take up when we get to them, but I have some requests to speak on some other items, we'll take this testimony at this time. Mr. Wall on item 2.3. 2--

>> Yes, sir.

>> Mayor Reed: -- 13.

>> On 2.3, on committee reports, yesterday at the transportation and environment committee, one of the documents presented to learned councilmembers, indicated that employee health -- employee pay cuts, in other words, employee pay savings, in other words, money that you took, imposed, seized from employees went to fund in part the white albatross known as the environmental innovation center. So this is going to stick with a bunch of employees. Here you're taking your money with regard to pension reform and then shuttling off the money well earned money bargained for money from their paychecks and whatnot to shove it over to the environmental innovation center which is a God-awful project, cost overruns an environmental nightmare in itself. I think you should be aware of that. And somehow be able to look the employees in the eye and tell them well I didn't mean to lie to you this way but it just turned out that we're taking your money to do this environmental innovation center. Now, with reference to 2.13, this is a sad thing. Every -- every time we see a councilmember headed for the sunset, we thank the councilmember, in this case it's Councilmember Pyle for her dutiful service over many years. And I might add for the historical record that this councilmember has been the only councilmember record in the history of her tenure or the tenure of those before me, who has given me an admonishment, a chastisement to make me a better person. And I thank you for that and subsequently I've learned from that treatment and I have yet to have any of your contemporaries follow through with any other riding crops across my back side. So thank you for your years of service and I'm sure that we'll see you down at Almaden valley nursery hopefully and more repeatedly.

>> Mayor Reed: I think that is -- request to speak on everything --

>> Councilmember Constant: Mr. Mayor, I'm willing to yell at him to keep him feeling at home.

>> Mayor Reed: We are going to discuss separately 2.2, 2.5, 2.7, 2.11, 2.14 and 2.16. And so those we'll take up separately. I think I've got everybody who wants to speak on rest of the consent calendar items. Any additional items on the consent calendar to be pulled?

>> Councilmember Kalra: And mayor, I inadvertently said 2.14. I have no wish to speak on that item.

>> Mayor Reed: On that motion all in favor, opposed none opposed, so that's approved. So working through, in order, item 2.2. Councilmember Chu. And Kalra I think want to speak on that one. I have a couple of requests from the public as well.

>> Councilmember Chu: Thank you, mayor. I just wanted to register a no vote to discontinue the SRBR.

>> Mayor Reed: Councilmember Kalra did you want to speak now or wait --

>> Councilmember Kalra: I'll wait. I received a lot of concern regarding some of the changes particularly impact on retirees so I'd like to hear from some of them first.

>> Mayor Reed: Let's take public testimony on item 2.2. Bob Leninger,.

>> I'd like to request this be deferred for additional study we made some comments three or four weeks ago when it was in draft form. We still haven't seen it in final form. We've seen some excerpts and memos about that. , SRBR. You can tell from some of the changes that were made, the letters came in, some things were done in a positive manner but it's some very complicated matters here with some unforeseen impacts. The reason we can't take a little bit more time to work together and especially when it comes to the Federated retirement board. They've expressed a lot of concern, we're concerned representing with spouses, 5500 people that the Federated board is satisfied that these are consistent with the state constitution. The letter from their attorney was very interesting. The board previously raised its concerns with various provisions that raise issues about whether

there is a compatibility with the state constitution. In communications with the city on may 2012 before the passage of measure B actuarial impact of these provisions. The board is not yet received a response to its questions. There's 5500 people and the board's responsible for them. I don't think they've been given enough time to look at this.

>> Mayor Reed: Susan de Vincensi.

>> I'm urging you to vote no or but this over for additional review . I noticed in the supplemental memorandum that people who are eligible for Medicare coverage are still required to sign up even though they are already retired. Those people may incur penalties for late enrollment in either part A or part B, certainly in part B. And I don't know if the city is planning to indemnify them for that. It certainly is not part of the draft ordinance. Then there's a piece that was add he in the section dealing with those who are not eligible to Medicare part B, who is not eligible for Medicare I'm not sure who those people are. Unless you're talking about people who are not yet age 65 and do you really want them to have to contact the Social Security administration and get verification that they are not yet eligibility? I'm having trouble putting that piece together. I don't understand what that means or what you're trying to get to with that. And I would like the reiterate Mr. Leninger's comments on the supplemental retiree benefit reserve. There is no rush to dismantle that program at this time. I think people should have a chance to have their day in court. I think the litigation should be concluded before you move on that one.

>> Mayor Reed: That concludes the public testimony. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I'll also be registering a no vote retirees have been given to us regarding the impact on current retirees. I think oftentimes when we make these changes we have whether there's agreement or not at least a full consultation with the bargaining units but oftentimes the retirees are left without the opportunity to have their issues completely and fully vetted and there certainly is -- the number of retirees that are under 65 is not an enormous number so the impacts of these changes aren't -- not only they're not going to yield huge financial benefits but they're impacting a relatively small group of people that I hope we so at least talk wand determine exactly what impacts they would face. As far as SRBR, I've been on the record as I'm

fine with the in principle eliminating it but however, I do think that there's a valid argument that litigation going forward to at least have an opportunity to discuss if there's any opportunity for some subsequent program for those that truly are living in poverty. And those that are truly struggling if there is any supplemental benefit that could be given just to those that didn't necessarily retire with the same level of benefits than more recent retirees may have left the city service with. Thank you.

>> Mayor Reed: I think that concludes the testimony, comments. Do we have a motion?

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: We have a motion on item 2.2. On that motion, all in favor? Opposed, one two three four opposed, Campos, Chu, Kalra and Pyle opposed, motion passes. 2.5 travel reports. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to report on the national league of cities Congress of I cities event that was in Boston. Councilmember Chu and I both attended. I attended as the city's voting delegate. It was freezing there, one day it was 27 and snowing when we were outside and I am very happy to live in San José. I was there to participate in the public safety and crime prevention committee. I'm the vice chair of that committee for the year of 2012. And I was informed there that I've been named chairman for the 2013 year. I also had the opportunity to testify at the fair committee on behalf a resolution urging the federal government specifically the Treasury Department to resume their practice of reviewing optional pension programs and issuing private letter rulings for municipalities or government agencies that are offering them, that would -- is a critical piece in our pension reform implementation. I'm happy to say that the fair committee gave it a unanimous vote of approval and it moved on to the resolutions committee which also passed it unanimously and it went to the full national league of cities voting delegation at their annual meeting and passed unanimously as well. I participated in too LTI which is a leadership training institute. The course title was achieving fiscal health and wellness through priority based budgeting. It's interesting to see that many of the examples that they brought up were from the City of San José, including highlighting our budgeted funds guide and the program priority analysis that the City

Manager completed I think it was two years ago. I also participated in a panel discussion entitled retooling public pension and the future Public Works and attended as the city's delegate the annual business meeting. That's it.

>> Mayor Reed: I'd like to add a couple of trip reports. I had a couple of trips since I last reported. One trip was to Los Angeles, to participate in a day at the Milliken institute on fixing California's finances. My part was to talk about pension reform and what needs to be done in California. You probably noted when the governor noted more work needs to be done. And so, I want to make sure that whatever work gets done, helps San José and doesn't interfere with what we're trying to do here. So they're advocating on behalf of local governments specifically San José. In addition, I made a trip to Des Moines, Iowa to meet with the governor. Specifically on the issue of trying to get the IRS moving to issue private letter rulings again on giving employees choices, which was a provision in our ballot measure on pension reform to give our employees an option to choose a lower-cost plan. Now the IRS has not issued letter rulings in that area for several years. And having met with treasury officials I'm in the process of gathering national support, so that treasury will see that it's not just a San José issue, that it is a national issue. I met with the governor, spoke to the taxpayers association over lunch, and the governor is willing to help, and is working with the national governor's association staff as part of that trip. With that any other trip reports? Next week I'll talk about the -- I think next week Councilmember Rocha and I will talk about the trip we took this last week to D.C. Any others? All right, no more trip reports. Item 2.11. That's ordinance regarding discharge of firearms. Have some requests to speak. I don't know who on the council pulled it wants to speak. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I appreciate staff coming to meet with me to answer questions. I know there have been some concerns by environmental groups. First I looked at this I can't say I feel easy about shooting birds. I do understand when there are accidents not only does it cost you know money for the airlines or airport, obviously, there's always a risk of a crash. But also, when there is, an incident with birds the birds don't exactly end up on the good end of the bargain either. So it's not like we are not currently having loss of bird life as it is. But I would like as I mentioned with staff, when they were gracious enough to meet with me, that it may be in this -- if the council approves it in this first year I know that there are very strict guidelines as when, documentation of when you know the firearms will be used, whether it be blanks or live rounds. I know that is already going to be

documented. I'd like to if possible also see if kind of parallel to that there can be documentation as to how many strikes there are, with the airplanes. So that we can get a sense of this, first of all if it's work and secondly, if the net kind of the net impact on wildlife is a positive one so to speak. Because I think if there is -- if by using live rounds we eventually change the behavior of the birds in the area so they don't come back to the area that causes the most issues with the flight of the planes. Then in the long term it is a good solution because we're reducing the overall -- the overall need, most of all for human killing of the birds but also, the airplanes themselves. So I hope you know what I'm getting at, just so we have a sense that we're moving in a positive direction, both in terms of a reduction of a risk to the airplane and to the people on the plane, the damage of the planes and also a reduction of risk to the wildlife as well.

>> Bill Sherry: Councilmember, Bill Sherry director of aviation for the City of San José. Absolutely, I think that's an excellent point. Obviously dealing with three federal agencies, USDA, U.S. fish and wildlife, the FAA documentation is going to be extensive. So we certainly don't have any problem sharing that information. All those records will be shared with the federal government and we will have that available and we can even do a summary at the end of each year.

>> Councilmember Kalra: And I know that when I spoke with airport staff, it was also a clear indication that all measures will be used, not simply that now, because the authority is there, that rather than the first, might more often than not be the last resort to use live rounds, any mechanisms you feel are appropriate whether it be other dogs or other animals. I was told there was a variety of different mechanisms that are used. So if all can be kind of kept on the table, but of course, as is necessary, if there's an urgent need and there's a sense that live rounds are needed at least are documented, not just on a -- not just on the individual cases but so we can have like year by year take a look at exactly what measures we're taking and what impact they're having in terms of damage to the airplanes but also in terms of loss of life of birds.

>> Bill Sherry: Yes, councilmember, you know we're in the process of finalizing our wildlife, hazard management plan. And all of those requirements are in the plan that we document all measures taken, nonlethal and lethal. So we will have all of that information.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Thank you. I have some requests from the public to speak. We'll take that now. Chris Sarbaugh and David Wall.

>> Good afternoon. Mayor Reed and members of the council. For approximately 20 years, I worked as a city planner at the airport. In the early 1990s I was assigned to manage the airport wildlife program. I've reviewed the proposed ordinance, and the attached memo and I have serious concerns. I'm not opposed to the USDA being allowed to use light ammunition because they're trained and proficient at doing that. I have a concern with airport staff. I have a brief presentation, three items and then some serious recommendations. First of all, approximately four years ago, I was in my office and I got a call from Kurt Eicherman from the airport department. I don't know if he's here I don't see him. Kurt said Chris, I'd like to, I'm talking with the police department and I'd like to get a shotgun so we can do some -- use it to shoot birds and stuff. I said Kurt I think in the City of San José the only people that can shoot live ammunition is sworn police officers. But let me look into it. I contacted Kevin Fisher in the attorney's office and I said Kevin this is what the operation people want to do. They want to get a shotgun and they want to use live ammunition. And he says well, they can't do that, the ordinance which is mentioned here doesn't allow it, they need to get it changed. So I called Kurt back, Kurt Licaman and said Kurt this is what you need to do. You need to go to city council to use live ammunition and shotgun. End of discussion. Several months later I was at the ops department and two members of the ops department says Kurt wants me to use a shotgun I've not been trained, I told him I'm not going to do it. I said, you're right. I contacted Kurt Eicherman. I set what are you doing --

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

>> If anybody wants to know about the safety of the airport need to know about it.

>> Mayor Reed: Would sir two minutes, you had it let you run over. Sir I'm going oask you to sit down, if you don't do that I'm going to have to ask you to leave. Security, escort this gentleman out. Thank you. David Wall.

>> Sirs, last week, while you were traveling away this was on the agenda. However, there was animal control was giving the invocation and they had brought in a variety of very nice dogs and cats and kiltens which thoroughly was a big hit with everybody in the room. This issue was summarily deferred because it would appease and give love to some God's creatures versus going down the path of race based extermination on the lord's fouls at the airport. I'm of no planes getting taken out of skies getting to be too routine by these large bird strikes. However I'm thinking with my knowledge of the airport that there's a lot of habitat remediation that could occur, simultaneously while fomenting this act of blasting of the lord's fouls. Now, in the Guadalupe garden area there are several trees that are of questionable value. These are left over from homes that were eminent domain about 30 years ago. These tree I think should be hewn. Also, you're getting a very large vagrant encampment out there between Hedding street on Coleman and this, too, may add to the birds because people are out there feeding the birds. Then of course Mr. Mayor, we have our lovely burrowing owl habitats out there at the airport, and what is going to guarantee a young pilot within the burrowing owl community from trying to exceed altitude just to get blown away? Obviously that is a concern, and the wildlife biologists obviously will have to discern whether or not to exterminate a burrowing owl or two with reference to flocks of black birds. This is not a popular item for any of you, I know that and I think other measures should be looked into. Thank you.

>> Mayor Reed: That concludes the testimony on this item.

>> Councilmember Kalra: Mayor, if I could just ask one last question.

>> Mayor Reed: Sorry I got a motion to approve, Councilmember Constant, is there a second, there is a second thank you. Councilmember Kalra.

>> Councilmember Kalra: Thank you and I forgot to ask this Bill, the public speaker jogged my memory of this. It is in the training of the staff because I know and my understanding is there is going to be training the San José

police officers will do appropriate training. Is there going to be wildlife training so there is identification of the species of birds? I know a big part of the problem are not extinct species and there's a lot of the gulls and that nature. Just so there will be that knowledge because I think that does raise some issues for me as well.

>> Bill Sherry: Councilmember the answer to that is yes. I was very concerned when this came up and wanted to know exactly what training was going to take place. So we had extensive training in firearm, the San José police department will give that training. I understand it's the same training that officers get. The USDA will do the training in terms of species recognition, as well as during the whole process, they will be guiding us and overseeing the whole process. So we are going to be doing it with them as well.

>> Councilmember Kalra: And sorry, in terms of chain of command, is a manager on site have the authority or do they have to get the okay from someone senior level to them even? I mean I just -- you know, I just am concerned that there's a lot of power that they give to someone that wasn't put -- didn't go down the line of work to use firearms in the course of their duty. So on the one hand if someone -- I would hope if someone doesn't feel comfortable using a firearm and doesn't want to that they can opt out of having that responsibility on the one hand. Because clearly I don't think anyone wanted to become a manager in an airport with the assumption they were going to have to shoot a shotgun at birds. But on the other hand, those that are willing to do it are trained to do it that there's a very tight supervision of the process and the discretion that they have to do it.

>> Bill Sherry: The answer is yes to all of that. We will have very limited number of people who have received this training and who are authorized to take the lethal methods. There are standard operating practices that they have to go through to ensure that all nonlethal measures were implement implemented first and lethal taking is a course of last resort only and then of course all the documentation with the supervision of USDA.

>> Councilmember Kalra: Okay, thank you.

>> Mayor Reed: We have a motion to approve the staff recommendation. On that motion, all in favor? Opposed? None opposed, motion is approved. 2.14, boards and the commission appointments. I don't know who asked, I forgot. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. So I -- you know we had this discussion back in October. And so you know I mean I completely understand the rationale of the psychologist. And you know I know that it was a painful process and a lengthy process but ultimately, I understand why it needed to happen. One of the things that -- you know what I thought we voted on and I left that meeting thinking that how are we also going to ensure that there is representation from all the council districts on commissions? And so I have a couple of questions for the City Clerk. One being, is there any indication whether the implementation work plan will include any language to preserve district representation when consolidating commissions?

>> Councilmember, we're work on an implementation plan on work plan to bring back to the council. We have some difficult transitions to make, because with some of the consolidations we have quite a large number of people that are currently commissioners, and when you look at consolidated commissions some of which may be smaller than even the current single commission currently so we are going to have to face how do we transition to smaller commission sizes? As we look at that, that's going to be a challenge. And how we achieve that balance will be something that we will have to work through with the council. I would just like to mention though, that we did -- the report did include a policy option to have commissions composed of of one representative per council direct and that was not the direction the council chose. And so we're working within the framework of some of the specialized representation, for example, the combined early care and library commission will include a certain number of people that have an early care and education background. So as we kind of put these melded commissions together we'll pay attention to those dimensions that the council approved, but we'll have to take a look at how we balance the commission geographically and otherwise.

>> Councilmember Campos: So what really brought this to my attention is, you know, one of the commissions or two of the commissions that are getting consolidated, human rights and disability advisory commission, very important commissions. You know, human rights commission is not just a symbolic commission. I mean they do

very, very good work and there's a number of issues that in our neighborhood in our community that need the attention of a commission such as this. My concern is, as these get consolidated, one, district 5 is going to lose a disability advisory commissioner in June. And a current commissioner that represents District 5 is eligible for reappointment. However, because the recommendation is to go -- is to do 9 seats and not ten or 11 seats, that position gets vacated. And if you look at the makeup of the new proposed commission, the vast majority of them are in two or three council districts. And again, I get the rationale for needing to consolidate. But really, we should be making a goal of trying to look at some of these commissions that if you really think about it, the logical, the logical path would be to try to find representatives from each council district. And so, you know, with the memo that I put out, I chose to you know these two commissions, you know, to me, the impact of the human rights commission is, again, very important, that even if we increased it to 11, where we make the recommendation of appointing the two that are eligible for reappointment and have applied for reappointment, I can't see something like that being that much of an extra burden. And I think one thing we do is, we accomplish you know getting representation from a district that already has very, very little representation on commissions. And I think District 1 is right behind me on that one. And then two, it potentially sets up the framework for a new commission that you actually could require that that moving forward, each council district by appointment by the mayor's office an appointment on this commission so with that I'd like to move approval of the staff's recommendation with the addition of the memo I published this morning.

>> Mayor Reed: A motion with a second, I think Councilmember Kalra had the second. On that discussion on the motion I have no requests from the public. Councilmember Constant.

>> Councilmember Constant: I don't disagree with much that's been said. The question I have is the memorandum is giving direction to if I'm reading it right is giving direction to change representation which really isn't agendaized. So I'm assuming what we're doing is, we're appointing and I'm just asking this for clarification, Xavier, we're appointing these folks and saying as the commission consolidation gets finalized it is something for staff to consider as they bring the to us?

>> Councilmember Campos: Yes.

>> Councilmember Constant: Okay, I don't have a problem with that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Mayor I'm just reading the memo for the first time now so I'm not very clear what action we're taking here. I have no objection to the appointment of the individuals that Councilmember Campos is recommending but the broader action? .

>> Councilmember Campos: The broader action would be to try ofirm, I'll use the word fix this now. And then I know staff's going to come back in the late winter, early spring, with a work plan and so forth. And I think if we did that, this would bring the total of these consolidated commissions to 11. Which would create the framework for staff to come back and again I would like staff to come back to make a requirement. And I don't -- with a recommendation to have this commission have a representative from each council district. So does that --

>> When you say this commission you're referring to what will be the merged human rights --

>> Councilmember Campos: Correct.

>> Councilmember Liccardo: And disability commission, correct?

>> Mayor Reed: Let's get clarified what the council action already taken by the council, there was a specific referral, I think from Councilmember Liccardo maybe it was your motion with Councilmember Rocha or vice versa on that issue, which we debated at some length and that is a referral to the staff to come back and continue to look at the council district representation. Is that correct?

>> Councilmember Liccardo: Yes, I'd really prefer that staff work happen and when we come back the public and everyone is aware that that issue is being -- is really being discussed. I'm certainly happy to support the motion, the individual that recommended it, Councilmember Campos.

>> Mayor Reed: As I understand it, the motion was to move the staff recommendation that came from the commission for the reappointment.

>> We have to come back with changes to the code and if I read Dennis's memo correctly he's recommending don't take action on the reappointments while we go through the transition period and Councilmember Campos is saying make the reappointments. And that's what would take place by your motion and then we still have to come back with the code amendments in doing the consolidation.

>> Councilmember Liccardo: We have more revisions ahead. Thank you.

>> Mayor Reed: We have referrals to the staff to continue to look at the district representation issue.

>> Councilmember Campos: Right. And so for the time being, I'm concerned that district 5 is not going to have a representative that comes from the human rights commission. Again, another example, I'm going to harp on this, of a council district that's for the most part on the edge of the city, further away from, you know, the civic center, that just does not have the representation on our commissions. And I think one of the things we can do, we can all do this as councilmembers, is to really get folks from our districts to apply for commissions. We could do that and hope that that happens. Or we can really take steps to start looking at our commissions, and making council district appointments. You know, I think that, one, it engages folks more. And two, there's a lot of talent and folks that want to get -- that want to serve in our -- each of our council districts that just don't, for whatever reason, you know they either think that they can't or they apply and you know, they don't -- you know they don't get selected. So for the time being, yes, my intent is to reappoint those two folks that are eligible for reappointment. And then, you know, act on you know, staff's recommendations in the coming months.

>> Mayor Reed: Okay. So the motion is to do appointments. We had a list that came from rules plus the two that have been added by Councilmember Campos's memo. That's the motion. The other issues we will get at some point in the future. Councilmember Herrera.

>> Councilmember Herrera: I'll just say I'm going to support the motion and I am interested in when a discussion comes back. I think there are some of these commissions that really should have representation from across the city. And they're not equal and those that have the subject matter expertise I think it's important that we keep those with the subject matter experts, and that won't always mean that every council district has a representative. But for the human rights commission, disability combo, I think those are one of the commissions that I think we really should have broad representation and especially from East San José and part of my -- I'm also in East San José and I'm very concerned that district 5, district 7, district 8 have that representation.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Dennis, if I remember correctly part of the communication to City Clerk come back to the code is to look at representation across the entire city. So that every council district would be represented, and on a variety of commissions, that's a direction already from the council?

>> Dennis Hawkins: Yes.

>> Councilmember Oliverio: And then secondary to that, when you do come back or we come back with the changes, some of the folks that we are appointing now, at possibly this meeting, may not actually be on the commissions once they're restructured?

>> Dennis Hawkins: That's a real possibility, councilmember because some of the consolidated commissions will have multiple people. So we will have to come one a mechanism where people will essentially be termed-out and other people appointed in their commissions to balance out the commissions and get to the new numbers.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: We have a motion. On that motion all in favor, opposed, none opposed, those appointments are approved. Item 2.16, Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I would like to modify this action item slightly. And that would be to just maintain the approval for the travel. But to modify the source of funds coming from council district 9 budget. I move approval with those changes.

>> Mayor Reed: We have a motion to approve with the modification. On that motion, all in favor? Opposed? None opposed, that's approved. City Attorney?

>> City Attorney Doyle: I just want to note for the record, item number 2.15 we did not pull. This is the exemption for a park bench in district 10. I want to just alert the council exemption will now be encompassed in the new policy being readvised to allow this I type of policy to be put in. Just sort of a heads-up.

>> Mayor Reed: Anything else on the consent calendar? I think we covered all the items. Didn't leave anything out. We are concluding the consent calendar. Item 3.1. Report of the City Manager.

>> City Manager Figone: Thank you, mayor I have no report today.

>> Mayor Reed: I'm sorry, I've got another card. Mr. Wall, you wanted to speak on the consent calendar, one more item, Mr. Rocha's item 2.16, I think, that you didn't speak on earlier. Let me go back let you speak.

>> I just wish Councilmember Rocha well and hopefully he will undo some of the pension reform rhetoric that has been bantered across the United States to the detriment of San José and have a safe trip back and hopefully you don't get a head cold. Thank you.

>> Anything else on the consent calendar? All right, now item 3.1 report of the City Manager.

>> City Manager Figone: Again, no report today mayor, thank you.

>> Mayor Reed: Our next item is 3.3, defined contribution option plan for new employees in unit 99.

>> City Manager Figone: Mr. Mayor if I could just make a few comments council considers this and staff will be then here for questions. So in front of you today is a tier 3 options for new employees into directly unit 99 which is our unrepresented executive and professional employees unit and includes council assistants. Tier 3 would provide new employees an option of going into the tier 2 defined benefit retirement plan that we now have in place, as established on September 30th. Or going into a defined contribution plan, a 401A plan. If they elected a defined contribution plan they will also not be in the retiree health care benefit that the city currently offers. As it is now set up, employees and the city will each contribute 3.5% which means the -- which meets the requirements to not be in Social Security. And also, we would have the latitude on a case-by-case basis to come to council, to request and increase in that amount, or an adjustment between the city and the employee, within the parameters of the tier 2 that has been approved in measure B. We've had some questions about why this is not being offered to current employees. This is something we definitely looked into. But as of now, they are IRS taxed. There are IRS tax implications that would prevent us from doing so . We think that this is a very important recruitment tool to provide employees a choice of retirement benefit that would fit their personal needs. This is especially important now as the council is aware, we are looking for multiple senior staff positions and with recruitments underway. And so putting this in place will give us that added tool for that tool kit. And if approved today, would become effective January 20th. And so any employee starting after January 20th, in unit 99, would have this as an option. And that concludes my opening comments and staff is here for questions.

>> Mayor Reed: We have a motion to approve. I have one request from the public to speak, we'll take the testimony now, Mr. Wall.

>> I would have also liked to have seen some form of structured bonus for performance. Instrument in there as well as other financial instruments that could be considered to be an annuity upon the hire of these people. I also do not know if unit 99 still applies to the attorneys, since they have formed their own union, the association of legal professionals. Am very much concerned about the reduction in level of our trained esquires and I think, that, Mr. Mayor, you should pay very strict attention to because we're losing the battle with our trained legal people. Bye.

>> Mayor Reed: That concludes the public testimony. Councilmember Kalra.

>> Councilmember Kalra: Thank you, Deb, this is being settle up to offer just options for those that come into city service under unit 99?

>> City Manager Figone: Yes, unit 99 which is unrepresent.

>> Councilmember Kalra: Now, the tier 2 which is stated in the memo the 65 essentially when someone is hired on they would be given kind of background on what the two options are and you indicated there would be the flexibility depending to offer something different enhanced what have you, and I bring that up because I know that not only do we have a lot of unit 99, across the board we have hiring we want to do certainly in the shortly term, we are going to -- we have a lot of heads of departments and so on that we're hiring and it's already challenged where we're currently just to be competitive and we know that -- is that part of the reasoning to allow for that flexibility?

>> City Manager Figone: Yes, let me give a maybe not so generic example. We're out look for a few directors now including the police chief. Let's say that given the current pay structure which tops out at a certain level, we could be attracting an individual who might need a little bit more but not need our retirement system. So conceivably I could bring to council something for that individual under this 401 (a) plan which would say the city's contribution is a certainment amount within the measure B level which now the parameter has to be within 90%, correct?

>> Jennifer Schembri assistant to the City Manager, yes, that's correct. We also wanted to clarify that if we were to make changes to the amount, it would need to be by classification, not by person.

>> City Manager Figone: Okay, within the job class. But it would really be prompted because we certainly wouldn't just go off and do this by the negotiation with the individual. If it became important to the compensation package.

>> Councilmember Kalra: I mean you know the same thing came up with the assistant fire chiefs and police chiefs, that you know we are scrambling to make sure the compensation at least is close to competitive as possible at the high levels and yet you know we don't give the same consideration when the issue really is affecting our ability to attract citywide, you know, at all levels in every department. And the other aspect of it is that there's continual reference to measure B as a measuring stick. If measure B is invalidated then this is in place. Then what does that do if anything to you know just in terms of having different levels of compensation and the sentiments of though now are stuck within the confines of what was subsequent evaluated.

>> City Manager Figone: Again the staff can correct me if I'm technically wrong here. But why we wanted to refer to measure B, as right now that is our guidance in terms of this 9% that I mentioned, as a parameter for the tier 2. And so we wanted to stay true to that. If something else changes, then maybe that can be reconsidered but right now, that's the bracket that we're using.

>> City Attorney Doyle: Councilmember I'd also chime in. You have measure W as well as measure B and measure W gives you great leeway to enact a new tier. Measure B has limitations of what can be. We would have to work with whatever decision there is. There is a severability provision there but that's anybody's guess. Do you have a the power to --

>> Councilmember Kalra: I know tier 2 has already been put in place. Not like there is no structure. There is some structure that's been put in place. But I think that you know the unit 99, although it certainly is a lot of the

management there there are a lot of different roles, and a lot I mean obviously not just our council staffs but many other roles that fall under unit 99 that again, you know, by eliminating or by just having a case-by-case basis to allow for kind of enhancement, again, it -- on the one hand exemplifies making us more competitive but then on the other hand creates a second class of folks that are never going to be able to achieve that kind of enhanced benefit. Although I do understand the recruitment, as you pointed out there might be folks that don't want the retirement because they've worked 30 years someplace else, and within four or five years that's really not something that they're looking for.

>> City Manager Figone: And let me just be clear, perhaps enhanced benefit if I use that term is misleading. This is not as rich as our tier 1 or our tier 2. So you know the theory would be the pay would become more important than the benefit, and so that's a theory that this is based on. You know, applying it,.

>> Councilmember Kalra: That's the important point that clarifies it a little bit, in that it's essentially an option for someone that doesn't they're already fully vested in a retirement plan, they already have their health care taken care of and that's not going to be an attraction for them but allows us to be somewhat competitive in other ways without actually -- without any more really are resources coming out from the city to take care of those contracts.

>> City Manager Figone: That's exactly the reason, yes.

>> Councilmember Kalra: Thanks.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Yeah, I appreciate the concerns expressed by Councilmember Kalra. We will be looking to salary recognizing that the benefit structures that have been set up in the past are not sustainable in an awful lot of cities and counties. As a result, I think there's going to be less certainty of those that are going into the workforce, municipal government to actually think that those benefits are going to be around by the time they're done. I also think it's important for us to recognize that if we are going to err often one side or another, this city

has proved in past decades that we are more than able to increase retroactively past benefits much to our detriment the idea of setting the bar where we think we can 23rd meet it and sustain it is an important one and somewhat precedent setting in the city.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Just for clarification. Unit 99 what is the lowest position that we would be -- that this would affect? Now counting council staff but but from the director level?

>> City Manager Figone: Yes, in terms of what you would classically think of as executive management which is most often associated with unit 99, it is the deputy director level or actually it's lower than that is it not?

>> Yes, unit 99 is made up of a variety of classifications, deputy directors administrative officers, there's about 200 people in unit 99.

>> City Manager Figone: It's a wide range, not just department heads, deputy director level. For example senior executive analyst, assistant is probably equivalent to a senior analyst who would be in camp.

>> A senior executive analyst.

>> City Manager Figone: Yes, right.

>> Equivalent to a senior analyst in camp.

>> So again, your opinion and I don't know if I should be asking you Deb or Alex, what are other jurisdictions doing or what do they do with this similar classification in other cities? Are they in a similar defined contribution plan?

>> City Manager Figone: No, this is pretty unique. They would typically go into PERS, PERS of agency as most cities are in PERS at least in California .

>> Councilmember Campos: So then wouldn't it be harder for us to attract, let's say it's a ten-year rising star in a smaller city that's looking at coming to San José and not even that far into where they are at and we would just love to get them here because they bring a lot of time that they could spend with us and share their talents but yet we don't have incentive. How are we dealing with that?

>> City Manager Figone: Actually in this proposal we would have two option he that we could offer that employee that you mentioned. They could take the tier 2 which is the traditional defined benefit plan or we could offer them we could offer them this tier 3. There is actually two option he as was described earlier somebody who is maybe on their second career or doesn't want to wait a five-year vesting period. Doesn't want the higher cost out of they're pocket because as you look at even in tier 2, there's going to be more contributions out of the employee's pocket than this 3.75%. CSA so the say director of a department from another city that has they would still have their option to go into this second tier or choose this?

>> City Manager Figone: Yes, they would.

>> Councilmember Campos: Okay, thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I was hoping to ask the City Manager if you could expand a little bit on the statement the IRS tax implications you wouldn't mind please.

>> City Manager Figone: I'll let the technical staff respond to that.

>> Councilmember, the comment that was made by the City Manager was the reason we could not offer it to current employees is because the IRS doesn't allow for existing employees to also have an option through a new plan. Current employees have to be mandated to be in a particular plan in order for the plan to be nontaxable. And so, as we're looking at with regard to the VIP program, the voluntary option plan that we're trying to get the IRS to approve that sign has to get specific IRS approval before it can take place. This particular plan because it meets all the requirements of the IRS safe harbor do not require IRS approval for it to become effective.

>> Councilmember Rocha: Okay. As far as getting to this policy recommendation and the parameters around it and forgive me if I missed it, I read as much as coy. The discussion with the current employee groups to get their feedback on the scope of this and maybe the interest of this?

>> City Manager Figone: Well, actually unit 99 is unrepresentand so as we've been talking with department heads in particular about and looking at our own challenges, with attracting within unit 99 and the fact that it's typically people later in their careers. This was an idea I came up with . So as we've talked about it with senior staff the idea kind of caught on that yes, we should have a tool like this. So given 99 isn't a bargaining unit, to sit down with it, it's been really more informally quite frankly that this idea last surfaced and you know as we've talked about it received some positive feedback. So the staff has been working persuade hard at my request to try to find a way to make it work within a structure that we're familiar with. And advance it to you today.

>> Councilmember Rocha: Okay so the discussion was just generally internally. Given the fact that that's where the conversation has been so far, your expectation that this is going to actually be effective for its intended outcome is just based upon experience within City Hall and the staff that we have? Just trying to get a sense of how --

>> City Manager Figone: Sure.

>> Councilmember Rocha: Because if --

>> City Manager Figone: Well, it's one more tool that we don't have. So the pay is what it is. The range is what it is on the pay side. And you know, a couple of the recruitments underway, having a couple of options where you can look at the potential candidate and say maybe our top step is not as high as city X. But we have this other option for you and in that option you'll only have 3.75% of your check going for retirement as opposed to a higher number. It's a way without raising the top of the range right now which we may need to do for classes in the future to preserve the pay capacity.

>> Councilmember Rocha: Okay, thank you. And to your point, the issue that you talked about in terms of the IRS and that's way above my pay grade, but is there any way for us to continue to try and get around that or is that a dead end, so to speak?

>> As the councilman may remember, we are in the process right now of getting IRS approval to allow current employees to opt-in to a different plan. To opt-in to a tier 2. It is possible to request that the IRS look at other options but again in this particular case, we can move forward with the tier 3, without having to get IRS approval but it's always possible to request that the IRS -- although our experience has been that they're not in the -- they are not currently looking at giving current employees other option he for a variety of reasons but it's always a possibility. The process for that would be to modify the scope of our current request or would it be a new request?

>> It would have to be a new request. The request is simply to allow current employees to opt-in to a tier 2 program. And a different defined benefit plan. We would have to request a different ruling if in fact the request was to allow current employees to go into defined contribution plan as well. There are two different types of plans.

>> Councilmember Rocha: And why wouldn't we make that request? Is there some reason we would avoid that? Is it a staff issue?

>> It is a call for the City Manager and for the council to make.

>> Councilmember Rocha: Okay, thank you. And most of my questions were answered by Councilmember Kalra. He raised a lot of the same issues just questions we had, I appreciate it. I appreciate staff work on this. I'm not going to speculate about whether -- what the future holds for the public sector. We've all made a lot of assumptions from this dais and been wrong a number of times and been right a number of times but I appreciate you looking for other tools to put in the tool box. Thank you.

>> Mayor Reed: We have a motion to approve. On that motion all in favor, opposed, none opposed, motion is approved. Taking us to item 3.4. Modification of agreement with Renne Sloan Holtsman and Sakai for consulting services relating to labor relations. I have one request to speak. I'll take that first, Mr. Wall.

>> Sir for brevity sake, can I combine 3.4 and 3.5 into one oratory?

>> Mayor Reed: Yes you may.

>> Sir. When I look at the vast numbers of moneys in the hundreds of thousands of dollars especially in the legal fees of \$1.2 million I would propose the next time that we do a pension reform, such as measure B, that you have outside contributors fund this type of expenditure instead of taxpayers having to fund it. Because this deals with a lot of money that could go into a variety of different city services. Point one. And point two, not to be belittling your travel escapades to Des Moines, Iowa or to Washington, D.C, on these issues with reference to pension reform would these type of financial calculations and costless put forward to the governor of Iowa and other people of Washington during your travels, sir, thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just a question for Rick. Rick I appreciate your response to our office, when I asked about rates to various attorneys. I just want to understand. Obviously these numbers are

getting large he as we go along, as we'd expect, could you just explain in terms of who's checking the bills, how does the process work in terms of making sure K A, that the work is commensurate with whatever's being charged and you've got somebody who's kind of knowledgeable about that kind of area who is looking at these bills?

>> Councilmember Rocha: .

>> City Attorney Doyle: Well, these are -- 3.4 is the Renne Sloane the labor consulting agreement. OAR we also have a legal services agreement with Renne Sloan and we looked very closely to those bills as well. I'll just answer because you probably have the same question about 3.5.

>> Councilmember Liccardo: Exactly.

>> City Attorney Doyle: We monitor those bills and either Ed Moran or Nora or myself we look at those and make sure that the work is being done. And we're satisfied that they -- the bills we've seen are -- there haven't been any questions raised and if we do usually it's getting clarification who did what and was it really attributed to the right contract.

>> Councilmember Liccardo: Thanks Rick.

>> Mayor Reed: We have a motion to approve item 3.4. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor in terms of using outside consultants like Renne, Sloane, Holtsman Sakai, to what extent to we strategize with the as to how we move forward? It just seems like you know they're involved with a lot of these types of anxious around the state, I believe they were involved with Redding, the city of Redding just lost a court case which again, based upon -- they took the advice of the same consultants about going after vested rights what have you and they lost. What recourse at all if at all do we have if we take their advice and the taxpayer is out? Because of advice by our consultants or strained relationships because of

strategies suggested by the consultant, or is that just a professional contract and at the end of the day we have to live with our decisions ?

>> City Attorney Doyle: Well, I'll let Alex or Jennifer talk about the scope of consulting. But just from my vantage point, they are very much involved flout the state with a number of public entities. Some you win, some you lose. They have to the extent they've provided legal advice or any kind of advice, I think it's oftentimes couched and identified the risk. They do an E and O coverage but it really gets down to what's the scope of their advice and what caveats or risks are analyzed with that advice. And it's -- you know other than that, I know they're involved directly in negotiations and also consulting and advising on negotiations as well as arbitrations.

>> Alex Gurza: Alex Gurza deputy City Manager. on their own on any legal issues. In terms of anything else, at the table, again, all of our direction on issues is given by the city council. So they really carry out the discussions and policy direction that we've received from the city council.

>> Councilmember Kalra: Well, you know I think whenever you use an outside source for these types of critical needs for the city, they don't have to suffer through the mistakes of their decisions. They now don't have to suffer through the mistakes that were made in Redding, with the amount of money spent there. And ultimately it's just a matter of strategy and approach, and how we approach our labor management issues and I've not been trying to excess my concerns in the way we've been approaching it that creates much more dysfunction and much more angst and fear. And if this is a strategy, if following their strategy has led us down that path I'm not interested in spending another \$400,000 unless we have a clear -- unless the city council has a clear sense of what direction they want to -- what direction they would advise us to go forward, and contrast that with the direction they've given us in the past couple of years. And then parallel that to the decisions or advice they've given statewide, and see what the results are from those discussions. Because as we know some of the -- some of the individuals involved with this firm are not shy about expressing their political opinion as to how they feel about public employee pensions and what if anything that they feel can be done about them. And so you know I'd certainly before we spend another \$400,000 of taxpayer money on this firm, would -- I would feel certainly more comfortable understanding what their strategy is going forward and how it will differ, if at all, from the strategy from the past

and how it will differ, if at all, from strategies they've advised other jurisdictions that have failed miserably about the same strategies they put forward .

>> Mayor Reed: I'd like to note the supplemental memo that City Attorney put out dated November 29th which lists the services being performed by Renne Sloane Holtsman Sakai and Meyers nave, a couple of dozen services that we've retained outside counsel for which obviously takes substantial amount of funding as we're talking about here today. We have to use outside counsel, because most of the lawyers in the city attorney's office are in a union. And there's a lot of work to be done. And it requires outside counsel to do it. There's a couple of dozen matters, that includes complaints filed at the public employee relations board, arbitrations, both grievance arbitration interest arbitration as well as the litigation. There's a lot of work here, there's no doubt about it. It would be I think better and cheaper if we could do that all in-house. But it's not possible, given the circumstances that we're in. And as to the legal strategies, those decisions are made by the city council. In consultation with the attorney. Most of which happens in closed session, although much of that has been published in one way or the other during the course of negotiations with our bargaining units. So people can go to the Website and see some of that. But ultimately it is the council and the mayor making a decision as to what direction to go, with the advice of our City Attorney helped with advice of outside counsel. There really isn't any other way to carry out the will of the voters, to implement measure B. And there really isn't any other way to carry out the negotiations that we're required to do in good faith in the Meyers Milius Brown Act, to negotiate with 11 bargaining units, sometimes multiple negotiations going on at the same time, with multiple unions, it takes a lot of effort. And we have to use outside counsel to do that. So I think that what we've got is what we see. And we have to continue to do the work. And these folks are doing a good job, in my view, as outside counsel. But ultimately the decision making is being made by this body. We don't always agree. In fact we frequently disagree as to what that direction ought to be but ultimately it is a council majority that makes a decision. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. This is a bit of a tough-sell. Especially in light of the fact that we have so many people leaving the city. We have to hire more people, et cetera, et cetera. But I would like to say that many of our talented, most talented employees are leaving. And it's very difficult to even think about getting them replaced. We have problems with our police department numbers being very low. And they -- of course the

pollution control plant is another story all by itself. So I'd like to suggest something that would be perhaps a little different. This is a strategy that we tried at the San José Evergreen community college district when I was on that board. And it worked. It was amaze being. But what we did, and I know pierluigi, councilmember Pierluigi has recommended this as well. What we did was to say, we need to see the negotiations from process. We went in, couple of people at a time, we couldn't say a word. We were simply there to observe. But to see what the situation is. I think sometimes you can't always solve something with extra dollars if you don't try other things as well. This is a thought. But I think at this point some we need to not only just think about more dollars, we need to think about more strategies. And I know that there have been repeated -- repeated interest in opening up negotiations to councilmembers. So I think it's not something that is a brand-new idea. It's certainly something that would be worth discussing. And with that, I just have to tell you that it's a tough sell, in our districts. They're the ones that have to go back and say yes, we did have to spend another million dollars, when people are getting fewer services, they're scared because they don't have enough safety measures that they need, in order to be safe in their homes. It really is not always the easiest answer to say well we're going to solve that by spending more money. And considerably more. Between the two it would be -- it would come out to over \$1 million. That's a tough one. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I would argue this is an easy decision. Because the voters have asked us to implement measure B. And we have an obligation to do so. And while we have to make an investment to not only have crafted measure B, but to get it passed and implemented, we have to realize that the reason we are doing that is to lower the cost to the city. And I guarantee you that the first pay period in place from the implementation of measure B will take care of this and then some, given the gravity of our problems. And pension obligations that exceeds \$250 million, not just this year but every year thereafter, this is a very small investment to ensure that we can move forward on the implementation of the voters' will so I'd make a motion to approve.

>> Mayor Reed: I think we already have a motion on the floor on 3.4. We'll come back to you. You can have a motion on 3.5, how about that? Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. continuing a contract agreement or expanding a contract agreement taking it into account on any consultant agreement performance. I don't know what city Manager or the City Attorney but I've given the city attorney's probably most qualified for that I'd like to ask in terms of your opinion you think these folks have been doing a good work so far?

>> City Attorney Doyle: They are a very reputable firm and very good lawyers. Many of what -- many of these lawyers are alumni from the San Francisco city attorney's office and have a significant number of years of experience with the public entity doing labor relations. And then they've been in private -- former City Attorney Louise Renne is a principal in the firm. That's my buildup. We just had a successful arbitration on the POA arbitration, represented by David Khan of the firm. The negotiations, you know, the negotiations are sometimes successful, sometimes aren't but they are at the table and they help the city and help Alex and his crew and he's better positioned to talk about the Desai Day negotiations but they've worked if city to where the city is protected from any challenges. Although there is a lot of Perb for unfair labor practices and other things of that sort. This is really, in measure B has reality resulted, it's no secret, it's all-out war. There is no other way to say it. You see it at both the superior court and the litigation, and you see it at PERB and at that level. At the same time, you have 11 contracts coming up, next year and they're going to be very much involved working with OER in terms of developing a strategy to bring those negotiations forward. So if, from my standpoint the short answer they do a very good job.

>> Councilmember Rocha: So in sports you are often measured by wins and losses, we go over this in closed session, I saw the list in the other memorandum, based on that and I hear the anecdotal, actually not true the anecdotal cases outside of San José where we received some legal opinions and you know, raising concerns for me, that I'm not so sure the council has been getting is not that it's not accurate but it hasn't always played out exactly as was suggested. I understand this is a moving target and you can't guarantee everything. extending these contracts, especially for large amounts of dollars. Thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. City Attorney sort of covered this a couple of times but it would seem based on 3.4 which is a specific item for \$400,000, that and it's been said before that this firm managed, helps us manage the complaints of PERB and as we know that many of those are unfairly filed. And there's the cost of arbitration both grievance and interest, it would just seem as though specifically item 3.4, we don't really have a choice on. It's really the cost of doing business, if you are a city, or a workforce that has arbitration, and files PERB complaints.

>> City Attorney Doyle: If you don't have the in-house staff to handle it and I know as the mayor indicated the conflict of my staff that we are very lean these days, it's I think a necessity.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: All right, I think that concludes the discussion on 3.4. We have a motion to approve, on that motion, all in favor? Opposed? None opposed, item 3.4 is approved. Item 3.5 --

>> Councilmember Kalra: Mayor, I opposed 3.4.

>> Mayor Reed: I'm sorry, anybody else opposed on 3.4? Okay, Councilmember Kalra opposed. 3.5, the Meyers have agreement for legal services related to the fiscal reform plan. Motion to approve that item. Councilmember Kalra.

>> Councilmember Kalra: Mayor, as you stated correctly we can't do everything in-house but there isn't just one office, whether it be a consulting firm for labor relations or a law firm in town there are plenty to go to. And I certainly have raised the conflict issue before. The same firm that advises us prior to going to measure B to be the one to gain the fruits of the labor, so to speak in the taxpayers' money now that we're fighting in court, an uphill battle. And clearly, if they created this self-fulfilling prophecy of us being stuck in a court battle for the next two or three years they're certainly going to become millionaires off the San José taxpayer many, many decades. Even

more significantly than that because even if we went and got a different attorney I think it goes more to the position that we've taken. And you know, I think it's simply-I think it's easy to say all the voters passed measure B and to abdicate the role that was played by the elected officials in the city prior to that vote, the reality is, elected officials I believe we advocated our responsibility to develop meaningful legal good-faith pension reform. Instead with the electioneering, the tools of lies deception anger fear misinformation, the voters then with that access to implement or they passed measure B as Rick said it was all out war that we started. And putting another \$1 million the into this war to me doesn't help our residents, doesn't help the taxpayers. It continues the employees leaving city service by the droves. I think we need to stop with this aggression. And start putting a little love into this, into the people that work on our behalf, with the badge of the City of San José on their hearts, work on behalf of the taxpayers, the residents in a way that is meaningful that brings people together and that gets us savings now. And this continual -- this continual fight is not helping anyone. And it certainly breaks my heart. And I think that it's simple just to say we'll keep fighting this, we'll keep fighting this but at some point the fight's going to end and what do we have left at that point? I certainly will not support putting another million dollars into this fight that I think has been very destructive for our city.

>> Mayor Reed: As Councilmember Constant noted our retirement costs are running about \$250 million a year that's every year and it's going up. We have unfunded liabilities in excess of \$3.5 billion. The measure B is an important tool, important step towards solving a billion-dollar problem and the fact that we're spending money to do that is necessary. To implement the will of the voters and to protect the people of San José and to preserve the services. So it's a -- yes, it's expensive but it's necessary and I think it's something that certainly we need to approve and to continue to carry out the will of the voters. Nearly 70% of the people voted yes on measure B. As they did on measures V and W. The last time in a prior election. And so yes. It's expensive to litigate. There's a lots of cases that have been filed and they are being ably handled by these lawyers although ultimately it is the council that makes the decision and the council majority has taken the action and the voters have approved it and it's our job to implement it and that's what we're doing. We need the help of these folks to do that. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I had a question about the budgeting. I know we had set aside a reserve and I read that in a memo. But as far as the dollar amounts that have been expended to date, is this generally what we had projected and expected or are we running over much more over what we had expected? We established a reserve for a reason and this is the reason and we're cutting a chunk out from the beginnings of the process.

>> City Attorney Doyle: From my perspective it is not extraordinary. It is really in keeping. This is really why I think we do as much litigation in-house because it is very expensive.

>> Councilmember Rocha: Thank you, that's a very short and concise answer just like a lawyer. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I wonder if it would be possible to meet with the team, just to get some idea of what would be different? Would anything be different or is it just the same situation as we already have?

>> City Attorney Doyle: Well, this is a litigation contract and from time to time in closed session you would have Linda Ross or Art Haringer come in and talk to you about status of the case. with respect to the maybe consulting, you know occasionally John Holtzman has been in closed session as well. But it's really up to the council and staff when they want to bring the attorneys in to talk with them. And just let us know. And if the council wants them we can get them there usually on any Tuesday.

>> Councilmember Pyle: I like a friendly request, to do exactly that. Probably the next session would be, or whenever it's possible to bring them forward.

>> City Attorney Doyle: It really is timing. And you know, with respect to the status of negotiations and PERB issues that's one firm and with respect to the litigation we can bring Linda in to give the council status update on the litigation. That's certainly up to the council.

>> Councilmember Pyle: That would be most helpful.

>> Mayor Reed: Okay, we'll do that. We haven't had them in in a while to update the litigation. As you notice from the memorandum there are dozens of matters that they are handling and just on occasion to take a look at all of them, we can do that organize to make that happen. I think that's the end of the discussion. I need a motion. Councilmember Constant's got the motion on 3.5, seconded by Vice Mayor Nguyen. How's that? Often that motion, all in favor, opposed? I count one two three opposed, Kalra, Chu and Campos opposed, motion carries. Taking us to item 4.1, sale of city owned property at 500 South first street. We have a motion to approve that item. We have some requests from the public to speak. Councilmember Oliverio, did you wish to speak first or do we take the testimony?

>> Councilmember Oliverio: I would just like city staff to lay out the -- you know basically for the public to know what we are selling the parcel for, et cetera.

>> Mayor Reed: Okay, give staff a chance to come down and while we're doing that I want to thank all of the folks at MACLA who have worked to support the arts in San José and develop programs of great value to our school kids and the community and certain the sofa area redevelopment Agency invested money we're disposing of it I guess on the city side, having done a transaction so the city ultimately came into ownership of the property. MACLA has been an anchor tenant in the sofa district since 1992. This is an opportunity for them to get a permanent facility and they can also leverage funding from other areas outside source he, planned renovations and programming but we certainly wish them very well, may they be very successful at getting outside money and continuing their program. I know that OED staff has worked very hard to make this happen. It's been complicated, it's been a long time but we are finally here when we can approve I.T., I want to thank the staff for doing that and give Councilmember Oliverio's question to the staff and let them talk about this.

>> Kim Walesh: Kim Walesh director of economic development. Thank you for the opening remarks. The mayor's correct, this is a project that has been in discussion with the Redevelopment Agency for many years and

we are very pleased to see it to fruition. I think this is the definition of a strategic project in that it meets multiple objectives, MACLA from being a 20 year tenant to being an anchor arts and community organization in its own building for the next 20-plus years. I think we all know MACLA to be a very, very special component of our community in the sofa district. It clearly strengthens the sofa district, aligns with our strategy to contemporary arts and the museum of quilts and textiles who have also been helped to own their own buildings and third, it raises revenues for the city and eliminates ongoing maintenance costs.

>> Nancy Kline deputy director, economic development and director of real estate. The property was appraised by Carnegie Blum at 1.4 million dollars that was an as-is appraisal and the terms of the structure of the sale are as follows: MACLA over a 36-month period of time would pay \$650,000 in cash, and then, the remaining \$750,000 would be paid in in-kind services over a 20-year period. It is a strong agreement for the city in that we retain a promissory note and deed of trust. So if for whatever reason MACLA was not able to fulfill its obligations the building would come back to the city.

>> Councilmember Oliverio: I have just one question. So the public knows could you define in-kind services?

>> Yes, MACLA provides a range of services, to the community, and so \$37,500 credit will be provided each year after providing first an annual plan for services above and beyond whatever it is that the city might already receive from MACLA, and knowing that those services, particularly we believe toward creative entrepreneur opportunities, arts incubator type activities would then be credited to the \$750,000 on an annual basis.

>> Councilmember Oliverio: Thank you. I just thought it was important that that's sort of out there and covered versus just vote and done with. I think it's important that we share how much the appraisal is for, what we're doing, the value and the agreement that you have opted -- what is the terminology again when someone defaults from the loan and the city gets the building back, what's that called again?

>> Foreclosed.

>> They would default or not perform. You're right, the city would get the full value of the \$1.4 million.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I know there are going to be some foams speaking in advance I wanted to thank them and everyone else for being here. I just want to congratulate MACLA and thank the city staff for working so closely with them. I've been going to MACLA for so many years, this is a part dream part long term plan I think it's a creative plan that definitely requires obligations from both ends. But I think that it's -- it will be -- continue to show MACLA as a successful, important part of our art scene, of our downtown scene but more importantly, finally get more of a permanent presence that will help I think even surrounding businesses and the surrounding arts community, to kind of build off what MACLA has already established and now is going to I think just establish for many years to come now as a permanent presence. And so you know I think this is kind of the idea of what this whole part of the sofa district was meant to be. And so I'm just really excited about it and I just want to thank everyone. There was a lot of work that went into it. I want to thank those that came to talk to me about the plan as well and the board of MACLA. But I'm excited about it. I know that Nancy, Kerrie, you all spent a lot of time putting work into this. I want to thank you too.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Also wanted to echo some of the comments that Councilmember Kalra gave you all persevered and worked hard and you had the vision to see this through and you know, wish you all the luck and you know, remember outreach to the whole city, there's a number of folks out there that just are thirsting for art, different types of art. MACLA has been providing that for a couple of decades. And if you can just look at the photo right there, and just continue the vision and see what a cobblestoned street, that is no longer a street but it's a pedestrian pathway, where folks can spill out from MACLA and enjoy Churros or whatever may be sold in the plaza there. But you're onto something. Let's not let it stop there. You know because you really have the ability to create an arts-place right here on one end of the downtown. So congratulations.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I would certainly appreciate any colleagues' support. I really want to congratulate Angie and the whole team at MACLA. I think this is a really critical instead of moving to the next level for this very critical organization. Just talk a bit about some of the services that are provided. The city and the community. I know I suspect there will be certainly around many of the downtown neighborhoods where they're very active certainly around south university market Almaden, has really been incredible. Particularly the a world without redevelopment we've got an incredibly devoted team of folks who are engaging particularly with kids, youth in a way that's very powerful whether it's through a spoken word, whether it's through the pea pod academy or any other way we engage our youth and the kids are really coming throughout the city. I think it's important to recognize when I'm over there at various events, celebrations, it's remarkable to me how people do recognize how important MACLA is from throughout the city. And I think they'll continue to reach out citywide. I just wanted to in addition to all the folks I thanked and acknowledged in the memorandum in November 30th I want to add a couple of names, Luis andrade and Nancy and Kim and everyone on our team for their hard work. I know this was a complex one and I appreciate our getting it over the goal line.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to congratulate our economic development team, Kim and Nancy and MACLA. I have been to events at MACLA. I think this is a great win-win and I'm grateful that we're able to did this deal. Not everything happening from the Redevelopment Agency is ability to move as smoothly forward as this. So I'm really happy that we are able to move forward and have this property become MACLA's, finally. And I like the fact that the city is also protected. I like the terms of this deal, as well. But you know, economic development I'm on that committee and we're looking at how can we have more companies and more young urban professionals and more folks want to be in San José to work and to have their businesses and to be here. And MACLA is part of that, so it's very important not only for the cultural aspects but for economic development. So I'm really happy to support this motion. Thank you.

>> Mayor Reed: I'd like to take the public testimony at this time. Please come on down when I call your name so you're close to the microphone. Angie Helstrop, Eva Terasos, John McGirk.

>> Good afternoon, mayor and members of the city council. My name is Angie Helstrop Alvarez and I'm the executive director of MACLA, I'm thrilled to be here today and to ask for your credit Councilmember Liccardo for all of his work in championing this as well as gratitude due to city staff, Nancy Kline, Kerrie Adams Hafner and Kim Walesh. I'd also like to take a moment and acknowledge our community of supporters in the audience here with the I heart MACLA stickers so if you can please stand. Thank you so much for joining us, yay! So MACLA's community partnerships and our work developed over the last 23 years has laid a strong foundation for where we're at today. As an organization we've systematically moved towards facility ownership by building a cash reserve during the recession, growing audiences, deepening our ties with the community and commissioning and presenting bigger and bolder new work each year. The agreement before you today really makes sense for MACLA, for the city and probably perhaps most importantly our community. Having a permanent home will support MACLA's cultural equity efforts in the transmission of Downtown San José. Latino and other artists of color will have a permanent place to thrive. This will spur the creation and exhibition of great contemporary Latino art, it will foster economic development, it will support the work of our youth, it bridges diverse communities and enhance vibrancy in the two downtown neighborhoods which we intersect, the sofa district and the immigrant and low income William Reed corridor. Thank you so much for your support and your partnership with MACLA. We really appreciate this . [applause]

>> Mayor Reed: John McGurk and Eva Terasos and Cesar Gonzales.

>> John McGurk, the the Hewlett foundation annually gives away \$14 million in the Bay Area to performing arts organizations and we have supported MACLA since 2006 with nearly a half million in grants. We currently have a grant for \$60,000 over three years for general operating support, for the organization. I wanted to highlight a grant that the organization received, national grant from the Ford foundation. It was a very competitive grant, 700 applicants but they gave away 12 grants across the U.S. and San José was one of the few to have received one

of these grants from the national funder. It helped the organization to do capitalization planning and predevelopment so they would understand the full cost of a facility project such as this. The acquisition, the capital improvements and most importantly the ongoing operations. They worked with partners such as Northern California community loan fund, to fully understand what it means to own versus rent a facility. Based on their important planning work of the Hewlett foundation, last month awarded a \$300,000 grant to MACLA to enable their purchase of 500 first street and we would like to commend the Office of Economic Development for negotiating a agreement that will benefit the people of San José and the cultural life of the region for generation to come. Thank you. [applause]

>> Mayor Reed: Eva Terasos, Cesar.

>> Co-founder of MACLA. I'm excited to be here today. To urge your support of the recommendation before you. In 1992, my other co-founder, the other co-founder Maribel Alvarez and I entered into a unique partnership with the economic space in one of their vacant buildings in downtown San José 510 south first street. Since then MACLA has been on a mission to secure a permanent site in downtown. We believe this agreement is a win win for the City of San José for the youth families and artists who participate in our programs and four a cultural arts program who national model of community arts basis for the caliber breadth and depth of its programs and operations. Our board is committed to raising the dollars necessary to complete the project and to setting the strategies and policies that will enable us to sustain the strong financial and organizational model into the future. On behalf of the board of directors I want to thank you for your support and look forward to seeing you at the grand opening. Thank you. [applause]

>> Cesar Gonzales, David Wall Ross Signorino.

>> Good afternoon mayor and city council members. I'm Cesar Gonzales, director of where resident artist and MACLA. MACLA has been our home for the last five years. We are a community group we started folklorico in the backyard and MACLA opened the doors to our home so we've been there for five years it is a wonderful foreplate for us dancers come from Campbell, Mountain View, Morgan Hill, a lot of them take the road to MACLA because

it's a center. We are very happy that MACLA has been our home. The last five years we've been growing from a group in being six members to now being 65 with MACLA's support with the too many that they gave us to energizing helping the community, we helped the ready community a lot and do a lot of community events. Thank you so much.

>> Mayor Reed: David Wall. Followed by Ross Signorino and Tamera Alvarado.

>> With MACLA at its current location and the Jalisco incubator just up the street a little bit, plus the Mexican heritage plaza I think we're about arted out around this city if that can be. I am concerned about the \$650,000 residual, to be paid in kind. I would hope that there would be serious applications of this moneys, to go forward with the state-of-the-art recording studio either at this facility or at the Mexican heritage plaza to act as a permanent funding source to capture a lot of the music that can be sold for profit to complete and carry on these very nice art projects when city coffers are basically going to be bankrupt in the near future. The \$650,000 in-kind services I've seen these agreements crop up before. Mr. Mayor, at water pollution control plant there is an \$800,000 in-kind agreement with a farming exercise. But I think this needs to be more quantified and audited over time but a dedication of a large section of this building for a musical studio would thank you.

>> Mayor Reed: Ross Signorino, Tamara Alvarado and Connie Martinez.

>> Thank you, Mr. Mayor and members of the council. I'd just like to get up here as part of the public to give this project support. In spite of the fact that some of the remarks that Mr. Wall has made here in regard to the financing, well I think you can do a good job of it and make sure that this financing works real well. What I am really amazed at here, not amazed, I'm glad to see that this building that you're going to put up 33,000 square feet is twice the size of two football fields. That's good. I think that should accommodate a lot of people there and in the hopes of performing the things that you want to for the community. So I think it's a good project and I certainly think that public support should be behind this because any time you can get together with a project like this, where you can bring the community in that section together, it means a lot. So thank you so much for this project and that's all I have to say on the subject. Thank you.

>> Mayor Reed: Tamera Alvarado, Connie Martinez.

>> Hey, everybody some hey mayor, councilmembers. I can't quite reach over. So I'm coming to you here, obviously as a representative of the school of arts and culture at the Mexican heritage plaza at our Mexican heritage plaza also as a past executive director of MACLA which I was honored to serve as executive director for five years and also an a donor long time donor, that is one of the things I want to put out there. I know there seems to be broad support for this and I'm really happy to hear that, very happy to hear that because many people have worked on this project for a long time. One of the things that I want to say about MACLA is MACLA takes young people very, very seriously. The first experience I had with philanthropy was when I was I think 24 or 25 years old. I received a letter from MACLA. I was working at Washington United youth center and I was doing theater at MACLA. I was part of the young adults, young people's programs there and MACLA sent me a letter asking me for \$50 to support programs. And I was so honored to receive that letter. And that for me started a habit, if you will, of philanthropy, that I also encourage my friends to do the same. So when we think about MACLA and sort of what you know services would be rendered, there are services that you can put onto a contract but then there's also these other services of how MACLA develops leadership over time. Keeps young people, I'm glad you mentioned that, Councilmember Herrera, how MACLA keeps young people in our community. MACLA's a place where you can see yourself, all of us can. And that's why MACLA is so, so vitally important to us. So I just want to also reflect on a couple of things our co-founder Dr. Maribel Alvarez always said that MACLA works in the margins, without being marginalized. So again I want to say this agreement is really smart for our city and for our community, just appreciate that and I know that it will gain everyone's support. Thanks. [applause]

>> Mayor Reed: Connie Martinez.

>> Good afternoon, everyone. I just wanted to join the love fest today and tell you how excited I am to and congratulate both city council Office of Economic Development and MACLA for this incredible project coming together. MACLA has been a strategic participate of 1stAct since our inception and I think council is aware we

have invested a lot in sofa. In fact over \$2 million that we have raised and invested, including a recent completion of Gore Park. And one of the reasons we did is because of organizations and leadership and the level of community building and place-making that organizations like MACLA provide. So congratulations to all. This is a very happy day. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor by Councilmember Liccardo I believe. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Mayor. I just wanted to thank all the folks that came out in support of this effort. It's a great showing of support of MACLA but also of arts and cultural community out there. I see a lot of frequent flyers out there of many of the events we have in the community. I also want to thank the gentleman from the Hewlett Foundation. Thank you for your money. We appreciate it, Ford Foundation as well. I wanted to make an unabashed appeal to our executive director, Angie. We know MACLA has been wonderful working in the past with other community organizations. I know in this case, there are community organizations that have been co-using the space. We look forward when Teddy Cruz transforms the second floor. But in the meantime we hope you will continue to do well with other partners in the downtown in make space available. Thank you.

>> Mayor Reed: We have a motion to approve. On that motion all in favor? Opposed? None opposed, motion is approved. Congratulations. [cheering and applause]

>> Mayor Reed: Our next item, regarding the environmental impact report for Santa Clara Valley habitat conservation plan, natural community conservation plan. We have an appeal of the EIR. Since this is an appeal of an environmental impact report we're not dealing with the project today. It's merely the appeal of the EIR. Now, I'll let staff, I'm sure they have some additional comments beyond their memorandum. So we'll let staff for a while and as soon as we get the folks outside we'll be able to hear what's being said.

>> Joe Horwedel: Thank you, Mr. Mayor. Did want to add that there is a supplemental memo that staff distributed this morning responding to some questions we had received earlier. Those were really looking at the potential

impacts of cumulative fee increases on development and how that might shift development. We did note that that was one of the responses, master response 3 in the EIR itself and that we had looked at a fiscal analysis. We looked at a cost of development survey that we do here in San José and add he those costs to it. So it is something we have looked at. I do want to note that today at approximately lunch time we received another letter from a separate legal firm that had raised concerns about the environmental impact report. Andrew will be talking about those issues related to it. And then lastly I wanted to address a question that we received a lot of which is when is the habitat conservation plan coming to the city council? Originally had been today. Our focus has been on the EIR challenge so that is what we are focusing on today. The council at our study session did have a number of questions of staff. We are working through those right now. The -- and our goal is not to come back to the council until we have completed all of those questions. We want to make sure it's full and complete staff work on that. Originally we were thinking December 18th would be the date we would be ready to do that, which would have meant we distributed a memo essentially this week. We are still doing work on that so my guess is January we will be coming back to council. I have notified a number of the different environmental groups that have been asking that question, that we are coming back to the council, but it will be when we have answered all of those questions. And so with this, I will turn it to Andrew to respond to the EIR.

>> Thank you, Mr. Mayor and members of the city council. The item before you is an appeal of the Planning Commission's certification of the environmental impact report or EIR prepared for adoption Santa Clara Valley habitat conservation plan, natural community conservation plan or habitat plan. The habitat plan was prepared in partnership with the city of Gilroy the city of Milpitas, Santa Clara County, Santa Clara Valley Water District and Valley Transportation Agency to both public comment and private development infrastructure and maintenance activities. The habitat plan is intended to result in both a long term environmental benefit, and a benefit to the public and private development community, by clearly identifying feasible mitigation measures for potential impacts upon biotic of those measures, and providing certainty as to what those measures are for the next 50 years after adoption of the plan. On October 15th, 2012, Wayne Costa representing YCS investments filed an appeal of the Planning Commission's October 10th, 2012 certification of the habitat plan EIR per section 21.07 of the municipal code, the city council considers such appeals can either find that the EIR is complete and uphold the Planning Commission's certification of the EIR or find that the EIR is not complete and require revision of the

EIR. Discussed in detail in the staff report, including a local partner's response to the YCS appeal the appellant has not identified any potential environmental impacts that were not adequately analyzed in the habitat plan EIR communication YCS has indicated that its primary objective is instead that the habitat plan and habitat plan EIR be revised to incorporate its proposed development project as a covered activity. Development proposal's consistent with use policies and regulations used in defining covered activities in the habitat plan would be covered by the habitat plan. The habitat plan and habitat plan EIR however does not address specifically initiated which are considered inconsistent with the local jurisdiction's general plan. In addition the city received a letter dated December 3rd, 2012 from Shepherd Mullin Richter and EIR staff has reviewed this letter and concluded that it does not raise any specific issues of concern relevant to the CEQA process that have not been already addressed within the final EIR prepared for habitat plan. Accordingly because there are no substantive issues with the EIR staff recommends that the city council find that the habitat plan EIR is complete and in compliance with the requirements of CEQA, and that the city council uphold the Planning Commission's certification of the EIR. Thank you.

>> Mayor Reed: Is that it from staff? All right, since this is an appeal we'll take the appellant first. Not clear from the cards who's doing what but I believe that Ella Foley Gannon is here to represent the appellant. The appellant will have five minutes and we'll take public testimony after that.

>> Thank you, player and councilmembers, I'm Ella Foley Gannon from the law firm of Bingham, McCutcheon and I am here in behalf of YCS investments. As we have stated with our letter filed September 25th and subsequent appended to our appeal, YCS is supportive of the concept of the habitat conservation plan and all of the goals of the habitat conservation plan which are set forth before you today by staff. Unfortunately we cannot support the habitat conservation plan as it has been brought forward to you, will be brought forward to you, in the near future, and part of the reason why is, the -- we think that there are deficiencies for the details of our concerns about the EIR presented in our letter we have both substantive and procedural concerns. I am happy to discuss those with you today if you have questions. But they are set out in detail and there was nothing in the response from staff that I think draws into question any of the complaints that we raise. I'm here to answer questions. Otherwise we

would ask you to consider not certifying the EIR and ask that it be sent back to address the issues that we raised in our letter. Thank you.

>> Mayor Reed: Thank you. If we have any questions we'll come back to you. You have some time you can respond if you wish.

>> Okay, thank you.

>> Mayor Reed: Public testimony on this item. Melissa Hibbard, Joshua McClusky. David Wall.

>> Councilmember Oliverio: Mayor may I ask a question real quick? The letter was not posted on the agenda, was that given to the clerk or posted another way?

>> Mayor Reed: You talking about the letter from Shepherd Mullin? I had a copy about a half hour ago, the clerk -- it did just come in.

>> Dennis Hawkins: Yes, Mr. Mayor, we distributed the copy that was received today, and it was distributed to council offices, it is not our practice to post private letters or letters from the public with the council agenda item but to distribute it to the mayor and the council and appropriate staff.

>> Mayor Reed: Okay so it's been distributed. Melissa Hibbard.

>> Conservation now very excited about the you know the new future that is in front of us. I'm mostly here just to support the staff recommendation and also to personally thank the mayor's office, the council and the staff for all the hard work and the due diligence that's been going on over the last month or two. We've been working closely with many of you and I just personally want to thank you very much for working with us in a way that I believe is going to get us to a very successful plan that will be a model not only for the State of California but for the rest of

the country as we look to solve our problems at regional and subregional scales around protecting open space natural resource he and creating livable communities, thank you.

>> Mayor Reed: Joshua McClusky and David Wall.

>> Good afternoon. My name is Joshua McClusky, I'm a San José resident and here representing the Audubon society follow Councilmember Chu and Kalra's recommendation within the memo and we would like to see your support for the EIR and certification today and implementation. Thank you .

>> Mayor Reed: David Wall.

>> I believe that the EIR is an incomplete document. Predicated, there is no real discussion, since the last time it was presented with reference to nitrogen compounds, nitrogen deposition, now we also add, since the November cap and trade has now become official fiscal year 2015 energy sectors has come online, this whole process of nitrogen deposition is a function of trips, cost per trips. How are these costs per trips going to be managed, who is going to account for these moneys, outside trips nitrogen compounds air deposition let's say from San Francisco's airport their jets emanating nitrogen compounds coming into San José, other prevailing winds depositing nitrogen, in San José. This whole habitat plan has been just a class study of grand mal incompetence san Francisco 49 are games into San José affecting nitrogen deposition and therefore assorted and sundry calculations pertaining thereto. It's a horrible plan it's been a horrible plan since it's inception there's been a lot of money wasted yet nobody it seems except for this lone voice in the wilderness is addressing this nitrogen deposition issue which every lawyer I have seen through all these meetings would come up and say this plan is flawed. And that's why I mentioned even a dead attorney would prevail in this case. I think you should trash this whole event until the nitrogen deposition issue is squarely defined. Thank you.

>> Mayor Reed: That concludes the public testimony. I'm going to add a couple of things to the record but I want to let the appellant have another chance to speak, if the appellant wishes to respond to any of the comments. You had three minutes left to cover.

>> I have no further comments but I am available to answer any questions if anyone has.

>> Mayor Reed: Anybody with questions for the appellant? No questions at the moment. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. And just to clarify, I'm sorry you're with the Bingham or Shepherd Mullin firm?

>> I'm with Bingham McCutcheon.

>> Councilmember Liccardo: Thank you for submitting your letter in advance.

>> I had just read the Shepherd Mullin letter.

>> Councilmember Liccardo: It's nice to have it in advance. I'm trying to understand your argument about the use of the distinction between no project at the baseline, as opposed to current conditions.

>> Uh-huh.

>> Councilmember Liccardo: And I don't understand, if we were to use current conditions, I don't see how an EIR could be meaningful. If what you are comparing is development in the future to the development, we would all agree that development, with or without a plan is going to impose more environmental impacts than no development in the present. So why would we pick the present as opposed to the no project alternative as the basis for comparison?

>> Well, there's two -- there's a distinction under CEQA between the no project alternative which needs to be considered as part of the alternatives analysis as opposed to comparing what the baseline conditions are. The

problem is in this presence of the analysis those two things have been conflated. Really, there's almost no alternatives at all the no project alternative you're not look at that against anything else. So what the baseline is supposed to be doing is saying we're looking at let's define what the existing conditions in the environment are today, so we have one field, one level field that we're looking at and then we can compare things to that. Yes, when you're going to be looking at what would the world be like 50 years from now I agree with you that it is meaningful what the no project alternative is, alternatives but you have to have the environmental baseline defined separate from that so that you can have a meaningful discussion of what are the increments of the impacts associated with each alternative.

>> Councilmember Liccardo: Okay. Thank you for that explanation. And then, just to understand, I understand obviously you guys are very concerned about a specific project, development project I should say, that is the young ranch development. And I'm trying to understand how an EIR could satisfy, I'm look at now page 6 of your letter. Where in the second sentence you say that YCS cannot determine whether proposed rural development on 200 acre, and it's proposed 1950 acre young ranch reserve could be implemented. How -- I'm trying to imagine if we had an EIR that was that specific, as to identify every potential project and how it could be implemented, we'd be here a long, long time. What realistically would you expect to have an EIR?

>> Absolutely. And it's one thing that was noted earlier that our major concern, major complaint with this was that the EIR did not specifically or the HCP does not specifically contemplate our project. That was one proposal that we suggested during the process of making this kind of like a modified pipeline project just because there's so much information that is known about this site and these resources and it's a really critical part of the whole what we believe is the conservation strategy and the planning strategy should be. That being said we're not saying that the fault of the EIR is that it is not defining to level of specificity all the projects that could or could not be approved in the next 50 years. What we're saying is that the criteria that are listed are so vague and ambiguous that you can't figure out how they're going to be applied. So we're not saying that the EIR should have said what is being proposed on young ranch, I mean it would have been great if it had done this but we're not saying that it needed to be legally adequate. What consistent as we use one example is the habitat linkages. The way those are defined it is really impossible to say what is going to be adequate and if you can't know what the goal is that has

to be met, then how can you know what are the impacts that you're analyzing? If you can't say what so it's not just this specific project but it's the types of projects that are going to be allowed under this plan. And if you don't know that then I would say you don't know what the impacts are. And you can't analyze it. You have to have a further level of clarity and specificity.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Any other questions for the appellant at this time? Not at this time, thank you.

>> Okay, thank you.

>> Mayor Reed: I wanted to, before we get into council discussion make sure that there's some other items that are in the record, for the council and the public as we consider the EIR and the plan itself. If we go back to the last hearing on the plan, whenever that was, October I think, I raised several questions about the cumulative impact of fees. Noting what I thought were some weaknesses in the economic analysis. But since that hearing, a lot of work has been done. And I want to make sure that the record reflects some correspondence that has been sent. And I presume received. First, is a letter dated November 13th, 2012 from the Department of Fish and game and the U.S. fish and wildlife service, the joint letter to the cities of East Palo Alto, Newark, Sunnyvale, Milpitas, Cupertino, Mountain View and Palo Alto biological resources, and particularly to note in there, the comments from the wildlife agencies that the Santa Clara Valley habitat plan is an important step forward in protecting endangered threatened and rare species and their habitat in Santa Clara County, we expect jurisdictions not directly parenting in the SVC HP comparable mitigation measures to achieve this important goal. As part of the CEQA review process and through wildlife agency authorizations, the wildlife agencies will provide information addressing the adequacy of project impacts we heard that from the wildlife agencies in the public comments when they came down to testify. Now we have it in writing. This is a five-page letter. I'm not going to read the whole thing in but I just wanted to make sure that the record reflects that we have written corresponds to those agencies moving forward what they said they would do with regard to once this HCP is in place, it becomes the standard by which other mitigation measures would be measured. And then second group of letters I think they're all dated

November 15th, 2012, from the Sierra Club, the Santa Clara Valley Audubon society, thrive committee for green foothills, nature conservancy and milpitas, Palo Alto, Mountain View, Santa Clara and Sunnyvale, and there may be more. Again, showing the effort that is being made to ensure that mitigation measures that would be considered and required under the HCP are likely to be considered and required in other jurisdictions, whether or not they're signatories to the HCP. And finally a letter to the county of Santa Clara from the Department of Army, army corps of engineers this district, regarding their interest in using the HCP as part of their process, again, responding to a request from county of Santa Clara one of our partner agencies for what the army corps was intending to do. And I want these to be noted in the record because I think they provide an answer to the question about the cumulative impact of the fees. And I think the conclusion reached in the economic impact analysis is correct. That if you take all these fees together, there's not likely to be a significant impact on the land use patterns within Santa Clara County. Because of what the agencies have said that they will do, and what the environmental groups have said that they will do as reflected in these letters. And I think it's important that we ultimately get this better documented in the HCP when we finish the final final final documents so the record is clear. But from my point of view, I'm able to support this environmental impact report notwithstanding some of the issues I had in the public meeting based on the representations that have been made and based on the actions that have been taken that will ensure that the mitigation measures that we would require within the HCP are most likely going to be required elsewhere in the county. So essentially the fees would be the same, the mitigation would be the same, and the impact on development would be the same. So I think we can reasonably conclude that there wouldn't be any adverse environmental impact from the cumulative impact of the fees. So I just want to make sure that those make their way into the record, and then when we deal with the habitat conservation plan I'm going to be interested to make sure that we properly documented it, get all the record together, so that how long from, 50 years from now, 49.9 years from now we still know what happened when we're all doing other things. So with that, I have some other requests on this. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I appreciate your comments. Looks like there is and I think there will continue to be momentum in make sure that we're not and those our partners are not the only ones not going forward but at least the work that we've been able to do over many, many years I know Vera and others have been at the table from the legal perspective making sure our interests are certainly protected. That at least

we played more of a role in crafting the parameters of the plan. And so others now are going to have to play more of a follow as opposed to a leading role. And I think that's why I've always encouraged us to continue to push forward so we can help to dictate the final plan and I think our partners in the environmental community will continue to put pressure on the other jurisdictions as well as the federal government and certainly state environmental regulations are going to push in the direction of having these plans in place. It's at their own peril if they choose not to take seriously developing their own plan or at the very least taking into account the mitigation put forth in the plan. I agree with your sentiments as well as the sense that we at least are getting some sense that the other jurisdiction that aren't signatories are going to at some point fall online or at least moving in that direction and I'm certainly comfortable with approving of the environmental impact report and will make a motion that the memo of Councilmember Chu and I put forward essentially is supporting planning staff and commission recommendations to approve the environmental impact report.

>> Mayor Reed: All right, we have a motion. Councilmember Chu.

>> Councilmember Chu: Thank you very much. I just also wanted to thank the staff for working on it. I -- one, I apologize, pointed out earlier but in your memorandum dated November 13th, on the bottom, from Joe, the bottom of the cover page. The local partners that you right as stated Milpitas I believe it should be Morgan Hill.

>> Joe Horwedel: You are correct.

>> Councilmember Chu: With that little correction, again, thank you very much for your work.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Joe, I just wanted to go back to the comments you made about the delay to January. I guess I'm not totally clear because we often have lots of questions that get answered on the day of the hearing, right? And it's not infrequent that you'll issue supplemental memoranda. Why can't we go forward on the 18th? Is there a particular perplexing issue we're dealing with?

>> Joe Horwedel: It is a function of bandwidth. Andrew hasn't been able to work on this as he has been working on the harker appeal. There are other issues that cause us to stop working on this. Andrew and I are kind of the planning involvement, there are obviously other things work on --

>> Councilmember Liccardo: So we can blame Don?

>> Joe Horwedel: Yeah, well it's just that we're finishing up a bunch of work on some private school proposal, public-private partnership with school stuff, we've got two DAs that we're trying to get done for next week and the week after so it's just --

>> Councilmember Liccardo: Okay.

>> Joe Horwedel: In the year a lot of things came and this is the kind of thing that one place scooted out.

>> Councilmember Liccardo: I get it, thanks. Can you respond to the second question I asked, and of council from YCS and that was about --

>> Joe Horwedel: The baseline --

>> Councilmember Liccardo: No the other issue her assertion really that the criteria aren't specified with enough certainty or enough detail to be able to enable someone to understand what the impacts will be. The young ranch.

>> Joe Horwedel: So in the plan there's an extensive amount of pages devoted to things that are in and things that are out of the plan. We've spent a lot of time with trying to anticipate public projects, that we would be bringing forward, capital projects, and then as well as private development. And the basic assumption we've taken in the plan is, the private development is inherently a covered activity under the plan. I think the question that was

being raised is, is the magnitude of any private development in the foreseeable future covered by the plan? And I think that's really kind of the rub that's going on in this case, is that the proposed development has a number of very sensitive habitat that exist on the property, and for things like serpentine soils which is where the bay checker spot butterfly lives on. There is a finite amount of what we consider take. How much land can be converted into development or be impacted, that this plan covers? And that there is things like Communications Hill that we are working on in the City of San José that is in our urban service area plan for urban development that will potentially have serpentine soil impacts. We don't know the quantification of that yet. We have other development that's going on in the county. That over the years, from PG&E projects, county road projects, that also affects serpentine soils. We have landfill. I think the concerns we have talked in the last year or two around development, that they would like certainty that their project would be guaranteed to be covered by the plan as it's proposed. That there's X amount of acres that they would have impact. I think they've done a really good job about designing the project to minimize impacts, they've really listened and looked at the project itself of our goals but because we didn't go through and write them as a specific project and say 200 acres of serpentine, they don't have assurance that two years from now going through a development process with us and the county that they could go and have a guarantee to do their project. So that's my take-away of what that concern is.

>> Councilmember Liccardo: I understand. I guess, obviously I can't speak for them but what I heard her say and what I saw in the letter was, for instance as you define linkages does that mean corridor or a large link where there can be dispersion?

>> Joe Horwedel: Well, we have within the plan, wildlife corridors, we have linkages between the major habitat areas where we want to acquire lands. So that we have connectivity between those. And I think there again, their site sits in the middle of where some of those go through. I think they've done a pretty good job of trying to accommodate those. But this is a 50-year plan over, you know, many square miles. Is you know a large area. And so to be down at a level to saying on this property, you need to maintain a corridor width of a thousand feet, we really didn't feel that that was appropriate, at kind of this landscape level type of reviewing, versus when an individual project comes through and we're doing CEQA review on it, we'll assess the biotics, or the county will assess the biotics and have we in fact achieved that?

>> Councilmember Liccardo: Joe, I think I'll take it offline because I don't want to consume too much time with this. I don't think that's what they're saying. I think they just want a definition that will give them clarity, that can be applied uniformly throughout the city or throughout the plan area. And I think what they're looking for is some of that clarity.

>> Joe Horwedel: Uh-huh.

>> Councilmember Liccardo: I recognize that this can get very deeply into the weeds, pardon the pun.

>> If I may, there's also an issue with this as well, though, that this particular project that they're describing is outside the City's urban growth area, is not contemplated for development in the general plan. So the picture that was taken of development within the City of San José and frankly in the county of Santa Clara, it was a picture that viewed all of our current general plans, all the jurisdictions parenting in this as well as all of our currently urban growth boundaries. So clearly, this was not contemplated in any of those ways. To try look at certainty for something that was not contemplated for development in this plan, had it been for example within our general plan, you look at what the requirements are for, for example, rural residential or had it been contemplated in county plans, this is a little bit unique in that respect.

>> Councilmember Liccardo: Thank you, Vera, that's very helpful.

>> In addition, also, pardon me, your project about no project baseline --

>> Councilmember Liccardo: I think I get your point and the response.

>> I was just going to say it's responded to on section D of page 8 local partner's response, October 18th. I just wanted to put that in the record.

>> Councilmember Liccardo: Thank you, the response is very convincing that's one of the reasons I asked the question.

>> Thank you.

>> Councilmember Liccardo: The letters that the mayor referred to ask those be distributed to all of council? We're fighting a battle on Friday to encourage or nudge other jurisdictions to go in the direction of the HCP and it would be really helpful to understand what all the agencies are doing, what they're saying specifically so we can all be informed.

>> Joe Horwedel: So we can pass -- distribute those from an info memo. Originally we had targeted the 18th that would have those as attachments. If we are going to have them in January it would be helpful to get them out now.

>> Councilmember Liccardo: I think we have our VTA meeting on Friday if I'm not mistaken.

>> Joe Horwedel: Thursday.

>> Councilmember Liccardo: Stand corrected, Thursday.

>> Joe Horwedel: We'll have them go out tomorrow morning.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: EIR CEQA and city approves it I assume anybody who doesn't like it they have action they ask take?

>> City Attorney Doyle: The members of the public do have a right to file an appeal which you have before you, yes.

>> Councilmember Oliverio: Whether it is gas station owner who doesn't want another pump across the street --

>> City Attorney Doyle: Yes, you have been down that road already.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: I just want to tag onto what Councilmember Liccardo said about the working with the VTA. We have the nitrogen deposition fee and how that gets applied county-wide is an interesting question, I think that's of great interest to us and that's part of the conversation at VTA. We have a joint meeting with the Water District, they're obviously partners in this, and have some authority and capacity around riparian corridors in the rest of the county. So I think we take all of these opportunities to make sure that our partners and signatories are all work together and so the VTA one on Thursday is an obvious example of once the other cities pay attention to the work that's been done, I think we'll get a lot of cooperation on that. So I want to encourage the councilmembers who are members of VTA to work on that, that you've already started and the question was whether or not this is on the agenda at the joint Water District, city council meeting for the 10th. I know we've seen that agenda. Just don't remember if it is thereon or not.

>> Joe Horwedel: Mr. Mayor, it is not directly on there. There is an item related to wholesale water rate setting that is on the agenda. And in my humble opinion that really is the appropriate place to ask the question. Is what goes into wholesale water rate-setting. Wholesale water from the Water District comes from a combination of the sources, locally procured rainfall, the state and federal water projects do depend on biological opinions being issued by water industries HCP. That they've been able to receive those contracts to extend that water supply into the valley. So it is essentially, could be considered mitigation from the water that we are receiving from the state and federal government.

>> Mayor Reed: Good thinking and we'll have to continue to do that as we deal with the implementation side of this. Because we'll have the HCP back in front of us relatively soon and the implementation will take quite a while. With that we do have a motion, as previously made. On that motion, all in favor, opposed? I got one opposed, Councilmember Constant, the motion is approved. The EIR is approved. Adopted. Certified. Whatever we did. I forget exactly the word. Staff will tell me.

>> Joe Horwedel: We've upheld the certification of the EIR and moving forward with implementing.

>> Mayor Reed: That's what we did. Make sure I got it right. That concludes our work on that item. Which was 4.3. We did skip past 3.6 and 3.7. Those are scheduled to be last which we're not yet to last. We're moving on to item 6.1, the automated transit network feasibility study is our next item. Hans Larsen.

>> Hans Larsen: Mr. Mayor, members of the council, I'm Hans Larsen director of transportation. Just a few brief remarks. This item was recommended to come to council to just distribute the staff report to the council to raise the council's awareness of this effort. We did have presentations on this topic to the T&E committee at their meetings in November and prior to that in May. This effort was a joint effort with the airport and the VTA. And there were presentations on this study to the airport commission and November, as well as the VTA's measure A oversight committee. Also in November. Basically, the conclusions of the study, is primarily a technical study. There's some technical issues that we identified with this that for engineers it's useful in terms of setting a path forward to develop this new form of automated transit. I think the key issue is there's no money particularly in this country to move a project forward. So our efforts in actually actively pursuing a project which we're looking at around the airport isn't viable in the near term but instead we think there's some merits to continue to promote this. Here locally, within Silicon Valley, within the United States and internationally and we'll be taking some minor steps to just help facilitate awareness of that. And so I'm available to answer any questions you have.

>> Mayor Reed: We do have some requests from the public to speak on this, we'll get to this in a minute. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor and I want to thank Hans and the director of D.O.T. for coming here to make this presentation as brief as it is. The reason I had asked for this item to be referred for a full council discussion is I kind of felt, given this issue and how it's developed over the years it was kind of an important decision tree moment I used the word I think abandoned but it was quick to point out that it isn't this, it is just a feasibility study for this point in time, that we won't let go of this issue, we will continue to be advocates for this. I wanted the full council to at least have the ability to weigh in on this issue and also to hear this issue. I felt it was important so again, I appreciate my colleagues allowing this item to be heard today and also for staff for presenting it.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you mayor. Hans thank you for coming back. Since we had the presentation there are a couple of questions that came up in my mind. I understand sort of I know this is vex a rough estimate at this point the total cost is \$758 million. Back of the envelope, do you have any sense of how much of that is attributable to the fact that we are relying on elevated guide ways rather than something at grade? In other words does elevation add that much to the cost, it would be interesting to consider how much an at-grade system would look like?

>> Hans Larsen: Councilmember Liccardo, airport facilities with adjacent transit, light rail and then CalTrain and future BART on the other side of the airport. I think the cost estimates that our consultants came up with, did take into account the most cost-effective way of making those connections. It is a combination of at-grade and elevated sort of where necessary. I think one of the things that the report identifies is because this is a new type of transit technology that has really not been built in this country and very few places in the world. There's almost like a 40% markup just because of the risk factors associated with doing something that hasn't been done really at all or very much. So that's a big component of the high cost that we saw. I think one of the other conclusions of the study ask if we are to make a transit connection to the airport that really the most effective connection would be a connection to the downtown Diridon station where you have BART light rail Caltrain bus rapid transit future

high speed rail, that you get a lot more benefit of connecting the airport there than at 1st street and Santa Clara station.

>> Councilmember Liccardo: I agree there. We are funding for measure A to study what we have to study. So I appreciate that we'd probably be looking at a different alignment. Essentially is what you're saying then that by -- there really wouldn't be any cost savings by ditching the elevated alignment because that was the lowest cost alignment based on what they --

>> Hans Larsen: Yes, that's my sense that we looked at an alignment the brought it in as sort of the lowest reasonable cost. With this technology it is not something that you can mix with pedestrians and bikes and cars. So largely for it to have automated transit vehicles it largely has to be physically separated from any other conflicting other movements.

>> Councilmember Liccardo: Okay. I recognize that no one is about to install a per-ticket fee at the airport given the challenge the airport is facing. The way we finance something like this, my understanding is at SFO they did per ticket fee I know this isn't the time to do that but I think those are the kinds of things we could be looking at in the future as we try to make this viable. Thanks, thanks for all your work.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Hans continuing on that train of thought, is there any potential for public-private investments and you know when you look at some of the rail projects, you've seen in other countries, and especially what we're looking here in California I keep hearing the potential for that. I mean is this a project that could generate interest?

>> Hans Larsen: Yes, Councilmember Campos, that's I think one of the strategies that we'd like to support. Clearly, that there are very limited funds available for transportation investment. We are just meeting with the transportation and environment committee yesterday, and looking at the big deficit that we have in funding for

just basic pavement maintenance. So nationally there isn't a lot of you know support for doing you know it's challenging to get any transit investment particularly for kind of new innovation. So looking at some of the examples across the world, and you know this technology is being implemented probably the most notable project is at the Heathrow airport which is a private airport. So they funded a system privately. There's a project under construction in Korea and in India and those are all on privately financed. So one of the things that we would like to support is potential for private investment here within Silicon Valley and one of the strategies is we would love to have this here in San José. There's probably opportunities with say an Apple expansion or google or some other companies that have resources that may be willing to do a you know sustainable transportation showcase project. And so that's some of the efforts that we're working with others to tries to facilitate.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I agree with some of the sentiments of Councilmember Liccardo and Campos both in terms of the connectivity, what makes the most sense and I think that if this -- we can all dream and this can be on our wish list of some day seeing this in San José or seeing it from the airport and is.

>> Councilmember Pyle: If it is coming downtown to the Diridon station, it's going to be a major hub it would make much more sense. On the flip side of this on the financing aspect in the other countries where it's financed and heavy heavy volume and the reality is the airport by itself is not likely to create the kind of volume that a private investor is going to look for in this kind of project. However you start connecting it as you mentioned some of the technology hubs some of the campuses, some areas of interest in downtown and the vicinity then you start to create enough of a volume that also starts to serve the purpose of actually getting people out of their cars. Again this maybe something that you know is something down the line but I think that's how if we're going to think about it we have to think about it in those terms in my opinion as opposed to simply how to get the people from the airport to the light rail station. As Councilmember Liccardo said there was funding for look at one aspect

or one type of program for this but if we truly are going to look I think in a visionary fashion and think long-term I think we have to think about how this can supplant some of the other transit options out there and most important vehicle traffic.

>> Mayor Reed: I have a couple of requests from the public to speak. We'll take the testimony at this time, Ed porter and David Wall.

>> Good afternoon, councilmembers and mayor. I'm Ed porter, I'm here from Santa Cruz. When San José was first considering getting this study performed, Santa Cruz city council adopted a strong resolution which was delivered to the council at that time, and the mayor supporting the objectives of the study, because we think it's very important. And there's long been discussion of collaboration between various cities, regional cities in this area, in this kind of effort. Now I think the City of San José is to be congratulated on the progress of this project at this time. Just in response to a couple of comments on the council here I just want to say I've been looking at ATM networks and personal rapid transit for about 20 or 25 years. I can tell you from firsthand knowledge that there is private money for ATM networks and regarding Councilmember Campos comments, I just want to say that most of the railroads in this country started as private enterprises and later became public enterprises and it is not a bad model. Regarding the \$758 million mentioned in one of the reports, I just want to say that there are companies that are advertising that they will construct this kind of ATN network for ten to \$12 million per mile. And if you began with three miles you get \$36 million, not \$758 million. So it's worth thinking about that, when you put the results of the study in perspective. I do want to express a note of caution similar to that. The study results and vision sophisticated and mature ATN systems that we may not enjoy for many years, just from the comments that I heard from just now in maybe a decade yet one recommendation is to seek new state regulation now. I just have to say, to me that is sort of like if, in 1915, when Henry Ford was first perfecting his mass production vehicle, interstate highway regulations ready to go first and would I say no, I don't think so, I think you need to let these private developments begin. Finally --

>> Mayor Reed: Sorry, your time is up. David Wall and then Ross Signorino.

>> I've never been a proponent for pod-cars. I think they're a little bit too Ritzzy for this city. When you look at \$758 million, that's almost the amount learned director of transportation mentioned the other day about the backlog of road repairs. I mean, it's a little less. But I think we need to focus in on road repairs. And in closing, with reference to the habitat plan and all those fees, there should be a dedicated revenue stream for the Department of Transportation with these cost per trips to siphon off all that money and put it into a road repair account that he can manage as he usually does with great facility for the benefit of our community. Thank you.

>> Mayor Reed: Ross Signorino.

>> Thank you, Mr. Mayor, members of the council. I thought I'd get up here and throw a little bit in the mix about transportation. You talk about light rail, talk about BART and then talk about the airport. I think we've been talking about this for the longest time and then you talk about possibly some private companies that would probably like to help finance this project. Personally if I were a private company I wouldn't finance it all under the conditions that you're laying this all down. I don't think so we have plan B, we have plan A but never a plan B or C or other things. We could hook up BART to airport, to the airport here and hook up all three airports together with BART instead of going downtown trying to make a tunnel there. When the high speed rail has told you that that is not the best solution for the putting the tunnel in. That is in Downtown San José and very expensive. Again I ask you again, come up with another plan, plan B as opposed to plan A that you have, bring it downtown, bring it surface to the airport much less expensive I believe in my simplicity of thinking that is to say. And I urge you to look at it again, plan B, go for plan B, plan C and then maybe you might have something that we can have an alternative to what you're trying to do already. Thank you.

>> Mayor Reed: That concludes the public testimony. I don't think we have a motion on this yet but I've forgotten. Anybody make a motion on this? Motion is to accept the report. On the motion, all in favor? Opposed? None opposed, report is accepted. Motion is approved. Around we will move on, actually we'll move back in the agenda, Items 3.6, the comprehensive annual financial report, 3.7, the comprehensive annual debt report and 9.1 the basic financial statements of the Redevelopment Agency of the City of San José and the

successor agency to the Redevelopment Agency. A lot of financial reports, I think the staff wants to present all of them at once and then we'll talk about them. How do you want to proceed?

>> Actually 3.6 and 9.1 and then we have to do a staff change for 3.7. So if we do 3.6 and 9.1 together first. I think that will work.

>> Mayor Reed: All right.

>> Sharon Erickson: And I will attempt to kick this off. Sharon Erickson City Auditor. Under the charter the City Auditor is responsible for conducting or causing to be conducted the annual audit much the City's financial transaction. You have before you today the City's comprehensive annual financial report and the results of the annual financial audits conducted by the independent certified public accounting firm, of Macias, Gini & O'Connell. I'd like to thank the city and the successor agency's accounting staff and the external auditors for their work and ask them to present their results for your review and acceptance.

>> Thank you, Sharon. Juliet yah Cupertino Cooper acting director of finance and I have with me Cindy Pon, a partner of Macias, Gini & O'Connell and abe andrade, finance director of the former Redevelopment Agency now SARA, and Grace closely in getting the financial statements completed for today. So and the next slide just gives an overview of the table of contents for the financial statements. We have the introduction which is the letter of transmittal, outlines the awards and the organizations, and the auditors opinion is only based on the portion of the CAFR which is the independent auditor's opinion, the management discussion and analysis which provides an overview of some of the highlights of the financial activity of the organization over the last year and the basic financial statements, including the notes. The notes are very important to read in conjunction with the financial statements and then there's also required supplementary information and supplemental information and finally the statistical section if you can get all the way to the end of the document provides some interest being statistics usually on a ten year horizon of the activities of the organization. In addition there are a number of smaller audits that are done that will be -- that are posted on the City Auditor's Website and we will be distributing an informational memo listing those identity on the Website. So now I'll turn it over to Cindy Pon to give the results.

>> Good afternoon. Thank you for inviting me to discuss the audit ultimate are of the fiscal year 2012 financial statements. Our audit report is found on page 1 of the financial section tab. The scope of the audit includes the City's government financial statements, its major governmental and enterprise fund and the fund information of the city. The responsibility of these financial statements rests with the city and our responsibility is to express an opinion on these financial statements based on our audit. We performed our audit in accordance with generally accepted auditing standards and we rendered a an unqualified or clean opinion. This means fairly in accordance with generally accepted accounting principles. The fiscal year 2012 audit reports includes four additional paragraphs to emphasize different matters to the reared. Three of which relates to the former Redevelopment Agency. The first paragraph highlights that during the year there were changes to the California redevelopment law which resulted in the dissolution of the Redevelopment Agency of the City of San José. and this is also discussed on page 42 of the financial statements, in note 1A, whereby the state enacted legislation that dissolved the redevelopment agencies in the state of California as of February 1st, 2012. As such, on February 1st, the city, as the successor agency to the Redevelopment Agency of the City of San José, became responsible for overseeing the dissolution process and the wind-down of the Redevelopment Agency. The impact of this dissolution was an extraordinary item of \$2.1 billion which will be discussed later by the city. In the second paragraph, we also highlighted the reader towards a note 4C 3 which is found on page 120 of the financial statements whereby on June 8th, 2012, Moody's investor service down greated the former Redevelopment Agency senior obligation reading to below BAA 1 which triggered a special termination event under the continuous covenant agreement under 2010C housing tax allocation bonds. The bonds had an outstanding balance as of June 30, 2012 of 88.6 million and are reported as a current liability of the successor agency. For the period commencing on August 15th, 2012, and ended on November 15th, 2012, the grant -- the bank agreed to forbare from exercising its rights and responsibility under the bond documents with respect to the existing default. Negotiation is were under way to extend the forbearance agreement as of the date of the report. The third paragraph high lights, notes 4 D 3 which is found on pages 124 and 125. Whereby in connection with the redevelopment dissolution law the county of Santa Clara's auditor's controller's office issued its agreed upon procedures report on October 5th, 2012, which identified three separate issues, questioning a total of \$203 million of assets held by the city. These issues are currently in dispute. The city has requested various meetings, confer

meetings with the state department of finance and is in the process of administrative procedures to resolve these issues. Due to the uncertainties with the redevelopment dissolution law the ultimate outcome of these issues cannot be presently determined. Accordingly no provision for any liabilities that may result has been recorded in these financial statements. The last paragraph that we added to emphasize a matter was -- describes a matter similar to the prior year, and emphasize the funding status of the health care plans as of the most recent actuarial evaluation date and directs readers to the disclosures which starts often page 101. As of the most recently actuarial valuation dated June 30th, 2011 the value of the defined benefit pecks plans actual accrued liability exceeded the actual value of their assets by \$510 million for the Police and Fire department retirement plan and \$981 million for the Federated city retirement plan. Also as of the valuation date of June 30, 2011 the value of the postemployment health care plans exceeded the value of their assets by \$943 million for the Police and Fire department retirement plan and \$1 billion for the Federated city employees retirement system. And with that I would like to turn this back over to Ms. Cooper.

>> Okay, the next slide here we have a statement of the net assets and as Cindy mentioned, the dissolution of the Redevelopment Agency created an extraordinary event. And what this did is, it basically took a little bit over \$2 billion worth of liabilities of the formatter Redevelopment Agency that were presented inth the City's financial statements and moved them to a new separate trust fund. So in doing that essentially we removed \$2 billion worth of debt that was owed over into a special trust fund which then increases the net assess position of the city by a similar like amount. There were some offsetting changes that occurred as a result of that as well, some loans and obligations of the former Redevelopment Agency to the city that were declared null and void, and those are being booked either on an accounting basis now and will be impacted on a budgetary basis when those moneys become due and payable. If the dissolution of redevelopment had not happened there would have been a decrease in our net assess position of about \$300 million which is consistent from prior years. Additionally it's important to note for the first time in five years the General Fund operating revenues exceeded our operating expenditures creating a surplus of just under \$50 million. It was generated through a combination of slightly stronger revenues and continued implementation of the cost reduction measures including the deep service reductions eliminations and reduction in employee total compensation and service delivery changes. This chart right here just provides a more detailed breakdown of what the city's extraordinary gain was transfers of former

agency assets and liabilities and then in addition that long term liability was \$2.3 billion which is the bonds that are outstanding. Then as I mentioned there was an invalidation of some loans and interest which totaled \$18 million associated with loans to the General Fund, that the General Fund will assume that are related to the CRAF loans and the park fund of about 13.5 million and some accrued interest on the CRAF loans that had to be written down to the Leif rate which is a total impact to the city of about \$35 million so the extraordinary gain that's showing on the financial statements is as I mentioned just over \$2 billion.

>> Mayor Reed: So we gained \$2 billion. Why don't I feel rich?

>> Because you still have to pay it back.

>> Mayor Reed: Oh.

>> It's just we moved it in a different presentation of the financial statement. So it's one of those unique opportunities. The good thing about that to the extent that the former Redevelopment Agency continues to express fiscal stress with respect to the tax increment revenue coming in or issues with negotiating some of its bond special trust and doesn't reflect any kind of negative aspect on the City's general presentation of its financial condition. So that's the one helpful benefit of that. Here is a General Fund comparison. With the prior year, as you can see here on a GAAP basis, we have a General Fund 171 million the difference is about \$11 million which is mostly attributable to the loans the 18 million in loans that the General Fund will be assuming. On a budgetary basis they haven't been assumed yet because they're not due but on an accounting basis they are now assumed in the presentation. So and then on page 131 and 132 of the financial statements there's a more detailed discussion of the difference between budget and GAAP accounting if you are so interested to be further informed. The General Fund balance as I said here is the \$183 million on a GAAP basis. Last year we implemented GASB 34 which created assign those or those that that money, the \$49 million this, quote, unassigned, \$33 million of that is attributable to the emergency reserve and the contingency reserve and the rest of it would have been allocated through the annual report period. As you ask see most -- though it shows \$183 million most of it is committed to other expenditures in the organization. Okay. There we go. Okay in the next slide

here, one of the things as we know is looming is the implementation of GASB 68, which will radically change the presentation of the liabilities of the city which brings on the balance statement the City's total pension obligations. So while we saw a \$2 billion essentially bump this year in 2015 when we implement GASB 68, we'll probably see a like amount in terms of a reduction. So we are -- we are working and developing a team on how to implement GASB 68, look at bringing back sample financial statements so the council can be informed on how that implementation will reflect the presentation of our financial position. It's not effective for the city until fiscal year 14-15. So it will be three years from now when we're actually making the presentation to you showing you the impact of the GASB 68 implementation on our financial statements. Additionally, retirement, we're working with retirement services to bring forward to the council a separate presentation on their financials, both the Federated and Police and Fire. As the plan sponsor we believe it's important for you to have a presentation to see the financial -- the financial position of those retirement funds. So that will be coming back to you sometime after the first of the year. But just wanted to let you know that that's an outstanding item that we'll be bringing back forward to you. Two significant subsequent events prior to -- after June 30th, one we issued tax and revenue anticipation notes of \$130 million which were used to help prefund the retirement contribution on January 1 -- not January, July 1, and we did the airport debt refunding of \$49 million a couple of weeks ago. So with that we're available to answer questions and then we present to you the comprehensive annual financial report for fiscal year 11-12 which is item 3.6. And then the basic financial statements for both the Redevelopment Agency and the successor agency which is item 9.1.

>> Mayor Reed: Let's see if we have a few questions on these before we move on. I want to make sure I understand how the trans, the tax revenue anticipation notes get handled we are talking about an entire year, we borrowed money, paid back the money, the net impact is zero. But when you were talking about the increase in revenues or the trans, in the revenues?

>> Know no.

>> That is a real increase in revenues not a borrowing.

>> Yes.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Is there any GASB requirements that we have not implemented yet?

>> No, all the ones that have been pronounced to be made we have implemented them .

>> Sharon Erickson: But there is a list.

>> There is an upcoming one in the notes to the financial statements. I can tell you what they are. They are GASB 60, which is now, I'm going to tell you the title is. It's accounting and financial reporting for service concession agreements. GASB 61 which is financial reporting entity on both an amendment to GASB 14 and 34 and GASB 63 which is the financial reporting of deferred outflows of resources deferred inflows of resources and net position.

>> Councilmember Oliverio: Thank you.

>> There's actually a few more.

>> Mayor Reed: We have requests to speak on 3.6 and 9.one. We'll take those at this time. David Wall.

>> I would like to thank our acting budget director. As a matter of fact I would like to see a friendly motion from the floor to cut to the chase and just have her appointed today as the director of finance. Saving whatever pittance the City Manager would have for the nationwide search. So that would be my request for a friendly motion from the floor. With reference to 9.1, are we still on track for expending \$1.3 million for the successor agency out of the General Fund? For the period of January 1st, 2012, till June -- consume January 1st, 2013 to June 30th,

2013? And also Mr. Mayor, are you going to be declaring a fiscal emergency with reference to any type of retirement take-backs? Thank you. Err.

>> Mayor Reed: That concludes the public testimony for this item, could you go back to your recommendations? You had a slide, there it is. So I need to get a motion.

>> Motion to approve.

>> Mayor Reed: Move to approve staff's recommendation on 3.6 and 3.9. Any further questions on comments? Councilmember Liccardo.

>> Councilmember Liccardo: Thank mayor about Julia just look at the report notes about GASB 68. And I assume it's going to reflect poorly on the financially of every city in the state with a pension obligation. Is that fair to say?

>> Yes, that is correct.

>> Councilmember Liccardo: So anticipating the sucking sound coming from the credit agencies, are we looking at potential down grades across the board throughout the state? I mean is this going to affect our ability to borrow?

>> I think it's a little early to make that assessment. I know Moody's was doing some independent kind of research and asking for a different presentation in some of our materials. They're still waiting to release their report on that. So it's hard to say. Because it's an accounting presentation. It's not a funding requirement. So it becomes the obligation of the entity to decide how they're going to continue to fund those pension obligations which you as a city council have been working very hard on doing so those are important things that the rating agency looks at, as well. It's not just the presentation of the financial data but what is the council doing in order to solve any budget issues that they have.

>> Councilmember Liccardo: I guess if I recall just after I got into office I think GASB 43 and 45 came in on OPEB obligations and everybody you know everybody's jaw dropped because we discovered we were a billion and a half in the hole. And I just can imagine that you know, when that revelation comes, there certainly are expectations that are altered as a result. And I recognize it may not change our course of action because we've been pretty up-front and transparent about it. But I'm just concerned about sort of the contagion effect of all of a sudden these cities reporting in ways that they haven't reported before.

>> That's why we want to sit down and do some preliminary analysis and bring bam some pro forma analysis bandwidth to do that but it is one consideration that we could have, to essentially do that. But obviously we're three years out which is always good, gives you time to plan and think about it.

>> Councilmember Liccardo: Yes, great, thank you.

>> Mayor Reed: I think we probably have to anticipate that once these GASB requirements are implemented, and rating agencies digest it that cost of borrowing for municipal governments is likely to go up. Because it's going to be adding risk to everybody's balance sheet, I think, because most cities have bigger liabilities than they're currently reporting, even though people know what they are, once they're out in the open the market's likely to tick up the interest cost for us. But because we've been pretty much out there dealing with it, that's one of the factors they look at in our own rating. You can see the ratings that they've done, one of the great things is the council is dealing with their pension obligations and that's the big plus but the other side they say, on the other hand, it looks like it's going to be really hard to implement the pension obligation he, so that's a downer. It is undoubtedly going to increase the cost of boring nor municipal governments. Any other comments? We have a motion to 3.6 and 9.1 all in favor, opposed, none opposed, both of those are approved. We will have a staff changeover to talk about the comprehensive annual debt report which is item 3.7. O.

>> Good afternoon, again, Julia Cooper acting director of finance. I have with me Maria Oberg who is our acting Treasury Division manager and Peter Detlitz who was recently promoted to be our city debt administrator. We're

happy that Peter has decided to stay on with us and continue to provide us with his words of wisdom. With that, this presentation unfortunately is a little long because there are a couple of outstanding council questions regarding the debt policy and we have a proposed amendment to the policy to deal with short term debt and variable rate debt in terms of look at that differently and additionally there have been some questions about debt capacity and ability to pay. So we're kind of going otry to run through the kind of debt we have out there and Councilmember Oliverio's asked several times in firms of different types of debt and the capacity and ability to pay. So we'll move forward quickly. So this first slide is just an overview, just gives you kind of the policy objectives of the City's debt management program and we focus on debt issuance, debt administration and issuance process really only takes about 25% of the staff resource time. The rest of it is really spent on the debt administration. Because once you issue the debt you got to live with a lot of obligations to maintain that debt and maintain the relations with the investor community for usually 30-plus years and then financial advisory services, in temps of look at capital financing needs over time . Just kind of a quick overview of the presentation. We'll go over the comprehensive annual debt report. We'll look at the debt portfolio overview and the types of debt and Peter will talk about that then I'll transition to talk about variable rate debt and the refunding and restructuring opportunities then we'll talk about just the slide on what kind of the work we're doing for the organization. And talk about the debt policy amendment and then some comparison to some peer cities. So as I said we'll try to go as quickly as we can. The debt -- the debt report really is a presentation of the debt that we owe to the investors, and our access to capital markets whether it be on a public offering or private placement. So this is where there's paper issued in which so to speak most of it's electronic and then we owe somebody back. So that's the focus of our presentation today. This slide right here just gives a kind of a pie chart of all the debt issued by all the agencies excluding multifamily housing revenue bonds in which we act as a conduit issuer. It's just about \$5.2 billion. In addition, the multifamily housing is about \$534 million. So this is -- we are -- with the dissolutionments of redevelopment it's kind of tweaked a little bit how we're going to be looking at some of these buckets in terms of obligations going forward. So this pie chart may look a little differently next year as we try to transition and think about those debt obligations. So now I'm going to turn over to Peter who is going to describe the various types of debt in the portfolio including as I mentioned overview on our capacity and ability to pay. Since different types of debt essentially have different types of responses on that question.

>> All right so the city continues to maintain high credit ratings with Moody's, S&P and Fitch of double A one double A plus double A plus. two-thirds voter approval for issuance of debt and they are secured by ad valorem august each year requesting that we place that on the property tax roll. The current authorization was approved in 2000 with measures O and P and in 2002 where measure O to fund library, park and public park facilities. The capacity to pay is limited to a charter total assessed value and also the willingness of the voters to tax themselves. For the lease revenue bonds Moody's and S&P, Moody's and Fitch I'm sorry do assign a one-notch distinction in lowering our ratings where Moody's assigns a two they are issued by the City of San José financing authority. And in this way the city annually covenants to budget and appropriate for least payments. These, the bonds are repaid by the City's lease payments on assets that are pledged as security to the bond holders. We've got two kinds of lease revenue bonds and we break these out in the debt report between nonself supporting with recourse to the General Fund which is bonds facilities for City Hall central service yard and self supporting with recourse to the General Fund such as the ice center. The city has one series of parking revenue bonds for the 4th and San Fernando garage, the ratings are A 1 by Moody's and double B by Fitch. They are secured by park revenues and a support of RDA tax increment. There is no recourse to the General Fund for the pavement debt service. And for 11-12 the city had a debt service coverage ratio of 4.5 times. The city does covenant to increase parking rates in order to for the payment of the debt service. And we do pledge a maintenance reserve for O&M of 25% for the expenses. Land secured bonds are generally nonrated. These require two-thirds voter approval of the property owners within a district or two-thirds of the registered voters if there is more than 12 special assessments levied on the debt service and again there's no recourse to the City's General Fund. These bonds are issued assuming typically a 3 to 1 or 4 to 1 value to lien ratio and we do covenant to foreclose on the property in the event a property owner fails to pay. Airport revenue bonds, rating of A-2 A minus and triple B plus. The rating agencies are a little split how they feel about the airport. These bonds do not require voter approval. They're secured solely by airport revenues net of O&M. Again there's no recourse to the General Fund. The airport does enjoy a relatively high debt service coverage ratio of just over two times. And the city covenants to raise rates and charges at the time airport in order to cover the debt service. The city does essentially enjoy a triple A ratings on the City's sewer revenue bonds. These are issued through San José Santa Clara clean water financing authority. Again do not require voter approval and are payable by sewer rates and charges. Again there is no recourse to the City's General Fund. We have a extremely high debt service coverage of over nine times and

there is a covenant to raise sewer fees and charges in order to agency the 86% bonds are rated at BA there triple B and B minus as compared to the 20% side for housing which are rated at double A one K AA and this is reflected by the housings nearly two times coverage ratio. They are secured solely by property tax or tax increment. There's no recourse to the General Fund. As we've discussed earlier the agency was eliminated in February of last year, and the capacity and ability to repay is from tax increment received from the county through the RPTTF. Finally, the city does issue multifamily housing bonds unrated as these bonds are sometimes privately placed with a bank. As Julia mentioned affordable housing projects. These bonds finance construction acquisition and the rehabilitation of the City's affordable housing. The proceeds of the bonds are lent to the developer or borrower and they're paid solely from loan payments from the borrower. Again there's no recourse to the General Fund. And the ability to pay is dependent on the cash flow or the pro forma for the cash flow that's spun off the project. And at this point I'll turn it back over to Julia.

>> Okay, thank you Peter. So that's kind of the bucket of different types of debt we have in the City's debt portfolio. Then in addition to having kind of the types of debt we have kind of the way that it's issued. Generally fixed rate debt is much of the portfolio but we have short term and variable rate debt. Tax and revenue anticipation notes are one form that's generally done for general flow cash flow borrowing to smooth the mismatch between receipts of revenues and expenditures and they are payable from revenues within a single year. So you issue them in a fiscal year and repay them in the same fiscal year. We have issued those just recently to help fund our prepayment of our retirement contributions, and we do an analysis, and usually the borrowing cost more is less than the savings that we're getting from retirement so we look at that every year to make sure it makes financial sense to borrow. We have commercial paper both on the city side at the airport. These are short term promissory notes and the variable rate demand bonds that are also secured by a letter of credit. The interest rate is periodically reset and the bond holder can demand or put following any interest rate change and we have those outstanding both on multifamily housing and in the past we had some clean water financing authority outstanding but we refunded those into fixed rate notes. So then in terms of variable rate debt kind of what is a letter of credit? It's liquidity support that's variable rate bonds their repriced weekly sell their bonds on a weekly basing. It provides a mechanism for investors to put their bonds back to the bank if they can't be resold to another investor. So generally if an investor decides they don't want them they tell the bank they tell the trustee they don't

want them and then the trustee tells the remarketing agent they buyer and then either the remarketing agency may take them into inventory or they may essentially put them back and they become bank bonds and they have a high are interest rate. The budgetary savings due to historical lower average rate and it also allows flexibility for change and use of the property and or to prepay the debt a feature that's not easily available for fixed rate bonds. So as we've talked before this letter of credit does provide some exposure risk to the city. We have the renewal risk which is becoming more and more relevant to the city. We have interest rates to the city down grade risk if the bank is down graded we can in effect -- we ask have some increased costs or redevelopment Agency letter of credit fees can go up and then markability risk to the extent that people don't want to hold that type of credit that can impact as well. One of the things, there's BASL 3 which is coming into effect in 2013, BASL 3 and GASB 68 it is a global across the world on bank capital adequacies. They do stress testing and how letters of credit. So it is basically going to require the banks to maintain 100% liquidity coverage which means a lot of the banks are not going to want to give us letters of credit anymore so we are looking forward and thinking what can we do, essentially to reduce that risk going forward. For example, J.P. Morgan holds a big letter of credit for us on the redevelopment side and they've already approached us relative to make some changes in that type of structure that we're exploring and we'll be bringing back to the council and the successor agency and the oversight board next year. And then this is just a little chart that just shows you since 1995 what have been the historical variable rate and fixed rate costs. So on a fixed rate basis the average has been about 4.7 percent and variable rate is 2.25. You see that huge spike there? That was essentially the market when it fell apart in early 2008. So that's -- but as you can see it calmed itself right back down in a relatively short period of time. what can we do about that and we have aggressively been being wog towards reducing our variable rate exposure. Taking into account that we're moving out of the decade of investment and a lot of our variable rate debt was there to help manage essentially the construction process a lot of it at the airport and some on the city side. And so as you can see in June of 2010 we have \$1.1 billion of variable debt outstanding. That is kind of a big number. As of today it's about \$662 million and we're projecting by February to be about \$511 million. So basically that's over a 50% reduction in less than a -- about almost a three year period of time. On the airport's about 75 million. The financing authority, that, 257 is built up of SP outstanding and additionally unused capacity there. The Hayes mansion the ice center and FMC all of which have real good business reasons right now to be in a variable rate mode. We are looking at refunding the variable rate debt on City Hall and the park garage across the street into

fixed rate debt and that is part of the refunding that we bring forward to you. And the j.P. Morgan and the well far go piece there about 50-50 split between the two. As I mentioned we've already done one refunding this year for the airport creating about \$1 million in savings. We're working on bringing forward to you in the early part of 2013 about another \$381 million of refunding which takes into account the bonds outstanding for City Hall and the garage across the street and it will provide some variable rate risk mitigation and so we're really excited about that because it's also going to provide budgetary savings on top of that, that's really unique opportunity for us. Additionally G.O. bonds. Those will come forward hopefully in the early part of 13 as well. Those will not create any budgetary savings for us because it's just will reduce the rate that we will put on the tax roll for the taxpayers but as stewards of the public funds it's important for us to working on those two. Page 13 through 20 in the debt report provides much a lot of detail on the debt issuance we did in the prior fiscal year about \$713 million and what we've got on the table for the upcoming year about 854 which the bulk of that is the City Hall project. And as I mentioned we do provide financial advisory services for major projects in the organization. There's kind of a summary right there. And then we do list all the projects on page 2 of the report as well. So I'm just going to kind of flow right into the debt policy here. While it's a separate action on the agenda which is 3.7 B, we did go back and look at the City's debt policy. And it's a -- the actual policy today ask attached as an exhibit to the annual debt report. And then the amendments are an item that's on the agenda and it's black-lined in terms of the changes that we're proposing the debt management policy has really served the organization well over the decade of investment. The policy has been in place for over a decade with no changes or amendments. I would say it's been a very useful tool for us. We are now taking some of the practices that we've used and now codifying them into the policy in terms of our recommendation. So with respect to short term borrowing we're recommending that prior to issuance that there's a reliable revenue source identified to secure the repayment and the final maturity to finance a project should be consistent with the economic useful life. And unless the council determines that an extraordinary circumstance exists it won't be more than seven years. So this would be like for commercial paper and things like that, we have a short term borrowing identify the revenue source and don't amortize for longer than seven years. And the second change we're recommending is on the variable rate debt in terms of when we're making a determination to issue the variable rate bonds that a determination be made the term of the project the market conditions our kind of overall debt portfolio structure when issuing the variable rate bonds for any purpose. And those are kind of things we've come back to you over

time when we've come with bond issuance but we thought it would be good to put it in the policy for future councils to look at. So and both of these changes really dove tailight what the capital improvement program fiscal policies which require comprehensive resource plans so this is kind of consistent with how we look it from a budgeting perspective so now we're kind of pulling it into the policy to make the consistent there. And then finally we had a report kind of looking at peer California cities. And it's really we just looked at California cities because once -- it's very difficult as you know to do things on a raising revenues and taxing ourselves without voter approval. So we took a snapshot at a few California cities. We did at long beach based on the different cities have different amounts of G.O. debt outstanding. Long beach just issued \$181 million of G.O. debt a couple of weeks ago. That's not on the table because this is as of June 30th. So you -- and this just provides a snapshot in terms of looking at it. We're kind of like right in the middle from a population standpoint we're the third largest city but we still have more debt outstanding than San Diego but again San Diego is a very unique city has different kind of economy and dynamics of the people that live there. So once again as you can see most of it had to do with the ability and willingness to tax yourself. So finally, in a summary, the debt, management program continues to be highly active in the areas of administration and financial advisory services to the organization. We have a strong and dead kited program that protects our financial interest credit ratings and longs term management of debt compliance to minimize any financial penalties and the failure to comply with those regulatory requirements can result in significant penalties so we take all of that very seriously. So the recommendation is to accept the report and then approve the proposed revisions to the debt management policy.

>> Mayor Reed: Thank you. I had a couple of questions I'll just start with. Page 35 starts with the description of the City's outstanding debt portfolio. We have our pie chart there. And the thing that's interesting to me is what's missing which is the discussion of pensions and OPEB obligations which are a form of debt but we have never considered it part of our debt report. And we just had a pretty good comprehensive discussion of that in the CAFR. But when we look at this looks well only \$5.2 billion worth of debt. Actually there's another \$3 billion or so that we're not looking at. So it's kind of conspicuous by its absence. I don't know if the format of this is dictated by some reporting requirements or something but I'd at least like to seize a footnote in there that says by the way there's another \$3 billion that we're not talking about, if you want to see that you go to the CAFR or go someplace else.

>> The annual debt, this is something that in all honesty is made up by us.

>> Mayor Reed: It's a good one. I like it.

>> And we think it's an important thing to essentially tell the community the investors kind of what is all the debt that we have in more detail than is presented in the City's financial statement. So and it really is something that the investors look at in terms of how much debt is out there with respect to actually kind of paper as opposed to liability. We can include a footnote to direct people back to the discussion in the CAFR because we do work very closely and put these two documents out at the same time. So I think that would be a good thing then to direct them to the other document where we have a lot more detailed discussion of those liabilities.

>> Mayor Reed: Yeah, I think that would be helpful. I wouldn't want to repeat everything.

>> We don't like to repeat things either.

>> Mayor Reed: Do it in one place, but a cross-reference would be useful.

>> No problem and Maria is here writing down notes so she'll remember to do it next year.

>> Mayor Reed: There is another term of arts, mine it's a term of accounting. Self-supporting debt which I think is a little bit optimistic. Because if you look at the kinds of self-supporting debt that we have, most of it is actually not supporting itself completely and we're running negative and the General Fund is having to make up for it. We have self-supporting with recourse to the General Fund, we have nonself-supporting debt, I don't know if there's a better term, supposed to be self-supporting debt,.

>> Is the Hayes mansion and the golf courses and even the convention center today, the expectation was based on the feasibility reports, was that general Fund would not have to step up. Those projects likely could not have

been financed without the General Fund support because there was no track record of those revenues being produced. I think over the course of the last several years in particular when we've seen those projects haven't really penciled out we've kind of rethought about some of the analysis that we do and the things that we put in place. So if you take and look at the convention center project that we did where we have those lease revenue bonds outstanding we have a new tax in place we have the blinker tax we have certain coverage, we have a whole host of.

>> Mayor Reed: Work you did on the convention center financing most recent one was excellent.

>> Yes.

>> Mayor Reed: I'm sort of quicklying with your language there to the average person that picks this up, self supporting debt we don't have to worry about that. But we're paying \$20 million on redevelopment self supporting debt supposedly and millions elsewhere. So if there's a better way to describe it, you know fine. It's clear if you read through this, it's clear to me I've been reading this for a long time but the average person reading through this might get the wrong idea. Page 41 the chart of nonself supporting debt slash general recourse annual debt service which is going up every year, at least the blue notes are going up the civic center project. Could you just explain why that's happening?

>> When we did the original debt structuring for the City Hall project we -- it was in order to do the measure I compliance it has like escalating debt service to more mimic what we would have expected to see with respect to rental rates. As part of the refunding we're look at doing some restructuring and working with the budget office in terms of what kind of fits, how to put the savings in terms of how it bets serves or budgetary needs. I think we're going otry flatten that out and debt service is related to City Hall.

>> Mayor Reed: Okay then back to the self supporting debt question, on page 42 there's more details on self supporting debt with recourses City's General Fund and I went through that list and I couldn't identify everything. So the purple, series 2007A recreational facilities, what did we buy with that?

>> Those are the golf courses and a piece of the Hayes mansion that was done in early 1993. And it also includes Camden, doesn't it?

>> Yes.

>> And the Camden community center. So what happened was, is there were a number of bond issues that were outstanding and we kind of rolled them up into one refunding.

>> Mayor Reed: Okay. Out of this list the only ones that I recognize that are actually fully self-supporting might be the ice center.

>> It is.

>> Mayor Reed: And I'm not sure if any of the others are even close. To fully self-supporting. Well ice center worked out pretty good.

>> The convention center the 2011 As the most recent convention center financing.

>> Mayor Reed: That's fully self supporting. Okay.

>> We will take your comments and figure out a different way to state.

>> Mayor Reed: I like the colored charts and everything it does I think clearly convey the message. And then the last thing, the comparison with the other cities' debt, again we have that whole pension obligation, OPEB obligation which is bigger than what we're looking at, which is interesting, I know those other cities have big numbers too, I don't know if it makes a difference in terms of a comparative basis. I don't want to forget that we have \$3.5 billion of unfunded liabilities weighing on our shoulders. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed and thank you finance staff for the great presentation and I won't mayor you asked quite a few of my questions so I won't repeat those. On the topic of lease revenue bonds though is San José unique in comparison to other cities that we can issue the lease revenue bonds without voter approval?

>> That's California law.

>> Councilmember Oliverio: So everyone can do that, the only distinction is when it comes to general obligation bonds some --

>> That's California law too.

>> Councilmember Oliverio: Let me know this, what is the difference between San Diego's issuance of debt versus San José? I thought San Diego was more restrictive or --

>> No, they just asked for any additional G.O. debt. So it could be whether they have a -- don't have a need or whether they don't have a public sentiment to tax themselves. So it could be whatever the politics are playing in San Diego.

>> Councilmember Oliverio: Okay, thank you for the clarification.

>> Mayor Reed: One more thing in San Diego when their pension crisis struck in San Diego, they had to redo a whole bunch of financial statements and they were unable to borrow money for anything for some period of time. So they may have gotten off the borrowing curve.

>> Councilmember Oliverio: And then if on the maybe for City Attorney, if someone wanted to, if a councilmember wanted to change the lease revenue bond voting requirement, is that a city charter or is that simply a council policy?

>> City Attorney Doyle: It's a city charter issue. The charter allows you to pass any measure with six votes. So it would be a charter issue.

>> Councilmember Oliverio: Right so if you wanted a supermajority of eight votes you'd have to go to the ballot for that?

>> City Attorney Doyle: Yes.

>> Councilmember Oliverio: On least revenue bonds we have this amendment that we're proposing for the other item. Do we have an ability to revenue bond you have a kind of more narrower scope of what you could use to pay it back with? Because right now it's just based on the General Fund paying the debt. Finance first, just the -- when I issue a lease revenue bond the only thing that's going to pay for it is the General Fund?

>> To the extent you haven't identified other source he. There have been situations where we've done a lease revenue bond and then the money is coming from C&C, like repay, like a community center we've done that in the past so that's an identified source of revenue that's not the General Fund.

>> Councilmember Oliverio: To the City Attorney and to you, if you wanted to offer an amendment on the lease revenue bonds, make it more difficult to i.e. borrow or pay the back with more certainty, with the mayor's example of self supportings things that are not self-supporting is that city charter again or city ordinance?

>> City Attorney Doyle: I think you could work with the debt management policy and what conditions or what criteria or you know coverage or whatever you want to look at, with respect to any further make it a higher bar before you can issue lease revenue bonds. Look at that.

>> Councilmember Oliverio: Appreciate that. And then on these other cities indebtedness does it really take into account the ability to pay? Because some cities just have a superamount of revenue but you are just doing it strictly as a percentage of the General Fund. You're saying here is a variety of cities and here is the debt issued.

>> Here is a variety of cities and here is the debt they have outstanding. p.m. although we may be in the middle we budgets of other cities.

>> Councilmember Oliverio: Although we may.

>> Smaller than us their budget is bigger.

>> Councilmember Oliverio: Revenue is amazing to pay debt. And then on the 2015 thing as that comes around that's going to be a bit precarious and I'm sure you're being diligent in the letters of credit and the ones involve. This is just a macro question, if we have a slow-growth economy say a 2% economy growth debt schedule and money it owes, between letters of credit and/or in the bonds we owe?

>> Well most of the debt we have outstanding is fixed rate debt. So to the extent that you know the revenues come in and we continue to budget like for the airport, I mean they are -- they'll have to increase their rate charges if they're not getting sufficient revenue to pay their -- to pay their bonds. So and on the variable rate side to the extent that interest rates remain low like this it's going to continue to be a budgetary advantage to us. Even though we're paying relative high letter of credit fees the interest rate and the letter of credit feeds are still lower than fixed rate debt.

>> Councilmember Oliverio: Where you would be nervous ?

>> I'm never nervous.

>> Councilmember Oliverio: I know you're not nervous. You're very calm and you need to be for these bond tradesman. Where do I need to get nervous House that when I see the interest rates moving in a certain direction?

>> I would you have to say that they would have to be right now we're paying interest rates like .2. I would start to get concerned if they were like 3%. That's a lot of movement so --

>> Councilmember Oliverio: Thank you so much.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Probably about slide 7 I zoned out. Can you start over? Kidding, joik joking.

>> I thought you had a question on 7.

>> Councilmember Rocha: Four hours in, I'm sorry I'm getting a little punchy here. The variable rate debt slide. Maybe this is a naive question but how much of that is interest? Attributed to interest do you know?

>> That's just the principal amount. Just principal amount outstanding.

>> Councilmember Rocha: Okay and where would the interest factor in, am I being too naive there is no?

>> On an annual basis we're paying probably .2, .3%, letter of credit fees. All in I think we're budgeting like 175 for all the fees and interest.

>> Councilmember Rocha: Okay, thank you.

>> Mayor Reed: The PowerPoint presentation that you went through is that posted?

>> It should be.

>> Mayor Reed: If not it will be, with this presentation to council agenda for anybody who wants to look at it at leisure. We have one request to speak. We'll take the public testimony at this time, David Wall.

>> With reference to variable rate debt, do you have the flexibility, should market interest rates start going skyward, to start trimming that debt quickly? Or are you going to be stuck with it? Thirdly, with with reference, what is the entire housing debt and how does that affect our entire portfolio through the city as being -- our ratings with the lenders? Thank you.

>> Mayor Reed: That concludes the public testimony. Anything additional staff wants to add to the presentation? All right. Could you go back and put up the slide, maybe it's up.

>> Yep.

>> Mayor Reed: Okay, the recommendations are up. That's to accept the report and approve the revisions to the debt management policy. Motion to approve, staff recommendations, any comments or questions? All in favor, opposed, none opposed, those are approved.

>> And don't forget you've got the financing authority item real quick.

>> Mayor Reed: Yes, one more thing. That is the joint city financing authority matter item number 2 action he related to the City of San José financing authorities commercial paper program.

>> We're just here to answer any questions.

>> Councilmember Rocha: Move approval.

>> Mayor Reed: I had one question about commercial paper, it's very short-term proking.

>> Yes.

>> Mayor Reed: We're always at risk of the lenders changing their mind. We saw that at the airport. They decided to get out of the business, had nothing to do with us, had to do with macro-economic things. I'm sure we're work down that short term borrowing including the commercial paper. And Councilmember Pyle, is abstaining. She's left the room. All right, we have a motion. I can't remember if we do or not. We do have a motion. All right, we have a motion to approve the actions on the commercial paper program. You have one request to speak, Mr. wall. Okay, Mr. Wall passes. On the motion, all in favor? Opposed? None opposed, that's approved 10-0 with Councilmember Pyle abstaining. That is the last business item. We have open forum. Mr. Wall.

>> Transportation and environment committee, they have -- the water pollution control plant had a CIP update. It should be required reading of all the councilmembers. Mr. Mayor, you're going to have to really justify biosolids dewatering and drying facilities, considering that solar drying of sludge is the most economical and green vision type device known to the plant. I know that you and Vice Mayor, for several years at the treatment plant advisory committee, have been ingratiating yourselves to the McCarthy ranch people and the Irvine company with reference to this particular issue. I think that the actual cost for this should be identified to the ratepayers before you go forward with it. Lastly, today, we saw basically a give away of \$650,000 of in-kind money. Earlier this week, we saw the Mexican heritage corporation, actually it was last week at CED, the Mexican heritage corporation losing about a million-five. I suggest that you waive the \$325,000 to St. Bellarmine preparatory school because this group provides added benefit to the city. Whereas these other groups already mentioned, only provide ancillary or illusory type benefit to the city. And in a way, with the Mexican heritage plaza, you're paying for Pagan worship of Aztec gods and other deities which is not going to make good sound with the City of San José, with reference to putting a hammer on God's holy Roman Catholic church with their mild request for the use

of city property that nobody else can use. It's obsolete. And the \$325,000 is nothing compared to what you've given developers and everybody else in this city for some time. Thank you.

>> Mayor Reed: Ross Signorino.

>> Thank you, Mr. Mayor, members of the council. Last week I didn't have a chance to comment on the agenda that you had on the 27th of November. And it was about the Steinbeck middle school in the Councilmember Campos district talking about a football field that, they were going to use -- did I say football? I meant to say soccer. You were talking about building that soccer field over at Steinbeck middle school and Councilmember Campos had a good point there, that in spite of the fact that you're having to practice soccer field over here, on Coleman avenue, much of his constituents can't get over there to use that soccer field and the point was well taken that that soccer field where this middle school Steinbeck middle school is going to be there where they're going to build this soccer field is good because again a lot of his constituents come from very poor family should it exist in many of the other council districts that they can't get over the Coleman avenue to use that soccer field got it right this time not football. And so I think it was a good point taken that soccer fields throughout the city, just like Steinbeck middle school, should be built, and I think it's good for kids, it's always good when young people are employed and keep active. That's a good insurance policy for the city. At any rate, whatever the cost may be, I don't say astronomically but the cost is well accepted. Thank you.

>> Mayor Reed: That concludes the open forum. Concludes the afternoon agenda. We're in recess until 7:00 p.m.

>> Mayor Reed: Good evening. I'd like to call the meeting to order. This is a continuation of the city council meeting of December 4th, 2012. O&M the ceremonial item, I'd like to invite Councilmember Kalra and representatives of the Santa Clara Valley science and engineering fair association to join me at the podium. Today we're commending the Santa Clara Valley science and engineering fair association and the 2012 winners from San José. Councilmember Kalra has the details.

>> Councilmember Kalra: Thank you, mayor. If I can have all these wonderful students to join the mayor and me as well as the councilmembers from the districts in which you live also hand you your certificates. We have representatives from the students from district 1, 2, 4, 6, 8, 9 and 10. So come on, yeah, come on over and line up. So -- and we are going to name each of the students individually, Stacy from my office will make sure each councilmember gets their certificates. So and we also have with us Bena Jane who is with the Silicon Valley science championship. I'd like to talk about the background of this fair. The Santa Clara Valley science and engineering fair association, 50th anniversary back in 2010 SCV SEFA, what these brilliant students are able to achieve. The, engineers and scientists of the Bay Area. The board members have made it possible to ensure that our students continue their passion and interest in science and engineering and provide recognition and incentives for them to pursue their dreams. The students that participate in the annual science and engineering fair become our future scientists, technology, mathematicians, they have that potential not just because of their drive and passion but the supports they get from parents and teachers, we have many teachers. Annal councilmember Forrest Williams, something he's been passionate for many, many years, he's actually in Washington, D.C. today and he couldn't be here, but I wanted to recognize him as a supporters of this fair for many years. Before we hand the commendation over I want to list some of the names of the students that are here, I'll also list one that is not here, district by district, those who aren't here but I want to make sure that every student's name is mentioned even if they couldn't be here today. These are the winners of the synopsis, other levels of winners as well and I'll mention it, district 1 we have Nomrita Barettem.and we with Neeve Narata, thank you, Councilmember Constant. And we have Andrew Tsi who could not be with us this evening. Direct 2, individuals who could not be here today, Robert de Gregorio and Bill Nguyen but we do have McKenna Duzak. [applause]

>> District 4 we have Zara Masud, Councilmember Chu. District 6 Councilmember Oliverio, if you can present to Alexander powers. James Thomas could not be here today. We do have two winners of the Intel international science and engineering. We have a winner from the Intel international science and engineering fair, Anna Thomas. Anna. Congratulations. And another winner at the synopsis championship, Nakira Baduma. [applause] District 8 Councilmember Herrera, a winner and international winner, international sustainable world energies environment project holly Jackson. Holly is not here but we want to certainly recognize her for her work. And then Afman Dessanian. We will make sure we get the recognition to them. Councilmember Rocha, thank you. And Councilmember Rocha if you can also recognize Alexander Vu. Is Alexander here. [applause] And I know we had received RSVPs from Varadan Mabadi, and Meputi, district 9 winners. And then district 10, two district 10 winners one is Intel international science and engineering fair Weber is Ryan chow and then Sheila Khan Samuelson. Let's have another round of applause for all the students. And we're in the capitol of Silicon Valley. These are the students that are going to lead us into the future. So we're so proud of them. Mayor if you could present, Esvian, we'll have the mayor present you the commendation, recognizing the Silicon Valley science and engineering fair association, recognizing these students so they could lead into today and into the future.

>> On behalf of the science and engineering fair association, I want to thank you for doing this for us. Our students have worked very hard over the years, over the year to do these projects and for them to be recognized by the city, it's a big honor. Not only does this encourage them, but encourages other students who watch this happening. We're Silicon Valley so we need to be on the top of this. Thank you so much.

>> Councilmember Kalra: If you haven't been, you should go! You will be humbled by the incredible talent of these students.

>> Mayor Reed: Now we're back to the rest of the agenda. 11.1 hearing on the consent calendar. One item on the consent calendar. Motion is to approve the one item on the consent calendar, rezoning on Alma avenue and Monterey road. I have no requests to speak on that item. All in favor, opposed, none opposed, that's

approved. We have a rezoning of real property located at 6782 and 6790 San Felipe road. Again no requests from the public to speak. All in favor, opposed, none opposed, that's approved. Then the main event for evening.

>> Councilmember Liccardo: Mayor can I ask one question on that item?

>> Mayor Reed: Certainly Councilmember Liccardo.

>> Councilmember Liccardo: Joe, the only concern I have on this project is on the riparian encroachment. Is there a reason why this project couldn't have worked with a 100-foot said back?

>> Joe Horwedel: To do a 100 foot said back on the property would have eliminated half of the houses on the project. We did look that there were existing buildings that are within the 100 foot setback and development that was there. That are coming out as a part of this development. So that was part of what we took into consideration. We also looked at the nature of the stream. It really is, it's called a creek but really is not a creek. So it is a low-water stream under the riparian corridor policy which says the 100 foot setback, that's where we would aspire to, is on a small site like this, it has the flexibility to do less that be that. So we did look at those things as a part of our recommendation. And looking at it, I think there are some things at the permit stage that I want to talk with my staff about of pulling some parts of the development out of setback areas because there are landscaped areas part of yards and front yards and things that I think should be not left in private ownership, and it should be subject to a full homeowners association, that maintains this to make sure it actually has some long term maintenance rather than four homeowners arguing every year about how they want to do something without the structure of an HOA.

>> Councilmember Liccardo: Okay, thanks Joe.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Yeah, I just wanted to add that the developer worked with the neighborhood. There was quite a few concerns there. And they were able to replant some of the native species in the area preserve some trees and some of the -- there's some structures that are actually getting removed that are also improving the area. I'm concerned also that riparian area but I think a lot of the concerns were answered and that's why I was supporting moving forward with this.

>> Mayor Reed: Councilmember Kalra.

>> Thank you, mayor. And I also as I often do have questions about the riparian corridor, it seems like in this, as you know, Joe, I mean the issue I have is that we seem to have a policy, and we seem to bend it a lot. That's part of the reason why you for a long time have wanted a review of the riparian policy. And that although there can be mitigations in regards to adding or other mitigations can be done, you can never undo, once you encroach on a creek or a waterway you can never mitigate otherwise to make up for that. Once that happens, that happens. So it's somewhat reminiscent although not to the same extent of a project that was out in Almaden, I think a couple years back, that that had a I think even a further encroachment. That had some other issues because it already had a cement parking lot I believe that was within the riparian corridor. But you know I -- what is the -- I didn't see this when I was reading the report previously in terms of average but I know sometimes you have an average kind of riparian -- an average setback. Does it maintain an average 100 foot setback?

>> Joe Horwedel: We really try stay away from averages. The developers like using them because it makes everything sound really good. So really look at what is the minimum they're doing and then generally what they're doing and then the exhibits for this, just thinking what page it's in, there is in about the milt of the packet there's the plans that shows all the houses and the developer has included and in there you can see a 30-foot 50 foot 75 foot and 100 foot line that's been drawn. I think on the West side of the creek they were pretty much following the 75-foot setback line. There are a few incursions and that's what I'd like to work with them on. There is only one home there I think to do a 100 foot setback you would have no house on that side of the creek and that's where staff looked at and said that was probably a bit extreme but of how to situate the home in there, there are places that it has a 50-foot said back to the building itself but then front yard landscaping that the intended to be riparian

but it's on the wrong side of the fence. I think there's going to be a lot of the challenge of the homeowner over the years replanting it. And that's the piece I'd like to work with the developer of try to get bigger than 50 and more towards 60 or 70 in there. I think that's possible but we'll work on that at the permit stage.

>> Councilmember Kalra: I really hesitate with these. Like I said I don't think it's necessarily as egregious an encroachment as some others that I've seen. And that I've certainly opposed in the past. I do -- the last point you made I do strongly strongly encourage you to follow up on the point you just made, the lights, fence, retaining walls, that issue because I think that's really the only way to mitigate an encroachment on riparian corridor in a way that has some -- that has some mitigating effect. Because once you're X number of feet away you're X number of feet away, you can't change that but I think we really have to be sensitive to other structures whether it be fencing or what have you, that in any way will inhibit the growth of the riparian corridor. Because even if it's a blighted site, what have you the idea is to re still allowing the development.

>> Mayor Reed: All right some we have already taken a vote on it. Anybody want to reconsider the vote? It was unanimous I believe to approve. Now we'll move to 11.3, an appeal of the planning director's adoption of the mitigated negative declaration for the Harker school as an appeal. Ordinarily when we have administrative appeals we allow five minutes for the appellant, five minutes for the applicant, we have four appellants and one applicant tonight. So I'm going to divide the time a little bit different. We'll allow two minutes for public testimony as usual, give each of the appellants four minutes and Harker will have five minutes to use however they want to divide it up. So we will start this with the appellants. But I think the staff probably has some comments before we do that and we'll take that now.

>> Joe Horwedel: Thank you, Mr. Mayor. On June 25th the Harker school applied for a planned development to demolish portions of a former children's shelter to allow a private elementary school. The private zoning allows school use he of the property but because it is reconfiguring the property it does trigger the need for a planned development permit. It is as you can see in the aerial surround he by predominantly single family residential with exception of industrial buildings, Xylinks concerns about cut through traffic through the neighborhood that we'll talk about some more. This evening. The proposed school will move into the 11 buildings that are on the

site. There we go. That were originally developed for the shelter. With a preschool use to serve up to 120 prekindergarten students. At build-out this preschool will transition with up to 600 elementary school students K-5. That will reconfigure parts of the site as we go. As a part of this development we have looked extensively at the traffic impacts related to the proposed development. The parking, the circulation, drop-off, to ensure that the facility can operate in consistent manner with level of service policy. Our policies related to relationship with the neighborhood and how school facilities should operate, and through the full environmental review process. In August of this year, the staff did do a neighborhood meeting that it had about 90 members of the public involved. This has been a very lively topic in the neighborhood. And staff has worked really hard with the council office and with the neighborhood and the school to try and work through the issues that have been raised by the community. In August, we worked through the environmental review process for the development with review period running in through September. It ultimately resulted in Planning Commission hearings in September and October environmental determination the negative declaration as well as the planned development permit. So tonight we are conducting a hearing on both of those items. That normally, the Planning Commission would be the appeal body for the development permit, but because of the environmental appeal, we have brought those together so we do one hearing, and are able to resolve the issues tonight. I think it's important to note that the development permit that staff approved did include a number of conditions that related to the operation of this facility. I think the number of conditions that we added to this are included within this exceed what we have done for other private schools and partly was the result of what we have seen with some of the other schools where we've had some issues around scale and photographic. We were willing to try to take that into account and it was the same issues that the community were raising. So as part of the draft permit that went out ultimately approved we limited the number of students and staff available. We looked at the hours of operation and start times so that we did not have these peak loading of everybody coming at the same time. We added in conditions related to coordination with the neighborhood, the good neighbor type committee operations to continue a dialogue with the school and the neighborhood, and I think you -- the work that's gone around there I think will solve a lot of the issues. Most importantly putting a transportation management program in place that looks at how students and faculty come to the campus, whether it's parent dropoff, whether it's through public transit, whetherrists through shuttle buses, whether it's through walking, we looked at all those various permutations, and put criteria into the permit. There's limitation related to driveway, the number of vehicles that are coming into the site, that relate to

traffic mitigation. hard and fast numbers that are measurable. We've added criteria to deal with how that occurs. What duration, you know during the life of this permit. To make sure that not only on day 1 that it works but at full occupancy it works and then past occupancy it works. So staff is recommending that the council misconduct the hearing tonight on the protest of the environmental of the development permit that you consider the staff recommendation, staff analysis on the issues that have been raised on the negative declaration was appropriate and uphold that and approve the development permit. Staff has looked at the memo from Councilmember Rocha. Some other ideas that could go into the project. And we have already worked through what those revisions would be to conditions also. So that the council, if you chose to approve it pursuant to Councilmember Rocha's realize's memo that we would be able to support your decision that. With that staff is available for any questions.

>> Mayor Reed: Before we get any questions of council I think I'll get the appellants and the applicants to speak and we can always come back for questions from council to staff. Let me do that now. The appellants, I think there are four of them. Brian Burke, Jeff Bollini, Annya Donovan and Jeffrey pickard. I'll allocate four minutes to each of the appellants and then we'll get the applicant.

>> So my name is Brian Burke. I live at 4144 white oaks avenue in San José. Thank you for the opportunity to speak this evening. As one of those who appealed, I just want to let you know, I'm a 15-year member of or resident of Cambrian area. And I want to start by stating that this is not about the Harker school. This is about the Cambrian neighborhood. And that's my neighborhood. I strongly support the amendments proposed by Councilmember Rocha. With just a couple of minor suggestions. However, when deciding this issue, I believe some context is important. In August, we collected over 400 signatures from Cambrian residents who opposed the project. Almost 100 Cambrian residents attended the open forum hosted by the Planning Department and all but two opposed the project. Over 20 people attended the Planning Department hearing in September to voice their objections. And you have seen dozens of letters to the Planning Department. But today is not about whether the project goes forward, but rather, how the project goes forward. Through this process, the Harker school has made adjustments to their plan. The city Planning Department has added additional requirements. And the community has dropped requirements. As the largest city in the Bay Area San José has an obligation to support

and foster regional projects. This is a project worthy of support. However when supporting regional projects the city should err on the side of neighborhood preservation, especially when a project has a potential to be intrusive, and particularly when a project does not provide significant economic or social benefits to the city such as job creation, tax revenue generation, local commerce, or community services. Today, only 2% of the families attending the Harker middle school come from the Cambrian area. And only 18% come from the whole of San José. This data was pulled from the transportation impact analysis. Minimizing potential traffic intrusion to the neighborhood should be the function -- should be the focus. The council's own resolution specifies neighborhood streets, general plan policies, discourage inter-neighborhood movement of people and goods on neighborhood streets, streets should discourage both through vehicular traffic and unsafe speeds. Below are the recommendations I have, in addition to supporting Councilmember Rocha's amendments. Amendment number 3, should state the transportation demand management program shall include designated routes of shuttle bus, carpool and parent trips that only utilize primary arterials such as Camden Avenue, union Avenue and highway 65. This is consistent with the City's through vehicular traffic. Amendment 6 B of Councilmember Rocha's amendment should count pedestrian trips. Not counting pedestrian trips is a loophole and a moral hazard. Park cars on Barrett avenue or union avenue would trip count requirements. Yet does not meet the spirit of the guideline and fails the community's needs. And finally, I request that we reduce the trip count to the original 350 trips. After the final Planning Department meeting in October the trip count was increased from 350 to 370. I want to thank the Planning Department, the council, and Mr. Nickolaf an also stop the community's engagement with legal counsel. I urge the council to adopt Councilmember Rocha's amendments with my edits and I will close with afternoon adage.

>> Mayor Reed: Sorry, your time is up. But you made your point quite well. Jeff bellini and then Annya O'Donovan.

>> Good evening, Mayor Reed, city council, my name is Jeff bellini. I submitted my environmental appeal because the transportation demand management plan approved by city planning fails to monitor all Harker school traffic which is a requirement for ensuring that the freeway mitigation measures imposed on this project are successful. I want to be clear. I seek only to amend this project not prevent it. According to the TIA report the

proposed elementary school will cause a significant traffic impact to several nearby freeway segments rated at LOS F. The four red arrows negative declaration. The blue arrows identify freeway segments on highway 17 at fail to analyze in their TIA report. This highway 17 amendment warrants a new traffic study but I'm not asking for a new traffic study or an EIR. This project must not impact highway 85 by more than 1%. The school must limit related traffic to no more than 350 vehicle trips during the a.m. peak hour. It must limit the number of vehicles arriving and departing the area to our freeways to a less than significant level. Here's the problem. TDM monitoring driveways. The current plan ignores consume traffic that doesn't use the driveways such as park and walks or stop and drops on neighboring streets. These vehicles use the freeway's on ramps and generate local traffic just like the vehicles that enter the driveway. If you don't count all vehicles in the counts then you're not ensuring that the freeway impact is less than 1%. Because TDM plan and require pedestrian counts be added to driveway counts when determining compliance against the 350 trip count limit. Let me demonstrate how easily this can be done. There is no access to the property along the sites highlighted in red. Access is only possible along union avenue highlighted in green. Because there is only one way in or out of the property it's very easy to count anything that enters or exits the site including people. Pedestrian traffic can only enter the site from the sidewalks along union avenue. By positioning one traffic counter on the long the north driveway and another on the south driveway on November 15th myself and the three other project appellants met with Chris Nicholoff and option. Although they stopped short of giving it a full blessing. Probably because their lawyer would go ballistic. Although there's no accepted engineering standard for converting pedestrian counts into car counts here's a very simple and conservative way to do it. Count each pedestrian trip as half of a vehicle trip. I provided two examples where pedestrian trips come into play. Neither one overreports the traffic so there's no harm to Harker. This approach is easy and helps ensure the school's impact to the freeways is reduced to a less than significant level. Please modify the TDM monitoring plan to require pedestrian counts and use them when determining compliance. Thank you.

>> Mayor Reed: Annya O'Donovan, Jeffrey pickard.

>> My name is Annya O'Donovan, I I've lived in Santa Clara County for 16 years. First I would like to say thank you not mayor and to the city council members for being here today and listening to our concerns. I'm a mother of

two young boys and I am very involved in their education so having such a highly regarded institution in our neighborhood is not the issue. What is the issue is the impact of the school on our neighborhood. In particular with regard to traffic. Since submitting our appeals the other appellants and I have met twice with Harker representatives. These have been productive meetings and we have made significant progress on several of our issues. Councilmember Rocha strongly support the items proposed by Councilmember Rocha. I would like to add some comments to his recommendations. I agree that the Harker neighborhood liaison should be required to coordinate outreach efforts with any neighborhood association. However I would like to take this one step further and ask if formation of a citizens advisory committee be formalize this group to is communication between the neighbors the city and Harker is more focused an more efficient. Regarding transportation I agree with Councilmember Rocha, regarding periodic data collection of the average daily traffic volumes on nearby residential streets frequency of driveway counts however I believe it is absolutely necessary to discussed by Jeff Bellini. I wrote like to focus on the traffic situation on union. First I would like to refer to Councilmember Rocha's recommendation for a bus ducker. The Harker buses would be using a public roadway and not a designated bus pullout. So all traffic traveling in the same duration of the time that is needed to unload the children therefore both lanes on union avenue going southbound will need come to a complete stop for at least five minutes. This will happen multiple times as each bus pulls out either bus duck out is needed or the Harker buses will need to drive on site. The second traffic situation I would like to address is the Barrett union intersection. This is currently a very busy intersection during peak times. As cars are driving to work and also to the local schools. When Harker is in session cars will be queuing on union. This is a two-way roadway, there is not enough space for three cars. It is union our community asks that it keep clear or a do not block sign be painted on the southbound portion of union. The third traffic situation I would like to address is the left-hand turns the cars can currently make out of the property exit. Cars are exiting left and trying to cross two moving lanes. In addition to the queuing cars in the turnout lane. This is a dangerous situation. I request that a median be constructed so that cars can only do a right turn at the side exit. Finally I would like to propose that on-site dropoff for cars be increased. Currently only 60 cars can be dropped on site union avenue and would reduce the backup during peak hours which will ultimately improve conditions at the highway 85 and union intersection. Thank you.

>> Mayor Reed: Jeffrey pickard.

>> Hi, my name is Jeffrey pickard, I live directly behind the proposed school project i'm here to say thank you for the opportunity to come and speak and that I am in support of Councilmember Rocha's memorandum that he sent out on November 30th, 2012. However, I do find it lacking in certain key areas in which we've spoken at length with the Harker school and note all that to be of benefit to the community and will mitigate certain traffic congestion concerns that we all have. Like my other appellants have mentioned the current proposal does not call for a no blocking area in front of Barrett avenue. This is already a very congested road with a lot of high speed traffic and I think it's paramount to the safety of the existing neighbors and the future children that will inevitably be parking walk onto the campus. Even with harker's best effort to eliminate queuing onto union avenue to the opening of the campus to completely eliminate cars blocking up and limiting access onto Barrett avenue. Even in its current configuration the intersection is already very dangerous and queuing cars won't exacerbate the danger to the people that are paying -- not paying attention to those crossing the street and then cars that are traveling fast on northbound union and making a high speed left turn down on Barrett. Another issue that another appellant has mentioned is the issue of counting the number of trips coming into and out of the neighborhood during peak school hours. Currently there is no quantity final way of calculating the number of pedestrians coming in and out of the school during these peak hours. We request there be a series of checks during the car count that will count the number of people parking around the neighborhood that will be walking onto the campus. In conclusion we have all worked really, really hard to find a fair and reasonable solution that will not seriously impact harkers's ability to run its school and not impact the lives of the people that are living throughout the community. If Councilmember Rocha's recommendations are implemented along with the other requests that myself and our other appellants have made, I believe we'll have the full support of the community. Thank you so much.

>> Mayor Reed: Thank you. That takes care of the comments from the appellants. I'd like now to invite the applicant to speak. I think Andrew faber.

>> I'll defer to Mr. Nicholoff.

>> Mayor Reed: Give you five minutes for the applicant.

>> Thank you, Mayor Reed and members of the council. My name's Chris Nicholoff. I'm head of school at the Harker school and I'm pleased to be here to talk about the school's plans for union avenue property. I'd like to thank Councilmember Rocha and his staff for their efforts towards this project and like to thank the city staff for their work. Like to thank the neighbors of the Cambrian community for their willingness to meet with us and discuss the project. Harker is a co-educational nonprofit independent grade schools. We served grades K-12. Been in the valley since 1932. 32% of our students are from San José. Our K-5 campus is located on Bucknell avenue. Blackford afternoon on leased property and our 9-12 are on Saratoga avenue all San José addresses. The use of the union property, in the fall of 2013, we do plan to open a preschool with the maximum of 120 students. And in eight to ten years' time we would move the lower school on Bucknell avenue grades K-5 to the union site with a maximum of 600 students and 100 employees. It is part of our long term goal to own all of our sites and union fits perfectly into our plan quality education is never more important. How we educate our children will impact the competitiveness of the region for decades to come. Harker believes in a love of learning broad programs character and service. We're proud to be part of a network of public private and charter schools to ensure that Silicon Valley and San José remain a global center for innovation and talent. As far as the quasipublic schools in our general plan amendment or a zoning change. Our use will preserve much of the beautiful setting on the site. And our use will continue a 50-year tradition plus tradition of the site serving children. As far as being a good neighbor we've made extraordinary commitments to the Cambrian neighbors and the city to mitigate traffic impacts in the neighborhood. We've gone beyond the existing conditions in our permit and prepared a good neighbor plan to address these issues. As part of our work with the neighborhood we have offered and the city has accepted to -- our lawyers didn't do that I promise.

>> Mayor Reed: I don't have that switch.

>> As part of our work with the neighborhood, maybe I shouldn't say this part. With the neighborhood we have offered and the city has accepted to put up the sum of \$75,000 for neighborhood traffic improvements to be used at the discretion of the city. We have decades of experience running schools and managing effective traffic control measures. In closing we think we're the best use for this site. We are committed to mitigating traffic and we're

committed to being a good neighbor. This site will allow us to be part of the continued excellence of education cambrian community so certainly we'd like to reserve some time for response rebuttal after the rest of the public input. So thank you again.

>> Mayor Reed: Thank you, you do have some time left. Use that at the end. So we have some other folks who want to speak. We'll just take public testimony. Put in a card if you haven't put in a card and want to speak please get your card in. Carol gutstein. Mark warlick, Allison Hartson Buehler. We'll allow two minutes for each speaker.

>> Good mayor and councilmembers. My name is carol gutstein. I live at 2006 I and many of my neighbors welcome Harker. We support quality education which is so important in these times. I'm also a Harker parent. Collectively my children represent 22 academic years at Harker. So you could say I'm an expert on what Harker can present. That's a quality education. But the education Harker provides is not just academic. They also strive and present social values, community service, citizenship, environmental concerns. My children learned this and I observed this firsthand. And they do it not only in teaching. But in demonstrating by what they perform. Knowing this, I have full confidence that Harker will carry out its civic responsibilities and respect the rights of the neighborhood and use the property in an appropriate manner. I deal on a daily base with the traffic created from partnerham and St. Francis cabrini. That's what we do for education because it's worth the inconvenience. I'm confident that Harker will provide a great stewardship for this property that's been dedicated to education. It's a wonderful site, perfect for a school use. I can think of many other uses that would be much more detrimental to the community. Harker is bent over backward in addressing the needs and requests of the community. And I think they've acted responsibly and will continue to do so and I encourage you to approve their request. Thank you.

>> Mayor Reed: Mark warleck. Allison, eLise.

>> We still Meece meet monthly we get about 20 people an average we have National Night Out with hundreds of people. The reason we still exist is because we partnered. We partnered with the churches in the area. And more importantly with Harker. When Harker first came into the blackforward neighborhood we all had the same problem

what's going to happen with the traffic? What's it going to be like on Blackford avenue? Harker bent over backwards to meet with everyone and just make the problem go away. And that is what they're going to do. They're going to handle it. I can say that because I've watched them for seven years. Now I thought oh okay great they're going to come along here and they're going to help for you know a year, two years, make the problem go away. That's not what happened. Seven years down the road when the city actually it was about five years down the road, two years ago when the city ran out of money and the starboard youth center was going to close, the Alma youth center was going to close a couple of women in the blackford area, the black open. They could not have done it, blackford would not be going on if Harker hadn't come to the table. I can tell you just coming right to the point. When we needed computers, at Alma and starboard, Harker came in with \$20,000, at least \$20,000, worth of hardware and software and got those community centers back online. So my two minutes are probably up. I could ramble on for five minutes about this. But that's the truth of it. They're just going to be there and they're going to keep coming and they are going to bring value to the community. So I submit --

>> Mayor Reed: That's your two minutes.

>> Thank you.

>> Mayor Reed: Allison Hartson Buehler. Laura champion.

>> Technical difficulties.

>> I apologize for the power failure.

>> My name is Allison hatson Buehler. The following edited comments were taken from Councilmember Rocha's autumn partnerham elementary has been less than ideal as the city annexed part of this neighborhood poor visibility and cut through traffic from Bascom and union with ask sometimes result on Woodard road representative would like it to be. Last fall two children were struck by a distracted driver. The children were not severely injured motorists should travel in the absence of sidewalks to denote the area for pedestrians to

walk. Our office advocated for the inclusion of a choker to be installed along Woodard and twilight drive lane size motorists will naturally slow and be more aware of their surroundings. Also by moving the stop sign into the island visibility issues caused by the morning glare, that drivers in the morning school dropoff hours experience while traveling East into the sun. The cost of this project was approximately \$20,000 and was completed by city employees. Harker school has offered up \$75,000 to the city to be used for neighborhood improvements or traffic calming where necessary. If a choker or bump-out cost the city \$20,000 as mentioned in Councilmember Rocha's newsletter how far will \$75,000 stretch? I'm asking the city to require Harker school to contribute a minimum of \$250,000 towards traffic calming. Traffic calming should not cost the city money that will not be recouped via property taxes. As a nonprofit entity Harker will not be contributing to paying out money with no reimbursement. Harker should be required to contribute at least the same amount of money they would have been paying in property taxes.

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

>> As a for-profit business would have. This is the picture of that.

>> Mayor Reed: Sorry, your time is up. Alise Kutini, Laura Champion, marina Morrow.

>> I'm alise Kutini. 14 million to billed this facility and today, we are still a nonprofit solely focused on bettering life outcomes for foster youth through academic programs with the local schools and colleges these basically our agency focuses on improving the best practices programs and we support Harker moving forward with this permit. We're delighted to see that the property will maintain its 50 year history, starting as parker school and then the shelter and now Harker academy. We are also pleased that the facility will stay primarily intact. beautiful place for children to learn and to play. I urge you to allow Harker to continue with this permit process. Thank you.

>> Mayor Reed: Laura champion, marina.

>> And I sit on three county commission including first five. Our family has lived in district 9 for five years. And in San José for ten years. Tonight I'm here as a parent of two wonderful children one of whom attends and thrives at Reed elementary and the other who thrives at the Harker school. Both schools are important to our family and we're grateful to Harker for the scholarship our son received while my husband built his law practice up. We are in support of the Harker school's permit and respectfully ask that you allow Harker to move forward. Harker will be a wonderful addition to our community because of its high quality private school education, its commitment to community service and specifically because of the careful attention paid to the flow of vehicles during dropoff and pickup windows each school day. We live right across the street from Reed elementary and we experience a similar dropoff and pickup situation there and thank you for consideration of my request.

>> Mayor Reed: Marina Morrow.

>> It is marina Murray. I'm a 12 year resident of the Cambrian area. I live three blocks from the proposed site. Currently takes me ten minutes in dry weather, 20 minutes in wet weather to get my children to their public school. If the council does not pass Councilmember Rocha's amendments you are dooming my neighborhood and my children's neighborhood to a horrific traffic scene. You are almost guarantying that my neighborhood will become one of the worst neighborhoods of San José. We are not disputing Harker school. I have nothing but positive things to say about it as do every single member of my community that I've spoken with. We all think very, very highly of Harker school. Their value is not the question. The question is the safety of my children, of my neighbor's children and the speed in which you move people through this very, very, very, very congested corridor. We're a block away from 85. It is currently as we speak right now, a very, very, very, very bad traffic situation. I cannot see how the introduction of any school in that location without the, Mr. Rocha's amendments and potentially even more could be beneficial to my neighborhood. Thank you.

>> Mayor Reed: Susan Dwarak, Robin Morino, Susan Landry.

>> Hi, good evening. I'm Susan Dwarak, and as many folks know my husband Joe and I have lived worked played served volunteered taught many and educate our children in San José. We are members of the Harker

community, both of our kids have attended Harker for a number of years now. And while we are discussing one Harker campus that happens to be in just one of your districts, I do know that many, many, many, many families live in each of your districts. And as a member of this community I hope I can speak on behalf of the parents to say that we are good neighbors. We are also neighbors. We live in communities. We experience as some of these other folks have said the traffic and whatnot of other schools. We are a very conscientious community. We want to listen to everything that the neighbors circulate to say and the school honestly bends over backward to go to efforts to mitigate any, anything negative for the communities. And the parents form car pools, and we have shuttles, and we do everything we can to encourage folks to answer neighborhood needs like this such as the traffic pattern. So on behalf of the Harker school and the parents, including all of the Harker constituents, in your districts, we would ask you to please support this and thank you very much.

>> Mayor Reed: Robin Marino, Susan Landry, David Lopez.

>> Hello. I'd like to thank you first for your time. I live in district 6. I live right behind Willow Glen elementary school so I know what traffic is like around an elementary school and how horrendous it can be on a multilaned road. I'm also a parent at Harker a kindergartener parent and I'm amazed awwhat a great job Harker does at manage traffic and educating parents on how to manage themselves in traffic getting in and out around our school. So I would highly encourage you to support Harker in this endeavor and thank you for your time.

>> Mayor Reed: Susan Landry, David Lopez, Andy Faber.

>> Good evening. I live on try creek road in San José Campbell area. I'd like to support the part of -- everybody here made a lot of other comments. I'm only going to focus on one thing. In the local amends there's discussion about where the trees are going to be planted along the freeway area, and within the site. I think it should be somewhere between three and 500 feet of union, and 85. I think there should be a neighborhood coordination newsletter and that paper, or this flier, e-mail, should have an article about the trees are free. Because in Don Rocha's letter it talks about money contribution for trees not being planted on site. Being given to our city forest and then given to homeowners. I think this will continue the stewardship that's been there on that site. And it

addresses some of the environmental concerns that have been raised. I also would end with the donor recognition wall that's inside the front door to the left. Numerous people's recognition for their financial contributions, physical contributions, whatever, recognizing those people, and I'd like to see that preserved. Thank you.

>> Mayor Reed: David Lopez, Justin glass, James Bohan.

>> Mayor Reed and councilmembers thank you for this opportunity to speak. Many of you know me as president of national Hispanic university here in San José. Providing access and opportunity for many of our youth and others in this community not only Hispanics but we provide that access. But I'm here today to speak in favor Harker. The reason why is, a state school board member for six years I was very concerned about the education and overseeing 1059 school districts it was challenging to do the work that we needed to do. But to see a school like Harker and other schools I think it's important with an academic track record as they have and the ability to engage community and create some positive things in this state is very positive. As an institution they are helping other institutions better their position. So I'm here in favor of this motion, and this to support Harker. And I believe wholeheartedly if we are to have the future, the workforce of the future here in California we will need to let a thousand flowers bloom. Thank you.

>> Mayor Reed: Justin glass, James Bohan and antiFaber.

>> I'm who attends a separate school in the area. And I just want to say that I've been absolutely amazed in the way that Harker has treated the traffic situation in their current campus for the elementary school. Not only have they sent out continuous reminders of us to obey the rules and to be considerate of the neighborhood, but I've seen the leadership of the school out there ensuring that these rules be fold and following up with the parents. maintaining this. I have no doubt that Harker is an excellent institution and they will be an even better neighbor to the Cambrian community. I'm thankful to them as recognizing the institution as a great institution to be in the neighborhood and I know that it will better the neighborhood as a whole and I know that they will not only do what

is been asked of them but they will go above and beyond and the Cambrian neighborhood will be surprised at their willingness and at their efforts. Thank you for your time.

>> Mayor Reed: James Bohan.

>> , councilmembers, first I'd like to thank you Councilmember Rocha for your work with the neighborhood. We appreciate it and want to state for the record that I support the majority of the recommendations in your memo. And I just wanted to reiterate some of the concerns of the appellants and state my support of a few specific items that I think do need to be considered in the permit. First the formal establishment of a citizens advisory committee, would future issues and I think that should be added. Pedestrian counting should be a requirement as well for the reasons stated before. It will allow for the most accurate accounting for the number of vehicles servicing the campus. I believe additional mitigation are going to be needed to prevent the Barrett avenue union avenue from being and the bus stuck out completed. Thank you.

>> Mayor Reed: I before we do that.

>> Thank you, Mayor Reed, city council members. My name is path Rick Maeza, I live at 15075 Chamarin avenue which is the street immediately north of Ebison directly opposite of mitigation measures that plan to be applied to I'm sorry the Barrett, also be considered for Charmarin and Chelsea drive. These two particular areas form very convenient routes for immediate U turns to get off of union, going north, you make a U-turn to get back on union going south. And also, my daughter attends Carlton elementary and to get to Carlton, in the morning, we have to get by the proposed site for Harker as well as across the 85. And that can be very challenging during rush hour as most of the traffic is flowing towards the onramp at 85. And certainly, the new site will add much more traffic congestion at that time. Thank you very much.

>> Mayor Reed: Recca Nandekumar, Tina Nachivi.

>> Good evening, Mayor Reed and councilmembers. I'm a 20-year resident of the Cambrian community. I have a child that is a sophomore at Harker and I'm thrilled that this excellent school is moving into my neighborhood. I live on a street with two schools right opposite my house. I have the John Muir school and the Broadway school and every day we fight traffic and that is part of what we deal with for our education. Harker is a great school. Every time we go to Harker, we are always told about traffic. Harker talks about traffic. Harker's parents are out there you know trying to make the best of what we have and trying to get to school. Harker students are a great addition to the community, I welcome them. And I really look forward to this school coming into my community. Thank you.

>> Mayor Reed: Tina Najibi.

>> Hello. My name is Tina Najibi and I've been a San José resident for 23 years, two kids gone through Harker, 18 years. I think what I would like to talk about is the traffic. Because that seems to be the major concern. And I think one of the advantages of the Harker school is the fact that we have so much experience handling traffic situations. As you've heard, we do get notices as parents to follow the rules, stay on the main roads, and we do have administrators and traffic people outside making sure that parents are following those rules. I'm -- if the Harker school doesn't go into that area for example it's made to be too costly for the Harker school to make that proposal needing to do further improvements other than what they've already agreed to do, the question would be who else would go there and what else would they do to the area? For example if Xylinks puts another building there do they have the proper experience as Harker has in correctly directing the traffic in the neighborhood. As we said we have shuttles we have car pools and we are parents who are used to the routine of quote unquote following rules. So I'm not as concerned with Harker being there and I think you should take that into account as well. Thank you.

>> Mayor Reed: Thank you. Andy Faber.

>> Unless there are legal questions I want to defer to Mr. Nicholoff if I might.

>> Mayor Reed: Mr. Nicholoff if you want to close this out for Harker unless we have questions that Mr. Faber needs to address.

>> Thank you to all parties involved and we really appreciate everyone's efforts towards this project and we look forward to being good neighbors in the Cambrian community and we are certainly available for any questions that you may have. Thank you very much.

>> Mayor Reed: That concludes the public testimony as part of this, Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. I want to start by finishing Mr. Burke's statement. That's pretty important to be put into the record, close for him good fences maid make good neighbors and as far as they're concerned they're building a fence not to keep anyone in or out but to ensure that we know what the boundaries are. With that, I want to thank everybody as well. This has been a good process as far as I'm concerned. Sometimes they these are messy sometimes these are unpleasant and sometimes these can get a little ugly in terms of what folks want. I think the neighborhood has done a fantastic job from where they've started to where they've gotten to. That became of partners in this effort, truly partners in this effort and put away what they wanted completely wanted and looked at what could they possibly get out of this and what was in the best interest of everyone. That takes a lot to get there and I watched them get there from the beginning to tonight and it's really impressive and I'm proud to represent the folks here from the district 9 community. Harker school I can say the same thing, where they started and professional institute and a great community partner. They've done a fantastic job and they've been a pleasure to work with. City staff has been fantastic as always. They've showed up at community meetings, multiple community meetings. They've been very responsive about and they've done the same for my office. They're a pleasure to work with, thank you. And I'd like to thank Peter Hamilton of my office who has done a fantastic work on this project. Wow, see? [applause]

>> Councilmember Rocha: The mayor said Councilmember Rocha your turn and not a clam and Peter Hamilton gets almost a standing ovation. I could almost just close and move the recommendation on that that's fantastic so thank you very much Peter you did a wonderful job. As far as how we got here in the county is or was or still is the

property owner. They made the decision to sell the property and to whom, not the city. Our role at this point is a land use regulator. That's based on our current zoning and policies. Outreach as I mentioned, has been mentioned has been a long process, again from where it started to where it's at now is really a big change and I think that again goes to all the parties work in this. The multiple committee meetings we had, the director's hearing, the meetings between the applicant and the neighborhood process, another day on the private side and the public side to step up and make sure this is a good project. I've personally met with Harker in the neighborhood myself and Peter Hamilton as well on a number of occasions and again these have all been very professional and cordial meetings. At the end I don't think everyone got what they wanted but I think this process has resulted in a very good project. As far as the concept of the island or the no left turn there on union could you speak to why city staff didn't present that or support that?

>> Mr. Mayor, members of the council Manuel pineda Department of Transportation left turns we determined it was sufficient gap to allow those left turns out. In combination with the middle left turn lane at the site, we consider that a safe movement and it is something that should be accommodated to provide adequate access and good access to the site. -thank you. Let me take this moment to congratulate you. Now is this something we so reevaluate at some point in the future?

>> Certainly. As with any school, we you know we always have an opportunity in the future to see how the school's functioning to see if there's any issues that need to be addressed and that's something that the city can always go back and take a look at.

>> Councilmember Rocha: Now the pedestrian counts, as I mentioned, one of the appellants mentioned that there isn't a standard practice with counting pedestrians. How did you see that factor into the traffic count so to speak, completely two separate items.

>> Yes, we did see that as two separate items. We don't have a standard rate as to how we translate pedestrians into vehicle counts. I think the thing I would want to add though, is that the TDM requirement to go down to 370 trips actually is beyond the number required to actually mitigate the freeway impacts, there's already a little

leeway in those numbers that gives us a little flexibility. With regarding to creating a new criteria, without having really any set standards as to how to do that.

>> Councilmember Rocha: You briefly touched on my next question the trips 350 or 370. That was depending whether the shuttle was dropped off onsite or offsite, approval for VTA allows for the offsite. I've gone back and forth in my head on this one. I think Harker's made a heck of a lot of compromise so to speak and we've asked a heck of a lot of them, some conditions unprecedented in my opinion. What do you think of the 350 versus the 370? Generally what I'm asking for, is there a significant difference in terms of the traffic impact? I know as far as a community member, I know one trip is significant but can you speak to from where you see this?

>> Certainly we understand when it comes to trips, one trip can be considered significant. We try focus as relates to significance as per the CEQA impact criteria. What we're looking at here is mitigating freeway impacts and the reduction in trips is really made to mitigate those impacts. There is a little leeway in that, that 370 is not the exact number. Actually the exact number is higher than that so there's flexibility. We do think that 370 or 350 either one will provide sufficient clearance to make sure the impacts are mitigated. It really comes down to how stringent we want to be with that number.

>> Members of council, Harry Freitas assistant director of Public Works. I warranted to follow up with what Mr. Pineda just certain percentage of vehicles to each segment of the freeway that was impacted, the shuttle bus operation is really a separate and distinct operation that doesn't directly relate to the zip code study we used to establish the trip distribution for the project so it's not really a one to one ratio.

>> Councilmember Rocha: Okay so as far as you're concerned you don't have any major concerns whether it's 350 or 370 regardless whether the shuttle drops on or offsite? As far as you're concerned that trip is accounted more for on the interchange not at the school site so to speak am I understanding correctly?

>> I think it's irrelevant. I mean the fact that the trip crosses the threshold of the driveway is not relevant. The relevance is to attempt to mitigate the freeway impact. But the way the freeway impact was calculated was not

relative to an individual shuttle trip. It was calculated relative to a zip code study on the existing students. And you know just by way of -- I think we're getting to the point where we're counting individual trips in a science that doesn't -- that doesn't have the exactitude of a single trip. This science has just as we had an election and there were polls done and there were margins of error in those polls. There are margins are error in traffic reports that exceed the individual trip. So I think we're talking about microscopic adjustments to macroscopic assumptions.

>> Councilmember Rocha: Go ahead.

>> If I could add one note to that, I think whether the number's 370 or 350, when we looked at the number to mitigate the impact the number was actually higher than that. So as I mentioned, you can go with either number, ear number meets mitigate their impacts.

>> Councilmember Rocha: For these complicated reasons I'm going o-- I think that's why I've been struggling with this because based on what I've heard from you folks it doesn't sound like the number is really the most critical issue here and that's why I've been reluctant to representative and let me also take the moment to ask if Bruce Knopf community meeting and answer any questions as a county staff person I believe who is involved in the proposed negotiation on the sale of the property. And there was a great point raised about the donor wall and the community partner wall that has all the memorabilia and the folks that were involved in the children's shelter project. I haven't thought about that on your end. Have you facility site?

>> Bruce Knopf, asset and economic director for the county of Santa Clara. thank you, mayor and thank you, Councilmember Rocha. To date we have worked very closely with Harker and with Silicon Valley children's fund to go through and identify items that were important to the fund either that the fund maintained and so far I've not discussed with them that donor wall specifically but they have established a very close working relationship that respects the artwork and the construction that occurred there. So specifically, I don't have an answer to your question. I can just tell you, they have a close working relationship to respect what has been constructed.

>> Councilmember Rocha: Thank you. Maybe if I could ask Harker the same question. Generally what you just stated has pretty much been my experience. I guess my expectation would be that Harker would work with the folks to accommodate whatever interest there is an maybe some of the donor or community partner wall so to speak?

>> Yes, Councilmember Rocha. We obviously would work with the fund to be as respectful as possible with that and work with them to take care of that in a way that meets their wishes.

>> Councilmember Rocha: Thank you. And I would have expected 92 less, this has been your attitude all year long so thanks. My experience was the first community meeting and if I may I'm going oshare something that was an interesting start to this. And the mention that the community was generally opposed or true, started with a group e-mail address that was noonHarker and that's how far they've come from that approach tonight. And again I'm proud to represent these folks, they've done a great job of being community partners. As far as impacts any further I'm sorry to say that I think I'm going ostand on the memo as I've written as it is and I know that I'm probably not going to make some of the residents leap or maybe all the residents unhappy about that and I know that Harker isn't clearly if both sides don't like me I've done something right. So hopefully I can go home and sleep tonight and not have my house egged or anything. This as has been mentioned this is a private school and it does not provide the same kind of public benefit that a public school but private schools are just as important as public schools and I see Harker as an asset to San José and to this community and I'm looking forward to having them there. The traffic impact that's during the permit including shuttle and the driveway counts I think are really going omake this project a good partner in the community so with that I'm going to make a recommendation, and I'm going to be really technical here because there's certain conditions that I need to do, according to City Attorney. So I would like to recommend denial of the appeal of the planning director's adoption of the mitigated negative declaration for the proposed project and adopt the resolution to uphold the planning director's adoption of the mitigated negative declaration and deny the appeal of the planning director answer decision to appeal a planned development permit nor the Harker school project.

>> Councilmember Liccardo: Second.

>> Mayor Reed: All right we have a motion to do all the things that Councilmember Rocha just outlined.

>> Councilmember Rocha: Which includes my memo.

>> Mayor Reed: Which obviously is based on his memorandum which he has referred to several times. Is that it, Councilmember Rocha? Okay. We'll come back to you if you have anything to add. City Attorney.

>> City Attorney Doyle: That includes the resolution that includes the PDP as well. I finished that sentence. Joe is look at me.

>> Councilmember Rocha: I had that underlined.

>> Mayor Reed: We have everything correct?

>> Joe Horwedel: We have amended the based on Councilmember Rocha's memo.

>> Mayor Reed: Let me congratulate Harker school and the community for getting here tonight not in unanimous agreement on everything but in substantial agreement on some really important things. First, that the quality of life in this neighborhood is important. And the quality of the school, schools in our city is important and really balancing competing interests which is what we do, that's what we're elected to do to try to work out the best selection. I think Councilmember Rocha's memo gets to the best solution. Maybe we'll improve it over time but it's an excellent starting point because there's no doubt that the quality of schools is very important to the quality of life in our city and very important to the people of our city not just to the students but to everybody and there's no doubt that the quality of life in this neighborhood is important to our city. To balanced this out we've got a good project here and I want to thank Councilmember Rocha for taking the lead and everything that's been a long road but a job well done. And I think we can be proud of this neighborhood and we can be proud to have Harker as a member of our community. We have some excellent public schools, traditional public schools. We have some

excellent public charter schools and we have some excellent private schools and Harker is one of those great private schools that we're proud to have in our community and look forward to seeing them have even more students than they had and doing quite well with this neighborhood I think with the conditions that we've put on. And with that I just need to disclose that my staff in preparation for this meeting did meet with Harker school and their representatives along the way. Councilmember Constant.

>> Councilmember Constant: Thank you. I want to congratulate our Planning Department and Councilmember Rocha on this. For having the most conditions on anything I've seen come through the council yet. So -- but I wanted to talk a little bit about Harker. Because Harker, it's been said, has three campuses in the City of San José. And all of them, fortunately are in district 1 and I've had the opportunity to work with the Harker kids and the Harker administration and I know my colleagues here have seen a number of the Harker students come through here as we've commended them for some of the incredible work they've done and the achievements that they've been able to attain thanks about great part to the education that they receive from Harker. And all of us have a lot of schools in our district. I think I have over 37 schools in my district with the five school districts I have. We all get complaints of traffic. But I tell you in six years as a councilmember I've never received any complaints about photographic at any of the Harker campuses because of the community partner they are we've heard a lot from parents to make sure they know the rules and follow the rules and it's very apparent when you visit their campuses and I've had the opportunity to do so. And I want to say, reiterate some of the things had a blackford NAC and what abandoned for a while and become kind of a run down campus. It's far from the heyday it was when I graduated from there in 1981. But it had run down quite a bit. And when Harker took it over it was a transformation in the neighborhood. They take such pride in their facilities and can you drive by and see what an incredible job they've done on the campus. It's been commented Harker in the neighborhood. One of the speakers spoke about no social benefit to this project. And I couldn't disagree more. Because I tell you, the asset that Harker has been to San José and especially district 1 has been incredible. They are the most generous, I have several private schools in my district. And they have been by far the most generous. We heard about the computer centers that they donated to Alma and starboard community centers. But they also give money and support to organizations throughout the district and the city . They open up their facilities whenever we ask them to host community meetings. They are our biggest partner in our National Night Out, an event that truly could not

happen without Harker. They do it not only for their students but for the community as well. They have brought a lot of national and international attention our city because of the achievements that their students have achieved like the Intel science competition, I always know that I'm going to have Harker kicks place in that every year. I say that just to talk about all the benefits. Because we hear about how bad schools behave or mostly the parents quite frankly. I got to tell you I've never seen a kid cause the problems driving to school at any of my schools. It's always the parents. And I one year made the mistake of volunteering to be the sidewalk captain at my kid's school. It was the first year I was elected to council and I was sure I'd never get elected again based on the conversations I had with several parents as they drove like idiots to school every morning. I think we see a completely different attitude in the parents when they drive to the campus of the Harker schools. And when we look at this site, it's the best play to put a school. It's on an arterial road. I can't tell you how many schools we have buried deep in the neighborhoods of our district and there's dozens of streets, neighborhood streets that are negatively impacted by traffic. Especially when you get schools where they decide to put a charter school on the back side and you have you know a thousand kids in an area that's designed for four or 500 kids. I drive my schools to rolling hills middle school as many days as I can, a few days a week and there's almost 900 kids that go to that school and it's a stacking lane for 6 cars. And it's a nightmare to get through here. Here we have a stacking -- what did I hear, 60 cars? If every xavier was going to fall out of his chair when he heard 60. Because if every school had a stack lane like that we wouldn't have a third of the problems that we have or we'd have only a third of the problems that we have at our schools. I think there's a Starbucks right down the street one way and a Peets coffee 370 trips in the morning at the same amount of time and when you think about the size of the streets that are feeding to this location, I think many of you residents are going to be pleasantly pleased when it's finished that the traffic is not going to be as bad as you fear. Now that being said I have to be honest I'm concerned about the number of conditions. And I think that -- I think we've gone a little bit overboard just to be blunt. And I know if I have one negative thing to say about Harker is that they're just too darn easy going. And I know that they have the goal of getting this campus going and being good neighbors and when I look at the fact that we're extending the noticing about triple of what we normally do, that we have conditions with no expiration dates, where we're going to have these conditions go on forever, instead of having them tight for a year or two then ease up I think would be a much better way to go. Because when I look at the other private schools that you have and you see what they do and what they don't do, quite frankly, we've set a completely different standard for this campus. And

I don't think it's fair, quite frankly. I don't want to say that we shouldn't be approving Harker, because that's not what I'm trying to say. I think we should. But I think we've gone overboard on the -- we've gone overboard on the conditions. I'm not going to pick it apart bit by bit but when you have three pages of conditions going on top much conditions that our planning staff has already done I think we have gone overboard on that. I'd love to see Cambrian is getting a great community asset and a great neighbor and I hope that Harker keeps as much activities in my district as we can because we love having you there. And I know everyone's going to be real happy with this.

>> Councilmember Rocha: So please if I may.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: I'm sure you read my memo and staff report, some of my conditions actually reduce some of the conditions that staff had recommended.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I want to join in thanking the planning staff Department of Transportation volume of work and in particular Councilmember Rocha and Peter Hamilton has become -- has a big fan base here it seems like. I know one of the toughest things some one of the toughest roles a councilmember can have a lot of times is having competing but noble interests and trying to find a way to find some common ground. I think here the neighborhood quality of life and a school wanting to open are two very good public policy interests if you could put it that way. And so I really commend you on clearly the work that you put into it. And I want to thank so many people, I got a lot of e-mails. I apologize if we didn't get a chance to respond. There are so many of them both from folks that students going to Harker or people that support Harker as well as folks that live in the neighborhood. I just want to thank all of you for being here today, as well as those I sent them e-mails and responded. We often hear about complacency, clearly there is so many of you that care enough about this issue on either side. That I've showed up and have stepped up and it really helps to inform us

and I think it helps certainly Councilmember Rocha and our city staff to really understand what the issues are and perspectives and it doesn't seem like anyone was left unheard on this issue. The first speaker from the appellant says it is not about the Harker school, I think the extension of that is certainly not about the students. I think everyone wants to make sure that the students, all of the students, the mayor said this as well, have great access to schools. I also rational drivers turn a switch off for that five, ten-minute period when they're dropping their skids off at school. So I can understand the frustration at times living in a neighborhood and when you have a school of stacking of maybe five or six cars as opposed to the stacking that's proposed here yet people double and triple parking is important especially when a school comes into a community and to have a good plan and to have a great communication with the neighborhood and with the school administration and that the parents ultimately have to follow-through on the direction from the school. And I'm confident that this is going to work out and I think as has been stated in the long term I think it is going to end up being a very good relationship because of where it started, where it started and where it's gotten to in a very short period of time. I think with Councilmember Rocha's guidance with administration of Harker's guidance and with the neighborhood and parents I think there's only room to grow in that relationship and so I imagine that this is going to end up being a boon for the community. But that being said you know the parents that are involved now, the ones I've gotten e-mails from I don't doubt that they're going to do what they can to comply with the rules and regulation put in place through this process. But four five six seven eight years from now a different set of parents that didn't have to go through this process it is going to be up not administration to future generations of students that come through Harker of how important it is to abide by the rules that are being put forth. But I think all in all this is pretty much of an outcome as we can expect so congratulations Councilmember Rocha and I look forward to the opening of the school with all the neighbors there as well as the parents in attendance.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I hope I didn't offend anyone that had my foot up on my desk. I got to elevate it, I broke my foot. Anyway, I just wanted to thank Councilmember Rocha, it was very thoughtful memo and I appreciate all the great work that you and your team did along with the city staff. Obviously, the community has demonstrated I think why San José is such a great place to live. I came here expecting a big fight

and I'm glad we didn't get one. I think there will always be places for people to disagree but I think folks are generally in concurrence that we want Harker here but with some conditions. I had a question though about driveway counts. And I appreciate what Councilmember Rocha wrote. I certainly know intuitively, you know as a kid my dad used to drop me off three blocks away and I walked in the remaining blocks when he was on his way to work. I imagine that's common thing kids experience. Why do we depend typically on driveway counts?

>> I think there's a couple of reasons for that. One ask that in many schools as was mentioned by a couple of councilmembers we have the issue but we don't have enough queuing capacity within the school itself. It really force he the patients to drop fortunate with Harker that we have a much better situation from a dropoff and pickup standpoint. I think the driveway count is an easy measurement to have, it's very easy to count. There might be some instances where people get dropped off before they enter the driveway because we are shooting for a number below what's required for freeway impact, we're mitigating above and below the freeway impact. If there are some kids who get dropped off then we would still be within the threshold to mitigate that impact. I do want to emphasize though that creating that significant activity and access really limits the number of people who will have to do kind of what you're describing that does happen to a eight cars instead of over 60 vehicles.

>> Councilmember Liccardo: Okay, that explained a lot. I guess I'm concerned then how we might rely on driveway, fortunate as we have with the queuing here. Thank you very much.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you mayor, hand it to staff is that you try to find that happy medium. And I think with schools and with more schools coming into existing neighbors, that's not the normal way to plan a school. The normal way is, you have a large housing tract and you know, planning will require them to figure out where to put a school. We're seeing schools move now into existing neighborhoods and you know I agree with Councilmember Constant which doesn't happen that often so he may fall off his chair right now. This is actually some it's a big site, it's a good site, where you can actually accommodate you know I think buildout is 600 kids. Where you know they're not going to be on top of each other some they're going to be -- they're going to

have a lot of space for them to move around, you know, and have adequate classroom space. The issue and this is one of the benefits because it's a private school that we have is, we could actually impose mitigations that could make everybody's life much happier. Right now you might not feel that because we're having to compromise on things. At the end of the day, having the city be the land use cop on this one actually gives us a lot of opportunities to make a better project. With public school sites and some -- and public charter school sites, you know, I mean it goes through the state and oftentimes the state will say this is what we're going to do and you know you got to live with it. So I think this is a good opportunity for us and for our Planning Department and all of you out there and Peter Hamilton and the councilmember to really come up with something that is going to be you know, that's going to be a happy median. And I think at the end of the day, look three, four years down the road, you're going to be happy that you have this great school in your neighborhood. So I commend the work that you all did out there in getting this school. Because a lot of neighborhoods would really like a school like this in their part of town. So I'll be supporting the motion, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I will be brief. I really appreciate all the e-mails that came from the community and I had a chance to learn how many students from my district, 8, attend Harker. I'm very happy to be able to vote yes on this and support this project going forward. I want to thank Councilmember Rocha for obviously doing a lot of detailed work and I've been through a few, land use things during my first years and I know what that's about. I hear everybody, move forward in a good way and I'm happy to vote yes tonight? Thank you thank you.

>> Mayor Reed: I think we're just about done with the council discussion. Councilmember Rocha anything to add? All right you have a motion on the floor from Councilmember Rocha, incorporating ought the resolutions and the findings as outlined in the staff recommendation and Councilmember Rocha's memo as we have discussed. On that motion all in favor? Opposed? I see none opposed, the motion carries unanimously. Congratulations to everybody. Thank you all for coming out and participating. Our last item is the open forum. We have no cards under open forum so we are adjourned.