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>> Mayor Reed: So we're going to start our meeting. The first item on the agenda before we go into closed session is the..... [--Audio Difficulties for 25 seconds--]

>> Package proposal. A copy of this proposal has been provided to you, and this proposal has also been posted on the city's Website. Thank you.

>> Mayor Reed: That is it on the labor update. I have one request to speak, Jim unland.

>> Good morning, I'm Jim Unland, president of the POA. I'm here this morning to ask if the official city position is that the POA and its members are participating, condoning and/or authorizing a work slow down, which Rose Herrera has accused us of doing. As any intelligent and stable member of this council knows, a work slowdown is prohibited by our contract, and I'm here to reinforce that my members are responding to emergency and nonemergency calls as fast as they can and making arrests and issuing citations. Although it appears to be a delusional rant from a desperate politician, that politician is also an employer. So I'm here to find out if she speaks for the city or just herself. We have no play book, nor have we ever seen this play book. We condemn this play book, and it should be noted that our law firm has nothing to do with this matter. You now have our official denial of having anything to do with it. Rose owes us an apology. My members would rush to the aid of anyone in harm's way and put their lives on the line, and Ms. Herrera's accusations are despicable and come from a place not grounded in reality. Lastly I am delivering to the clerk a signed letter that was faxed to Ms. Herrera last week, asking her to denounce the illegal campaign cash given by Mayor Reed to illegally help keep Rose in office. I hope to hear from the city representative today as to the official city position with regard to the work slowdown. Thank you.

>> Mayor Reed: That concludes the public testimony, concludes this agenda item. We are adjourning into closed session, we'll be back in here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for October 16th, 2012. We will start our meeting with an invocation. And Councilmember Rocha is going to introduce the invocators.

>> Councilmember Rocha: Thank you, mayor. Well I'm very excited and happy to introduce the invocation today. As far as I know I don't believe we've had this type of invocation at least from this group. The committee to promote square dancing, CSD. Academy district 9. They support new and returning dancers, give demos likes this one we're just about to see to see how fun dancing can be. I asked them to be a dance lesson for this council. They were afraid myself or perhaps Councilmember Constant might injure themselves, so without further ado, let's go.

>> Circle left. You are my sunshine, my only sunshine ∂ ∂ you make me happy when skies are gray ∂ ∂ [∂music∂]

>> Spin that top. ∂∂ ∂∂ square through, spin that top! Square through, three quarter round ∂∂ ∂∂ ∂∂

>> Make it look nice and federate now. Boys circulate, girls circulate. Promenade. ∂∂ ∂∂ please don't take my sunshine away ∂∂ ∂∂ you'll never know dear how much I love you ∂ ∂ please don't take my sunshine away ∂∂ ∂∂ join hands and circle left ∂∂ with a hoop and a holler! All right thank you very much!

>> Mayor Reed: Next is the pledge of allegiance. We have some help, Lynhaven third graders from district 7 are going to help us. Please stand.

>> Mayor Reed: Thank you, Lynhaven third graders. First item of business are the orders of the day. Any changes to the printed agenda? Seeing none is there a motion? We have a motion to approve orders of the day. On the motion all in favor. Opposed, none opposed, orders are approved. As noted in the agenda. We're going to adjourn this meeting in memory of Joy sinnott for her dedication to the residents of San José and the young dancers who aspire to gain skills in the art of dance. Councilmember Chu will have more.

>> Councilmember Chu: Thank you, mayor, it was with great sadness we heard that Joy sinnott passed away at the age of 66. She passed away after a long battle with cancer. She was born June 16th, 1946, moved to the Bay Area in 1969. She started teaching dance out of her home in North San José and eventually opened her own studio, calling it Joy of dancing. Her love for dancing, and children, impact the lives of thousands of dancers and their families. And my family is one, and my daughter started dancing in the joy of dancing add a very young age. Ms. Joy and her students were well-known locally but also performed internationally and have danced their way from Europe to Malaysia. She was known for her dedication to her dancers and helping them game skills in the art of dance. Ms. Joy sold her business in 2007 to a lifelong student, and friend, Ms. Nicki Byrne Day. Joy is survived by her husband Bob, son Andy, daughter Laurie, sister Carol, and her nieces and nephews. Regret that because of the schedule conflict, they cannot make it to the council this afternoon. Joy has been a great asset to the community and will be missed by the community. May her memory and legacy forever live on in our hearts and mind. Thank you.

>> Mayor Reed: Next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mayor, council we met in closed session this morning, we were given authority to initiate litigation in one matter. The name of the action and defendants as well as the substance of the litigation will be disclosed to any person upon inquiry once the action is formally commenced. The vote was unanimous.

>> Mayor Reed: I'll now take up the ceremonial items. I'd like to start by inviting Councilmember Constant and representatives from retirement services, ING and the deferred compensation advisory committee to join me at the podium. Today we're declaring the week of October 21st to 27th as national save for retirement week in the City of San José. Councilmember Constant has some of the details.

>> Councilmember Constant: Thank you mayor. Each year we take the time to declare this week in October as national save for retirement week here in the City of San José. Behind me we have Julia Cooper who in addition to being our acting director of finance is also the chairperson of the deferred compensation advisory

committee. And we have Kelly Wright Tina Smith and Emily Connat from retirement services and Peter Ing representing Ing, no relation, the city's deferred compensation plan provider. Since 2006, our congress has approved resolutions designating the third week of October as national save for retirement week. The goal is to increase individuals' awareness in financial literacy so they can think more about how they plan their retirement. In an era of trillion dollar deficits at the federal level that create uncertainty about our future Social Security, Medicare benefits, coupled with longer life expectancies. It's really critical for each American the importance of saving and planning ahead and probably the most important is to start early. Statistics show that nationwide 50% of workers over 55 have less than \$50,000 saved for retirement. 39% in the same age group have less than \$25,000 in retirement savings. Fortunately over the last 30 years the growth of defined contribution plans have been replacing defined benefit plans -- I think I got that backwards there, sorry about that. But it's really important for employees to consider their individual savings habits for long term financial well-being. The City of San José has long been a participant in deferred compensation plans and had a complete week of activities planned in partnership with Ing to promote the importance of saving for retirement. And Julia Cooper is going to tell us a little bit about some of the events and some of the information about our plan.

>> Good afternoon, and thank you Mayor and members of the city council for the proclamation. I'm the chair of the deferred comp committee, but also represented on the committee are Pascal Rubenau, who is our vice-chair, and he's an employee representative, David Woosley is the police department representative, Darren Wallace the fire department, Daniel Arrel is another employee representative. Donna Busse is our management employee representative, and Ernest Escobido is also a City Manager representative. So they, along with me and the staff from the HR department monitor the city's deferred compensation plan, and I'd have to say our employees do a very good job about saving for retirement. In addition to having their defined benefit plan we have over \$600 million of employee contributions in the plan today. And our participation rate citywide is nearly 72%. And this compares very favorably to a nationwide study where they looked at 55 other deferred compensation plans and their participation rate was only 26%. I'm happy to say that the finance department is the third highest ranked department in the city at almost 78% but the City Clerk's office outranks everybody at nearly 90% participation in mayor office, fire at 82% police at 77 and retirement services at 74. So there's going to be a lot of good activities

in next week planned and we hope people can come out and include the deferred compensation as part of their savings for retirement along with mayor defined benefit plan so thank you.

>> Mayor Reed: Next I'd like to invite Bill Colvin and our Internet security officials to join Councilmember Constant and me at the podium as we declare the modify October as the national cybersecurity awareness month in the City of San José. Councilmember Constant will have the details.

>> Councilmember Constant: Thank you, mayor. We have a number of people joining us here today. We have Bill Coleman, he's a partner with Alsop Louie partners, an early stage venture capital firm, Jarrod Spirley, the co-founder of It Software, Joe Cavasic, CEO and co-founder of It software, Cyril Reyan, president and CEO of Resilience, Inc., Ellen Asma, local information security professional, and I didn't see Vijay yet. Oh, okay. So we're going to proclaim again for the second time, October of this year as national cybersecurity awareness month. We started this last year when we had our cybersecurity summit here at City Hall. We all know that as computers, the Internet, mobile devices and wireless access continue to grow and touch all aspects of our lives we become very used to them. And we start using them to do all kinds of things without really giving thought to the threats that lurk in our pocket or on our desktop or on our tablet or wherever we may be doing our banking, our commercial exchanges, simple as using your store debit cards and other things that you can do on your devices now. Of course when we have attacks on our cybersecurity infrastructure that can affect not only business systems and the things that happen day-to-day like our power system, our power grid, our air traipse grid but the things like just getting gas out of our cars. You can't even get it out of the gas pumps if we have these problems. The purpose of national cybersecurity month is to educate the public oops on prevention and best practices. Our president issued a proclamation and in it he identifies the time we are here to recommit to ensuring our information and infrastructure remain secure, reliable and resilient. We know we have had many studies on the issues and the threats that face us. Cisco's security intelligence operations study showed that spear phishing -- we all know what phishing with a p-h is, but there's also now spear phishing which is targeting an individual or specific organization to get private information -- those attacks have tripled from just 2010 to 2011. Scams and other malicious attacks quadrupled during the same period, and the cost of attacks to organizations worldwide exceeds \$1.25 billion. So it's really important that we start to take steps to protect ourselves individually our workplaces from being

compromised protect ourselves from falling victims to online scams and protect thing our identity. Last year we had the cybersecurity summit here as I mentioned to raise awareness. Last week in district 1 we had the shred athon, to remind people how importantly it is to shred personal documents. If you want to leisure more, you can visit the national cybercurt alliance, the Department of Homeland Security and get involved with the local chapter of the Bay Area N I.nfraguard all on the Internet and they are listed up there for you. With that I'd like to have the Mayor give the proclamation to Bill Coleman. Bill Coleman is a very well-known entrepreneur here in Silicon Valley. He was the founder, former chairman and CEO of CASAT, Inc., an enterprise cloud-computing software company acquired in 2009, and he was the founder, and former chairman and CEO of BEA systems, the fastest growing software company to grow to \$1 billion in revenue. And I think Bill has a few words for us.

>> Mayor Reed: You forgot to mention that he is a United States air force academy graduate, as well.

>> Councilmember Constant: He went the same time as somebody else, right?

>> Actually, the mayor was an upper classman, so I had to call him sir all the time. First I want to congratulate the city council, the mayor, Councilmember Constant for putting such great emphasis on this for now a couple of years. And not only recognizing this as cybersecurity month, but doing active events. This is a national threat. As a board member and the head of cybersecurity for Business Executives of national security, last week, on Thursday night we hosted defense secretary Panetta where he gave his cybersecurity policy speech. He started out by saying that cybersecurity is the greatest security threat to America. And he's talking about not just a threat to crime. It's a threat to our economy. He mentioned that. The stealing of intellectual property is one of the biggest things going on now. We work with the national security agency, the head of which general Alexander, he told us a couple of months ago, that there is no major corporation in this country in any business that has not lost intellectual property. That's the property that makes this country go. 80% of the capitalization of companies on the stock exchange is because of their intellectual property. If you go to China now there is a beautiful looking Land Rover, there is a total copy manufactured there from intellectual property stolen. This is a serious, serious thing. If the -- at the local level, we are -- we are seeing the biggest explosion of innovation we've ever seen. I've been in this valley almost 40 years. And the combination of the web, the social web, mobile and cloud, is creating this

Renaissance going on in Silicon Valley. It will be I believe the greatest creation of value that we've ever seen. But that's only if we can keep it safe. Because people aren't going to continue to put their likes of at risk, their money at risk, et cetera, on the Internet if we can't. So this is a very serious subject and I want to thank the city council and the mayor for what they're doing, and hope that we can all take it seriously.

>> Mayor Reed: Now I'd like to invite Councilmember Herrera and the Ham family, to the podium as we declare October 16th, 2012 as food allergy awareness day in the City of San José.

>> Councilmember Herrera: Thank you, mayor, I'm very honored to welcome Brian Hom family, Brian Hom, Kathy Hom, Steve Hom. The City of San José is honored to proclaim today as food allergy awareness today. Over 15 million Americans have food amer gist including six million children. Associated anaphylaxis appears to be on the rise. 18% increase in food allergy was seen between 1997 and 2007, centers for disease control and prevention. This makes it even more significant to bring consciousness to food allergies as they can be severe. Especially when someone has anaphylaxis. Shock, a life threatening reaction to any type of allergy, such as food, drugs, insect bites and latex. Recently the Hom family and FAAN traveled to Washington, D.C. to lobby for the school access to emergency epinephrine act and Brian will say what the -- it is the food allergy anaphylaxis network, that's what Faan stands for. This act would require public schools to keep and administer epinephrine auto-injectors in case of an anaphylactic emergency. That would save someone's life. Unfortunately, many schools do not stock them due to the costliness and the need to replace them annually. In addition, to raise awareness, the Food Allergy and Anaphylaxis Network and the Hom family commemorated the life of B.J. Hom by hosting the second annual memorial 5K run and walk this past weekend at Lake Cunningham regional park. Their goal was to raise \$50,000. They raised \$80,000. Now, B.J. Hom was a young San José resident. Son to the Hom family, brother to his siblings. Who at the age of 18 tragically lost his life due to anaphylactic shock when B.J. unknowingly ate a trace of peanuts to which he was allergic. Events like the B.J. Hom memorial 5K run and walk raise public awareness and funds to provide advocacy education and advance research on behalf of all those living with food allergies and anaphylaxis. They continue to host organized walks and other events such as the car and bike show held this summer that also help fund food allergy consciousness and programs in order to provide understanding hope and networking opportunities for those affected by food allergies. And most important

of all: To save a life. And with that said, it's my utmost honor to present this proclamation to Brian Hom and his family for showing the courage in the hour of their grief to move forward to do something for the rest of the community. Proclaiming October 16th, 2012, as food allergy awareness day in the City of San José to raise awareness and encourage residents to join the efforts of the Hom family and the food allergy and anaphylaxis network, and mayor would you please present the commendation to Brian.

>> Mayor Reed: Done.

>> Councilmember Herrera: Okay.

>> I want to thank the City of San José for proclaiming food allergy awareness day. B.J. Hom passed away and four years have gone by since that summer. This was the worst and most heartbreaking day in our lives. Kathy and I felt like someone had reached into our chest and ripped out our hearts. To this day I still can't believe it happened. But it did happen. And that is why I'm on a mission now. I want to warn parents, children, families, and friends, about the dangers of food allergies. And I want people who doubt that food allergies are serious, to know how destructive they can be. I can't change what happened. But I can help protect my other two boys. B.J.'s brothers, Steven and Brandon. They both have peanut allergies. Steven broke out in hives on the day that B.J. died. Later we found out that he and B.J. ate the same dessert. Chocolate mousse at the buffet. Then when we realized what caused B.J.'s reaction, lucky Steven was administered an epi-pen, an antihistamine, and he was okay. We didn't know that Brandon had peanut allergies until after B.J. died and we got him tested. He had been eating peanuts for 15 years without any reactions. Kathy and I both have no food allergies. So it's important for parents to know even though they don't have allergies their kids can still get them. I encourage you to read labels carefully, ask questions when you're eating out and traveling and do all you can to educate everyone you know. And I encourage schools and camps to have plans to protect kids and food allergies such as peanut free areas. I'm still working with Congress and senate in Washington, D.C. to get the bill passed to have Epinephrine auto injectors in emergency kits for any child who should suffer an anaphylactic shock. I still remember like yesterday, being by B.J.'s side in the delivery room, with my wife when he was born. I'll always remember being by his side with my wife when he died. We miss him dearly but we know that some day we'll be together. B.J. was

the wind beneath our wings. I told my wife and two other kids that you find a penny on the ground, this is a sign from B.J. that he's okay. I want to thank all the doctors, nurses, educators, city officials and volunteers who worked so hard to help families like mine. Most of all I want to thank all of you for supporting food allergy and anaphylactic network to raise awareness of food allergies in an effort to find a cure, you are giving the gift of life to millions of kids like B.J.'s brothers who suffer food allergies. I can't think of a more meaningful tribute to my son. Thank you [applause]

>> One other thing. Wanted to express deep gratitude, honorary government chair Rose Herrera, thank you for your 2012 FAAN walk in the California Bay Area. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Kalra, Yolett Nerit California underground railroad and other officials to join me at the podium.

>> Councilmember Kalra: Thank you mayor. Zianda Antonett Johnson, San José State University urban planning department. California underground railroad project, Everett Gaspar, chair of the African American, and Debra Fuller, grad student. San José State university. It's a great honor to be here and joining with my colleagues in recognizing October as underground railroad awareness month, the underground railroad. black Americans took to campaign their free do dome as they traveled ofng as far as Canada and Mexico. At the heart abolitionist movement. Thee people firmly believed that slavery was against their faith. Others considered the contradictory withheld freedom from nearly 4 million men, women and children. The underground railroad was also composed of many individuals, most of whom participated as conductors in the South, and were often still enslaved themselves. Certainly risking their own lives in their assistance of the under ground railroad and leading many others to freedom. This led many to become active on underground railroad including historic harriet tubman I'm very proud to have an image of her in my office as a source of inspiration for myself and my service to my community. Here in California, Bay Area entrepreneur Mary Ellen pleasant reacted against slavery and used her fortune to resist the movements. Support in order to work across many states helped the underground railroad spread to the West during the gold rush era. Many thousands of people both famous and not very brave individuals whose courage, cooperation and perseverance helped them to 75 and endure a quintessential turning

point in our country's history and I hope we all take to children about this important part of American history, the American heroes certainly involved in the underground railroad and the support of the underground railroad as well as the abolitionists during the era of slavery and I think it's also quite important as we approach election day that those that can vote, do vote, in honor of those that gave their lives for freedom and subsequently gave their lives for the right to vote. And so with that, mayor, I'd ask if you can please present the proclamation from the entire city council and the mayor's office, proclaiming October as underground railroad awareness month in the City of San José. [applause]

>> First and foremost I would like to thank you, Mayor Reed and Councilmember Kalra and the entire city council for taking the lead, not only here in the county, in the State of California, but also in the country, three years ago, in proclaiming the month of October as underground railroad awareness month. Very, very few people realize that right here in San José, we had underground railroad operatives. We had a school on 6th street in walking distance from here where Mrs. Betty Mason sent her children up to San José. It was a hug. We had a local judge, when California had its own future displays act, we had a judge right here in San José who hid in his private home someone escaping from slavery, until the act expired. We have an amazing history, and amazing legacy. That very, very few realize and it's a compliment to the city for taking the lead, and right now we have four other counties in this state who are following the example. We have Sacramento, we have San Francisco, San Diego and Los Angeles who is joining in this initiative and we are looking for a state resolution as well. With that we would like to say thank you and I would like to introduce to you professor Richard Koss from San José State urban planning because they have a very exciting project that is helping us in this initiative.

>> Hello. I team in the urban and regional planning department at San José State. I'm joined by one of my very talented grad students, Deb Fuller. I just met Yolette a few weeks ago. Our urban planning shares a space with the African American studies department. When I met Yolette a few weeks ago I was swept up by her enthusiasm. When she learned that one of my areas of expertise is producing digital maps she just jumped on me and said let's make a map for this project. So with Deb's very capable assistance we're going to be producing a digital map of African American pioneer locations, and we'll be producing that in a variety of formats, and we are so excited about this effort. We think it will be a wonderful educational device, way to tell a story kind of an

unknown story for the state and the nation as well. So we're just really thrilled to be on board. And excited to get this map out to you as soon as it's ready. So thank you. [applause]

>> Mayor Reed: We're now going to take up the first item on the agenda. I'm going to people just a little bit about the agenda order today, because it's different than we normally do. We started a study session a couple of weeks ago on the habitat conservation plan. We are going to take that up first and spend however much time it takes for the councilmembers to do the study and during the session. And then when we're done with that we'll move to the consent calendar and through the rest of the agenda. Those of you who are here for other items, it's going to be a while. I'd say at least one hour, probably two hours and maybe three. This is a study session, we have eight, nine, ten inches of documents, many, many, many correspondence, communication, there are a lot of council questions and we have a lot of staff. We'll spend whatever time it takes to get the council comfortable. We will not be taking action on the habitat conservation plan today, this is a study session. The council will probably give staff direction for more work. One council direction says bring it back December 4th. Ultimately it will come back and there will be opportunities for continued debate and public comment. We took extensive public comment in the last meeting so we're going to try to spend most of our time today with council discussion with staff. We will at some point take additional public comment from people who did not get a chance to speak last time. This is a continuation of that hearing and we're trying to get the council educated and up to speed which is the purpose for the study session. But everybody who spoke last time can speak again when it comes back for action, whenever that may be. And so for city staff that's here, if you're not really here for the habitat conservation plan, I think you're free to go for a while. For probably quite a while. I'd anticipate so the staff doesn't get nervous, out and out get here when we take their item, we'll take a brief recess after we're finished with the habitat conservation plan. That will give you a chance to get from your office back down here, wherever you may be. And if somebody is not here, we can pass the item until they get here, so please go do whatever you need to do. Because I know there are other things on your work list besides what's in front of us today. So with that I want to open up with item 4.3, and since we had a staff presentation last time PowerPoint presentation last time, we won't do that again, but there has been work done, supplemental memorandum that came out if you don't have a copy of that you should get it and then we'll have council discussion and then some public testimony and staff will probably get to closing comments at some point. So with that I'm going to turn it over to Joe Horwedel.

>> Joe Horwedel: Thank you, Mr. Mayor. We did have one slide that we wanted to go and talk through with the council that's up on the screen. This is from the study session, we put out a supplemental memo 11 pages, that came out yesterday, I do apologize for the lateness. We wanted to answer as many questions as came out, do appreciate the three supplemental memos that came out from councilmembers, they did help staff as they were working through this. The memo addresses some of these questions, not all of them. When we come back on I think December 4th we would come back with a couple more items for the council's deliberation. I think our conversation today really needs to be focused around the plan and how it relates to the economic healthy in the city. I think there's no question that the plan achieves the goals of conservation and environmental protection. I think succeeds very well in that regard. There are many of the questions have been raised is how does this affect the competitiveness of San José and related to properties in North San José specifically. The types of questions. And this is why we put the slide that's up on the screen to -- for the council and the public's consideration. To put this in context in North San José there is a little over 3,000 acres of employment land so this is industrial park, light industrial heavy industrial and commercial lands available for development in our North San José area. Of those lands, about 200 of them are vacant and within the yellow boundaries you see there. And about 2800 to 2900 are outside of owl territory. What's also important to look at is about 180 acres, 178 of our estimates, are on large sites. And these are the ones that we look at for the future of the ability to do large campus development. We are processing development applications on about half of that right now. And these are sites that as the incentives that we move forward with to reduce the traffic fee in North San José would benefit a number of those projects. And as a part of this I think it's you know important to recognize that there is a significant amount of land that is contained within that. But I did want to go through and put it in context of our total development portfolio in North San José because I think the discussions we have about how we compare to Sunnyvale, Mountain View, Palo Alto is really not on these lands but on the balance of the lands in North San José. Meaning those cities are predominantly built out and in most of North San José we have built out or built already. We have also a number of sites less than ten acres, about 8200 acres worth that you can see shown as the yellow on the map. As it relates to how the HCP would affect property in North San José. What we are seeing here the dollar amounts is the cost per acre for properties that are in those different categories. And so the red properties that are inside the yellow circle, those are the ones that are -- that would have burrowing owls that live

in the area. And that they also are open developed lands of large size. Meaning that they are larger than ten acres. They have the highest fee that would apply and that's \$60,000 an acre. That's a significant amount of money and I think that's really the crux of the question about the plan is, should we go through and apply those fees to those projects, as I said, the ones that we're most concerned about, I think most of those have entitlements and it will play into our conversation about pipeline, we'll talk about a little bit later. The yellow properties those less than 10 acres we do have some exposure there and it does have impact if you do have owls in the neighborhood as it relates to your property. And those would be about \$54,000 an acre. Again, that is a fee that Sunnyvale, Mountain View do not apply directly to their projects. There are consequences that go on in those cities to deal with some of those issues but not to the extent we deal with them in the plan. As it relates to the rest of North San José, where the majority of the development has been happening, and where we're planning the development to happen is -- would be the top right-hand corner which is the 2855 acres. So those are areas outside of the burrowing owl habitat area that are already developed and would redevelop. Those would be subject to the nitrogen fee but there is no fee for developing land and for owls. And so we do have a wide kind of disparity of lands in North San José of how the plan affects them. And so I think how individual property owners see the plan is very much influenced by what they fit in those six boxes up there. And it is for the city and how we go and position ourselves in moving forward I think we need to be really careful around this. As staff we have tried to be, as balancing minimizing those costs but also providing the recognition that there are in fact burrowing owls that exist in this area, that those are a species regulated by the federal government and through the migratory bird act as well as through fishing and game through the endangered species act and listed species so we do have to live with that. As it relates to some of the other issues that were raised in the previous council meeting and in some of the memos we have focused a great deal in looking at how we provide certainty for our developers. There has been a question about the army corps of engineers circulation the regional water quality control board. I think there's been a tremendous amount of progress been made by the army corps of engineers. We talk about that in the memo. The army corps is prepared to put in writing how they would propose to deal with that, we were dealing with them on language can't important to note that the army corps of engineers is already using the methodology that we would propose for this plan, which is to issue a wetlands permit, called a regional general permit which would be good for up to half acre of wet land take or fill per project. They are doing that now in East Contra Costa county, they issued a press release in May celebrating this is a new way of doing

business. They are working with five plans we are one of the five plans. I think the progress that has been made now has been good. Kay goody with the U.S. fish and wildlife service has been a major part kay will be able to talk in a few minutes about some more of those efforts. We are talking about the regional board level. They oar little bit further behind of where the army corps of Jersey is at. But there is a lot of dialogue even in the last week about how to go through and push that forward. Because it will be new territory for them. I can say that one of the other habitat plan has taken a different strategy and kind of going straight to the state. I think the regional board staff is realizing that they really want to be a part of how these things are permitting rather than being usurped by the state. So I think that's been part of the conversation back is how do they stay in the game. But they're recognizing the type of analysis of how we deal with impacts at a watershed level rather than on ooh a individual project basis is actually better for the environment. It is a better way of thinking but they are coming around that there is a better way to do this. We are also dealing with the issue of the other cities and how to bring them into the plan. So at this point I would like to go through and have Kay goody talk about the two letters that I distributed on your chairs. This is an important partly of how you go through and level the field.

>> Hi, thank you for having this session . I want to talk about the main thing about the letter on October 12th is the joint letter that we sent to all of you. And we tried to address some of the issues and concerns that you had presented at various meetings, recognizing that our letter didn't address all the issues that have been brought up to date. I want to bring up that, you know, historically why we are here today had to deal with for the City of San José is commitments that both the City of San José made and then we made to you on processing and permitting, regional permit and that was for the Bailey interchange and the Coyote business park. We wrote that in two various biological opinions and we have subsequently used that information and the fact that you have been good partners in the participation for a number of infrastructure projects, including numerous VTA projects, as well as water contracts for the Santa Clara Valley Water District, as well as numerous flood control projects that have been proceeding. I also saw recently all the memos that have been going back and forth. I was in contact actually yesterday with the corps of engineers, if branch chief Cameron Johnson, I had actually talked to Jane Hicks who is his supervisor too and expressed that there was a need for a letter to explain that they are committed in processing a regional permit. What Cameron relayed to me and said that he would in fact you know they would be willing to send a letter. But they have a public notice process, just like everybody else. And they

can't prejudge their public notice process because that would be a violation of Nepa and other regulatory requirements. He has already sent an e-mail that I forwarded to Joe that expresses some of the issues. Also for the regional board I have been in contact with one of the supervisors and I have requested a high-level Management meeting between fish and game and fish and wildlife service to discuss the importance of providing some regulatory certainty as it relates to these plans. It goes beyond just this plan, but it goes to all the plans that we are working and participating on. And I feel that they are willing to -- we actually are supposed to be scheduling the meeting next week. But it's dependent on fish and game's ability. Right now he's in Hawaii so -- and I'm here. But anyway, the other issue is the concern about fairness. And at the last meeting that we were at, I had said that we would write a letter at the point of issuance of the -- at the point that you adopted the document. I thought about that and realized that the CEQA document really, there was no reason why we wouldn't do that now. And I came to that decision with fish and game on our own. I mean, it was -- we contemplated it and discussed it and realized that we were writing a letter to you, outlining the concerns and the issues as it relates to cumulative effects and nexus issues that the same holds true. And so we have a template letter. It's still draft, because you know, we're trying to see if we got the gist of what the idea was. And we're willing to take, you know, input on that letter. But this would be a template that we would send out to all the jurisdictions. And then we have, again, in our joint letter, said that we would be willing to meet with you, or anybody, to describe what the need -- need is as it relates to the EIS and EIR cumulative effects and endangered species. And in conclusion there has been a lot of to be about certainty on biology and different issues. But their issue of getting a permit through fish and wildlife service has not gotten easier. This would give you in essence certainty for all the species that we've perceived that could ever be listed within a 50 years. We're taking a huge risk that often is viewed with distrust from environmental groups because we're taking a risk on very limited and endangered species in essence for 50 years. We're making a commitment that a deal is a deal. That's a very big thick for efficiency and competitiveness for other agencies and jurisdictions that don't have this type of permitting process. So anyway I appreciate the efforts that you all have made. And I'm here to answer any questions and willing to continue to work with you.

>> Joe Horwedel: So couple more items from our memo. There was a number of questions that had come up both at the council meeting from airport staff and from the memos the council shared in the last week related to the airport itself and how it was subject to the plan or not subject to the plan. So we have clarified within the

supplemental memo that the airport is not a covered activity in the plan. Meaning that it does not have to follow what's in the plan. It has its own separate owl mitigation plan. It has its own EIR and EIS that we prepared for the airport master plan. We do know that at some point in the future we are going to be making some revisions to the airport master plan, so at that time we would look to see how it would fit with the the owl management plan. Our hope is that it would continue to fit within that. If for some reason at some point down the road we needed to do something different, we would meet with fish and game and possibly take advantage of the HCP or do it separately. We have that flexibility. It's been questioned, how do we take control water pollution control plant and the airport. I think San José has been very responsible in dealing with the burrowing owl over the years in both private lands and public lands and that is in some ways part of our challenge today, that we did not eradicate owls in the past like other property owners have. I think it was a responsible approach. Our plan with this is that both the water treatment, water pollution control plant and the airport are treated like individual, private property owners. That the plan does not have the ability to go through and force mitigation opportunities or responsibilities on those lands. Both of those entities do have the ability to enter into agreements if the plan was adopted to go and enhance wildlife that was on the property and take credit for those. There is not an opportunity to double dip if there are owls on both of those properties, there are today same with private property owners this has plan to minimize as best as possible to not penalize somebody who did the right thing. And so that's why the fee is not different for a property that has owls versus a property that is across the street that could have owls. Is that we wanted to go through and reward good behavior and not penalize good behavior. And we were being kind of I guess a little bit twisted in that there still is a charge in. If there was a way to get rid of that for properties that have owls on it, still willing to see if there's some way to get there. And I any part of the discussion is around the pipeline. My next topic. We did speak extensively in the memo about the pipeline north San José developments that were extend those permits into the future. The plan really looks at the world of, once the habitat plan is adopted, and then put a one year time frame for projects avoiding having to pay the fees. And that was something that there was a lot of deliberations amongst the staff and the liaison group over really the last two years about how we should deal with existing projects. The alternative was to the extent you said anything that had an entitlement in the past would never have to deal with the plan essentially meant you would have large projects that built 1/10 of it that for the nextfully years could go through and build with really no consequence about allow the plan applied and the sense was, that was not fair. That said is that we also recognize we needed

to have some sort of transition because this is a big obligation that comes in, in certain cases and Howe to transition into that. And so similar to what we've done with park fees and other types of regulatory changes is to put some level of pipeline. We have proposed a one year pipeline. It is something that -- that is the way the plan is drafted. The question has been asked by changing that, would that trigger a change to the EIR? Not necessarily. So that is one of the things we could come back in December based on the discussion today and some options we've been asked to look at around pipeline paid for but does provide some level of greater certainty for projects that have received approvals and especially those and I think for the city that we would be most fixated on is those that are employment related. That is really our goals here in the city and I would say that is one of the things staff would be wanting to come back and talk with the council about. So at this point you know, there's a lot of information in the 11 pages of those supplemental questions. We tried to go through and take really dense technical information and put it in a more kind of understandable presentable format for both the public, ourselves and for the council and so we're really available to answer your questions and help the comment today.

>> Mayor Reed: I'm sure we'll have a few questions a couple of preliminary ones. You did a slide presentation at the other meeting, do you have that did in case the council has a question?

>> Joe Horwedel: I did not load it up but I think we have the hard copy.

>> Mayor Reed: We didn't get a chance to ask questions on it last time so I'm guessing folks would have an inventory of questions that would refer to one slide or another. Since our meeting the Planning Commission had a hearing on it, certified the EIR but I understand the Planning Commission did not make a represents just passed it on through with the AR certification.

>> That's correct, Mr. Mayor, the Planning Commission had four members in attendance that evening, they voted 4-0-Q1-2 on motion to approve the plan there was extensive discussion by the commission, in the end they voted to bring it forward to the council as a policy item with no recommendation.

>> Mayor Reed: I understand there has been an appeal filed to the EIR.

>> Joe Horwedel: That is correct. We received an appeal yesterday from the YCS properties, these are outside of our urban service boundary land south of the Silver Creek country club.

>> Mayor Reed: And that would be heard by us when this comes back as part of this package is that the way we would handle it?

>> Correct, my intent would be after the December 4th hearing we would schedule the appeal of the EIR as one of the items on the agenda.

>> Mayor Reed: The fact that it's been appealed anybody who wants to file an action can bring an action, they don't have to be an appellant, is that correct.

>> Joe Horwedel: Rick.

>> City Attorney Doyle: That's correct, the issues need to be raised at the time administrative level but the appeal-filed.

>> Mayor Reed: Round up the usual suspects. .

>> And the dedicated October 15th is a response from the local partners including San José to the YCS comment letter that the mayor is referring to so we have prepared an initial response which frankly is quite complete but we may have more to say.

>> Mayor Reed: Okay, back to whenever this comes back there will be more than just the HCP on the agenda and people can testify about it at that time. I put out a memo that I think we need to discuss today and get resolved before we approve the habitat conservation plan. I want he to explain work that's been done over the last

many years. My staff and I have met with owners, developers, advocates, environmental organizations, and their representatives, and I've been asked several times if I'm trying to stop the habitat conservation plan or delay it for years and the answer is no to both of those questions. What I'm trying to do is make sure it's defensible in litigation and if work necessary to get it right can take weeks or months but certainly not years. And many of these issues that I'm concerned about are raised by me and others in a study session a year ago, so it's not like they came up at the last minute. I also want to make sure that we don't repeat the mistakes .35 F.A.R, floor area ratio, two story buildings surrounded by parking and landscaping. We did that on the assumption that neighboring studies would do so also. That turned out to be a mistake and we've wanted to change it 20 years later. We had to litigate our way out of it with our neighboring cities \$11 million to settle the CEQA litigation. I don't want to do that again. But I'm reminded of it every time I take a ride up Great America Boulevard in Santa Clara and see the six and the eight and the 10-story buildings and then drive north first street and see mostly two-story buildings. And that's the difference that it made for 20 years. I think it was a mistake to go it alone. And it had dramatic impacts on our job generation capacity and I don't want to do that again so I'm trying to avoid that. I don't want to be a sucker. I think we got suckered in 1988 and I'm just dead set against it happening again. I don't want to agree to something that puts us at a competitive advantage not for 20 years but for 50 years. I would point out that goal number 3 of the memorandum of understanding approved in 2004 by the San José city council which we signed on to was to provide for a mutually agreed upon process to allow for an HCP applicable to the greater Santa Clara Valley area. We haven't achieved that goal we're still talking about it. That's the reason why I think the HCP is not quite ready for us to approve. We did have a commitment to engage in the process, to develop an HCP. We have done a great job in doing the HCP process but we had twin objectives. Goal number 4 of the memorandum of understanding for which we committed to this process was to first conserve and protect species and habitats while providing for the continued economic health of the region and the people of San José have a very strong reason for achieving both. The HCP clearly will do a great job to meet our environmental goals and there's a great amount of support for environmental activists. There the development advocates. That does cause me some concern and I think leads into the question of litigation risks. I had 14 years as a Planning Commissioner, 12 years as an elected official and many years in environmental work and have learned a few things. First in California nothing important happens without litigation, so just plan on it. CEQA litigation can slow down implementation 50 several years, routinely does. There's a much higher probability of an environmentally

weak centers when the salts and advocates who usually scrutinize the heck out of EIRs are supporting the project. So the probability of litigation increases when we adversely so all those elements are present so I conclude the probability of litigation over the HCP is close to 100%. We need to get it right and we have to seriously consider how we draw the lean on pipeline projection to reduce the litigation risks. Can you never eliminate them of course. As to the plan there's a lot to go through and it's hard to know where to start so I really would just start at the beginning. 1988, North San José development policy adopted by the city council, golden triangle task force consisted of most of the city council, cities in Santa Clara County what happened in 1988 the staff report says we adopt this F.A.R. on the assumption that everybody else is going to have an F.A.R. Where did we miss on the implementation step and how can we build so we're if only one standing ?

>> Joe Horwedel: Mr. Mayor, the golden triangle findings were adopted by all the advertise in northern Santa Clara County, with the exception of the City of Santa Clara. They never signed onto it. I think were pretty aggressive in going the other way. In the years since '88, cities including San José have gone and stepped away from those goals of 35% coverage. We did that with our North San José area development policy as you noted, that dramatically increased the amount of development. Sunnyvale, Mountain View have done similar efforts, Mountain View right now is doing a major intensification study around the Google complex about adding more square footage in that area. Sunday did one several years ago. So it is I think since then the world has changed. And has changed pretty dramatically. I think as you said, having one outside did create some bad behaviors, that is why the eight-story buildings are all great America parkway.

>> Mayor Reed: And we get out of our restrictions with the North San José policy work that we did that took us four or five years, I forget. And litigation. So getting out of habitat conservation plan is even going to be more difficult if we're unhappy ten years or 20 years from now so we have to get it right. We'll have to litigate our way out, environmental review to get out. We just have to understand if we're signing on for 50 years it's a very long time, very difficult to get out. Which is why I want to get these issues resolved up front instead of hoping that we fix them sometime in the future.

>> Joe Horwedel: Well, the one difference that would I say exists, the 50 years is an important thing for us to be very deliberate about, to not rush into. But I think the difference between golden triangle and the HCP is the golden triangle was a limitation into the zoning code restrictions that did not allow development to exceed those levels. So in changing those those were land use rules that required EIRs to go change those the HCP is essentially a mitigation means to go through and achieve development within the urban areas. It does have provisions to allow us to extricate ourselves out. It is though I would say complicated. I don't think it would require an EIR for us to get ourselves out of the HCP but I think there are financial consequences, based on decisions we would have made up to that point, that we would essentially have to cash ourselves out of that I think I would not want to understate. I think there is some real work involved with that.

>> Mayor Reed: Knowing that the risks are there ideally this things works as the way we hope it will work is we will have other cities demanding to be let in on this good deal. So far they haven't reached that level of comfort. But I don't want to be alone in there trying to get out when everybody else is not participating. So let's take the burrowing owl land issues. The habitat conservation plan as I understand it would require a 250 foot no development radius, no disturbance radius around an existing owl burrow.

>> Joe Horwedel: Correct correct.

>> Mayor Reed: And fees of \$50,000 an acre plus or minus depending on the zones. Are those required in neighboring cities? I got the impression they are not, I've been told by many development folks they are not required that way. So I see the letter here which I think is an excellent letter and I know that you've -- you are of the opinion that what we do with the HCP will become the new normal. But how do we make sure that that happens? Can we build into the implementing agreement some requirement for our partners and the permitting agencies to continue to move ahead to equalize the cost and these costs could be very large on some properties. And could end up making those properties sit there empty for ten or 20 years or longer. While that might be good for the burrowing owls it's not necessarily good for economic development. How can we equalize that and be assured we're going to have some help?

>> Joe Horwedel: So it's unfortunate that Scott's not here today, Scott's agency is the one that deals mostly with the burrowing owls. As part of the 250 foot buffer there are buffers that are required today around active nests when development is going on. Whether that's a full 250 feet I don't think it's that big so I think it has over time gotten bigger. In the past we, San José and other cities, have also had burrowing owl mitigation for relocating owls off the properties. Not at the level that is in the plan today. But what I have heard from fish and game of what they have sent letters to other cities, is getting pretty close to what is in here, upwards of 23 acres, for an owl nest, where you have an active nest. And so I think Kay's probably the best one to kind of take the second half of this.

>> Well, that will teach Scott for going to Hawaii. I did talk to Scott beforehand and that is one of the reasons in our letter we talk about being consistent on burrowing owl mitigation that is going forward. Some of the fees are going in for acreages and there are CEQA comments that are going on and I'm not disputing the mayor, that basically, things have ratcheted up. Doesn't mean that it shouldn't and won't ratchet up. As it relates to the severability of the agreement, it does allow you to sever the permit. But basically for any impacts that have occurred, you have to catch up. So if there is mitigation or impacts that have happened you catch up in the plan. So that gives a different advantage. The other thing is, as it relates to fees, and you were talking about the cost, the fees can be adjusted and there's a mechanism to allow, it's up to you guys as the implementing entity, to look at other ways to reduce fees or deal with the fees as you see -- as the plan moves forward. It provides quite a bit of flexibility to allow you to determine that. And then on litigation, at the point where a permit is issued it's a federal permit. And usually just so that you know, you're not by yourself, maybe that doesn't make you feel better, but the federal government will defend. Because it would be in federal court. Because it would usually we're sued on the Nepa document and our issuance of the permit.

>> Mayor Reed: When you say ecan adjust the fees who are we?

>> Joe Horwedel: So we as the implementing entity, so this is the joint powers agency that has been talked about. It is made up of each of the participating agencies that have land use authority. So it is the City of San José, City of Morgan Hill, City of Gilroy, the appointed.

>> Mayor Reed: As I read if document we're required to collect the fees.

>> Joe Horwedel: Correct.

>> Mayor Reed: But the fees will be set by two votes out of eight.

>> Joe Horwedel: Two votes out of eight. But all the fees have to be exact enacted with concurrence of all the parties. So tall agencies have to have at least one vote saying yes, this is the right thing to do.

>> Mayor Reed: I've read through the implementing agreement and I'd like for Vera to should say that, I think that would be a good rule if we're going to adjustment in with other people but I didn't find it in there but I didn't draft it so if it's in there at some point Vera can point that out to us. Okay. So rye parental corridor, first -- riparian corridor burrowing owl these are requirements higher than anybody else currently has.

>> Joe Horwedel: I think it's the highest than I have seen done before, yes.

>> Mayor Reed: Okay, hopefully, everybody is going to come along and this will be the new normal, the new standard. Riparian areas, 150 feet in some areas 150 in other areas. My question is neighboring cities what are their riparian area setbacks and is there a requirement to pay \$300,000 an acre for anything inside the riparian area setbacks in any other city? So the riparian corridor policy, we have in the City of San José is 100 feet. The HCP outside of the urban areas has a larger setback than 100 feet. Inside, it allows -- it has the 100-foot and it also for certain streams also has a 35-foot setback which is much smaller than the City's. So for the most part they line up. There are some places where I thinkists more rigorous than ours and then on the edges it's a little bit tougher. The issue about the \$300,000 and as anybody else is subject to that? Sort of fee, I think they -- it's hard to say. They don't have a direct charge at that. But because the applicants for those projects have to go deal with the regional water quality control board directly with the army corps of engineers to obtain permits from them when they are building in and near streams. There are typically mitigations that are required of those

developments that are negotiated separately between those two parties that the city is now part of. So I can't say of what it specifically is.

>> I can tell you that I've been working on a project with the Santa Clara Valley Water District that I think they have been trying to achieve I think they bring it up to me quite a bit. Riparian mitigation for over 10 years. They've had very -- a big trouble trying to buy and have lands and acquire habitat. There's a number of developers that have a similar thing and so we don't necessarily, as an agency, look at it as a fee. Which people would pay -- most people would pay a fee, pay money rather than meeting with us. I mean it's the truth. So that basically it doesn't translate necessarily but the time and money it does. Is very expensive and takes a long time.

>> Joe Horwedel: And I did want to clarify. The 150 foot riparian setback there is a case inside the urban service area where that would apply. But it's only properties with slopes greater than 30%. So in San José we have used the 30% slope line is where we limit development. But typically you're not able to build that close to creeks when you're in that type of steep topography. It is a 150 foot setback expectation from the plan where we would be doing development that we would ever problem. And then 375,000 is the maximum fee that is for a wet land. And the last comment I would put on that is I think we should be very concerned about being competitive with other cities and developable lands, the zone B, zone C lands that are up on the chart, as a city we have worked really hard to protect our streams. We worked through the collaborative with the Water District about protecting that throughout the county. I think if other cities are not following that, that is something that I think we should be taking up with the Water District about why they're not holding up on that end of it. Because that is a real concern. But it is one that, in some ways, this monetizes, for want of a better term, bad behavior where development has not respected the 100-foot setback and had no consequence other than having to stand in front of the council and have a discussion about their project. But once that discussion is done and the decision is done they do build houses. And generate profit off that land. So this does put consequence for that choice.

>> Mayor Reed: But it's clear that what we're going to require with this HCP is more than is being required in surrounding cities?

>> Joe Horwedel: The guiding principles that we have with the 100-foot setback is what I think has been predominantly adopted in the collaborative with the other agencies. Through the Water District and what they were looking at, of how development should relate to creeks. I think there are circumstances going on, because most of the county is build out, about how new development that is redeveloping of what setback is getting approval on. I think that's a fair debate to have. But through the collaborative, we all agreed with the Water District keeping them out of permitting is that each of the cities would go through and honor that type standard.

>> Mayor Reed: There's a table in the HCP in one of the appendices, in page 6.7 that lays back the setbacks, the riparian corridor setbacks which I really didn't understand fully and I didn't have time to read the entire chapter to see if it explained it. So you have 100 feet, in some cases 35 feet more. And sometimes it's measured from top of bank and sometimes it's measured from the edge of the riparian. So I guess my question is how do you interpret that? And where is the edge of the riparian? Because I've been on a lot of creek trails. Levee trails. And you've got a creek, top of bank, a levee, a trail on the levee and then riparian corridor looking kind of stuff outside of the levee, so do you start measuring there, or do you measure from where? And is this a change from what we've been doing with the riparian corridor? And is that 100 feet or 135 feet in some circumstances and how do you sort that out?

>> Joe Horwedel: For the habitat conservation plan, all the measurements are from the top of bank, which is much more defined than our city policy which is from the edge of riparian corridor or top of bank whichever is further. So that's my -- why I said that the HCP and our riparian study match up generally. But in some cases it's less rigorous, is that because it's measuring 100 feet from top of bank and we may be measuring 100 feet from tree canopy, our boundary's going to be further out. But the responsibility to mitigate under the plan's going to be much less. It's going to be from the 100 feet to top of bank. So it is I think a much easier place to measure from and some of the debates in front of the council has been well is this tree in or out of the corridor and therefore is the 100 feet measuring from the right place.

>> Mayor Reed: Well, I think you need to do a little bit of work on this chart maybe. I just don't understand how to read it. I think it is a little confusing, I didn't read it the way you just explained it.

>> Joe Horwedel: The chart we used at the council last time in the presentation we tried to go through and explain a little bit better about how we deal with the top of bank piece, that we did go through, or -- oh, where is it? It's the 35 feet, where you have that 35-foot number is that riparian vegetation is it puts it out on the outer edge of that. I guess -- so it is one that I guess we should do some work, I agree.

>> Mayor Reed: It needs to be clear.

>> We'll come back with that clarified in December.

>> Mayor Reed: Can you put up the one slide you had today, it's probably in that PowerPoint as well. But I know which one it was because there was only one.

>> Joe Horwedel: That one.

>> Mayor Reed: That you used today, the very first one.

>> Joe Horwedel: Slide 3 in that presentation. Yes. No, of the --

>> Mayor Reed: That's the one. So I want to talk about unintended consequences or perhaps intended consequences and find out which is the case. So in North San José we have two creeks, Guadalupe, Coyote, we love 'em. But there's development all along them, along the levees, so if one of those developments whatever is put there is within 100 feet of the top of bank and they've got a parking lot or building within that 100 feet of top of bank, and they come in and want a permit from the City of San José. The way I read the document, they're going to have to pay the mitigation fees or riparian corridor setback at \$300,000 per acre.

>> Joe Horwedel: The -- I think it's the one thing that's going on in both of these rivers is the top of bank is generally more than 100 feet from the property line of where the actual bank is down in the channel versus the

flood control channel, so that is one of the things we look at with development about should we have any sort of setback. The question about, does this trigger the payment of a wet land fee for area inside the channel, the flood control channel, we would not be charging that. If there is area outside the flood control channel that is in the 100-foot setback area, we have generally not been approving parking buildings in that area, pursuant to the City's policy.

>> Mayor Reed: I'm talking about existing development. I'm just trying to figure out who's at risk here. There's a lot of intensification going on. We have companies that have operations across the Bay Area and they want to get in one location and they come in and want to intensify their site. If they are looking to pay additional fees just to do that just because their development historically is within this 100 feet then that's an extra cost and extra reason not to do it.

>> Joe Horwedel: No, they're within an existing impacted area in that area, so we can come back to clarify that but it's one that I think the way the plan is written today they would not be subject to paying that knee if they are kind of working with the level of impact that's there today. And that's how our city policy is written and we tried to mirror that in this.

>> Mayor Reed: I think that area needs some work. Page 2-42, provided the element subject to the plan, that on the following page, the way I read it, perhaps I'm reading it wrong, is if somebody needs a permit from the City of San José, the activity is subject to the HCP, if there is any ground disturbance. So if they want to replace their landscaping or shrubbery or put in a pipeline or something, unless maybe if the additions of less than 5,000 square feet of new impervious surface to new existing excites are not subject to the plan. But I think there's an area there that pay additional fees on top of our development fees. That could come in for grading permit landscaping permit, sewer lines, water lines, all of that is ground disturbance. Look like this is very broadly if they show up and need to throw some dirt around, need a permit from us for, let's say, tenant improvements, then they're going to have to be subjected to the plan. If that's not the intention maybe we can just clarify that.

>> Joe Horwedel: If we can go through and make sure we're clear, again it's matching up with the existing policies on the riparian corridor we tried to keep those all very consistent about how we deal with those today and have dealt with them in the past. Which is if you are in that 100 foot area and doing disturbing activities, we're trying to make it better. We are not saying you have to get rid of all of it in there but we do go through and try to make it better than it is today. Generally we would not.

>> Mayor Reed: We wouldn't but our surrounding cities would.

>> Joe Horwedel: That's where I would say to go back and how we deal with the Water District who is supposed to be looking at that.

>> Mayor Reed: They are our partner in this and they have a degree of interest in getting this through. I think they have already voted on this because most of their permits are subject to this nitrogen deposition fee which is not being charged in any other city to the north of us and even though it might be small dollars in some categories, it is a fee, and extra fee on development. And the question is, you know, how can we get the rest of the county to participate in the nitrogen deposition fee however small it pay be so that we don't have to worry about that being a competitive disadvantage.

>> Joe Horwedel: Yeah, and this is the one I think there is the easiest means to level the playing field. Because the impacts are indirect it's coming from air quality emissions from vehicles here in the valley. We have analyzed what is the total amount of nitrogen that is coming -- going into the air and where it's coming from whether it's from Santa Clara County overall, whether it's from the rest of the Bay Area or outside the Bay Area and how much of that lands here. So that is when I think the nexus findings, we have essentially done a nexus study that analyzes that universe, we have looked at the conservation strategy and the cost to do that. I think now it's more of a question of how we deal with those agencies and I think some of it is political, some of it is I think advocacy from environmental groups and part of it is the letter that Kay has shared with you today. Of a bit of a club. I think it's going to work in all of those realms to make something happen. The two I think we have the greatest opportunity to deal with straight out is the Water District and VTA. The Water District in that they regularly get contracts

renewed nor water from the state and federal water projects that import water into this region. Both of those require CEQA and Nepa approvals. Bailey interchange to date the water contracts do not have a responsibility to deal with nitrogen even though the water supports the valley as we know it today and what will grow in this valley and the existing development. So it is very much something I think there is a rational basis that could be made, that as mitigation for continuing to receive that money or that water, that the cost of mitigating those impacts, the same as the impacts to the delta smelt that they have to deal with, it is no different than that. As it relates to VTA, they are a signatory also to this agreement and are participating but the VTA projects themselves again are not mitigating the nitrogen impacts from the vehicles traveling those roadways. The impact is ascribed to the raised with the liaison group that we should go and find a way to level that playing needle. The liaison group has had discussions I conceptual agreement spread those costs across all businesses and residents here in the valley that benefit from things such as state and federal water, benefit from VTA dollars that are used to move people from homes in San José to jobs in the north county.

>> Mayor Reed: Another fee that's significant in size, the seasonal wetlands fee, \$375,000 per acre. What are seasonal wetlands and where would this apply and again are we going to be the only city that has the seasonal wetlands fee? And is Alviso a seasonal wet land? Because it floods every 15 or 20 years.

>> A seasonal wet land is you know would be like a wet land that drains that is not a permanent creek. So it would be a vernal pool type habitat, it could be some -- ephemeral streams and it could be also some ponds. And a lot of the seasonal wetlands are actually in the county area or in other jurisdictions within the plan. Very little is probably left in the City of San José.

>> Mayor Reed: What about in Coyote valley?

>> Joe Horwedel: There are definitely properties in Coyote valley that I think -- that are seasonal wetlands. That was part of the Cisco project, when we did the development. We build a lagoon in the far West of the Coyote valley. I think the property that Sobrato has bought in Coyote valley has seasonal wetlands that is a result of the

water table in that area. There are some in North Coyote valley seasonal wet lands I think also in mid Coyote valley.

>> And just so you may not have remembered but in 2008 the fish and wildlife service wrote probably the longest CEQA letter we have ever written, it was 60-plus pages of comments on the concerns that we had for that area.

>> Mayor Reed: I just like to point out why I have some of these concerns. If you add them all up they can be some pretty significant numbers on individual projects certainly enough to make people pause and think about whether or not the project is going to go ahead. But I'm seeing projects move ahead in our surrounding cities. Moffitt towers we got a second application in. I bet you they don't have to pay big numbers for burrowing owls or for wetlands. That's in Sunnyvale. Santa Clara's got the 49ers stadium going up right along San Tomas creek, I bet you they didn't have a 149 foot setback unless our wildlife agency partners and us can figure out how to make this happen. So I think that's an important part of the work to figure out how we can do some of the things that Joe just outlined around these fees to make it fair to the people of San José, in comparison to our surrounding cities. So that's the competitive disadvantage. And then I want to talk a little bit about the analysis done by the -- in the environmental review process and the HCP itself. There are a lot of comments to the EIR. And there are master responses because many of the comments were the same. So in master response number 3 which is on page 7 of the responses, there is a recitation of why the economic analysis is unlikely, the plan fees are not likely to be the determining factor in financial feasibility for most development projects. They are unlikely to cause competitive advantage to habitat plan fees are not likely to shift development outside the habitat plan area and I think that's the area which I have the most disagreement with the analysis in the plan. And I'd like to have a chance for staff to explain that. It's based on an economic impact analysis of the draft Santa Clara Valley habitat plan by wellدون services which is posted on the Website. So I want to turn to that and ask the question about cumulative impacts. I don't see any analysis in here that looks like we looked at cumulative impacts in the way that we would if we were looking at cumulative impacts of development on endangered species, for example. And most of the conclusions about the fees are unlikely to cause a competitive advantage are conclusions. There's not a lot of background on how that analysis was done, or what the data is. So let me start on page 10 habitat scenario comparisons. The first part is within habitat plan area and there's a baseline

habitat plan advantages and disadvantages. Actually a pretty good chart. So one two three lines down within the habitat plan area the question is share of development facing ESA compliance cost which I believe is the how much development will face endangered species act compliance cost. And the answer is, for the baseline, uncertain. And I have the question of how much of the development in San José would be subject to having to get a take permit from one of our resource agencies. Because I understand the county, I got that, it makes sense. I understand Morgan hill, Gilroy, water district, they all have a real reason here because most of their permits are going to require -- are going to face ESA compliance cost. Uncertain I think is certainly the answer. We don't know the answer in San José but it can't be more than 10%. I can't believe that rebuilding our convention center would require a take permit. Now perhaps I'm wrong and we need to talk about that and get me educated anyway on when take permits are required. But knocking down buildings and putting up new buildings shouldn't require a take permit. And if that's the interpretation of the act I think we need to get some outside counsel to help us figure out whether or not we really do have compliance risks with that. Do you have an estimate of how much of the development in San José over the next 30, 40, 50 years, would require a take permit if we don't get into this HCP?

>> Joe Horwedel: The 10% I think is a very conservative number, meaning it's larger than it probably is. So I, in talking with the media I've used the number no more than 10% of the projects we do are required to get their own individual take permits. I think the -- and that's part of the challenge with the habitat plan is, unfortunately, we are dealing with issues that the Water District is having to deal with, and that the VTA is dealing with, on a cumulative scale, that the projects they are doing have a cumulative impact and we got caught in that net because of the Bailey entertaining project and the Coyote Cisco project, those brought us into this. Is there anything else that would have tripped us up in the last ten years? I don't know at this point, there was something else. I can say with pretty reasonable certainty that when we go to do the water pollution control plant, and as a part of the updates for that, I think there will be a major battle about what ouring will be through all the different agencies without the HCP. Because we'll be dealing with the same issues of cumulative growth and the impacts to the bay checker spot butterfly that has the indirect connection. I think that is a battle we will face because we are a large city. I think if we were the scale of a 50,000 population, when Coyote came up, we would only be talking about an HCP for Edenvale. We wouldn't be talking about an HCP for West San José. I think that is our lot because we are a big

city. That's what makes it a little bit hard to answer that question. I think as just our scale we get tripped up. And the --

>> Mayor Reed: Well, we're used to being the biggest target in the region, we're the largest city in the region and we have to deal with that. We're asking 90% of the people to pay for something that probably only 10% get the benefit of directly. Now there's all kinds of great indirect benefits and habitat benefits and environmental benefits but if you are just looking at the permitting part of it, 10% of our people might need a permit but now we're going to have 90% pay that don't. I think that raises a question I know that staff has done all the work on prop 26, prop 218 all that and all the nexus stuff but it is probably 90% of the projects for VTA and Water District. So that's why they're interested versus 10% of the projects in San José. And that's -- we're probably prepared to do that. But I want to make sure that we do it correctly and not create disincentives which takes me down to the bottom, next to the last line on this chart. Shifts between sites. So we have an advantage of the habitat plan is that there are fewer shifts within the county or between county and other regions. Fewer than what? I'm not really sure. But I think that's just a wrong conclusion. And then if you look at footnotes, development act commitments will not special impact fees, i.e. wet lands, alternative sites within the county I certainly agree with that, I may well be in fact in some cases it certainly I would be.

>> Joe Horwedel: Related to that Mr. Mayor, we did go through, one of the sources of data cited in that city is a survey we do every couple of years is the cost of development survey. Where we put out standard building types and have different cities price them. So the most recent one we did, these are the studies that participated in it, in what -- this chart is a modified version of what is in our survey. And what's modified is the pink and the green parts of that where it says San José. The regular cost on a citywide basis if we were building and this is a 100,000 R&D building and same kind of parameters, we asked each of the cities how they would -- what their cost would be. The regular version, we sit between Sunnyvale and Santa Clara County on this chart so we are the second cheapest. When we put that chart on North San José and Edenvale \$12 a square foot that's what North San José looks like so that's why we did the fee buy-down. We're not competitive with the rest of the marketplace with the North San José fee. But the green is the cost of the habitat plan and this would be property that is considered green field. So it is not a redevelopment site. This has got that area fee built into it as well as the I think this even

had the owl fee built into it. But you can see, is our cost do move to being much more expensive than Sunnyvale at that point. So there is definitely an impact and that's why we said that in that cost study. There are -- the nitrogen fee itself we don't think would cause people to shift where they would build or not build. In comparing one green field site to another green field site we don't think there's a great difference. But we do think when you put the wet land fees and owl fees, those are substantial numbers and that would cause behavior to possibly change that developers are going to make a decision to not build on one site or the other. That's why I said we really need to look at the pipeline provision in North San José as we go through and look at especially the red properties in here for some amount of time do we go and give ourselves a little bit of breathing room in there.

>> Mayor Reed: Well, the data that you just had up I believe is reflected in table 11, page 32, of the economic impact analysis, which is the industrial R&D development fee burden. So it didn't take me more than about 30 seconds looking at this chart to realize that the most important stuff is not even being considered in terms of the cost. So for example, development taxes, impact capacity fees, not only is it not considering the \$5 it's not considering the \$12 that it is in North San José because it would be a lot bigger than that and there's no mention of the owl fee, riparian fee, the wet land fee or any other of the big-ticket items in the HCP. So that's why I think the economic analysis needs some additional work. Because if you're looking at the cumulative impact of the fees like you look at the cumulative impact of auto exhaust, you've got to look at the cumulative impact. If you look at all these fees it's millions of dollars. You had a case study that you put up last time, that is \$1.5 million on one property in North San José and that did not include the cost of dedicating the land around burrowing owl burrows which is probably for each burrow somewhere around \$1 million or \$2 million worth of land. You add all of this together and you can see that some projects are not going to happen. And we have a couple hundred acres in North San José, hundred acres in Edenvale, roughly 300 acres, roughly 700 jobs that are going to go someplace else at least a portion of them. That goes to the impact a flaw in the environmental analysis if you are assuming no impact on these fees and no shift in development patterns, that's wrong I think if you're going to put 40,000 jobs to the north of us, and continue the reverse commute or north commute pattern, put out a lot of auto emissions that is something that needs to be modified. And the other related comment or conclusion in this economic impact analysis is on page 31 table 10 project specifications down at the bottom, where they've done analysis of the increase in development costs if they were shifted to tenants through higher lease rates result in a

one half cent increase in the monthly lease rate. The particular property that you had is a case 3 last time I think, they're projecting somewhere around a 14% increase in the lease rate in order to cover the cost of the HCP. I think that 14% means the project won't get built. Certainly not in the short run. And maybe not in the long run. So I think the work that's been done on the economic analysis is not necessarily connected to the real world. And there's no evidence that the work considered what's happening, there's some footnotes and data from people, but I think that's missing in the economic impact analysis. And you know, that's the basis on which the EIR concludes there's no significant impact to the development patterns. And so I think that's a weakness in the analysis. The other thing that doesn't consider is the cost of redesigning a project. If you happen to have a burrowing owl in the middle of your ten acres. If you put it right in the middle the project itself may be undevelopable because you've got to have a 250 foot radius and I think that adds to the cost.

>> Joe Horwedel: Around that point Mr. Mayor, I think it's a little bit of apples and oranges in that today that developer has to get approval from fish and game. They do not have an unbridled right to get a building permit and build with that owl there. The last thing we heard was that fish and game was asking for 23 acres of land for that pair of owls.

>> Mayor Reed: In the Central Valley?

>> Joe Horwedel: No, they are no longer asking for land to be acquired in the Central Valley for owls located in the valley .

>> Scott really needs to talk to.

>> Mayor Reed: Because I'd just like to know if Moffitt towers are going to have to worry about burrowing owls for their second tower.

>> Joe Horwedel: We will be following up on a couple of others to seize what is in their specific documents and if we have to do it through public records request we'll pursue it that way. I did want to also note is that the -- why I

did this slide is that when we do the cost of development survey, it looks at a citywide, what are citywide fees and that's why North San José has never shown up in these because those fees only apply in North San José. They don't apply in Edenvale, they don't even apply in Berryessa. It is a bit of a misnomer, that's why we did the revised one for North San José properties that are not redevelopment. But you know, it is kind of that down to the 200 acres or down to the 80 acres, where that stacked number would apply. But that's not on the 3,000 acres of North San José. It's in the 200 or 100 acre areas. Still significant? Absolutely but I want to make sure kind of the apples to apples.

>> Mayor Reed: Well, it is a significant number and 40,000 jobs and if you look at our aspirations for closing the jobs-housing imbalance and the \$11 million that we're paying to get the chance to increase the economic development in North San José, 40,000 jobs is a lot of jobs. And it would be a significant impact. I had another question on the master responses to the comments on the EIR. Mass response number 4, which is I think page number 9, those are the tiniest page numbers so I'm not really sure I got it right. But it is master response number 4. There's a discussion there about the wildlife agencies, army corps of engineers, the regional water quality control board and a permitting strategy. And the comment is, the details of this permitting strategy will be worked out as much as possible prior to approval of the habitat plan by the local partners. So I'm not prepared to approve the habitat plan until that is worked out. That's what if comment says and I think that's right. Because one of the things that is creating a problem for us is development uncertainty. And even when you know the fees you can calculate the fees you can do the pro formas. But if you don't know what's going to happen it's another uncertainty and it's a disadvantage of anyone trying to decide if they're going to spend \$100 million in San José to put a project up \$100 million in Santa Clara County regional board is ignoring us.

>> Joe Horwedel: I would characterize it as they are paying attention. Maybe a year than what would have been nice.

>> Mayor Reed: It is hard for us to get them to focus on our problems because they have problems of their own. Pipeline, I would like to talk about the pipeline a little bit in trying to minimize the litigation risks, how you define the pipeline is another way to do that. The more you step on somebody's toes the lest likely they are to be

cooperative. So Cisco sent in a letter, two letters commenting on the EIR comments 37 and 40. Requesting specific pipeline language. Ellis partners, e-mail from Dean Rubinson, also had specific pipeline language. So I'd like to know what's wrong with what they requested. The response is we're not doing that more or less. And should we consider some modifications to the pipeline language?

>> Joe Horwedel: I don't have the EIR in front of me, so I can't read what their original comment letter was. There is one that I think look at the pipeline is something that certainly makes sense. That's what I was trying to lay out in our supplemental memo, that I think there is a liberal of room in there that we can work with. I think some of the requests we've seen and I can't remember if it was Ellis or Cisco asking for essentially a pipeline of anything that was previously approved, we have really never done that before and I would really recommend that the council not go down that path. That is I think far more generous than it really would need to be. Our goal is to go and bring economic development to San José. And our incentives are around bringing it sooner to San José and I think to the extent we look at a pipeline that aligns around that, I think there is something you know that I want to come back and bring to the council around that. I think to the extent that you have a pipeline that's anything that's been talked about in the past then I think we are looking at recirculating the EIR because I think it starts undermining the conservation strategies and the financial health of the plan.

>> Mayor Reed: What about development agreements?

>> Joe Horwedel: Most of our development agreements all the ones I've worked on specifically exclude all the rule that applies citywide. Because we recognize that the city will do things from time to time such as green buildings, we might do childcare rules, there is not a benefit to the city to go through and give away the ability to do that. It is certainly something we have the ability contractually through a development agreement. More on the unfunded liability on the back side that we'll have to figure out how to deal with.

>> Mayor Reed: I think the question is are we going to honor our development agreements?

>> Joe Horwedel: Absolutely.

>> Mayor Reed: All right, that's good. What about wildlife agreements with the wildlife agencies?

>> Joe Horwedel: Any agreement that is valued with the wildlife agencies will honor.

>> Mayor Reed: How about previous agreements in areas how do you see them being affected by the adoption of the HCP?

>> Well, we've honored our agreements with your city so far and I think we've been pretty good partners ten years sitting through these. But if there is existing biological opinions we have honored those but some of those existing biological opinions for example that the fish and wildlife service has that they've had difficulty buying lands and implementing their mitigation which is past due we have actually allowed them to say if the HCP gets issued that they could enter into that and pay the fees to make it easier for them. So in essence we have given them a second pathway to deal with their issues which in essence is pretty generous from fish and wildlife stand.

>> Joe Horwedel: And fish and game have operated the same way. We have asked developers for copies of those because we're never a party to those agreements just to see what's in them about the we have not received copies of those, which is a little bit of a challenge in the councilmember's memo so we are doing research around that but we don't have that completed to date. I want to turn to the nitrogen deposition fee, appendix E is the contribution estimates, and I've read this a whole bunch of times, there's a lot of math, a lot of percentages, and I'm not yet comfortable that we're properly allocating the costs of new development as opposed to existing mitigation needs, and maybe it's because I really don't understand it, and I haven't had a chance to get a tutorial from staff to go through it. But I think that's important to being able to defend the fee as a fee and not have it treated as a tax, which of course will be alleged in whatever litigation comes our way. And one of the things that it steeps me is that we're asking new development to pay for 50% of the impact from night jeopardy and new development will not be 50% of the activity because we have a baseline of a million people add 400,000 people to that and it is somewhere around a 40% increase. But I got the idea from one of these numbers that new development is going to pay 50%. Straighten me out.

>> Joe Horwedel: It is 50% of a percent. So in appendix E there is a chart on page E-67 that looks at all the nitrogen that is landing on the habitat there, in south San José. And it puts a 30% share of the nitrogen that is landing on that property, that area, coming from mobile sources in Santa Clara County, only within 20 kilometers of the site. So we look at all the nitrogen that is in the air in Santa Clara County, we've estimated where that nitrogen comes from, through modeling of the wind patterns, where the emissions, the vehicle miles traveled in the region, not just Santa Clara County, then we've looked at what percentage of the plan is a percentage of we have already looked at a percentage of a percentage and he now we are looking at a percentage of that and looking at how much is there today and then based on our projections for general plan growth in the region the vehicle miles traveled over the life of the plan how many more millions of vehicle miles debt traveled in air quality emissions, so the 50% is the 50% of the emissions that are occurring within the plan area that is coming from mobile sources. We have estimated that is where that comes from as opposed to you know so it's 50% of 30% of of another percent.

>> Mayor Reed: I think you need to work on that a little bit so it is clearly understandable. Because I'm looking at the development fee nexus study of June of 2012 again done by welldon financial services, 4.6, nitrogen deposition per vehicle trip, share of nitrogen deposition ofrom new development within plan area is 50%.

>> Mayor Reed: So that's short-handed from some other data that got down from that area. So we can share the full math of how that got there.

>> Mayor Reed: I think you need to put it on one page to see how you got there. It looks like new development is paying half, but new development is not going to be half of the activity in 40 years, we're going to grow that much.

>> Joe Horwedel: No. It's not clear how you deal with stationery sources, because clearly stationary sources contribute, what the study says. But we're only tagging the per-trip. So is that per-trip, get the vehicles and also the stationary source from which the vehicle went or came from?

>> Joe Horwedel: Stationary sources are permitted through the air quality district, it's like the Metcalf plant when it was built, they were required to purchase serpentine soils in the area as mitigation of the nitrogen emissions of that plant. The Los Esteros plant in Alviso went through the same process. So on largers projects that is something that the air district is dealing on those issues on individual point sources like a generate in the back of an industrial building. There has not been a mechanism put in place that would put a nitrogen fee on that, that's a logical next step to go, right now the total tons of nitrogen that goes into the air every day is a pretty small piece of it but it is one that you know we should deal with at some point.

>> Mayor Reed: I think the question is whether or not in the allocation of the cost we properly allocated the cost because these guys are doing things.

>> Joe Horwedel: Yes, the stationary air quality impacts are not being paid for by development of mobile sources. We are only asking for new development to pay for the air emissions of mobile sources. They are not subsidizing the stationary or stuff outside of the plan or existing development.

>> Mayor Reed: Okay, that's good. On page E-3, appendix C nitrogen deposition contribution estimates. There's another percentage. About a third of the way down the page they're talking about the nitrous oxide emitigations, NOX. San José emissions make up 79% of the Santa Clara County NOX emissions. I don't see how we at 55% of the population are going to generate 79% of the NOX emissions. Now, if bee get credited for all the cars that drive through San José to get to north county maybe that's where it comes from.

>> Joe Horwedel: I think that's only applying to the emissions of mobile sources within the plan area. So it is a percentage of the percentage. It is not 79% of all the emissions in the county.

>> Mayor Reed: That's what it says. You better check.

>> Joe Horwedel: This is an issue that we have been dealing with for 15 years of nitrogen going back to the Silver Creek country club. This is one we have finally gotten better science to explain it so we'll go through and double check that piece of it.

>> Mayor Reed: It's certainly clear we got a lot of nitrogen from the north county and different part of the county. That is accounted for, I think, the way I read it, they're looking at what we're generating which is the appropriate metric to be using. One more thing on the nitrogen deposition fee. If you have throughout the plan area. Except if it's within 2,000 feet of rail station, it's reduced, which I think is good because there's less traffic, people are living close to the light rail or heavy rail or some other kind of rail. But it implies because the fee is the same no matter where the development is, that the location of the development doesn't have an impact on nitrogen. I know somebody who lives close to work doesn't generate as much as somebody who commutes from Palo Alto to San José. Would it be better to have a fee that has some geographic or some distance component or something because I'd like to incentivize jobs in the South and housing in the north. We've been trying to do that for decades. Most of the 'nother is not participating in the HCP because the jobs in Santa Clara through Palo Alto aren't aren't covered by this. But shouldn't we set some kind of a standard when we adopt this since we're going to try to make the rest of the county participate in it, that would somehow recognize the fact that if you put jobs in Palo Alto and housing in South San José the two will meet by vehicle and that there is a big impact from that imbalance. Is there something we can do now to set the stage for the argument later with our other cities?

>> Joe Horwedel: I think that is a very good guiding principle Mr. How fees should be ideally structured. We spent a lot of time over the last couple of years about even could we make the fee go away? Could it be and be zero for downtown and be expensive in the sort of suburban three car garage scenario working with the home building industry and just trying to work within the box of nexus versus policy, we could never get something that was not horribly complex to try and implement. So we ended up going to something which kind of gets there which says, every city when you do your traffic analysis, which we have control over individually we are able to take into account trip generation rates, capture rates internalization, things that reduce the amount of traffic associated with a project. So that downtown project near transit is already going to have inherently a lower trip

generation rate as opposed to that three car suburban garage traditional home. But it's built into that to deal with it.

>> Mayor Reed: I know Councilmember Liccardo has communicated with VTA about opportunities to reinforce participation in the HCP. We've got to look at all those things because ultimately I think it's in everybody's best interests, advocates on all side of this is that everybody has to play in the same frame as we are.

>> Joe Horwedel: Absolutely.

>> Mayor Reed: Whether or not they are in the HCP or otherwise participating, they are generating the nitrogen, they are generating the impacts, they have burrowing owls and all. We've got to figure out how to move this to the entire county in some region. I'm going to be turning to the implementing agreement, and point out to my councilmembers, the implementing agreements in volume 4 the appendices. 5.2, page 18, incorporation into the permits. Each party, that means us, acknowledge that no representation inducement promise, or agreement oral or otherwise has been made by the other party. That would include the resource agencies, and the other cities. Or anyone acting on the behalf of the other party that's not embodied in the Santa Clara Valley habitat plan this agreement or permits, that means anything you heard here today that is not in writing or formally incorporated in the plan doesn't exist. So if you're going to make a decision based on some promise or aspiration or hope, you got to get it in the plan that's part of the things I want to do in the next couple of weeks is make sure we've got commitments that we can count on otherwise it's all just talk and I know from what I've heard that the resource agencies have many, many other things to work on, and as soon as we've signed onto this is the momentum is going to dissipate, and we're going to be here. So we got to get it now and we have to get it right, because this is the only chance probably for 50 years. The adjustment of fees. Again we're going to be stuck with the fees. we're not going to set the fees as city council, we're going to have to live with the fees and collect the fees. And I'm not real comfortable turning over a dozen fees to unelected at least not don't report to anybody who aren't accountable to anybody without some mechanism for the public to be engaged in that discussion about fees and the structure that we have now doesn't really get us there, unless Vera's been able to find that section that says we all got to approve certain things.

>> Absolutely mayor. Actually, the implementing, let me clarify what the implementing agreement is. The implementing agreement is the assurance between the local partners and the wildlife agencies that we will in fact implement the plan. And fund the plan in the manner required by law. And it is part and parcel a requirement of the HCP, to do this implementing agreement. However, having said that, the joint powers agency is not governed entirely by the implementing agreement. The way that we work with each other as local partners within if implementing entity is actually in a joint exercise of powers agreement that creates the Santa Clara Valley habitat agency. And that should be on the site as well, and I want to point you to page 4 of 18 in section 5 where it talks about the agency governing board for the plan. For implementation of the plan. The governing board is an eight member governing board that serves as the agency's governing body. It consists of two represents from each party who are officials elected to the party's governing board. So it would be one of the councilmembers, two of the councilmembers would be on the governing board and again that would include the county of Santa Clara, the cities of San José, Morgan Hill and Gilroy. With regard to the duties of the governing board, it's in section 5C well actually let me go to in 5C it talks about things that cannot be delegated by the governing board. The first is adoption and modification of fees. So the governing board always retains the authority to make fee related decisions. Obviously staff would go out and perhaps contract for fee studies, perhaps the nitrogen fee because of fuel saving measures in the future could be lowered. You could take a look at that you know and it requires periodic review of fees. As does any development related fee. Section 5D has the quorum regarding voting. It says that each member of the governing board has one vote, that's two votes per jurisdiction. The presence of at least one representative from each party shall constitute a quorum for the transaction of business except less than a quorum may adjourn meetings from time to time. Unless otherwise provided in this agreement, any action of the governing board requires an affirming vote of at least one representative of each party.

>> Mayor Reed: Where is that?

>> That is on page 5 of 18 of the joint exercise of powers agreement, section 5D.

>> Mayor Reed: Thank you. I have a question about the airport, it's hard to determine if it's in or it's out.

>> Joe Horwedel: It's out.

>> Mayor Reed: When I read one section the airport's all in, how can it be out if it's in? How can we clarify its status bass when we look at appendix M, the western burrowing owl conservation strategy, the most important thing, the most likely way to achieve year 15 positive growth rate will be through an average increase in the number of adult burrowing owls at the San José International Airport, Moffitt air field, that is not participating, and shoreline park, that is not participating. So if it's not going to be in, we need to make that clear and I don't think that should be in because we have all of our existing agreements with the FAA and the master plan and we're doing this with the wildlife agencies as well.

>> Joe Horwedel: Absolutely it is out. It is explained in the appendix about the burrowing owl essentially survivability analysis and where they exist today and what the likelihood of those populations existing ten years 20 years into the future. Clearly we are like any other property owner that has rights and if we choose to participate in having owls on the property, as a part of the mitigation strategy, there are benefits overall to the plan area but we are not required to do that. The same with the water pollution control plant. We certainly have responsibilities ais a property owner for the owls that are on the property today and changes we wish to do to not have owls on the property we have done that with the airport. We have not done that for the water pollution control plant. We for the plant.

>> Mayor Reed: I think one of your assignments over the next few weeks is just to clarify the status of the airport. Questions or comments from the supplemental staff report. Page 2, question is the HCP EIR adequate? First line says the only comment letter on the HCP EIR received by San José to date was from YCS but I think that's inaccurate because there's 40 comments or so at least. I know some of them are critical, the BIA, some others, technical thing but --

>> Joe Horwedel: I misspoke. It really was since we put the draft EIR with responses back out that is the only written comment we received on the EIR.

>> Mayor Reed: I heard from some of those folks that they didn't like the responses the first time that doesn't mean that they agree because they haven't sent in another letter, so I guess from a legal comment these are comments raise those issues in litigation, whether or not they come back and say you didn't really answer our question, correct, we have to worry about it whether or not they send two letters.

>> City Attorney Doyle: That's correct.

>> Mayor Reed: Okay. And then I'd like to give our lawyers a chance to talk about prop 218, prop 226 works with the California mitigation fee impact act or whatever that is, because I've been totally confused since prop 26 was approved, about when it affects what we're trying to do and what it means. Some way you can read it it doesn't really change anything in terms of fees. But I'm not really sure. I just wanted to make sure that you guys have had plenty of chance to make sure the fees we're talking about here meet the latest whatever that may be.

>> City Attorney Doyle: Prop 46 generally doesn't apply to development fees, but Vera I'll let you take a load off.

>> It doesn't and actually neither does Prop 218 in this type of a circumstance. So really what you have to worry about is government code 66,000 which is the mitigation fee act. That's why the nexus studies were done as carefully as possible to exclude those -- talking about nitrogen deposition in particular. They don't have to be perfect studies but they have to be rationally done. To exclude those those projects and those creating nitrogen gas emissions, from elsewhere outside the plan area from the workings of the plan and from the fees that are you know going to be collected from people within the plan area.

>> Mayor Reed: Okay, good, we're clearly going to be challenged on this and always have to plan ahead. On page 5 the question is, what is the effect on the burrowing owl habitat? There is HCP obligation to mitigate impacts upon burrowing owls. I don't see much in the way of data on that, the people that I've talked to that have burrowing owls talk to, I think they're judging the way it justified to be not necessarily the way it's going to be, so that takes us back to what is going to be the rule for people who aren't in an HCP.

>> Joe Horwedel: Yes and that's going back to as referenced in the letter from fish and game fish and wildlife which I think was in March of this year, new guidance given by the fish and game to their staff and how they deal with burrowing owls across Northern California.

>> Mayor Reed: Then on page 8, question, can the plan be expanded include all the cities in Santa Clara County and Fremont? Comment, the answer is the original assumption was plan would be amended at a later date to include north county cities. I've read some discussion about how hard it will be to amend the plan to bring in other cities. So that takes me back to the need that I started out here with, our goal number 3 which was to come up with a process that we all agreed on with our partners on how we're going to get the other cities engaged. And we have not much to go on there. And it's pretty clear we will have -- we as a city will have no leverage whatsoever on our surrounding cities, that it is our wildlife agencies that might be able to give them some incentive to participate.

>> Joe Horwedel: The one comment I would put on that is that I guess the one benefit of having the plan as it relates to that issue is, the case of Facebook in Menlo park where environmental groups did write comment letters about the nitrogen issue as I understand it to the City of Menlo park. They responded in their EIR and said there was no feasible means of mitigating that impact. If you look at the letter that Kay has distributed, the template letter, it is specifically written to go through and deal with that issue. Because it says that all feasible mitigation measures have to be included. And by having an adopted plan that says the way to mitigate nitrogen is to write a check. It is pretty hard to argue that \$3.60 a trip for the north county cities, that that is not feasible when they have impact fees at \$12 a square foot. That it is a pretty small fee. And so I think as we've seen with some of our litigation on CEQA our judge here in Santa Clara County has been pretty rigorous about what open the books of their pro formas and why they cannot economically do that. So I think that does change from the world today. Today I think it is an easy argument to say and we've used it in the past that it is difficult to do it, there is no certainty around it. That having a plan I think undercuts all of those arguments.

>> Mayor Reed: Again that's not in our control.

>> Joe Horwedel: That's not in our control.

>> Mayor Reed: Once we sign onto this we're done, 50 years we have to rely on our wildlife agencies and other partners. That takes me back, we need to understand what we're getting into. And one other comment on that same question. Somebody did a review of council and committee memos back to 2001 showing that council was concerned with keeping the plan area manageable and closing it to only the jurisdictions that are currently involved. I think that's just not right because the memorandum of understanding in 2004 specifically in goal number 3 said we're going to try to do this county wide. And so I think that's been of some concern. I understand the difficulty of it. But it's not something that we've given up on.

>> Joe Horwedel: I would say we have not given up on but it was a very serious concern from day 1 and it was very deliberate that we did not as a city want the city of Palo Alto residents involved in land use decisions in Coyote valley. That was a very direct conversation we had around that.

>> Mayor Reed: Well, we have the people of Palo Alto directly involved in the land decisions in Coyote valley, a lot of them are here today. You can't really avoid that, you might as well accept that, that everybody has an opinion of everybody else's business when it comes to environmental conservation.

>> Joe Horwedel: I would agree.

>> Mayor Reed: Menlo park and Sunnyvale are not doing what we're already doing and I'd like them to just be fair about it. And finally one question. I started on this ten years ago. If we sign on to this, can we replace the King Road bridge over the Penitencia creek?

>> Oh my God I'll agree to that, right now! I mean yes, that would be -- I don't see any reason why it wouldn't happen immediately. Right now, VTA, Gilroy, there are a whole bunch of projects basically are -- have an alternative fee structure right now saying they'll pay the fee if the HCP goes through, which is cheaper than doing

the mitigation, and we have written biological opinions for that. And I personally will make that commitment to get -- take care of that.

>> Mayor Reed: That would be great. What about NOLA can you speak for them?

>> So for -- no, but I have spoken to them. Basically the regional permit that we are working with through the corps of engineers, I have talked to Cameron Johnson and I've talked to his supervisor and I've talked to Gary Stearns who is the NIMS person, who is the branch chief that would be working on it. And they would be authorizing that regional permit which would then streamline that process. And so we're working on that right now with them.

>> Mayor Reed: All right, you are relieved that I'm done with my questions now although I probably asked some questions that others had as well. Sorry to be hogging up the floor but this is a pretty large project. Vice Mayor Nguyen.

>> Vice Mayor Nguyen: Thank you mayor for asking almost all the questions I had. I just have two. First one is on the supplemental memo on page 5, the last question before you talk about there's an opportunity to amend the plan if we need to make adjustments. And I think what the City's general plan, you know, when their amendments or changes that are made, usually go through the full council. So can you just talk to me a liberal about how these changes can be made, how challenging it is, what kind of process, I know that the explanations in the memo is -- it's very short. I just wanted you to elaborate on that.

>> So I have been involved in numerous HCPs. For example in the San Joaquin plan. They have done major amendments numerous times for the HCP. And it's -- it goes in very simple to basically that the implementing entities see clarifications that needs to be done within the document or there's simple things that need to be changed. To, for example, that you want to include an entire new area into the plan. And then it still is easier than developing the plan because then you just supplement that information. And the Natomas plan for the City of

Sacramento has been amended, a number of times, trying to deal with their changing environment. And it's been a fairly simple process.

>> Vice Mayor Nguyen: What is the costs associated with making these changes?

>> So sometimes it's simply an administrative cost, simply the implementing entity makes a clarification, the wildlife agency says that is well within the context. The most expensive cost would be, let's say if you had to change the -- you added Coyote mid Coyote back into the plan, you don't have to revisit rewrite everything but you use the fundamental document so I don't really have the cost in that sense.

>> Joe Horwedel: That scale you're looking at something that's probably a two to three-year process to go through the public process, rewrite that you would be doing a new EIS or a revised EIS.

>> Vice Mayor Nguyen: That actually would be my next question. Is what is the time line, how long would it take to go from a very small change to a major change?

>> So a small change can be within a month, whenever the implementing entity deals with it. You have a lot of leeway in dealing with your issues. A larger change, there could be larger changes but we analyze it within the Nepa document and it's simply a review and renewal process. Some of those issues you put time lines on the wildlife agencies because you think we might be slow. And so we have an obligation to respond to you in a certain period of time for our response. But then if you want a big huge area added in or something different that we've never done then it's basically the normal CEQA review process. But again you have the fundamental documents done and it makes it a lottester.

>> Vice Mayor Nguyen: Thank you and another question is on page 7 again off of this supplemental memo. Question number sec the plan implementation and trying to get other agencies to bear the cost. One of the things that kind of struck me was looking at different options and one of the options you talked about was looking through county wide ballot measures to fund some of the costs. Obviously, you know a lot of the cities and

the counties going through difficult times right now, we're looking at the county you know putting up tax measures on the ballot. I think when it comes to it, this is something that's just really might be very difficult for citizens to vote upon. So it just kind of struck me that this might be one of the options begin the hard economic times we're going through now.

>> Joe Horwedel: Given the 50 year impact of the Plan san Diego was one of the ones we were asked about the last meeting. They have done some different types of -- ways of funding their plan. It is an option. That is why we put it in there. It would be a general increase that either us or the county could do it that way.

>> Vice Mayor Nguyen: I'm hoping that it would be maybe 20 or 30 years down the line when the economy improves tremendously. And then some comments. I'd love to take credit for writing this memo, but I didn't. Councilmember Sam Liccardo did it. I want to thank him for allowing me to sign on look along with other colleagues adopt the habitat plan but at some point we will adopt a plan that is environmentally balanced and fiscally responsible. I think some of the points the mayor raised are colleagues do as well, some of the concerns that I have that are really major, the pipeline projects. I hope that you know, we give serious considerations to these individuals who have made significant investments in our city. So that you know when we have the right plan in place, that there will be quality future developments or projects if our 70 and that we I remain competitive you know when we're being compared to some of the smaller cities in our area. And at the same time, preserve adequate space and protections for wildlife. I'm sure I want my daughter to grow up in an environment where she appreciates wildlife, you know, taking trails, visiting different -- a space where she can actually enjoy natural, the natural environment. And that will be the ideal world that I want her to grow up in. And if I have, I guess if I have a say in it then that would be the kind of world that I would like to create for her. And so there is no doubt in my mind that I would like to see some -- a habitat plan that the city council can approve at some point. But I don't think that now is the time. I think that there is just a lot of issues that we just have to work through. Again, I think you know, we have a mayor that is just very conscientious about making sure that we have a sustainable plan and I thank him for that. And then of course the cumulative impacts of the various fees, you know the nitrogen deposition fees, the wet land fees, the permitting fees, the mitigation fees, on and on and on. I just want to make sure that when people invest in our city that they are being treated you know in the fairest way possible. And so

you know, I am sure my colleagues have other concerns. So I'm going to stop here. But I hope that when we come back, whether staff can come back on December 4th or at a later date seems like we probably will not be able to meet that date since there are so many concerns that are still looming that we will be able to address all the concerns that are raised today and come up with a plan again that is environmentally balanced and fiscally sustainable. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Joe, just so I understand the nitrogen deposition fee, I understand it's all based on trip generation and safe to say that a 200 square foot office building in different locations in the city will have different trip generation rates?

>> Joe Horwedel: Very much so. Part of that is location part of it is how much parking they provide.

>> Councilmember Liccardo: Okay. And so proximity to complementary uses, proximity to transit all those factors will reduce trip generation rates and presumably result in lower fee.

>> Joe Horwedel: Correct.

>> Councilmember Liccardo: Okay. You know I thought that was an interesting point that the mayor raised, that the report found or suggested 79% of county wide emissions are coming out of San José. But somehow or another San José is responsible in some way that is a value-laden assessment because even if that's true, those trips are ending up somewhere. And overwhelmingly our dominant commute pattern in this county has been from south and east to north and west. And the decisions of councils for decades in many of those cities which contain high concentration of jobs to not take their fair share of housing contributes to what we see now is a dominant commute pattern where clearly San José is the primary source of county wide emissions for nitrogen deposition. I wanted to just explain very briefly to my colleagues, what I was referring to in paragraph 4 on page 2 of the memorandum. When I talked about exploring the possible of county wide fees because I knew it was going to be

important particularly for the five members who serve on the VTA board. What I discussed with staff over VTA is whether discretionary transportation funding under the one Bay Area grant program that's OBAG, it is a typo, it says ABAG in the memo but OBAG is a source of funding that is in the next cycle is not a discretionary amount, that the VTA controls and to be able to condition that perhaps on this cycle on mandating that all jurisdictions in the county pay for a nexus study and start the wheel turning to what we hope will be in a much shorter period of time than what San José's undergone, what, 11 years to get here, we hope will be a much shorter time to get to commensurate fees that we are having around the city. I think, I agree very much with the mayor that everyone future of San José that we have a fair fee distribution process. I think the process that was suggested by Joe about the Water District and what they can do with regard to pricing of water, certainly is another mechanism. But I think there are mechanisms that we do have some influence some significant influence over. And certainly, at VTA we've got two members who are from the county that are signatory agency. Five members from City of San José and a member from south county. So we've got eight folks who represent on a board of, gosh I'm going to get this wrong. I think it's 15. So we clearly have a majority of members who could dictate an outcome and VTA could ensure that we have a county wide system of fees. I think we need to exploit those opportunities and I think VTA staff is very open to that. Joe, I appreciate your willingness to consider alternatives in the pipeline. I certainly haven't prejudged where I'm going to come up with as we look at that. But I think it's helpful for us to at least understand what the alternatives are and taking a closer look now could save us a lot of litigation and trouble cost later. I do have a question about riparian corridor mandates. As it is, do we allow any development in areas where there's greater than 30% grade? I mean I cabinet --

>> Joe Horwedel: It is pretty unusual where we would have approved development on slopes that are greater than actually the property where they're building is greater than 30%.

>> Councilmember Liccardo: Okay.

>> Joe Horwedel: Because that's steep terrain to be doing step development.

>> Councilmember Liccardo: That's what I figured. So it doesn't seem as though the 150 foot setback is a significant threat to whatever we have been doing in terms of --

>> Joe Horwedel: I'm trying to think of where that would even kick in. It's probably the only project I'm aware of is we're working on the landfill in Almaden valley where it has the creek behind it where they have landslides in area that are steeper than 30% but we are not doing development. We are just generally not building in those areas.

>> Councilmember Liccardo: Okay. I'm less concerned about the riparian corridor issue unless someone can show me where it really upsets the expectations that have been pretty clearly set by our 100 foot setback policy. I'd be interested in seeing those if there are such examples. I want to go back to that issue about whatever decision was made in 2001, I wasn't there and I don't know why people decided what they did but I others having control over fees, and development decisions ultimately. And I just think we need to walk into this with eyes wide open. Obviously if we do expand the plan and I hope we will that means we're going to have to cede some amount of control and how those amounts get adjusted I think is going to be significant. I know it takes plenty of time to work those governance issues out. It only took us about a decade on MTC to figure out how to get San José another seat. I guess the question I have is, you know, I suggested one way for how San José could bolster its representation on the governing board, what does it take for us to change the governing board representation? Do we need to recirculate, does that mean we need approval of all the other signatories?

>> Joe Horwedel: It is approval essentially the local partners. It's the local agencies, it's not an environmental issue.

>> Councilmember Liccardo: All right, that's encouraging. Okay well I -- what I'd like to do is I'd like to make a motion to move forward with the memorandum, dated October 12th, that's co-signed by councilmembers Rocha, Campos, Vice Mayor Nguyen and myself, if there's a second --

>> Second.

>> Councilmember Liccardo: Thank you very much, I'd happily accept any amendments if there are additional questions that are posed that need to be fully vetted. I know the mayor asked many, including questions on the riparian said backs. But I'm happy to include additional questions on whatever's on the memo.

>> Mayor Reed: I'm sorry, we had a second, Vice Mayor Nguyen. So the memorandum refers to my memo and the issues that I raised as being part of this. So we have this body of issues moving forward.

>> Councilmember Liccardo: Yeah, yeah, it incorporates all the questions. I take a slightly different tack. I think than has been expressed. I'm likely to err on the side of moving forward with this plan, recognizing we're not going to get it perfect. It's not going to be perfectly designed at the outset. I'm hoping we'll be able to amend as we learn more and we're going to learn more. We know that there are things we don't know. But the words on Olmstead the rights of posterity do outweigh the priorities of the present and we need to be thinking seriously about the kind of valley we want to continue to preserve for future generations and this plan is a critical path for us to do that. So I want to see this plan go forward. I know there are many, many concerns that have to be addressed but I expect we're going to address as many as we can and move forward with a plan that we know won't be perfect but we can't make the perfect the enemy of the good.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I do appreciate mayor the long line of questions you had. I think that definitely helps to inform a lot of the concerns or questions people had. And I've had the benefit as well as Councilmember Chu, to serve as part of the liaison, a liaison to the plan so I have a little bit more background. But it's definitely not a simple endeavor that we're seeking to put forward here. And I do want to thank all the time, this has been literally years of evident that's been put in from our staff of both the Planning Department and the City Attorney and also in working with some of the state and federal as well as county representatives in a lot of work has been done, there's been a lot of changes to the plan over many, many years. I put forward a memo that I'm not going to put -- that Councilmember Liccardo has a motion on the floor. I'm not going to put forward mine because mine essentially is just a call to move forward with the plan and I would just state that my intention in

putting that forward is to make clear not just my support for the plan but that we adopt and move forward with it as soon as possible and I with was going to suggest a shorter title line but really December 4th is not that far off and I would certainly hesitate to go any further. Especially because even in the supplemental memo a lot of the questions that were asked, quite properly were answered because the answers are there. This is a voluminous plan and will always be easy to identify the answers and as the mayor indicated there are places where it could be worded a little differently or a little more clarity to some of the answers but I think for the most part that the answers to most questions any of us may have are in there. And the -- as Joe I think appropriately stated, this is, really this is about mitigating to allow for or to achieve development. And some issues have been raised including riparian and I'm glad we finally are starting to move forward with looking at our riparian policy but looking at the last couple of opportunities we had we funded and decided not to move forward and it is a source of frustration to the Planning Commissioner and 100 foot setback policy that we don't abide by it at least oftentimes we don't. And so just having a policy is not good enough. Having something in place and I look forward to going through the city policy but I think that the HCP adds some more teeth to our riparian setback policy in a way that I'm certain more comfortable with and especially with some of the green fill property. And just one more comment in terms of stationary sources because I'm on the air district board there are certainly mitigations required particularly for new stationary sources and ongoing fees that deal with stationary source issues and be routinely we will raise those fees accordingly so there is a separate process as far as overseeing some of the stationary sources that was referred to. And you know, the idea of also the different options in terms of funding what have you as stated this is a plan that's going to cover half a century. So we don't -- we know where we are today as far as our economy and in five years ten years hopefully it won't be 20 or 30 years where we would first have the opportunity to attain some kind of county assessment but the reality is this is for the benefit of all of us and as Councilmember Liccardo indicated this is really some if we look back the reason people want to live here is because there have been so many great efforts and measures to preserve our environment open spaces it does attract businesses it attracts people to want to be here, it attracts tourism and so you know conservation is certainly not free, whether it be the redwoods or the national parks or some of the habitats that we have us just in our surrounding neighborhoods. But we do want to be respectful and sensitive to any plan we put forward that may have a negative impact on development. And so in the past few years, in fact just in the last couple years there has been a lot of scaling back for the fees. For the development fees there have been something species removed from the

list for consideration that was all done both on concerns for the supervisors and councilmembers and others liaison groups as well as concerns in the development community. And as the mayor said we're probably going to get sued no matter what, but we must go forward with the plan we know is going to be respectful of our environment and know what the ultimate goal is for us, for us here with the habitat conservation plan is just that, to make sure that we are conserving our habitat the best possibly way and the most aggressive way we can while ensuring that others can come along with us and we can then once again take a leadership role as we have so many times when it comes to environmental stewardship. We need to know, we need to do what we know is right even though sometimes others don't. I think this is a great opportunity to do it. And so additional thoughts and details as to why, I feel that we need to move forward as soon as possible in my memo and I would ask anyone that is interested in further thoughts on some of the little bit of research we did that's included in the memo I hope will be included as we go forward with further staff resources as well. Thanks.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Thank you for all the comments from everyone. Especially the mayor, I thought those were extremely extensive. I just want to throw out that I'm a councilmember for the City of San José. That is my primary goal and objective to serve this city. It is also my primary objective as Pierluigi Oliverio to fix some of the things that have occurred to San José in prior decades. I feel San José has not been all it could be based on events larger than us or also based on things or our goodwill was short sighted. And there's always been a lot of interest what happens to San José and many of those people do not live here and they've always wanted to sort of control what we've had in this city. So my short thoughts is that I would like to see more of the other cities committed and involved in HCP. We are all in it together. Second, I want to keep the idea alive of what they did in San Diego county of having it go to the ballot. Why? Because if this is such an important value to everyone, that we preserve this space, of land and for these species, then everyone should have a point of view in helping to pay for it. Even those residents that don't live here but send me e-mails constantly from other cities to our north that want me to implement it. If you want me San José to take the bullet then you need to help me pay for it. If we're not successful, then we can go to implementing an HCP in the traditional manner and it will be an increase of a tax to someone that will decipher through the community. It will

be a tax on the property owner, it will be a tax on the development community which represent all the people that are in college or might be working in an office building some day in the future. One way or the other it's going to be paid for. So I would simply ask as a modification to the motion is to keep that alive, have staff come to further information from San Diego county to keep that as an option for us to see where we're going.

>> Councilmember Liccardo: Yeah, I'm happy to accept that as friendly amendment.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just real quickly. One thank you for your line of questioning. I think you flushed out a lot of questions that we all had. One just wanted to make a comment on the memo that Councilmember Liccardo authored and the rest of us signed on. One I think we laid out a number of questions and the supplemental report from you Joe did a very good job answering, answering a lot of our questions. I think the fact is that this has been studied for I could say more than several years. And so one, I think as we come back in December, with any additional information that you're going to bring based on the memorandum here, that we be ready to vote on this in December. I know that there's some thought that perhaps you know, this gets pushed off, more. But I think we've pushed this off long enough and we need to take action on this. We do need to make sure that we're being respectful to the entire county, and I do agree, the rest of the county has to be respectful to the responsibility that San José is taking on. Being the first is not always the most comfortable but we're doing the right thing. And the rest of the county needs to join in. But with that said, being the largest city in the county we do bring that responsibility of leading the way. And I think this is one of the ways that we do it. And so I hope that when we come back in December, that this council is ready to act on this. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Just wanted to add my appreciation to our staff, that working on the HCP as well as many of the HCP staff and our partners, government agencies, like Councilmember Kalra indicated, I was a liaison to this group. And you know, I witnessed firsthand how hard that all the agencies are working together to get to this point. So I wanted to thank you all for the hard work and thank the mayor for your questions. I definitely support what has been said by Councilmember Campos. I really like to see this project to move forward. Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, Vice Mayor actually made a lot of the comments I was interested in making so I thank already inform that. I appreciate the mayor's raising these issues. Maybe these are not easy questions or popular questions but they needed to be asked. I appreciate that he stuck his neck out and did it. I also want to thank Councilmember Liccardo nor his work on the memo that I was asked to participate in. As far as that, I think I'm looking forward to getting to a final date on this issue as I'm sure our planning director is, as well. So I concur with all my cliques' points up here in terms of the points of the issue I'm not going to belabor the point. Thanks.

>> Mayor Reed: I think it's time to take some public testimony. I'll go that but I had one follow-up question. The joint powers agreement, I think I heard it said that that's posted on the Website HCP, I've been there, I can't find it. Send me a link if you could.

>> We'll get it for you.

>> Mayor Reed: With this, we have to be done by 6:00 because of the presidential debate so I'm going to limit public testimony to one minute. We will of course have other opportunities to speak on this but please come on down when I call your name. Jerry de Young, Cassie Bedner, Kathy Trujillo. Jim conklin. Abigail ramsden. Come on down. Pregnant ladies always get to go first. So -- it's just one of the rules we have there.

>> Appreciate that, thank you. Good afternoon, mayor and members of the council. My name is Abigail ramsden. I work for the nature conservancy where I is a global conservation organization whose largest chapter is here in California. Both locally and nationally, the nature conservancy has supported habitat conservation plans which exemplify our own approach to science-based conservation planning. HCP is a -- represent a thoughtful, comprehensive approach to species and habitat preservation that avoid the piecemeal results of project-specific conservation efforts. Such plans also create common ground between the need to protect our environment and the realities of economic development. My perspective comes from experience on both sides of the aisle. permitting and managing individual mitigation projects as well as projects Coachella valley HCP. S, we have two minutes or one? Well the HCP represents an important contribution in long term. If approved the city will help control implementation of the plan and continued partnership with the development and environmental communities. I urge you to continue your support.

>> Mayor Reed: Jim Conklin, Roland LeBrun.

>> I'm Jim Conklin, the executive director of a newly formed executive group South Council county business council we're very happy with the discussion that you had today. We were in favor of Mayor Reed's memorandum regarding delay until you have more information. I might let you know the business council researched every operating and in-process HCP in the State of California. Over the last three months. A couple of highlights in our research. This HCP has the highest percentage of reliance of fees from the development community of any HCP in California. There is no other nitrogen disposition fee within any other HCP in the state of California. So you are Guinea pigs in that scenario. We are very pleased you are talking about other participants. Other than San José, Gilroy and Morgan Hill. Funding the whole apparatus of this HCP because we think that's only fair.

>> Mayor Reed: .

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

>> And we are happy that you are agreeing or at least talking about spreading the wealth, Water District, VTA et cetera. Willing to work with you.

>> Mayor Reed: Roland LeBrun, Shanie Klinehouse,.

>> Good afternoon, thank you for the opportunity. I'd like to start by expressing my strong support for Mayor Reed's memo and focus on the impact of the HCP on the count's park charter fund. The park charter fund is \$40 million a year half of which from San José property taxpayers. The firm has been in base since 1976 and has been used for deposition of 48,000 acres of park land santa Clara County. Last week the board of supervisors voted to turn over 25% of the entire park system to the HCP implementing entity. So that these parks could be used as mitigation for the widening of 101 between Morgan hill and Gilroy and longer runways on additional 2 million in park charter funds, annually nor high value habitat land purchases other mitigation activities. In closing this is a misappropriation of property taxes earmarked for parks and recreation not mitigation and I urge you to reject this plan until these issues are addressed. Thank you.

>> Mayor Reed: Shanie Klinehouse, Eileen McLaughlin, Brittany Relaford.

>> Good afternoon, Mayor Reed, council. I'm shanie Klinehouse our organize is over 80 years old. We have thousands of members in the city of San José. And we have been stakeholders in this process since the beginning. We really do appreciate the amazing amount of work that has been done by the city in all other stuff, and stakeholders and the efforts that you all have been done in trying to assimilate and understand the process. And what is at stake. I do want to respond specifically to Mayor Reed's memo on the burrowing owls. I think that the city has done a lot to protect them at the airport and at the water pollution control plant and we appreciate your efforts to save them. But we doubt with this plan the owls will disappear from our city. And I think if you ask the children of the city 99.9% of them would like to see the owls in the future in the city not elsewhere. And while we're looking at arranging the deck and the chairs on the deck, the boat is sinking for them. They're disappearing they're almost gone we need to act.

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

>> Thank you.

>> Mayor Reed: Eileen McLaughlin Brittany Relaford,.

>> I'm Eileen McLaughlin I'll representing the citizens committee to complete the refuge but I'm also a long term resident of San José and I wanted to start by thanking the city for deliberative process thorough process that the city has taken in review being this HCP and the burrowing owl plan. It's taken a lot of effort by everyone and I truly appreciate it as a resident. I say thank you for all of that. I want to say as a resident I've also seen, since the problem referred to by the mayor in 1988 that the city has grown in its position of leadership in this valley and action moving forward on this plan can only put the city further forward in that leadership. I might add that environmental groups such as ourselves, who support these plans, can be advocates we freely comment to all those cities. We're glad to be promoting the HCP to all of them. Thank you.

>> Mayor Reed: Brittany Relaford, Korsakof, Stewart Weis. Anybody else who put in a accord this is the time.

>> Good afternoon, and thank you for your careful consideration of this, what will be a momentous plan. There is a tremendous amount of regulatory streamlining and relief that's going to give you a regulatory advantage and I hope you realize that. I wanted to show, here is a physical manifestation of the \$34 per housing unit nitrogen deposition fee. This is a 38, I picked this up at Home Depot. We're talking about a trivial amount of money per project that has a large cumulative impact on conservation. There's a lot of smoke and fire over it but it's really a trivial amount of money. There will be mitigation one way or another, and this is probably the best deal you're ever going to have right in frond of you now. So let's approve the plan get it in place and make it a success. Thank you.

>> My name is Amy Nelson and I represent San José State university. Particularly, I support the HCP in some aspects, in other aspects I believe that there needs to be more research done. There are actually three proposals

for amended onto the site and the development plan for the plant maintenance and upgrades. And what was not discussed was the alternative use for solar paneling, the new fog development of the recyclable waste energy facility that is being put into place now and what the impacts will be for the noise air quality and land use management of these areas during flooding, weather -- during the rainy seasons whether we consider the owls be in a habitat which is prone to flood, which would move them -- they would have to be moved from the area which would be -- they would have to be mitigated, there are other considerations also.

>> Mayor Reed: Sorry, your time is up. Last speaker is Brad spears.

>> Good afternoon, mayor and members of the city council. My name is Brad spears. I'm associate director of government affairs for the building industry association. We've been commenting on this process for a long time. My comments might be a little bit lengthy tonight so what I'll do, considering the time constraint is just encourage you to find the letter that we provided and take a look at the four points. Some -- most of which are very similar to the points that have been discussed today. The BIA has been supportive of most HCP. We have been concerned about this HCP primarily about it you know affecting our competitiveness into the future. So I appreciate you guys taking the time to look at our letter. Thank you very much.

>> Mayor Reed: That concludes the public comment on this item. We have a motion on the floor to refer some matters to the staff to bring back to us I believe December 4th was the date on the motion. I'm going to support the motion. I thank my colleagues for investing their time energy and effort on this, this is a big project and it takes a lot of work. I want to thank our staff city staff lawyers and planners and our wildlife agencies, staff and all of the collaborators and partners. This is going to be a big project and ultimately it is going to be good for San José and good for the valley. We just got to get it right. And I just wanted to note that there are millions of square feet of development underway in the cities surrounding us. A lot more there than there is here. And it -- one of the reasons that people come to San José is, it's cheaper, that they can rent to companies that pay lower rents. And to the extent we increase the costs by ten or 15%, we're going to cut off some of those opportunities for companies to relocate into San José, and that's just a fundamental problem we have already. And I don't want to make it worse. But we also have to recognize that Silicon Valley's economy is a strong economy in part, large part

because of our fantastic environment. And all of the things that we have done collectively and collaboratively. Some intentionally and some perhaps just lucky to protect our environment. And you know we're very proud of that and it's very important to our future economic prosperity to have a strong environment but we have to have a strong economy as well. Those are things that have to move together. Those were the original goals, both environment and economy and I think we can do it, we've done it in the past and we will again. With that we have the motion. On the motion, all in favor, opposed I count none opposed so we'll refer those items to the staff and they'll do some more work and bring it back to us presumably December 4th. As I said earlier we were going to take a short recess after this item so that the city staff that's in the building watching us on the webcast can get down here. So we'll recess for five minutes. City council, a real five minutes not ten minutes. Five minutes that will give staff a chance to get here, so we're in recess for five minutes. By my clock it is 4:3237. That means 4:42. I don't know what your clocks are but synchronize your watches. [Recess]

>> Mayor Reed: Like to get everybody back to work. Five minutes is up. We have got staff that have come down. And we still have a quorum which is good. First item to consider is the consent calendar. And we need to pull item 2.2A final adoption of ordinances regarding Telecommunications users tax. We had some councilmembers that abstained from that the last time.

>> City Attorney Doyle: Mr. Mayor, councilmembers Oliverio, Chu, Liccardo and Herrera will be abstaining again on this vote.

>> Mayor Reed: And hopefully we still have six left here to vote. I believe we do. This is final adoption of ordinances. So let's just take that one first while the other councilmembers are out. Any additional comments or questions on that? I have no requests by the public to speak on it. We have a motion to approve. Councilmember Kalra did you -- one two three four five, all right, we lost our quorum. We need -- who are we missing, Councilmember Pyle is still here. Councilmember Campos is still here. Okay, we have six here to consider item 2.2 amp. Mr. Wall you want to speak on that before we take action? (inaudible).

>> Voters -- thank you.

>> Mayor Reed: That concludes the comment on 2.2A. Is there a motion? Motion to approve the second reading, final adoption of ordinance whatever it is on the agenda. All in favor, opposed, none opposed, that's approved. Now we'll take the rest of the consent calendar. We have a motion to approve any requests to pull anything off? I have no other requests. All right on the motion to the approve the rest of the consent calendar. I'm sorry, stacks of cards here, Mr. Wall. You want to speak on the consent calendar.

>> 2.9 co-generation facility (inaudible) raised some questions since you said anywhere from 6 to \$7 million on the plant master plan, for consideration or new facilities at the plant on page 2 of the memo, quote, the plant's aging electrical generation equipment is failing more quickly than anticipated. Period close quote. Well I raise the issue that I would say any half-witted person, would know that they are over 50 years old or 30 years old in some cases that this statement is so disingenuous that it borders on a genuine lie, which begs the question why the taxpayers have to come up with an additional \$400,000 for an additional CEQA agreement which in my opinion should have been part of a plant master plan which you spent six or \$7 million for. Mr. Mayor, I've been to several of these TPAC meetings at which the former administrator of the environmental services department, and their staff, brown nosed you up one side and down the other about all these little Disneyland applications at the plant. But nowhere did I see anybody talking about rebuilding the engines or even replacing them. Further a number of engines, which I'm not in disagreement with but one of the power applications I will be. And if you're adding an extra 4 point megawatt generator to dewater sludge when you can easily leave that sludge processing alone, brings the fact that you Mr. Mayor and the Vice Mayor has routinely supported the McThy ranch and the Irvine development people considering sludge drying and this is to the detriment of all the ratepayers because solar drying is far more environmentally conscious, and keeping with your green vision and keeping the actual green vision money in the taxpayer's pocket thank you.

>> Mayor Reed: Item 2.12 be pulled off for specific discussion. I have quite a few cards to speak on that. Do we have a motion to approve the balance of the consent calendar? All in favor, I'm sorry Councilmember Chu.

>> Councilmember Chu: I have a question on 2.9. Can I pull it off for a quick discussion?

>> Mayor Reed: Certainly. You want to pull 2.9. Okay. So we're going to have motions to approve the balance, excluding 2.9 and 2.12. That's a motion, all in favor, opposed, none opposed, that's approved. 2.9, Councilmember Chu you have a question.

>> Councilmember Chu: I don't see Terry here so probably -- is she here?

>> Mayor Reed: She's on her way. We'll come back to that.

>> Councilmember Chu: Okay, thank you Mayor.

>> Mayor Reed: 2.12, Emery street vacation. Councilmember Oliverio.

>> Councilmember Oliverio: I make a motion to approve. This is a process that has been going on for some time to vacate a portion of Emery street.

>> Mayor Reed: I'll take the testimony at this time. Please come down, Jeff Budola, Judy McDowell, David Wall. Are you Mr. Bedola?

>> No.

>> Mayor Reed: Do you have a card in? Okay, you are next in line.

>> I represent Bellarmine college prep we're the owner of the property that surrounds this piece of street property. Just to give you a little bit of collect park neighborhood association, requested that Bellarmine pursue a closure of a one-block portion of Emery street that would use school related traffic in the neighborhood. After working with the city and the CPA the one block portion of the street was closed to determine if school related traffic in the neighborhood was reduced. Traffic studies were conducted before and after the closure. At the end of

the one year period there was a public hearing or public meeting that was held expected and 400 cars per day and Asbury traffic between, the neighbors determined that the closure had accomplished its objective, the traffic flow was more balanced and that the closure should be permanent. The city Department of Transportation and Public Works agreed and the closure was made permanent. The street was placed on a maintenance agreement between the city and Bellarmine. With the renovations of the Bellarmine baseball field and setback requirements it became necessary to request that the city vacate the street. After the vacation, the street will remain a designated dropoff point for students, as required by two existing permits. But the neighbors have requested that, as a part of the resolution, that there be an amendment to the resolution that has been made that would also designate this area as a permanent dropoff location for the school. If street is unbuildable property due to utility easements and will remain in its current state and finally the fed and emergency vehicle access will be facilitated by gates.

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

>> Okay.

>> Mayor Reed: David Wall.

>> Recognize this issue going to the Rules Committee some time ago. In no way would I suggest you go back on what you've done. Because you will get the complete ire of the Roman Catholic church specifically the Jesuits. You will get the ire of the church so please go forward.

>> Mayor Reed: Keith Bramer, John Allen, Scott Soper.

>> I'm Scott Soper, speaking on behalf of the college park neighborhood association. I'm speaking on behalf of the closure, the neighborhood association has spent the last few months reviewing this process. The main reason that we're speaking here this evening is to make a clarification regarding the existing fence which closes the street. There's an ambiguity in the plat map and the easement. It should indicate that that's providing access from Stockton avenue. Emery street has already been closed to traffic, as Tom Goran who represents Bellarmine just

mentioned. Preventing a dropoff in an area where it's not supposed to be happening and also removing a dangerous issue blocking the fire station located at that corner and our main concern right now is to support the vacation but to make sure that the status quo over the last few years with Emery street being blocked off from student dropoff traffic except from the Stockton avenue access be continued. Thank you.

>> Mayor Reed: I think that's it, of everybody that put in a card, I called some names if you're not here, this is the last chance. That concludes public testimony on 2.12. Councilmember Oliverio anything to add?

>> Councilmember Oliverio: No, mayor, most of the people that were coming were in favor of that item. The current use can the school city, language to make that done already.

>> City Attorney Doyle: You can add that to the resolution if you desire. As part of the motion. And we will also make sure that the sense is accurately reflected in here.

>> Councilmember Oliverio: Okay and the second reading or the final the hearing will close when?

>> City Attorney Doyle: This is a resolution. This is it.

>> Councilmember Oliverio: Great, so that will be great. So for the City Clerk if you've understood the information based on what the City Attorney said that's it. And I really want to thank you know in each of our communities there tends to be a little bit of tension between neighborhoods and schools because they are such traffic aggregators. They have been working for several years on that and I'm glad it's worked out. It's been a long row to vacate the street. Thank you.

>> Mayor Reed: Motion to approve with some resolution language changes. Councilmember Liccardo I'm assuming that's okay with you, did you wish to speak? On the motion all in favor, opposed, none opposed, that's approved. Taking us back to 2.9, Councilmember Chu did you have a question?

>> Councilmember Chu: Thank you, I see Kerrie coming down here. Help me with my memory a little bit. The new -- the co-generation facility is that part of the plan master plan?

>> Kerrie Romanow: Kerrie Romanow director, environmental services, there is a new co-generation plant as part of the plant master plan.

>> Councilmember Chu: I remember we approved that plan in September of 2010. And that -- what we approved in 2010 included the co-generation facility right?

>> Kerrie Romanow: In general, yes. And then we made the plan more specific last spring where we talked about the three packages and part of package 2 is a new energy system. And as you know, the electrical system at the plant is failing much more quickly. And we feel that we need to extract it out of the EIR and get moving now.

>> Councilmember Chu: All right. But also last spring that we increased the compensation from \$600,000 to \$2 million to pretty much cover some of the additions. You know part of them is probably go to the co-generation facility. Now we're asking for another how much was it, 453,000 or actually 454,000. Two million as 2.5 million just to do the CEQA analysis .

>> Kerrie Romanow: Yes. The CEQA analysis as well as some interaction with regulatory agencies that will have input on that project, and then a small amount \$25,000 to -- where we've gone over in some other areas in the plant master plan EIR.

>> Councilmember Chu: When we approve the two increase from 600 to \$2 million, we didn't take into consideration of this co-generation facility? That's where you're telling --

>> Kerrie Romanow: No I'm sorry, we did and the reason that we need the additional funding is to pull it out of the existing EIR. We'd like to extract this energy generation system so we can get moving in advance of the entire master plan EIR. And one of the advantages to that is if the EIR is held up our energy projects are not.

>> Councilmember Chu: Okay, thank you. I move to approve.

>> Mayor Reed: Motion and second. Mr. Wall you requested to speak on this, I already spoke on it, I just wanted to make sure. City Attorney.

>> City Attorney Doyle: This is on the vacation of the Emery street on Bellarmine. It is coming back. This is setting draft resolution we will be coming back on November 6th.

>> Mayor Reed: Okay. So on the motion regarding 2.9, on that motion, all in favor, opposed, none opposed, that's approved. Correction regarding 2.12, I think that's the last item on the consent calendar, I don't see anyone telling me otherwise. Number 3.1, report of the City Manager.

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

>> Mayor Reed: And the City Manager's report. .

>> City Manager Figone: I will kick this over before I turn it over to Jennifer Maguire our budget director. As you recall 2012 was a extremely afford to adopt a balanced budget the city council had to make significant sacrifices by closing a \$115 million shortfall, with service cuts in public and nonpublic Safety departments implementing 10% across the board compensation reductions and eliminating over 400 positions. These cuts were on top of a cumulative \$200 million of shortfalls that were solved as part of balancing the 9-10 and the 10-11 budgets which also required significant service and compensation reductions and the elimination of over 1300 positions. So that is our starting point for this annual report. And that is the backdrop. Thanks to the efforts of the budget office and all departments throughout the city working together, the General Fund ended last fiscal year with revenues that

were very close to estimates employees who year after year have found ways to innovate and continue to provide quality services to the community despite extremely challenging times. With the slight cushion projected for this fiscal year the city council is able to adopt a budget which set aside \$22.5 million to cover the currently anticipated shortfall for 13-14. They authorized the opening of four libraries, and one community center. Allocated some limited resources to start addressing the City's unmet deferred infrastructure needs, and added back some previously one-time-funded critical services. Although we've made progress in stabilizing the General Fund budget we all know that the service levels to our community are still not adequate. However as I look at the current fiscal year and next year I believe we need to balance our service levels with the ability to retain our hardworking employees who demonstrate the best in public service we also need to be able to attract the type of employee who can keep pace with what the community expects from the City of San José. While information on key cost factors such as retirement costs and contributions to the successor agency to the Redevelopment Agency will not be available until early 2013. And during that time, we will be doing some planning and we will also need to determine if we're able to create some capacity for some level of performance based compensation adjustments that might be appropriate to add to our budget planning. Because these cost factors can significantly change our budget outlook as I mentioned in the annual report the administration is not planning to release an early 2013-14 forecast this fall. We will however issue the five year General Fund forecast in February of 2013 as usual, for preparation of the 13-14 proposed budget. And with that setup I'll turn it over to Jennifer Maguire and thank her and her team for getting us out this very good annual report. Thank you, Jennifer.

>> Jennifer Maguire: Thank you, Debra again Jennifer Maguire budget director. Good afternoon, I'm pleased to present you with a very brief overview of the City's 2011-2012 annual report. This document complies with the City's charter and it is the City Manager's vehicle for summarizing and annualizing the budget perform for the fiscal year. Throughout the report you will find a technical comparison of budget to actual revenues and expenditures for each budgeted fund for 11-12 and as appropriate explanations explaining differences between those annual amounts. estimated to actual ending fund balance amounts for all funds as well as a summary of the 2011-2012 year-end reserves by fund. As I'll briefly describe in my presentation today a number of 2012-2013 budget adjustments are also recommended in the annual report for city council consideration based on the closeout of the 11-12 fiscal year and budget information . I'm proud to say that on an overall basis the city ended

the year as expected due to prudent budgeting and very active monitoring and management of our over 110 city funds throughout the year. As the year in review as the City Manager just discussed, 2011-2012 did park our 10th consecutive year of General Fund shortfalls. Over the last ten years the city council resolved shortfalls totaling \$680 million with almost half of that amount experienced in the last three years. As the City Manager mentioned for 11-12 the budget shortfall totaled \$115 million which necessitated economically sensitive revenue categories such as property tax sales tax, transient occupancy tax the development fee program and the development and real estate related taxes. In fact a number of revenues have finally nearly reached or feed the prerecession levels 27-2008. On the expenditure side, performance in 11-12 also met expectations. Overall expenditures were within or below approved levels in all funds. As a result of the city council's careful decisions during the year the General Fund again ended the year with a small additional fund balance. As I'll describe in a few minutes actions are recommended in the end report to allocate this additional fund balance to close out the 11-12 fiscal year and to help address two urgent funding needs. For the rest of city funds all special and capital funds ended positive most with fund balances at or above estimated levels. While the General Fund and some other selected funds continue to be on a thin margin and some budget uncertainty remains the overall budget finally appears to be in a more stable position. While this is positive news, as we all painfully aware, our service levels to our community are far from adequate and our city has millions of dollars of critical needs that are not funded. As always, to ensure that we stay in a balanced position staff will be closely monitoring the city's current year budget and will bring forward status updates through our bimonthly status reports as well as an in depth status report as part of a mid review budget released by mid January . As I mentioned on the previous slide the budget end \$168.3 million which was 12.8 million above the 155.5 million estimate used to develop the 2012-2013 adopted budget. Factoring out the dollars that are owed back to the development fee program reserves and the true ups of our rebudgeted projects that were approved by the city council last June and recommended in the annual report, the variance was really at the \$7.2 million level for 11-12 or 0.3% of the budget. After required adjustments, the additional \$7.2 million of fund balance was generated primarily from expenditure savings that to the 5.8 million or 0.5% of the modified budget. Another 1.2 million was generated by liquidation of in revenues an beginning fund balance were about spot on as there was only \$183,000 of extra sources that were above the estimate of \$1.1 billion. The next slide shows the administration's recommended allocation of the additional fund balance in the General Fund as well as other recommended 2012-2013 adjustments. Starting with the .8 million variance, we are bringing what we

consider to be the real fund balance available to the 7.2 million level. There are two categories of cleanup actions as I mentioned. First is our development fee program reconciliations that total approximately \$3 million. These adjustments serve to true up actual costs with actual revenues for the building, planning, Public Works, and fire development fee programs, and we place any extra money into our development fee program reserves. The second is our rebudgets or other cleanup adjustments that for this year total \$2.5 million. These are funds recommended to complete existing projects that were approved by the city council to budget adjustments to follow council reduction. It is used to reconciliations of our grant awards. After the net cleanup actions there are a number of recommended budget adjustments that will allocate all of the \$7.2 million in net available 11-el 12 fund balance as well as implement 2012-2013 budget adjustments first are required technical rebalancing actions that actually generate a net additional funding of \$3.3 million for allocation. We have grants reimbursements and fee activities that in total are \$2.5 million but they have a net zero impact on the General Fund. And the third category we have our urgent fiscal program needs which are \$10.5 million and they do allocate all of the additional fund balance along with the additional funding that was -- is 88thed on a technical rebalancing action line item. Kind of diving into the recommendations a little bit further. In the category of the required technical rebalancing actions, \$3.3 million in net additional funding is expected to be generated from the actions listed on the slide. The first recommended item reflects net upward revenue adjustments that will produce additional funding of about \$2.5 million. The primary source of this increase is recommended upward adjustment to our sales tax estimate to reflect fourth quarter 2011-2012 information. There are -- this has been offset by some net downward adjustments from some of our other revenue categories to bring those revenues in line with 11-12 actuals as well as 2012-2013 projected levels. As directed by the city council as part of their projects of the mayor's June \$900,000 based on the final actions approved as part of the 12-13 adopted budget as well as final contribution rates approved by the two retirement boards. Finally, three small miscellaneous adjustments require additional funding of about \$120,000, that is included in this report. There's funding for our fuel tank monitoring for our police retirees health and dental fees appropriation and a transfer to the District 10 construction and conveyance tax fund for the Leland high sports field repayment recommending five other technical or reblanks adjustments that you can also see on this slide. First as part of the purchase and sale agreement with earthquake soccer LLC the developer purchased a portion of the airport West property for the development of the future earthquakes soccer stadiums thee revenues are recommended to pay off a portion of the HUD 108 loan reducing the principal of the loan from \$20.8

million to \$15.8 million. This payment is consistent with the most recent financing plan that was approved by the city council in June 2012 to accommodate the community soccer facility. An increase to the police department's overtime funding of \$3.9 million which would bring the entire funding from 13.3 million to 17. to allow the department to continue to backfill for vacant patrol positions, expand targeted enforcement of high crime activity related to gangs through suppression cars and to provide funding to continue backgrounding efforts on an overtime basis until a contract is in place. Anticipated year-end savings related to sworn vacancies that we're currently experiencing, a small reallocation of our rebudget of personal services savings from the prior year will fund this increase with a net zero impact on the General Fund. Technical adjustments are also included to realign our General Fund and our neighborhood security bond fund expenditures. The Spartan Keyes service delivery model change will eliminate a newly created recreation specialist position that has not benefited and will reallocate a service delivery at the center in fact it will stretch the funding that \$86,000 will be stretched all the way through the end of the center's lease which will be for February -- until February 2014. And finally, a reallocation of \$19,000 in Almaden lake park swim funds to park ranger hours is consistent again with the city council's approval of the mayor's June budget message that directed the parks foundation to reallocate those funds for other District 10 parks and trail programs due to the continued algae problems encountered at the time lake. Combined with the funds that were available in the gift trust fund we were able to add 1900 new park ranger hours this fiscal year. A series of net-zero adjustments totaling \$2.5 million are recommended in the report as I mentioned to reflect new or updated the largest adjustments are for activities associated with parks, recreation and neighborhood services totaling \$2 million for the senior nutrition program and San José B.E.S.T. program. Recommendations for the police department total approximately \$450,000 and relate to fees regarding the traffic enforcement grants and the gaming unit. As I mentioned earlier utilizing the small additional 11-12 General Fund fund balance of \$7.2 million combined with the additional resources generated from the recommended budget adjustments of \$3.3 million a total of \$10.5 million is proposed to fund two urgent program needs in this report. First is recommended that too successor agency city \$7.5 million be established in this report. This reserve would provide for payment of successor agency withhold certain redevelopment tax revenues. Inconsistent with past practice the county of Santa Clara is withholding a county's employees retirement plan otherwise known as the PERS levy. As well as two other tax overrides related to water district projects. The city in its capacity as the successor agency has commenced a lawsuit challenging the county's

actions of withholding funds required to meet the successor agency's enforceable obligations. This recommendation is to establish a reserve will be made because of the timing and outcome of the litigation are currently uncertain. If the matter is resolved, such that the 7.5 million reserve is not needed, the administration intends to recommend that the city council 13-14 budget process. Second our increase to our workers compensation general liability catastrophic reserve of \$3 million is recommended as directed by city council as approval of the mayor's 2012-2013 June budget message. This increase provides funding to cover evergreen development. Given our budget situation we believe this amount of additional funding is sufficient at this time, as we have funding in the amount of \$10 million, in the current year's general liability claims appropriation. Based on prior year budget balancing actions only \$2 million annually is allocated to this appropriation combined with the city attorney's office track record where it historically paid less for claims in litigation settlements when compared to other large cities. It is important to note however that there are still multimillion dollars of potential claims outstanding. For context to our recent budget situation and the 11-12 growth experienced in our economically sales tax that comprise about 40 to 45% of our General Fund sources excluding fund balance. In addition I'll provide some historical context to our four development fee programs that also provide a strong indicator of our local economic health. Turning specifically to property tax which is on your screen after years of growth collections fell in both 9-10 and 10-11 showing the approximate year and a half autoeconomy however in 11-12 marking the first growth in property tax collection since '08-'09 as projected small growth of 2.3% was realized from actual 2010-2011 collection levels. Our 12-13 adopted budget reflects small growth in this category. In the general sales tax category I'm pleased to say that growth which resumed in 10-11 continued in 11-12 after two years of decline in 8-9 and 9-10. Of have basically reached the prerecession level of \$149.5 million in 07-08 not adjusted for inflation. However they do remain to be well below the peak collection level of 164.3 million in 2000, 2001 which is not shown on this slide which is prior to our decade of shortly falls. 1.3% is needed in this category compared to our adopted budget estimate of 3%. Once we see our first quarter results for 12-13 which we should see in December it is anticipated that an upward adjustment to this revenue estimate may be brought forward later in the year. In the four development fee programs, building, planning fire and Public Works, overall revenues of 40.5 million reflected 15.2% growth from 10-11 levels and exceeded prerecession levels of 37.7 million in 07-08. Revenues reached their highest collection since 05-06. With the exception of the planning fee program the three other programs experienced double digit growth when year over year growth of 29% while the fire

development fee program and the building respectively. The planning fee program which is currently experiencing the slowest recovery did have growth however of 8% from prior year actuals. Due to the stronger than expected performance last year development fee programs allow for declines in development related activities. However, collections will continue to be monitored and if appropriate, we may adjust these revenue estimates with their corresponding expenditure increases later in the year. Moving on to our specialty in capital funds, we have four funds noted here. First is the airport operating fund, the airport did serve 8.25 million passengers in 11-12 but unfortunately that was an overall decrease of 1.6% in fiscal year over year passenger activity. However there are some good news due to conservative budgeting the operating fund did finish with a \$2.5 million excess funds balance compared to the 12-13 operating budget collections of then.7 million exceeded our modified budget level by 1.2 million and end of the year 25.3% above the prior year levels. For the 14 largest hotels our average room rate increased as well as our occupancy rate increased year over year. Recommendations are included in the report to increase our revenue estimate to restore a 5% growth estimate for 12-13 as well as distribute the excess funding to our three funding recipients which is our convention and cultural affairs funds, the convention and visitors bureau and the cultural development program. In the convention and cultural affairs fund they also ended positively with excess fund balance. Using that fund balance the additional from the T.O.T. fund and recommending in the end report an increase to their fixtures furnishings and equipment of 2.2 million. Due to the overall age and condition of the convention space as part of the convention center renovation project. In the affordable housing investment fund they also ended with an ending fund balance that was \$5.4 million above the estimate. Our report recommends an allocation of an increase of 4.6 million to the housing loans and grants appropriation. Moving into the capital budget the construction and conveyance taxes which fund the parks library fire and service yards capital programs collections rose 18.7% from the 10-11 levels, a total of 25.4 million was received in year end 10-11 up \$4 million infrom last year. After experiencing sharp declines since the peak collection of 49 million in 05-06 with the exception of 9-10 which had collections that actually had year-over-year growth it appears as though the real estate mart has stabilized now experiencing modest growth resulting in 11-12 tax receipts 01-02 which is the base on year on that chart as well as almost meeting prerecession levels experienced in 07-08. The next chart shows the two major revenue sources that primarily fund our city's traffic capital program, the construction excise tax and the building and structures tax. As you can see on this chart, these tax receipts have and have been growing for the past two years the improved elections in both revenues

sources is primary attributable, as well as increased commercial and industrial activity. Multifamily residential activity was especially strong towards the end of 11-12, and may not be indicative of future growth but it appears that the traffic capital program may have higher than anticipated funding in the near future. In the special and capital funds there are also also noted on this slide and explained in detail on the document. In the cleanup actions area we're doing fund balance reconciliations for all funds rebudget adjustments net zero funding transfers reallocations, grants and reimbursement revisions, et cetera and in the recommended adjustments category we're recognizing new grants and reimbursements that the city has received. We're updating costs revenue estimate and limited number of new projects. In closing as we move forward, this slide shows that the major next steps of initial steps for the upcoming 2013-2014 budget process. Again as the City Manager mentioned, as discussed in the end report message what you do not see on the slide this year is the issuance of the 2013-2014 preliminary General Fund forecast later this fall. Despite the fact that we have a strong starting point for 13-14 already set aside to address the forecasted shortfall that year based on last February's forecast, updated information regarding a number of significant cost factors is not yet available but will be key to thoroughly understanding our upcoming budget situation. These major cost factors include the level pension and retiree health care costs as well as the level of General Fund contributions necessary for obligations related to the the successor agency to the Redevelopment Agency for the next five years. In addition, the compensation changes for budget planning purposes will also need to be decided. These cost factors in addition to revised revenue and other expenditures for next years are anticipated to be available in the January-February time frame and will be analyzed as part of our issuance of our five year forecast document that will be released at the end of February. We believe that this timing will better inform the 13-14 and beyond. With that I will stop for questions and we have department heads here as well if you have specific questions on individual funds. Thank you.

>> Mayor Reed: I'm sure we'll have a few questions. I just want to start by thank variances in projections and all these funds and all the things that you've had to do, very, very spall variances and I know it's difficult because there's so many variables. But once again we have had a very strong budget process. And I want to thank my council colleagues for the work that they've done on our economic development strategy. Because when you see these revenues going up again that's a very good switch from going down. It's not by accident. We've done a lot of things as a council to implement our economic development strategy with great staff work as well. So in the

sales taxes and property taxes are going up it's for a reason. I mean some of it's out of our control but a lot of it is in our control and we've done some really good things. I think the total net revenue increase is \$6 million if I read the number right. Which pales in comparison. That by far is the biggest factor in being able to balance this budget without having to do even more things to do in the waive job cuts and stuff and so we're still benefiting from that. We're all benefiting from it and it was a big sacrifice by our workforce and I just wanted to acknowledge that. The importance of that. As we went through the budget process. Let's not forget, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Can we have the slide with the allocation of the 10.5. Setting a side a iks ches they're that fund has currently \$10 million in it?

>> Jennifer Maguire: Yes, it does. Actually we have two -- we have one reserve and one live appropriation that we spend general liability claims from. The reserve is for workers compensation and general liability which we have multimultimillion dollars of claims outstanding against the city. We only have \$10 million in that reserve. In the live appropriation woo cut the ongoing amount because we were able to carry over some significant amounts. But we feel like we need to put some more money in here because we only have \$2 million in there and easily.

>> Councilmember Kalra: There is \$2 million going annually?

>> Jennifer Maguire: Annually. We started out 12-13 with a \$10 million appropriation of which only \$2 million ongoing.

>> Councilmember Kalra: So but then 10, this will make it 13 with this action?

>> Jennifer Maguire: Correct.

>> Councilmember Kalra: And you don't have to the amount that the potential liability versus you know, there's always a potential for liable. The maximum that's sought versus what is actually given through the process.

>> City Attorney Doyle: Councilmember let me try to take a stab at that. Annually as part of the budget we are asked as part of the CAFR process we're asked to come forward with estimates as to what the potential liabilities are. The numbers fluctuate. This really represents -- we have a \$10 million reserve. The General Fund is at risk. Verdicts and settlement. With the berg verdict of some months ago, that's what that \$6 million verdict represents. And we don't have a judgment yet. And there will be a lot of posttrial motions but we're planning for it. But to me this is a conservative and prudent number specifically with respect to other claims we have environmental claims, we have some 647 F claims still outstanding we have police excessive force case, taser related cases, there's a whole number and host of cases and any one, we've had very good success but you need that buffer just because we are self-insured.

>> Councilmember Kalra: Just because of the \$6 million verdict, obviously appeal, we don't know what the end result will be, just to make sure there's depending what's happening on other cases.

>> City Attorney Doyle: It is a prudent reserve given the fact we are self-insured.

>> Councilmember Kalra: Can you explain that in greater detail as to why --

>> City Attorney Doyle: That's the PERS levy. It represents the \$sen Evan.5 million annual.

>> Councilmember Kalra: Okay.

>> Jennifer Maguire: Councilmember Kalra if we are successful in that regard we will recommend to roll that back into the 12-13 process.

>> Councilmember Kalra: Thank you for all the work on this thanks.

>> Mayor Reed: I have one request from the public to speak. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'll echo the mayor's comments. This is a great document as it always is, so thank you for -- it makes it very easy to right and very easy for referencing. I did have one question, it jumped out at me, I have been tracking this, the performance based compensation changes. At the end I believe. It talks about you moving in the direction of the meet-and-confer on the --

>> Mayor Reed: Was there a number?

>> Jennifer Maguire: It's in the City Manager's transmittal memo, 28. Roman numeral.

>> Councilmember Rocha: 28, not in the report itself but in the transmittal. Only question I have I guess is, do we have a goal in mind of when we would be comfortable proceeding with this in terms of when we achieve a certain level of evaluation?

>> City Manager Figone: I think there's a few ways that I'm thinking about this councilmember. First of all, budgetarily, what can we management compensation plan we have the performance based only system. And then even with the nonmanagement there is the ability in many of our contracts to give a merit increase based on performance. But we haven't really been able to fund that so that's been frozen. So really I think our starting point is, with the tools that we have, what could we afford to allocate to be able to use those tools. Before we even go off and fashion something new. And so as we've said, you know, there's been a lot of movement in the organization, the departments are working hard at getting up to speed, and having our goals 100%, performance appraisals so I think really the reference to the discussion with our bargaining units would be around what more could we be doing in the area of performance based compensation. Did a little bit of brain storage with our department heads at an off-site and they think very highly about the idea of team awards, for example. So if we have those similar kinds of discussions with our bargaining units the question would be I think to your point, is how would we evaluate that? Based on individual performance, are there objectives established with the team, and so that's really what we're thinking about. Using the tools that we have trying to create the capacity and the budget to do that and then seeing if we can take it to the next level.

>> Councilmember Rocha: Thank you, couple of questions on that. Where is Police and Fire in terms of the performance based or the evaluations? Are they included in this?

>> City Manager Figone: Yes.

>> Councilmember Rocha: This is entire workforce?

>> City Manager Figone: The entire workforce. And each segment of the workforce may have a different ability to evaluate performance for performance pay purposes. And so I think that's why really we're going to have to drill down on this and make sure it's relevant based on you know, the nature of the work that's being done. There's a lot of moving parts in this, clearly. I don't disagree with that. I think that just for me is why I continue to watch this item, and make sure that we're methodical. On it. that's just on the same issue I've been raising for the past two years and I appreciate you folks continue to raise it and also point out that we can keep apprised and watch it as well. Thank you.

>> City Manager Figone: You're very welcome.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, I'd just like to phrase once again Jennifer and her team for the great work you do but I'd also like to second your thinking City Manager because I think when we take a look at years and years and years of sacrifice we do have to think in terms of trying to show some form of gratitude for that. And the most effective way I know of is some little extra cash in the pay check. That, too, coupled with attractability is that part of your thinking as well, City Manager? The attractability component part of your thinking as well?

>> City Manager Figone: Oh, absolutely. You know, we all know that there's a real pent-up demand. And that there are also costs coming out of our employees' pockets that I think we would all agree need to be brought

under control or working with our bargaining units on the Federated retiree retirement plan side, on the cost of retiree health care. That's a very, very heavy lift. It's something that we're all feeling the pressure around and so many things need to be addressed for our existing employees as well as to ensuring that we are attractive as an employer moving into the future.

>> Councilmember Pyle: Thank you, I really appreciate that effort.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just had a question or two about revenues. Jennifer, I looked at the sources of funds number on top of page -- little Roman numeral 11, indicating that we had that \$6 million less revenue in the aggregate in the General Fund. When I went through the details and checked I realized I was worried about that because I always assumed that we were seeing rebounding revenues and most of that in fact all of that is attributable to federal grants. And other local agencies, and so when I look on page Roman numeral 2-6 I see a variance of about \$3.5 million in both revenue from federal government and revenue from federal government under line item of the ARRA act. Can you give me a \$7 million of federal money that we didn't get that we expected to have, was that lots of little projects or --

>> Jennifer Maguire: I don't have it off the top of my head but it is a matter of timing, one fiscal year to another. That's why we have to talk about adjustments because it's not a real true picture of our General Fund situation. It's just that grant money didn't come one year it's coming in the next, same way with expenditures, they're aligned appropriately. You'll see that money this year in thereafn.

>> Councilmember Liccardo: And that also --

>> Jennifer Maguire: A lot of grants in that category.

>> Councilmember Liccardo: So it's not that somebody else growned on us?

>> Jennifer Maguire: In that particular category though could be due to a loss of revenue from the Redevelopment Agency as we wound that down. That used to be the category we got reimbursements in.

>> Councilmember Liccardo: Understood, thank you. Then small Roman numeral 15, T.O.T, I understood we had big growth last year so we pushed up the adopted budget estimate for the following year, essentially to piggyback another 5% and intuitively that seemed awfully optimistic to me for a couple of reasons, one is we're riding a good year of growth and secondly we've got a convention center under construction and it will be under construction until I guess August or September of next year. How confident are you that we're going to see 5% T.O.T. growth through all of that?

>> Jennifer Maguire: Considering I'm pretty fiscally conservative I feel pretty good about register that to you. We are already seeing numbers coming in that are higher than that in the current fiscal year. I opt risky but you know that is a pretty volatile revenue source but it's -- we have worked with consultants on those numbers in the past and we're just restoring it to the growth that we thought we would see this next year. We're not revising the overall percentage any higher than that.

>> Councilmember Liccardo: Okay, Roman numeral 2-14, the card tax, I know it's no secret I'm an opponent of the card room expansion measure that's on the November ballot but my understanding is the ballot measure that passed in June 2010 kicked in for ten of the 12 months in the last fiscal year is that right? So we would have seen the results of that ballot measure by the third month of the last fiscal year.

>> Jennifer Maguire: Yes, that's correct. It went into effect August 2010.

>> Councilmember Liccardo: So we increased the number of tables from 80 to 98, almost 25% increase in the number of tables, we increased the amount of tax from 13 to 15% but we only got 1.2% more revenue from the prior year. Is that -- am I reading that right?

>> Jennifer Maguire: That's correct.

>> Councilmember Liccardo: So we're doing an awful lot of expansion in capacity and increasing the rate and not getting much more than a rounding error in terms of increase in revenue from the card rooms?

>> Jennifer Maguire: That's correct. That gets volatile with our economic conditions and it really is a hard one to predict but that's a correct assessment of where we are today without tax.

>> Councilmember Liccardo: Well with more disposable income in you are which gom of increasing the number of card tables in this city. We just don't get the revenue that folks might believe we get.

>> Mayor Reed: I think that's the questions. Just one last comment on the card room revenues. You can build it, they won't necessarily come. I guess we'll find out with how matrix does overall.

>> Jennifer Maguire: If I could add one comment on the transient occupancy tax just because I've got it handy here. Just through August we've already received \$1 million of receipts against our original estimate of 8.7, we're already 10% above our estimate for the prior year.

>> Councilmember Liccardo: Thanks.

>> Mayor Reed: Take testimony from the public, David Wall.

>> With reference to they'll show up. On item number C where you're changing the title of affordable housing fund to low to moderate income fund there was a positive balance this in the affordable housing investment fund. Is this name change just allowable to access these funds and exclude other people from housing? The other thing that I don't see is any sewer service and use charge rebates for the expansion of the South Bay water recycling program which exceeds the scope of proposition 218. Also, there is no litigation funding or sources of funding set up for fiscal year 2012 or 2013 for the habitat conservation plan litigation. So what resources will our honorable

City Attorney draw upon when the litany of lawsuits start coming in for this flawed habitat plan? On the last issue, about the airport, about the west side property \$4.97 million benefit to the owner of the earthquakes, why don't you rescind that deal and lease the property out to him for a certain period of time and then if that deal collapses then you could reallocate the \$100,000 per council district back into your parks maintenance fund and be better off than just having a soccer complex that benefits a corporate entity versus some grandiose or illusory jet A and J B fuel exhaust while playing soccer. That should do it. One other thing. If you are going to have 911 dispatchers wearing uniforms where nobody can see them, and you have cut their pay not 10% but more like 17% exclude them from having to wear uniforms? The command staff knows who their employees are and that's an extra burden on them, thank you.

>> Mayor Reed: That completes the testimony on the annual report. I think we have a motion to accept. Motion is to accept the annual report. On the motion all in favor, opposed, none opposed, report is approved accepted good work, thank you. Well move to item 4.1, would like to take item 4.1 and 4.2 together. One is a vacation of a portion of actuary avenue, the other is the sale of a city owned property on actuary avenue.

>> Councilmember Constant: Doesn't one say deferred?

>> Mayor Reed: Oh we'll take the only one, do we have a request to speak? Mr. Wall, we'll take the public testimony at this time.

>> This property for example does not fall under the auspices of God's holy Roman Catholic church. If anything this falls under satan's requisites, the environmental nightmare that whole project called Almaden ranch is going to wrought upon the citizens, who live in that area and are represented by shall we say lackluster or less than energetic pursuits. Something low when you consider the vast sums of money that this project is going to reign in. So once again, I raise the issue, just like on the soccer stadium, why not lease the property to Arcadia development company and retain ownership and somewhat control over the developmental aspects and uses of that property at Almaden valley ranch. But we will wait and see how this goes but this is a very poor land deal for the City of San José residents. \$24,000 for this piece of land. That's going to allow a multi-hundred million dollar

in theory project to go forward. And also the consternation that people are going to have just getting off the freeways and moving around cherry avenue and it's just a nightmare what you've done with that Almaden valley ranch -- scuments Almaden ranch retail center. You make a deal to the devil anonymity you bellarmine project to November the 6th. The wages of sin.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the resolution on 4.1. On the motion, all in favor, opposed, none opposed, that's approved. 4.2 has already been approved. 3.5, I mistakenly skipped. Recycle plus!, billing and analysis. We'll have a presentation. I believe staff has already presented this at committee so our presentation day will probably be a little shorter.

>> Good afternoon, pair and council, Ashwini Kantak acting assistant director of ESD. Julia Cooper and Vijay Sammeta, given the time, we will not be doing a presentation. I would just like to point out that the recommendation before you today we're really asking you to accept the staff report and proposed strategy of discontinuing the in house service delivery option and continuing to evaluate two other alternate service delivery options. So I just want to make sure that you realize that we're not asking the council to approve a specific service delivery option today.

>> Mayor Reed: We have a motion to approve. Councilmember Constant.

>> Councilmember Constant: Thanks. I just wanted to make sure that the issues that were brought up at public safety will be part of that review as you move forward.

>> Yes, absolutely.

>> Councilmember Constant: Okay, thanks.

>> Mayor Reed: Okay, this has already been heard at Public Safety and this recommendation comes with the recommendation of the Public Safety committee. On the motion, all in favor, opposed, none opposed, that's

approved. Item 8.1 actions related to the restoration of San José fire stakes number 5. We have an extraordinary voting requirement on this one, for some reason the City Attorney is going to explain to us in a minute that requires us to get eight votes. I want to make sure we do in right. City Attorney.

>> City Attorney Doyle: Findings for 8.1 A and B. This is an exception to the competitive bidding requirements under the charter. The rears a finding that there is urgency, necessary for the preservation of life health and property. The staff report goes into detail as to the issues involving mold and having to seal this building and the need for the fire department to have access to it. And so it requires eight votes. Two-thirds vote for items 8.1A and B.

>> Mayor Reed: We have a motion to approve. Anything additional from the chief?

>> No, we're here to answer questions if there are any.

>> Mayor Reed: Any questions for our staff? We have a motion to approve. Hopefully we can get eight votes here. I don't know where Councilmember Kalra is. I think he'll be back in a minute. We'll see if we can get the eight votes without him. If not we'll wait until he gets back. On the motion, all in favor, opposed, none opposed, so we got at least eight votes to do that. I think that's all we needed on that item. Item 9.1 is the last business item that is the approval of the recognized obligation payment schedules. Also known as ROPS.

>> City Manager Figone: Staff is here just for questions mayor.

>> Motion to approve.

>> Mayor Reed: Motion for approval, Mr. Wall you wanted to speak.

>> Thanks Mr. Keit. Considering his revenues were shrunk. Also there was no public apology made to him with reference to the incubator scandal and the absence of a secret report which was not truthful so I would like this

council to apologize to Mr. Keit for any misunderstandings that the San José Mercury News may have printed or misrepresented for any city council member's aspirations, and this is unfortunate that Mr. Keit has to undergo this. This is unfortunate that the people from the county just here the other day five little scoundrels that are holding up his money to pay our obligations and you folks treated those scoundrels those five Board of Supervisors people let's go for measure A so they don't stab us in the back as I inquired from some councilmembers that are look at their computer screens but I say to myself the scoundrels of the county aren't the City of San José's friends. For the most part they are City of San José's political rejects. But back to Mr. Keit. I would like an apology sent to him or at least a very affirmative and genuine thank you for his service considering, he's going to lose even more hair out of his forehead trying to figure out how to pay all of your indebtedness that you incurred with all of these bogus forecasts that we've just heard today from our learned finance director. So in closing, in addition to Mr. Keit's apology you can apologize for me for having to pay your socials for having to put up with all these shenanigans. With the sole exception of the office of City Attorney who serves the city very well. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on 9.1 the recognized obligation payment schedules. Any discussion on that motion? All in favor, opposed, none opposed, that's approved. Last item is the open forum. Mr. Wall.

>> I have yet to see any diep of legislation to protect the houses or the neighborhoods of public officials like our mayor and City Manager had to undergo by trespassers entering in their property and causing them all sorts of trouble. I don't like that. I've yet to see it and I don't understand why. We have budgetary aspects of what's going on. We see -- we hear this glorious talk of surpluses but yet we don't see pay and benefit amendments for a variety of city departments. We don't see anybody in the wing getting a pay and benefit amendment or I started out with the attorney's office as well or Police and Fire. So that is unfortunate. Lastly, I had an idea that cropped up during today's discussion on how you can deal with your funding scenario and everything with the feds and the state folks with reference to the habitat plan. You can lie to them. It's a real simple thing. You thrie city employees. And you got away with it. It's 10% pay cut, it's more like 17% per year because they have to pay for their retirements. In addition it's going to continue. And nobody really wants to work for the City of San José

because of that. If you were to say to the Feds and the state folks, sure, we'll agree with anything you want for the habitat plan and then a couple of years later say it was just a joke we're going to impose upon you and we're going to impose upon you not paying a dime and doing what you want because we have a history and track record of lying. Some people may say it's not just a lie it's just we're being a little bit economical with the truth but that's fine too. The main factor is the methodology is sound. You have a proven track record of doing what you want which is I guess okay because it's good to be king but don't pander to the state and feds like we're going to do this for 50 years because if people actually realized when they voted for you that you're going to make decisions 50 years out that's.

>> Supervisor Shirakawa: Going to cost you a ton of money, you wouldn't have been voted into office. Thank you.

>> Mayor Reed: Jeff bedola.

>> Hi, got stuck in being traffic. I wanted to speak on 2.12. Probably it's better this way. I would have said things that might have been a little difficult and embarrassing for people to hear. What I would like to ask, though, is since that we're moving into the phase where there will be posted notices and that's an opportunity for discussion on the issue, I would hope that I could possibly submit some comments. I've done a lot of work on this. And if I could do that, submit some stuff, would it be okay to have that communicated to the applicant, and perhaps the neighborhood association? Because communications have pretty much broken down. As I've been trying to review this matter. And I think it would be good to examine impacts on traffic and also, associated with the closure, and also, maybe, get a better look at how different views, different interests confront each other, and how there's a possibility for a vision that maybe is more than what we had when we kale into the discussion. I can see possibilities with that thing that hadn't come out. But I wrote down neutral on the sheet. What's important to me is discussion and interaction, so that people can feel involved in the process and contribute to the outcome of it. So we haven't had that yet in the neighborhood association. So it's been a really uphill battle for me. Thanks much.

>> Mayor Reed: That concludes the open forum, that concludes our meeting. We're adjourned.