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>> Mayor Reed: (gavel strike) I'd like to call the San José city council meeting to order for August 24th, 2010. We'll start with an invocation. Councilmember Nguyen will introduce the invocator.

>> Councilmember Nguyen: Thank you, Mayor Reed. I would like to welcome reverend Edward Kwong from the San José Christian Alliance Church to deliver the invocation for us today. Reverend Kwong has been with the San José Christian Alliance Church since 1975. He works with the church to provide free food and medical care for the homeless and also tutor students from all walks of life. The church also has an international outreach program that helps orphans and disabled children in China. I want to thank Reverend Kwong for the work he and his church have done to improve the quality of life for residents of San José and am pleased that he is with us here today.

>> Good afternoon, Mayor Reed and the city council. It is an honor and a privilege to be here today and thank you Ms. Nguyen for inviting me to come today. It is a privilege and an honor to invoke God's blessing before today's session. Let us pray. Heavenly father we thank you for the City of San José. We thank you for the privilege of leading and governing this great city. We thank you for the city council and all who are in leadership positions serving this city. The apostle Paul said in first Timothy Chapter 2, I urge you to pray for all people, ask God to help them, intercede on their behalf and give thanks for them. Pray this way for kings and all who are in authority so that we can live peaceful and quiet lives marked by godliness and dignity. This is good. Pleases God, our savior, who wants everyone to be saved and to understand the truth. So today we pray for all those who are in authority in the City of San José. Mayor Reed, the city council, and all who are in high position, that their decision and action may give us a peaceful and quiet life. We bless them today with humility and sincerity, knowing that in this special place, they are to make a difference and for specified season to serve this great city and people. We bless them with a spirit of cooperation to work towards goals greater and higher than themselves. We bless them with continued honesty and integrity that their decision and action may reflect your goodness, righteousness and justice and mercy. We bless them with wisdom and discernment to see through all complexity and to find answer in simplicity of wisdom. We bless them with authority over the city to call for law and order. O God we ask that your light will shine in all corner of darkness so that there is no place for evil in this city. And we bless us, San José, with economic prosperity, even amidst recession. Because your favor is upon the leadership of this

city. Finally, we bless them with peaceful and restful life that they too may be renewed and refreshed continually in your presence. O lord may your kingdom come, your will be done on earth as it is in heaven. We ask this in the wonderful name of Jesus Christ our lord, amen.

>> Mayor Reed: Thank you for joining us. We'll now do the pledge of allegiance. Please stand. [ pledge of allegiance ]

>> Mayor Reed: I'll take up the orders of the day. Are there any changes from the printed agenda? We need to consider? I have none. Is there a motion? Motion is to approve orders of the day. All in favor, opposed, none opposed, that's approved. I'd like to note that this meeting will be adjourned in memory of Maria Elena Montellano, a resident of Alviso and a beloved owner of Maria Elena's restaurant who passed away on June 29, 2010. Councilmember Chu has some words to ad.

>> Councilmember Chu: Thank you, mayor. It is with deep sadness that we learned about the unexpected passing of Maria Elena Montellano on June 29th, 2010 in Mexico. Her family has honored us with being here today to join us in memory of Maria Elena. Would you please rise, her family members. Thank you. A long time Alviso resident and restaurant owner, Maria Elena was a fixture and role model of our community who was treasured for her passion to support youth. Maria founded Maria Elena's restaurant in Alviso 22 years ago, and made Alviso popular because of her cooking. For the period of time she welcomed students to her restaurant and provided them delicious Mexican food to make sure the youth had a safe place to go to after school. Later on, when the Alviso youth center provided after school services, she started delivering free food to the students there. Maria Elena's efforts have touched many people's lives and have provided hopes and positive motivations with whom she interact. May her memory remain in our hearts and minds. My colleague, Councilmember Campos, has a few words for the family of Maria Elaine Pap.

>> Councilmember Campos: Thank you, Councilmember Chu. Maria Elena I met more than 14 years ago and I met her in the capacity as a city employee at that time. And I met her because we both shared a passion for wanting to make sure that youth were safe and had other alternatives and choices. And she did it the best. She

embraced her ability to be able to communicate with youth, to make them feel comfortable, and to help them to seek better opportunities in their lives. And I will always be grateful for her leadership within the Alviso community, and beyond that. She became a personal friend because of the passion that she shared, and I saw her eyes light up when she was able to save a life, whether it was one child, or whether it was one youth. Maria will always, always be remembered for her leadership in our community. And her daughter reminded me, as she shared with me that she was looking through letters that we, as city employees and electeds, had sent to her thanking her for her service in serving the City of San José in her capacity. To the family, we thank you for sharing Maria with us.

>> Mayor Reed: To any of us who knew Maria Elena, she will be missed. She was a great person for Alviso and a great person for the city, and I want to thank the family for being here.

>>> Okay, we'll now move on to the next item on the agenda, which is the closed session report, City Attorney.

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

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to invite Councilmember Herrera, Stephanie Ferris and Fred Cortopassi to join me at the podium. Today we're commending Lake Cunningham regional park rangers Stephanie Ferris and Fred Cortopassi for saving a life of a visitor at the park. Councilmember Herrera has some additional information.

>> Councilmember Herrera: Thank you, mayor. I'm very proud to be standing up here today with two of our city colleagues, park rangers Stephanie Ferris and Fred Cortopassi. On Saturday, June 19th, 2010, Fred and Stephanie made the difference between life and death for one park visitor at Lake Cunningham. Around 2:55 p.m. the victim, a resident visiting from Santa Cruz, California, was located near the marina, inside the park, and started to collapse onto the walkway. According to a witness he became unresponsive and unconscious. The witness ran into the ranger office at the marina and asked for help and to call 911. Stephanie Ferris and Fred Cortopassi immediately responded, and after assessing the victim's condition, they started administering

emergency breathing, oxygen, and eventually, cardiopulmonary resuscitation. They were able to keep this park visitor alive while waiting for an ambulance. And everyone from the San José fire department to the victim's cardiologist have all said that if it hadn't been for Stephanie and Fred's quick action, he would not have survived. Stephanie and Fred did everything right. Their training kicked in. They remained calm under pressure. I'm very proud today to acknowledge their dedication and commitment to public service in our community. When I met them earlier and congratulated them, they said, we were just doing our job. But doing their job is hero's work. I want to thank also our PRNS staff in the audience for your support. I think Peggy Rudd, our family park manager at Lake Cunningham, and Gina Anney, acting parks manager here today, thank you to them. And thank you again, Stephanie and Fred, for your courageous efforts. And with that, I'd like to invite Mayor Reed to present this commendation to Stephanie Ferris and Fred Cortopassi, and Stephanie will have a few words.

>> I would just like to say thank you to the city council for considering us for this award. As park rangers, one of the most important aspects of our job is public safety. And to be able to save the life of one of our park visitors simply reminds me of why I became a park ranger to begin with. And that was to protect and serve our visiting public, and also, to preserve our open spaces for the next generation. I really appreciate this. Thank you very much. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Chu and our San José public library assistant director Mary Naku to join me at the podium as we recognize September 8th, 2010 as international literacy day in San José.

>> Councilmember Chu: Thank you, mayor. I'd like to thank my colleagues and the mayor in joining me in proclaiming September 8th as the international literacy day in the City of San José. On November 17th, 1965, the United Nations proclaimed September 8th as international literacy day, to highlight the importance of literacy. And it is of great importance to the City of San José, and the county of Santa Clara. They are an asset, 277,000, 16% of our population, residents in Santa Clara, and 153,000 in San José, who do not have sufficient literacy skill to perform basic daily task that requires reading, writing, and completion of forms. The City of San José is committed

to provide the tools and resources to improve literacy rate in our community. Established in 1989 by the library department, partners in reading has helped adults and children improve their literacy skills by offering services to families through group instruction, English as a second language, and one-on-one tutoring. Volunteer tutors are the backbone and strength in partners in reading. With 3478 tutors trained providing services to over 4,000 adult learners, with the help of trained community volunteers, partners in reading has been able to connect, inspire, and engage adults with low literacy enabling them to develop reading, writing, and computer literacy skills, as well as helping them to build self esteem. Today, to accept a proclamation, are some of our own city library staff the volunteers and learners of the City's partners in reading program. Nancy Naku, our library assistant director, here today to accept the proclamation on behalf of partners in reading. Thank you. [applause]

>> On behalf of the library department, I want to thank Councilmember Chu, the mayor, and the honorable council, for this proclamation. And the recognition of the very good work that all of these people do. One of the most difficult things in life is to understand the difficulties that you have and that you face in the world around you, to embrace them, and to become in charge of them and to take charge of your life and to move forward. And the people behind me standing here today have done that in their lives and learned and grown and are becoming valuable members of this community. We have a great group of volunteers that help them do that by building relationships with them, by setting up learning programs from them and committing their lives to helping these people become valuable members of their community and on behalf of the library department I'm grateful for all of the work that the staff, that the volunteers and that the learners are willing to go through to increase their capacity and gain literacy in their lives. International literacy day is a marvelous thing and it is a great thing to celebrate that in San José. And on behalf of the library department, the partners in reading program and all of the volunteer tutors and learners, I want to present copies of this publication, this is our latest publication this year, filled with the stories that are written by the learners who have been able to achieve literacy in our lives. We will be proud of this and will be celebrating this tomorrow evening at an event at the library. On behalf of everyone behind me and the commit learners and tutors of the program I want to present this to the council. Thank you. [applause]

>> Mayor Reed: Thank you all. Look forward to reading the book. I've read previous years' edition. Always good stories. Our next item is the consent calendar. Do we have any requests from the public to speak on the consent calendar items? None. Any consent calendar items, Councilmember Campos?

>> Councilmember Campos: I'd like to pull 2.8 please.

>> Mayor Reed: We have a motion on the balance of the consent calendar. All in favor opposed, none opposed, that's approved. Item 2.8, Councilmember Campos.

>> Councilmember Campos: Thank you. Lee, I wanted to ask you a couple of questions regarding the memo from Councilmember Herrera to go on a trip, the city-to-city trip with the chamber. And I know that Councilmember Constant brought his memo last week. The last week, I believe. And he outlined very clear, how he was -- how -- where he was going to be getting his source -- his funds for the different items that needed to be paid. And I know that he is only -- he only requested funding for the registration and all other expenses from his personal funds, I believe that's correct. And I know that Councilmember Liccardo pulled his. Was there a change in the policy? Because Councilmember Liccardo's memo appeared similar to Councilmember Herrera's. And I'm wondering if there was a change, that's why he pulled his or weighs making some adjustments on how he was going to determine how he was going to be paying for that trip?

>> Lee Price: Councilmember Campos, Lee Price, City Clerk. There have been no changes to the council travel policy. This trip does qualify as it has in the past, to be paid for by the special fund set aside each year by the mayor and the council called the mayor and council travel fund. I'm afraid I don't have any information about what Councilmember Liccardo's intention was when he --

>> Councilmember Campos: No, I think you answered my question. I wanted to note there was a change in the policy because I'm reflecting on how Councilmember Constant had designated the two different source sources of how he was going to be paying for his trip. I guess he's doing that in hard times and difficult times feels he ought to be able to help the city out a bit. I thought maybe I'd missed something, that there was a change in the policy, it

striked a question. Because Liccardo had pulled his and it reflects the same as Councilmember Herrera. So I think that was a wise choice to help the city out on Councilmember Constant's behalf. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I'd just like to say I took that trip two years ago and used the funds. That has no policy change, no differences, and provided a report back. So I think it's a good thing. So thank you.

>> Mayor Reed: 2.8, is there a motion? Motion to approve 2.8. All in favor, opposed, none opposed, that's approved. That concludes the consent calendar. Item 3.1 report of the City Manager.

>> City Manager Figone: Thank you, mayor and council. I have two items to report on. First of all the police chief recruitment is well underway in that we have completed three of our community outreach meetings. We have two more this week, one tomorrow evening, Wednesday September 1st at 6:00 p.m. at the west valley library. And then the next one, and the last in terms of the community wide meetings, on Thursday, September 2nd, at the Eastside Union High School district offices, again at 6:00 p.m. As we've committed at these community meetings, we are posting the notes from the meetings online within 72 hours of the meeting, and you can already find notes from last week posted. Also, our targeted outreach with the various special groups is underway. And the list of those groups who we intend to reach out to are also posted online with also the status of that outreach. And so I invite the mayor and council and members of the public, if you see a special group missing, please bring that to our attention so we can find a way to reach out to them. Also, the council meeting of September 14th, we will have the policy statement for the department for your approval and I'll also take the opportunity at that time to update you more formally and receive your feedback on the process to date. Again, if you have any questions in the meantime, please feel free to contact me or Deanna Santana of the City Manager's office. The second item is one that has just come to my attention, and so it is very sketchy right now in my own mind. But I did want to let you know because I understand some councilmembers have been caught off guard by contact from the press. What has come to my attention is that local 230, the firefighters union, has held a press conference and

has revealed, it is my understanding, a tape from that conference which was conducted last spring, where a city staff member who was presenting made some comments about dynamic deployment. And so that videotape has now been revealed through a press conference which is very unfortunate in that it has caught many of us offguard. So as we speak, my staff is sorting out the details of who said what to whom. And then I think very importantly, what context? Because certainly comments can be taken out of context. They will prepare an info memo to get to the council as soon as possible, to let you know what we're aware of and what we're doing to manage through, what appears to be, from my quick read, a discrediting campaign around dynamic deployment and the difficult decisions that you as a council had to make during the budget process. Let me just remind you all, that we brought to you dynamic deployment as a proposal which had been thoroughly vetted, professionally by the senior staff of the fire department and myself. As we went through that internal vetting our thoughts about how to mitigate the issues associated with pulling resources out of the system, our thoughts changed along the way including my recommendation to bring to you adding a battalion chief in order to ensure that we had the best minds around how to use the dynamic deployment approach which was a move-up strategy which is very common in the fire service. You had also received, as did the public, a very thorough fact sheet about what dynamic deployment would do and what it wouldn't do. We also thoroughly discussed that in an MBA, a manager's budget report, earlier in the process. Again, this was one of many strategies that were well thought out to bring to you and among many difficult decisions to balance service delivery, as you faced dealing with \$118 million shortfall, which you did last year. So again, in closing, I will bring to you more details through an info memo as soon as we sort this current set of events out. Thank you.

>> Mayor Reed: Our next item is 4.1, contract amendment for the neighborhood stabilization program. We have a motion to approve. All in favor. Opposed, none opposed, that's approved. 4.2. Actions related to the kings crossing apartments. We have a motion to approve. We have a card from the public, I'll take the card or the public testimony at this time. Jerry Mungai.

>> Thank you, mayor. The city prides itself in the fact that its leader, the leader in the state for affordable housing with over 18,000 units and more on the way. Now we have kings crossing which will provide housing for extremely low and low income families. They can no doubt be families that earn in between 11 and \$64,000

annually and will no doubt be eligible for other taxpayer provided subsidies like earned income tax credits, food stamps, free school lunches, subsidized health care, and a myriad of other services. And it will only serve to attract more demand for subsidized housing which is the whole idea, because housing demand, whenever it exceeds supply, thereby ensuring a long life of the housing department. It's a perfect example what Reagan once said, the closest thing to eternity on earth is a government agency. The \$25 million and the loan, the \$10 million, will come from public financing, actually. This means more government financing that will crowd out financing available through private sector. Not only that, but it sadly can contribute to crime problems. Just recently, this weekend, the Mercury News talked about the fairway affordable housing complex, the murders that took place there, and the neighbors who were interviewed there said the drug dealing problems in that area continue to mount, and some might wish to leave the area. Also, the building costs are inflated by the requirement to pay prevailing wages, that would mean union wages, and union wages for nonskilled labor. But the costs are really understated, because they don't include the bureaucratic costs at the federal, state, and city levels to define area median income and deviation from that, determine the eligibility, rent levels, living wages and et cetera. In short the free market will provide housing at lower cost and that needs of the individual home buyer or home renter. Thank you. So I'll urge you not to approve this.

>> Mayor Reed: That concludes public testimony on this item. We have a motion on the floor to approve. All in favor opposed, one opposed, Oliverio opposed.

>> Councilmember Oliverio: Mayor I had my light on real quick.

>> Mayor Reed: I'm sorry.

>> Councilmember Oliverio: No, not a problem. I'd just say, at the time that this came to council I voted against it, because it was like adding 1400 people and a one-acre park, so I just voted against it, and I'm going to continue, thanks.

>> Mayor Reed: All right. That motion passes. Our next item is 4.3, public hearing on rezoning on real property located at the Northwest corner of Winfield boulevard and blossom river way.

>> Move to approve.

>> Mayor Reed: I have a motion to approve. I have a card from the public to speak, I'll take that at this time. Peter Johnston.

>> Good afternoon, thank you, my name is Peter Johnston, I'm an architect with PDC Northwest, representing our client, the owner of Brookdale Senior Living. I just wanted to add one thing to the record. I know that it's approved -- or I didn't know it was going to be approved until now, but this request to allow assisted living on this campus is really borne out of need, borne out of necessity. With the population there, the independent seniors would like to know that they can require additional services as required for daily living so that they can stay in their apartments with their friends, not be forced to move off campus and start all over again. So really, I think allowing this improves the neighborhood and improves the life of the citizens here. So thank you very much. I'm available to answer any questions if necessary.

>> Mayor Reed: We have a motion to approve. All in favor, opposed none opposed, that's approved. Number 5.1, amendment to the development, operations and maintenance agreement with the Viet heritage society. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. I'd just wanted to start off by thanking PRNS director Albert Balagso and his staff for your commitment to work with Viet Heritage Society to help this project move forward. There has been many bumps along the way, but staff has worked with VHS to find more practical ways to approach this project and show their support for it these many years. I would also like to thank Sophie Tran, the acting director of VHS, and Dr. Nguyen, who is the chairman of the board, for their continued commitment to this project. The Vietnamese heritage garden to be located at Kelly park will be the first of its kind to be developed in this nation. As many of my colleagues know, this project has been in the making for almost two decades. Giving

this project our blessing today will help it move forward and I'm optimistic that construction will commence shortly thereafter. The board has been working very diligently to secure funding from our sources including the state the county and individual donors. It is also worth noting that VHS will donate the project to the city as a public park for the use and enjoyment of all residents. District 7 has a high deficiency of parks and open spaces, and the addition of the Vietnamese heritage garden would offer an alternative location where residents can relax and enjoy. This also helps in our long-held goal of creating cultural gathering places in our city. So with that I would like to move for approval.

>> Councilmember Pyle: Second.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Thank you. We have a motion on the floor for approval. Councilmember Herrera.

>> Councilmember Herrera: I just wanted to congratulate Councilmember Nguyen on this really great project. And for her leadership on it. I know that she's been working diligently since 2005 to make this happen, and I think it's great to have -- we're going to have this place promoting rich cultural diversity where people can come together and that everybody can learn more of the Vietnamese culture. I know it's been one of her top priorities and she's been working all summer to make this happen. So again, congratulations.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I just wanted to add a few comments to say that I've been here for almost 16 years. And I think it is nice to see that we're finally going to be able to move forward. I was there for the groundbreaking. And not a whole lot of movement has happened. So congratulations to Councilmember Nguyen for moving this forward. And congratulations to the Viet heritage society for making sure that the vision continues to move forward. I will be supporting the motion.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I wanted to echo Councilmember Herrera's sentiments on the good work of councilmember Madison Nguyen. I'm very excited to see the private maintenance. Because in reality, this thing has been stuck for a while because of the structural deficit. And if we don't have these private maintenance agreements, nothing's moving forward in the city. Thank you, councilmember.

>> Mayor Reed: I have one request from the public to speak. Dr. Nguyen.

>> Good afternoon. The honorable mayor Chuck Reed, San José city, the honorable member of city council, I want to introduce myself. I am Yiang Nguyen, the chairman of the Viet heritage society. And we have today here, Sophie Tran, our current ED, and board members. As you know, the Viet garden project has been initiated in San José more than 20 years ago. But not until April 2005 when the city council approved and hand the job to build the garden to Viet heritage society. Since then we've been working very hard with the city with our architect, design team, and at this moment we come up with our fourth amendment, before we can start building the project. During this moment, I would like to recognize a few special individuals, who have donate and contribute a lot to the project. The first one, I mention is mayor Chuck Reed who, at the time, very beginning, has been one of the pioneer and the founder of the project. Thank you, Chuck Reed. Then also to recognize councilmember Nora Campos and Councilwoman Nancy Pyle who have contributed significantly to the project at the very beginning stage of the project. Then one person I won't forgot to mention, she has put her whole heart into the project and she has been from the beginning of the project she has been with us every moment and without her we won't be here today so thank you so much, councilmember Madison Nguyen. And also, we working with many city staff that I would like to recognize, Albert Balagso and Brian Hartdale with the park and recreation. And also Bill Haddock with the Department of Public Works. Also not forget to recognize member of our design team. We have Peter Cole architects, David Meyers, Ken Alcott and Kyle Yuseff with Brian construction engineering. So once again on behalf of the community and the Viet heritage society I would like to ask the council for your strong and full support. With your approval today is allow us to start building the project as soon as we can without further delay. Thank you so much for your support.

>> Mayor Reed: Thank you. That concludes the public testimony. I have been working on this project a long time and I would like to thank Dr. Nai Nguyen and the people who stepped up in the middle of the two decades so to speak and began to work on the project to help the community achieve a long term goal and I know that it has taken a lot of staff work, not just in parks department but in Public Works department and others to try to make this thing a reality. It looks like we're there, we can start construction soon with this action. So I'm very much looking forward to the day we can start that construction and we can all enjoy this for the whole community. So I want to thank the board though for carrying on because they're the ones who have to raise the money and do the work to make it happen. So this truly is a community project, which we're helping but the community is driving this. We have a motion to approve. All in favor? Opposed none opposed, that's approved. Congratulations. [applause] Item 7.1. Public hearing on a commercial solid waste and recyclables collection franchise.

>> Councilmember Chu: Mayor, can I ask City Attorney that --

>> Mayor Reed: Councilmember Chu, yes.

>> Councilmember Chu: Do I need to recuse myself for this vote?

>> City Attorney Doyle: The -- I think the issue involves if CWS has an interest in this issue, is that correct? .

>> Councilmember Chu: Yes.

>> City Attorney Doyle: I think based on your form 700, you should recuse yourself.

>> Councilmember Chu: Yes, could I request to be excused?

>> Mayor Reed: Okay, Councilmember Chu will step down for a little while, while we hear this. Is there a staff report on this item?

>> John Stufflebean: No we're just in place for the next item mayor, sorry.

>> Mayor Reed: Anything -- I have no cards from the public on that so is there a motion? Motion to approve the franchise. All in favor, opposed, none opposed, Councilmember Chu abstaining. Item 7.2 storm water permit annual report. There is a staff presentation.

>> John Stufflebean: Yes, John Stufflebean, director of environmental services. We do have a short presentation on both 7.2 and 7.3, which are both related storm items, and I will turn it over to Melody Tovar, deputy director of watershed protection, to make the presentation. Thank you.

>> Good afternoon. We're pleased to be here today to request your authorization to submit our annual report for Fiscal Year 2009/2010 to the Regional Water Quality Control Board for our storm water permit implementation. Our storm water permit programs aim to minimize pollution entering our storm sewer system, as water that flows through our community goes directly without treatment to local treats and ultimately the bay. The permit was newly issued last year as a reminder, and it became effective December 1st, 2009. It is now a regional storm water permit, and municipalities throughout the San Francisco Bay Area have the same requirements for storm water management. Just as rainwater flows across the whole of our watershed, with so many opportunities to interface with our daily activities, our permit activities span the breadth of our program services from the city -- from across city departments. This is not just an environment services effort. Implementation of these programs is a collaborative effort among staff from our department as well as transportation, Public Works, parks, planning, general services and more. This is the first annual report under the new permit and it also follows the standardized template for the first time that was developed by the Bay Area storm water group and the permittees under the permit as a requirement of the permit itself. We want to share several highlights from the year. A number of our new program efforts have had to evolve swiftly over the last seven months. In partnership with our Department of Transportation, we have implemented new procedures regarding outfall inspection in order to

screen our system to better ensure there are no illegal connections to our storm sewer system. Also with Transportation we are now implementing a monitoring and inspection program for our pump stations. Our biggest concern is dissolved oxygen, and we're also working with the Department of Transportation to come up with management strategies to increase dissolved oxygen if our inspection deems that that is appropriate. Dissolved oxygen is critical for aquatic habitat, and this is the first time we're having to monitor our pump station discharges under our storm water permit. For potable water discharges for the first time there is also monitoring going on associated Wednesday routine maintenance activity such as hydrant flushing shown at the top of the slide. This is true for all municipal potable water discharges including our own municipal water system. They have quickly implemented a monitoring program where they're now doing monitoring for chlorine, pH and turbidity every time they go to flush a hydrant. This is also consistent across the region again for municipal potable water program managers. And lastly here we have been amping up our efforts for water quality management across the Bay Area. And that's begun with all agreeing that we will do this collaboratively as a region. And so San José, as have the other 77 permit holders under this storm water permit, have agreed to do our water quality monitoring as a regional monitoring collaborative. San José staff also participate directly on a number of regional groups that work on monitoring efforts and special studies related to special pollutants here in the area such as PCBs and mercury. We've also worked very hard to expand a number of our programs dramatically to reduce pollutants that will be a key part of our permit implementation over the next four remaining years. The city's working towards aggressive trash reduction goals including cleanups, enhanced maintenance, structural controls, and potential actions to reduce litter at the source, a reminder to us all that we are aimed to meet a 40% trash reduction goal from our storm sewer system by 2014. We've already begun to assess and inspect the 32 hot spots that are required. These are areas within our creeks that have an accumulation of trash within them. We have begun that process, having selected the 32 from an initial pool of 89 sites. The staff has also been working on the environmental impact report for a plastic bag action that has been out on the street now for almost a full 45 days. And we're also progress quite quickly to installing two very large control systems within our storm sewer system to capture trash and intercept it within the system, as well as installing more of the small devices. Additionally, we continue to work on integrating storm water treatment into our development projects. As development activity has declined in recent years, so too has the activity associated with requiring storm water treatment, but it does continue. This year over half of the regulated development projects that integrated storm

water treatment did so using landscape based design measures such as the bioretention areas you see in the center slide. And also, excitingly, we have been maximizing our potential with the integrated pest management strategies. To address pesticide toxicity in our creeks the city has a multipronged approach. This year we were recognized by the Department of Pesticide Regulation from the State of California through their innovators award for our use of integrated pest management in our city operations. Our program includes a number of elements such as use of biological controls instead of chemical controls for weed abatement and other needs. We show here the sheep grazing on one of our city sites instead of herbicide application. A nice dovetail to that is we have recently been informed that we will also receive from the Department of Pesticide Regulations a \$200,000 grant to implement a pesticide-free park within our Guadalupe River Park and Gardens. This is a great example how we have taken the requirements of a regulatory structure and aimed our work in the direction of innovation and service to our community, and it is being recognized by other parties. So we continue to be a leader in the bay watershed, in support of implementing programs that protect water quality. We want to recognize the many departments that have been involved in this effort particularly as the organization overall goes through such transition. We recommend that the city council authorize submittal of our storm water annual report. Thank you.

>> Mayor Reed: I have no cards from the public to speak on this item. Is there a motion? Motion is to approve the submittal as recommended by staff. All in favor. Opposed, none opposed, that's approved. Item 7.3, storm water permit implementation. Is there additional staff report on that?

>> There is a staff presentation.

>> Mayor Reed: Okay.

>> At your discretion.

>> John Stufflebean: Just a couple of minutes.

>> Mayor Reed: You're not going to repeat what you just did?

>> John Stufflebean: No.

>> Mayor Reed: They're related but not the same.

>> They are very related.

>> Mayor Reed: Okay.

>> In addition to our storm water activities, and we thank you for your time today, we are also recommending that the council to direct the attorney's office to make some specific code changes that will support our permit implement. Specifically, the storm water permit recognizes that even small construction projects have the potential to contribute pollution. And so it requires that we have adequate legal authority to require best practices on all types of sites, regardless of the type of permits that's required. We already have code language that requires a general prohibition against pollution and nonstorm discharges. We already have code requirements that talk about best practices on large construction sites. Our recommendations today focus on ensuring adequate coverage for small construction sites. These changes will more explicitly allow us to enforce on those smaller sites, when and if we need to, based on complaints, and it would more closely align with the permit language of the storm water permit. Projects one acre and larger in addition to our own local regulations also must comply with a statewide construction permit that was also amended and adopted last year and it is frankly more aggressive than the things we plus require of them locally. Both the construction permit and the storm water permit are new and a reminder that our storm water permit is regional, so the things we are recommending are consistent with what's expected across the Bay Area. Our program approach however does not change substantially. It is very consistent with our current practices where we do do proactive inspection on large construction sites, and for smaller sites we focus on education. We will ramp that up a bit through our permit center, but our inspection of smaller sites will only be in response to complaints, should we receive them. And lastly we have one additional change in the code related to storm water treatment systems on development project sites. As we talked about in our update for annual report, this can be a number of different kinds of

techniques. They can be landscape based, but sometimes they are mechanical. And in the case of mechanical devices, they are often underground, like the photo shows here, with an above-ground access point. Sometimes these systems are harder to identify whether or not they have been maintained properly from afar, and so we are recommending that the municipal code more specifically allow us to require maintenance records and access to their sites in order to properly -- properly ensure that they have been maintained. This too is required specifically by our permits. So in recap, we ask that the council direct the attorney's office to prepare an ordinance amending the municipal code for construction sites and storm water treatment system maintenance. That concludes our presentation.

>> Mayor Reed: We have a motion to approve. Further discussion? All in favor, opposed, none opposed, that's approved. Our next item is 8.1, response to the civil grand jury report entitled disaster preparedness in our county and cities.

>> City Manager Figone: We have no report. Here to answer questions.

>> Mayor Reed: All right, we have a written response, staff report. But anybody has any specific questions? I have a motion to approve the response. All in favor, Councilmember Pyle.

>> Councilmember Pyle: I just wanted to say before everybody forgot, I am the liaison to emergency preparedness committee, and it's been my pleasure to spend some time with Mr. Godza, because he is absolutely a prize. We were very, very fortunate to get him as our emergency developer, director. And he's doing a great job and I think that actually we are -- I can't say we are better than other cities but I think that we perhaps have done more, we've tested more. And the city is in, I think, excellent shape. I'm glad the question came up because it certainly should, based on what's happened in other cities regarding an emergency. But I was really interested, when I saw that, I thought oh my gosh, they don't know what shape we're in. We're more concerned right now in reference to what we do with the most fragile population whenever there's an emergency. That's our biggest concern right now. When I say that I'm talking about pets, older people, people that are disabled, young children, that may or may not be left alone. So those are the things that we're busy working on now. We meet at

least four times a year with the county. Each city has a representative and the next meeting is one in which we will be making a presentation for the City of San José. So I'm hoping that we can tape it or do something and allow it to be brought here as well. So with that, did you have some comments? Okay, thank you.

>> Mayor Reed: A motion to approve on the floor. Nora Campos.

>> Councilmember Campos: So Councilmember Pyle, thank you for serving and representing the City of San José on this board. I just have one question. I think for the chief. Regarding the report, in light of the situation of removing a few trucks and engines and a few firefighters, as we move forward, are we still in the same capacity in relationship to this report, being able to meet the demands, if we were to have a disaster in the City of San José?

>> Mr. Mayor, members of the council, Willie McDonald, the city's fire chief. It is true that we have less capacity now than we have had in the past, given the reductions that we've had as a result of the budget reductions. We are very well poised to provide services to our community, but we also are plugged in with various, you know, county agencies as well as other state agencies that would assist us in the event that our resources are impacted to the extent that we're overwhelmed by whatever the disaster may be. That's the good news. The bad news may be that there maybe other incidents that are occurring within the county or other parts of the state that may also impact those same resources that we would try to draw upon. But the system of emergency preparedness, not only in the city but also in the valley, as well as the state, link a lot of resources together that are available to us that we can draw from.

>> Councilmember Campos: And then I don't know if you can answer this question, but each council district, I remember almost 15 years ago, where there was a standard that, there was a designated area in each council district that was considered hubs if, for some reason, councilmembers or the mayor could not make it to City Hall, to get briefed on the situations. Where are we at with that in the City of San José?

>> Mr. Mayor, councilmembers, I'm Chris Skyley, director of emergency services with the fire office of emergency services. Specifically to your question, councilmember, that is in fact correct. Each of the districts, the councilmembers did have a field office designed. This is designed to provide a focal point if you would for councilmembers to contact their community members and receive input and feedback directly from their constituents as well as provide information to the constituents during a disaster response. In the next two weeks you will be receiving a disaster handbook if you would that will guide councilmembers and your staffs in coordinating a response to a major event. And in February of 2011 we'll be conducting a four-hour course of instruction for the council on specifically roles and responsibilities, as well as the specific procedures for responding to a major event here in the City of San José.

>> Councilmember Campos: Will you still have designated areas in each council district? That was something that we shared with the public so that they were prepared as well if they needed to receive any information and they couldn't make it to City Hall or lines were down. Has that been done yet?

>> Yes, we still do maintain the list of the councilmembers appointed or selected field offices and it is the intent to continue that practice to allow the constituents to have that immediate access to government in response to a major event.

>> Councilmember Campos: Can you re-send that out. I don't remember seeing that.

>> We will be sending that out also in the next two weeks along with the disaster handbook.

>> Councilmember Campos: I appreciate that. Thank you.

>> Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I think a lot of what we're talking about here, as the chief just talked about, a regional effort when I look at the questions and the responses to the grand jury inquiry. And I'm very concerned about our residents being prepared, and so I think it's very important that we continue the San José prepared training. My question, I guess, would be how are we going to make that available to more people? I think it's a great training but I think it takes a while. It's 20 hours and maybe you could comment on how many people have gone through it and what kind of opportunities can we provide online to get people through that training? Because it's a partnership. Obviously, we have trained fire personnel and other kinds of first responders. But if we have an emergency, just by the fact we have this training, it says that we're going to have an informed public that can help themselves to a certain extent and can work together. And I think Chris we talked about that when I met with you so I'd like to know what we're going to do about getting that training out to a wider audience more quickly and also what I would like to see again, the people that are cert trained, that they be identified and that information be gotten back to council districts so that neighborhood leaders and organizations know who the cert-trained people are, so they can be tied to in working with the fire departments working in their area. So if you -- whoever would want to take that question.

>> Absolutely, councilmember. The intent is to develop not an effective emergency response plan that maximizes local governments' capabilities, but in fact develop a more resilient community as a whole. Both individual residents, their neighborhoods, community-based organizations, private sector organizations, if each and every one of those were more resistant or could better withstand the effects of an event, the need to provide resources or support for those individuals would be radically diminished. In many case and in most major events it is in fact your fellow citizens, your residents, your family members, that are most likely to come to each other's aid. And it is not necessarily the well-publicized resources of government that are going to carry the day, especially in the first two or three days of an event. So you've struck a note in that San José prepared is designed directly to address that need of our communities. And it is the intent of our office to not only take the success that we have enjoyed on years past but to expand that, to provide a broader spectrum of access to that kind of information and that kind of training. Whether it's online access with training programs and videos, a two-hour class which is the cornerstone of the San José prepared program, or the 20-hour community emergency response team training. We do continue to receive Homeland Security grant funding to provide for one individual to coordinate

the training efforts. But in recent months, the last seven or eight months, we've continued to expand the role of volunteers as instructors. So we're actually make better use of actual community members teaching peer to peer if you would both the two-hour course and the 20-hour course. We've been able to expand the participation in the two-hour course from 850 residents two years ago to 1200 residents this previous fiscal year. We expect to go beyond 2,000 residents this current fiscal year. In terms of community emergency response team programs, that is a potential to not only educate individuals, but also begin to organize them and make them perhaps a community service, or actually physically tie them or operationally tie them to the fire services. That is an option at this point that we are exploring. It's being done in some communities, and we can certain hope to see what San José might be prepared to support.

>> Councilmember Herrera: So Chris, if I hear you correctly, even notwithstanding the fact that we have lost some trained fire personnel, what we really also need to do is beef up and really work with our community to train them so that they can be able to take care of themselves. Because even at a fully staffed situation with fire and police we are still going to have community that has to deal with taking care of themselves in the event of a major earthquake for what, 24, 48 hours, what's the time we're talking about, 72 hours?

>> We'd suggest at a minimum 72 hours but previous experience in major events have indicated, especially with the disruption of public systems like utilities and transportation, individuals should be able to go about 96 hours, hopefully without major support from outside. But again, it is absolutely correct. It does become the responsibility of each and every citizen to prepare themselves and their families, because that is in fact where the greatest benefit will come. We're also looking at this as being an empowering tool for individuals rather than stressing the fear and the apprehension and the stress or the chaos that might come after a major event, being prepared for yourself and your families is empowering. It gives people a sense of strength, and it also is very important for improving the strength of community ties and neighborhood ties.

>> Councilmember Herrera: And I'm sure that helps our firefighters and police officers know that they will have an educated public that can help people out, so they can attend to the most important emergencies at that time. Thank you, Chris.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Since Chief McDonald was called up, I had a question on disaster preparedness. Chief, when we look at different groups of the city, different employee groups in the city, for example librarians, about 88% of them live in the county of Santa Clara. But when it comes to firefighters -- and I'm looking at the city's information -- 36% live in the county. So they're not in the immediate area. So when we have a true disaster and a majority of our workforce that would respond to disaster is not in the vicinity or sometimes not even in the state, what challenges does that present?

>> Mr. Mayor, members of the council, it's a different challenge, and it depends on when disaster would occur and what type disaster it is. We find that a lot of times that these disasters come on for not only hours but days. And so depending on what type disaster, how it impacts our resources, we may have to change a lot of our standard practices, for example, we might have to change the shift schedule so that we would bring some more folks in. The ability to bring those folks in will of course be determined by what kind of incident it is or how widespread the disaster is or how available folks are to be able to come in from whatever the damage may be. So yes, it's a challenge. If it happens to be at the time when we have a lot of our folks coming to work or going off we then of course have twice the number of people that we would normally have available to us. So in that fortunate case we may have more firefighters available to us than we would otherwise have. But it could happen at any given time and so it will depend on the type incident, the availability of our folks to be able to get here, and the amount of times that it takes overtime, that it will be responding to the incident that really be able to know what availability we'll have of our folks.

>> Councilmember Oliverio: Certainly, ideally would happen at shift change but that would be difficult to manage.

>> Right.

>> Councilmember Oliverio: I guess as a chief, managing resources of skilled personnel and having them available for a disaster to treat residents of San José, do you believe there should be some level of requirement that people live within a reasonable distance of the city, since we have thousands of people that apply for each fire academy?

>> It would be great if most of our folks came from the community. In fact, that would be good for a variety of reasons, not the least of which is a connection that would you see for the folks would have to stay here to be here to be involved in the community. But we still see that a lot of our folks, are involved in the community and so they by chance may be here or they may have some impact here otherwise. But of course you know if the question is would it be better to have our folks live nearby, of course it would be.

>> Councilmember Oliverio: Thank you, chief McDonald.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, Mayor. Just a question for Chris. I'd just like to ask you to elaborate your effort in reaching out to non-english speaking residents in the city.

>> Yes, councilmember, we've identified a critical issue in that we really discussed or spoke about what we used to call special needs populations. We now call them access and functional needs populations. These are segments of our community that have either physical barriers, social barriers or language barriers do accessing government services on a daily basis and during response or in response to a major event especially critical that we provide a mechanism for that to occur. In terms of the preparedness training we are prepared to conduct our San José prepared courses in a multiple variety of languages making use of either translator systems or electronic translation devices to provide that training. But more importantly what we're attempting to do is make use of the existing community based organizations and those social networks that may provide services to a population that English is not their primary language. So instead of having some outsider come in and present a course or a class and have it translated for them, we'd much rather make use of one member of that community

to provide that message already through that existing network. Which reinforces that network and also provide a level of credibility and trust that may not be present for many parts of our community. We've identified about seven languages at this point that we're going to be prepared to deliver that course and instruction as well as all of our other materials and we're moving much more aggressively into providing our resources and delivering our services to those targeted segments of the community. And a bit less to the general population, because we realize that this is a group of people that is going to need that assistance prior to the event and most especially after the event most of all.

>> Mayor Reed: Chief, you mentioned there might be a need to change the shift arrangements in the event that we have a major disaster. I'm interested in knowing what power we have to do that, considering that anything, everything, is subject to the meet-and-confer requirements of the Meyers Milius Brown Act. And if you today wanted to change the shift, you'd have to first set up a meet-and-confer session, and then you might have to go to arbitration if the union didn't go along with that. So in the event of an emergency, do we have the power, under our city ordinance or state law, to say this is an emergency, we're going to make decisions, that the incident commander or the chief is going to be able to make decisions about how we deploy our people, we don't have to go through a meet-and-confer process?

>> Let me start with that. Mr. Mayor, members of the council, it's been my experience that under certain circumstances emergencies in the declaration that the council and the mayor would declare, that we would have the ability to change a variety of things on how we provide services, shift schedule and when people come to work is one of those. That we wouldn't need to meet and confer with anyone, that we would contact our folks and have them come back as an order.

>> Yes, sir, basically California law states that upon the proclamation of a local emergency the appointed director of emergency services in our case the City Manager does have the authority to direct staff outside the normal bargaining unit agreements that may be in place or any labor force agreements that may be in place for the extent and the duration of that declaration of local emergency.

>> Mayor Reed: What will it take to declare a local emergency? Do we have to convene the city council? And declare it?

>> No, sir, actually what would happen at this point is depending on the timing of the event, and whether or not we had any lead-up time, at this point we may approach the City Manager, explain the situation, make recommendations in terms of actions that we might be taking, including the potential for proclaiming a local emergency. If the City Manager were to proclaim a local emergency, it must come before this council within 14 days for ratification, because ultimately it is this governing authority that provides that legal basis for the City Manager to take action.

>> Mayor Reed: Well, that's good. That means we don't have to take a week to figure out that we're in an emergency. We can react immediately, which is really critical.

>> No, sir, 3:00 a.m., just sign here and it's all done.

>> Mayor Reed: Okay. Because when the big one hits, it's going to be an emergency. We don't have time to call a city council meeting to figure out it's an emergency. And I would like to note that the grand jury has recommended the one recommendation in the report is that all residents learn to prepare for emergencies and assume responsibility for their own welfare in the event of a major emergency or disaster. Pretty simply, as has been explained, in the event of a big one, whatever that big one is, our resources are going to be overwhelmed. All you have to do is go back and look at 1989, when we had the earthquake, look what happened to first responders around the Bay Area. And that wasn't the big one. So we know that whatever resources we have to respond immediately with government will be overwhelmed. And so three days of food, water, and medicine, every person in this city should look to their family to make sure you have that, because it may be three days before you get a fire truck or a police car or an ambulance. In fact, there may be three days before the 911 system even works. We don't know. So you have to be prepared to take care of yourself, your family, and your neighbors. So this program, the San José prepared program is really important to help people be able to do that. But there's no doubt that no matter how many firefighters we have, how much equipment we have, the big

one will be bigger than we can handle. Thanks for report. I think there are a couple more questions. Councilmember Pyle.

>> Councilmember Pyle: You're absolutely right. If we just do the math you'll know we're not able to get by with whatever staff we have. I just wanted to say too that when you mentioned the fact that everybody needs to be prepared with water, food, et cetera. We Do did do a district wide event last year, was extremely well attended and we sold the packages, not packages, but they're kind of like large duffel bags, with a variety of provisions in them. And they just sold like crazy. We made it a very generous offer. And I know we have a lot of people prepared in my district. But what I hope we are going to be able to do is to duplicate that throughout the city. So that if somebody in district 10 didn't get that particular training they can pick it up but at a different site. And the high schools work extremely well because of the different breakout rooms. And people who helped with that event were basically as you had mentioned Chris, they were volunteers who turned into grand masters giving courses on any particular item. They're quite professional. So it all kind of comes together, and the whole district, the whole community tends to take responsibility for what has to be done. And they're ready, and willing, and able, to make it happen. So thanks.

>> Mayor Reed: I think that's all the council questions. I have one request from the public to speak. We'll take the testimony at this time. David Wall.

>> David Wall: It's good to see Your Honors on duty as usual. I believe this city is wholly unprepared for a disaster. That we have seen, basically, in Pakistan or China or whatever. I vision people, because of their laxity in our country, and it's not government's fault per se, are not prepared. And you were rightfully so to remind everybody to be individually prepared. But this warning must be on a weekly basis in my opinion, until you see behavioral changes. Mr. Mayor, you often go to Washington for a variety of things. I would think surplus military equipment for water trucks, for example, meals ready to eat, possibly, 5, 6 million rations to be warehoused somewhere in the city, leaving up of the national guard armory might be a wise move. But also, individually as fire stations, can fire trucks be equipped with water filtration devices, since water will be the most critical element, and pure water, or water that won't create dysentery or other types of abdominal problems, should be, I mean we're

the capital of Silicon Valley, right? And we're relying on 96 hours for the government to react. We all have a stake in this as individuals and I do not discount individual responsibility for this matter. But there are a lot of resources coming home from the war that could be reutilized and could be possibly just given at will to cities that ask for them. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion before the City Clerk. I believe, is that right? All in favor, opposed, none opposed, that's approved. We'll now take up 4.4. Item 4.4 has two parts. There's an administrative hearing on appeal, and then we have the zoning for real property on the West side of Guadalupe Mines Road. This has been heard once before. And continued to this date. And let me just talk about how I think we should handle this hearing. First off, all these who are going to speak on it, come down to the front. This is the last item on the agenda, plenty of room to sit. Since we have four appeals filed, and we have the zoning, what I'd like to do is open up both matters at the same time. We'll hear from the appellants, like to give each of the four parties three minutes each. And then hear from the applicant, in response, who I think could probably do it in three minutes. Take public testimony, whatever anybody else wants to say, and then let the applicant use the rest of his time to have the last word for another five minutes. And then we'll let staff add anything they need to add and then we'll have council discussion and deliberation. Councilmember Pyle did you want to make some opening remarks?

>> Councilmember Pyle: I would, thank you, Mayor Reed. Before we begin I'd just like to say that I take it, my responsibility to carefully and fairly look at new development proposals in district 10, very, very seriously. I've been out to the site, walked it, I've read hundreds of pages of material on this project, met with representatives of the neighborhood and environmental groups concerned with this development. The developer Truemark and our professional city staff. The majorities of concern regarding this project centered around traffic, school district enforcement, emergency response routes and loss of open space, not to mention the riparian corridor. Staff responded to concerns regarding traffic schools and emergency response routes and the corridor. My original memo enhanced the staff responses to the concerns of residents by recommending an increased riparian setback, a donation in the developer to help fund work to help address the traffic concerns, and my personal commitment to working with the community and our office of emergency services to create an emergency

preparedness plan. After the deferral of this item on the 17th, I've continued to ask questions of staff and the developer and listen to community concerns. These additional two weeks have been very beneficial and I'd like to thank everyone who has become so actively engaged in this project. Your ideas have been given serious, serious review and I truly appreciate your dedication and commitment to this project. Your input has helped to guide the additional recommendations I'm submitting today. I believe that this development, with the recommendations from my two memos, will honor the intent of the riparian corridor policy, greatly improve the existing conditions on site, provide permanent public access to the Guadalupe creek and will provide housing, much needed housing in the much desired \$1 million range for future residents. And with that Mr. Mayor, I'm ready to hear from the public.

>> Mayor Reed: All right. We will first turn to our staff. I think the director of planning has some overview. There's been some work that's been done in the last couple of weeks, I think he'll probably want to bring us up to speed on.

>> Joe Horwedel: Thank you Mr. Mayor and council. Today there's the two items we're going to talk about. First is the appeal of the mitigated negative declaration and then the land use question. And as noted in the report, there were several major issues, as councilmembers pointed out, riparian setbacks, the grading that goes onsite, and then how the streets network. We'll move on to the negative declaration and appeal. The council, as a part of the appeal of negative declarations, have three choices in front of you. You can go and uphold the decision of the director in issuing the negative declaration, that finding that the work the staff did was adequate and compliant with CEQA, you can direct that the staff direct more analysis of the issues that you've heard thus far or you may hear today and direct staff to recirculate a new mitigated negative declaration and bring that back. And the council also can direct that the applicant and staff prepare an environmental impact report to address the impacts of the project. And so I will talk a little bit about the environmental issues themselves. The big issue that has been talked through the review of the project, and through the environmental protest, has been the riparian corridor policy and how this project conforms to the policy, and is that a significant environmental impact. It's important to remember that the riparian corridor policy does provide numerous benefits to the city. It was created to address that our creeks are an important habitat to the city, they are part of our flood control system in the city, and that we need to be responsible about erosion control. Your storm water permit we heard earlier today is related to that. They are

also a very important part of the esthetics of the community, a recreation amenity. The policy does recognize that it is important to protect those habitats and minimizing any impacts to the resources, and that we should try to find ways to do better with our streams in protecting those. And so we do, as staff, evaluate projects for conformance with the riparian corridor policy. We apply setbacks that fit the specific circumstances. As you know this city is 200 square miles, that we have very different streams, some of them are -- we call modified earthen channels, essentially engineered ditches, to very beautiful riparian streams creeks and rivers in this city. And the policy does recognize the differences between that. The policy starts with 100 foot setback, that is the presumption of what is the minimum setback from creeks. And that we spent a great amount of time as staff looking at projects about how to integrate 100 foot into those projects. There are exceptions that are built into the policy. You heard some testimony at your last meeting regarding past projects and exceptions, and that is something that staff is very mindful about. The environmental community is very watchful about, because every one of those becomes a rationale to do something less than 100 feet in future projects. So we as staff try to be a good steward of the policy. We think it's an important policy for the city. And other regional agencies and environmental agencies at the state and federal level also recognize that. But it is important to note that exceptions do exist within the policy itself. It is a document that begins to talk about what's going on with the policies, we may come back to this as the discussion goes along. But what we're really trying to show in this diagram is that the boundaries are not straight lines. That they really do reflect that every site is unique, that it's really based upon where the trees are on the property, the drip line, the undercanopy of shrubs on properties. And the issues that we're going to be talking about on this site today really look at the exception side and existing development, how do you deal with the site that has a parking lot that literally goes into the riparian area of what is the appropriate setback for that, and then as you put new development in what is appropriate of inside and outside. And so what this is showing is that new development should be outside of the 100 foot line. If we do have exceptions where there's already encroachments into less than 100 feet, we acknowledge that, we acknowledge that in downtown and other major urban areas, that 100-foot setbacks really aren't appropriate. So it is a policy that reflects that we are a very different community throughout the city. For the project site, and it's a little bit hard to see, but I notice the applicant today brought some new exhibits. This is the site plan that we saw previously at the council two weeks ago. You see a blue line that is running through the site. That is the 70-foot average setback that the applicant has proposed for the project, and has been talked about in councilmember's memo that the applicant is, I think

willing to make that work. The red line is what 100 foot setback would look like and that's a minimum setback versus an average and that is what the staff recommendation to the Planning Commission was. That the staff recommendation on this project, it is the site that's on the edge of the city and so we have recommended a 100 foot riparian setback for the majority of the property. We do recognize that part of the site is constrained, one of the exceptions in the policy, and that less than 100 feet is appropriate. That we do think we need to keep working at the grading on this site and trying to minimize the amount of grading, because that partly is driving some of the issues we're seeing with riparian setback and the preservation of the oak trees on the property. As we noted in the staff report, we think the density of the site of a net eight units to the acre is appropriate, and that's -- you'll hear from the community I think today. And the street issue has been talked about in the past but I think this is less of public or private but it's more of just make sure we have streets that really look like full-serving streets and the councilmember addressed that in her memo. And so at this point, we'll make the council discussion and the public testimony occur and we'll be available for questions and comments.

>> Mayor Reed: All right we're first going to take up the hearing from the appellants. Again we're going to take whatever testimony everybody wants to give all at the same time. We have both items, but we will certainly devote separately, deliberate and vote separately on those. First we'll start with the appellants regarding the mitigated negative declaration appeal. And is their representative here from the Audubon society? Let them go first followed by the committee for green foothills. And then Jean Dresden, Lydia wheeler and Susan didder.

>> Mayor Reed, city council members, Bob Power, executive director, Santa Clara Valley Audubon. Thank you for the opportunity to comment on this project. Just a few quick points and a conclusion. The initial study seriously underestimated the bird abandons and diversity at the project site. When a mistake was made at this magnitude, 17 species identified by the experts and the consultants versus 82 species by the citizen scientists, one can only wonder at the thoroughness and adequacy of any of the rest of the environmental analysis. Analysis of the encroachment on the habitat by people and pets was nonexistent in the initial study. Staff response to this issue in the appeal leaves mitigation to a pack of coyotes and a couple of bobcats. I haven't seen this mitigation measure before. And I thought it very creative, if completely inappropriate from a planning and implementation perspective. The initial study ignored the designation of this reach of Guadalupe creek as a cold water

management zone, with the implications for steelhead salmon habitat and spawning. Thorough assessment of the potential impacts of the project of steelhead during construction and after completion needs to be completed as part of the environmental analysis. The conclusion that we were left with is that the initial study and the recommendation for the mitigated negative dec do not provide enough information about the environmental impact for the public or city council, to make an informed decision about this project. For these and other reasons stated in our appeal, Santa Clara Valley Audubon continues to assert that a mitigated negative dec is inadequate and recommend that the project be sent back for complete environmental review. The documentation provided by staff at 23 pages led me to believe that staff was recommending the average 70 foot setback. The presentation just made by director Horwedel leads me to believe that staff is recommendation a 100 foot setback and it would be good to have that clarified. We can support a 100-foot setback. If the original project had come in with a 100-foot setback, we probably would not have been involved in this discussion from the beginning. Thank you very much for your consideration of my comments, and I appreciate the opportunity.

>> Mayor Reed: Committee for the green foothills.

>> Good afternoon, Brian Schmidt, for committee for green foothills. I have an overhead I'd like to have put up when we have the chance. But there are legal and policy reasons why this policy should not be approved or the negative declaration accepted for anything that -- any project that is less stringent than the Planning Commission or the staff recommendations that we've heard today. In particular something -- there were two issues that we put in our appeal and that 23-page response was not responsive to. First one is up on the screen. Regarding a 50-foot minimum setback. The recommendations other than the Planning Commission recommendation or staff response had setbacks that were less than 50 feet. And the 50-foot minimum is something that is in the riparian policy. We put that in our appeal. The staff response -- or the response that was included in the packet did not address that issue. The second issue was the habitat plan where they -- where the habitat plan addresses interim projects and the city is part of -- Santa Clara habitat planning agreement which says that interim projects such as this one must help achieve the preliminary conservation objectives of the valley habitat plan. And one of the preliminary conservation objections of the habitat plan is a 100-foot buffer or possibly a smaller buffer plus mitigation funding, which is included in this case, is not being done. That was also not responded to in the

response to our appeals. They simply said they conferred with the agencies that wildlife agencies but did not respond to that specifically. The land use guidelines near streams and related ordinances are also issues that could be raised here but basically the key point here is the Planning Commission recommendation and the staff's recommendation is itself a compromise. The actual policy that generally is supposed to be in force is a 100 foot buffer. Even the Planning Commission and staff recommendation compromises from that. So that should be the minimum that we find something we could live with, what we prefer is a 100 foot buffer throughout. Any exceptions to the 100 foot buffer are exceptions that have to be applied strictly, so that 100 feet is generally the rule. One exception that the applicants referred to would involve the fact that the parcel is rectangular and the long part of parcel is adjacent to the stream. Very few parcels are going to be square, and so half the time you're going to find parcels with roughly long side next to the stream. The parcel -- the creek meanders a bit. All live living creeks will meander a bit. It's really important to keep a buffer and the buffer while there is the issue of replacing pavement in the area, the buffer could be done at a future point when more strict 100 foot guidelines are in force. So for this reason we would not -- would reserve all our rights for anything short of the Planning Commission and staff recommendation. Thank you. Be happy to answer any questions.

>> Mayor Reed: Thank you. Is anybody here from the Guadalupe Coyote resource conservation district that wishes to speak? All right, Jean Dresden, Lydia Wheeler, Susan Didder.

>> Mayor and councilmembers, thank you for your attention on this important issue. And I appreciate the council's continued commitment to improving the future of San José. What's before you that we're discussing at the moment is a difficult choice and we are asking San José to maintain its recognized environmental leadership, and apply its 2020 general plan with envision 2040 general plan, and the mayor's Green Vision objectives in mind. So you may have read in our appeals, we represent more than 50%, and more than 100 residents of the Guadalupe Mines neighborhood. We consist both of the Campagna subdivision and the landowners along Guadalupe Mines. And several concerns were expressed in our appeals, first of which is related to the riparian corridor. As you may have heard repeatedly the policy is, a 100 foot setback. Exceptions are rare, and should only be exercised in extremely rare situations. This particular site is a highly valuable riparian habitat for both the creek species and the wildlife around it. You may have heard the developer's biologist say that numerous special

species are absent from this area due to this being an urban system. Let me clarify: This is an underutilized industrial site. It has been for many, many years. This is not an urban, and a limited system. It's not even a suburban area. It is on the edge of the urban growth boundary and at the foothills of the Santa Cruz Los Gatos. And sensitive species do exist in our area, in fact one of the residents caught a tiring salamander on his porch. The biologist also said, very few habitats live outside the creek. Large mammals such as deer bob cats and cougars, occur much less because of human presence. A lot of the wildlife has been forced out of the system. Again we can tell you we see deer on a daily basis and Coyotes on a regular basis. They live in the open spaces surrounding this area and they do utilize the creek as their primary water source. This is a rich and critical riparian corridor despite the developer's hired biologist says. And this is an issue of not comparing existing conditions to what is being proposed. That decision was made years ago. This really is an issue of the rare opportunity to restore the habitat and foster an environment that returns critical species to that habitat. As Commissioner Bitbidal had said, basically if you don't put 100 feet here, where should we put it? Because to me, this area is really close to wildlife and open areas. We should preserve more green space for existing wildlife and for future ones, and it is across extensive open space. And Commissioner Norman Kline also said this is a buffer zone. This is where you would protect it. If you can't put 100 feet here, you really have no reason to put 100 feet anywhere north of here. So it's really important to keep this 100 feet at this location. And so we ask for 100 feet setback along the entire length of the creek. Another environmental concern is the number of trees to be removed. Of the 929 trees that exist on the property, 921 will be removed. And of these, 120 native trees will be removed.

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

>> Thank you.

>> Mayor Reed: I have one more appellate who I don't see here, Larry Aimes. All right, that concludes the comments from the appellants, I believe. I've heard from all of them that are here. So we'll take the applicant, let the applicant respond to the appeals and then we'll take public testimony from everybody else that wishes to talk.

>> Good afternoon, Mayor Reed and members of this council, my name is Eric Shanehauer, and I represent trademark companies on this application. I just wanted to note that we've entered into the record a supplemental additional information and facts on response 5 of the staff memo that was distributed to you all and to the City Clerk. I also want to say that the staff did an excellent job synthesizing literally hundreds of comments into a comprehensive 23-page memo that gives you very thorough responses to all the comments that you heard today and all the comments that were submitted in writing. I just wanted to make a few key points, and one has to do with the distinction between urban infill and other projects. Because there seems to be a misconception of what the policy says. And you can see in the paragraph that Brian Schmidt read to you, he only read the first sentence. But if you continue the paragraph, it notes that urban infill areas, that minimum setbacks can be 30, if appropriate. And there's no doubt that our site is an urban infill site. If you look at all the surrounding area, there's fully residential suburban neighborhood across the street from us, including homes extending all the way down to the end of Guadalupe Mines. The entrance to the Guadalupe landfill is here. The entrance to the Guadalupe quarry is here. So although there are trees here hillside there are major urban uses all the way around the Guadalupe Mines Road. Across the creek is Hicks road. And along Hicks road is Los Gatos Christian church and a school for 500 children as well as an entire subdivision of estate homes. So on all sides of our development there is urbanized uses. We are well within the urbanized uses of the city. Granted we're at the edge but we're fully surrounded. So under the city's policy we would be what would be constituted as an urban infill site. The question's been raised, well if you don't do it here where do you do it? Well this policy is a citywide policy. And a place like Coyote valley, if and when it ever gets developed, would be a place where we have large undeveloped parcels, huge acreage and it's appropriate there to just start with 100 feet because you have so much room and so much land to work with. That's the distinction between urban and nonurban. And it's being applied incorrectly here by the neighbors. And then lastly I just wanted to close with, how can we be having a negative effect on birds, animals, and the environment, when we are pushing development back. We're at zero setback today, is the current development. We're pushing back to 72.8 feet. We are adding 3.8 acres of new riparian vegetation and trees, we are planting 700 more trees on the site than exist today. So if we're doing all of these improvements, stepping development away, adding plans, adding trees, how can we possibly be harming the environment when we clearly are benefiting it. So with that I'd like to ask for your support in upholding the director's decision and rely on the memo from your professional staff that clearly outlines and covers all of these issues. Thank you.

>> Mayor Reed: We'll now take the public -- the rest of the public testimony. We'll allow two minutes for each speaker during this part of the testimony. James Robenolt, Libby Lucas, Fred Howell. When I call your name please come down close to the front.

>> Good day mayor and city council members. I appreciate the time to speak on this matter. My name is James Robenalt, I represent the Santa Clara Valley Audubon society. And I would just like to point out there are indeed over 80 species of birds utilizing this area. One of them being the yellow warbler which is the species of special concern. I think it's really, really important to maintain the city's normal policy of 100-foot setback in this area. I think that if the 100-foot setback had been initially proposed there wouldn't be a whole lot of public outcry on this. The average 70-foot setback that's proposed clearly means that there are plenty of areas where it's less than 100 feet and will be detrimental to wildlife in the corridor. I would just also encourage the council to do a full environmental impact report on this project and under the CEQA recommendations. Thank you.

>> Mayor Reed: Libby Lucas, Fred Howell, David Cook.

>> Libby Lucas, Los Altos. I wanted to just do a little retro on my former involvement with this stream is with the Trails and Pathways group. I sent you a letter last night, and basically this site is where the city council approved a recreation trail on its way from Guadalupe to Mount Umunhum. You can see it up there with a little arrow. And I think that this is very important to honor this earlier city council approval of this trail alignment. The Santa Clara Valley Water District was supposed to have a dedication of 22 feet by an earlier development that you had here in the '80s and the narrow route received it was supposed to be conditions of approval and the trail and swales were supposed to go in that particular setback. I'm sort of staggered by the removal of all those trees. I can't believe that that is a conscionable. This is a steelhead stream. The stream temperatures are absolutely vital to the survival of the species. And this is a natural, unusually wonderful upper stream system and riparian corridor. So I think you really have to go with the staff's recommendation of a full 100 foot setback. When I was with the Guadalupe resource conservation district as director, we conducted geomorphology classes just upstream of this with all the regulatory agencies. This is a very dynamic stream. You can see it is already cut within the riparian

setback that you have on this plan. And so to refer to what staff said on the recommendation that this is indeed a -  
- not an urban infill. And that's on the last page, I think, just before their conclusion. So I think you have to go back  
to their recommendations. I think they've done a good job evaluating this and only they have seen all the  
particulars. But above all do not let that tree loss happen. Those are native trees.

>> Mayor Reed: Your time is up.

>> Thank you very much.

>> Mayor Reed: Freddy Howell, David Cook, Patrick Pizo.

>> My name is Freddy Howell. I own the Los Gatos Birdwatcher, which is a retail store in Los Gatos. And we take  
people out every Saturday to various places for birding. This past Saturday we went to Guadalupe Mines Road  
and walked the riparian corridor. In an hour and a half we had 34 species, one of which was the willow fly catcher  
which is a very rare fall migrant. And we were all thrilled to be able to see it. There are other species that other  
people have mentioned that are nesting in this area. The other speaker talked about the yellow warbler. This is  
one of the few places that the yellow warbler can nest without call bird predation. And we're -- it is something that  
we would like to keep, to continue. The -- I would also like to say, I would like to have the council require the  
environmental impact report, and keep the 100 foot setback. And one of the other issues that hasn't been brought  
up yet, when you change any urban infill from commercial to residential, a lot of native wildlife is under siege from  
the cats that come in. People don't keep their cats inside. They feel that it's the cat's right to be outside, and kill a  
lot of wildlife and birds. So this is a -- sort of an unintended consequence so to speak. But I would like that to be  
considered as well. Thank you.

>> Mayor Reed: David cook, Patrick Pizo, Patricia Clumb.

>> Thank you mayor and council for the opportunity to speak on this issue. The letter that Libby Lucas referred to  
earlier, I have a copy of. They sent a letter the same time that Audubon and Committee for Green Foothills sent a

reply to this proposed development. And although it's alluded to in the memorandum from the Planning Department, some of the issues were not addressed in their memorandum. But I would like to requote what Joe Horwedel said, this is a -- this has a footprint that is within the 100 foot setback but Joe stated, new developments should be outside the 100 foot line. So regardless of where the original footprint of this project was, it should have a 100 foot setback. I'd also like to quote you from the letter that was sent to Mr. Enderby at the Planning Department. It says, "We urge adherence to a strict application to the city's riparian corridor policy on this site." So a major partner of the City of San José has recommended strict adherence to the 100-foot setback, and we ask the city to consider that this afternoon. Thank you.

>> Mayor Reed: Patrick Pizo, Patricia Colome, Brent Graham.

>> Thank you for the opportunity to speak on this issue. My name is Patrick Pizo. This is a critical plan and wildlife corridor into the valley from the Guadalupe watershed. Let's not mess it up. I live below the water -- below the watershed in the Santa Clara Valley Water District, perk ponds area and so forth. Corridor, the animals actually wildlife and birds use this to enter any grass from the Guadalupe corridor. So I wanted to just point that out. And I ask the comprehensive recommendation set forth in the Santa Clara Valley Water District memo to Mike Enderby of the city of San José dated May 14th, 2010 be adopted. The memo addresses accesses to the riparian corridor, use of native plants, flood control, and other issues. I want to focus on one item included which is a trail along the creek proposed by the developer. The city master plan includes description of a full purpose trail connecting the Almaden lakes to the quicksilver park. Seems like the development plans for this limited use creek trail for Brookside residents, has the city not considered that the proposed trail should be a segment of the master plan trail to serve all the residents? This could be another critical part of the discussion of what setbacks should govern this project. Please consider this aspect of the development. Thank you for your time.

>> Mayor Reed: Patricia Colome, Brett Graham, and Jeshwar Baht.

>> Good afternoon, and thank you for this opportunity. I'd like to start with something I hadn't planned on, and that is to point out to you that regarding the issue of whether this area is urban infill or not per the policy, the policy

itself says, this study has addressed itself primarily to riparian corridors within the urban service area. Based on the assumption that corridors outside the U.S.A. enjoy some substantial general plan policy protection. So it is not accurate to say that only Coyote would be subject to the full protection of this policy. The policy was intended for urban use, and the urban infill term used in other parts of the policy points out that usually properties of an acre and under. But anyway, I would like to address the project, regarding primarily the riparian issues. The project has so many good things going for it but approval of it should include the following elements. A riparian edge fully consistent with the City's riparian policy, drawn around the outer edge of tree canopies. This practice alone provides some significant protection for the corridor. Secondly, a 100-foot setback. Third, setbacks should be expressed as minimums account not averages, as is being proposed in some cases. There is no reliable way to calculate averages in most cases, and uncertainty leaves the way open for abuses and arguments in the future. Then the current project includes grading in the corridor. And in the riparian corridor, and removal of some unknown number of trees to accommodate that grading. But no grading at all should be allowed in the riparian corridor and only minimal grading in the setback areas. Removing the asphalt from root networks will degrade rather than improve their conditions --

>> Mayor Reed: Sorry your time is up.

>> Oh, no.

>> Mayor Reed: Brent Graham, Jeshwar Baht, Jen Wang.

>> I just have --

>> Mayor Reed: No, sorry, your time is up.

>> Mr. Mayor, Councilmembers, my name is Brent Graham. I live directly across the street from this project so I will probably be one of the most affected individuals. I think it's amazing this whole project seems to come down to this one issue, the 100 foot setback. I think it's for a project this large that's a pretty amazing thing, that that's

the only issue that really appears to be you know still at the forefront of discussion. And it seems like the more I hear about this the more issues are brought up. So it seems like a little more investigation might be appropriate. I'm not against the development. I think the housing project is correct. But I think the 100 foot setback needs to be dealt with and also think the density needs to be looked at. There's some you know issues about that. Every house around there including mine is zoned one acre. The project directly across Hicks Road is I believe they are zoned over two and a half acres. So it's not like there's a lot of density. That one project that is zoned I think 9.2, I think that was done when the San José area was just looking for housing anywhere they could and they got that approved. I don't know if that's appropriate today with the housing market the way it is. But I think the 100-foot setback from everything I can hear, it needs to really be looked at carefully. Thank you.

>> Mayor Reed: Jeshwar Baht, Jen Wang, Jen Z. Wang.

>> Honorable Mayor Reed and councilmembers, thank you for giving me the opportunity to speak today. My name is manjeshar Batt, I've been a resident of San José for 30 years working in the high tech industry here. My neighbors and I and you'll hear from several of them today are here to give our comments regarding this development. As you'll hear most of us are in favor of the development. And we have actually attended several of the meetings, and provided comments to the Planning Department, we've gone over their meetings, reviewed their recommendations, and we believe that this agreement to have a 100 foot riparian corridor we actually would respectfully ask the mayor and council to approve the, recommendations that they have provided for Brookside development. I think if you do that, we will actually be able to provide the growth and housing for San José while, at the same time, preserving the environment and the riparian corridor which is so important to our quality of life in this area. Thank you very much.

>> Mayor Reed: Jen Wang, Jen Z. Wang, mallavika gosh.

>> My name is Jen Wong, I'm a resident in Campagna which is very close to the project site. The developer keep on saying, if the policy was all about 100 feet, we wouldn't have a 58 -- 50 pages here. The truth is, on 53 page, 50 page, they are talking about the importance of the corridors. How they may be at risk and how they should be

protected. Only half page has a list of the exceptions which immediately followed by two pages, given the restriction and conditions under the exceptions. So this is a half page of restrictions, the exceptions with two pages following listing the restrictions for the exceptions. Now, I'd like to mention one exception that the developer claims, for economic balance. Now, they are going to lose 35% of their houses by 100 setback. Here, here is the original development plan. As you can see, it will remove the entire line, row of the houses, they will only lose 17 houses which is 20% of their houses. So mere is a trick actually they are playing. They simply push all of the houses down to this level, by removing all the -- most houses to claim the big loss.

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

>> Okay, thank you.

>> Mayor Reed: Jen Z. Wong, mallavika gosh, Susan didder.

>> My name is Jen Z. Wong, I'm a resident of Campagna. So we expelled all of the communities around the downstream. We didn't find any visible reduced setback downstream. They all have larger setback, larger than 100 foot setbacks. So this, this, this and this, actually we zoom in so you can see that and there is one exception, just in this corner. So there are four scattered single family homes with less than 100 foot setback. They all build 30 years ago, before the riparian corridor policy was created. They actually just next to the proposed development, development site. So the developer should not use this exception as an excuse to start a new development which has less than 100 foot setback. Another thing is, to allow a development use has less than 100 foot setback in upstream and such rural area makes no sense. If you want to compare to a recent development, you should compare to the -- much further setbacks and has less dense development on the other side of the creek, in the Los Gatos. This is the area actually, it's a new development. So if you want compare we should compare with this one. Thank you.

>> Mayor Reed: Mallavika gosh, Susan didder, Julia Nguyen.

>> Honorable mayor, councilmembers, thank you very much. My name is Malavika gosh, and I live on the street right across from the where the development is planned. Okay. What we have been concerned is average versus minimum. This struck us as to be very, very interesting. Because riparian policy never mentions average. We all know average is a mathematical trick. Numbers can be made to look good. And if we want, bad by using the term average. For example, this diagram shows in a hypothetical case if this is the riparian corridor, you have a building that doesn't have any setbacks, zero setback. However you can use distances that are perpendicular and when you average it out you get a setback of 78 feet. You can do even better. You can take another distance, go from the riparian setback, bypass all the homes, go to the road and you will get a 200 foot distance. And now, the average has become 94 feet. What we ask, honorable councilmembers, we are very new to this. We all have regular jobs. We have here for a reason. That we request you to not allow this precedent to start. Very soon, average -- the use of the term average will become the norm and it will become the standard. And we are requesting that you have the power to discredit such precedence. Thank you.

>> Mayor Reed: Susan didder, Julia Nguyen, Gary Winer.

>> I'm Susan didder, I'm talking about the issues I have with evacuation again. If you can put the slide up. We have at least 400 people already, that can only get out by way of the Guadalupe Mines Road, with only one way out from Puerto Vallarta. Contrary to what was said, the fire marshal does not evaluate evacuation. This has never been looked at, despite what the developer says. You're going to put another 400 or more people into this same area, and we are not going to be able to get out. Despite what was said in the rebuttal to the appeal, there is not going to be time for some -- the air marine corps or whoever to come over and put a bridge across Hicks Road, and we're going to be stuck there. The other thing that was said was, this was unlikely. If you remember, we're surrounded and engulfed by the Santa Cruz mountains where there's been a number of deadly and destructive fires lately. We're right in the path of that. We are also on several fault lines, including adjacent to the San Andreas fault and where the Loma Prieta earthquake was. If you remember the Oakland fire storm, 792 homes were lost in the first hour. There's not going to be time for evacuation for all of us. We need a route, not a plan, you know, and so that's what we would ask for you to encourage. Before this is put in there has to be an evacuation route for us to get out. The other issue I wanted to bring up, if I have time, is there is a lot of houses in

the via Campagna development that are in foreclosure, short sale, many empty homes, people are just leaving their homes. And now we do not know how long, if you look at the current economic indicators, how long is this downturn going to happen? And you're going to bring another glut on the market. Our housing prices are going to be down, there is going to be more homes than we even need for this area. This is going to bring our housing prices down and going to bring in more homes than we even have a need for in the Almaden valley in that price range. There certainly is no -- is a surfeit of homes more than it is right now.

>> Mayor Reed: Sorry, your time is up. Julia Nguyen, Gary Weiner, Nancy Bernardi.

>> Hello, my name is Julia Nguyen. I want to test from my personal experience. I'm a resident from the via Campagna, and I've had multiple occasions took my kids, six-year-old and four-year-old walking around the neighborhood around the FedEx area where it's open space now. On multiple occasion I saw snakes and I saw deer and I saw turtles and trout. One occasion I picked up a red head turtle from the wild and my son found it and put it back in the creek. I want to tell you it's true we saw a lot of wild animals around that area, that creek needs to be preserved. So I'm here having a letter from an environmental activist, Larry Aimes, and she cannot be here. So I'm trying to read a letter on his behalf. Dear Mayor Reed and councilmembers, the problem is, with the project's impact to the Guadalupe creek riparian corridor. I'm sure you will agree that years ago the city made a mistake when it allowed the construction of the previous size parking lot so close to the creek. Back then there was little awareness of the habitat and of wildlife corridors. And the aim was to mitigate traffic patterns with reverse commutes. But the mistake has now been cast in concrete. It's just asphalt. And it can be removed, and the habitat can be restored. The Brookside Estate project is at the very edge of the urban extent abutting the Sierra Azul open space preserve and near the Almaden quicksilver county park. It is just a little downstream that the Guadalupe expanding into the broad expanse of the percolation ponds. The creek provides about the only connection between the two that allows wildlife to go between hillside and valley floor. Everywhere else there is a continuous wall of housing development through this creek provides --

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

>> Okay, thank you.

>> Mayor Reed: Gary Winer, Nancy Bernardi, Ron Jacobs.

>> Thank you, Mayor Reed and all the councilmembers for the opportunity. My name is Harry and I live 200 feet away from the project site. I want to talk about design and density of the project. In the previous held hearings the developer has claimed that Brookside has less density than our community, via Campagna. This is what I confirmed with the city planning department. Our community has a density of 1.5 homes per acre because we left 100 free acres of open space from development. So if the Brookside claims less density, please do as you say. And the next thing is about the street. The street in our community is all public. While Brookside has six private streets and one side street parking. I did some research on Almaden area. At this size and this price there's no single family houses on the market, use private street or one side street parking and in our community the home size to lot size ratio is 46% average. And the Brookside is proposing 72%. We already feel the pain of small backyard and they want to amplify it for the future residents with monster homes on a teeny tiny lot. Overall we're asking right design, right density, public street to match our neighborhood. Do not sacrifice the life and quality of the future residents. The current design is meant for urban area, like San José downtown, or close to shopping center for example, valley fair or Santana Row. This is not meant for our community, not for our neighborhood. It is not for edge of urban growth boundary. Thank you.

>> Mayor Reed: Nancy Bernardi, Ron Jacobs, Todd wheeler.

>> Good afternoon Mayor Reed and councilmembers. I represent the Guadalupe Coyote research conservation district. And we have a letter here, I won't read this because all the details are in it and I'm sure that you've heard quite a few that I would like you to actually have this and read it. We're -- first of all, we didn't get notice and we didn't have a chance to review the document in time. And so we found a number of things in it, and we're mostly concerned with the riparian setback. That area is a mitigation area. The Guadalupe creek is a mitigation area for the downtown flood control project. It's supposed to have passage for the fish to come up and spawn. And so we're worried about the impacts to that and the runoff from the cars and that kind of thing in the riparian area and

the vegetation. So we would like to see an EIR on this. So that everybody can know what the impacts are, and in particular, you know, those -- those steelhead are threatened species and I think they're endangered, actually and there's some threatened species up there, and that's our main concern with this project. Just we need to keep the impacts or know what the impacts are before it's -- before you have, you know, massive erosion and problems with sediment going downstream. So I thank you and I'll leave the letter with you. Thank you.

>> Mayor Reed: Ron Jacobs, Todd wheeler, Harry Foo.

>> Honorable mayor, city council, thank you for your time. My name is Todd Wheeler, I'm a resident of Campagna across the street from the proposed site. Steelhead trout and chinook salmon are federally endangered species act listed species. Portions of the creek adjoin the project, and the site is ideal for spawning. Due to the cooler temperatures provided by the extensive canopy of the heritage and other trees and due to the installed fish ladder just downstream at mason dam. Salmon and trout have been spotted in the stream, so it is actively used by these species. The city of San José is a member of FAHC, the Fisheries Aquatic Habitat Collective, collaborative effort, Three Creeks HCP and Santa Clara Valley Habitat Conservation Plan. Millions of dollars have already been spent by these groups to mitigate and improve the habitat. We are not asking that development be stopped but the 100 foot minimum setback be honored. We do this -- we ask this to mitigate and reduce the effect of garbage, fertilizer, pesticide runoff and other contaminants from development and forcing the 100-foot minimum setback allows the city to be active participants and leaders in faith without spending any General Fund moneys. It is also in line with adopted riparian policy. The residents of Guadalupe Mines really have no financial stake in the project. Our goal is to inform the council on the importance of the beauty of the natural area we live in. We hope the councilmembers will recognize the importance of this fragile natural area, as well, and will exercise their power to protect it and leave it as a lasting environmental legacy. Thank you.

>> Mayor Reed: Todd wheeler, Harry Foo.

>> Mayor Reed and councilmembers, my name is Gary Winer, I think we're a little bit out of order, but bear with us. As residents of San José and Guadalupe Mines neighborhood, we ask the following of you. You follow the

envision 2040 guidelines and that is asking for San José environmental leadership. It also says to protect and enhance riparian, existing riparian corridor, and to a minimum of 100 feet setback. Focus on healthy neighborhoods including ours, Guadalupe mines area. Also, ratify your Planning Department staff report, which also included the majority vote of the commissioners. And that includes being fully compliant with the riparian corridor study, and also, all streets to be public streets. Commissioner Kline says, the applicant's proposal is too dense, and that's a quote, and continues, San José's bad sprawl, automobile oriented past. Chair Jensen said, I agree with my commissioners that large expensive homes on teeny tiny lots are not respectful of the people we are asking to move there, nor of the people who already live there. That's us. Follow Mayor Reed's Green Vision to San José, you said, quote, today at the beginning of the 21st century we must step forward to help solve the climate and energy crisis, and protect our environment. Mayor Reed, and councilmembers, now is the time to live and act on those words. We, the Guadalupe mines neighborhood, do want those unsightly commercial buildings, pads, and parking lots, demolished. We also ask each you to respect and protect the Guadalupe Creek riparian corridor while supporting the right size and the right design for the future, housing development that will complement the beautiful creek and our neighborhood. Thank you.

>> Mayor Reed: All right, I'm not sure who still wishes to speak. I've gone through all the cards. Sir, looks like you want to speak. Come on.

>> Thank you. My name's Ron Jacobs, resident of Guadalupe mines road. I'm sure you know this, I hope you appreciate it will probably be a long time before the number of people and the intelligence and the passion of this many people come forward on a project. I want to talk a little bit about the Guadalupe corridor in relation to the spawning of the Chinook salmon and the trout. This is not just a component. It's -- I mean it is a component. It is not an individual site. It is part of a big system that starts at the bay and goes all the way up to the base of the Guadalupe dam. Already, the Water District has staff that are -- they're on staff to monitor the flow coming out of the dam to keep it with the right turbidity, the right amount of flow, the right temperature for this spawning habitat. And to remove the canopy and to encroach on the riparian corridor in this area is something that in my opinion will have to be mitigated for in the future. We know that because it's been stated in the policy, the riparian policy, as well as in the envision document and in the Water District. And they're pleased to you, to keep the 100

foot setback. And the cutting of the canopy is going to raise the temperature of the water, and mitigation will have to be done for that in other ways, if it's even possible to get the water temperature back to the right amount. The Guadalupe creek is the only one in the watershed that has this type of environment and can sustain it. So you know, we're on the way to rebuilding this and to having this habitat flourish. And if we're able to right-size this development to maintain those, we still get all the benefits. If we get housing, we get people put to work, we get the property used in a positive manner. But it's done in a manner that meets all of those.

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

>> Thank you.

>> Mayor Reed: That's all the cards I have so that concludes the public testimony on both of these items. We will now bring it back for council discussion. We'll first take up -- I'm sorry, the applicant does get the last word, reserving some time reserving on this zoning matter. We have five minutes for the applicant to respond on all of this.

>> Mayor Reed, members of the council, Eric Shanehauer representing the true mark companies. Let me make it clear, we are not touching one square inch, one leaf in the existing riparian area. This notion that we'll somehow cause the water to increase in temperature and fish to die is an absolute falsehood and in fact what we're doing is pulling development away from the creek and adding more trees so there's a misperception among the speakers about what we're doing. Just as a reminder, the site we're working on is fully developed, there is zero setback, it is fully covered with asphalt commercial buildings and commercial landscaping. Most of the trees being removed are parking lot landscaping. Just a quick review, we looked at it last time, there's the asphalt parking that will be removed and restored into beautiful riparian habitat along the creek. A two-story home sits on the riparian edge, it will go away and be restored to habitat. A diesel generator and diesel tank, along with more paving. Gets removed and restored with more habitat and more asphalt at the southern end of the property. There are no tricks or averaging tricks being played on you. We've given you exhibit where we've dimensioned every aspect of the project. From the biggest setback to the smallest, you know exactly what we're proposing. The average is 72.8 as

a point of reference, but the benefits to the ecology of the creek are enormous. We are going to remove 2.3 acres of asphalt and building from the riparian setback area, and we're going to plant 3.8 acres of new trees and plants to expand the riparian habitat of the creek and strengthen it as a habitat for fish and birds and wildlife. And to give you an example of what 3.8 acres is, this is the City Hall super block. It is 5 acres. I've highlighted in green the amount of space that we are going to remove impervious surfaces and plant shrubs and trees consistent with the riparian habitat. This has to be among the largest riparian restorations probably done anywhere in the city on private property. Among the largest. I'm not aware of others. We are going to plant 700 trees more than what exist today on the site. How can that be harmful to birds? We're going to not touch any of the trees that are in the existing habitat area. We're going to install 29,000 square feet of pervious pavers, on our house driveways to reduce runoff within the development. We're going to build the homes so that they exceed the city's green building standard by 58% above your minimum requirements. And lastly we're going to be building a publicly accessible trail along our 2,000 foot frontage of the creek, as well as benches and other amenities. It's going to be fully publicly accessible like all of the creek trails in San José, and the benefit to the taxpayers and the General Fund, that it will be fully privately maintained 50 homeowners association in perpetuity. So if we look at the facts, there's -- it's undeniable that we have huge environmental benefit and riparian benefit to this creek, by restoring 3.8 acres that is now parking lot and building and putting it into native habitat along this creek. I'll just note on the exhibit that we've highlighted here in green the edge of riparian habitat but also for your reference in yellow we've put the top of the bank of the creek. And in blue we've put the low water channel of the creek. We want to make it clear that yes, the policy measures from the edge of riparian habitat but in fact in this creek scenario the top of the bank is even further away from the edge of riparian and the actual creek channel is super-far away. So when we talk about protecting the riparian habitat which is primarily focused on the water in the creek, our development is a significant distance away from that. You have the exhibit before you and all of it is dimensioned to give you a sense of the distances of the development. With that, we would hope that you would not only support Councilmember Pyle's memo, as a balancing point that allows our development to be feasible, but also protects the creek. Quite frankly, I hope that you would be proud, about the amount of environmental and riparian restoration that we're going to be doing on Guadalupe creek that far exceeds anything else along this creek. Thank you for your consideration.

>> Mayor Reed: That concludes the public presentation on this matter. I just want to see if the director of planning has anything to add before we come back for council discussion.

>> Joe Horwedel: Thank you, Mr. Chair. There were a number of issues were raised, and Mr. Shanehauer dealt with a number of those. Staff would -- we were neglectful in our presentation at the beginning to clarify the difference between our 100 foot recommendation that we concluded in our staff report and the discussion that was in the staff report that came out Friday in relation to the negative declaration protest. It's important to remember that there are two different issues that we're working through. The first issue the council has today is the protest of the environmental document. And so there, we're looking at a threshold of significance. And the riparian corridor policy is not that threshold of significance of the City of San José. It is an important policy foundation about new development, but we do look at what are the environmental impacts to the riparian area. And so as Mr. Shanehauer noted, we are looking at what the existing situation is, and then what is the delta as a result of the new development, does it get better or does it get worse. And if it gets worse, does it get worse in a significantly manner. And in this case, the review by the professional biologist looking at the property, the review of my staff looking at the analysis of the property, we've concluded this is not a significant project and therefore does not trigger the need of an EIR. From a policy standpoint relating to rezoning staff has recommended a 100 foot setback and that has been discussed in our staff report and as a part of our presentation today. But that is why there is a disparity of those two numbers. The issue about urban versus nonurban areas, I think as staff tried to point out in our staff report, this is an urban land use and an urban edge, rural edge. And so the policy really, you know 30 feet, 50 feet, is wide as policy, that we could go either way with that. Hindsight we should have recommended 50 feet as the minimum but staff does stand by our recommendation of a minimum 30 foot separation setback in the small portion of the site. There was a question about the habitat conservation plan. The project did go through and notify the U.S. fish and wildlife service and the California Department of Fish and game as we do for all projects that we are processing that have potential habitat impacts. That is our agreement with both those agencies. We are working on a habitat plan which would put consequence to doing less than a 100 foot setback. And as one of the speakers said, if you do less than 100 feet you would go through and pay mitigation. That's one of the concepts that is being studied with the plan that has not been adopted by this council or any of the other local agencies that are participating in that plan. We are

still having ongoing negotiations with the wildlife agencies about the plan. Spent about six hours last week in negotiations with them on just the burrowing owl issue. We are still working through it we are making progress and I think ultimately there will be something along those lines but we are not there yet. The issue about the cat predation, that is something that has -- staff has been aware of in the past. We really had not seen a lot of literature around that in the past and so we have not enacted standards around that. That is the same, it's going on elsewhere in that urban-rural interface across California, CEQA's being used, I think as we addressed in the staff report, there have been some communities that have tried to deal with that. It is really a tough issue, and it's one that I think really goes back to almost a general plan type issue that where we have urban uses, and adjacent to habitat, it is one of those problems that potentially can happen. I think that is something that staff was not being facetious when we pointed out that Coyotes and bobcats do exist in the area, and there is literature out there from research in other communities that that actually is the best means of actually protecting the wildlife. And as a cat owner, it is not something I, you know am happy to hear about but it is I think the realities that, out in natural areas, nature does have a way of dealing with that. The comment was raised about why build more homes in a down market? Every recession, we hear this comment. This project is not being considered because it will get built tomorrow. It is being considered because it is something that could get built during the life of the general plan for the city. And if the developer obviously is going to have to figure out how to make financing work, then that's going to be for him to deal with that. And so staff is recommending that the council find that the environmental review was completed in accordance with CEQA and that you adopt the resolution upholding the negative declaration, and then we can move to the recommendations on the zoning itself. Staff still has our regular recommendation.

>> Mayor Reed: Thank you. Before we get into deliberations I just want to disclose in preparation of this meeting my staff met or had conversations with Eric Shanehauer, the Shanehauer group and represents of the Guadalupe mines neighborhoods. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I have some questions for planning. First of all I'd like to know if you can think of any other fairly recent projects, in which a riparian area made up almost 25% of the site. If you do the math on this that's about what it comes out to when you take the A of acres available and the amount of riparian.

>> Joe Horwedel: I don't have one that comes right off the top of my head. One of the projects we have been working on have been kind of in the more urban areas of the city. And so we haven't been pushing for a 100 foot setback. So 25% is a large hit and that's partly why we recommended less than 100 feet on a portion of the site because we felt pursuant to the policy, that we shouldn't have a disproportionate impact into where we couldn't make a nix us finding pursuant to federal law.

>> Councilmember Pyle: So if we consider that fact and then also ask about the development on the other side of the creek?

>> Joe Horwedel: Well, on the other side of the creek is Hicks Road, and the road is adjacent to the riparian corridor and kind of cuts through it on some places. On the other side it is ranch homes, as you heard testimony, one acre --

>> Councilmember Pyle: I'm just talking about on the other side of the creek itself. From Hicks Road down to the creek. That area.

>> Joe Horwedel: The road is predominantly right at the edge of the creek.

>> Councilmember Pyle: So that area, nothing is going to happen there. And is it as developed today? What is the public access to the trail along Guadalupe Creek?

>> Joe Horwedel: There is a trail that exists along there but there is not an easement, it is my understanding should have occurred back in the 1980s when this office building was built.

>> Councilmember Pyle: There is no real access at this point, and there would be -- not only -- well, for the public, it would be a wonderful, wonderful addition to the public. If it's possible at this time, Mr. Mayor, I would like

to take a couple of minutes to talk about some recommendations on both of my memos, unless, Joe, you weren't complete with your comments. You were.

>> Mayor Reed: The -- the first thing we have to deal with is the appeal of the -- the four appeals, the negative declaration. So let's try to get a motion on that, and debate that one. And if that's approved then we'll talk about the zoning. Is that the best way to go staff? The attorney says yes.

>> Councilmember Pyle: I move to discuss those appeals.

>> Mayor Reed: We're going to discuss them. The question is I need a motion to appeal or deny, I think.

>> Councilmember Pyle: Oh, I'm sorry. I make a motion to deny the appeals.

>> Mayor Reed: Back second to Councilmember Constant. The motion is to deny the appeals and uphold the mitigated negative declaration. That's the motion on the floor here so that's what we'll discuss at this time. Any additional questions or comments on had a? And if that's approved then we'll come back and talk about the zoning application. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First I wanted to disclose, I don't remember if I did this last time. But I have -- my staff has spoken to many of the neighbors in the area. As well as is received a bunch of e-mails. And I've spoken to the applicant personally but not specifically about this project in any depth. I think when we look at this, this whole riparian issue, this one's is eerily similar to the discussion we had not too long ago in my district, or seems like not too long ago in my district. I think I just wanted to kind of reiterate something I said back then, which I think was almost two years ago or maybe more now, and that is if, you have a policy that has within the policy recognized exceptions, and granting those exceptions is not an exception to the policy. Because the policy recognizes those and contemplates those things happening. And we continually hear the fact that, you know, this doesn't work, an exception to the policy. And I just want to say it's not. It's utilizing the policy in the way it was written in the context in which it was written. We heard a lot about the areas of the riparian that were below

the 100 feet. But we didn't hear a lot about the areas that are above the 100 feet. And I think it's important. To get to the averages you have numbers that are above and numbers that are below. There are significant areas. I'm familiar with this particular property not because I've been there recently, but years ago. I've looked at the Google maps in preparation for the meeting. There is going to be a lot of restoration in this project. And I think sometimes we lose sight of that. It's like we say we don't want to improve something, because we can't make it perfect. And my personal feeling is we need to look at what we can do in each situation to make it as best as we can. And much like the previous vote we had in my district, where we had all kinds of impervious coverings and outbuildings that were taken out, and quite a large area was restored. We see that multiplied by a significant factor at this location. So I think we really have to be clear in our lens as we look at this, this that we are -- that this is a significant and significantly restoration of habitat. And it is going to leave this particular area in a much better place than it is today, or has been for many years. And we also have to remember that if we do not take action on this, and this project does not get built, I think there could be a pretty good argument that it will stay in this condition for many, many years. And nobody will benefit at all. And I think that that really has to stay paramount in our decision. So I do obviously support the motion since I seconded it and I urge my colleagues to do the same.

>> Mayor Reed: I'd just like to add a couple of comments to had a. First I'm really interested in the distance to the creek. Not from the edge of bank, and riparian corridor, but to the creek. I think it's really important in here because there was discussion of the canopies of the crease and the cooling of the water, I understand that's an important issue. But I can't see anything that they'll do on this site one way or the other good or bad that will affect the shade on the creek. Because it is approximately 180 feet to maybe 100 feet at the closest from the edge of the development down to where the creek is. I mean it's just huge distance. I don't see how shade could be a factor at all. And that's a pretty wide -- that's a riparian corridor. We're measuring it from the top of the bank or the top of the existing riparian corridor. But it is a very wide stretch there. So I'm really pleased to see the restoration of the riparian corridor going from a zero setback. I think that is a zero average and a zero minimum. No matter how you cut it you got a lot of properties inside what we consider to be the riparian corridor. So I'm very happy to see that improvement. The other thing that I really think is an improvement is the addition of the trail. Because we all know how hard it is to get trails, how difficult and how expensive it is. And so that's a good thing. So I'm going

to support a motion to deny the appeals, and approve the mitigated negative declaration because I think looking at all the things this project has done and all the changes that have happened along the way, they've mitigated potential impacts in a way that makes it appropriate to do this on a negative declaration. I'm going to be supportive of a motion. Councilmember Campos.

>> Councilmember Campos: I wanted to disclose in preparation of this meeting I met with Eric Shanehauer and Chris davenport and my chief of staff Javier met with the representatives of the Guadalupe Mines Road group as well as Eric and Chris.

>> Mayor Reed: I think that concludes a discussion on the motion regarding the mitigated negative declaration. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just wanted to -- I am going to support the motion but I want to thank the community though for coming and getting involved. And I did have a chance to meet with some of the community who actually came to one of my meetings in my district. And I think you're to be commended for your involvement and your input. And I believe that as a result the project has improved. And there's been lots of changes made in this along the way, because of Councilmember Pyle's involvement, your involvement and the applicant. And so I just want to thank you for getting involved and for your input. Rarely have I seen anything really black and white since I've been on this council in terms of the issues we face in these development issues. And I think Councilmember Constant pointed out the fact that the riparian policy, although it's a really initial goal, has exceptions. And the one thing that has made me excited about this project as I've seen it unfold, is the fact that it's actually going to be an improvement upon the current situation. Zero setback now. Tanks sitting out there. An old building, lots of concrete. And I just wonder, 30 years from now, if nothing happens, if this project doesn't happen, what kind of damage to species and to the environment will occur from us doing nothing? And I tend to look at what can -- what good can we do? The fact that we're going to have a trail, the fact that we're going to remove some of these things that certainly can't be good for species and for our environment, makes me very sympathetic to this. So I'm going to -- I'm going to support the motion, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I also wanted to commend the neighborhood for quality research, and the extensive amount of time to spend on this issue. Thank you for coming in and speaking to my chief of staff. Also want to disclose I have talked with Shanehauer.

>> Mayor Reed: I think that concludes the discussion on the mitigated negative declaration. We have a motion on the floor. All in favor? Opposed? None opposed, that motion is approved. That was item A. Item B is the rezoning. Which we can now consider. Councilmember Pyle.

>> Councilmember Pyle: What I want to do is read the recommendations that were made for August 17th for the meeting that we really didn't have. So -- and then also for the 31st. The stipulation number 1 is with the riparian setback, the project would be developed with an average of 70 feet. It actually turns out to be 72.5. Streets A and B would be developed as public streets, with sidewalks, park strips and on street parking on both sides. As proposed, the remaining streets would be developed as 30 feet private streets with sidewalks, park strips and on street parking on one side of the street. Trees, the outside trees, the trees outside the riparian setback, especially the oak trees, would be replaced at the standard rate per city guidelines. And the project will continue to evaluate the preserves of additional existing oak trees. And then, the last -- on the 17th was, given the concerns with existing condition of traffic, that the section of Camden between Coleman and Guadalupe mines and Hicks the developer has agreed to contribute \$15,000 for the development a traffic study and potential mitigation work. And on the 31st I would like to say that one of the suggestions is to increase the amount of impervious surface to be removed to 101,000 square feet which requires -- would require the developer to use pervious pavers in all driveway aprons in the project. And direct the developer to work with the city park staff to determine the appropriate location for the playground and appropriate equipment. We weren't quite sure that those were within the setback and back far enough. Require the development to provide the city with easement rights through the entire length of the property along the creek for trail purposes and require the developer to work with city staff to balance the use of retaining walls, drainage and ADA regulations, those are relatively new not mentioned before. And these by the way were suggestions that came from community input, which I absolutely treasure. And

then, to direct the developer to continue to work with professional arborists and biologists to ensure that the preserved trees are not negatively impacted by fill or grading. And with that, I would like to move my memo.

>> Mayor Reed: There was a second, Councilmember Nguyen had the second. To so the motion is based on the two memoranda, the August 17th and the August 31st meeting memos. Further discussion on the motion. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. So the -- I just wanted to consider in your recommendation, the 100 foot riparian, minimum of 100 foot riparian setback for the majority of the property, what I take from that or my assumption is that for the southern portion, that's where you only for the southern portion that you figure 30 feet would be reception because of the configuration?

>> Joe Horwedel: That's correct, Councilmember Kalra, where those street A and street H where those intersect.

>> Councilmember Kalra: And you had made reference to the commercial built in the '80s. Do you know the year, do you recall the year?

>> Joe Horwedel: My memory this was being worked on when I first started with the city, so it's probably back in '85, '86 that this was being approved.

>> Councilmember Kalra: Thank you. I want to thank all the people that have come here as well, those that I've had the chance to meet with, the neighbors from the neighborhood there, Guadalupe Mines, Pat Colonne and Jean Dresden whom I had a chance to meet with, as well as Chris Davenport from Truemark and Eric Shanehauer, who has done a tremendous job in getting information to us, and has been accessible the whole time for any questions that we've had. And you know we all collectively you know share the burden of increasing our housing stock in the City of San José areas in which we've identified for residential development. What we need to think very carefully about how we develop them and oftentimes the developments are more dense than

what we're used to. Oftentimes we do get large groups of residents coming before us, usually in opposition to a project, either in its entirety or regarding its density. Sometimes the council approves it, sometimes it doesn't. And I don't believe that we in any case disregard the opinions of the neighbors. In fact in this case I think there have been significant improvements to the project and I want to commend Councilmember Pyle for both her memorandum and supplemental that she submitted which I think add considerable improvement to the project and clearly have shown that she has listened to the community and the needs of the community as well as some of the environmental concerns. That being said, one other thing is I did go to the project site and had a chance to walk it. And anyone that lives near there, that lives in a tremendously beautiful part of San José. And the project site currently which has been there now for 25 years, shows our past mistakes, you know, to have cement right up the bank and have literally drip lines of trees hanging over the cement is a shame, because it's truly a beautiful, beautiful piece of land we have there as part of the riparian corridor. And those that have had the opportunity to hear me discuss riparian corridor issues in the past know that I'm pretty strict when it comes to riparian corridor issues and I think that for a number of issues. And there's a number of reason why the riparian corridor setback is a minimum of 100 feet not an average of 100 feet. And I know Councilmember Constant indicated that in some portions it's much higher, some less. And I think that's great that there are some sections where it's more than 100 feet. The significance when you reduce it dramatically in certain areas is a pinching effect it has on the riparian corridor, especially since Hicks Road is on the other side, and it was a shame to stand there and see cars right across the creek driving along Hicks Road, and we can't do anything about that. But we can do something about our side of the creek. And so the other point, Mr. Mayor, that you made in regards to the significance of the distance to the creek as opposed to the edge of bank, the riparian corridor very carefully take into account all the way to the edge of the bank, because the habitats we're protecting aren't simply those that are swimming in the creek. It's the birds and the other animals that use the entire corridor as a habitat. That's why I'm concerned when we have significant pinching that occurs on the riparian corridor. The current condition is not a good one. And with all due respect to my colleagues I don't believe the standard is of the riparian corridor policy is an improvement on the current condition. The standard should be ideally what we would like to see there. Because we know whatever we have there will be there for generations. We've already had the commercial property for 25 years. Housing typically stays in much longer than commercial property, 25 years or more. That's where I get great concern when we get projects like riparian corridor projects in which we create great exceptions

and use minimums in which there's a great deal of pinching. There is no doubt in my mind that the project even initially proposed by the developer before all the improvements was a great improvement over what we have there now in terms of preserving the riparian corridor. However, I do feel that we need to think about what is going to be there 50 years from now, 100 years from now, and I certainly have an open mind to exceptions and would agree with staff that because of the unusual configuration of the southern portion I would be more lax on the 100 foot minimum probably for that portion of it. But to be so lax with the entire length of the project, I would not be comfortable doing. And Councilmember Constant made reference to the project in his district, in fact, I was on the Planning Commission when that came before me and I actually voted against it at that time, for some of the similar reasons. Not that it wasn't necessarily an improvement on the current, or the existing state of the riparian corridor, but just that we were straying too far from the policy and I feel the same way in this case. Although if the project is approved I do feel that it will be an overall improvement of the riparian corridor but doesn't go far enough in complying with the policies that the council has set forth. [applause]

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to disclose that my staff met with residents of this neighborhood as well as Eric Shanehauer and Chris davenport. I just wanted to thank Councilmember Pyle for the additional recommendations to your original memo. I think it really shows that she has really listened to the community and worked really diligently to make sure the community is comfortable. The two memos to me really strike a healthy balance between development and environmental preservation. The fact that this development will add additional, an additional more than 700 trees, and a trail is something that I can certainly support. And I appreciate the neighbors coming out to speak on this. But at the end of the day, I think that we're actually doing more good to this current -- of this current site than what it actually is and what's going to be in the future if we do nothing. So I'm very happy to support the motion.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. I as well wanted to thank the speakers that came from the public, specifically Pat Colomb, you're wearing a smart planning hat and you've been here advocating for very high density infill development in my district over 100 units to the acre. So I know that you wear it on both sides, preserving the environment as well as doing sensible planning that makes sense for our city. Mr. Shanehauer, I don't think you could have had anyone else in your job field do a better job when it comes to riparian. I'm sure you never thought you would be thinking about that when you were studying at Stanford. Councilmember Pyle I think you did an outstanding job you know dealing with what you had to deal with as a land use issue and bringing things together. Community and riparian all those types of things and for people at home, riparian is a creek. With that said, you know this decision actually was cast a long time ago, in April of 2006 the city council actually rezoned this from R and D to housing, along with several other parcels that night. So I myself along with Councilmember Pyle went out to visit the facility. What I actually saw there was what everyone else sees there, but I also saw cars in the parking lot. And I recognized the logo of the company named -- called Monolithic Power Systems. They are a semiconductor company. So I said, hey, why not just knock on the door. So I went there and asked to speak to the CFO. And as I was sitting in the lobby I saw people coming in to interview for jobs. I come to learn that Monolithic Power, that's their global headquarters there. They have 160 employees. They'll be hiring 11 people in that facility. They do about 240 million in sales. They are a publicly held company. The physical object, it is a semiconductor chip. So we as a city derive sales taxes outside the benefit of well-paid jobs in the semiconductor industry in San José. So I spoke to Rick Ready, the CFO, and he said, you know what, we would really like to stay here. We like this location. They even put in a bid to buy their building and an existing building, commercial price for the property. However Truemark put in a bid based on a certain number of units of housing. Time and time again housing trumps commercial so therefore that bid was accepted. Even though Monolithic Power only occupies one building, they did offer to buy the second building. With that said, they understand, they don't own the building. There's many companies out here in the valley that lease and they don't control their destiny. But in this case they really did try to stay there. I then said, wearing my San José Hap hat on, well, gee have you thought about Edenvale or San José, well no, Pierluigi, San José will not be in the running for us in our relocation. Based on where the team lives, you know the sea level team, we won't be staying in San José. So they do have X amount of time to find a new headquarters but it's not going to be in San José. So I can't -- I can't vote for this item, knowing that I'll be eventually kicking out a corporate headquarters out of San José,

when at the same time I talk about not having any money to provide services. I understand the decision was made long ago, but I don't have to associate myself to that decision. So I will respectfully be voting no.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I just wanted to be sure to thank some of the people that have been so helpful. I do want to say, too, that any project that has anything to do with the riparian corridor has got to be one of the most difficult land decisions that we make. Gosh, I've lost that sheet of paper. But I would like to give great praise. Oh, here we are. I would like to say that I think my recommendations will balance the needs of the existing community and the developer, greatly improve the riparian corridor, provide much desired housing for professional families. And since I'm the liaison to the parks and rec commission, I will be following the development of the trail area very closely to make sure that the trail is a key feature of the neighborhood and open to all. And, as a councilmember for district 10 I will continue to monitor this project and work with the community, staff and the developer to make sure the project is the best that it can be. And just to be on the record, I cannot praise planning staff enough for their efforts to provide information and work with me on my recommendations. We have spent quite a bit of time together. They've been quick to respond to not only the official appeals but have answered numerous questions from me my colleagues the developer and the community. So I just had to say that because I did want people to know that I wasn't going to drop out of the picture once this was approved. Thank you.

>> Mayor Reed: I think that concludes the council discussion. I don't see any other requests to speak. We have a motion to approve based on the two memoranda from Councilmember Pyle. All in favor, opposed, Councilmember Kalra, Councilmember Oliverio. So we have two opposed, eight in favor. That motion passes with one councilmember absent. So that matter is approved. Concluding the business of our agenda today. Are there requests to speak under open forum? I don't have any cards. We have a couple of requests under open forum. Robert Cortese, Gary Andrew Crittenden.

>> Hello, council and mayor. I want to thank some of the councilmembers, particularly Oliverio, too, Herrera, and absent, Luccardo for coming out to the Italian festival. I'd like to thank the mayor as well. I want to make a

suggestion for Communications Hill. We've had two fires in the past year and there's a low tech solution from a high-tech company that we can sort of take an example from. Google, on their Mountain View campus, they recruit the use of a goat herder to come out and chew all the brush and all the fire danger stuff down. So I'm thinking that would be a kind of a cute thing just to drive down 87 and see goats munching down the grass on the hill. The other suggestion I want to make concerning Communications Hill is since 2006 there's been a group of us going out there using it as a model glider park. It is one of the few places in San José that has the right topology, it has the right prevailing winds and everything else to support that. There's the academy for modeling aeronautics that would actually help us develop that site if the city chose to look into using that site for a model glider park. In addition to helping develop it they would also provide \$25,000 worth of liability insurance. So there's some good things to look at there. Thank you.

>> Mayor Reed: Gary Andrew Crittenden. I don't see him in the audience. That's the last request to speak. That concludes open forum, that concludes our meeting. We're adjourned.