The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Commissioner Bit-Badal: Good evening. My name is Edisa Bit-Badal, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, October 10, 2012. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record show that all commissioners are present with the exception of Commissioner Kamkar and Commissioner Cahan. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or defer remaining items to the next

regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. staff.

>> Thank you. Staff has received a request from the applicant who is not here, on item 3D, the CPA 95-032-33 to defer the item to the Planning Commission hearing on October 24. This deferral would allow the applicant to work out some of the project issues with the neighbors. Thank you, do I have a motion to approve -- Commissioner Dori Yob.

>> Commissioner Yob: Move to remove this item and move it to October 24th, as recommended by staff.

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

>> Staff has no additional reports at this time.

>> Commissioner Bit-Badal: To I have a motion to approve the consent calendar? Second? All approving please say aye. Thank you. Moving on to the public hearing. Item 3B. I'm going to go through with this. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. Staff item 3B.

>> Thank you, Madam Chair. This conditional use permit is for the timely renewal of a conditional use permit. File number CP-05-055. Allowing continued operation of a hazardous waste facility located at 1021 Berryessa

Road. The subject hazardous waste facility, Clean Harbors, is also proposing the installation of two 10,000 gallon tanks as part of the C.U.P. The project does not include any other physical modifications to the facility or any changes to the existing facility operations. Staff is recommending approval of this project for the following reasons. One, per zoning ordinance section 20-100-750, the project is considered a timely renewal, and the use can be continued unless there is evidence of noncompliance with the original permit. Two, the project complies with the conditions set forth in its original conditional use permit in that, according to the city's bureau of fire prevention, there have been no major code violations or code issues. Three, the two 10,000 gallon tanks will be located adjacent to existing vertical tanks, are comparable in size to these exist tanks, and will not significantly alter the visual character of the site and its industrial surroundings and lastly the C.U.P. maintains a five-year time limit for renewal. In addition to the C.U.P. the hazardous waste facility can regulated by other city, bureau of fire prevention, the Santa Clara County Department of Environmental health, the Bay Area air quality management district, the state department of toxics and substances control and the environmental protection agency. This concludes staff report.

>> Commissioner Bit-Badal: Thank you staff. Is the applicant here? You have up to five minutes to make a presentation. Okay. Thank you, we do not have public speakers card on this item and the applicant has decided not to make a presentation. Do I not have any questions from commissioners. Actually, Commissioner Kline.

>> Commissioner Kline: I was just going to make a motion to approve 3A as recommended by staff.

>> Commissioner Bit-Badal: Do we have a second? Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I do have a question. Can I ask that now?

>> Commissioner Bit-Badal: Absolutely. Would the applicant please come forward --

>> Commissioner O'Halloran: Actually, it is a question for staff. I was confused that in the staff report it said that the two tanks were proposed to be 10,000 gallon but they would replace two tanks that are 1500 and 1800, and

then your report says the proposed tanks are comparable in size. It seemed to imply that they were comparable in size to the existing. Did I miss understand that?

>> Staff meant to indicate that the proposed -- the two 10,000 gallon tanks are comparable to the existing vertical tanks out there not the ones that are replaced. The replaced for the previously removed tanks are actually smaller in size compared to the proposed 10,000 gallon tanks but the existing tanks out there right now are in comparable size in terms of height and width.

>> Commissioner O'Halloran: How can that be? They're much larger, but they're no taller or wider? Or they have more volume but they're much taller and wider?

>> There are two proposed tanks are located in a location where two smaller tanks used to be, that have since then been removed.

>> Commissioner O'Halloran: Oh I see, okay, I'm sorry.

>> So it's larger than those previously located tanks but the tanks are similar in size to the ones that are still out there.

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

>> Commissioner Bit-Badal: Thank you. So we had a motion by Commissioner Kline, seconded by Commissioner Yob. Commissioner Abelite.

>> Commissioner Abelite: I'm sorry I was just going to make a motion and seconded, I didn't hear the second. No comments.

>> Commissioner Bit-Badal: No problem, we do have a motion and second. No more lights. Please vote by light, please. All those commissioners present voted for the project. Thank you. Item 3C, staff.

>> Thank you, Madam Chair. This is a conditional use permit and determination of public convenience or necessity to allow the offsale of alcohol for a full service grocery store at an existing commercial building site, formerly a savemart located at 1070 Story Road. The project is exempt from CEQA. In order for the store to be able to sell alcoholic beverages at the location, the application needs the conditional use permit. But because the site is also located in an area of high crime, and is overconcentrated for offsale licenses the city must also grant a determination of public convenience or necessity or PCN. The subject site would be part of a full service grocery store at an existing neighborhood commercial shopping center fronting onto an arterial street with good access and visibility. The sales area for the alcoholic beverages is incidental to the larger sale of food products and would comprise no more than 5% of the store's total floor area. The police department has indicated that they're neutral to this proposal. Even though the site is located in an area of high crime. Some of the recommendations identified in the police department memo are outside the purview of this land use permit. But these can be pursued by the police department separately through the liquor license process through the state of California. If this project is approved the operator will be subsequent required to on tape and maintain in good standing a permit from the California state department of alcoholic beverages control or ABC. This particular instance there are two specific factual findings for a determination of public convenience or necessity that the Planning Commission would need to make in order to approve this project tonight. Unfortunately this is not possible since the project proposed is located within the Tully-Senter strong neighborhoods initiative area and the site is located within 150 feet from a residence. As noted in the staff report, the zoning code was recently amended and in instances where the Planning Commission cannot make all the factual findings for the determination of public convenience or necessity, forward a recommendation to the City Council rather than adopt a resolution to deny the proposal as has been traditionally the case in such instances, if they can find that the proposed sale of alcohol would be a very minor portion of the total net floor area no more than 5% and the addition of off-sale of alcohol to a full service grocery store would provide a more convenient shopping experience. With this limitation included in the project which is noted in the draft resolution distributed tonight, staff feels that the Planning Commission or staff

recommends that the Planning Commission forward a recommendation to the city council to approve this conditional use permit and grant the public convenience or necessity. This concludes the staff report.

>> Commissioner Bit-Badal: Thank you staff. Is the applicant here? The applicant has up to five minutes, here she is here. So there is nobody coming forward from the organization but we do have a speaker's card. Regarding this item, Joanie Ramon and Cindy Wynn, would you please come forward. You have up to two minutes.

>> Thank you. My name is Joanie Padron. I'm a field consultant for 7-Eleven Ing. I'm here to support the interest of the franchise store on the corner of Story and McLaughlin. Sun and Cindy Nguyen are the proprietors of 25 years and have been an integral part of the community and the neighborhood. Their concern centers around the number of alcohol licenses already issued in the area, as well as the effect to the small, independent business owners in the area. They feel that this permit if issued would both adversely affect theirs and multiple small businesses in the area, forcing them to compete in a market that is already depressed due to economic factors. They ask this permit not be issued.

>> Commissioner Bit-Badal: Thank you. I do not see any questions from commissioners. Thank you so much for your time. And the -- since the applicant is not here I'm going to close the public hearing. As we do not have any more cards on this item, staff.

>> Staff has no additional comments, unless there's questions by the commission.

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

>> Commissioner O'Halloran: Thank you, Madam Chair. Was the previous save-mart allowed to sell liquor?

>> My understanding is that that was not the case. In instances where we have previous use that had a liquor license associated with it and the new use were to buy that same liquor license they would still need to come in for a conditional use permit but they would be able to bypass the PCN process. And so given that they're going

through the PCN process, I believe that probably either there was no alcohol license available to buy, or it wasn't transferred as part of the project.

>> Commissioner O'Halloran: Okay. And then also as a practice, does the city typically allow this type of sale of alcohol at the large grocery stores like this throughout the city?

>> All I can say is generally in past instances, we've seen a lot of offsale of alcohol proposals. In past practice when there's been a PCN the Planning Commission has a lot of times been obliged to outright deny it because they are not able to make findings in a lot of cases and a lot of times the proximity to residential is usually the key factor. However in that case the applicant does have the right to appeal that decision to the council. And the standards under title 6 for determinations of public convenience are a little bit different, and that is when it is appealed to the city council, the city council is obliged to consider the recommendation made by -- or the testimony that was provided as part of the Planning Commission. However, the findings that they have to make in order to approve the offsale is a little bit different. They're a little more flexible. And they don't have to make the same rigid findings of denial because it's located within 150 feet. They can take into consideration other factors, such as it's part of a larger grocery store that may have some other benefits, there may be some other public convenience to having such a facility within a neighborhood, and a few other factors. And in past practice, I don't have specific statistics but the council has generally been more favorable in terms of making determinations for offsale of alcohol when it's in conjunction with full service grocery stores.

>> Commissioner O'Halloran: Okay. Then finally how does staff view the issue of business competition in the context of land use?

>> That doesn't enter into our equation. So just as it is for issues of gas stations or any other uses, you know, it's a free market society, applicants can choose to locate two businesses of the same type right next to each other if they so wish, provided it's not subject to any sort of conditions by the city. But that's not something that the city attempts to try to regulate.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. And actually, Commissioner Kline.

>> Commissioner Kline: Make a motion again, move approval of 3C and the recommendation would be planning staff recommends, that the Planning Commission would recommend that the approval of California Environmental Quality Act and recommend, recommend to the city council approval of the proposed conditional use permit and determination of public convenience and necessity as conditioned by staff for the following reasons as stated in the findings and documented by staff.

>> Commissioner Bit-Badal: Thank you and we have a second. Commissioner Yob.

>> Commissioner Yob: I turned oon my light to second the motion.

>> Commissioner Bit-Badal: At this point I see no further lights and we will vote by light at this point. And the motion passes by all those commissioners who are present. Thank you. Moving on to item 3D. Staff.

>> Thank you, Madam Chair. This is a conditional use permit to allow religious assembly use within an existing office building, along with associated minor site improvements on a 2.575 gross acre site. This is located at the Northeast corner of Lincoln avenue and highway 280. The subject site is within the industrial park zoning district which allows religious assembly use with the issuance of a conditional use permit. The proposed use will operated at a staggered schedule and share the onsite parking with the existing credit union which is the only other tenant in this office building. Planning staff has included alternating onsite parking conditions in the draft resolution. As discussed in the staff report this religious assembly use is consistent with the goals and policies of the San José 2040 general plan and zoning designation. Therefore, staff recommends that the Planning Commission find the project in conformance with the California Environmental Quality Act. Staff would like to point out that there was a minor technical inconsistency in the staff report. That said combined industrial/commercial as industrial. The online report was the corrected version. This concludes the staff report.

>> Commissioner Bit-Badal: Thank you. Is the applicant here? You have up to five minutes to make a presentation.

>> Good evening, Henry cord on behalf of the river church community. I'll make this short. First we'd like to thank our planner, Impana Encola, for her fine work and her supervisor, Mike Enderby. Secondly, this was filed on July 10th. If you take action on it tonight, it will be the 90th day so I think that's very efficient work on behalf of staff, done don't you, Laurel? The opportunity at 670 Lincoln for the river church community is to consolidate their current operations. They're bifurcated right now with offices on North First Street by the old City Hall and over at San José State university. So they're excited about being able to consolidated and grow their congregation. I believe the staff report and staff's summary this afternoon covers all the points we worked to make sure all the concerns of staff were addressed. With us tonight are both the pastor, Brad Wong, and the chairman of the real estate committee for the river church community tonight if you had specific questions on operations of the church. Meanwhile we would appreciate your consideration and approval of this and if you have any questions we'd be glad to respond. Thank you.

>> Commissioner Bit-Badal: Thank you, Mr. Cord. We do not have any speaker cards on this item. So if commissioners have any questions this is a good time to ask. And it seems like there are no questions. Thank you. With this, I will close the public hearing portion of the hearing. Staff.

>> Staff has no additional comments at this time. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Yob.

>> Commissioner Yob: I'd like to make a motion to consider the exemption in accordance with CEQA and consider the conditional use permit as recommended by staff.

>> Commissioner Bit-Badal: Thank you. And do we have a second? At this point we will vote by light. And all commissioners present voted for the item. Thank you. We will move forward with item 3E. Commissioner O'Halloran.

>> Commissioner O'Halloran: Madam Chair, as I did at the last meeting, my company CH2M Hill prepared the EIS for the habitat conservation plan. I didn't work on it directly, but in order to avoid any appearance of conflict I'm going to recuse myself from this item.

>> Commissioner Bit-Badal: Thank you for the disclosure. Staff.

>> Joe Horwedel: Thank you, Madam Chair. This matter was before the Planning Commission at a previous meeting and we took public testimony on the item and had some discussion with the Planning Commission. We did ask the commission to defer the item. So that staff could prepare a response to a letter that was received shortly before that Planning Commission meeting. Staff has distributed to the Planning Commission, and has posted on the Website, a response letter that was jointly prepared by the local partners of the habitat conservation plan. The letter is a full response to the letter from the YCS commons. There were a number of issues that were raised in that original letter related to co-lead, the alternatives that were looked at through the EIR, several specific issues, and we have provided a full response to each one of those. Staff is recommending that the Planning Commission certify the EIR. And would recommend moving the habitat conservation plan forward to the city council. We also had -- just look at my agenda -- the actual plan itself and to the extent the commission has comments on the plan itself, again you had some discussion last meeting, that we will share with the council. But any additional questions or comments that the commission had related to the actual plan itself, staff is prepared to answer questions and forward comments. And that concludes staff presentation.

>> Commissioner Bit-Badal: Thank you. I do not see any lights on for this item. Commissioner Abelite.

>> Commissioner Abelite: Earlier this afternoon we received a memorandum by e-mail from Mayor Reed's office that seems to have a number of issues with the plan and I was just wondering, what does staff think in terms of

what should our actions be tonight that are appropriate, should we take an action? I'm not terribly comfortable without taking actions at this point in light of the memo.

>> Joe Horwedel: Commissioner Abelite. Mayor Reed did put out a memo today regarding to the plan. It is a -- I think a series of questions that the council has talked there as they have discussed the plan. Both at the last meeting in September as well as in previous meetings. I think this reflects the comments that the mayor's office has received from individuals that they have talked with. And outside of the city organization regarding the plan. And staff has already been completing a memo, that would be answering a number of the questions that were raised at the time prior council meetings which overlaps with a number of these issues. So if there's the commission's interested I'd be happy to do kind of a thumbnail walk through of what the issues were, the response we have a 25-page memo that I'm editing now that I can hopefully distribute tomorrow.

>> Commissioner Abelite: My initial read of the memo told me this was going to go away for about a year. I didn't understand at what magnitude and what level these questions were being posed at. I wouldn't mind getting some more information on that letter.

>> Joe Horwedel: Sure. I think what will happen at the council level and ultimately it will be at the council next week talking about the habitat plan some more. We're not asking the council to take an action next week. That would be scheduled for a later date. And whether that is early November, early December, we're still working on. It's partly of -- partly the discussion next week around some of these issues. So I think the biggest set of issues that the mayor has raised in his memo is how does the plan affect the competitive advantage or disadvantage to the City of San José, in other participating local governments, by doing the plan? And I think that's really a function of a couple of things. Of how the fee structures of cities such as Sunnyvale, Mountain View, Palo Alto, Santa Clara compare to our North San José area. On an existing developed parcel to an existing developed parcel, the fee structure with the habitat plan is really what we call the nitrogen fee, the traffic impact or air quality mitigation fee of $3.60 a trip. That really is the delta. When we price that out for I think it was 200,000 square foot office building it was about $70,000 is what that cost for that mitigation would be. So that really is kind of the competitive piece we're looking at on a multimillion dollar project. It is one more thing on the pile is one of

the things we're very concerned about because we already have traffic impact fees in North San José. We are looking at should that fee be included or is there another way to pay for that mitigation or that impact. So we're dealing with that. I think where the bigger disparity is, is where you have a property that has never been developed in North San José and we have about 200 acres of that on North First Street that is the land either has burrowing owls on the property today, we showed some aerial photos last meeting that showed the circles of their foraging habitat. If you have land that is considered habitat for burrowing owls which those 200 acres are there is an impact fee on those properties I think of about $45,000 an acre. The cities to the north of us do not charge that fee. So there is a disparity if you are building a new building on a new site in Sunnyvale and a new site in San José there is a difference. The challenging part is, there are not a lot of green field development sites in those cities. Most everything we've seen developing in those cities are sites that were previously developed. We are still fortunate that we have green build sites that are more easy to go develop. But because there's habitat potential, utilization today, they are looked at by the resource agencies, wildlife agencies differently. So I think that's the big thing that's causing the rub right now. We are looking at if you take burrowing owls out of the plan what does that do? If you don't have owls on your property there is then equilibrium. But if you have owls on your property you have equilibrium with those others cities but are probably going to buy 23 acres of land for every set of owls that are on that property. But that would not happen in time, you just have to go and deal with fish and game and negotiate a settlement with them individually. So I think that's the big issue. Are these things that are going to put us price competitiveness out of the market, where we're right on the other hand incentivizing development in North San José. It's a very important issue for us. So it is one that staff is very sensitive, we're spending a lot of time really making sure that we truly understand if plan means, the consequences of it around that. And that's what you saw in the mayor's memo. There are questions about how prior agreements, these are where you have fish and game has entered into agreements with other developers to deal with burrowing owls in the past. It is our understanding that some developers have done that. We do not have in our possession any of those agreements so it's hard to answer the question of how it would impact it other than I can say if those agreements are still valid the HCP says you're not covered by the plan. You are outside of the plan. You business as usual. If those agreements have expired then clearly they don't have standing. So we are clarifying those issues. There was a question similar to that as the airport which has had an owl management plan since '89, the airport is not a covered activity under the HCP. We acknowledge that there are owls on the property. It is within the permit area

but it is not something we specifically wrote into the plan that the airport is a covered activity. If at some point later on they wanted to do it we could actually do it but it is not an assumption within the plan that the airport is in. There's been questions about army corps of engineers permitting and regional board permitting. The army corps of engineers has been working with us on doing a regional general permit. What that means is wetlands of less than a half acres, we would have a permit, a master permit issued every five years that would give us stake authorization, so you would not be dealing with the army corps of engineers. It would already be preissued to the plan.

>> Commissioner Abelite: I'm sorry, what -- since we're talking about the plan, is that strictly San José?

>> Joe Horwedel: That would be the whole permit, it would be all of the participating agencies, Morgan Hill, Gilroy, Water District, VTA and the county.

>> Commissioner Abelite: Oh, so the corps is negotiating the deal --

>> Joe Horwedel: We have proposed that with the regional board, have not made significant progress. They have entertained the concept, I think they're really waiting to see what happens with what the final HCP is. Before they go forward, with whether they would do that or not. The -- I think it's Solano county habitat plan has gone straight to the state regional board or the water quality agency to get a master permit from them to do similar sort of things. So that permitting is accompanied with the HCP or at least it follows behind it about a year. Because it does take them some time to take the approved document and then do their necessary permit approval. On the army corps they actually did a press release for what three did on East Contra Costa, touting the fact that this was a new way to do business, that they did it for East Contra Costa and they were working with four more agencies. We are one of the four. Question around governance and the fees, the level of fees that get collected. That's really a function of the certain areas of impact. And it's similar to the whole competitive question. One of the issues that's been raised is riparian fees are high, we've assumed a fair amount of impact within the San José boundary. Or at least what's assumed in the plan. Therefore there's a big set of dollars involved in that. Those dollars only get invoked if someone actually goes and builds in a riparian area, does

essentially less than a 100-foot setback. Our council adopted policies for a number of years is 100 foot setback. So to the extent that we are in fact are approving development consistent within the 100-foot setback those dollars never even accrue. To the extent somebody's doing you know 50- or 70-foot average setback, which we've done on some projects, there is a dollar amount that goes along with that but essentially it's providing the mitigation that the community has been asking for, for years whenever we do a project that says you know they're building in the riparian setback area. Other cities to the north may not have a riparian setback and so there is the competitive question are we more competitive for someone wanting to build in riparian setback? I guess my answer would be that's probably not a business that we should aspire to be competitive in. Our goal should be to protect the riparian areas. The issue about burrowing owls at the airport, and the water pollution control plant, is something that San José I think has been very proactive in the years past, that we have worked hard, the airport staff has integrated into the operations of the airport, protecting owls out there, and they have a large number of owls that continue to live out at the airport. The same out at the water pollution control plant. The plan acknowledges that there are a large number of owls out there today. The plan also assumes for success that we need to have more owls living here in the South Bay. Mostly out in the bay land. But that we can't give up on the owls that we have in the -- at the airport or at the treatment plant. So there is acknowledgment in the plan that those owls exist. I think we could have done a better job about the good work that has occurred about why they are still there today versus many parts of the county where they've gone but there is not a penalty per se that says that we have to use city lands to turn them into owl preserves. Those we've been very clear with the resource agencies that those are public lands, that have other responsibilities for operations, for financial, you know of how they are funded, that it's not an owl preserve. It is something that it is a secondary benefit, we have been very complementary about accommodating those. At the end of the day it is an airport, a water treatment plant and both of those need to operate in that prime directive. And then there was concerns raised about weaknesses within EIR, and I think that really was a response to the letter the commission received at the last meeting. The property owners representative is here tonight, and you know is interested, could talk about whether they still have concerns around that or not. But it is one that we think we have answered the questions around the EIR and the adequacy. And it is important for the record: This EIR is unlike, I think, just about any other EIR we've ever done before. This is an EIR about preserving wilderness. We've identified significant impacts from preserving wilderness which is a bit of a stretch of the mind to wrap around. Those impacts are because we are preserving

wilderness and habitat we may create noise impact because of the maintenance activities to preserve those lands, that it may generate traffic in places where it hasn't in the past. So we have identified things that I think most people would say are pretty low potential impacts of occurring, but we wanted to be conservative about them, but they are not air quality, we're not building a superstore. We're not putting housing that is going to put demands for services, emergency services. This is essentially about building a preserve system around the built urban environment. So it is a really unusual EIR but I wanted to put that on the record.

>> Commissioner Abelite: Just give me a moment here.

>> Commissioner Bit-Badal: I will take the next commissioner in the meantime.

>> Commissioner Abelite: Yes that's fine.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: Making sure mine is wrapped around what we're doing here. Seems like this is a long process, been done by pretty much independent organization, the money years and years the money is pretty much done. What we have here is a finished product from this long process. We also have the city council starting to weigh in on the plan itself, so this is our opportunity to take a shot at this. It's our job to do so. We could either as I understand it certify the EIR or don't. If we don't we have to document exactly what's missing in the EIR so somebody would go back and fix it. Unfortunately that organization reign ran out of money to actually do any major work on the EIR but we could somehow work through that I suppose. The other job we have is to advise the stolen who is bringing this up right now which is really timely on what we would think could be changed in the process, in the plan, so that we could actually add our two bits into their discussions that are going on right now. It is our opportunity as a Planning Commission to do that and we should take advantage of it because it is really good timing. But the question is: If, assuming this process, our recommendations to the city council and city council's own deliberations, significant changes to the plan is done, would this then create a cycle that would come back through all the various agencies and we would see it again if it was significantly changed?

>> Joe Horwedel: So let me go deal with the first part under the EIR. I do want to clarify that the commission, yes, certify or not certify, and if there's information, we will go back and do that. The lack of a budget at this moment is not a reason for you to not certify or certify the EIR. So I want to be really clear on that so the public record's clear on that. We will go find the money for whatever we need to do. As for the second question or comment, yes, this is an opportunity to talk about if there's things about how the plan is put together, certainly interested in the commission comments around that. We talked about the JPA at the last meeting and some of the structure and some of the challenges of that structure. But also, if there are changes the council goes through and says they want to -- they talked about burrowing owls, if for some reason we decided we took burrowing owls out of the plan, our sense, that's going to trigger recirculation of the EIR-EIS, and so clearly that would come back through the planning Commission so that added action. To the extent that they did some changes that did not affect the CEQA or NEPa for the plan, but really this document itself, that's one of the things we would have to look at, whether there was something that needed to come back through the commission on that, one of the challenges, the draft plan that we have here, the resource agencies they said it's take it or leave it, as is, I don't think it's quite that extreme, it has been through the federal register process, there is a very prescribed federal review process that happens with the document and to the extent that there are changes that are desired, that's one of the things we'd have to sit down and figure out, do we start that over which is probably a two-year cycle or do we go and missile kind of tweak some things.

>> I'd like to add to that also that it's not the City's decision to attempt to revise this plan. It would be the decision of the other five local partners as well whether they would want to invest in that.

>> Commissioner Bit-Badal: Commissioner Yob.

>> Commissioner Yob: I'm just curious what the status of the other local partners and where they are in the process, have any of them approved it can you explain where they are?

>> Joe Horwedel: So the county approved it yesterday, Morgan hill and Gilroy still has to go and Water District already has approved it and VTA is scheduling it the beginning of November. So we're kind of in the middle phase at this point. I think both Gilroy and Morgan Hill are in the next week.

>> And we're the only agency that goes to the Planning Commission for certification of the EIR. The others councils and boards have certified. They have already finalized their process and we're only about halfway through with your consideration.

>> Commissioner Bit-Badal: Thank you. Commissioner Yob.

>> Commissioner Yob: Just one more question about opting in, if we did not opt in now and this proceeded without us, is there an opportunity for us to later opt in, or no? And then also, similarly if we are in it --

>> Joe Horwedel: How do we get out?

>> Commissioner Yob: If we wanted to get out, you know, in terms of the fifth year plan, this is a huge commitment. I'm just curious, both ways how that would work.

>> Joe Horwedel: On the opting-in piece I would say it is possible but I would say, if San José chose to not participate in the plan, I think the other five agencies are going to have to see, even is it feasible to adopt the plan or implement it as adopted. And why I say that is, the financial assumptions about how do you pay for the conservation strategies which are different than mitigation, the conservation is what you need to do for recovery of species. So it's almost like a flat rate for burrowing owls you need to do X, for butterflies you need to do X. So the price structure, the cost structure assumes a certain amount of development in San José as well as the other cities. Think of Gilroy or Morgan hill drops out it's probably less are of an impact but if the counties dropped out the Water District dropped out or we dropped out those are in some ways fatal decisions to the plan. That said, assuming the plan's adopted 20 years from now, any one of the partners has the ability to go and drop out of the plan. There is built into the document of how to kind of unwind it. It does go through some of the balancing the

books that would happen at that point, one of the things that we would be looking at for whatever agency was stepping out of the plan was, have they fulfilled all of their obligations under the plan. And so to the extent that there is development or projects that have been approved, that have required habitat acquisition or fees being paid, have all of those commitments been satisfied that were expected under the plan? So there are some operational things that were take to unwind it but it is possible to kind of unwind yourself out. And the plan itselfto could vote to dissolve itself. There is the obligation for the in perpetuity, management of the habitat that's been acquired through the process to date, so that's one of the reasons we're really careful in watching the fees, is making sure that we're collecting enough money to ensure that endowment that would continue to manage these lands into the future.

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

>> Commissioner Abelite: Just two other questions. So Commissioner Kline two meetings ago talked about the J PA and the voting proportionality versus that. And that did appear in the mayor's letter and I didn't hear you touch upon that.

>> The voting proportionality of the JPA is a function of everyone having to work cooperatively together. If one agency has more power or whatever that cooperation ends up dying. The agency probably with the most money in this, and the most property in this, is the county. San José certainly has a large chunk of fees that would go to this because the nitrogen deposition fee that would be collected. If you take a look at the fee structure among the different plan areas, you have areas A through D, A being the most rural portions in the county that have the most habitat, you know, on them. Those fees are extremely high for any type of development in those areas. Areas B and C, less so. It's sort of a midland fee by comparison. Area D, which is mostly urban San José and pays a nitrogen fee primarily is the lowest fee, but it's the highest in terms of number of participants because of the amount of units. So we wanted there to be, the people fashioning this wanted there to be a balancing act among all of those different interests with an understanding that everyone was putting a lot of money into this plan, a lot of props, a lot of interest, a lot of effort. On the governing board, VTA did not want to vote, so they are not on the governing board. The Water District has one vote by comparison. They will be contributing primarily through fees,

because they have very large projects. The rest of us my be contributing both land and fees, the county particularly in terms of land in their parks department. So we balanced a lot of interests in coming up with that, and it didn't seem right to, among the partners, to say one partner should have more votes or another should have. That was truly -- the true cooperative portion of this plan was how we came up with that governing board structure.

>> Joe Horwedel: And let me give some percentages of the allocation of at least our estimates of where impact will be and therefore, the dollars. So the private sector wet land mitigation, this is where I was talking about big assumptions whether they really hit or not. Gilroy we're assuming about 26% of those dollars will come from the city of Gilroy project. About 4% coming from Morgan hill projects. I don't know why those two cities are dramatically different. Ours we show 64%. And you know based on our policies, I don't see a lot of private development that's going to be developing in wetlands. So we went and kind of looked at total creek miles that existing within those agencies. The county has about 6%. But total, that's $31 million out of all of those. So while it's a big chunk of money, the zone A, zone B fees that Vera talked about those are $184 million over 50 years. 36% of that is going to be coming from the City of Gilroy private development projects. 23% of it is coming from Morgan Hill projects. 22% from San José projects and 20% from the county. From that standpoint, really Gilroy is the larger contributor, and on a per capita basis it is dramatically tipped. But as reflection of its green field development, the ratio of green field development happening, primarily Gilroy and Morgan Hill and the county, despite our 200 square miles, we are still at 21, 22% out of that. And so I think burrowing owls, though, 100% of that system to be in San José, because the owls that are nesting are in San José where development is at. Serpentine soil, most of that is in San José, because that's where most of the serpentine soil in the county area is within our jurisdiction. It may be in the hillside areas because that's where you know it's at. But it's in our physical jurisdiction versus the county. So it's one that we have tried throughout this process from day 1 to figure out a balanced way, recognizing that you have us being the 800 pound gorilla in the room just from the size of our population but you have other cities that for the amount of development that's proportionately they are doing is substantially larger than what we do. You know the amount of acreage that is going to develop, the amount of units proportionally for Morgan Hill and Gilroy, substantially more than we will do in San José.

>> Commissioner Abelite: Thank you. And then another question completely different in the mayor's memo, and I couldn't believe that it wouldn't have been done. They refer to a nexus study for fees that have been committed and released. I assume that's been done.

>> Joe Horwedel: Yes, we've done it several times. The latest was June 2012 and it's up on the habitat conservation Website.

>> Commissioner Abelite: No further questions.

>> And additionally, they're incorporated into the plan. So if you take a look, for example, at appendix E that shows you the scientific methodology behind the nitrogen deposition at the end, it's all included. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Kline.

>> Commissioner Kline: And just to follow up with that, what percentage of San José and the other cities are in the emissions charges fees? As I understand, that's one of the major competitive issues involved.

>> Joe Horwedel: Let me see if I can find that answer. It's one of the charts that I will be putting in for the council meeting. Because it's actually a kind of worked with total amount of emissions and then what's within the plan area and then what's existing development. So I will look at that, if there's any other questions --

>> Commissioner Kline: Ballpark? No guess?

>> Joe Horwedel: Don't even want to hazard a guess if I put something wrong out.

>> Commissioner Bit-Badal: There are questions or comments at this point, I will make very few comments, because I've had such great comments coming from my fellow commissioners. I appreciate the fact that you are discussing incentivizing development in North San José. That's a huge goal for us in City of San José, because

that is really our bread and butter or the golden goose. So we want to make sure that we are keeping that area very competitive in regards to development throughout the peninsula and the Bay Area. I also appreciate the fact that you touched on the riparian protection of that. That is something that I personally deeply care about and have stated it over the past couple of years. So it is something that I'm glad that the city has taken heart and is moving forward with that as well. In terms of fees, it's true some other cities don't charge certain fees and we are. So maybe we can look into the cumulative of how competitive you are by adding all the fees that we are charging to our developers, comparing to other cities. That's something that maybe we cannot do right now. But maybe two years from now we can look back, or year from the time we set the fees, to see how competitive we are. With our surrounding cities. Those are things that, when I look at it as an economic development standpoint, it's -- those are the issues that I would really -- would like to see us look into not only now, but into the future. Because of course, it's stat they'd we are charging a fee and a couple of other cities are not. You just want to make sure that as a developer who is coming in, he or she can be very clear and realize that our city is a competitive city. Also I appreciate the fact that this plan not only protects our environment but will streamline the process, will be very clear, and honest, in terms of the fees that are being charged. So the developer's not going to be surprised, that all the fees are set and very clear right now. So I also appreciated as I was reading the plans. Want to reiterate that about a year or so ago when we had the Planning Commission staff report on this, it was I believe during one of our retreats, these questions came up. And I'm so appreciative that staff has done such great work in addressing them. Because a lot of the economic development questions regarding fees and clarity and making sure that developers and community members know exactly what they're going to get if they're filing for a project in San José that you have addressed that. I would really like to thank you for addressing those issues and working on those really thorough EIR and ordinance. With that I gave you enough time to answer my fellow commissioners' questions.

>> Joe Horwedel: So if somebody is at home looking on it, it is in appendix -- volume 4 appendix E on page E-67. It notes that about 30% of the emissions that are located within 20 kilometers of the habitat location, so essentially Coyote valley, come from mobile sources of emission, about 17% are emissions that are coming from elsewhere in Santa Clara County. And then it then breaks out of emissions that come from point sources so those are like power plants other fixed places, generators that are within 20 kilometers, about 13% come from

those. And so what we focused on in the plan was the 30%, really focused on mobile sources within 20 kilometers of the site itself. And then so that was based on a lot of atmospheric data, air district data and then modeled through several different methods and on top of that we projected in the traffic projections for traffic increases both in the county, the project area. As well as the Bay Area, so that we accounted over time how emissions would change in the overall area and looked to see did that proportion change over time or was it still a relative proportion of 30% of mobile forces within 20 kilometers of the habitat.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: Just follow up on that question. I read some pretty big numbers of for like building a new convention center and this seems pretty exaggerated to me. But it clearly even something like building a new hotel or something in Downtown San José would be affected by this versus building that same hotel in the City of Santa Clara, per se, there would be a difference if all things were the same, is that correct?

>> Joe Horwedel: Correct.

>> Commissioner Kline: With that I would like to get going with the first section, I've read through the EIR and I really did my homework around I can't find anything really wrong with it that's physically missing so I'd like to move to certify the EIR.

>> Commissioner Bit-Badal: Do we have a second?

>> Commissioner Abelite: Second.

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

>> Commissioner Kline: No, just -- I think this is an important step so we can move this to the city council level where they would then be free to make significant changes if they do say so or walk away from it if they want to.

>> Commissioner Bit-Badal: Thank you. Since I do not see any more speaker we will vote by light. The draft EIR is passed by commissioners Bit-Badal, Abelite, Kline and Yob. All the commissioners voted for the EIR. Thank you. Commissioner Kline.

>> Commissioner Kline: Since this is such a unique project, instead of the approval of disapproval going to city council, is there a way for us to basically send our advice to city council as individuals? It's an exceptional project and it might seem buried simply to recommend advice rather than trying to get a majority one way or the other. Is it something that has been done before?

>> Joe Horwedel: Counsel.

>> Commissioner Kline: Since we're just here to advise them on this particular issue, it seems like it's a recommendation. Can we individually give recommendation I guess what I'm saying instead of trying to vote and come up with some recommendations.

>> Renee Gurza: Since you're merely, I don't want to merely, I don't want to discount it, an advisory body, each individual commissioner may have comments of things that they are particularly concerned about or particularly care for. But ultimately the city council is looking for a recommendation from the Planning Commission to advise them to approve the plan, or not approve the plan. So ultimately you would want to take a vote, hopefully that garners a quorum with everybody here, on whether or not you would recommend that the council ultimately participate in this plan or not.

>> Joe Horwedel: The one other advice maybe of how we dealt with issues in the past, where the commission took an action but there was almost like a majority-minority sets of comments. That is one of the things that, as staff, we can provide to the council, as here's -- the council or the commission took X vote but here were either attributed to individual commissioners if that's how you would like us to do or we could go through and say, commissioner raised these individual issues and kind of expand that way, without attributing it to individual

commissioners. We can do it that way. I think being able to share what are your thoughts or if there's concerns or things you -- comments that you really want the commission or the council in considering the commission's actions, I think our role as staff is we would like to facilitate that.

>> Commissioner Kline: Okay so here goes then. I would like to move a motion to recommend to city council not to approve the plan. And I'll follow up with comments, if there's a second.

>> Commissioner Abelite: I'm sorry, can you restate your motion?

>> Commissioner Kline: I would recommend regrettably, that we send a recommendation to city council not to approve the plan. That's what they're asking. To approve it or not to.

>> Commissioner Bit-Badal: Is there a second? There is no second. And the motion fails. I will entertain other motions. Commissioner Abelite.

>> Commissioner Abelite: I'll go ahead with the contrary motion and make a motion to approve the plan and send it on to city council for consideration as recommended by staff.

>> Commissioner Bit-Badal: Do we have a second?

>> Commissioner Yob: I'll second.

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

>> Commissioner Kline: I'll speak to the motion against it. I really, really like the goals of this plan. I think the goals are just stellar and I'm 100% for it. But I find that in trying to do good things sometimes you haphazardly do bad things. I radically oppose the creation of a JPA for this type of project. I think it's the wrong type of governance for it. This is not a short term decision, this is not even a 50 year decision in reality, this is a forever

decision. JPAs just don't disappear, they create lives of their own. JPAs are designed for several great purposes, a bridge between two cities, economies of scale. This piece of property is entirely in the county of Santa Clara. Entirely in the county of Santa Clara. The county of Santa Clara could -- there's lots of other options that could be done here. The other issue in the governance is not only the JPA is I think the wrong form of solution for this is that the JPA creates two boards with two governing solutions that is overly complex and we've mentioned in this Planning Commission before, the complexities could even come up where the two boards are suing each other. Who does the director report to? There's lots of issues here that have to do with governance. Governance does have major effects and policies down the road. We've seen this with MTC, we've seen this with VTA, same with the governance in this way is difficult. Implementation board that is not even elected. Nothing wrong with that it's just an interesting concept. You have the four permitting boards on the governing board which seems that weaker of the boards as far as the documentation is concerned and then you've got the implementation board which seems heavily weighted to nonelected people and I haven't even gone into the proportionality of the voting issue. The fact that this is going to have a major economic effect on San José and San José only has two votes on the governing board and on the implementation board, that just doesn't seem fair. We know through MTC issues, that does have radical effects on the resources and decisions that are made. We all like to think that people go to the JPA and take off their city council hats and put on their JPA hats. We know in practice that doesn't happen all the time, we wish it would but that has major effects. So my recommendation is great try. It's better to get this right than to implement a forever decision that's wrong. That's just a few issues. Governance is a major issue of this. I think the emissions is a major problem economically for the City of San José. I think if this was going to go through that probably should be readjusted. And I think we could probably get one board make sense. In fact one board I think makes a lot of sense, instead of two boards and there must be away of doing that that is fair to everyone involved. Clearly the VTA is not an important player, very important player but minor when it comes to governance and issues and the Water District is a question mark. Is that a long term, do they really need a governing position on the board since they don't issue permits. So those are some comments. In with that, I will be voting yes on this, so that we can move it up to city council, and not delay this any further.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: And I do want to pass along some comments to city council and I think in order to get the developer community to buy off on this anything that can be done to get the army corps guys on board and the regional water quality control board even if you have to go to the state level to do it, I think that will go a long way for the developer community so it's a one stop shop in real, real terms for the environment. I think if you could do it in a couple of years, it would be a lot easier to work in within our region that's the end of my comments.

>> Commissioner Bit-Badal: Commissioner Yob.

>> Commissioner Yob: I just want to comment that this is something I personally really struggled with because this is such a large voluminous document. It will carry on for 50 years so it's not without significant impact. I know that a lot of time has been put into studying this over the past decade. You know even though I was prepared to support the motion and will support the motion that Commissioner Abelite brought forward, the reason is really because I think this needs to get into the hands of city council. I feel as a Planning Commission, you know, this is somewhat out of the purview of what we are called on to discuss and this raises really large-scale policy considerations for the council to consider. I am bothered by the competitive disadvantage and the fact that this -- you know there are other major cities in this county that will not be a part of this plan. And so I'm concerned what advantages they will have with potential large scale development because those cities are not a part of this, whereas we are. And then also, you know I feel like I haven't seen a lot of analysis. There is a lot of analysis done on what the cost would be to certain developers with the plan and without the plan. Well obviously without the plan a lot of these fees aren't there. But without the plan what are -- it would be great to see an example of what some of the mitigation fees they've had to pay on a project by project basis. I don't think we've seen a lot of that here in the materials before us so I think that would be particularly helpful to council and I'm guessing in response to the mayor's memo that might be something you're working on. But this is a difficult one and I think we've all struggled quite a bit with it.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: I just got some clarification I guess. I would like to make a -- and this is not to say going against my original statement but I think a substitute motion would better reflect the intent here, which is to forward these recommendations to city council. But not specifically state to approve this particular plan. That ways, we can get the comments to them, without definitively saying yea or nay to the plan. Because I think we all want to forward this to the council and some of us have some reservations what's in the plan but I don't think I have jurisdiction to basically approve or disapprove. This is something city council needs to, we need to expedite it as quickly as possible with our recommendations. So that would be a substitute motion to forward to city council, this issue with our comments, without a yes or no.

>> Commissioner Bit-Badal: Do we have a second on this motion? Commissioner Yob.

>> Commissioner Yob: I -- if I understand correctly from counsel that it's acceptable for us to do that then I absolutely second that motion.

>> Renee Gurza: Thank you. I just wanted the record to be clear what the motion from the commission was, which is the motion that has been on the floor was to approve the plan as recommended by staff, yet all several commissioner comments were, I'll vote yes but I don't really think yes. So what I think Commissioner Kline is noting is that he would like to make a motion that on the record reflects what the commission is actually doing. So it's a motion to forward the plan to the City Council, with the comments of the Planning Commission. But there isn't a quorum of the Planning Commission, at least as I'm hearing the comments thus far, that recommends adoption of the implementing ordinance, adopting and incorporating by reference the habitat plan. So there is no quorum for that. So I was suggesting, or Commissioner Kline was suggesting, that the motion reflect what the commission is actually doing.

>> Commissioner Kline: That's correct as I stated before I would not be voting for this plan, by end because I want to move this to city council so I want this to get to city council, I do not want to detriment the city council making the policy decisions they have to make to do this. So in order to get this to city council I would have to vote yes even though I would ordinarily vote no.

>> Renee Gurza: Well you can vote yes on your motion to forward this to the city council. What is actually a motion to do earlier, there isn't a quorum up there isn't a quorum down but there is a quorum to forward these comments.

>> Joe Horwedel: Right so really the recommendation from the commission is a no recommendation open the ordinance that we're forwarding and no recommendation for the ordinance for council consideration, we are forwarding the comments of the commission to which there is a motion of four votes for. Is how I would characterize. That way that would allow the commission to forward the comments from the commission.

>> Commissioner Bit-Badal: Thank you for that clarification. I will again reiterate my concerns which I already stated 30 years ago. Incentivizing North San José development is huge and whenever we are look at fees we should really look at the cumulative impact of fees to developers. What really was attractive to me about this plan is because it's going to be one stop shop and as a development community you would much more likely go to local agencies rather than state agencies. That's what is attractive to this organization that's going to be created. At the same time I just wanted to make sure that the City of San José most specifically our North San José area which is again the golden egg, of our city, is staying competitive not only with the cities that we're in at this point, but with the cities in the Bay Area. So with that, I do not see any more comments from commissioners. And I will -- Commissioner Kline.

>> Commissioner Kline: Just wanted to make clear. We're voting now on the substitute motion.

>> Commissioner Bit-Badal: Absolutely. Because what happened is we had a substitute motion and there was a second on the substitute motion. So we will be voting on the substitute motion first. Should that fail then we'll go back to the original motion. So we are voting now on the substitute motion. Please vote by light. The substitute motion pass by commissioners Abelite, Kline, Yob and Bit-Badal. All those who are present voted for the substitute motion. Thank you. Thank you, staff, for your great work on this item. I know you have been working

very hard for a long time and your work will continue on through the years, so we really appreciate the effort you put into it.

>> Joe Horwedel: Thank you.

>> Commissioner Bit-Badal: Staff, we're now on number 3F.

>> Thank you, chairperson Bit-Badal. Provision C3 of the city's stormwater permit is focused on reducing storm water runoff pollutants and preventing increases from runoff flow from all new development and redevelopment projects. Beginning on December 1st, 2012 subprovision C 3 (i) of the city storm water permit requires all development projects that create or replace 2500 square feet or more of less than 10,000 square feet of impervious surface area which are defined as small project areas and detached single-family residences not part of a larger development permit that create or replace 2500 square feet or more of impervious surface, to install one or more of a list of several site design measures including directing roof runoff onto vegetated areas. Staff has prepared amendments to both Title 17 and Title 20 municipal code to address the storm water permit site design requirements for small projects and detached single family residences. Approval of these ordinance amendments will ensure that the city is consistent in its review of new development proposals covered under the requirements of the storm water permit for these project sites. As such staff recommends that the Planning Commission recommend to city council to approve the subject ordinance amendments. This concludes staff report.

>> Commissioner Bit-Badal: Thank you, at this point we do not have any speaker cards on this item. Do we have any questions for staff? Commissioner Abelite.

>> Commissioner Abelite: I do have a series of questions. You know, there's -- so there's encouragement to do certain different kinds of mitigations to keep the water on site, on some of these projects as opposed to letting them go off through onto the curb drainage system of the city. Tell me about like how do rain barrels and cisterns work if those are chosen, I've never seen any of those in practice.

>> So the rain barrels or cisterns for these residential projects or small projects would be installed by residents where they cut the roof rain leaders and are directing that runoff into the rain barrel. The rain barrel water the filtered and then used onsite for nonpotable usage such as watering their gardens, or landscaped areas on cite.

>> Commissioner Abelite: I mean I've never seen that done as far as any of my construction experience in 20 years. Maybe people are doing it but I've never seen it done. I do have a concern for the alternative requirements where you could you know put it in -- put the water into splash blocks and just hit the site itself, thereby relieving water going into the storm drain system. And the reason why I learned in construction you know you only go to court for water when you're building things. That water either goes through roof and you're going to court for mold issues, you have plumbing elaboration or the subfloors in raised floor foundations get wet and the reason they get wet is because when you have raised, this ordinance would work fine if we just built slab foundation from here on out which we probably will, for the most part. But for a raised floor foundations, it doesn't work. And the reason is, is because these raised floor foundation pads are very highly compacted from mechanical compaction and then you build your 24-inch grade beam and you grade up to it from six inches of woodwork. And you've got loose material and the top 18 inches is graded along the building. When the rain hits it, it percolates down through the earth, so you are recycling your water, you're hitting the gardening issue. But when it hits that 95% compacted pad below it, it goes laterally, and where does it go? It goes into the subfloor of the houses. When that happens you have mold issues, you've got wetness down below, you've got wood rot going. I've seen it I've lived it and I started implementing these measures where I'd hard pipe downspouts out through the streets because that's the only way to stop it. And I would spend $6,000, $8,000 a house doing so because it keeps me out of court. Because those court fees are a couple hundred grand then. I understand we're just trying to get in compliance and conformance with regional water quality control board standards so our permit I guess can live on, is that right? Is that what we're faced with here?

>> That's correct. And 99.9% of the projects are already implementing the site -- the City's preferred site design measure of directing its roof runoff into onsite landscaped areas. This would be simply putting in place an equal mechanism for the city to be able to inspect and verify that that is happening. So it won't necessarily change the

business practice of what's already happening on these scale projects. It's really to say that we have an ordinance in place, and a process in place to make sure that it's being done properly, to avoid some of the issues that you suggested, or that you raised. If the building official determines that there would be a risk or some sort of concern, such as the the technical instability or a flooding to a foundation or basement issue they have some of the issue of choices where they cannot have that roof runoff go directly down and go several feet out away from the foundation from a splash block directly to the adjacent landscape area. There's other options that have been included so that they can make that determination on a case-by-case basis.

>> Commissioner Abelite: I respectfully disagree with those other options. I don't think it will work. I think the only saving grace is that most houses or most structures are going to slab foundation just based on economics. Anyway just wanted to make that comment. And while we're talking about this, does the City of San José have a through-curb drain policy? Does Public Works have a standard through-curb drain systems? It was a controversial item 20, 30 years ago, I recall, through-curb drains is where you pour through the face of the curb to let leaders go out to the street.

>> Laurel Prevetti: No, in my experience it appears that we have all of the storm drainage go down through the gutters that you see in the streets but we -- I don't recall seeing the through-pipes to the street.

>> Commissioner Abelite: Okay, no further questions, thank you.

>> Commissioner Bit-Badal: Thank you. At this point, I will entertain a motion on this item. Commissioner Abelite.

>> Commissioner Abelite: I'm fine to go ahead and make a motion to forward this ordinance on to council for approval.

>> Commissioner Bit-Badal: Thank you, we have a second. Would you like to speak to your motion?

>> Commissioner Abelite: Again, just -- I think since foundations are evolving towards slab, it's not that big an issue. It's just something to be conscious of when we adopt some of these policies. Regional water quality control board does not understand the mechanics of actually building things in the real world, and they don't go to court dealing with homeowners when these things happen. But I understand the progress of our times and that's why I'll make a motion.

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

>> Commissioner Kline: Just to be supportive of Ed, I built three homes in three different cities in the last 12 years. I live on houses all on stilts on concrete pillars whatever all with different types of drainage regulations, Carmel, Saratoga, San José, in Saratoga, practially every single drop of rain that fell on the land or on the house had to go out either into a big huge sinkhole or out in the street. San José I think drops directly to the foundation, next to the foundation. In Carmel, everything went out. All of them have water issues, underneath the foundation, all. So I absolutely agree with what your statement is.

>> Commissioner Bit-Badal: Thank you. Since we have a motion and second we'll vote by light. And the motion passes with all the commissioners present. Thank you, next we're moving on to petitions and communications. Do we have any petitions?

>> Laurel Prevetti: Not this evening.

>> Commissioner Bit-Badal: Thank you, item 5 is referrals from city council boards and commissions or other agencies, staff.

>> Laurel Prevetti: No referrals.

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

>> Laurel Prevetti: Thank you, Madam Chair. Yesterday the city council convened a study session to discuss ordinance priorities. I wanted to briefly update the commission on the next set of ordinance priorities that will be worked on by planning staff. We're still working through the original 10 that they gave us in February and last August so these will be downstream but I wanted you to know about them. The first is doing a riparian protection ordinance that aligns with the new general plan. So consistent with your comments tonight, the city council did see value in doing that. This also are interested in considering the medical marijuana regulations once the California courts have made their decisions so that's anticipated early in 2013. So that may be coming back to you. They also asked that we modify the City's nuisance provisions in our municipal code to consider the nonpayment of taxes as an element of nuisance. So that would be an additional tool in the tool kit of enforcement. They want us to look at homeless encampments, may not affect the Planning Commission, but they also looked at wanting us to consider conversions of motels and hotels, to SROs which may also address affordable housing issues. So that one will most likely come to you. There are some general plan implications clearly, about that. There were some other items, but those were the highlights. Just wanted you to know, all title 20 actions need to have your recommendations before council acts. That concludes staff's statement, thank you.

>> Commissioner Bit-Badal: Thank you staff. I don't see any comments from commissioners, item 6 B, commissioners reports from committees. Commissioner Cahan is not with us so we'll probably address that in two weeks. And review synopsis from 9-26-2012. Commissioner Abelite did you have a chance to reconstitute yourself?

>> Commissioner Abelite: I did. And I do have an issue with the minutes. I'm looking at item 3B, so in respect to the attendance of Commissioner Kamkar. As I was watching the video and as the deferral was discussed and voted on, he barely walked on the scene of the image on the screen and I don't know, I almost -- I view him as being absent for that vote. I don't know, what we do about that. I would make a motion to amend the minutes to show that he did not vote on that item.

>> Commissioner Bit-Badal: You can do so if you would like to make that motion.

>> Commissioner Abelite: So I'd like to go ahead and approve the minutes that are before us with the change on item 3B to reflect that Commissioner Kamkar was absent for that vote.

>> Commissioner Bit-Badal: So does that also mean that he was absent for 3A?

>> Commissioner Abelite: No, he was not, he was walking in at the moment but he couldn't have heard the item nor he wasn't seated in the chair to -- he wasn't here. He just barely walked into the image as this item was being voted on.

>> Laurel Prevetti: So just for clarification, if Commissioner Kamkar and I apologize I was not with you that evening was just arriving for 3B, what does that mean for the consent calendar, and the other deferrals? Did the Planning Commission consider deferrals prior to the consent calendar?

>> Commissioner Abelite: I'm sorry, the consent was pulled.

>> Laurel Prevetti: Okay.

>> Commissioner Abelite: I'm sorry, item 2 was pulled.

>> Laurel Prevetti: And then public hearing item 3A?

>> Commissioner Abelite: That was deferred. Oh --

>> Commissioner Bit-Badal: I'm going to call on Commissioner Yob.

>> Commissioner Yob: I remember 3A was considered somewhat out of order. And I don't remember why, but it was considered after 3B.

>> Commissioner Abelite: Yeah.

>> Commissioner Bit-Badal: So we're only making the change to 3B then.

>> Commissioner Abelite: Right.

>> Commissioner Bit-Badal: Your recommendation?

>> Commissioner Abelite: Those are my notes from today.

>> Commissioner Bit-Badal: Do we have a second on that item?

>> Commissioner Yob: I'll second.

>> Commissioner Bit-Badal: If you're all approving please say aye? Any abstaining? Any nos? The motion passes with Commissioner Abelite's changes. Thank you. And item 6 E, subcommittee formation reports and outstanding business.

>> Laurel Prevetti: We have no report. Next -- at your next meeting, though, we'll will have an update for your 2013 calendar, so that will be -- look for that in your packet for the 24th.

>> Commissioner Bit-Badal: Very exciting, thank you. Item 6 E, commission calendar and study sessions, the same items that you just discussed. With that I will adjourn the meeting thank you and have a great evening.