

Expanded Community Advisory Panel (XCAP) Minutes (Verbatim)

February 5 2020, 4:00 PM

Regular Meeting

Community Meeting Room

1. Welcome and Roll Call

Chair Naik: Okay, we have a quorum, so we're going to move forward. Welcome to the XCAP meeting and I'll let Chantal call the roll.

Ms. Cotton Gaines: Alright.

Present: Gregory Brail, Phil Burton, Megan Kanne, Larry Klein, Patricia Lau, Nadia Naik, Keith Reckdahl, Cari Templeton (late), David Shen (late), Inyoung Cho (late)

Absent: Tony Carrasco, (excused), Adina Levin (excused)

Ms. Cotton Gaines: You have a quorum present.

2. Oral Communications

Chair Naik: Thank you. We'll have oral communications first, and is there anyone who wants to speak on an item that is not on today's agenda? Okay, seeing none, we'll move to the next item.

XCAP Member Burton: Greg now has the handouts that I picked up at the Caltrain meeting a week and a half ago. Just please pass them around and return that when you're finished. Thank you.

Pat Burt: For the record, Pat Burt, good evening. So, I will add a little bit of update on the funding aspect, but what I actually want to do, to address was, on the next Town Hall meeting, there, it sounded like there is no intention to include anything about the new alternatives in that meeting, and I appreciate that AECOM is not going to have been able to flush these out and do their thorough analysis and have that presentation for that meeting. But I also think that the public is aware of those, is interested in them, and is going to come into that meeting expecting to learn something about them, and if they hear nothing about them at that meeting, they're likely to be disappointed and frustrated. And we don't want that. And so what I would encourage is figuring out some high-level presentation about those alternatives, perhaps including what are the considerations that are still needing to be evaluated by AECOM without providing the conclusions to those evaluations, so they understand where they are in the process, they understand them conceptually and they understand that there are a lot of questions that remain, so they don't leap to conclusions. Make sure they get enough that they won't walk away highly frustrated with that meeting. Because that's the new information in this timing from

a lot of the public's perspective. Second, on the funding, the Council in their most recent taking up of this, of the business tax, tentatively narrowed it down to looking at a high-end of the range of revenue about \$10 million a year, which if all of that went to grade separations, would be bondable to maybe a maximum of \$150 million. And so, what they're now considering is not what our citizen's group had been hoping they would consider, that would have had a much more substantial potential benefit on it. As Philip mentioned, once there are design selections, then the City can begin the process of pursuing other regional, state, even federal funds. As of right now, those funds are more limited, but at the state and the regional level, they are emerging, and I would expect that in the next year or two, there are likely to be more funding sources starting to emerge for these things. Thanks.

XCAP Member Klein: Thank you.

XCAP Member Brail: To the point of the public meeting, I understand that is staff's meeting. This is not an XCAP, running this public meeting, so I would encourage the staff to put in something about the two new alternatives, so that people aren't confused, but I don't think as XCAP there's a whole lot that we can do about it.

XCAP Member Burton: Well, Greg, you're right. But at the same time, it's a great opportunity to get to engage the people. Personally, I find it, I'll just say this, I found the Midtown Residents Association extremely frustrating in its pacifism and lack of interest and unwillingness to engage on any level beyond letting me write an email to that group, and who knows. I view this as very valuable (crosstalk).

XCAP Member Brail: The meetings are great. I'm just saying we as XCAP can't fix the thing that was addressed.

XCAP Member Burton: Agreed.

XCAP Member Klein: Go ahead.

Penny Ellison: I just wanted to say that I completely agree with what Pat Burt said and also encouragement from Greg that if you don't include something about it, I think it's going to undermine people's confidence in the City's process. And, you know, it's not XCAP's meeting, I understand. But it's going to fall on the City if it isn't in there in some way or another. And also, I'm sort of wondering how you're going to deliberate intelligently on the schedule that I thought I understood is in place without having the details of the engineering assessment of the two alternatives.

XCAP Member Klein: The answer in short, I think, it will become a two-step process.

Ms. Cotton Gaines: Thank you for the feedback related to the meeting. We definitely will put a little bit more in there than we were mentioning now. So, noted on the feedback.

3. Presentation and Discussion with Norm Matteoni, Managing Partner at Matteoni, O'Laughlin & Hectman.

Chair Naiks: So, we have with us Norm Matteoni, who is the Managing Partner of Matteoni, O'Laughlin & Hectman and he is here to speak to us today about property impacts and the law that surrounds that. Thank you so much for coming today. Before I open the floor up to you, I'm going to let our City Attorney, Molly Stump say something and then I'll say a couple more words.

City Attorney Molly Stump: Sure, thank you. Thank you XCAPers and hello. When I heard Norm was going to come and speak to you about property impacts I wanted to be sure to be here and get a chance to listen and just wanted to say briefly upfront a little bit about various roles, and Norm may want to weigh in on this as well. I think what you would describe this type of a session as a kind of a primer to describe this area of the law which is fairly complex, and I look forward to a very preeminent local practitioner doing that for all of you. That said, there are areas in this area of the law where there can be differences of perspective and sometimes folks like Norm and folks like city attorneys like me end up on opposite sides, arguing various perspectives and ultimately courts can decide those questions. I am sure you'll point those areas out. So, I'm here to listen but ultimately, will give this type of advice and description to our City Council when we're going down the road and maybe facing some of these issues, maybe, hopefully not, but if we do in practice, then we will be working in that way. So, just wanted to make sure that I introduced myself and explained why I'm here and I look forward to listening to the conversation today, thank you.

Chair Naik: Thank you Molly and I just wanted to remind the XCAPers, so Norm is here so that as we have to do our deliberations and think about the alternatives and make the recommendations to Council, to the extent that there could potentially be property impacts, I say potentially because we don't know yet what there could be, that we would have as members of this group, a better understanding of what, in making a recommendation to Council, what we could, what would be the potential impact of what we're saying. Again, potential, potential could, if there could possibly be an impact. So, I just really want to stress that, but that is the point of having today's conversation. It's really to educate everybody on what it means and what it doesn't mean. So, with that I will let you take the floor.

Norm Matteoni: Thank you Nadia, thank you Molly. Let me just introduce myself standing, and then I'll sit down and blend in more. I've been a lawyer practicing Eminent Domain for a number of years. I started with the County of Santa Clara and did projects such as Oregon Expressway. A lot of the expressway projects I worked on, but in particular Oregon Expressway affecting Palo Alto and the ramps that I still don't think work right, getting off of Page Mill, but I was involved in, not the design, but the taking of property for those acquisitions. I have worked for school districts over the years. I worked for the County for ten years and probably seven of those were devoted to, no six of them were devoted to Eminent Domain actions, be it for the expressway projects, schools or flood control projects. All of those could touch on residential properties. Of course, it will also affect, depending on where the project is located, commercial, farm property, industrial properties.

So, it cuts across the board. So, I just wanted you to know that background and then after leaving the County, well for a few years in the County I did land use and advising the Planning Commission and Board of Supervisors, and that was a time when the Environmental Quality Act came into existence and I had an opportunity to assist the County of Santa Clara in preparing its own guidelines and implementation of the California Environmental Quality Act as it applied to projects, and I just mention the land use aspect of my practice for one purpose. One of the elements, and we'll discuss it later, in Eminent Domain is the highest and best use of the land. Land is not always to its current highest and best use. I suspect in the cases that may come up for these projects, that's not going to be an argument. Properties that are residential, they are going to stay residential, but I just let you know that. And then after leaving the County I did work in terms of representing the County of San Diego in an acquisition of 600 some odd acres for a new County jail by the border in Southern California with Mexico. I've done work, as I said, for school districts. But primarily I have represented property owners, so that's my perspective in terms of the impacts of a particular project on property owners. I have done that since the mid-70s, representing property owners. I also am the author of a treatise for California lawyers put out by what's called the continuing education. The Bar in its condemnation practice in California. I'm the principal author, there are other authors that contribute, particularly the tax chapter, which is not something I'm really up on, but I know enough to answer some of the questions that have been previewed to me. If those are of issue, we can talk about those. So, I've done that writing for a number of years and have appeared before the California Supreme Court on Eminent Domain issues, and the Appellate Court. So, with that, as I am about to make my move to sit down, I just want you to know how powerful the power of Eminent Domain is. It's the right of the Sovereign. The Sovereign here is the State of California and all of its political subdivisions. It is an absolute right and only in the Constitution is there a limitation, there's two. It has to be for a public use. There's no question that roadway improvements, transportation improvements, transit lines are a public use. And, succeeding on that front, the Government can go forward with what it defines as the project and take the properties necessary to implement that project, subject to paying just compensation, and the term just compensation has many manifestations that we'll discuss as we go through. So, I'm happy if you want to interrupt me at some point. If you think I'm getting off course, that it's not something that relates to what you want to know. You just tell me, and I'll back up and take a new lane. Yes.

XCAP Member Burton: Just a brief question. I had the impression that the railroad companies had or still have the Right of Eminent Domain under some circumstances, and possibly other quasi-utility type businesses. Am I right, am I wrong?

Mr. Matteoni: You're right. Actually, the early Eminent Domain law, and I should mention because that was one of the questions that had been previewed to me, you know, is there a body of Eminent Law? There is statutory law, legislation that dates back to 1872, and then the Eminent Domain Code was substantially revised and expanded in 1975, a 100-year span. So, a lot of things had happened, but the early law of 1872 was primarily based on what the railroads told the legislature they needed in California.

XCAP Member Burton: This is California Law?

Mr. Matteoni: Right, California, and so railroads. There are limitations on that, and backing off of it, but in the 1800s, not mid but 1870s and thereafter railroads were the dominant force that shaped Eminent Domain Law. And they had a lot of things in their favor. Utilities, obviously everybody has read about PG&E, whether it's gas lines or the problems with the electrification lines that have caused fires, they have the power of Eminent Domain. They historically they have been a very difficult agency to deal with. The law probably perked along in the early 1900s. Still serving railroads and urbanization of this State, but in the 1950s into the 60s there was a huge boom in Eminent Domain actions for the California Freeway System, for the aqueduct, and thus, one of the bodies of law that you look at in Eminent Domain is case law, cases that have gone up on appeal, to the Appellate Courts of the State or to the California Supreme Court or beyond. There was just such a volume of acquisitions that a number of them resulted, a substantial number resulted in litigation and a percentage of those went up on appeal. And, really, the Law of Eminent Domain notwithstanding, I told you, in 1975 the Eminent Domain Code was revised. The primary body of law is through individual cases and thus, the book that I contribute to is two volumes discussing the cases and what may have changed or modification of the law because of some new angle that somebody argued that the Court went along with or didn't go along with. But to go back to the Code, the Code is basically the procedure. If the City is going to file a condemnation action, that's the book, the code books that have all these sections and tell the City how it's to initiate a condemnation action, and how it is to pursue it through to trial. The evidence aspect in trial is primarily dictated by case law. So, to try to fulfill the primer aspect of what I can tell you, let me just tell you the procedure that any public agency would have to follow in taking private property for a public project. The procedure starts in the kind of things that you're doing right now in defining a project. Is it needed? What are we trying to accomplish? Where can it best be located to fulfill that public need. Years ago, school districts had a great deal of flexibility within an individual district of where they might locate an elementary school that required about ten acres, because a lot of the land was still in orchards around the subdivisions, but as the subdivisions took those orchards out, it became much more limited where school districts could locate, but they would do a study and determine, this is the best location. It's centrally located. Perhaps they knew the family that owned the farm or the orchard. We won't have to file Eminent Domain, I'm sure we can work it out with them and buy ten acres. They're very community minded. That was an approach that worked for small towns that all of us were at one time, here in the Valley. But things have become much more complicated and the complications, I guess, I can best describe, be it a rail line or a highway is, there isn't that flexibility of getting from point A to point B, and here, back here on the old rail line that Caltrain manages and runs, it's already on the ground, fixed, and we're now looking to another advancement of transportation that would utilize that corridor. So, the engineering has to be done, it has to be studied and since the 70s, it has to undergo an Environmental Review. The party that's going to condemn, be it the City of Palo Alto, Caltrain, Caltrans, whatever agency has to have all of that done beforehand. It is presented to the body, and it's probably presented to the governing body in terms of some alternatives. Again, not much in the way of alternatives for a transportation line, but it, nonetheless, must

be presented and from the aspect of Eminent Domain, that this is a project we want to pursue. The Environmental Impact Report has been analyzed and all mitigations that can be thought of are laid out, whether there needs to be overriding considerations to further it are determined and the properties are identified that are going to be affected. That document itself may provide some information to the property owner whose property is going to be affected. So, when VTA brought the BART line down from Hayward and Fremont, the extension into Milpitas and the Berryessa station, they did, for example, analysis of sound impacts and grade, if they're going below grade at certain intersections, what's around that and there were a lot of apartment houses affected, some homes. Mitigation measures were going to have walls on either side of the corridor. We're going to do some baffling coming out of the tunnels getting back to grade. Those aspects were analyzed, as well as vibrations, which is another big thing in terms of a rail line, and presented in the EIR. Some of those points of information which were more general than a property owner would want three later when the individual's property is taken, well, you didn't look at it from this aspect. You measured the sound over here and projected onto computer modeling or what have you. That's not the impact that I'm going to suffer. None the less, that is a strong starting point to assess those kinds of impacts. So, the government, through the process of environmental review has delivered some information, both to the decision maker and the community affected that weighs on whether there are damages for compensation, because there are going to be residents now that are going to have this extra noise impact and nuisance. The other aspect, and I'm still trying to blend in some of the practical issues of impacts on residents as I tell you the procedure, but I want to stay with the procedure. When a project is decided we're going to go forward. We have the funding for the project. Then the right-of-way people, the acquisition people are called in to obtain appraisals of the lands that will be affected. It's at that time that any affected property owner will be very specifically notified. You're involved, you're going to be following this project, so I don't have any fear of your notification of what's going to happen at various stages, but many property owners aren't up to that speed, and they get a letter from an appraiser adviser, I've been retained by agency X to appraise your property because of the prospect of taking a portion of it for whatever the project is. And you have the right, the law gives the property owner to meet with that appraiser and explain the property and understand what the appraiser can tell the property owner about the project. Is it a total take, it's a partial take, whatever? When I say parcel take, if that's the whole parcel, you may have a situation where only a corner is clipped off, or you're left with just a corner, depending on, you know, how your property is in relation to the project boundaries. Those have, those lines have very significant impact in appraising the property, because it's not just to put a value on the total piece of property. That's a necessary first step, and if it's a purchase of the total piece of property, that's an easier appraisal, or it should be an easier appraisal. But when you start reshaping the property, removing part of somebody's front yard or rear yard or clipping off a room of a house, things change dramatically. The other aspect of Eminent Domain is not just compensation for the land taken, but damage to the remaining land. So, that's a very important meeting and the law directs the public agency to have its appraiser reach out and have this meeting with the property owner. The next step would be for the appraiser to complete the appraisal and it is submitted to the agency for review. The agency gets the first look at it and there are people within

the agency that are also schooled in appraisal so they know what they're looking at. Wait a minute, you missed something, or we don't understand this or how you pulled this piece of information into your appraisal. So, it may be dialogued, depending on how well it's done, before it's released. But the way it's released is also mandated by law. It is released by the agency contacting the property owner, saying that it has an appraisal for the acquisition and it intends to make an offer based on that appraisal. From the agency's standpoint, it's not to spend more than fair market value. So, it has made that determination through this initial step of what it believes, on the basis of an independent appraiser to be the fair market value. And I want to inject a word of caution. Notwithstanding the property owner explaining on a partial take, well, wait a minute did you consider this? That's going to be very detrimental. You removed this whole portion of my backyard. The fence is right up against the pool or the patio. You really, how would I put it? It's just a harder look once the appraisal, that initial appraisal has been made and the property owner receives that, and that is often an area of a great dispute. Severance damage it's called, the damage to the remaining property, much more so than the value of the land or the improvement. I'll explain later on how the appraiser approaches valuing those types of improvements and the land. So, we're back to procedure. The property owner now receives an offer and it contains a summary of the appraisal that was made for that particular property. And the requires and the agency provides notice that the property owner may seek its own independent appraisal and the agency will pay up to \$5,000 towards the cost of that appraisal as a part of attempting to negotiate to a price. So, what the agency is basically asking for, what did we miss in our appraisal? You disagree with this. Show us some reason to revise, because all we pay is just compensation. We're not going to make a gift of taxpayer funds, and we believe we've met that standard. So, the property owner does get the appraisal and usually at about the same time an attorney, and oftentimes the attorney must even assist the property owner in seeking an appraiser. From the standpoint of my job at that point, I'm looking for an appraiser that is not just an appraiser you can find online or in the phone book, but an appraiser who has experience in trial. Particularly if the dollars you're talking about are large, there's room for a great deal of dispute and how well is that appraiser going to be able to translate its investigation to testimony. So, the lawyer begins to work with the property owner at that juncture, may work out a settlement, fine. But let's assume the settlement doesn't occur. It's back in the hands of the agency. It's got a project it needs to pursue. It can only pursue it through Eminent Domain if there is an unwilling seller. Eminent Domain makes the unwilling seller have to sell. The agency is required, again by law, to notice a hearing before be it the City Council, the Caltrans Transportation Committee, the joint Powers Board for Caltrain. Whomever it is that is pursuing the condemnation. It gives the property owner notice of that hearing and the right to object. The right to object has nothing to do with the value. It's whether this is a valid public project which I would tell you 99.9 percent of any such objections would not succeed with the body of law. The definitions of what fits, what types of projects fit public is very well established. But, could be some procedural misstep in terms of the environmental analysis or just the, particularly in smaller towns. At one time I was on the City Council in the City of Saratoga. The City of Saratoga just detested filing Eminent Domain actions. It felt it was a small town and it wanted to work things out. So, if it noticed a hearing to pursue Eminent Domain, the property owner

would come in and object and the City might back off and say, take another effort at negotiating this out. So, there is another aspect in terms of just the politic of a hearing, and I'll give you another example on the VTA extending the line from Fremont/Hayward into Santa Clara County for BART. Periodically they need some electrification stations and somebody came in that I thought was fairly well connected. It wasn't my client but a high-tech firm on what would happen, the interference with that electrification facility to keep the line active at the right whatever, would have a big damage and isn't there another alternative that you can move it? Both on the basis of the argument that you're going expose BART and VTA to large damages, and that it was a company of repute and somebody that the Board decided they wanted to protect, they moved. They moved that, they didn't move the line, but they moved the auxillary facility that served that line. So, those are types of arguments that can be made to the decision makers. The other is, and this used to be fairly frequent with school sites, that there are other alternatives that more reasonably suit your purpose. That's still a very hard argument to make because the governing, not the governing body, but the public agency has gone through all these studies and engineered this project in a specific way, and now somebody is standing up and telling them, you can do it a better way that avoids my property, or minimizes the impact on my property. It's possible, it doesn't usually happen, but in this County and Palo Alto there are some very bright people with engineering background that can make good arguments. At least you hear them in terms of impacts on new development. We don't want that development in our community. So, I'm just trying to give you some examples of how objections can be made, but ultimately, again, you can't say you're not getting enough for the property. You can kind of sneak that in, that you didn't look at this impact, like I told you the electrification booster station did to a high-tech company and its operation, and you'll cause substantial damages that will make a public body rethink some aspect of the project. Aspects that I've seen rethought, Caltrans on a design in Emeryville of an off ramp coming into Emeryville was able to change the curvature a bit so it didn't impact, I don't know if it was a Walmart or whatever, a big-box operation that had truck deliveries off of the local street they were tying into. Caltrans has a very good process that I'm not aware most agencies use, but if somebody makes an objection before it goes to that hearing body, the legislative body, it is referred to the engineers. If there is some modification that can be made and that's to the district engineers, which are located for us in Oakland, and if you're not satisfied with that, it goes up on review to Sacramento before the Transportation Commission hears the presentation by its staff and the objecting party on whether to take the property. But having gotten through all those steps you're probably going to find a resolution that authorizes condemnation and shortly thereafter, a couple of weeks, a month, a lawsuit is filed and served on the property owner. Maybe I should stop there. That gets us to the point of heaviest impact on the property owner and the next step is, what is the property owner to do to defend itself. So, I don't know if there are questions to that?

Chair Naik: I have one questions, and if the XCAPers want to jump in, and then we can move along. Are you familiar with whether or not Caltrain actually has to seek an EIR to do grade separations? Because my understand is that because it's a train, unlike a road, they can't turn so they only, if they have to do one, they can only do it in one spot because it can't really move. I thought Caltrain has always chosen to

do them, but actually that there is an exemption in CEQA and I'm wondering if you're familiar with that at all?

Mr. Matteoni: Well, the exemption would be that there are no alternatives. I can't quite think of the wording. Molly can help us out on CEQA exemptions, perhaps. But I would still think it has to do that because the grade separation is not going to just affect whatever the width of the right-of-way for the rail is. To do that, you've got the street going down, coming up, walls against what were properties to hold back the cut, probably tiebacks into the properties. I remember one in Fremont probably five or six years ago, they weren't residents but I can't quite remember the name of the street, but that had to happen and the street was at grade and it had the arm that came down to protect the people when the trains went by, but now everything is changing and it's going to be much more frequent, so we're going to separate that so the traffic can flow on the local streets while the BART train goes by. There was a business that I represented that had access problems because of how far the grade come back on the local street and intercepted and changed their driveway, and there were tiebacks that came into their property so underneath their property, which parking area, but there was concern does that affect our future development? You have these tiebacks and we can't excavate or we can't change that. So, all that was analyzed in an environmental review. And, thus, I think the answer would be they couldn't avoid it.

XCAP Member Burton: Is it sometime simpler just to do a whole property take to avoid the severance damages issue?

Mr. Matteoni: Yes, sure. If you're going to take all of that and leave me that, you're better off, as a public agency in most cases I can imagine, to acquire the total property. And the law, the Eminent Domain Code specifically authorizes that. To avoid excessive damages, the agency is authorized to take the total property beyond what it owns. So, you'll find, again with an agency such as Caltrans, if you cared to look that there's many remnants for a particular stretch of highway, little triangular pieces, they try to get rid of them and ultimately some adjoining property owner might take that and consolidate it with their holdings, but yes.

Inyoung Cho: When the appraiser, like whether you're an appraiser or city, the agency appraiser appraises your property, what point... You know, the property value changes over a certain period of time, so when would be that time. You know, is it, if they decide to give me money today and you know, construction moves on, like three years later my house could double. Like, I mean, when is the time that...

Mr. Matteoni: Okay. I understand the questions. There are different points that would provide different answers. But I'll start with how the public agency taking your property protects its date of, what's called the date of value. When the lawsuit is filed, if the agency deposits the amount of its appraisal, telling the court that in its judgement this is the probable amount of just compensation, the agency is entitled within 90 days to an order of possession. It may not get that possession, but the key point to your question is, that date of deposit, which usually goes to Sacramento into what's call the State Deposit Fund, sticks as the date of value. Most every agency makes that deposit a few days before or after or on the date they file the lawsuit. You may not get to trial, if you're contesting that, you may not

get to trial in Santa Clara County for 18 to 20 months. Just the way cases are stacked up that have nothing to do with Eminent Domain, but the flow of cases in this County. So, 20 months from now you are arguing on what is the value on February 5, 2020. But there are many variations to what I just told you. I'm going to backup to when you were approached. I'll assume you were approached by the appraiser who came and visited you, and that was seven months ago from February 5, and the agency didn't update that appraisal. It may think, well, the values have just barely risen or they are about the same. That gives rise to lots of arguments, which most often work in the property owner's favor if you can find new sales. Well, your appraisal is dated. I did have a Caltrain condemnation for one of these electrification booster stations that took out almost two acres of property a couple of years ago, and the appraisal was 18 months before they filed the lawsuit. We ultimately settled that case along the lines that I was trying to give you an example of, that we had to produce other sales. The market had changed and so Caltrain, actually it was JPA for Caltrain, went back to their appraiser and their appraiser said, yeah, I have to make an adjustment. Let me look at it and so forth. So, it provided a way to negotiate a settlement, but the settlement was probably 18 months after the lawsuit was filed. Now, another aspect of what I told you in terms of that deposit, you can take that money and still fight for more compensation. You're not prejudiced by having withdrawn the money.

(off mic)

Mr. Matteoni: And you probably want to take it, because the interest rate from the deposit fund is pretty low. It's posted and changes every quarter, but you're entitled, if they take position, they don't always take position, but most of them do within 90 days. If they take position, you're entitled to interest from February 5 until you get your money. If you withdraw it, whatever amount you withdraw, you're not going to get any more interest on, but if you get an increase you would still get on the delta, interest on that money that you eventually derive as the just compensation for your property. Does that answer your question? Okay. Yes.

XCAP Member Burton: If someone has to move there are probably a lot of costs beyond just finding another property. My out-of-pocket might include all kinds of expenses for rentals, moving companies and whatnot. Are those covered by the compensation award?

Mr. Matteoni: No. They're covered under what's called relocation assistance, and it probably works best for homeowners. It came about in and about 1970 from federal legislation, and then the feds, if they were making grants to transportation projects in California, mandated that the local agencies apply those rules and then within a couple of years, California adopted its own relocation assistance. Relocation assistance would be, again, they're taking your home, but before they file a condemnation action, they are supposed to offer you alternatives of where you can move. Very difficult in this area. I don't think most relocation service agencies do a good job on that. They do a particularly bad job on little businesses trying to find them a spot to go. But there must be, at the same time as that environmental review is going on, there must be a relocation plan that's put together. So, that's put together a few years before and, again, I'll give you the experience I know from

the BART extension, now into San Jose, the prospective properties affected a relocation specialist comes and interviews them. But that took place two years ago. There has been no condemnation coming into San Jose for BART yet. Maybe there will be later this year or next year for reasons that we don't have to discuss, but just project delay. And by the time that happens, you might have sold your business to somebody else, different things happen. Or, once it becomes real, you think of a lot more impacts on your business and the difficulty of moving may become much more complicated. In the Caltrain example that I gave you regarding this property just under two acres, it was used for Apple bus service for its employees. It used to be a large lumber yard, but it was a big maintenance building in the middle and big yard. You could park buses and repair them. It was next to, I don't know if you know where Bellarmine Prep is, but 880 at the crossroads that made very good sense for Apple and its employees going out to getting them, transporting them to wherever they transport them. The redevelopment, not redevelopment, the relocation people provided maybe, here's five places you can move. Well, the City of San Jose, they needed to stay in close proximity or the cost of fuel goes up the longer the runs. The deadhead time goes up the longer the runs. There's more wear and tear on the buses. They were at a strategic location. Everything is starting to move them out, and they're very near downtown San Jose, five miles, three miles. The City won't allow outdoor storage of vehicles in this zone. If you want to pursue that property, you're going to have to get it rezoned. So, these problems along the lines that you're mentioning start to multiply when you get to a specific property and moving. So, back to residents, I'm not quite sure when you said rental, if you're renting the residence, they are to give assistance to move the occupant of the property. You would not receive that assistance as the landlord. It would go to that party. They also pay moving expenses. You're required to get two bids, submit them for review and they will pay the lower bid. Where are you moving? Some people are not in a position to relocate. They will do some temporary relocation. There are restrictions that, okay, I've got to put this in storage for a year. I'm not in a position because of health issues with my spouse to find another location and move. We're going to move in with my daughter, but all the furniture has to be stored somewhere. Well, they may store it for you for two years and pay for that, and then that's it. So, there's another whole level of issues in pursuing relocation assistance that's beyond the just compensation. The just compensation I'm talking about and we'll get to as we go down the line towards trial focuses on this piece of property and what's on it, and not moving things.

XCAP Member Brail: Everything you said has been about obtaining pieces of property, but in the case of the BART you mentioned apartment buildings that were the tunnel entrance so there would be an increase in noise and vibration. Where does that whole fit into this whole thing? Because it seems like what we talked about before, the Eminent Domain you know, seizure of land is sort of the last step in the process and there's a whole lot of other impacts on properties that these projects could have, and I'm wondering where that fits in and what your experience has been there.

Chair Naik: Norm if you could just move closer to the mic so the audio guy can, because the meeting is being recorded. Thanks.

Mr. Matteoni: Okay. Sorry. I'm starting to try and relax here. As I paused to put it into perspective, there are those impacts that you've identified to adjacent properties that are not within the scope of the right-of-way, and the law up to, by case law, up to 1980 was, sorry, you know. We didn't take your property. It's more noisy. But their property owners, and there was a case, to just use again examples, if these examples aren't helpful to you, tell me. But I think back to cases to try to illustrate and answer to the question. So, there was a property known as Pierpont Inn in Southern California that was along the coast. The highway was coming along side of it, I think it's in the Santa Barbara area. In any event, there was going to be construction for two plus years, major construction of the highway and the hotel said, hey, all our rooms on the east side of the hotel are going to be affected. We're not going to get the rental charge that we would usually get or they may be vacant. People aren't going to come here to hear all that noise. That case went to the California Supreme Court. Actually, I said in the 80s and that was 1972, and they prevailed in terms of, they had unreasonable damages by reason of the construction. There was a company when I was in college, Jennings Radio was sold to IT&T, and when highway 80 came through, this property in San Jose off of Mclaughlin Avenue, they were an early high-tech company that did these sophisticated radio tubes. I was just a flunky working there, so I can't explain high-tech stuff. And their claim was the dust, not the noise, but whatever traveling on the roadway that was elevated above their, or at the same level as their rooftop was going to create dust and they were going to have to increase their air conditioning system, purifying, because they can't have that in the manufacturing section of their operation. So, that was another example, and that's a reported case of someone getting compensation for being adjacent. Nonetheless, those are cases that usually would require you to bring a lawsuit against the public agency. They do not tend to acknowledge those peripheral impacts. They do nowadays, because of these cases, on sound walls, that became an established approach to mitigate those kinds of damages. Nonetheless, I know when highway 85 went through Saratoga, the roadway had, it was striated or something. It created (crosstalk), and it was below grade and has sound walls, but the residents of a particular area said, we never had the rumble before, and we did not succeed in that case. I represented them, but it's gradually gone away or people have gotten used to it as the serration has decreased on the roadway. But it was a whole neighborhood that was concerned about it because the homeowner's association was reacting to the people most impacted right near the highway. So, yes, I guess the short answer is, there's compensation, but you have to pursue it in most cases.

XCAP Member Kanne: What if relatedly, what if we're changing public land, like loss of a parking space for example, or public benefit that a property owner might have expected that they no longer have access to? Is there any compensation for that sort of loss?

Mr. Matteoni: Well, if I understand the question, I'll take you to the reroute of the El Camino around the University of Santa Clara a number of years ago. Santa Clara pushed and the City endorsed that taking this section of the Alameda out of the middle of the University, the University began moving eastward. There was an old road called Campbell Avenue that had a lot of industry right up against the railroad tracks. There's a walnut plant there. There was very little traffic on that road. The

walnut plant employees all parked on the edge of the road next to the spur track that served the walnut packing company and a piece of the property was taken for the reroute of the Alameda and we're not going to have parking anymore. There was no compensation for the loss of parking because any municipality can, for traffic control, can take away parking or control parking. You can only park here at given times, posted hours. So, if that was your question, if you're losing parking on a public street, no not today. The law doesn't recognize compensation that.

XCAP Member Kanne: Thanks. I had a follow-up question to Greg's too. As you mentioned apartment complexes, if there are tenants on any given property, does that result in any special legal rights? I know there have been expansions in renters' rights recently. So, is there any special process for handling properties that have tenants that, perhaps, if the property were taken, would need to be evicted?

Mr. Matteoni: There are none that I know of beyond what I was telling you regarding relocation, and that's where relocation works the best, with tenants, residents in apartments. There, I don't know if Palo Alto has any, but there were old transient hotels in downtown San Jose years ago, probably still a few. But when that redevelopment was doing its thing to clear land, they would go and move somebody out to another location and then rent that unit from the owner, because they had so many people they had to move, and they couldn't take position of the whole piece of property until they got everybody out, they would rent it to keep it vacant, so the property owner didn't lose anything for that period of time. So, there are variations on how a public agency can approach taking care of tenants or the owner who suffers the loss of a tenant for a time.

XCAP Member Reckdahl: How do you value something like, if you have tiebacks going through your backyard. It may or may not affect the homeowner. How does the homeowner value that, or how does the court value that?

Mr. Matteoni: There's no fixed answer. It's the judgement of the appraiser, you know, what is the depth of the tieback, is it reasonable in that neighborhood that somebody would put in a pool and there would be interference. Otherwise, it's going to be something of a nominal compensation because there is an invasion of the property. But there may be, you know, what's the maintenance of those. Do they erode over a period of time and then the agency has to come back and invade the property and disrupt? So, the property owner would look for as many things as they could find that would change its total control of its property, the side yard, backyard to advise the appraiser and the appraiser is going to have to make a judgement. Again, another case was a utility line was put in the parking strip next to the sidewalk. I think this was a case out of Salinas, and that wasn't much of an impact, but the property owner said, but you have the right to come back and expand that utility, and the city said, but that's all we've done. No, your resolution says you have these rights on my property. I don't know when you're going to do that, 20 years from now, 15 years from now? And the court said, yes you have to compensate for the full scope of the impact of what you may do, not just what you did. But, again, I don't have a fixed answer for you.

XCAP Member Lau: I have a question about the right to object, and alternatives that reasonably meets the interest, and in terms of residents who may not be

articulate or knowledgeable about the law, I'm wondering if there's legal advice for those people who may not be, let's say, as I said, knowledgeable about procedures about how to pursue a lawsuit, or at least even ask questions about what their rights are?

Mr. Matteoni: Again, publications today do a good job in addressing that issue, but it probably works best for English-speaking people, although they can be translated, but you will get with that first offer, a pamphlet of the process. Not as I'm jumbling it in all different directions. But step-by-step and what your rights are, so it's an informational packet that is delivered to the property owner. That, you know, that works well for people that are sophisticated and understand these things. At least, way back when, and still happens that a lot of public projects that have alternatives are located where the property is less valuable and there are people that live there that do not have high income or higher education. There were environmental justice suits in Los Angeles to stop projects for that reason of going through a low-income neighborhood and the displacement of those people. But there is a process and I would say in this County it works pretty well.

XCAP Member Shen: Just so I'm clear, so, if there is like a sound or visual impact, and the example I'm thinking of is, one of the options we've been tossing around is the building of a viaduct potentially and some properties have the backyard right up against the tracks right now and consequently there would be a huge structure behind there, would that be a case where the property owner would still have to do that kind of lawsuit after the fact and on their own? But I could also see potentially it could be where any appraiser could say, oh, I have examples housing values and what happened when something got built so close that there is a drop in the value or a change in the value because of it.

Mr. Matteoni: Was the predicate to your question that a portion of the property was acquired?

XCAP Member Shen: No, there's nothing, it would be like daylight plane or just there's a big visual thing and potentially that could affect my livelihood as I live there or if I sold it, that would affect the value of the sold property versus not having that thing behind there.

Unidentified female: No encroachment on the property? So, in other words, right up against the fence line, two feet actually from the fence line, but no actual encroachment.

Mr. Matteoni: Well, that might be difficult to accomplish, at least for the construction of it. They may need temporary access of the property. So, I don't know if I previously mentioned this or not, but I represented a Police Officer on the Palo Alto Police Department who lives in Sunnyvale, and there was a wall placed on his property, but a piece of the property was taken, so, in that situation you ask for that as damages in the lawsuit that is filed, and if you don't it's forever gone. You know, geez, I didn't realize what an impact or how big the wall is. But your situation would be along the lines of what we were talking about a few minutes ago. You would have to initiate that and, yes, there are damages for that. I have not had a case where there was no taking, but I had a case in Saratoga for a condominium

project and, this was highway 85, and the roadway comes to grade next to the condominium. The wall is 14 and 18 feet high. These people, there were eight units, I think, eight or nine units, had a view of the foothills, Santa Cruz Mountains looking towards what's called the Saratoga Gap and that was gone. The appraiser came up with some diminution in value to each of those condominiums units that no longer had that view. They're looking at a concrete block wall.

XCAP Member Shen: So, in that case that you were describing, that would not require the property owner to kind of state that. It was more automatically built into...

Mr. Matteoni: Only if there was land acquired. There was long acquired from the condominium property owners, the common area I should say, and we folded in, we represented the condominium for the taking of the common land, and then the Board was saying, but there's individual owners that feel they're impacted if this is going to be this high. And so, they were folded into the lawsuit, but we probably did initiate those lawsuits. I can't remember, that was 20 years ago, on their behalf and consolidated then with the suit with the homeowners.

Chair Naik: Norm, is it fair to say that in general, there is a deference to the agency? So, in other words, it certainly from what you described, there seems to be a deference to, you could try to make the case, like they could have picked a different spot for different alternatives, but generally transportation agencies have gone through a very rigorous process to even get to that point, so there is not a lot of – usually deference is given?. Also, when it comes to any potential damages, it certainly would take any resident whose property was not acquired to try to sue for damages, but that generally it is kind of a difficult thing, because there isn't any other place that could have gone, or is it that they could still get damages?

Mr. Matteoni: Well, you're not going to get it moved if it's been constructed, so it's just a matter of damages and the judgement of the diminution in value because of loss of view. Loss of sound, not loss of sound, increased sound is probably easier, because it's been recognized for so long. But that Pierpont Inn case, as I recall, also had an element of somehow the freeway structure on a piece of it cut off the view of the ocean. So, view is important, you know. There are properties that have or move up the hillside and see the sweep of the area here. You're going to pay for that. So, there are ways of measuring it and you could be on the flatlands and still have a great view, and somebody puts up a wall, that's not what you had before. You're diminished. Somebody three blocks away with the same type of house is going to get more money if they sold the house.

XCAP Member Klein: I know each of these cases has its own facts, but how about a ballpark figure as to what the homeowner is likely to get for diminution because of sound and loss of view?

Mr. Matteoni: I think back on the case that I told you about, these were garages on the first floor and you came in behind the garage to a level and then had a second floor with the bedroom. They were in the neighborhood; it was settled \$8,000 to \$9,000 each but that was 20 years ago.

XCAP Member Klein: Right, but I'm more interested in the percentage of the total value of the property

Mr. Matteoni: Oh, I see. Those units were probably in the \$300,000 category at that time.

XCAP Member Klein: So, it sounds like 3 percent or so.

XCAP Member Cho: So, like an Eminent Domain lawyer, is it like you don't pay the lawyer until, unless you win kind of situation? How does it work?

Mr. Matteoni: It works in two ways. One, an hourly rate, the other is a contingency, and the contingency in Eminent Domain is based on that offer you received before you hired the lawyer, and whether the lawyer can get you a difference, a great amount, then the lawyer would take a percentage of that difference.

XCAP Member Cho: I have another question. So, if there is a school, Palo Alto High School, right next to the Caltrain corridor and if the Palo Alto High School somehow gets impacted, if the school, the organization could represent against whatever they're doing...(crosstalk)

Mr. Matteoni: Can Caltrain take school district property?

XCAP Member Cho: Yeah, or take their property or you were talking a lot about environmental impact, I think. You know, school football field is right there and they exercise and that the construction could impact their breathing. I don't know, I live right next to it, so I'm worried about my breathing. You know, things like that.

Mr. Matteoni: Well, there's a couple of parts to the question. School districts are public agencies, and so if another public agency wants to take a second public agency's property, there is a different standard. The law requires that it's a more necessary public use. Historically, transportation in California has been more necessary than other public uses, but there would be a special consideration to damages to a school. When I was with the County, again, if you know the fairgrounds property in South San Jose, there was the Franklin McKinley Elementary School, and the kindergarten was nearest to the street, but they had a crescent drive and the buses came in, let the kids out, picked them up. That was quite a ways removed from the road. Well, Tully Road was widened substantially, and that school district fought the acquisition, the County won on the more necessary public use, but the County paid substantial damages in redoing all the windows to soundproof them. The school said, we can't have the little kids here anymore. We have to change the arrangements within our facility, and those were all costly moves. So, I'm not sure of the particular impacts on a recreation area of the school, but the school certainly would have the right to claim damages.

XCAP Member Kanne: Is there another process that the City could go through with the school district to avoid that sort of situation?

Ms. Matteoni: I guess it would depend on how you design the project, your input on the design.

XCAP Member Kanne: I guess what I'm asking is, it seems to me that if the City wants to acquire private property for any reason, it needs to go through this process. Perhaps I'm wrong about that, but I'm trying to understand if there is like a separate process.

Mr. Matteoni: Oh, is it a different process?

XCAP Member Kanne: Yeah.

Mr. Matteoni: It's exactly the same process, it's just a higher standard of when that first resolution is passed to take the school district, the school has potentially a stronger argument than the private property owner, because of its public status. And, maybe this is a point to, do you guys just keep going or do you take breaks?

Chair Naik: Nope, we keep going. If you would like a break, please say so.

Mr. Matteoni: Let me just take a sip of water.

Chair Naik: Absolutely, and then while you're taking a sip of water, after I'd love for you to talk about the tax consequences.

Mr. Matteoni: Sure. But there is the right to object. You make that argument at the hearing of the City Council or the Joint Powers Board. Incidentally, the Joint Powers Board, at least for the electrification project retained the VTA (Valley Transportation Authority) to do the condemnations. My client went, I did not go, he made an objection, and it was to the VTA Board. But where was I going here? If there is an objection, there is the right to pursue it in court, but I told you at the beginning, as long as it's a public use, you're not likely to win. You might win procedurally, that the environmental review was done improperly and it sidetracks things for a period of time. But I don't see the opportunity for Palo Alto High School or the residents to have an effective right to take objection that would prevail in court. Maybe you all are familiar with what happened in 2005 with Mrs. Kielow in New London, Connecticut. That was a redevelopment type of project for Pfizer Industry that New London said, we want to increase our tax base and these residents here can be moved somewhere else for Pfizer, because that's going to be a great economic boom to our community and help us pay for other public facilities and the like, and Mrs. Kielow, in fact, there is a little film made of her objection, a little pink house. She went all the way to the United States Supreme Court and lost in a 4-1-4 decision. She said it wasn't a public use. It was a public benefit and tried to distinguish the word public use based on the historic understanding of public use. If the public using a road. If the public is riding a train. The public goes to school. And she lost on that close of a decision, but ever since, she has been sort of patron saint of those that want to object, but she lost and most everybody loses the fight. So, where do we want to go.

XCAP Member Reckdahl: Quick question. The government an only pay fair market value. In your experience, is that generous or is it pretty much right on fair market value?

Mr. Matteoni: Well, I told my prejudice. I represent property owners. I think it's usually conservative. Agencies that don't do a volume of business, I think are more generous. PG&E is not. People object to overhead power lines or gas lines through their property, and PG&E has just been, you know, that's not a damage. You've got to have these and you can look through the lines and see your view. Don't worry about EMF. It's nonexistent. Those types of issue. And so, if you're going to take that on, you're going to be in court arguing that, because PG&E will not admit those kinds of damages, so they're not reflected in a PG&E appraisal. Caltrans for years wouldn't recognize noise damage. It does now. Caltrans, just as an example, it's moving away in some locales where a local bond measure has been passed to fund an interchange or some highway improvement, so the locals are putting the money up and Caltrans will come in and do the law suit and contribute something. In those situations, an independent appraiser may be retained these days, but Caltrans had a bank of appraisers that were its employees, and the appraisal, the offer appraisal that you would get is from somebody who works day in and day out for Caltrans. They're not going to be too generous.

XCAP Member unidentified: Conflict of interest.

Mr. Matteoni: Right, and you only got beyond that, Caltrans did not go to trial, I can't say never, but did not go to trial with the in-house appraiser. But when you hired someone to object, then they went to another appraiser. And that always, I can't tell you how big a bump, because it varied, always resulted in a bigger bump up, but still not be satisfactory. The property owner will know the impacts on a partial take of the property much better than the agency, its engineers. They're doing a whole line, looking at it. Their appraisers are going up and down the line and, well, this is a little different, make a little adjustment here or what have you. So, on damage cases, and I'm not telling you all these cases go to a jury, but they go to trial and as the agency understands the problem that it has created, it will bring more money, more money is forthcoming to pay for those damages.

The Panel took a short break.

Chair Naik: There was no property acquisition but let's say it was generally recognized that the property might have an impact, like for example we were talking about the, you know, having something elevated behind your house, but they didn't technically take any of your land. Could the city or does the city ever preemptively just decide, oh, we're just going to compensate you now, rather than waiting for some kind of suit, in a proactive measure. Or is that something that is not typically done?

Mr. Matteoni: It's not typically done, but it is certainly possible, and if I were representing someone, I would approach the city in terms of discussing it with public works, whoever is responsible for the project. I probably wouldn't get too far there, but then would take it to the Council Member that I knew, and you know, I'm going to have to bring a lawsuit, but I think this can be worked out. It's a damage that's recognized and see what the receptivity is there. So, there is an avenue to work that out and claims are worked out. Not everything has to go to trial.

Chair Naik: But my understanding was that part of the reason it's not typically done is because from a public perspective, you could have the risk of, what you don't want is that a city is basically is like, oh, I'm going to come do this apartment building in front of your house so I can pay you an extra 50 grand because I'm impacting your house, right? That way you won't say no. So, there's a public element that balances that.

Mr. Matteoni: For the public agency, they should be treating everybody equal and, you know, three people are complaining and nobody else is. Well, I don't think there's a damage. It's up to the one that wants to pursue it. So, most often they result in lawsuits, but they don't have to. And maybe before we start talking about taxes, implications, consequences, just another word or two about the process. So, the lawsuit has been filed, and I didn't mention in Santa Clara County, if you have to go to trial, you're not going to be in trial for probably 20 to 24 months. An acquisition of someone's home or part of their home, is very traumatic. The only one that likes condemnation are lawyers. All property owners usually do not like condemnation, and I find homeowners particularly are affected, and there are lots of ramifications. You know, this is my folk's home, I've lived here all my life, what have you. I'm going to just tell you one story that worked out well for the woman, although she had to move. When the Guadalupe Expressway, now the Guadalupe Freeway was put past the airport and into downtown San Jose, in this older neighborhood south of Taylor Street just beyond where City Hall was located, were a series of small homes. One of the owners was Mrs. Carowsa (Phonetic), and she had lived there, raised her family, elderly woman, and the attorney was an Italian. I have Italian heritage, Mrs. Carowsa was Italian, the judge, Judge Raconelli (phonetic) was Italian, and the daughter, the attorney for the family explained to the judge, because usually when you call in the jury you want the property owner there, you want to introduced the property owner to the jury and try to catch some good vibes. Now, Mrs. Carowsa can't attend. She is not well, but you honor, if we could at some point during the trial, her daughters could bring her in for a few minutes. And so, a day or two later I see the two daughters on either side of an elderly woman all dressed in black. The attorney tells the judge, I have my client here and if this would be an appropriate time, I just simply would like to introduce her to the jury and then her daughters are going to take her home. Of course, you can do that. So, Mrs. Carowsa sat up and I noted she had a rosary bead and crucifix hanging here, and God bless you and sat down. Mrs. Carowsa got everything she asked for at that trial. So, just to finish up on trial, it's difficult to stay with it when there's the long period of time, the effect of an order of possession. Incidentally, you can object to the timing of an order of position for hardship if you can show to the judge that your elderly mother lives with you and, you know, we can't simply move. We have to make arrangements. The judge might give you another couple of months and stall the public agency. But these are all traumas that personally happen and are not directly compensable unless you come in with the right black clothes and rosary beads. You ought to know as well that most all these cases eventually settle. There were statistics from Caltrans years ago, and I haven't seen any for a long time, that 97 percent of the cases that are filed are settled. On larger cases with arguments on various points, the settlement most often comes, the best settlement for the property owner, in the last few weeks before trial. There are reasons for that. You are required, both sides, 20

days before trial to make a settlement offer, settlement demand it's called, for the property owner, and the court is trying to force the parties together that they make their best judgement after they have taken depositions of the appraisers, they know all they need to know of the case. What would it take to get out of this case? And it's intended to have a compromise aspect to it, but the benefit for the property owner and what does promote a jump in compensation, offer of compensation, is if that offer demand is not accepted, the property owner can recover its litigation expenses, attorney, appraiser, if there is an engineering witness, because of some aspect of damage that needs to be explained. All of those expenses can be ordered paid based on the court after a trial determining that the demand by the property owner was reasonable in light of the verdict and that the condemning agency's offer was unreasonable in light of the verdict. So, if you get a number by verdict over what you were demanding, you should be guaranteed the recovery of your legal expenses in going through the trial. And so that has an impact on eventually settling a case as it goes along. There are a couple of other things, if you had to go to a trial, that the law gives in my judgement as protection to the property owner. One is, I don't know how many are familiar in going through any litigation, but in civil litigation, if you bring a lawsuit for an accident against the party that ran into your car, you have the burden of proving the liability and the damages. In condemnation, there is no burden to either side. It used to be, pre-1975 the burden was on the property owner. That got eliminated on the basis that, what the jury is trying to do is its own appraisal of the property based on all the information that comes forward, and so the property owner isn't at a disadvantage against the government, nor is the government disadvantaged in the way the law looks at it. Both are equal in terms of attempting to prove the right number for compensation. And there is always the recovery of what's called legal or court costs, not litigation expenses, no matter what. You're filing fees, your deposition costs, the jury fees, all of those are on the public agency, and if you settle a case and go through escrow, all of those charges are on the public agency, not the property owner. So, there are other aspects of the law that protect the property owner in these forced acquisitions.

Mr. Matteoni: So, with that you want to talk about taxes. There are a couple of different aspects to taxes. One is, if your property is acquired, do you have to pay capital gains? The law beyond California, IRS law gives you the right in effect, to affect a tax-free exchange, 1035 Exchange. You have, you can receive the money. You don't have to put it in escrow. You can receive the compensation and look for an investment. You don't have to have the reinvestment lined up the day you get the money. You have two years beyond the year in which you receive the money. So, if you got your money February 5, you'd have all of this year and two years beyond to reinvest. If there are damages, the damages go to adjusting the base, but you wouldn't pay on damages when you receive them. So, that was one question, I think, that was raised by Pat when we were taking a break.

XCAP Member unidentified: Does that apply just if you go to trial, or does that apply to any offer?

Mr. Matteoni: Well, you have to document and perhaps I hear recently, the IRS is looking more closely at it, but this was a settlement in lieu of condemnation. So, if

you had that resolution, you're good. If you have a lawsuit filed and settled it, you're good. It's protecting yourself if you negotiate before those things happen, and public agencies are very good in say, providing documentation, either in the recitals to a settlement and/or a letter that it was prepared to pursue condemnation. It's vital to this project, whatever the project is, and this is a settlement in lieu of condemnation. So, that's worked well for property owners over the years. Are there questions on that?

Chair Naik: Not on that one specifically, but can you talk a little bit about the fact that the tax base, particularly in Santa Clara County, and how that's impacted when you...

Mr. Matteoni: Right. I did prepare, I don't know if they're in everybody's hands, an attached the code sections. I said 1035, 1033 I should have said for the IRS Code, but there is the adjustment of the base year property acquired following condemnation. And it can actually be transferred to another county, but not all the counties, and I don't understand how that is in California have it set up. Maybe it's the rural counties, but you can transfer your base on a residence taken in Eminent Domain to your substitute property pursuant to the formulas they established there. I don't typically get involved with the administration of that, but that's another provision in terms of providing protection to the property owner. So, if you had longstanding Prop 13 advantage on your property, you can transfer that.

Chair Naik: XCAPers, do you have another other question, and by the way, I'm going to have to excuse myself soon, so I will let Larry drive, but please go ahead.

XCAP Member Burton: What worries or concerns me is that we have an alternative for the crossing project that requires property takings that the agency may not budget sufficient time for the whole process of negotiation. That's one concern, or they may be unrealistic. Another concern might be political pressure to move the process forward faster than is reasonable for the for the typical situation. Another concern is that opponents of the project may use property taking lawsuits as a lever to try to delay or even kill the project. So, these are my concerns.

Mr. Matteoni: It's very unusual for a project to be accelerated. (crosstalk) Thank you Nadia. I'm going to use the example BART coming into San Jose, North San Jose, Milpitas, in 2000 or 2002, probably both. The environmental reviews were being made for that extension, and it was to extend all the way the way to the Dearden station in downtown San Jose or on the edge of downtown. Because of funding, because of environmental review, the acquisitions of the property in Milpitas and North San Jose did not take place until 2011, with a couple of cases going to trial in 2013, and if you follow the newspapers, the BART line is operational to be checked out, but not operational for passenger service on February 5, 2020. So, the line coming into the San Jose, the extension was approved and they had a big controversy over the tunnel under Santa Clara Street, was there going to be twin tunnels, single tunnel, that took a long time for political considerations, arguments between the City reacting to property owners on what would be less disruptive in the way of construction, not withstanding it's going underground. There's affects above the ground in terms of construction equipment, yards for storing materials and the like, and BART, what it wanted that took probably a year

and a half to be resolved. And last year we were supposed to see the condemnation actions, haven't and I don't think we'll see them, maybe the end of this year till next year. So, it's just hard with political realities and opposition, environmental reviews. I don't know if any funding is coming from the feds on this, but any day the feds can get upset with California and requirement something more, delay funding. Nadia would know how the high-speed rail has been affected. So, those are other considerations that can jam a project. The lawsuits, if there was some lawsuit that had legs on challenging the project itself, certainly that would delay the project. The court could not let it go forward until that litigation was resolved, but if it's a homeowner objecting, like Mrs. Kielow (phonetic) I don't think, and Mrs. Kielow, she took her property long before she got to the Supreme Court. The house was gone. The courts just not going to delay a major project. So, I'll go back to the orders of position, and when a property owner says, God, this is a hardship, I can't move. You're affecting my business. I don't have a place to go. I've got seven employees, whatever the business complications, that hardship is balanced against the public agency saying, it's been funded, the project has been in the planning for so many years. It's needed for these reasons and if we don't implement it, if we don't go to contract by June, we're going to lose the construction season and the cost of the project is going to go up. Judges are very inclined to go with that set of circumstances and, unfortunate that somebody's got some hardship. Maybe give them a month or so or make some exception, but it's really hard to, once it's on its own track, it's not stumbling over itself for federal funding or the like, to slow a project down as an individual property owner. Am I getting to your question?

XCAP Member Burton: Well, I guess, maybe I didn't explain it completely. We know it's going to take years between the time that the City Council says these are the alternatives and we go through all the planning processes before we can start breaking ground, but will the agency necessarily be realistic about the time needed to do the acquisition, or is there going to be some pressure, internal or external, that says minimize that so we look better on paper now?

Mr. Matteoni: Well, I suspect there is always that pressure, but the procedures to me are so set in terms of the reviews that have to be made, that an agency would have great difficulty compressing the time, particularly in a community such as Palo Alto where the constituency is well informed, and if they have a particular point of view that is just not going to be rushed. But I'm not the public agency. I'm looking over here, but I didn't expect an answer.

XCAP Member Shen: I had a question back to the condemnation notice. So, if someone receives one of those, what does that typically look like and I assume there is probably a timeframe that the homeowner, property owner says you've got to vacate this property by some certain time. And then the related question to that is, if there is a lawsuit that a property owner chose to bring against that, would the person still have to vacate that property or could it hold up the, for instance, your 18 to 24 months you said here in the Silicon Valley to wait for a court case. Could it lit literally hold up, could someone live in their house until that lawsuit was taken care of?

Mr. Matteoni: I've never seen that kind of delay. So, the notice you're talking about in terms of having to move, from my standpoint. When the lawsuit is filed, the agency makes a deposit of probably compensation. Before you ever see the papers, the agency has gone to court and asked for a date to set a motion to take position of your property, which will be more than 90 days out, because it still has to serve you. It has to give you 90 days' notice. So, if they anticipate they can serve you next week, they will extend out into April whatever it is, 90 days, to have a hearing by the court, and it's up to you within 30 days of being service to file an objection. One objection could be, if there were a viable right-to-take challenge. They don't have the right to take this property, they didn't do it right, then the court would hold that off and have a trial which is supposed to be expedited, just on the right-to-take. There are very few property owners in California that have ever won a right-to-take challenge. The last biggest one was the City of Oakland in the early 80s trying to take the Oakland Raiders. They weren't smart enough with Joe Alioto and Major Council to achieve that. The Oakland Raiders moved to LA I heard. Now they're gone somewhere else. In any event, back to just the process, if the objection is a hardship, which has only come about, I think, the legislation in 2006 or 2008, that the hardship was introduced. Not that people didn't argue hardship before, but the law recognized the right to protest on hardship. That's buying a few months or not anything, depending on how the judge looks at it. This is a vital project, sorry folks. And if you do not move out, there is a court order telling you you have to deliver position. If you do not do that, the Sheriff will enforce that order and physically move you. Way back when, when I worked for the County, there were a few people that didn't move out. The Sheriff's approach to that, because the Sheriff did not like moving people out of their house, was to go and post a notice that we're bringing in the moving vans next week if you don't obey this order. I never remember anybody not moving out that somebody was going to take over control. So, they control their own situation. And now, as I tell you on relocation assistance, there is provision to assist people to move. But there can be extraordinary circumstances that the court may listen to and, yes, that would delay the project starting but it probably would not affect the ultimate trial date for compensation. That would still be running its course.

XCAP Member Kanne: I had two questions. The first one, I think, will be pretty straightforward, which is, have you experienced any examples of an inducement in traffic being something that a property owner has gotten damages for? So, a road next to them has more cars, there's more noise or more pollution as a result?

Mr. Matteoni: I'm not aware of any recent case addressing that. There is a case out of Sacramento probably from 30 years ago of increased traffic with no compensation, but I think in that case there was not taking of the property. It's just how Sacramento has a lot of one-way streets and things got changed and it was a dump on a particular street. May San Francisco is experiencing that now that it closed part of Market Street. But, just like sound vibrations, maybe, but there has to be, it wouldn't be the city rerouting streets. I think there would have to be some project that expanded the street to take more traffic. Median strips, there's no compensation for median strips, so lots of people, when the light rail came to Santa Clara County, the light rail goes down the middle of the street, and you used to be able to turn, go into a driveway here or there. You can't and there's no

compensation for that. But there is, well, there's exceptions to that. So, circuity of traffic, circuity of travel, I should say. If there is a mile, mile and a half of median strip that you can't cross the center of the street that you had before, and you're a business over here and you have to drive a mile and a half, there are some cases that have challenged on the basis of circuity of traffic, the increased burden to the business of travel time, loss of delivery time or whatever they do, and most of those cases, the court is tolerant of the agency. But in some extraordinary circumstances, the viaduct circumstance is one that's been recognized, large trucks that had to truck and trailer movements when they were pitched this way instead of that way, there's a case that there's compensation for that.

XCAP Member Kanne: Thank you. My second question was, just to be completely clear, when you're modifying a driveway or the edge of a lot, that constitutes an impact certainly, but is the city actually acquiring that land in order to perform that modification? That's just kind of unclear to me.

Mr. Matteoni: It could. If a street is widened, they are and then they're going to conform the driveway. The grade of street may change and thus the driveway isn't what it was coming into your residence. Say the grade was up and now you've got a driveway going down and you're scraping the bottom of your car. Perhaps your whole driveway needs to be conformed, not this abrupt change, but this sort of thing. That's happening on a rural highway in South County where the County is straightening curves on a road that has proved dangerous going into a bridge area. The property owner has a gate within so many feet of the road. The road is going to be moved this way, it is going to be higher and his grade is not going to work. The County acknowledges that. The County says it will conform the grade, which requires it to go further into the property. We didn't talk about temporary construction easements. We barely did in terms of a wall that might be constructed just outside of the property line, but most public projects require some additional strip to the ultimate right-of-way for the construction to take place, whether it's loading railroad ties along the side, roadbed materials, cranes, what have you, and so the law allows the condemning agency to take temporary construction easements they are called, but they're usually long strips. In the past they've been three months, six months, maybe a year. As projects have become more complicated, for example, BART coming to San Jose, they're talking about five-year temporary construction easements. The value of a temporary construction easement is really leasing the land and restoring what might be damaged. So, when VTA went down Tasman Avenue or Boulevard or whatever, in Santa Clara, to put a median strip area, to create sufficient median area for the trains, it was taking landscaped area and parking strips of various businesses along there, and then taking that out of use for a year, two years, the whole parking in the front of a building. They may be able to put the parking back or not. You lose the landscaping. That goes to the nonconforming question that you don't have nice landscaping in front of your property, which municipalities usually demand, but property owners have come to feel that's an advantage. You know, it gives a nice setting to their residents, to their business. So, those things may be replaced. They are compensable.

XCAP Member Cho asked if it was possible to assess the risk of trains so close to structures and possible accidents and compensation for that risk.

Mr. Matteoni reported possibly if the property owner had an example of a disaster that could occur and assess the risk, but the more probable damage recovered is loss of view, noise, vibrations, invasion of privacy and would be claims for compensation.

XCAP Member Cho: My first question is, so they want to build, I'm giving an example here, so they want to build, so Palo Alto building code says that you can build up to 20 feet away from your property line. So, my neighbor built a very beautiful house, \$5 million and it's 20 feet away from their property line. Their property line is right next to the train tracks, and they want to build 15-foot high viaduct next to this fence, which is two feet away, 15 feet high viaduct, and then the train itself is another 15, so 30 feet high. So, 20-foot distance, if the train derails from the top of these 15 feet, like where are they going to land? Isn't that like dangerous situation?

Mr. Matteoni: Yes. I don't know what the statistics are of trains falling off that elevated viaduct. You would have to show, well, years ago before San Bruno, I don't think PG&E had much problem with high-pressure gas lines going next to residential properties in terms of its view of what it owed. That's changed dramatically, that the risk of explosions, and you have an example. So, if you have an example of some sort of damage that could occur and assess the risk. But more probably damage that you would recover for is loss of view, noise, vibrations, privacy, invasion of privacy, people on the train, I don't know how quick...

XCAP Member Cho: Oh, they can see. The train to San Francisco, they can see.

Mr. Matteoni: No, I know they can see, but (crosstalk), but all of those would be claims for compensation. The risk of, aren't they locked on the line?

XCAP Member Cho: So, another question is, do you engage a case that before the Eminent Domain kicks in, before, the part of the process that might happen, does the client hire you to represent them? To affect the decision-making part of a different kind of solution?

Mr. Matteoni: Right. On the BART line coming to San Jose we have several clients that retained us two years ago. We haven't done work for maybe 20 months, but they retained us so, you know, we talked about it initially. We might have talked to the VTA about particular issues affecting that property. And then it has sat. So, people do come more often early, as they learn of this and there is an opportunity in that to see if you can change things. Not that, you know, the owner and the attorney have a lot to work with, but there are certain circumstances, be it driveway conformance, or what have you that, okay, yeah, we need to take care of that. So, yes it happens.

XCAP Member Cho: So, what about the customers. I think about a 50 household is against a particular solution. Like, I mean, we did the petitioning to the city and

etc. but there is also opposing neighborhoods that want this solution. I'm just trying, you know, when is a good time to engage a lawyer?

Mr. Matteoni: Well the description you just described sounds similar to a neighborhood objecting to a new development that everybody is single family and they're going to rezone this strip of land next to you for apartments and they're going to be three stories, and increased traffic. I don't usually get involved early in a condemnation case in that situation, but I think that type of homeowner reaction to a private development that might be approved by the city is a parallel and attorneys are often involved in that. Their target is raising questions about the environmental impact and assisting the homeowners in doing that.

XCAP Member Reckdahl: Families are quite often worried that if they lose their house, their kids are going to have to change school districts? Is there any grandfathering of, if you get evicted at all?

Mr. Matteoni: No.

XCAP Member Reckdahl: You end up where you end up.

Mr. Matteoni: That's my shortest answered, no.

XCAP Member Reckdahl: Okay.

Mr. Matteoni: Where you go is dependent on, the school district. You live there, they receive your children, and I don't see Palo Alto cutting an exception if you're living wherever, Redwood City. Yeah, you can still go to school here.

XCAP Member Klein: Are we winding down or exhausting ourselves on the speaker? Norm, any final words of wisdom to us?

Mr. Matteoni: It's a tough game. You don't like it now, you're spending a lot of time on it, at trying to protect yourselves. The lawsuit is not going to be palatable. There is just, well, I don't know that many people like lawsuits of any type, but the loss of property is a dimension. You know, maybe if you just bought it, well, even if you bought it last year, you spent a lot of time selecting that property and put your heart into it, and those things aren't compensated. You've got to go back to, you know, appraisals. I thought there was a question of how the appraiser reacts, so I just will add, in terms of the damages, which is usually the toughest issue, and if you can demonstrate it to the public agency, then you're going to come out alright or you're going to have to fight it in court. I think I mentioned to you, Patricia, as we were taking a break, that the property owners usually want a jury to decide this, that jurors will relate to them. They have to live somewhere. They work somewhere. Public agencies like juries, because they are spending taxpayer money. So, it's sort of an offset. But both parties like it. It's rare that a case would go to trial just before a judge. It would if it was real small, you know, save expense to go. And now days there's even the prospect of mediation. The court wants cases mediated so you don't wait the 18 to 20 months, although there are exceptions for Eminent Domain. If the parties don't agree, the court can't force you to mediation or arbitration. You're entitled to a jury trial. And that usually works for the property

owner, but what I said to Patricia earlier is, it's not Palo Alto citizens that are on the jury. It cuts across the whole community of San Clara County, so there may or may not be people that really understand your situation. So, there's lots of problems and people aren't happy.

XCAP Member Klein: Norm, maybe a last question. It's certainly an unfair question. Based on your experience, do you think that homeowners in general in California, get a fair shake and are protected by the procedures?

Mr. Matteoni: They don't if they're small, they can't afford the fight. And that's unfortunate and that goes back to the situation I was talking about in LA where lower income community, years ago when 280 went through San Jose, there is a district called the Gardener District, and an attorney, civil rights attorney, John Thorn represented Angela Davis, he came to the fore for those property owners, but he could not try one individual case. So, I don't know how many were there, but they were bundled up and so he represented them as a group and got the court to agree to consolidate the cases. That's very unusual. Your individual case should be addressed to this judge, to this jury. But they were in similar situations and he was able to do a good job for them. But it's hard and the economics of these cases are such beyond the toll on your psyche. It just takes a lot out of you, and expense to go forward. The appraiser's expense goes up as the case goes on. The initial appraisal, the \$5,000 on any case of significance doesn't cover the appraisal costs, but it's the top in the code section, and you may get an appraisal for \$5,000. You go and try to negotiate from it. It doesn't work. Then the appraiser has to do more work, and he has to update things 20 months later. And I didn't tell you that that date of value is fixed, but you can get sales that occur later, because sales are usually negotiated months before they close, and so the court will allow subsequent sales, not two years later, but within a year. And if both sides have a band of sales a year before, a year after, those are all going to be admitted and then you're arguing about what's comparable and what's different on this sale. That's the usual argument. That's also very dry stuff to a jury, so you're looking for ways to make it more entertaining, and that's where the point I told you about an appraiser that has a presence that can deliver in court in explaining the appraisal. Otherwise, you might as well just mail it in and hope the jury reads it and looks at both sides and says, well, here is a middle ground figure. Everybody go home, which is a tendency as well in these cases, to go to the middle if it's complicated and both sides were as weak as each other and as strong as each other.

XCAP Member Reckdahl: You mentioned that 97 percent of the cases that are filed settle before the trial is complete. What percentage of the cases settle early and don't require any lawsuit to be filed at all?

Mr. Matteoni: You know, I'm not privy to that, but I'm just trying to think in terms of the VTA and the BART extension to Milpitas. I knew most of those properties and I would say it was less than 20 percent. But you're going through a highly developed area and most of the properties were business properties along the railroad tracks, not residents. Well, I told you there were some with apartments, but they weren't directly taken. There was one apartment house that had its recreation area removed and that case supposedly settled three years ago this last

month, and hasn't been finalized yet in terms of the settlement worked out in terms of rehabilitation the recreation area foreshortened, and the parties are still arguing about the rehabilitation plan.

XCAP Member Kane: Less than 20 percent settled early?

Mr. Matteoni: In the example I gave you. I don't know what the Statewide statistics are. I think school districts do a good job and very few school districts go to trial. They're kind of locked in where they have to go. They may be a smaller government entity, closer to the people. All of the Saratoga feeling that, geez, we don't like to condemn people's property. We know those guys.

XCAP Member Klein: On that happy note, Norm, thank you very much.

Mr. Matteoni: You're welcome. Thanks for having me.

(crosstalk,)

XCAP Member Burton: Quickly, who has my Caltrain meeting flyers. I just want to get them back before the meeting is over. Yeah, the three of them. There's one more. No below you, that one. Thank you.

XCAP Member Klein: Okay, we have a few items left on the agenda. I'm not sure how much we're going to get done on them. Actually, I think I'm going to skip around. Chantal, I think we'll start with you, skipping down to number seven, Staff Updates.

4. Discussion: XCAP Provide Input in Preparation for Upcoming Town Halls.

XCAP Member Klein: Well, let's skip over, put the burden on you again, Townhall meetings.

Ms. Cotton Gaines: Yeah, so this item Nadia requested, this is Item number four, Nadia requested to have it on the agenda, so we are going to bring next week, likely an informational item to you that is just the planned power point for the first Town Hall meeting, which is February 20, and that one is at Mitchell Park. The structure will look like you guys have seen for the previous community meetings and the first Town Hall meeting is the one where we're recapping just where we are period. So, there's actually a lot of information to cover in that meeting to bring people up to speed on the seven alternatives where we do have analysis to date. And so, we're going to do an informational item for you next week that just says, here's the power point we're planning to do, and then if you guys have feedback, just let us know. So, we probably won't spend your meeting time on that next time, but it should be, to Greg's point, things you all of seen before. And Nadia want this item on the agenda to see if there was anything that the XCAP had an interest in us trying to incorporate in the Town Hall meeting, if there's a question or something like that that you would like us to post to the attendees of the Town Hall meeting,

she just want you to give us that feedback. It's okay if you don't have anything. There's more than enough to cover.

XCAP Member Klein: You might want to give us an update on where AECOM is on our two additional ideas.

Ms. Cotton Gaines: We are working with them to get a very specific timeframe. I am thinking we will have early level things at some point in March, but I can't speak with more confidence until I get a refined schedule from them, which I think I'll have within the week. So, I can give an update on that next week. And we'll try to incorporate that into the updated Workplan as well, just so you know when it's coming back to you. We are right now scheduling a meeting with the proposers of those new ideas and AECOM and some relevant staff, and your technical working group, so that we can make sure that AECOM is analyzing things the way they are currently, and that we're not missing anything. That we're planning for next week, if everyone's schedule lines up.

XCAP Member Klein: The technical committee members who will participate in that are Phil and Tony and Keith, and I think you've all been notified of the dates. The idea of that, it is really just to make, as Chantal said, to make sure that we're all talking about the same things and if there's any particular technical problems we have our technical people there to help get the things straight. But the AECOM evaluation of our two new ideas will come before this full group whenever they're ready, and obviously, we want to have it in time so that we can take it into account in making our final decisions.

5. Discussion: Preliminary Discussion of XCAP Workplan (continued from January 29, 2020 meeting)

Ms. Cotton Gaines: So, for Item five, which is the Preliminary Discussion of your XCAP Workplan, last week we passed out, I'm just going to keep talking, last week we passed out a spreadsheet as well as a document behind it by dates and it described like what is planned. I met with Larry and Nadia yesterday, so we're making some updates to that, but if you guys can look over the document shared at last weeks' meeting, I think it was Item Five last week. Yes, Phil is holding up the spreadsheet. It's actually easier to read in black and white, so if you want to look at the printed on instead of the one uploaded. Please just look at that and we will bring the discussion back. We're adding some other things into it and trying to figure out how to maximize your time to keep you guys on schedule for April 30th.

XCAP Member Klein: Well, let me add to that is the way we're looking at things now is that we'll begin making decisions on February 26th. What that looks like, I don't know but we're certainly going to have an item on the agenda that would call for the possibility of making some decision. That's three weeks away, or looking at it another way, it's two months from our deadline.

XCAP Member Burton: But that's before some of the community meetings, you know, the public hearings.

XCAP Member Klein: Well, we have the Townhall meetings.

XCAP Member Burton: That's what I mean, the Townhall meetings, yes.

XCAP Member Klein: Well, that's an interesting point, but the Townhall meetings aren't really for that purpose, since we're not outline everything to them anyway. There's no lack of opportunity for the public to speak.

XCAP Member Brail: Can I ask that in preparation for that, we just make sure the documents and the presentations on all the various options are, I think the website is up-to-date, but I know that some of them, like I'm very familiar with, because I was on the old CAP, but I don't know that everybody has seen the presentation. There's an AECOM video, there are diagrams, there are elevations, there are maps, there are the fact sheets. I think it's important that if we're going to start talking about actually, you know, doing things, that we should all take the time to make sure we fully understand all the options that are currently in front of us. And maybe it's just a matter of looking on one link on the webpage, but I certainly hope to do that by the, and I think others should do the same.

XCAP Member Klein: Absolutely, which is why I mentioned giving three weeks of notice. If you were the college student who waited till the last week to do all your, to study for you exam, now is your notice that, when the exam is going to start.

Ms. Cotton Gaines: And there is a link on the website that, I think it is with renderings and animations or something, so if you wanted to look at all the animations of our stuff and alternatives, now nine technically, there are animations for six of them, and then the Churchill closure has all its different elements to it and then we are doing further analysis on the two new ideas. But that's a good starting place, if you want to see the videos again and look at the layout and plan view, all that type of stuff.

Meeting moved to Item number four.

6. XCAP Member Updates and Working Groups Updates

XCAP Member unidentified: Larry, can you explain again what we will do on February 26th?

XCAP Member Klein: We're not sure yet. I said, I deliberately used vague words to begin deciding.

(off mic)

XCAP Member Klein: Well, for example, we're not committed to this. Nadia and I and the staff are going to have a further meeting on this after next week's meeting. Here is one possibility and that is, start at the bottom. Eliminate ideas that have the least amount of support, so that people, we might start just with a going around the table and getting each individual's views on things. I'm pretty sure we will divide up and not discuss all three areas, but, well, Charleston and Meadow are really one thing, but we might have done meeting devoted to Charleston and

Meadow and the next meeting devoted to Churchill and its various ramifications. So, we might ask people to, without any motion on the floor, just give us your thoughts and see what everybody has to say, and then see where we go from there. But anyway, there are a variety of things. It's more complicated than having just a yes/no, are you in favor of daylight-saving time, or something like that. You can pretty easily take a vote on that. We know that these are much more complicated than that, so how do we make sure that everybody has a voice and we hear everybody else's views, so that we can all benefit from the give and take on that, and then it may also be that we have several iterations of decisions and maybe set some tentative things. Obviously, we don't need to make final decisions on February 26th or March, what is it, 3rd, 4th, but within a pretty short time thereafter, because it's going to take us a while to produce the final report as well.

XCAP Member Burton: Larry, will we have any indication of funding ranges or anything like that to help guide us in thinking about what's called financial feasibility by the 26th?

XCAP Member Klein: No. I think all we're going to have are cost, I'm assuming we will have cost, well, we do have cost estimates from AECOM. Whether we're going to get, it's a chicken and egg situation. The Council is not going to give us a budget. They're going to say, well, how do we give you a budget until we know what you expect to build.

XCAP Member Brail: I mean realistically, the only money available is the Measure B funding in the County that's shared with Sunnyvale and Mountain View.

XCAP Member Klein: Well, that's all at the moment.

XCAP Member Brail: So, the Council would have to get some money somewhere, and it doesn't sound like this business tax is nearly going to be enough or used for this purpose.

XCAP Member Burton: Let's say the combination of Measure B and business taxes could carry certain bond load.

XCAP Member Brail: It would be helpful to do some back-of-the-envelope forecasting. I agree with you.

XCAP Member Burton: Exactly. So, we know let's say, I don't know, the tunnel, South Palo Alto tunnel is so far beyond the realm of financial feasibility, we shouldn't spend more time on it. I'm just using that as an example.

XCAP Member Klein: Well, you're going to hear Pat and I'm guessing that Pat's going to tell you how his idea is to find the funding. I'll get to that in a minute. Yes, we will get there. The public, I think you're half the public.

Philip Kamhi, Chief Transportation Official: So, if I can really quickly, I just want to say that it's very unlikely that we'll have funding information after April as well, but the reality is, we can potentially apply for other funding sources once a project is determined. So, at this point it's not really a project.

XCAP Member Klein: The other thing is in the paper today is the introduction of legislation in the State Legislature for the oft mentioned idea of having a Bay Areawide sales tax of 1 percent, which would raise, Pat, what's the number, \$500 billion, something like that, \$50 billion, (off mic) \$100 billion, yeah. But that's spread out over nine counties. It's not just for grade separations. But that may very well, if it gets through the legislature could be on the ballot as early as this November, and that would be a potential source. Anyway, lots of potential things. Go ahead Megan.

XCAOP Member Kanne: Well, I just had a comment which is kind of to Phil's point which is that you haven't really gotten an update from the Measurable Criteria Group, because we've kind of been like, holding our cards close, so maybe that would be useful to like agendize specifically. And if you have any, like, specific questions for that group or things you would like to see. Because certainly my expectation would be that the criteria would matter in these decisions that we're potentially making this month and next month.

XCAP Member Klein: Thank you for that. Well, we'll hear from members of the public now. Pat.

The meeting moved to Item #2, Oral Communications.

7. Staff Updates.

Ms. Cotton Gaines: Oh, okay. So, Larry, also I think Nadia, for Item number five, just wanted that to be an announcement, so I can do that really quickly, if you want.

XCAP Member Klein: Anything else for the good of the cause? No. We're adjourned.

8. Adjourn

The meeting adjourned at 6:40 P.M.