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City of San José Community and Economic Development Committee meeting.

>> Councilmember Pyle: We don't have a quorum yet, but my understanding is we soon will. So we will get started so we won't waste a minute of your time. And we will take care of some of the beginning factors here. Number one, the roll call is -- probably be a pointless thing at this point. And the work plan. We are going to be dropping the fire department administrative citation fine schedule but that is the only item to be dropped. If you look under the consent calendar you'll see the chief development officers monthly verbal report is there it should not be because I'm going to ask our director to give that report in a few moments. So consent calendar will be consisting of number 2 and 3. And with that -- we need to approve --

>> Paul Krutko: We can just move and come back.

>> Councilmember Pyle: Second, all in favor, aye. So we'll begin then with your verbal report.

>> Paul Krutko: Thank you, Madam Chair. Paul Krutko, chief development officer. There's just a few things I'd like to highlight for the committee in terms of activities that have occurred since your last meeting in December. First off just to let you know, we are in the midst, in cooperation with OED staff, other staff and city departments the other agency, we are working on projects that has three large tenants that are making facility decisions. For council to know we discussed in the strategy session that there are some companies that have sufficient and significant financing, on their own, and they are looking to take advantage of this down market. So we're trying to be very nimble and respond to those opportunities. We did, and I know that council was represented at the headquarters announcement for harmonic, to move their headquarters and R&D facility to San José, 400 new jobs. Another thing I'd like to bring to your attention is the EIR and zoning for the soccer stadium and the adjacent development at FMC, rezoning of that and the EIR was heard by the Planning Commission, and approved unanimously, and so at the full council meeting on March 16th, the council will be taking up the certification of the EIR, as well as the rezoning which will allow the earthquakes soccer stadium to move forward at the FMC site with the addition it also covers off the rest of the development site as well as the Istar property. We are working with two car dealers. I know that the council and the committee is very aware of how important those are. Mercedes is looking to expand its dealership, with a separate showroom for a new car model so we're working with that dealership on that opportunity. We also have a request from Toyota to convert a closed restaurant into a showroom for used car sales. And it's always important to note that while we do focus on new cars the used as well as the repair activity generates substantive amount of the sales tax that we count as auto-related. With the name plate as Mercedes, used car sales can still represent a very significant hit for us. Now, the Work2Future area, given it's a sort of a silver lining I guess in a recessionary environment, we've received 900,000 extra funding from the state to deal with the dislocation in San José and that will require us to bring on a few more temporary staff to handle the amount of people who are actively trying to find work at the present time. Council did see last week at the state of the city, the community breakfast, that the Work2Future staff was the recipient of the pride of San José award, because it had met all of its performance objectives for the last four years in a row. In terms of clean tech, as you know, the council supported AB 118. Which was having the California energy commission work on alternative and renewable fuel and vehicle technology. We've advanced three applications under that program in partnership with other entities here in the valley and in the Bay Area. One is for heavy duty vehicles. One is for biomethane and another is for EV which is the infrastructure piece for electric vehicles. So we're moving forward, the council supported the legislation to create the funding. We're now working to try to bring some of that funding home to San José. In terms of downtown, the managers of downtown advisory committee met on January 14th. We took a look at entertainment zone crime trends. And deployment, the key message for the committee to know is that crime is down, and deployments are lessened, so that's a good sign. That's what we wanted to accomplish. I want to give credit to my staff, Lee Wilcox who leads that effort, I think we are making good progress in partnership with the police department and the club owners. I think the key element is the enhanced partnership with the club owners. One of the things in that area, we are looking at trying to develop a card scan pilot program. This is where you would scan driver's license and it would collect and give you realtime data, whether that person had now just a few minutes ago been kicked out of another establishment. That kind of thing we think that will really help to make it a safe and good environment for those that are wanting to have a good time and those trying to create difficulties we can quickly find. Just to close out, we do I think council's aware that once again Cirque du Soleil has had a very successful run here in San José. The show opened on February 4th, it will be there until March 21st. And we're hoping that it will continue to draw the significant number of patrons that it is. Coming up I just wanted to let you

know if you hadn't seen we will host, we were a designated start for the tour of California once again, we will host the stage start here, on May 19th, in conjunction with that we are going to try a couple new things. We are going to have the associated -- as you've seen a number of times in front of council where we give a check to the county office of education for their fitness efforts, there's an event that we hold call the king of the mountain ride on Sierra road.

We're going to try something a little different this year. The morning that the racers are going up about two hours before we are going to let our participants go up the hill two hours before and then wait to see the professional riders come up after that. We're also going to try something that has been done a number of places around the world to great success, I probably mispronounce it. It's called the Chicla Via. What that is -- did I pronounce that wrong? Close, I'm a Slovak, not a Hispanic. The event itself, what you do is, you close a significant roadway in your city dealing with all the traffic diversions but you allow the public to ride bikes, walk, stroller on that street and it's been, great success in other cities. New York City has done it, Paris and so we're going to try to give that a shot this year along with the other events that we've been holding. Madam Chair, those are just a few things I'd like to bring to the committee's attention this month.

>> Councilmember Pyle: As usual you've been a very, very busy group. Thank you so much for all that you do. So with that, let me bring you up to speed. We had to move Chief Development Officer's monthly report off consent, we are moving that up just before that. And we are dropping the fire department administrative citation fine schedule. At this point we have two things on the consent calendar, two items and it wiykd be sister city annual report and the Mexican heritage plaza transition progress. That is consent, so --

>> Councilmember Herrera: We already had a motion.

>> Councilmember Pyle: We had a motion made by rose, seconded by me. We had to hold off just a tad. So may I have a vote on that? [ ayes ]

>> Councilmember Pyle: You seemed hesitant.

>> Councilmember Kalra: No.

>> Councilmember Pyle: We do have seven sister cities and all but one is fairly active. So we're happy about that. So moving on now to the second part which would be -- one second -- the land use ordinance and policy work plan and the report there will be made by -- oh, Laurel, I'm sorry, little blind today.

>> Laurel Prevetti: Good afternoon, Laurel Prevetti, assistant director for our Planning, Building, and Code Enforcement. The item before you today is our current work plan for land use ordinances and policy update. As you know, one of the key services that Planning, Building and Code Enforcement provides is helping our council make the necessary policy changes to support economic development streamlining, as well as being able to respond to legal mandates and other things that come up in the normal course of government. In front of you is our report, and you'll see that we are busy working on eight items that still need to be finished for this fiscal year. If I can turn your attention to the last page of the report, which actually has the work plan, one way to categorize these is what is the intents or the motivation behind these ordinances. Three of them essentially seek to promote economic development and help with our city's vibrancy. This includes our sign code update, the public entertainment permit ordinance and the business destination ordinance. Two of the ordinances seek to streamline our processes, and these include the tree removal process, and the other is the conservation area. We would like to streamline the ability for neighborhood groups to come forward with neighborhoods that they believe should have that conservation area protection. And then there are three items that are really associated with state or regional mandates and this includes the landscape ordinance, I know our rules committee was a little surprised to see this so high on the priority list. But there is new state legislation that's requiring us to update our landscape ordinance. In addition we have our storm water permit that was recently approved and so the council needs to update our ordinance and policies as it relates to storm water. So you'll see we have quite a busy plate. The memo goes into some detail in terms of the staff that are helping, you're all very familiar with Carol Hamilton who's been helping us with the sign code but there are certainly other staff within City Hall in addition to Carol that's helping with the balance of this work. I do want to point your attention to those items that are high on the priority list for the beginning of next fiscal year, assuming that we still have General Fund resources for this work. That includes the green building retrofit ordinance, additional sign ordinance work, this would include things like the billboard relocation which is one of the new ideas that came forward as we were discussing the sign code. And the Alum Rock form based zoning which has been on our work plan for a considerable amount of time. But as we've experienced staff reductions, this one has slipped. I think the rest of them are pretty self-explanatory. We're trying to

address needs in our community such as the vacant and neglected structure protections, dealing with multiple family housing, et cetera. So with that we just really wanted your acceptance of this work plan and we're also interested in any feedback that you have for looking forward to next fiscal year if there are certain things that you are either surprised to see on the list, you'd like to bump up in the priority list, et cetera. So we're open to your comments but this is a report for acceptance only, thank you.

>> Councilmember Pyle: Thank you, questions? Ash? You have a few minutes.

>> Councilmember Kalra: Okay. Thank you for the report. And just in regards to the 30 items on the list. How did you -- how were they prioritized? Were they all -- they all have some value, some importance, and I'm just curious as to other than you made it clear or some of the items up on top that legislation requires some of it's been council driven certainly and so in regards to the other items that aren't so high up the list how are they appropriately ranked?

>> Laurel Prevetti: Right, so been this was the administration's best attempt to identify those priorities that align with council goals and objectives that have been expressed in the past and clearly, with the Green Vision, green building retrofit, is really one of those top priorities. This one we think we can tackle pretty hely given the new state codes that have just come out on green building. So the question really for San José will be what more do we want to do in our community compared to the others. Signs continue to rise to the occasion again, based on what we've heard from our council with respect to how to address some of these issues. And then again, Alum Rock form based zoning just because we were so chose. We've identified the parameters, we're at the point of writing the legal code and getting it into place. The remainder I would say was really again our best judgment but if there are comments of the committee in terms of which ones might, instead of being number 30 or number 27 should really be moved up, the priority list, we're very open to your ideas on that.

>> Councilmember Kalra: So it sounds like in addition to the direction or at least some of the priorities that council set forth and then some of the eligible priorities as far as aligning with the Green Vision that the amount of resources it would take was also taken into account?

>> Laurel Prevetti: That's correct.

>> Councilmember Kalra: Which I think is relevant, I mean, with limited resources, being able to accomplish some of the items make sense, as opposed to just putting a lot of resources into one item where you can knock out three or four, I get that. And will there be further -- it's somewhat I mean even with this report is I mean this seems like kind of an ongoing endeavor. So what is the best way for council as a whole or as individuals to provide feedback on an ongoing basis as some of tease items as priorities? What do you feel is the best way?

>> Laurel Prevetti: Thank you, yeah. This is really the first time we brought our work plan to committee. So we would -- we actually prefer to have the up front discussion before the beginning of the fiscal year. So to the extent that there are comments on items 9 through 30 today then as the council considers its budget priorities during the May study sessions, this is what we're talking about when you see, you know, potential tradeoffs. If this is a service that the council believes we should no longer be providing within the city. I'd have to say, though, that for most cities, being able to modify your ordinances and policies is really a core service of most Planning Departments nationwide so we hope that this would be a service that we would continue to provide to our council as well. But really, today is a great opportunity to give us your comments on these priorities so that way know upfront before the new fiscal year what you're hoping we can achieve.

>> Councilmember Pyle: Okay, going to move open to Sam.

>> Councilmember Liccardo: Thanks. Like every councilmember, I believe all 30 priority items should be the first. I know that's not helpful feedback. My gut tell me that if the core -- the top priority is supporting economic development, while maybe that is a bias we have in this committee, then we ought to be focusing on those revisions that we think might drive economic development and tax revenue. And obviously number 1 is a big one, their sign code. But I don't know if there's -- between number 1 and 8 that are in the work plan, is there -- are those numbers indicative of the priority in which they're given I guess temporally where they come up next year?

>> Laurel Prevetti: Actually some of these are moving ahead on their own time line so you are going to see some of these in parallel, for example the entertainment ordinance will be back to council in April. Some of the initial storm water policy changes will be to you if not tomorrow, in early March. So because we've got different staff resources we're able to work in parallel on several of these.

>> Councilmember Liccardo: Okay so this isn't necessarily an indication of priority, the 1 through eight?

>> Laurel Prevetti: Not the first eight no.

>> Councilmember Liccardo: I won't go into that because business stages seems to be an important economic issue. The others I'd identify as critical development priorities are number 13, offsale of alcohol at grocery stores, for those many communities who are trying to attract grocery stores to their community, and the streamlining adaptive reuse of historic buildings, number 14 to the extent that that could get a lot of buildings back into commission. I had a question about number 19 phase 2 downtown entertainment noise ordinance. Is that the specifically the overlay that we are using to limit the size of new clubs? Or is that a different ordinance?

>> Laurel Prevetti: This is a different ordinance.

>> Councilmember Liccardo: Okay.

>> Laurel Prevetti: The overlay one will be coming to you and that's what's intended to number 2 on the list.

>> Councilmember Liccardo: Ah, because I thought that only applied to streamlining the issuance of entertainment permits, but that's also going to contain the overlay.

>> Laurel Prevetti: Uh-huh.

>> Councilmember Liccardo: Great, okay, that's helpful. And then the last item on the list that I think is a priority and I'm sure all of them of course are important is the vacant, neglected structure protections, because in many communities, certainly many of the neighborhoods I represent and throughout the Eastside as well we're seeing the fallout now from the foreclosure crisis and the impact it's having on those communities. And it seems to me if there's anything on this list that might deserve additional attention between 9 and 30 that would be it.

>> Laurel Prevetti: Great, thank you.

>> Councilmember Pyle: Rose.

>> Councilmember Herrera: Thank you. Sam's pretty much covered what I would be support I which is -- I think at least he's saying economic development is a priority, I think that's important, I'm glad you identified that and the second would be streamlining. So on the list from 9 to 30 do you see, I'm not totally familiar with everything on the list, Sam called out a few here that were economic development. If you saw a few other economic development ones or ones that we'll be able to streamline processes I would like to see those prioritized in that list. And I guess on the mandated ones, is there any halfway in between? We're just committed we have to -- is there any way we can push back if need be or is it -- you know what's the parameters in terms of our needing to respond to those?

>> Laurel Prevetti: Well, the state mandate you know as a charter city we did explore whether we had a little bit of wiggle room in that -- for the landscape ordinance we've really dealt. But this will satisfy some of our other Green Vision goals that will encourage drought tolerant plantings et cetera. For the storm water under our permit we really do need to demonstrate that we have our implementation tools, aligned with the new permit, so again we'll be working with the regional board to demonstrate our commitment to that. Those all three of those have other staff, other than the staff person who's working on the sign code update. So we believe we can take care of those mandates without too much trouble. And we don't see other mandates coming forward in the foreseeable future but that could always change.

>> Councilmember Herrera: And I guess finally I just think that council needs -- we need to be careful about adding any additional things to your list. So I think that would be important to -- just to be mindful of the work that's -- that we could be creating if we add other things.

>> Councilmember Pyle: Amen. This does represent a tremendous A work. In reference to number 5 and the water efficiency landscape ordinance isn't this something that environmental sciences could be -- studies could be working on?

>> Laurel Prevetti: Well we certainly work in cooperation with all city departments including environmental services. This is an ordinance that does pertain to private development however not just public facilities and so we do need to work with our stakeholders, the chamber of course and others to make sure that they're clear where we're going. We already have a pretty good ordinance as it comes to drought tolerant plantings and that sort of thing, we need to modernize and update it per state law.

>> Councilmember Pyle: So with that -- do you have autoquestion? That's okay.

>> Councilmember Liccardo: Marijuana dispensaries, I didn't see it there, wondering if it's coming or not.

>> Laurel Prevetti: Well, as some of you have been following the rules discussion eare scheduled to come back on March 30th with an assessment of what's legal under our current municipal code regulation. So this item will be coming to you within the month and you will be able to decide whether or not you want to us do any work beyond that.

>> Councilmember Liccardo: Splendid, keeping Rose's admonition in mind.

>> Councilmember Kalra: So it's not under green building, then.

>> Paul Krutko: Or the landscape ordinance.

>> Councilmember Pyle: So after that all that work do you think perhaps we could push this forward and approve the report?

>> Councilmember Herrera: Motion to approve.

>> Councilmember Liccardo: Second.

>> Councilmember Pyle: All those in favor? [ ayes ]

>> Councilmember Pyle: Aand that is approved. Thank you very, very much. With that if anyone in the audience wishes to speak on a particular item, fill out a yellow card. In addition I needed to apologize to David wall. You wanted to speak in reference to the Mexican heritage funding, which we took under consent. Would you like to speak now or forever hold your peace?

>> David Wall: First of all, chairman Pyle, you never do anything wrong.

>> Councilmember Pyle: Oh, yes, I do.

>> David Wall: It's just a constructive oversight. As far as the Mexican heritage plaza is concerned, I like the idea for an art consume, I think this is an outstanding idea. The chronic lack of business acumen requires anyone with a measurable I.Q. to tell you to sell this property or to lease it. The city has no funding in the future currently to support approximately \$1.3 million for an initial startup of this outstanding idea. I think the City of San José eventually is going to have to take over control of the schools but that's a different issue altogether. This asset, a beautiful building has never been supported by the community. You have no money. You literally have to think about selling this asset. And in terms and reference to a term that's called a mexican cultural spike, that's contained within your document, I would suggest you lose that term. The street terminology for a Mexican spike is a dirty syringe with cheap brown heroin. So then again, I'm down on the streets allot so I hear that talk not in reference to an outstanding program for an art school which be everybody should support. The funding is not here now, probably will not be here in the next ten years. I think this program is going to have to be shelved. But you should also give outstanding honor and credibility to director Jensen for his participation in this matter. Also, condolences for having to do with anything with Office of Economic Development on his administrative plate. That weighs him down with badness. Thank you.

>> Councilmember Pyle: And with that we're ready to move on to D-2 which is the development services -- I'm sorry, where am I here? D-2, yes, D-2 and Joe Horwedel is here to carry that off.

>> Joe Horwedel: Thank you. Wanted to provide the committee with what's going on with development services as we have noted in the memo, activity has been dropping off for quite a while now. Though we are seeing some amount of stabilization it looks like in the building side of our business, in the planning side still kind of have not found the bottom yet. Which is disappointing to hear or say. We have been dealing with some of the challenges in our permit center when we did our reductions in November. We have found actually shrunk us a little bit more than we would have liked an so effective today we brought back two staff that had been laid off on an overstrength basis to help in our permit center so they are there basically as long as revenues remain strong. We were noticing delays for people trying file building permits were getting longer. We do have some challenges I think on a sustained basis of being able to do that so we'll be talking to some ever our customers Thursday about some targeted fee increases that are around keeping the permit center self-sufficient. And I think given a choice of a four-hour wait in the permit center or having a guaranteed appointment but paying more on an hourly charge I think it's a better business decision. What we're finding is that with the appointment slots our customers, you know, are spending less time in the building they're actually being able to earn income. So we want to help them be successful with that and that's why we put the two permit techs back today to help with that. So we are looking at as the spring building season is starting up, what are the things we need to be doing to keep up with the speed of development. There are a couple of mid sized projects that are moving through the building process that have aggressive schedules. So we're looking right now to resources of how we'll be able to deliver on that. And so right now we're taking it literally on a day by day, week by week basis and tracking on what's going on with our revenues, what's going on with our performance, moving people around as needed and being able to even look at how to bring some people back from other parts of the organization, literally on an hourly basis. Just to keep up with what our customers are needing.

>> Councilmember Pyle: Great. Questions? Sam -- I mean Ash first.

>> Councilmember Kalra: Thank you. Thanks, Joe, for the report and I'm glad to hear that there's some movement in trying to improve the wait-times including allowing flexibility on bringing especially bringing

the folks who have been let go back as needed at least get them back in the family for a while as many hours as they can and give them a little bit of income. I have heard anecdotally from folks that it's been really really tough on people coming in for permits having to wait for hours and they've -- they don't -- I haven't heard criticism of the staff. A lot of them that have been working in the area for a long time know the staff but it's just the wait is killing them and so I'm glad to hear that that's being worked on. A lot of the sentiment I'm hearing from folks is, that on big projects, yes, we'll move quickly, we'll move mountains, but on the folks who are there on a daily basis, even doing minor renovations, which right now is, which is the bulk of these independent contractors, that's the bulk of their business, is minor renovations and bathrooms, kitchens, whatever it might be these smaller projects that are low on the totem pole, having to wait as you said trying to wait all that time while they could be out trying to rustle up more business, is killing them. So I'm glad that there's a talk about targeted fee increases, if that happens then we have to make sure that the service level improves if we're going to go seems like you're talking with the customers, and so as long as that's kept with the same plane, with the fee increase they'll get their appointments, get out of City Hall as soon as possible often those plan checks and so on and I'm really interested in seeing how we progress as we go through this difficult period, with I'm sure it's a very inconsistent level of folks coming in for plan checks and permitting so it's very difficult for you as an administrator to be able to prepare. But whatever we can do to get, have as much flexibility in bringing in people on a moment's notice to help back us up, and improve the quality of service, and more importantly reduce the wait-time, I think is critically important. So any updates you continue to give us immediately will be very helpful. Thanks.

>> Joe Horwedel: Well as an example we went through and opened up a third service line so essentially a third person that's bringing in applications on an appointment basis. So we went from literally back in November, being able to do two appointments today, to today, we were doing 12 appointments. So if somebody could schedule a certain time so that at 11:00 they knew they could come in and we'd be able to do the review, we actually had an open slot today. That's the first time in a long time, partly we think with the extra cast we've added we've kind of caught up to where the market is again. So what we're testing now is how strong the that market really is on a sustained basis. And then because a number of those programs we do essentially are like FedEx service models that we will go through and schedule you an appointment. Our goal is you should be able to do that within a couple of days of when you want it and we've got all our people there to be able to deliver that service as opposed to a normal submit it and it waits. So we're able to run faster, charge essentially a premium service, and if we can do enough of that we think we can go sustain the business model to add yet another line out there which we think will just about make the waits go away. So that's how we're trying to kind of grow our way out of that problem.

>> Councilmember Kalra: I appreciate that, and that's extraordinarily challenging and I'm glad to hear that you're being as creative as possible in trying to deal with this real tough issue so thank you.

>> Councilmember Pyle: Rose.

>> Councilmember Herrera: Thank you. Thanks, Joe, for the report, and it's good news that you're hiring two new people back, if that means business is picking up. I was just looking at the numbers in the report here on page 3. And I guess I was wanting to know, year over year, which areas you think are increasing and which ones might be lagging, and as I'm looking at planning applications and building permit, because if I'm looking at 09-10 that's sort of the first half of the year?

>> Joe Horwedel: Right, that's the first six months.

>> Councilmember Herrera: If I just do the math in my head, it looks like we're on track to be close to '08-'09 in some areas, but not so much on planning applications. Some areas seem down and some seem like we're on track to do kind of close to what we did in '08-'09. Can you just comment on that?

>> Joe Horwedel: I think on just pure numbers building is running at a application permits issued similar to where we were the year before. If you look at the scale of activity, with everyone on the permits you'll see that we're still down, that the amount of square footage per permit is down, the valuation per permit is down. We hadn't seen a lot of new units breaking ground this fiscal year. It's picked up a little bit recently. I think the rental market builders are now recognizing that a year and a half from now the market is -- they want to be in the market at that point, so they're now starting to position themselves so there is a little bit of movement there. But other than that, there is very little new constructions going on, is that three quarters of our business in building is single family residential, reroofs, water heaters, small additions so it's really spine grain kind of work that's going on. It's a lot of business but it's a really small scale that's hard to make any real progress fiscally on.

>> Councilmember Herrera: So high volume low margins?

>> Joe Horwedel: We lose money on every one and we'll make it up on volume.

>> Councilmember Herrera: Not really though. Planning applications, the reason why that's so low, would that indicate bigger projects?

>> Joe Horwedel: The Planning applications down I think that's a function we did a really large amount of development about three years ago, and then we did the North San José development. We processed about 8,000 units just in that area in a year. We did a large amount of other development around the city that's all sitting on the books. We've done the permit extensions so all of those permits are still valid and until kind of the capital comes back for people to start building those projects there isn't a real interest from the development community to spend money on entitlements right now. There's a little bit but not a lot.

>> Councilmember Herrera: Is there in I way to look at a lower cost model for serving these low margin type transactions we're seeing coming through planning?

>> Joe Horwedel: Well, that's the discussion I was having with our managers this morning, is how do we go through and really look at where our business is and how can we deliver a service that is seen as value-added to the customer? And so how you go through and serve a large project, and the staff and the cost structure we've put to that is a lot easier to do than the homeowner who's doing the you know kitchen remodel and not adding onto their house but every dollar really becomes noticeable. The challenge is so much of our cost, everything from me all the way down to our computer system, has to go somewhere. And right now we do a pretty even split on it. That's some of the things that we're looking at is, do we amortize this cost or spread those costs different so that some of the smaller projects don't carry as much of that load. But ultimately I think there's questions about do you have the skill level of staff that are working on some of the projects? We have extremely talented people do high rise structural. They don't need to be doing single family residential. There's a different skill set we can use for that, we haven't done that in the past. The question keeps coming up from time to time, how much contractual do you do or not to deal with peak kinds of loads and there's some parts of our business that we do for self certifications. We're looking at all those different questions at the end of the day we want to deal with what our customers' needs are in a cost effective manner but doing it in a way that is fair to staff. We have a tremendous investment in our staff. That's what allows us to be successful when the big guys comes in. How to keep them busy during the slow time.

>> Councilmember Herrera: I guess I would look at the cost per project, how much we really -- the percentage of the project ought to be in the cost and make sure it's fair, because the bathroom remodel shouldn't be charged, shouldn't be accruing the same kinds of costs as larger projects an then I guess I would be wondering if we could up online be able to deal with more things online.

>> Joe Horwedel: Uh-huh.

>> Councilmember Herrera: And looking at having lower cost folks either on a contractual basis, I know you've actually outsourced some of it when we get into situations where we need to. Because what I'm also worried about is when big projects come in that we're not preoccupied with having to deal with so many small ones that we can't -- tool up for the big ones.

>> Joe Horwedel: That was the concern that Councilmember Kalra was mentioning about the smaller folks, we deal with the big guys. And typically how we deal with that is when Target came in on North First Street we put everybody on that and essentially all the other projects went and slipped on their schedule because we weren't working on those anymore. So that's part of the challenge, is it helps us to balance our workload and be more cost effective but it does have a service impact.

>> Paul Krutko: To amplify because Joe and I have a lot of conversations about this, one of the creative things they've looked at is what capacity there is in Public Works, there's an opportunity to potentially rent employees appropriately. The challenge often, for staff, is what can they charge their time to. So we do have some resources that was what we talked about in the incentive discussion as a part of the study session. It was about 300,000 that we've put in an account, that council put in an account that if a special project comes up it now allows Joe to get that capacity from another department or contracted over or whatever and charge off against that. One of the things I've talked to all of you a number of times about is that because we don't actually -- and it's tough, you know, the \$100 million budget deficit, the notion that we don't set aside some General Fund money to allow us to respond to those puts us when we're very thin in work in the building in a very tight scenario. I did want to point out to the council if you do look on the charts on page 5 of 7, you can see that in those special cases the special tenant improvement industrial tools, those driving industry companies that we talk so much about we continue to deliver a high

level of service and the anecdote was two that were processed in December were done on the same day. So we think that's a real competitive advantage for us when we're trying to recruit the high job, high capital investment companies that Joe and his team have the capacity and he has the experience to pull those together. I can't tell you how many meetings that John and I are in where we are trying to do recruitment and that's one of the big selling points. Joe comes to those meetings, he represents to the companies that we can deliver and that we have a track record and we tell them to go talk to the companies we've helped. We don't just have them rely on our assertions so that's a place we're being very successful. But it does have the ramifications elsewhere in the service package when you do that but a target's worth \$500,000 annually in sales revenue. That's why the minds get focused very quickly with the \$100 million deficit. So ...

>> Councilmember Pyle: Sam.

>> Councilmember Liccardo: Yes, thank you. Joe, I was wondering, how much of the small business ambassador program money is left after all the cuts we have seen so far?

>> Joe Horwedel: We still have -- run that program. But one change that we have made, we have taken restaurants identity of the small business ambassador program, just because of the coordination problems we were having with that type of business through there, but we still have dedicated staff that will work on it. The amount of activity coming through has been slow. So it's been down in the single digits.

>> Councilmember Liccardo: But we still have an active program?

>> Joe Horwedel: There's still an active program. We've consolidated with the industrial tool program and STI program so we don't have individual staff in all three of those programs. So we share them between those three programs.

>> Councilmember Liccardo: I see. And the problems with coordination with the restaurants is because of the need for health permits at the county?

>> Joe Horwedel: Health permits as well as the complexity of that type of construction and what we found is trying to do plan check in essentially a one day, all guys sit in the room it was very difficult to keep problems from cropping up in the field while they were into construction. And our goal is to resolve issues before they start construction and we found that by spending a little bit more time in the plan check stage versus trying to fast track our way through that paid dividends when they got into construction in the delays are much more expensive so that's why we pulled that one back out of there.

>> Councilmember Liccardo: Okay, and could you also help me understand with the full cost recovery model that we have presumably we staff a probative at best estimate we have of what we think the amount of activity is going to be. I remember you guys predicting hey our performance is really going to fall off in the coming year because of budget cuts but intuitively you would think you know purely theoretical standpoint well, we should be at the same level of performance we should have the precise number of people for the business. How -- can you explain why the performance is falling off?

>> Joe Horwedel: Sure, why that is happening. Two things are going on. One is that we have a -- especially in planning a large amount of projects that people have filed and then they have just put on the shelf. So we collected the revenue for that but we don't have an impound account that we then drawback off of. So one of the things that is why we maintain reserves is to go and have resources to theoretically finish those projects out. We really can't control when they decide to become active again. So you do have fluctuations that happen from that standpoint. They paid their fees one fiscal year, they do one work one year two years down the road. The second thing that's going on is related to how we load the cost per person. What our hourly rate is. We haven't adjusted our hourly rate in a custom years now. What happens though is, we two from being a business of development services being say 300 people to one that's about 150 people is the cost that are fixed for like being in the building, cost for the computer system, the cost for, you know, the rest of the city organization that's affectionately known as overhead, those costs generally don't scale as quickly, so they are still the same fixed costs. I have to spread them over fewer sellable hours. That's the challenge. If I'm billing something as \$200 an hour to pick a good number, and previously I used to get 100 of that for the person doing the work and now because my fixed cost have grown I may only have \$60 out of that left to hire somebody. So I really have less hours available to deliver that service. That's what we're going through right now is how do we go and rebalance the back of the house rest of the organization and you know starting from me all the way back through of what our costs are to get those more balanced.

>> Councilmember Liccardo: Okay.

>> Laurel Prevetti: We also offer services that are not cost-recovery so to speak so for example whenever we get a public records request we are mandated to provide that information. And we don't have funding to cover that. So we have all these other services that we are providing without revenue attached to them.

>> Councilmember Liccardo: Right.

>> Laurel Prevetti: So general inquiries would be another category.

>> Councilmember Liccardo: Okay, well, thank you. That's really helpful, help me to understand. Sounds as though the ratio of people to work actually worsens as we get into tougher economy.

>> Joe Horwedel: It shrinks. That's been the challenging part.

>> Councilmember Liccardo: Right. The last question I had related to page 4. The project chess clock, I was wondering, how close are we to implementation?

>> Joe Horwedel: I can't give you an answer on that one right now. You stumped me. It is something that --

>> Councilmember Liccardo: I tried to, it took me four questions to get there so -- we've been working on it for quite a while. I know we've been getting very close but one of the things as we went through and cut both our I.T. staff as well as in the department itself this is one of the types of projects that kind of slid. And I haven't asked about it in a while so I will have to ask.

>> Councilmember Liccardo: Okay, thank you.

>> Joe Horwedel: Remind staff don't put things in there that I don't know about.

>> Councilmember Liccardo: We'll talk about it off line, thank you Joe.

>> Councilmember Pyle: Thank you Joe, with that may I have a motion to approve the report?

>> Councilmember Herrera: Motion to approve.

>> Councilmember Liccardo: Second.

>> Councilmember Pyle: All in favor, we are ready now, there are no cards for D 2. We're ready to move on now to D3.

>> Paul Krutko: Madam Chair, just one point on that item. Staff -- I believe this is one that staff is requesting, yes, this to be cross-referenced just to let you know that ahead of time.

>> For March 16th.

>> Paul Krutko: Correct for March 16th.

>> Good afternoon.

>> Councilmember Pyle: Good afternoon, good to see you here.

>> Leslye Krutko: Leslye Krutko, director of housing and Matt Cano from the parks department is with me here today. We're here to talk to you about the exemption of affordable housing from the park land fees and the work we've done over the course of the last year to look at this and to see what options and alternatives there were. Going to provide just a very, very limited amount of background and then tell you how we got to what our recommendation is today. But when the city council originally set the housing department up back in the late 1980s a decision was made that there would be certain incentives created for the development of affordable housing. One of those was to exempt affordable housing from payment of park fees. That lasted for some time, until the 1990s when the redevelopment agency had money and was not in the situation it faces today and stepped up and offered to pay park fees for affordable housing for a period of time. And when funds became a little more restricted the exemption went back into play. And that's where we've been in the last couple of years, is that affordable housing again is exempted from payment of park fees. I think one of the pressures that we've been under is that as a city, as we grow and we become more dense, and for-d there's more development is there's more of a demand for open space than for places for people to recreate. And so as we've been developing affordable housing in more recent years, we've come up against concern that park land is needed. I think we're seeing that we're proposing development of affordable housing in some areas that are already park deficient and have been for many years. And it's the pressure is on the new development to take care of that park deficiency as it moves forward. So recognizing that this is a concern, we did -- and I should also say that this did come out as a referral through the inclusionary housing process. At last -- a year ago December, there were quite a number of follow-up actions that council did ask us to consider. And you'll start seeing those coming forward in the next couple of months, in fact we have a busy March agenda with you on some of those follow-up items. But what we did following that was, we pulled together a group of folks to advise us, and look at what alternatives there would be to paying the park fee, all the way from not paying it at all, just like it is today, exempt, to paying the full park fee, as all development does. And

everything in between. We also brought in a financial consultant to do some modeling to see how much of the fee could be paid for by other sources. And what that has shown is that 30 to 60% of the park fee could be paid by other sources. So what that means is there's an impact on the housing fund of somewhere between 70 and 40%. As a gap lender, that difference is -- would be paid for by the City's housing funds. So we did look, and attached to your report are all of the various options that we looked at. We broad these options before the parks commission and before the housing commission and they actually had a joint meeting where they discussed these options. And I think it was interesting because they really grappled with the same thing as we grappled with, is that these are both very important priorities and how do you do one and not the other? And where we ended up through all of this work, and we can talk about any idea that you might be interested in, where we ended up was looking at a reduced fee for affordable housing which still produces the incentive but does recognize the need for park development. And we are recommending a 50% fee which is consistent with the downtown fee for parks that is now in place. And with that, Matt and I are here to answer any questions you have.

>> Councilmember Pyle: I think it was smart for you to cross reference the two departments so we can get the yin and the yang of this situation, than you.

>> Leslye Krutko: Yes, it's been a lot of work and really thank our parks friends for working with us.

>> Councilmember Pyle: Did you want just to address Leslye? It's a two-parter.

>> I don't have any comments. I'm here to answer any questions.

>> Councilmember Pyle: You understood better than I. Sam.

>> Councilmember Liccardo: Supporting role. Thank you, Leslye. Sounds like a Solomonic result. I know there's no perfect absence and this certainly makes sense. Couple of questions. I know we had as you mentioned between 98 and 05, a program where the RDA provided vouchers. Obviously that kitty's run dry but as we go out and seek prop 84 money K 1C money and other sores are we contemplating that we would backfill, we could backfill the 50% obligation for some projects where that developer was successful obtaining other sores of funds?

>> Leslye Krutko: Well, let me speak to the one program that is more in the housing department's venue and then I'll do the prop 84, I'll let Matt handle that. On the prop 1C parks money at this point it's not going to be a lot of money, we're probably going to be lucky to get about 300 to 400,000 a year for the next couple of years. They have come out now with their regulations which we've been waiting for and it's all based on building report data. As you know we haven't been building very much. If you look back in 2009 and how many building permits we pulled for affordable housing or for development at all, very limited and that's what it's based on. Going forward this year we do have a couple of projects that will go forward that were approved last year so we'll get a little bit more but we think it's going to be fairly limited. What we have the council and will work with the parks department on what the needs are that they'd like to direct that to and it might be more park improvements as opposed to purchase of land and that's something that I think the parks department would have to decide.

>> I just wanted to add, that we did cross reference housing list with our prop 84 application and the Evans Lane project, which is in council district 6 near Almaden Road is probably the highest ranking project we have. If we get the prop 84 grant I don't know that it -- I don't think at this time that it would release anybody from future obligations. We haven't contemplated that for prop 84 but we could contemplate it in the future.

>> Councilmember Liccardo: Okay, thank you. And then on page 5 there's reference to tax credits picking up 30 to 60% of park fee, depending on the pro forma of the project. Is that an eligible expenditure for tax credit allocation?

>> Leslye Krutko: If it's a project cost yes it can be eligible.

>> Councilmember Liccardo: So if it's mandated by the city it's a project cost?

>> Leslye Krutko: Yes.

>> Councilmember Liccardo: Got it, okay, thank you.

>> Councilmember Pyle: With that if there are no other questions what I'd like to do is take comments from the audience. David Wall is first and he would be followed by, Terry Velandro and Bonnie Mace. Two minutes each.

>> David Wall: It's no surprise, I'm not a proponent of affordable housing due to its material misrepresentation insofar as how it flips back from developers as how they define it. There should be a moratorium on affordable housing in order to stabilize your debt structure. With over 548 million plus affordable housing I think the city has done more than its fair share. Especially considering the debt load. The developers inherently benefit from this zero park land or 50% park land fees. Because it's not

coming out of their pockets. It's profit. And it becomes a public nuisance properties, when you have this high density living projects with people that cannot afford to live here and there are ancillary nuisances that are created. Taking away park funding is not acceptable. You also don't have the services anymore to support affordable housing. But let's look at the park lands. We saw not more than two weeks ago, where you now are not going to construct any parks at all. So now, we have an issue of 50% reduction of a full fee. For something that won't be constructed at all. Because you can't maintain it. Therefore, charge the entire fee. Let the people who live in affordable housing be able to stand tall and look citizens in the eye and say hey, I pay my fair share for parks. Not to look at the fact that it's tax subsidized housing, that will collapse without that subsidy. Thank you.

>> Councilmember Pyle: Thank you. Terry. Did I say your name right? Terry bellandro?

>> Bellandra.

>> Councilmember Pyle: Sorry.

>> Members of the committee, housing director Krutko and Matt. I'm speak because Helen Chapman could not make it today and I'd like to read her speech. Today is the first step in a critical process that for years has been slow to resolve the issue of providing parks and open spaces for affordable housing residents. Members of the community have raised the issue recognizing the need for both affordable housing and meeting the goals of providing parks, open space and recreational opportunities to our residents. No one wants to see either issue RDA's voucher program sunset back in December 2005 with no future source of park fees allocated for parks for affordable housing. This truly is a dialogue that needs to be brought to the entire city council quickly to review with all members of the community. The hard question how to fund parks with affordable housing project must be answered. Directors Krutko and Balagso have given you an excellent starting point today with the memo in front of you. To see the two departments come together with considerable outreach to the community is to be commended. To read that both the parks admission and the housing commission reached consensus on this difficult issue by agreeing that parks and affordable housing should be well integrated, designed and planned to enhance and benefit the public should set the standard for partnership. Please support the memo today and vote to agendaize and move this very important discussion to council quickly. Our community can only benefit from your support today. Thanks.

>> Councilmember Pyle: Thank you. You did a great job Terry. I think Helen would be proud. And Bonnie.

>> Helen will be proud. Bonnie Mace chair of the housing commission. So this is a very fair and balanced approach and the most important thing to come out of this entire process is the fact that we are not pitting these two important priorities against each other because in the past they have always been seen as one against the other and it's a zero sum game and it's nice to see as Sam said a Solomon approach where you have a 50/50 split between the two, and also that we've had a joint commission of parks and housing that have discussed these issues. So housing commission and I believe parks commission, although I can't speak for them, supports staff's recommendation both that you discontinue the current exemption and you enact the 50/50 split. And the one other important thing is we also need to address a permanent source for funding for parks which is an important element and that solutions be creative. There are a lot of ideas that came out of the joint housing and parks commission discussing creative ways to meld parks and affordable on the same site and so those are sort of things that are going to come in the future but for now this is an important first step and we support staff's recommendation so thank for Leslye and Nat for working together so hard on this project.

>> Councilmember Pyle: Thank you and with that are there any other questions?

>> Councilmember Liccardo: Motion to approve.

>> Councilmember Herrera: Second.

>> Councilmember Pyle: All those in favor? Thanks for a great report and great resolution. We appreciate that. We're ready to move on to D-4 -- ready to -- permit ordinance for public entertainment. And we welcome today Lee Wilcox. Very familiar name to me. I have to always remind him where he got his start.

>> Thank you, councilmember. So on January 26, the city council adopted urgency amendment to title 6 and title 20 related to entertainment uses citywide specifically the public entertainment ordinance. The goal of the ordinance is to provide the city with a tool that assists the city in protecting the health, safety and welfare of those persons working, living and playing in the city. As part of the urgency amendment, council further directed the City Manager to continue to working with entertainment venues citywide in bringing forth further revisions to the ordinance. The purpose of this report is to update the committee on

that process. With the urgency changes taken upon January 26th the public entertainment ordinance now applies to businesses with an occupancy over 100 that are open to the public and serving alcohol offering one of the four subtopics here dancing singing audience participation or live entertainment. The process staff has set out on to bring forward for the revisions started in November of last year. And the goal of this process is to meet with a number of small groups following backup several times with citywide outreach meetings to help you know bring forward broad agreement around a set of recommendations that will ultimately be heard by council. The first citywide outreach meeting was held in January of this year and I'll come back to had a in a second. While the public entertainment ordinance is a citywide ordinance, a number of the entertainment venues do reside in Downtown San José, and I did want to remind the committee that a major component of our downtown strategy is the hospitality zone assessment report. It really is a strategic document for our downtown night life at this point. And a good portion of this plan relies on downtown San José transitioning from a night club destination to a night life destination. And the report relies on four avenues for the city to achieve that. We spent considerable time over the last year in regards to the policing aspect of that component, and the venues role in that transition as well. Today we're here to really talk about the city policies and regulations and how we believe the changes we're going to make will help with that transition. While the public entertainment ordinance is a very important tool, for Public Safety and regulations, we are approaching this project through an economic development perspective as well, by creating something more flexible and streamlining the permitting process we hope to attract new night life businesses to downtown thus diversifying our night life options and reviving the nighttime economy. Part of staff's internal work thus far has been finishing Betts practices research that we started to share with a majority of stakeholders that we have been meeting with. The goal of this is to see what cities from across the United States that are deemed as successful entertainment areas how their ordinances are structured and what can we learn from them and what trends are we seeing nationally through a regulatory or promoting entertainment piece. While this isn't complete, we've seen some initial conclusions that almost all cities in America over a population of 50,000 regulate entertainment to some extent. San José currently does have one of the more flexible ordinances, when it comes to this regulatory standpoint, and then some cities take a very broad approach to regulating entertainment, including karaoke, bowling alleys, bocce ball, but a majority of cities throughout the nation especially large cities regulate entertainment through recreational dancing permit or sharing this information with stakeholders the citywide, second citywide outreach meeting in a few weeks. The first citywide outreach meeting we had in this year in January was attended by existing entertainment venues from around the city, possible new entertainment venues, looking to locate in San José and downtown stakeholders. Based off peek feedback that we received through hospitality zone process, some of the smaller group meetings and just complaints over the past three years, staff and participants put together these three questions to work through the citywide outreach meeting. So what within the process to obtain the public entertainment permit could be improved or streamlined? What should be related through an entertainment ordinance and what areas of the business should be regulated. And based off -- based off of those questions and a pretty extensive dialogue that was really good, staff jotted down with participants the following goals. The first, the current cost to obtain a permit is too much. It is a cost recovery permit as we just heard Joe talk about and Planning, Building, and Code Enforcement, PD to administer this permit overall new application process and the time line of the permit to see if costs can be cut down. Second, the renewal process, currently, the entertainment permit lasts two years. At the end of two years you apply for a new permit, it is not a renewal permit so it is quite cumbersome on some businesses to put together a whole new package, the fingerprinting and all else that goes along with it. , wedding anniversary parties and that they currently aren't loud to. We at the city believe this is not true that we do have the flexibility to do that so we're working with them right now to see whether this is a city or state matter and we'll work with the businesses to achieve that. Fourth, little bit more flexibility with security guard requirements. This is something the city takes pretty serious but we are looking at creating a little more flexibility for the smaller venues in this regard. Participants felt that all employees that work at an entertainment venue in the city should be required through the entertainment permit to have ABC LEED certified education, this is the licensed education on alcohol and drugs and the training is focused on practical information on serving alcohol beverages, safely responsibly and legally so that was something the clubs really want to check on them cells. And lastly participants felt that there needed to be a special permit or that restaurants shouldn't be required to have a permit too if they're going to have infrequent entertainment or seasonal concert series. And so while we're not sure we can do that legally, it is something we are working with stakeholders on right now. Taking all this information, staff is work

internally as we speak to address the desired outcomes. Once a draft set of revisions are in place we will hold a second city outreach meeting in early March with formal recommendations coming to the city council, late much, much or early April. With that I'll be happy to entertain any questions.

>> Councilmember Pyle: You know Sam's going to go.

>> Councilmember Liccardo: Sorry, Lee, I want to thank you for all the immigrate work. In terms of the restaurants who are engaging in frequent entertainment, I wonder if we could borrow some of the ideas we had last year, left coast life. If there's a single sponsor that's willing to be sort of a downtown sponsor for infrequent entertainment that restaurants would sort of contract with that entity so that way we wouldn't have to reinvent the wheel for every restaurant, is that possible?

>> I believe so, that is one of the ways we're looking at it.

>> Councilmember Liccardo: Great, thank you, looking forward to the results.

>> Councilmember Pyle: Rose.

>> Councilmember Herrera: Thank you. I just wondered how would this impact community events citywide? Is this --

>> Community events are usually obtained with a special event permit through the office of cultural affairs, so currently changes to the public entertainment ordinance would not affect those events whatsoever.

>> Councilmember Herrera: They would be going through the same process as before?

>> Correct, yes.

>> Councilmember Kalra: Thank you.

>> Councilmember Pyle: Thank you for the report. We do have one person from the audience wishing to speak and that would be David Wall.

>> David Wall: I was reluctant to speak on this issue today. Until I heard a comment, frivolous comment mind you, immature and it's based on foundation made by the director of the Office of Economic Development. With respect to crime statistics being down, he's correct. In all regards. Except for one material aspect. Crime is down because of you, the council for the City of San José. Not that you're proactive and that you've done some marvelous. You have put barrier upon barrier, of the San José police department for the suppression of drunks and their assorted lascivious conduct downtown. and park structures don't look bewildered or amazed. This is a fact, a material fact where even beat cops have to ask permission from their supervisors to arrest somebody who is drunk in public. I find them drunk in milk on the railroad tracks just today . Okay? So when I hear statistics like that it infuriates me because it makes the downtown a place to come. And when in reality, the argument is, people with no means punks from East Palo Alto, Oakland, the gang bangers on the east side come downtown. Maybe that's what you want from these clubs. But the people with means that can go and spend couple hundred bucks down original Joe's for a dinner, that's what you want. That's the difference between night life and your night clubs. And so far, you have done -- you've gone out of your way to take away the power of the police department to do what they do best, is to clear the criminal element from our streets. Furthermore you have also restricted the San José police department from these permits for these clubs. And I recall who votes for these type of activities. And it's a shame. It's a scam, really. Because people with means should stay away from San José on a Friday or Saturday night, completely. Just completely in the downtown. Thank you.

>> Councilmember Pyle: Mr. Wall, I want to issue an admonition. I do not want to you cull out any particular individual to harass that will not happen in these meetings. Thank you very much.

>> David Wall: First of all harassment is not my intention. My intention is to express the truth.

>> Councilmember Pyle: I consider it harassment and harassment will not be tolerated. Thank you.

>> David Wall: I.

>> Councilmember Liccardo: Motion to --

>> Councilmember Pyle: Did you speak?

>> Councilmember Herrera: I did speak.

>> Councilmember Pyle: I'm a little premature. Any other comments? Last chance, Sam? All those in favor? Aye. Thank you. At that point in time, thank you Mr. Wilcox for a beautiful report, we appreciate that. We're ready to move on now to monument policy and with us we have, oh my gosh, we've got quite a crew here today. Thank you for being here.

>> Good afternoon, my name is Carey Adams Hafner, I'm the director of the office of cultural affairs. I'm here with Barbara Goldstein, our director of public art, and Bob Ruff from the redevelopment agency to discuss the proposed monuments policy.

>> We're very happy to be here. We've been working on this for about two and a half years, together with OCA, parks department, general services, redevelopment agency, City Manager's office, City Attorney and Department of Transportation. The monuments policy that's been proposed establishes criteria and guidelines for monuments, something that we have not had before. It places the City Manager in the lead when monuments are brought forward. And it defines the topics that are appropriate for monuments. Basically, what we're trying to do is establish that monuments on public property are government speech and therefore they need to fall within certain categories. The CAO, the City Manager is able to create administrative guidelines and procedures, and the policy includes the review process, and what criteria would be used for review. The policy basically encourages that if an organization or group wishes to create a monument, that rather than presenting the city with a fait accompli, that what they do is that they make a donation so that the monument can be created, rather than having the city accept something that is pre-fab. It also places the responsibility with the donor for the entire cost of the monument including its ongoing maintenance. If a monument is public art then it would go through the normal public art process with the arts commission in the lead and the public art committee serving as the review body. And that's basically what it is.

>> Councilmember Pyle: That's short and sweet. We can deal with that. Rose I think you were first.

>> Councilmember Herrera: Yes, thank you, thanks for the presentation. I think it's really important that we get this monument policy in place. I think it really helps people approaching the city understand what can be done, and how that process would happen. Can you discuss what an appeal process would look like in terms of the City Manager's process? Because shouldn't we be looking at this and how would a group appeal if they were not happy with that decision?

>> The policy does not have an appeals process in it. If there were a desire for an appeals process, that would need to be something that would be established in administrative guidelines and procedures.

>> Councilmember Herrera: I think there should be some way for there to be an appeal or a redress in terms of that, be able to come back, so I would make that as a suggestion.

>> As one of the administrative guidelines?

>> Councilmember Herrera: Yes.

>> Okay.

>> Councilmember Pyle: Any other questions?

>> Councilmember Herrera: That was 1A.

>> Councilmember Pyle: Two would be Ash.

>> Councilmember Kalra: Thank you for the report. I was partly driven by First Amendment issues that sprung out of the Supreme Court and they've given some guidance in regards to these kinds of issues. And so the criteria that's laid forth, and I haven't, you know, read any case law on this. I'm just curious, is that a reflection of the degree of specificity that the courts indicates would be appropriate in that?

>> Go ahead.

>> Councilmember Kalra: Sorry.

>> Not entirely. A lot of the criteria were established in conversation with city departments. And have to do with, first of all, whether the topics are appropriate, but then, also, deal with issues having to do with the appropriateness of a monument to a site, what's already going on in that site. The professionalism of the work that's being proposed, the community outreach. These are all things that are really specific to the City of San José that have to do with what kind of city we'd like to see.

>> Paul Krutko: So councilmember just to amplify that a little bit, I think the idea was twofold. One was that we felt that we wanted to be proactive in this regard. There has from time to time there's been community interest or a particular group in the community having interest. And so we thought that it was appropriate to try to line-out a policy so that individual commissions, individual departments, the council itself and the manager, weren't dealing with this on a case-by-case basis. So that was one of the rationales to try to do this. And the fact of the matter as we grow as a city and we have, are creating ever more venues, that potentially someone in the community might think would be appropriate for some kind of commemoration. And so we thought that it was important for us to get ahead of that. Not taking this concept too far but if you -- in my mind, the way I always tried to frame it is, if you think a bit about D.C. and the capital district, there is very specific identification of where monuments can go, what kinds of things can be commemorated, individuals, events and so forth. So that it's not that you're not encourage it, you're just trying to provide a frame for that kind of activity to happen. I think Councilmember Herrera did put her finger on one of the aspects that -- it took a while for us to work through. There were lots and

lots of fingers in this, as any policy development has. And that is, the balancing between the manager wanting to -- and I think this is where manager Figone came down on it, was that she should, on behalf of the council, and you can -- as you're looking at this policy you can decide you want to go another way, it would be important for the manager to take on a bit more responsibility in this area than to have all of these decisions in front of the council on an individual basis. So the sense was to create some criteria, some framework, that would guide and shape the proposal. But I think the councilmember did point out, I think our ultimate thinking was that these would be potentially appealed to the city council. I don't think it's spelled out specifically, but our sense was, that if there were a manager decision I think not dissimilar to planning director decision in some areas, the ultimate appeal body would be the city council. But there was a little bit of sense that given the workload that the council does already have, that this might be an area where we could, by creating a with defined process. And folks that were interested in monuments followed these criteria and Councilmember Kalra kind of pointed them out, the significance that the group provides to San José, that it doesn't documented outreach and community support, support from the actual people being recognized or the group being recognized so if you kind of go through those the notion was as you checked off those boxes as you got all those things you would be getting yourself inside a window where you got a good chance where your proposal would be approved. Indeed right Barbara go back and try to check that one off, right?

>> Exactly, yeah.

>> Councilmember Kalra: I think the concern I have is I understand the importance creating the framework, creating narrow scope of what can be memorialized in our city. I mean D.C. certainly is a unique situation the nation's capital and they're going to -- a lot of people are going to want to have monuments there and I'm sure we've had requests in our city and throughout our city for monuments. But of the criteria listed how many of them spring from the legal direction from the courts and how many of them are San José specific? Or are there some of them kind of a mixture of both?

>> Councilmember Kalra, there are some underlying legal considerations that the staff took into consideration, in doing the monument policy. Our office is involved with them and the Supreme Court has indicated some of the limitations in which a municipality can impose on First Amendment rights. And policy does reflect those limitations. The term government speech is a term that's used by the courts. And it needs to be clear that when a monument is set upon public property, that is conveying a government speech and not an individual's speech because then you open it up for a public forum. And that's clearly not what's intended by this policy not to open up all city lands for anybody that wants to put up any type of monument. There are some underlying legal principles that are required to be adhered to, that's why you hear some limitations as to what this monument policy will allow. But beyond that the city staff has looked into ways in which we can open it up enough to allow sufficient amount of monuments to reflect the diversity of the community.

>> Councilmember Kalra: My question is, I understand that there has to be some? It's important to have some guidelines so that it can be construed as government-speech, and my question is, there's one -- that's one level, you know, it seems like we're adding other requirements as well to narrowing it even more which may give certainly more protection to our argument that it's government speech because if we have a very clear -- clearly set guidelines. But you know, how far are we going beyond what's required, is my question. And so I don't know if that could be answered at the moment, or it could be answered some subsequent moment. But that is -- that is in look at all these requirements you know if someone has to abide by all those criteria, it's excluding a lot of -- it could potentially exclude not only a lot of potential themes for monuments but also some of the requirements that I'm not -- not just 100% certain about including you know someone's donating a monument and, you know, certainly it seems if we encourage the donation -- a donation of funding rather than a monument, but then the responsibility is on the donor for the cost, the design, fabrication and all that and as well as the maintenance. I mean it just seems like if someone -- if the other -- let's just say the outer criteria are met and someone's giving a donation to the city, that we're creating barriers for that. That's one component. And I don't know if I'm reading it an incorrect way.

>> Paul Krutko: I think the concern -- and you know I think you put your finger on something that's part. I think that the staff in almost every policy recommendation we bring forward, every item we come forward to you with, is very sensitive to the current fiscal crisis we find ourselves in. The way we in an analogy way, I would get Barbara to perhaps speak to the fact that we've been very good at creating a national, a world level public art collection, though we are very challenged with the maintenance and curation of that collection. And that was because the projects provide money, through council policy to develop public

art. But then we look to the General Fund to maintain the art. And being very, very honest and direct, the challenge we can read community priorities as well as you can. We go through a community prioritization process about how you should make policy and the first thing falling on the floor would be maintenance or curation or those types of activities. We would be sensitive to the notion that the city would accept responsibility for a particular monument which would then ostensibly become city property and then we would then have the public very concerned about the condition of that piece of art or piece of monument that we accepted. So that's why I think we, for your consideration, again, this is a draft policy, we certainly, coming back to council because this is what needs to happen next, this needs to go to the city council identifying which ones are sort of legal Supreme Court area and which ones we've added into. I think the one area I did want to point out beyond that councilmember is just the reference that this was -- we intend for the various appropriate city commissions to be the first stop for these proposals. So the notion here was to give some overall councilmatic guidance to the commissions that would be working in these areas, and then they would come on forward to the City Manager for approval. So the commissions were playing an advisory role in this regard. So --

>> Councilmember Kalra: And you know I think that's helpful to know kind of where we're having more San José specific rules and if those can be fine tuned, some of the -- and also definitions where some of the terminology, you know significance of the person group or event to San José, what does that mean? Support from representatives of the person group or event being recognized, who are the deed representatives? Often in the communities, it is difficult to identify what that means. Community outreach and support. I know we use these terms a lot and we always find a way to define them in a way we feel appropriate. It is not pretend that everything we do is under such fine direct policy that we can just you know filter it through but, you know, my biggest concern is that we're being too narrow in what -- and so that is something that if we agree today to pass this forward that I'd certainly like an opportunity to talk to staff about and maybe get a little bit more guidance and reduction and just comfort.

>> The monuments policy actually states that other criteria selected by city council and set North an amendment are possible, in terms of the topics. the topics that are set forth are actually quite broad and the way the community involvement --

>> Paul Krutko: Pardon me, if you look in the attachment, are you looking at page 2, Barbara, is that where --

>> Yes, page 2.

>> Paul Krutko: Government topics, on the policies.

>> The topics are actually quite broad. And also, the way that community outreach is defined is according to council policy for community outreach. I think that we're trying to work within the framework that council has already established. The issue that you brought up regarding donation of monuments and whether or not it's required for the monument that's donated to come with maintenance funds alongside of it, that's also within the discretion of council to waive. But one of the issues that we dealt with over the last year just as an example is that when the Guadalupe river park was created, there were sister city elements that were given to the city they were given to the city with no maintenance funds and two of them have been severely damaged. There was no responsibility assigned for who was meant to maintain them or funds assigned for that purpose. On the other hand, when the veterans memorial was created it was created with an endowment that earns interest at the peninsula foundation and that's what's allowed us to be able to continue to maintain that monument. So those those were the kinds of things we were thinking about in creating a monument to policy.

>> Councilmember Pyle: Sam is next and then rose.

>> Councilmember Liccardo: To understand the policy, monument to the Canadian curling team, its gold medal in the last Olympics the City Manager decides hey that's nice doesn't have much to do with San José so no, thank you. Now, I'm trying to understand, with Councilmember Herrera's suggestion does had a mean there's an appeal to the council or is there some -- how sit -- are we anticipating this should work?

>> These things can always be appealed to council.

>> Councilmember Liccardo: Oh, okay, whatever happens here still, someone gets another bite at the apple.

>> Yeah.

>> Councilmember Liccardo: Oh, goodie.

>> Paul Krutko: Council, we don't mean this on a glib way, but on any given Tuesday council makes policy. we see the ultimate arbiter is the council. The intent of this was hopefully by going through this

process, most if not all of the proposals that are substantive in nature will be resolved and will go forth and create monuments in the community. We're not looking to stop things, we're looking just to shape things.

>> Councilmember Liccardo: Fair enough. I think I understand the preference for money rather than in kind here. The question I have is, the control over how this monument gets shaped. I mean say this group has, for many reasonable reasons, a particular artist in mind, you know, et cetera, et cetera, concept of size and on and on. Do we have to go out for an RFP on this or can we allow them to really shape the monument in a way that reflects their values?

>> I think that that's probably something that it would need to be addressed, a set of procedures. But my gut reaction is that it would be, first of all it would go to the department that was the responsible party. Not all monuments are public art. Many of them are not. And it's likely that they would want to form some kind of a steering committee that wanted to give the monument and the people in the city that were going to be responsible for maintaining it and helping to maintain its placement.

>> Councilmember Liccardo: So we're not precluding their ability to really control -- obviously within the limits of free speech, and government speech topics, we're not interfering with their ability to get -->> Participate.

>> Councilmember Liccardo: Yes, get an artist that represents a particular that they are creating a monument for.

>> This is the veterans there was a committee formed and the committee worked with city staff to develop a monument that they felt proud of. They spent a few years doing that and gathering material and bringing other community members in. And I think what resulted was a very successful monument.

>> Councilmember Liccardo: Okay, thank you.

>> Councilmember Pyle: Rose.

>> Councilmember Herrera: Yes, I think being able to have an appeal is pretty important I think in all of our policies. We don't -- we're not sitting up here as an autocratic form of government here, and people should have a right to redress it and but put that in the form of a motion. I think it is probably in here in this proposed ordinance, that any group proposing a monument we would want them to have to go through commissions and have standards because one person's art is another person's not art. Maybe not -- or not well appreciated. [ Laughter ]

>> Councilmember Herrera: I don't know what I want to say, what I want to call it. But let's say not everybody can appreciate it in the same way so I think it's very important as keepers of the public you know landscape and land that we have to -- we should make sure that whatever these -- whatever group would put forth would meet those standards, I think that's very important.

>> That's in the policy.

>> Councilmember Herrera: I think it takes the pressure off people who are asked, people in our position and others in government who are asked, so on the other end you can come out with San José that we can really live with. So I think that's really important. I had a question on the maintenance. So is that in perpetuity, is this a fund that's in -- how do we make sure I mean then you're going to have some process to make sure that that fund will exist in perpetuity, okay.

>> That would be the recommendation that a fund is established that kicks off enough interest that would be able to maintain the work in perpetuity and that in reviewing -- the policy actually establishes that the monuments need to be durable to last for 50 years.

>> Councilmember Herrera: Okay. And I guess the last thing and I want to make a motion to support this but I want to incorporate Ash's concerns and my concern about appeal. And cross-reference it also. That this process should be public. I mean whatever we do? And I know it is contemplated that it would be, I think it's very important that we keep it transparent and that people feel that they you know can follow this and can be part of it, whether it goes the way they want it to or not.

>> Sure.

>> Councilmember Herrera: With that I'd like to move this forward.

>> Councilmember Liccardo: Second.

>> Councilmember Pyle: With that provision and all those in favor? All right, it's unanimous.

>> Paul Krutko: We will follow up on the other questions that were asked as well regarding, you know, what is statutory or Supreme Court as well as what we added in.

>> Councilmember Pyle: We're going to go from monuments to habitat. Can you see that out there with the birds and the bunnies. So Joe -- no, it's not Joe.

>> Tara Boyd.

>> Councilmember Pyle: Hi, Dale.

>> Thank you, Madam Chair. Darryl Boyd from planning. We're here to do a status report on the habitat conservation plan. And Laurel's going to bring up the slides. We've got just a few, a few slides for today. Essentially we're -- there's really two things in particular that we're asking for council direction on. One, as we'll talk about, and as you should have noted, would have noted in the staff report is regarding the zone D fees. There's some fairly serious opposition by members of the development community that are opposed, to that fee and then we're also seeking reaffirmation from the council that there's a continued preference for a joint powers authority to be the implementing entity at such time as the habitat conservation plan would ultimately be implemented. In the staff report, we spent quite a bit of time at the beginning of that report talking about the fish strategy issue and we're pleased to report to you that today that that really isn't an issue the water board at their February 9th meeting decided to go ahead and support the removal of the fish species to be pulled out of the habitat plan and no longer be -- to no longer be covered by the habitat plan. And so staff's currently in the process of looking at our schedule which we'll talk a little bit about, give you hot off the press information from the end of last week with regard to schedule and we're also look at preparation cost. But the key issue is really with regard to the impact fees, and you'll note that there is a slide in the handouts that shows the map of the four impact fee zones. And if you'll note that most of San José is in zone D and that's the fee we really want to focus on. We've talked about that previously and it's the indirect impact fee. The other fees particularly zone A and B fees are really more -- much more oriented on direct impacts, whereas zone D is the indirect impact fee. We included a slide that's called the HCP implementation proposed funding estimates. We're providing that just by way of context, if you will. The -- and again these are estimates that are being continually updated, he we're pleased to be able to tell you remember this is a 50 year plan were north wards of a billion dollars, with the most recent fee estimates that we've done, the total costs of the plan are now coming down to around \$800 million. Again that's over 50 years. But just to put the zone D fee into some context, the total amount of fees for private development are around \$352 million. The total A overall development fee funding is \$457 million which is 56% of the overall cost for implementing the plan over the 50-year period. So the bulk of the revenue stream to implement the plan really is coming from fee funding. Then there's a number there for nonfee funding which is around 44 -- 44%. As I mentioned the total funding right now is around \$810 million estimated to be total cost are estimated to be \$802 million so we're in the black which is better than where we were before. And the reason this is important is part of the findings that the U.S. fish and wildlife service and state fish and game need to be able to make in approving the plan is that there is guaranteed source of funding so that is really why the funding source for the implementation of the plan is so important, because they need to be assured that we actually have feasible funding strategy. At the bottom of that same slide, proposed funding estimates, you'll note that there's some dollar figures there for the various zones. Zone A which is the fee that would most directly -- for development that would most directly affect natural habitat areas. So it's the most sort of pristine areas if you will that those fees would cover about 33% of or about 33% of the fees. Zone B would be for areas that are not currently developed but maybe have been previously disturbed, say they were like some of the areas in northern Coyote valley where land was farmed. So it's not built, it's still in a relatively semi natural state, that would be zone B fees. Zone C fees are for development on the perimeter edges of the city, and don't contribute a lot. And then lastly is the zone D fee which you'll note is about 9% of the overall fee funding. With regard to total revenue stream from development impact fees the City of San José's development will be about 30%. The next slide, then, is talking about just as a reminder, I think you've seen most of this information before. As we've stated the zone D fee is really an indirect air pollution fee that is intended to address the impacts from nitrogen deposition on serpentine habitat primarily in south county, and particularly the Coyote ridge east of 101. So there's some methodology that's been created in the plan that staff feels is very defensible from a 15 nexus standpoint. The fee would be, again, applied to any project essentially within the City of San José where there would be an intensification of existing development and new trips would be created. So the fee would apply to those new trips that are created. There would be some -- this is the details to be determined but there would be some adjustments made for the like trip reduction credits for mixed use transit support, supportive uses, and so forth, an then again in a long term we expect the trip rates are going to go down. And so there would be future adjustments made based on that. The next slide just gives you some real quick, again, fee estimates as currently proposed for the zone D fees. We're looking about a little over \$6 per new trip. About \$62 per single family unit, \$43 per multifamily unit, as well as cost estimates for commercial, industrial, retail. And again one of the key reasons that staff has been concerned and the council is

concerned previously about this particular fee is, it could potentially penalize the very types of intensified development that the city and others desire in the long term. And so that's really what's attracted on the next slide with the fee issues. The development community, there was an e-mail that was attached to the staff report from Paul Campos on behalf of northern California HBA raising serious concerns in opposition to the zone D fee and again, some of those as I said are shared by staff with regard to the potential for penalizing the very top level of development that we want to encourage. We had a meeting with the development in January in Mare Island. The meeting ended up better than it started wildlife supportive of the concept of habitat conservation plans. He testified many times for the East Contra Costa plan and so there's a lot of respect I think between the wildlife agencies and particularly Paul Campos. It became apparent that they're really not opposed to the actual dollars as they are really to the principal of the fee because this would be the first plan in the state of California where there would be a fee levied for an indirect impact related particularly to air quality. Again to put this in context where there's a lot of discussion right now initiatives with regard to climate action plans, Bay Area air quality management district looking at their threshold so there's a lot of concern I think a heightened sensitivity on the part of the development community about perhaps opening themselves up, becoming vulnerable by sort of supporting something that may be considered a precedent and used against them later on. And so that's really where the bulk of their concern comes from. At the end of the meeting that we had, with them, we came up with some various alternatives that staff wants to explore further with our local partners and with the development community, and some of those are listed both in the staff report and on this zone D fee issue slide down there at the bottom. One concept would be that we attempt to do a better job of differentiating between even types of transit oriented development. So -- and this has been talked about conceptually at the general plan meetings update, transit supportive as other types of development. So using some of those concepts we would like to explore with the development community a graduated zone D fee if you will, that clearly levies clearly not the ones we want to see happen in the long run, and to the extent that there would still be a fee that it would -- for the types of development that we do want, that it would be a much reduced fee. Another concept and I hate to even throw this one out here but another concept that was and I'll blame our director, this was Joe's idea, another one was some notion of a city subsidy. Not meaning that we would actually come up with the dollars per se but there may be a way to -- akin to what we do, we're just trying to identify possible alternatives. We're not supporting any particular one. But that the -- using the general plan search update surcharge as an example to collect fees and then the city would somehow pay their fee in a long run. Another suggestion was trying to come up with a specific serpentine impact fee, that had been talked about by some of the other local partners and then lastly as we mentioned exploring the ability to have a fee that's more directly linked to greenhouse gas emissions. We would like to have this item cross referenced because we think to the ability -- to the extent that the March 9th city council meeting could be perhaps a forum for development interests to be able to show up and weigh in on the issue, staff would just like to be in a position to facilitate that discussion, if we can, with the full council. Because now that the fish issue has been put to rest, this zone D fee is one of the last remaining issues that we need to get resolved so we can go forward and move on with the plan. Again, the next slide is the implementing entity options, there was prior joint powers authority we are presuming that is still what the council would ultimately prefer. With fish coming out of the plan there would be a much reduced effort and role by the Water District.

>> Paul Krutko: Coy ask you one question?

>> Yes, sir.

>> Paul Krutko: Help me understand, I should know this but I don't. So the various zones you're showing on our map, surrounding jurisdictions, do they have a similar zone D?

>> Yes. Thank you.

>> Paul Krutko: And there is the proposed fee similar to this one?

>> That's a good question and I missed, I forgot that point, thank you, Paul. What we realized in earlier attempts to try to find this zone D fee, it was realized that Morgan Hill and Gilroy are also going to generate development that may have similar impacts. So my understanding the way the current fee is structured is the zone D fee is actually included as a component of zones A and zones B. So it's not called out specifically And I'm looking at Ken Schreiber our program manager. zone D is actually rolled into A and B if that makes sense.

>> Paul Krutko: Let me ask you a different question.

>> Okay.

>> Paul Krutko: Is there a City of Santa Clara map? Is there a City of Sunnyvale man?

>> No, sir, there's not. because they're currently not included within the boundaries of the habitat conservation plan.

>> Paul Krutko: And how are they going to get covered?

>> Well, there's -- that's one question but the other question that you didn't ask is that we -- in creating the model to try to determine what the fees and the impacts would be, we actually subtracted out their contributions. And so there is this model that takes into account that there are other jurisdictions that do impact serpentine habitat. And so that's -- there's an attempt to try to factor that into the model, is one consideration. The other consideration is, is at some point the thought is that they may -- the plan could be amended to add additional geographic area so they could be covered as well.

>> Paul Krutko: Well that I mean the documents all come through and maybe I should ask these questions before but I think for the council it's going to be important since we just went through the study session, we just had one of the elements in what council was looking at in terms of and the mayor's office, relative to incentives was the concern about the fee load, that San José projects have. And I think when the council takes this up in terms of the cross-reference, it would be important to reflect on that. I think that planning does a very good job of creating the cost of development study which shows the council our fee structure versus others, and where we have made policy choices that result in fees, that add to the cost of development. This would seem to me to be -- this is to me like we're right in the middle of making this type of decision. Obviously there are other extraordinary entities outside of us that have something to do with this and the lack of a habitat conservation plan may preclude us from doing development in general I think ultimately, right?

>> Not necessarily. They'd have to go project by project and couldn't negotiate on a deal.

>> Paul Krutko: We like, as our council has told us at times, we like certainty, what the numbers are going to be. I guess contextualizing this, if we are in competitive environment with the rest of the Bay Area as an example which is what I would look at this what are our competitors going to have in terms of their fee structure relative to this compared to us? I'm sorry I didn't ask this question before but --

>> No, that's a great comment, thank you.

>> Councilmember Pyle: It is.

>> And I think that's also a good point for us to take back and talk with the other local partners about for the overall program. That's a great comment, thank you, put it in overall context.

>> Councilmember Pyle: Darryl, could I make the suggestion?

>> Yes, ma'am.

>> Councilmember Pyle: I appreciate you got about ten more slides to go --

>> Actually, those slides are just there for your information. If I could just jump to the revised highlights and then I'll conclude. Is the -- as I stated because of fish decision now been made now we can sort of define what the skull will be. And so with regard to revised schedule, at this point we would intend to finalize the draft habitat plan, we also have to do an EIR EIS and then there's a third document that's called an implementing document that's more of a contract and more of a legal document. And so over the next few months that's what we'll be working on. There will be a pretty heavy amount of staff work involved, to get all those documents prepared, at various levels. With the expectation that we would actually begin the 90-day public comment period on the draft EIR-EIS this fall, this September there would be a 90-day comment period because we're under the federal regs for this. So the comment period would close in December which would then mean that formal actions would start to happen with each of the local partners then in the early part of the following year, with actual permits issued in 2011. So that's where we're at currently. But again, we're -- this was a Friday, we just came up with these dates and so they may change. But at least we'd have greater certainty than we did two or three weeks ago. So with that I'll conclude, Madam Chair. Thank you.

>> Councilmember Pyle: Sam, I think you're first.

>> Councilmember Liccardo: Going on Paul's question, I'm certainly aware of the study area boundary. But if the schedule D fees are based on nitrogen emissions wouldn't we have reason to believe that cities outside study area boundary may be as great at contributors or is proximity driven that maybe I'm not --

>> That's a great question that there's been lots of debate about. Because when we did the Coyote valley specific plan what we found is really what was being deposited on Coyote ridge was not coming from 101, it was coming from up the peninsula somewhere. So the challenges just to be really candid and really blunt with all of you, I think the challenge really is that because the City of San José, because of our land use policies and our urban growth boundary we don't have a lot of direct impacts. And I think that going

into this that was not realized by anybody. And so now, it's a matter of how do we get San José to contribute some amount of fees to the implementation of the plan, and because we don't have lots of direct impacts, this indirect impact fee is really sort of the -- the -- that's really how they can get us if you will for fees. Because when we've talked amongst the other local partners about just doing away with this fee which the council had talked about two years ago or more, there's adamant opposition from the other local partners about just totally jettisoning this fee. Because there is not -- there is a perception that San José wouldn't be paying its fair share. But you're absolutely right.

>> Councilmember Liccardo: Would one offense splitting the baby, I'm starting to use that analogy twice --

>> We can split a butterfly.

>> Or burrowing owl.

>> Or burrowing owl.

>> Councilmember Liccardo: I won't use wildlife analogies on this one. Are we confined to the city area boundary in the imposition of fees or can we go county wide?

>> We're confined, my understanding is and I know Larry is in the back of the room, but we are constrained to the study area boundaries.

>> Councilmember Liccardo: Okay.

>> Because again this is like a nexus study that we would be doing for any other of our fees.

>> Councilmember Liccardo: I see Vera approaching.

>> The other planner that was on us, acon Daniel son, took calling this an indirect fee. Part of it is, but part of it is very direct because when nitrogen comes out the back of our cars and deposits itself on serpentine soil what it does first is it kills plants that are endangered as a result of the NOX deposition. That is the habitat where the butterflies live and eat those plants. So the impact on the butterflies is secondary, but the impact on the endangered plants is primary. So it's a combination. I think there's an argument to be made there. But when we took a look at the fee originally the fee study that was presented to us by our experts included pollution from San Mateo county, it included pollution from stationary sources that are already permitted and already mitigating our impacts. It included pollution from outside the study area. We had them take all of that out. To the extent it reduced the fee to about 40% of what was originally envisioned or less, even. So we took a very, very hard look at the study and its reasonness with regard to City of San José, actually charge this fee on a per trip basis. Also, I wanted to comment on the fact that reducing the fee for transit oriented development is really a San José issue within San José. It's really not an issue with the fee structure, with the plan. Because under the plan, the way that it's envisioned by all of us, all of the local jurisdictions, when we have a project come into the city, we take a look at the trip generation from that individual project. And we take a look at what do we expect, if the project proponent shows us that they are not going to be generating the trips that we may have already calculated, that we may think we're calculating, we can reduce that fee ourselves. The amount of fee won't go down but the A trips will. So that's really the safety valve in terms of what was envisioned how we the fee locally and how it's charged on development.

>> Councilmember Liccardo: I appreciate that but where my question was going was is there any empirical has a the significantly greater impact of what's coming out of the tail pipe in Palo Alto on these species?

>> No, but we only pay for the portion that's coming out of the tail pipe in San José.

>> Councilmember Liccardo: And I guess that's my hang up.

>> Paul Krutko: Vera could I ask one more clarification question? Because I've been thinking about this conceptually with the General Plan J.P. update and be so forth. Is this -- is it fair to, existing problem in the community and we are attempting to solve it on the backs of new development? So just bear with me. You're saying that there is -- there is an amount of this problem now, correct?

>> Correct.

>> Paul Krutko: Correct. So we're making sure that new developments will be the one that answer assessed this fee. We're not saying someone that we've already approved, let's take the Sobrato project, you know, over by the light rail station that has a lot of new cars and all that, since this is going to be after that happened, the cars in that development have already contributed. It's more of a conceptual problem that I'm having with our entire fee structure. Our entire fee structure is based upon applying the cost or the impact fee to the new development, and I get why we've done that historically, lots and lots of growth. But I have a worry, I'm just going to share with them, that as we go to implement the new plan, we're -- we have a huge fee structure for someone to pay and we're thinking they're just going to come

willingly into San José and do this development when they have a whole lot of other choices. So the implementation plan for -- do you follow where I'm going with this? That it worries me and I don't have an answer. I'm just telling you that I think we've got an issue that Laurel and I have been talking about that it's not enough for us to do the general plan update. We need to have a conscious implementation plan or we'll never realize what that general plan is telling us, right?

>> You know Paul to answer your original question I have the same concern every time we review a developer impact fee because we can only charge to the development what the development is causing. So the statement that new development is paying for existing conditions is wrong.

>> But there is a difference with this one though that's the point I want to make clear.

>> There is a slight difference.

>> Because with the HCP it's not just -- we're not just paying to mitigate the impacts of the project. There's also this concept of recovering to the contribution, or contributing to the recovery of the species. And so that's one of the subtle differences that we have to deal with, with the HCP is it is more of just mitigating the impacts of a particular project. We've actually got to go farther than that so there is a subtle difference there.

>> It ising proportional and to the extent though we have taken out of the fee existing development we have taken out of the fee what is caused by others, assuming that we are somehow going to backfill the moneys to do some of that through grants and other there are contributions other than developer impact fees that are very significant in this plan to attempt to deal with that. And so, you know, he's right, that's different however, the other -- there are a couple of other kinks here, if I may. One is that if a developer were to go to the wildlife agencies for their own permit they would be charged with the same thing. So that is a condition of getting a federal and state permit.

>> Or maybe more.

>> For many -- and it would probably be more. Secondly also for those projects that are required to go to the wildlife agencies to obtain their own permits or would otherwise be required to, this plan is voluntary on their behalf. They can opt to go and play the permit game with the feds and with the state. And obtain their own permits. We have included a provision that allows them that out. That if they don't like this plan, they can go do it on their own. And we felt that that was significant, we felt that was a huge safety valve for the plan. We think this is absolutely ridiculous that you're requiring us to do that. We say we're not requiring you to do it. either don't need the permit or that you're obtaining your own permits. So we have built that in.

>> Paul Krutko: You let's use this what you said. So I'm in Santa Clara city and I propose a project, will they -- without a habitat conservation plan, will they -- maybe I'm not understanding but will they have to go to the federal agencies to get a permit for their project and be assessed a fee?

>> If they need incidental take permits --

>> Paul Krutko: I'm just worried about the competitive playing field between projects that's all I'm worried about.

>> If they need incidental take permits from those agencies, yes. If they are in wetlands if they're taking any kind of soils, if they're in a typical urban climate probably not. It depends where they're located. I can't speak to them as far as where they're located but if they require any of those permits this will probably be an easier process for them but because they're Santa Clara they won't be able to take advantage of it because Santa Clara is not included in the plan.

>> Laurel Prevetti: And when you look at they're's general plan update they are not going to be affecting habitat so there's no direct way to have them interact in this process so this would be unique to San José.

>> Councilmember Pyle: Sam, were you finished?

>> Councilmember Liccardo: I am.

>> Councilmember Pyle: Rose.

>> Councilmember Herrera: Thank you. To Paul's point I'm concerned about our economic recovery, not just recovery of these species, although I do care a lot about the burrowing owl but I am concerned about our recovery in terms of our economy and our city, and et cetera. So it sounds like I heard some light here, it sounds like the project, projects that would have to sustain these impact fees, there would be some projects that would be in an area where, if they didn't do it through us they'd have to do it through the federal government. Is there some way we can when we move forward on this that we can make sure that we promote that idea, or at least, you know, in the way we market this? I mean the --

>> Well, an example of that is, we have one large project we do have one large project where that where the developer, the builder has backed out of. That they were -- they were hoping that we would be done within the year for the habitat conservation plan because their property is heavily affected. I know there are projects in Gilroy that have gone through federal and state processing, it's taken he them over seven years to try to get their permits. These permits if you follow the certain conditions under this habitat conservation plan for 50 years if this goods through you're guaranteed that if you do X, Y and Z that you will fall under that permit if you're a developer. That is some security without change for that amount of time. That's what the people have been negotiating this plan have been attempting to do. And you know in some ways this is the largest urban plan, I believe, in the country at this point, so it is not a -- it is not a -- there's a lot of complexity involved in it. It also covers a lot of species. So some of the plans have been more rural areas. So there is some complexity to it. And, you know, so I do think that there is some security for the development community. I can understand why they don't want to pay additional fees. But if they were in a place where they really did want to develop, this might actually be of benefit to them.

>> Councilmember Herrera: The other thing I wanted to say in terms of the transit oriented development areas where we know there's going to be light rail and BART, that kind of thing where it truly is near transit, wouldn't there be less impact because we've got mass transit? So I definitely think we should be actively you know excluding those projects.

>> I've already addressed it's really a per trip issue, trip generated.

>> Yeah, that's -- right.

>> Councilmember Pyle: Rose did you --

>> Councilmember Herrera: That's it.

>> Councilmember Pyle: Okay, Ash.

>> Councilmember Kalra: Okay thank you. Actually I just wanted to commend staff for all the work that's been done on this and I think this is really a very good resolution of -- concerning where this issue began. And considering that most of San José's development that falls under the purview of this is in the zone D area. And so yes, you know, the -- as often as the case, when we putt policies together and of course policies, they affect subsequent plan, subsequent building, that's the case with so many policies that the City of San José has adopted over the decades and sometimes it's to make up for mistakes of the past. But this is consistent with where we're going in terms of transit oriented development as the other councilmembers have indicated, that you do get a benefit from creating transit oriented development since it lowers the number of trips since you end up paying less. It is consistent with the direction that the air quality board in terms of new greenhouse gas standards consistent with the direction we're going there and I certainly understand and have sensitivity to the builders in terms of undergoing any other cost. But as long as legally the costs are attributed to what they are causing and no more than that then I think it's important fours to be partners with the other local agencies and particularly with the other cities and in the county. As Morgan historically and Gilroy continue to develop having these fees in place will be critical to maintaining the habitat that exists in Coyote valley and in the region as a whole. I think it's valuable I'm glad also to sit on the JPA, seems to be implementing entity that we'll be going with, particularly with the Water District having less of a stake in this plan. So I'm supportive of the recommendations where staff is at this point. I think that this is a positive move in terms of preserving the habitat and doing it in the ways that I think it is certainly mitigated in terms of effects on development.

>> Councilmember Pyle: Okay. This will be coming before council but we're not sure when. Do you have the date?

>> March the 9th I believe Madam Chair.

>> Councilmember Pyle: We don't have a date yet?

>> I think it's March 9th.

>> Councilmember Pyle: You said that earlier.

>> Councilmember Kalra: I wanted to -- I make a motion to approve staff, accept the report and approve staff recommendation.

>> Councilmember Herrera: Second.

>> Councilmember Pyle: Before we do we have a speaker on this item and that would be David Wall.

>> David Wall: First I need an understanding, can I give praise and accolade to our director?

>> Councilmember Pyle: Absolutely. Just look at the city rules in reference -- it's right there spelled out and committee meetings are no exception.

>> David Wall: I give praise when they're deserved, anyway there's good praise about this development business. However let us not forget air deposition from spent aviation fuels, San Francisco airport, our

own horribly polluting neighborhood in my neighborhood, Reed Hillview neighborhood, I support the concept of habitat plan but this plan is only a full employment act for lawyers. Even bad ones are going to make money off this one. Okay? But let's keep this program going, but defer it for more study. But there is even just outstanding ramifications as to what I've been supporting for so long. The elimination, a total elimination of all residential housing permits. Because you're destroying the little butterflies. Not only that, you're destroying, not you per se but the effects of nitrogen loadings which is not addressed by any type of analytical methodology for air deposition or soil chemistries, but the actual soil constituents microbes, fungi, that will destroy your grass and so on, how do we address this development issue? You have no water, now cars are destroying it, tail pipes. Well electric cars aren't going to destroy it and why should developers be held and I personally don't like developers per se but why should they be held accountable for building a residential structure? They're not buying the cars for the structure. This program is ridiculous, should be thrown back for probably a whole generation of study. It's incomplete, it's flawed, flawed per se. And I'm still giving accolades for the conceptual argument about competition from sores outside like Santa Clara, Milpitas and other wards for our office economic development, outstanding development.

>> Councilmember Pyle: Okay thank you David, stay tuned to the city council part of it. Okay, we're ready to take that vote. All those in favor, all those against, that is unanimous, unanimously approved. We are now ready for the public forum. And guess who's going to speak. There he is. David. David Wall.

>> David Wall: Now, within the confines of city rules and that our sensitivity meters are somewhat adjusted high, medium or low, we raise the issue of who stated publicly on many -- at least two occasions, Cirque du Soleil, 2500 patrons per night. Is that truthful? Well, statement was made and relied on by most venerable and honorable councilmembers who by dictate and by personal admonition do not make any errors. Okay, now, let's talk about something that should concern you and scare you a little bit. Chronic toxicity failures at the plant effluent continues. They're getting ready to suck in more federal stimulus money for advanced water filtration. It's a good in theory, but this toxicity has to be addressed. The toxicity problem is the City of San José going to be held harmless and indemnified, by the water district for that nice big toxic slug of brine dosed with chlorine and brine and what that will do the outfall and chronic toxicity test. So if the district doesn't hold harmless, I don't even know if you can hold harmless for a discharge of a potentially harmless waste into the POTW. So that's not really what's talking about. All that's talked about is going forward and grabbing federal thrust money without really thinking about taking a new technology inclined to tweak an antiquated sewage treatment plant to do something it's not really designed to do, and then of course this is the drinking water aspect of it that's not discussed. But it's that toxicity that will pass through the filters. And you should ask them about those chronic toxicity failures, their periodicity and why you are hearing it from me. Thank you.

>> Councilmember Pyle: Thank you, David. Susan, are there any other cards I missed? Okay, with that we're adjourned. Thank you.