

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

>> Councilmember Liccardo: Let's call the transportation and environment committee meeting to order. We're short of a quorum. Brief roll call. Councilmember Rocha.

>> Councilmember Rocha: Here.

>> Councilmember Liccardo: Thank you for joining us. Councilmember Herrera and Campos will be joining us later. I'm Councilmember Liccardo. So we'll skip the review of a work plan, that requires a quorum I assume. We move on past consent to reports to the committee. Hans are we the computer problems worked out?

>> Hans Larsen: Yes.

>> Councilmember Liccardo: We'll go to the transportation activities report.

>> Hans Larsen: I'm Hans Larsen and Manuel Pineda. Deputy director with the department of transportation. We have three segments to the report, so I'll give you just an overview of some of the highlights, there's a lot of exciting things going on. And then we'll have a focused discussion on the high speed rail project as well as the Santa Clara Alum Rock BRT project particularly focused on downtown design issues. So just the start of the highlights, so we got some very interesting pictures for you this month. You can see the \$2 billion BART project is moving lots of dirt around. This is some activity at Penitencia creek. The upper right slide shows the installation of the Blossom Hill Monterey UPRR railroad crossing, pedestrian overcrossing. And you can see on this, it has a very -- a nice artistic design to it. It has a feature on it that represents the blossoms in the blossom valley area. We worked very closely with our public art program to add some interesting esthetics to this bridge. The bottom left is the celebration of the opening of the 101 Tully interchange. This was a ceremony held in June attended by the mayor, Vice Mayor and councilmembers Herrera and Campos, among others. And that was followed just a couple of months later with award of construction for the next phase of work in the 101 corridor. That being the 101-capitol-Yerba Buena interchange. And on the bottom right, you can see improvements to making capitol expressway more bicycle and pedestrian friendly as well as more attractive and better lit. This is a section along the capitol expressway corridor shows a wide multiuse sidewalk that's safe for pedestrians and bicyclists both day

and night and you can see with the landscaping it's going to be quite an improvement in that area. Couple of other projects to note is the VTA board awarded the contract for the 880-280-Stevens Creek interchange and so that is going to go into construction. Last month city council awarded a consultant contract for the 101-Maybury interchange, and part of the council's direction was to come back to this committee at least every six months with an update in terms of the strategic direction for that project. We had a kickoff meeting with our consultant team, actually this morning, and are putting together both a strategy in terms of doing the technical work for it, as well as a policy advocacy strategy. And should have some more details on that when we report next quarter. Going to move now to the California high speed rail project. And since our last report there's been a lot of very significant activity. Most significant was the state approved funding to initiate construction of the project, in the Central Valley. So it's allocation of \$2.6 billion in federal and state bond funds that matched \$3.6 billion in federal dollars. And so that's going to begin construction in Central Valley. And be planned for completion in 2017. I have included an additional map of the high speed rail project that you have here. It is actually a document that spur put together. And it's sort of very easy way to sort of understand what the phasing and implementation plan is for the high speed rail project. So also, high speed rail authority approved a business plan which identifies their implementation strategy for high speed rail. So the first section is to start construction Central Valley, which is the yellow-dashed area. That's the limits of construction. And then that will be followed by what they're determining as their first operating segment which will be between Merced and San Fernando valley. So that's the yellow portion. And the goal is to have that complete by the year 2021, subject to funding availability. The next phase of work will be an extension towards San José. And that's the Merced, Gilroy, San José portion which would provide high speed rail service between San José and San Fernando valley by the year 2026. And then completion of the project to reach from San Francisco, San José and Anaheim would complete what's on blue on this map, and that's planned to be complete in year 2028. Overall it's a \$68 billion project and there's about 10% of it is funded for the initial construction. There's some additional state bond funds that are available to continue work. But the big challenge for the project is securing the remaining funding to keep the project moving under the schedule goal. Another significant approval that's on the top bullet here is in addition to the high speed rail investment the state agreed to invest in other key regional transportation projects across the state and benefiting the San José and the Bay Area is electrification of CalTrain from San Francisco to San José, to the Tamien station. And so that is a funded project, with state transit bond funds. And that is expected to be complete in year 2019. So this is a --

it is a funded near-term project that will allow us to enjoy some near-term benefits. The other part of it that's significant for San José is a proposal from high speed rail to continue completing the planning work for the high speed rail system and that includes completing the San José to Merced EIR. And they have announced a plan to release a draft EIR for that segment in the fall of 2013. So about a year from now. And this raises the issue that we've been engaged in for several years, that deals with the design of the project, particularly in the downtown area. And that deals with the options of having it come through elevated, which high speed rail has recommended, or underground, which is the option that the city council has asked to be studied as part of the formal EIR. We have in the staff report a suggestion of having the city do some independent work with a geotechnical consultant in order to provide policy makers in the community with independent information on geotechnical issues, soils and water conditions in the downtown which are really central to the issue of whether an underground station is viable. We've since thought a bit more about this. There was a Diridon good neighbor committee meeting this last week, and there's a number of issues that have been raised in terms of the direction of the project, and the scope. And given that consideration, there's a couple of things that we'd like to study a bit further in terms of the process and scope and schedule for doing additional work on the full high speed rail project. So I think one of the context is that under the best-case scenario, high speed rail won't be coming to San José and be operational until the year 2027 at the earliest, and that assumes a lot of funding coming in place. And so we're concerned about doing advanced planning on the project so far in advance of its actual completion. And we'd like to -- we're contemplating stepping back, working with the high speed rail authority, and to reevaluate the EIR schedule and process. And couple of considerations would be, one is, we have the good news of having CalTrain electrified as a near term project. Let's focus on getting that done, before we look at the long range planning for the high speed rail improvements. Second issue is that it's been very awkward to for San José to deal with the high speed rail project in their EIRs because they have Diridon station north to San Francisco and Diridon station south to Merced. And in consideration of really a whole new approach and strategy for high speed rail, we would like to have high speed rail consider if we are going to do more work on San José, and for the ultimate high-speed rail that we really pull all these pieces together and look at San José in a more comprehensive way. We had recent experience with the visual design guidelines which really looked at all of those in a comprehensive approach. We found that it's a lot easier to communicate and work with the community in looking at San José in one overall study, with one project team as opposed to two different ones. The third consideration

we have is that the development of high speed rail and the Diridon station is a significant regional transit facility that's of interest to CalTrain and VTA and many others. And they -- what we believe is that those organizations bring to the table some significant expertise in terms of developing these systems. One, CalTrain has been very industrial in dealing with high speed rail integration on the peninsula. And we they their expertise, their staff and experience really should be an important part of any assessment of alternatives in the Diridon station area. And also, VTA has been our lead with the BART project and they have considered tunnels and underground stations and we think they also need to be actively engaged in the effort to look at these options. We were looking at -- we've taken a very proactive role in trying to address these issues with city resources. But we think that with the significance of the issues we need to pull all the parties together, to look at this and then assess you know really what's the right time to be looking at there. So we got CalTrain with electrification, VTA really focused on BART, and do we need to put an effort near term on high speed rail which is later down the road and really trying to resolve these issues now. We want to take back and look with other stakeholders and look forward to a strategy, where we're leaning is to make a case for moving forward with the final EIR process on a slower schedule than what's been proposed. I want to also acknowledge before Manuel talks about the bus rapid transit project is, as some of you may know, Ben Tripousis has been our lead transportation policy manager for a decade and a half, and so a lot of these projects that you have seen highlighted have really been a result of a lot of great work that Manuel has done as well as Ben. Who's Ben? They -- and Ben is going to -- he's done such a great job for us leading high speed rail issues as well as many others, he has been selected to be part of the management team for California high speed rail and serving as their regional director for Northern California. We're very sad to lose him. He's been just tremendous in all the things he's done for us and a lot of the things -- pretty much anything that deals with regional transportation, Ben has had a significant hand in. But we certainly wish him well in new responsibilities as leading the Northern California efforts for high speed rail. So Ben is with us for a few more weeks and begins his new role at the high speed rail authority at the beginning of October. So the other significant activity regarding high speed rail. And so with that I'll turn it over to Manuel to touch on the highlights of some key issues with the BRT project.

>> Thank you, Hans and Ben and I have similar haircuts so I do understand the confusion. So I did want to have the opportunity today to talk about a few items on the Santa Clara Alum Rock BRT. Focusing on three of them in

advance of the PAB meeting that's coming next Monday. As many of you know, we have been working with the VTA for the last number of years on delivering the BRT project. And today I wanted to highlight three items. One, the design alternatives for the downtown station as it relates to the street design. The aesthetic design of that station as well and the 7th street station location. Regarding the street design, what is currently approved is what we're calling the base scenario, and really the focus of that design is that removes the parking lane between 1st and 2nd street for a bus only lane. Kind of what you have in front of you is a picture of that design, and the key highlights of it are it bumps out the existing curb line four to five feet to create a much better sidewalk station location. Removes the current parking lane to have a bus-only lane between 1st and 2nd street, and then we reconfigure the existing pavement section, removing what's out there, which is a painted median, which allows us to continue the four lanes on Santa Clara Street throughout the corridor. The PIB also gave direction to VTA staff to study a bus-only lane that went between the first and second corridor. What VTA looked at was a bus only lane between 1st and Market Street, as well as different alternatives within that, some you know shorter blocks, different directions, different alternatives they could look at between 1st and Market. At this point what they've determined, and we had a meeting with them approximately two weeks ago with both VTA staff and a number of advocacy groups. That of all the alternatives they looked at, they all provide similar benefits for buses. So at this point they are focusing on one selected option for further analysis. And really what that does is it focuses the removal of the parking and loading zones for half a block before and after the station, making that a bus-only lane. So if you look at that picture in front of you, right at 2nd street you can see for half a block, both entering and exiting the station, the parking and loading zones are removed, and that allows the buses to have its own travel lane as they exit -- enter the intersection, travel to the bus stop, and exit the intersection. Exit the bus stop, as well. So it like I said there were a number of alternatives but this is the one that the VTA is focusing on for future analysis. So moving forward, from a staff perspective, we do support the further analysis of this new configuration. I think really what we need to look at is what benefits that does that new design provide in comparison to what impacts does it have? So what bus benefits and bus travel time benefits does it provide, and then relate that to the parking impacts, the loading zone impacts and how do they measure up against one another, so in general heading in the right direction with additional work to do. Aside from that we also have other items that need to be determine for any station design such as limiting right turns and left turns in second street or maybe even not allowing those benefits and how is that going to -- let me do this again here -- and how is that

going to affect overall downtown access. Staying on the Santa Clara station, I wanted to briefly speak about the aesthetic design for the station. And what you see there is the proposed or the preferred design that VTA is moving forward with. Superimposed on the Santa Clara station location. Let me start by saying we have been working with aesthetic design on the VTA for quite a while now and we certainly the VTA perspective to have a design that's repeated throughout the entire corridor that allows for branding of the BRT system, so people know that's a BRT corridor, and from a maintenance perspective, we all have this issue, right? It makes maintenance and operation of a facility much easier if you have a similar station throughout the entire corridor. At the same time, I think there are a number of locations along the BRT corridor that merit a different look or special look to them and we do feel the downtown station is one of them. The downtown station already has a number of concerns that need to be addressed. There's safety issues, some cleanliness issues and lighting issues and whatever design alternative we move forward with really needs to take that into account. In addition to that this station is the only BRT station within an urban downtown center. And we do think the aesthetic design of the station needs to reflect that a little more and create ally more flexibility. If you look at this station at this location, you can see it's adjacent to taller buildings especially if you go in the north side of the street. In addition to that it's also adjacent to historic buildings and we are a little concerned about how this design will relate to the adjacent land uses. The VTA has been -- has worked very well in coming up with different changes to the station that could help personalized the station depending on where it's at for example modifying the wind screens or doing different pavement treatments, and they will be hiring Barbara and her staff from the City of San José to help them with that process. But we do think that locations such as this one on Santa Clara street probably need to go beyond that and really rethink what the station should look like. So it really fits within its urban context. Lastly wanted to talk about the 7th street station location. I know something for the PAB board members something they've seen before. The drawing before you you've seen existing colors. The existing bus stop is in red, the approved design is in green. And what VTA is currently proposing, something that was proposed previously, but proposing again, is in yellow, which the new proposed location for the station. So the approved location was approved by the PIB in May 2010. And as VTA has further looked into the design for that station, they're proposing to build a 200 foot station length. The concern that does come out of that is that that will require a driveway closure that currently serves the upcoming supermarket as well as the Lee's Sandwich site. So that 200 foot station length pushes the station far enough where the driveway's required to be closed. VTA real estate staff has done some preliminary

work, and they're evaluating the cost of that driveway closure between half a million to a million dollars. As such, the VTA is prepared to revisit once again moving the stations in front of City Hall, as well as across the street from City Hall and that does raise some concerns. One is that it will affect City Hall access. As you can imagine, if you're trying to come on Santa Clara street trying to make a right turn will make that a little more difficult. We haven't analyzed what that would mean, but we are concerned about that. Police Department has expressed concerns in the past about safety, related to having a BRT stop right in front of City Hall as well as event management because there are a number of events that happen at City Hall and the rotunda and the plaza and how would that be managed if you have an active stop at that location. Also it does bring the station closer to downtown and closer to Santa Clara Street. And the next station over is on 17th Street, and VTA has tried to kind of place those so that's place those so they're spaced evenly and that disrupts that a little bit. And lastly just like the downtown station we are also worried about the aesthetics and how that station look would align with the architecture of City Hall. Staff recommendation at this time is to really maintain it at the approved location. Really, the only outstanding item is that the driveway and the closure of the driveway and the costs associated with it. However, VTA does have different station lengths throughout the corridor. Some are as short as 120. The one in Santa Clara in downtown goes beyond the 200. But if you shorten the station from the proposed 200 feet it would minimize the impact to the driver or not require the closure to the driveway. And if you look at the previously approved design on the north side of the street that's actually 120 foot station length which pretty much served the same number of buses. So from our perspective, there are a number of issues with moving it at City Hall in addition to that we haven't really fully explored what concerns we would have moving it to the north side. So we think maintaining it at its current location, revisiting the station length, minimizing the driving impact still meets all the goals of the BRT project. In addition to that we expect that site to redevelop at some point which will allow us to revisit whether that driveway is needed or not. With that, we'll open it up to any questions.

>> Councilmember Liccardo: Thank you very much, Manuel. Thank you, Hans. I just wanted to first lend my emphatic support for the staff's position on the -- on slowing down the EIR process with high speed rail. I think having an opportunity to engage those regional agencies and take a closer look would be a really positive step. Thank you for that. I also want to express my concurrence with concerns around design. The BRT station, particularly in front of the very iconic building there at the Bank of America building and even as far down as I

guess you got the FRODO building as well, those are obviously very important buildings in the downtown, and we wouldn't want those sort of hidden with a jack-in-the-box station in front. So I appreciate that. And I guess what I first wanted to do, we don't have any cards from members of the public, do we? Okay, then let's take questions and comments from members of the committee and then we'll return. Councilmember Rocha?

>> Councilmember Rocha: Thank you. I really owned had one and that was the slide that showed the entry of the bus prior to second street.

>> Uh-huh.

>> Councilmember Rocha: And you touched on the record that I wrote down which is why and the benefits. So you touched on it but if you wouldn't mind expanding a little bit on what those benefits would be absent the obvious one in terms of entry across the street. But otherwise what other benefits would there be?

>> It provides travel time benefits for the buses because it allows the bus to move out of the travel lane and be able to travel to the signal without having to wait other vehicles at that location, as well, both enter and exiting the signal. So it allows for the buses to get through those two signalized locations much faster than they would otherwise. Although we don't really know the measurement yet. We haven't compared it to the base scenario but instinctively would be able to do that. VTA is running the numbers right now to see exactly how much benefit's provided and it will be able to measure that benefit against the impacts associated with more parking and loading zone removal.

>> Councilmember Rocha: And is that both on the East side and West side?

>> That's correct, both sides, yes.

>> Councilmember Rocha: Trying to purr the ease there, okay thank you. And I wanted to share my concern about the bus station and the word that wasn't used was character and trying to maintain the character of the downtown and also the buildings right there. I think would be really important. So thank you.

>> Councilmember Liccardo: Councilmember Herrera.

>> Councilmember Herrera: Thank you. Thanks for the report. Congratulations to Ben, we'll miss you but congratulations to you on your new role. In terms of the options for the downtown station, are we looking at height changes or just in general, what kinds of things do you think will be possible to help have more of a suitable character? I like what Councilmember Rocha -- I think that's a good way of putting it.

>> Yeah, at this point VTA's perspective has been that the stations are fixed the way they are, except for some minor changes to it such as changing the wind screens or maybe changing the pavement to give it a little different character. I think what we would like to see is for the VTA for some special locations such as this one to really consider doing something different than their base design. So we really haven't been able to explore that with them. But I think if they're open to that both kind of D.O.T. staff as well as Barbara and her group would be happy to explore what options we have to really develop a station that fits within the character of the downtown.

>> Councilmember Herrera: Yes, I guess I was wondering what stations had you in mind in other cities or if there were other examples. Just wondering.

>> Not off the top of my head I don't. No.

>> Councilmember Herrera: I'd be interested to see what that looks like.

>> Hans Larsen: Councilmember Herrera, if I might add, if you look at the transit mall it has a unique design to it, particularly when the transit mall was retrofitted for ADA access. I think the other concept is along the lines of less is more. That particularly when you're in a retail area, and you've got a lot of activities not having all the columns

and the walls and even the canopies and to have much more of an open station. There's two kind of things. You could have a design that's unique and that attracts attention but you could also have one that is more minimalist, that highlights what's there in terms of the historic character rather than trying to cover it or do something different. So I think looking at both of those, I think that there's probably between some of the other stakeholders, the downtown association shares a concern about the aesthetic design. Spur San José has been involved with this as well. And you know, recognizing the amount of activity that's going there, I think that there's sort of a leaning towards a more of a minimalist design than having wind shelters and canopies and a lot of things that create more blockages for pedestrian movement or visibility in the area.

>> Councilmember Herrera: And that might cost less, too.

>> Hans Larsen: That it might.

>> Councilmember Herrera: Several things. Too, if you had simple design going. Thank you for the highlighting the fact that the high speed rail plan has this segmented issue with Diridon station. That's a really important point. And I like your re-prioritization in terms of us focusing in on the electrification project with CalTrain and pointing out all these projects that are important. So what will we have to do in order to adjust the time frame on that EIR and the work that we're contemplating? What -- how will that roll out or --

>> Hans Larsen: Well I think the first step, just -- we appreciate the feedback from the committee in terms of moving in this direction. So I think you know, it would be just start with staff level discussions with high speed rail authority, and I think we might know somebody at the authority we can talk to about this.

>> Councilmember Herrera: Oh.

>> Hans Larsen: And also with our other partners, VTA and CalTrain. And then I think we'll keep our policy makers apprised as to how those discussions are going.

>> Councilmember Herrera: It sounds like a very practical approach and I always like things that make sense, common sense. It's a very good way to pursue it and it -- since it's not coming to San José until 2027, that gives us time I think then to look at alternatives, and put together a good way to look at alternatives like the tunnel option which many of us would certainly like to be -- like it to be fully explored. Last what I'd like to say how wonderful it is to have the pedestrian and the bike lanes and all those improvements out there, and thank the staff, the city staff for the participation in that process, as well as VTA. But we participated in that as well and I really appreciate that. Our residents are really excited, and we've got an official ribbon cutting coming up in a few weeks to separate that. But it's really great to see young families walking down there and people riding bikes and people walking and people pushing baby carriages in an area that was frankly dangerous to be walking along before. So it's very exciting. So thank you.

>> Councilmember Liccardo: Congratulations Councilmember Herrera and the community be out along Eastridge it's very important to have improvements.

>> Councilmember Rocha: Chair Liccardo. You always want to get the last word. It's the chair's prerogative.

>> Councilmember Liccardo: Get in there Don. There was the 7th street station, I had the one question and one comment and I guess I'll follow with a congrats as well. You talk about the impact, I'm not getting into micromanaging, the station location, how come it's not across the street from the other one, did they not --

>> You marine the approval location? -

>> Councilmember Rocha: Yes.

>> There was concerns from the school about having a BRT stop.

>> Councilmember Liccardo: I think Don is talking about moving that other one further East.

>> I don't think it was ever explored, correct?

>> Councilmember Rocha: I didn't know if there was functionality issue of having them on the same block in terms of size and access and pinching, I didn't know if that might have been some of the issue, but then I looked at the one proposed in front of City Hall, and I do have a comment about that one, and we talked about potential impacts. But a lot of these stations have potential impacts to private properties and we are a public agency so in terms of setting a good example I would tend to lean more towards being more open to having the station in front of City Hall than maybe my colleagues or other folks. But I think in my opinion and I don't know if my colleagues share that I would like to see us consider that and not be so strong in terms of the potential impacts because as public agencies we do a lot of projects that have impacts on privately property owners, and I think we should step up as well. And then let me say congratulations, too, to Ben. He and I first met when we were both council assistants, and he worked for then Vice Mayor Margie Matthews, I believe, at the time. It's been a long time ago, and congratulations, and looking forward to your new role, and thank you chair Liccardo, for allowing me.

>> Councilmember Liccardo: Of course. As long as I get the last word. Actually, I don't. We have public comment. I would like to join in commending Ben for his years of public service at the city. I know Ben is passionate about the City of San José. I hope he continues to be passionate about City of San José, when they're sloshing around here in high speed rail.

>> I still live here.

>> Councilmember Liccardo: Thank you. Look forward to good things happening under your leadership. Just wanted to weigh in about a couple of points that have been raised. One, I think Don makes a fair point on the City Hall issue and frankly I've been at mixed minds on this. But with regard to the placement of the BRT stakes, I had not developmentally considered the notion of pushing the South side station further East, I guess there were concerns about disruption to retail on that block between 7th and 8th but I don't pretend to know because I don't think it's been brought to the VTA subcommittee before as an option or if VTA's even considered it. Ray do you have any idea?

>> No, I don't. Ray Salvano with the Department of Transportation. But I'm looking at the aerial right here and noting too that if we were to take and slide that station on the south side of Alum Rock one block to the -- we actually have another driveway then that we have to take and deal with there. So we're almost trading one problem for another.

>> Councilmember Liccardo: Sure. Fair enough. And probably problems all along here, hmm? The other thought I had is, I understand pushing anything further to the West, also creates compaction with regard to other stations, but given the fact we're roughly on the same block and I know there's some safety concerns about the proximity of this site to the tower of the City Hall and what risks there might be there, I'm just wondering if we had fully considered pushing this further towards 5th street. I understand there's still the aesthetic issues but at least the safety concerns as well as the concerns around right turns around 6th street would seem to be mitigated if these stations actually went further to the West. Is that something we were discussing at all with VTA or -- no?

>> Hans Larsen: No, that hasn't come up. I think just in terms of the spacing just to look at where the stations are. So outside of this one you have the station that was discussed, and the transit mall area between 1st and 2nd street. And then the next one is 17th street. If we start pushing it back to 5th or 4th you really have two stations pretty much serving the same area. One other perspective that we have on this is, a lot of the use of the station is going to be towards San José State university. And so the university is between 4th and 10th street. So the current 7th Street corridor is kind of the central point of the university. It's a corridor that has bike lanes in it. And on San Fernando street, that's the location of a traffic signal. So you have the traffic signal at 7th and San Fernando. So we're already set up with signalized access into the university from that location where you don't have it at 6th or 5th street. So those are some other -- there's I think a number of maybe little issues that has led staff to feel that better off just you know, having the BRT station developed where it's currently located and making the modifications there. Rather than creating new issues with a transit station at another location. I think you know the other part of it at 6th street is the impacts to retail and the planned development on the north side of the street. You have got San José taqueria and other businesses there. And then there's a planned development

as you go towards 6th street for a residential complex and a daycare center. And those have been you know sensitive uses in terms of having stations in near proximity.

>> Councilmember Liccardo: Thank you. On the BRT, this isn't actually part of the presentation but it was in the report, the El Camino BRT and the issues that VTA is having regionally with our friends in Sunnyvale and Mountain View. I just throw this out as a suggestion. We generally don't throw our weight around on VTA as a city. We all kind of vote individually however we think is best, and typically as I know San José has been trying to not get involved in this business of block voting but I wonder if given what's at stake there which is a \$125 million project, the opportunity to get federal funding as I understand it is really conditioned on the willingness of those cities to agree to be able to trade dedicated lanes for BRT. If they're not willing to, then in the alternative they're going to pull out money from measure A, which means the money comes from projects like the Eastridge light rail or BRT rather or BART or anything else. And it seems to me that this may be a situation where the city really should be weighing in strongly on the board level and its staff and saying if they're not going to agree to dedicated lanes in those other cities let's not go forward with this project. Let's focus our scarce resources elsewhere on projects that really are going to move people rather than having a BRT project that really looks like every other bus project in the valley. I don't know if that's something you guys have thought much about.

>> Hans Larsen: Well, yeah. You know to have the BRT system work you need to be able to serve you know a good portion of the valley. And so to have it be successful you really need to have all the cities that are served by it, you know, on board. And developing in a way that's going to be an effective system. So I understand the VTA board is having a study session on the BRT program.

>> Councilmember Liccardo: Yes.

>> Hans Larsen: And that's intended to be the opportunity to call the question and look at this are we really committed as a valley to this type of transit service? If so, you know we need to do it right. If not, maybe you need to 30 of some other alternatives.

>> Councilmember Liccardo: Well I guess that's exactly what I was getting at, was the cement 21st meeting. It might be helpful if staff has a position on it to be vocal about it if staff feels comfortable doing so, so the San José representatives are all aligned with regard to what we need to be doing. We recognize it's outside your jurisdiction but it has a lot of impact on it.

>> Hans Larsen: We definitely consider participating the on that.

>> Councilmember Liccardo: I'd like to go to members of the public, Scott Knies.

>> Good afternoon, chairman Liccardo, members of the committee, Scott Knies, executive director, San José downtown association. We had a big meeting three weeks ago with VTA, Silicon Valley Leadership Group was there, SPUR, Transform, downtown association. We talked about the BRT. Couple things to add, getting to Councilmember Rocha's points. We learned at that meeting that it was a bigger priority for VTA with the in-coming direction rather than the out-going. And we were thinking of the half-blocks just on the in-coming blocks which would have been on the north side, the south side in front of Walgreen's, the south side in front of the city view, the old horizon building there. We were going to handle a lot of the out-going so eastbound on the south side of the street with some signal prioritization, to give BRT a little bit of a jump. That might even help deal with your turning movement at 6th street also. We certainly think it will help with our turns eastbound on Santa Clara onto 2nd street. Staff I think filled you in on some of the design issues there. We think the downtown should be treated differently than El Camino, Stevens Creek, Alum Rock, not just a cookie cutter from the suburbs into downtown. We have different conditions there. And it seemed to be that VTA was very open to that as well. Some of the things we looked at right in that area as well is with the loading zones where we do the half-block on the in-coming not the out-going so only two of the four lanes there, have the loading zones in that area. Have a nonpeak time hours available so you could still do some loading there without getting in the way. So we don't lose all the loading in the area. There's a lot of progress being made with BRT. On the high speed rail, want to second the direction and the principle that Hans late out. We had a good neighbor committee in this room last week. There was a lot of information that was conveyed. Pretty stimulating discussion. I think one of the things we're still trying to figure out, because kind of the high speed world changed a lot last year at the new business plan and the

changes in their leadership and the changes on the peninsula. And what might the opportunity be for San José with the blended system? Do we really stop it at the border of Santa Clara and then go to the four-lane separated, grade-separated high speed rail tracks for San José? Since we're electrifying all the way to Tamien do we have another way of bringing that in? Right now, priority is supposedly Merced to San José over San Francisco to San José. But we've seen the high speed remain priorities change and they probably will change again, like BART that has been built in segments over decades we expect the same with high speed rail. It's hard for us to predict the future. San José should keep all of its options open.

>> Councilmember Liccardo: Thanks Scott. Okay, unless there are other comments or questions, we don't need a motion on this, I assume. We just accept the report. Okay. We'll entertain a motion to do that.

>> Councilmember Herrera: Motion to accept the report.

>> Councilmember Rocha: Second.

>> Councilmember Liccardo: All in favor, okay that passes unanimously. Thank you gentlemen. And we'll move on now. Let's move back to the work plan. We did not cover that earlier so we now have a quorum. Review of the work plan. The four items there are being dropped or deferred.

>> Councilmember Herrera: Motion to approve the work plan.

>> I just would like to make a verbal correction for number 3, it should say December instead of November.

>> Councilmember Liccardo: With that amendment incorporate in the motion?

>> Councilmember Herrera: Yes.

>> Councilmember Liccardo: Second, all in favor, none opposed. We'll move on to item 2 in the report, Public Works Muni code revisions. Dave.

>> Dave Sykes: Thanks for having us. I'm joined here by -- Dave Sykes, director of Public Works. I'm joined by Barry Ing, deputy director of Public Works, and also Glen Swartzbach from the attorney's office who's been helping us quite a bit work through many of these proposals that we're going to go over with you today. As a little bit of background, we actually came to this committee back in March of 2010, back when the bidding climate was extremely competitive. We've seen that continue. But also at a time where we had been inundated with bid protests, and so we went through some of the issues that we were doing to manage the bid protests in particular and some of what we're going to share with you today is kind of a plan to deal with some of that. Really what year here for today is input and really to help us flesh out some of these proposals, to confirm with you whether we're on the right track or whether we need to make adjustments or rethink what we're proposing today. So two things are kind of driving us to come forward with some of these recommendations. First of all, back in 2005, the council approved the delegation of authority to the director of Public Works to award contracts up to \$1 million. But we've never come back and modified the code to reflect that change. And as we began to think about doing that, we also came across the fact that there were other things that we wanted to address with the code. And so what we've been doing is kind of packaging that with that initial issue of putting into the code the delegated authority but also addressing many of these other issues that we've wanted to incorporate for streamlining or other reasons. I think it's good to kind of give a few examples of some of the issues that we've been wrestling with. One, the bid protest process. The code doesn't define that process. Over time, we've developed the process, and I think we've developed a pretty transparent process, a pretty consistent process. But there's nothing in the code that directs it. As an example when we cannot resolve protests we bring them to the council. There's no other direction we have, we're coming to the council to resolve protests. On another issue. When the council delegated authority to the director to award contracts up to \$1 million, we weren't specific about which contracts that meant. So we've been very conservative in how we apply that to only Public Works implemented projects. We haven't applied that to projects that are implemented by D.O.T. and ESD. Public Works does implement most of the projects in the city, but there are some implemented by those departments, and because we weren't clear at the time we've never expanded the authority for those projects. And then I think

there's other things that we're proposing today, that address really kind of the efficiency of how we do business. I think a good example of that is, is change orders. Currently, the code allows the director of Public Works to execute change orders up to \$100,000. Beyond that, we come to the council. And it's very difficult to manage that process within the kind of the speed of business of construction. And often when we come to the council with a change order in excess of \$100,000. We're in essence doing it after the fact. The work was already done and then we're asking for permission from the council. I will note that on bigger projects, convention center, airport, police substation, we typically come to you ahead of time and say delegate to the director the authority to do the change orders in any amount within the construction contingency so in essence, that is kind of an extension of that thought process. In terminates of the way we're approaching this in terms of our goals, I think it's good to kind of share some of the successes we've had. As I mentioned in 2005 the council delegated authority to the director to award construction contracts up to \$1 million. We've kind of looked at what we've done recently. In the last three years the director has awarded 91 contracts that were within that threshold as compared to 40 contracts that have come to the council.

>> Councilmember Rocha: Can you repeat those?

>> Dave Sykes: 91 contracts within the last three years that the director has awarded within the million dollar threshold. If you recall at the time, I don't think some of you were on the council at the time we were projecting to save about 20 days and about \$10,000 per project through the director-award process, so not significant on an individual basis, but as you add it up, a little bit more substantive. In the last couple of years since July we've transitioned the bid opening process from the Clerk's office to Public Works. In the last two years, actually in the last year we've actually went to a system called bid sync, to put our bids out to advertise. We gained up quite a bit of efficiencies on that. And in the last two years Public Works has played a more central role in reviewing with the attorney's office bid protests. We've kind of pulled that in as a central process for the city. So all of these things are positives. Just with the protest process alone, not that I think we can take full credit for this but back in 9-10 we had 11 protests that went forward to the council. Last year we had two. So I think through our centralized process we've been able to kind of resolve a lot and even prevent to some degree the protests that we were seeing before that. Another goal is to reduce the decision making time especially during the construction part of

the project. And I kind of talked a little bit about the change order process but another good example is subcontractor substitutions, currently the way the code reads is if the general wants to sub a sub you can do that with Public Works director approval unless that sub protests and then we're in front of council. Hasn't happened that often but what has, it's been a fun process to go through, if you will. And finally, I think, I think what we're proposing today is mostly administrative in nature. But of course that's subject to kind of the input that we get from you. And we believe we're presenting it in a way that's consistent with best management practices in the industry. So I'll just take three slides to kind of highlight what we've got in the report and what we're thinking about doing. The first one we're proposing to extend the Public Works director's authority on contracts that are implemented by D.O.T, and ESD, to the \$1 million threshold. We've looked at it seems like these average about ten projects a year implemented by those two departments and that trend would probably continue. And D.O.T. for example these are mostly the wheelchair ramp and resurfacing projects they currently administer themselves. We are also proposing to have the ability to set contingency levels above the policy under certain conditions. As background, we have a contingency policy. It says that contingency should be at 5% for street projects and parks, 10% for utilities and new buildings, and 15% for building renovations. We 99% of the time adhere to that. If we want to deviate from that it -- now at this point it drives us to the council to get permission to deviate from that. And I'm talking for projects within a million. If our projects are more, more than a million we would be coming to council anyways and the council would have that authority. We are also proposing that the director can execute change orders in excess of 100,000. We have a cap, if it's above we come. I talked about that a little bit before. What we're proposing is it wouldn't be an arbitrary amount but we would be able to issue change orders within the contingency. The council approved or director approved and certainly within the budget. There's no request here to go beyond the project budget. Some other items, developing a process for, and a policy for bidders to propose or equal products. It is a very cumbersome process now, we always spec or equal. The process for getting that approved is very cumbersome so we would like to propose some changes. Allowing the director to make findings for sole source and bun process that is very important to us, allowing the director to make changes to the standard specifications. These were the standard specs. They were last approved by council in 1992. Every time we try to move forward with and we have been in the process of making changes, since we're trying to do it as a product, a single product, each time we attempt to do that we think of more things that we kind of want to put in it. Our plan at this point with your approval would be probably to

come to council with a new version of this in the next year or so, but at the time get authority to make changes to this as it grows and changes. What we currently do is just make changes through the contract with special provision on a contract by contract basis obviously making the contracts quite thick when you're not being able to rely on an updated standard specifications. And then the next group that we're proposing is around the protest process. We're proposing that the director have the ability to resolve protests and conduct responsibility hearings. We would continue to exercise the same type of process with the attorney's office that we do now when we make the recommendation. It's been my impression that the council has not enjoyed their role in the protest process. I will grant to you that it's come down a lot. So we are seeing less protests come to the council. But even last year whether we had two, one was proceed straightforward, that was on P.A.L.more park, I believe. One was on the EIC bid was a very challenging one to get through and I know the council has difficulty sometimes with kind of trying to understand all these minute details. The other element that with the protest process that we're proposing but certainly open to discussion, is that the protests would be limited to the bidders. As I mentioned earlier we don't really have a formal protest process. So it's been hard for us to really decide one way or another. In essence our practice has been any information we get we would look at. What would be nice to be able to distinguish between information that we're looking at and a true protest. So at this point we're proposing that the protest would be limited to the actual bidders involved. As far as next steps, certainly getting your input, based on that input, deciding kind of which of this we're moving forward, is it all of it, is it some of it. We would be looking at doing stakeholder outreach depending on which components of this we're taking on and then we would bring back the final draft to the council sometime in the spring kind of given workload and our ability to keep forward -- keep moving forward with these items. And I think I'll stop there.

>> Councilmember Liccardo: Thanks, Dave.

>> Dave Sykes: Yeah.

>> Councilmember Liccardo: I don't see items from members of the public so we'll turn to the committee. Councilmember Herrera.

>> Councilmember Herrera: Great work, and as much as I so enjoy the bid protest process, it makes sense some of the changes you're suggesting here. I have a few questions, I'll probably think of more but I'll just ask this one now. In terms of the standard, the standard specifications that obviously you're working on as you're going right now and you're asking that changes that you can basically make changes whenever you need to, that ability to make changes that would end when the new standards came out in terms of your request or are you asking that ongoing even once you issue the new standard specifications?

>> Dave Sykes: Yes. Given our update that's coming forward would be so significant our thought process was to bring that significant body of work to the council for approval but then, going forward, the director would be allowed to kind of make the modifications as needed. You know it's kind of outdate they'd we rely on a hard book, that are normally on the web --

>> Councilmember Herrera: Online.

>> Dave Sykes: Online and to be able to make changes once a week or once a year or whatever and not in the pass to bulk them together and bring forward a comprehensive package.

>> Councilmember Herrera: So would those changes, then, would they come to us for approval, or do you just make changes? I'm trying to understand the problem, how would the --

>> Dave Sykes: We would make changes if the council granted that authority.

>> Councilmember Herrera: Okay, great.

>> Dave Sykes: A great deal of this book are technical specs about material types, that sort of thing, and then there's part of the specs that have to do with the procurement process.

>> Councilmember Herrera: Who can protest right now in terms of bidders? You're saying pretty much not just bidders but anybody who has some information can issue a protest; is that right?

>> Dave Sykes: We can -- and Glen can help me with this -- we have kind of taken the approach that we will review any information that comes our way. For example, on the EIC rebid, we got information that kind of came outside the protest period. We still presented that to the council because you know we don't want to exclude information. I think our objective here is to tighten it up to the bidders involved with the process. Certainly if someone outside the bidding process brought forward some information that was relevant, that we thought was important, we'd still figure out a way to factor that into the process. I just don't think we'd call it a protest.

>> Councilmember Herrera: Yeah I'm thinking I know it's not the right term but if there happens to be some type of information that's sort of a whistle blowing sort of thing.

>> Dave Sykes: Right.

>> Councilmember Herrera: That was vital, and none of the bidders were going to bring it up in the process, yeah, we wouldn't want a process where that couldn't come forward in some fashion. Are you saying you wouldn't call it as part of the protest, it would be some other way.

>> Dave Sykes: Right. Could be is information we get from entities outside the process, non-bidders outside the trades. And typically the information we're getting is the ability of that low bidder to do the work.

>> Councilmember Herrera: Okay. That's all me questions for now.

>> Councilmember Liccardo: Don.

>> Councilmember Rocha: Thank you. Just some general questions, and maybe touch on a few specifics. Did you consider any different thresholds for any other contract awards for the other two departments, or just the straight million dollars that the authority, same as DPW?

>> Dave Sykes: Yeah, I think that's where our focus has been. The council was comfortable approving that authority for the director of Public Works. As I mentioned, we looked at how many projects that is in those departments. The director of Public Works would still be awarding those contracts on behalf of those departments. It's a relatively manageable number. As it turns out in ESD many of the projects are above the million dollar threshold anyways and they would still continue directly to the council. I think from my own personal point of view it's really addressing kind of an ambiguity. We were never quite clear when we went to council for the authority for Public Works. And since we weren't clear, we just were behaving in a conservative manner and decided not to extend it to those two departments. I think after working through it, realize that it was kind of a mistake not to be more clear about that. And so it was really kind of gauging your comfort level in making that extension something that we've done in Public Works for about seven or eight years.

>> Councilmember Rocha: And the current authority that directors are allowed as to --

>> Dave Sykes: In ESD and D.O.T. they have authority up to \$100,000.

>> Councilmember Rocha: 100,000 okay.

>> Dave Sykes: What we're proposing today is to stick with our centralized procurement process but to extend that to the director of Public Works.

>> Councilmember Rocha: Okay General thought for me. I have some concerns about this, not the efficiencies and not the savings. Just a philosophical concern about what my role here as a councilmember and the spirit of the role in terms of representing the public. And the public means people, contractors, residents, businesses, all folks. And in my mind, some of this was set up as protections for any potential, for lack of a better word, problems

that may arise with no authority or council review and no public review so to speak. So I'm trying to maintain that public review role that I believe is the purpose of my job. While also trying to allow staff a lot of discretion in doing their job because I realize a lot of this is technical and a lot of this takes time and work. But -- so that's my personal struggle here in trying to find what that line draw -- where we draw that line, is it 250, is it 266, is it 1 million? You can pick what that line is in order to allow staff the discretion to make some of these decisions. But I just don't know how far I'm comfortable in what that number should be. I'm sorry go on.

>> Dave Sykes: Questions from you leading up to this, I think there's kind of two big things that we're proposing here. One is much more minor in my mind and that's the extension of the Public Works director's authority to award the contracts in ESD and D.O.T. up to a million. We're in essence extending what we've done within the department. It's a manageable number of contracts a few contracts each year for each one of those. I think what would be more significant in my mind is the proposal to have the Public Works director to resolve bid protests and conduct responsibility hearings.

>> Councilmember Rocha: A, B and C is where I was going next.

>> Dave Sykes: So that's a bigger step. I will tell you and Glen and Kevin can weigh in. The process we've been following is a process we have been following absent direction from the code. We have been bringing that to council because the code doesn't provide us any direction on that. I think we've done a good job in being transparent and consistent. But as I mentioned when we have brought those to council it's been my impression that the council has felt that this would be better dealt with missive from time to time. Not that that feeling has he be always been university but that's the impression I've received.

>> Councilmember Rocha: And refresh my memory, as part of those protests is there a recommendation from staff as to what the action should be?

>> Dave Sykes: Typically we come forward with a recommendation. It's been my experience, and that recommendation's typically built by the department of Public Works and the attorney's office. In my experience, I can't think of a time where the council did not follow that recommendation.

>> Councilmember Rocha: Okay, so whether it's uncomfortable or not, there's professional recommendation.

>> Dave Sykes: There is.

>> Councilmember Rocha: As to what they believe council should take action on.

>> Dave Sykes: Yes.

>> Councilmember Rocha: So you jumped ahead to where I was going to raise my next concerns, it wasn't just about the dollar but it was also about the public review. And the -- and my -- again, going back to the spirit of it, in my mind this was set up to avoid abuses of power. That doesn't exist here in San José, and I'd be the first one to say that. But again, just forfeiting that authority for any public review raises a big concern of mine. You talked about the numbers and I think it's two this year and 11 the year previously was that the numbers I heard?

>> Dave Sykes: Two in 10-11 and then two the last following two years.

>> Councilmember Rocha: I'm sorry, 10 and 11 you're talking about the fiscal year?

>> Yes, 2009-2010 we had 11, and then 2010-11 we had 2, and then last fiscal year 11-12 we had two.

>> Councilmember Rocha: Okay so in terms of the workload you talked about trying to reduce the workload or the savings that are there and then I'm also trying to see or recognize what -- did what that has gained us in being a former department employee for the redevelopment if I was freed up from some work I did other work. So to

help me get there in terms of where we're at, what do I free up staff to do, I know there's plenty to do, but in order to compromise, that's not a good word for me, what am I going to gain by that leap of faith in your mind?

>> Dave Sykes: Starting out I think your questions are completely fair and reasonable. We have through a lot of work we've done on the front end in terms of reviewing specs and making corrections so we're not making mistakes, same mistakes twice, we've been really able to bring the protest number down. So the number of the protests that the council are seeing have gone down significantly. So I don't think we could at this time tell you it's a significant reduction in work by you to grant this to the Director of Public Works, because we have been able to get them down to a very manageable number. And to be honest, the process that we go through analyzing a bid process is going to be the same, one way or another. So for us I don't think there's really that much of a reduction in workload. It's really the issue of presenting it at the council and from what my impression has been the council's at times frustration over having to deal with this and wish that it could be done administratively.

>> Councilmember Rocha: Okay, thank you. Let me jump to a technical question. The sole source that you mentioned, that's for \$1 million as well?

>> Dave Sykes: What are we proposing there?

>> No, that sole source process is for any project period. Although, see, for within the director's authority for D.O.T. or ESD, 100,000 or less currently, they would make that finding along with the award of the project. For Dave, since he currently has award authority up to \$1 million, it would be within that \$1 million authority. If you grant Dave the authority to award D.O.T. or ESD projects up to a million, then he would have the sole-source ability for all three types of -- all three departments' projects up to a million dollars. If the project comes to council for award, the council makes the sole source finding. So it depends on who is making the award.

>> Councilmember Rocha: So you would have the authority to award a \$1 million contract to some entity with no RFP.

>> Dave Sykes: No, actually this is -- when we talk about --

>> Councilmember Rocha: Help me understand sole source and procurement, please.

>>> So I think yes, in circumstances that would -- we haven't even developed the rules here. We're trying to engage your interest level and sort of support for this. So, yes, it would be up to our award authority. I don't know if Ken is help me in terms of how we would actually put this together but certainly your input right now is important in terms of how we develop it.

>> Yes, I think one thing to note because there are construction projects that are being bid. So it's not the typical RFP, RFQ process, there's a very strict bidding process that we have to go through.

>> Councilmember Rocha: This doesn't apply to service contracts then?

>> This is just for construction contracts. That was part of the thinking that went into raising the director's authority to \$1 million is that you've got a very rigid process, and a lot of people would say, overly rigid. But a process that you have to go through and you have to award to the lowest responsive and responsible bidder. So there is a formal process that we go through and with regard to the sole source, you're not talking about a particular sole source to a contractor, you're talking about a sole source for a component of the project. So you're going to sole-source your HVAC system, or you're going to sole-source a particular computer project or computer components within the project. So it's not sole sourcing to a contractor we're talking about, it's about sole-sourcing some component of that project. And right now we follow state law on that. And this would allow the director to make that sole source decision himself. Which is current what we do on the purchasing side. If you look in the Muni code, in title 4, the director in charge of purchasing can make himself that sole source decision to purchase certain goods. If we have -- like H-vac system controls is one thing. There's an efficiency in having the same controls in building to building to building. We can have less -- less spare parts, there's the advantage of services and maintenance of the building in the long term. So this would allow an administrative decision to be made to sole source this so you have that consistency. So it's not the contractor, sole absorbing to the contractor. We still

have to go through this bidding process which is you put it out to all the contractors in the community and they all have a chance to bid and compete for the project.

>> Councilmember Rocha: Okay, thank you. Let's see there was one other question I had. You had used the word inundated in terms of numbers at the beginning of the presentation. I'm not sure what that number was applying to, the protests I think?

>> Dave Sykes: I did?

>> Councilmember Rocha: Yeah. I don't know if you were referring to some time past, hoping to get a little more clarification on that. It was a note I had written down when you used that word I was trying to keep up.

>> Dave Sykes: Yes, thank you. Back when we first came to council, the committee, back in March, 2010, I think, at that time the at the city was inundated with bid protests. It had to do with the competitive bidding environment but it also had to do with, I think at that time we were seeing several types of bid protests. We were seeing bid protests issued on the base of our plans, and bid protests from contractors doing anything they could to get the job. I think we've done a lot of work that has really almost nullified the number of bid protests we're getting based on mistakes on the plans, and actually in the last two years we've seen zero. What we have still seen is a continuation of some of the protests coming in based on the fact of subcontractor lists, those sorts of things, that we have done a good job of, in essence, addressing and resolving so that you've only seen two in the last two years come to the council.

>> Councilmember Rocha: Okay.

>> Dave Sykes: But there was a time where I would say we were inundated with protests for a period of time.

>> Councilmember Rocha: Attachment A first page, top section, 25,000 or less protests, procedures unclear, then protests no right to protest the word. At a goes back to me that you haven't seen language for us, having a

tough time making that leap of faith, I guess. You mentioned also the trade association or industry group does not have standing to submit protest, that one to me is a little tough for me. I have a lawyer to my right here who might correct me. But in terms of having standing, I kind of, to my original point, talked about in my mind any member of the public or of San José has standing in maybe some of these issues. And again, that is a general statement, and that may not be true in every example. But I just hate to take that opportunity away from folks and they may have a valid issue and I recognize you work through that with groups now and you have got a great program going. I don't disagree with that. But just the permanent removal of that opportunity, for me, I am a little reluctant to make that jump there.

>> Dave Sykes: And we appreciate that. That's one of the reasons we wanted to highlight that element, to gauge your comfort level with that one. If the committee wanted to continue down the path as we proposed we would be conducting some outreach with the trades and kind of go through that process. If you stopped us in our tracks right now on that particular item we'd probably pull back on it and focus on the other things where there's a higher level of comfort.

>> If I can add too, right now under the city charter, Public Works contracts that are under \$100,000 aren't bid. And there's an informal process already. You can address this but I don't think we have any protest procedures and we don't get any on the small ones. The protests on contracts over \$100,000 construction process though have to go through a formal bidding protests. That's where we get the protests and where we get into talking about a protest procedure. So under \$100,000, those are small projects and they're informal and there suspect the kind of public participation if you will than there would be on the larger once. And I think the other think to remember, in termination of the bid protest, really what you're talking about is who is going to get the contract for the construction project. And I have never seen a protest from the member of the public. It's always the contractor or a trade association. Because they're the only ones who may have an interest. Certainly the bidders, the contractors who are bidding are the only ones who me have an interest in getting the project. It doesn't stop a member of the public from challenging the project, any other aspect of the project in any way.

>> Councilmember Rocha: Okay, thank you. Hi started when I had read this memo initial reaction, for lack of a better phrase, I was concerned that this was a solution in search of a problem. But reading it more thoroughly and then reaching out to your staff and getting some feedback has helped me greatly and also in discussion here. So I don't feel that way any longer and I'm glad I got there. But I still think I'd like to digest or chew on some of this, because some of this stuff is some significant changes, and for me, I think the input I provided hopefully will be helpful to you.

>> Absolutely.

>> Councilmember Rocha: But I'd like to allow -- and it's unfortunate the chair is not here -- but for me, I think I'd rather forgo any recommendation, from me, but again, I'm only one voice up here, and allow me some more time to analyze this and think about this prior to council. So thank you.

>> Councilmember Herrera: So we're going to come back when the chair comes back to vote on this. We don't have a quorum now but I had another question, too. Take the opportunity to ask my question. In terms of contingencies is there a limit on the contingencies? It just says higher than policy limits for projects. Would there be a limit on that or the limit would be the budget or --

>> Dave Sykes: Well, that's actually a good question. We haven't developed it far enough to set any type of limit. I described to you what the current policy had. From time to time, when we've wanted to set a higher contingency, we've come to council for permission. It's normally when two or three or 4% of what the standard is, certainly we have to respect the budget no matter what circumstance is. But I think we can develop that as part of our proposal in terms of setting a limit beyond which the policy we would go.

>> Councilmember Herrera: Yeah I think I would feel more comfortable with some sort of a limit on there, or an explanation as to why that would hinder the processing to have one on.

>> And let me say part of the proposal is the director could set a higher contingency, but would have to make written findings as to why he would be exceeding that basic limit policy and trying to put some kind of check in there.

>> Councilmember Herrera: That is part of the change.

>> That would be part of the proposal.

>> Councilmember Herrera: That's helpful. Going back to Don's question about, I think I sort of -- I'm not quite sure where -- I see a lot of these smaller ones where you have to right to protest in terms of the new policy. But I think what you're kind of saying is, really, there's no protest going on right now, but it's not clear in the policy, so you're kind of just cleaning up the policy, I guess, to reflect kind of what happens, or what would be a more practical way of looking at it, I guess?

>> That's correct.

>> Dave Sykes: Right, and so we've been kind of working without that guidance from the code. Fortunately we haven't had protests on these smaller projects, but this would get some more formal direction, so that there would be complete clarity for everyone involved with the process.

>> Councilmember Herrera: But again I think, and I asked it earlier, if there was some outside reason or information even though there is no protest as part of this, there would still be room for you to get information about something if there was an irregularity or something that somebody wanted to surface, I mean, there would still be a way to do it. It just wouldn't be a formal protest.

>> Dave Sykes: Right, I want to reassure you of that. I think if someone came forward with information about the behavior of a contractor or their performance or something, you know, we would take that into consideration as we do now.

>> Councilmember Herrera: It just wouldn't be a formal protest around that?

>> Dave Sykes: I think it's important to keep in mind that, as Glen mentioned, we don't normally see protests on the smaller projects. The vast majority of protests that we see on the bigger projects, the vast majority we've determined we, the city, have determined, have no merit. The most frequent protest has to do over protesting the subcontractors, listed on the subcontractor list. And time and time again we have said that has no merit in the city and we still continue to see that protest come forward.

>> Councilmember Herrera: I remember 2010, so I'm glad we're seeing fewer of them, and our chair's back. Thank you.

>> Councilmember Liccardo: Forgive me if this has been asked already, since I have been absent. But I'm a little concerned about process. I'm assuming the state code creates some right for bid protest, is that fair? Glen, or is that why we have a system or do we do this just because we want to be fair?

>> Actually, the public contract code doesn't have a process in it.

>> Councilmember Liccardo: It doesn't, so we create it entirely -- hmm. Do we feel we have to create a bid protest process?

>> Dave Sykes: Yes.

>> Yes, to have some protest so it's clear -- so it's clear what the contractors need to do when they protest. Because right now we have no time lines, we have nothing about when you should submit something, what it should cover. We kind of developed it I guess over the last six seven eight years. It goes into our contract and it has no formal process. That's what we're trying to get here are some clear procedures for contractors to follow.

>> Councilmember Liccardo: Does state law require some bid protest process?

>> No, it doesn't have any -- what I'd say is it's required -- the cases require that we have some process to allow protests, but beyond that -- beyond that you know, there is no -- there are no state requirements for what that state process needs to look like.

>> Councilmember Liccardo: Okay, I think I appreciate that, then it's basically case law that tells us we have to have a protest of some kind?

>> Yes, to allow the bidders to protest.

>> Councilmember Liccardo: So here's where my question is going, that the way we have it proposed, which may be the right way to go, but the concern is, is that we've got the initial decision maker essentially is the Department of Public Works. And now the appeal for the bid protest goes to the head of the Department of Public Works. And it seems to me there would probably be some kind of due process challenge out there that would say you can't have the decision maker and the judge of the appeal be the same person. Are we concerned about that?

>> Actually that's still a question as we're drafting it. And one of the proposals may be that it go to the City Manager's office or something like that. But that's an issue we're still looking at, yeah, I think that's a good point. And that's something that I've raised as an issue throughout, and there's still -- in the draft there's still some question marks in those places about how to deal specifically with that. And that's why, you know, again, like Dave started off, this is preliminary to get some feedback on the general direction we're headed so --

>> Councilmember Liccardo: Yeah, I mean I don't feel strongly that it has to be the city council. Because I think frankly in the past when these have come up before the council we've been hugely deferential to the expertise of the department anyway. In making our decision and I think it's -- I can't think of an example where we haven't gone with the recommendation of the department anyway. And so because we're mostly at sea and lost in the

details, for the most part, and so I agree it makes a lot of sense for it to remain administrative. I just think it's needs to be somebody else. Whether that's the City Manager, you know, City Attorney whoever it may be.

>> Councilmember Liccardo, just so that you know the City of Sacramento has a fairly robust bid protest process written in the code. However, the City of Sacramento has the appeal going to the council. That's something you can digest as a model. They have a bid protest fee, as well, to discourage frivolous protests, \$500, but their process is sound, but it does end with the council.

>> Councilmember Liccardo: Right, and is that the way it works in most cities, that it ends up at the legislative body?

>> In the -- of the seven major cities of California, just Sacramento has that detailed of a process, and I think it's because they get a lot of challenges. I think San Francisco probably has a similar process in the works, but they're right where we are. They're looking for a direction to set something that makes sense.

>> Councilmember Liccardo: Okay.

>> Dave Sykes: And I'll just say. I'm reluctant to advocate one way or the other. I think what's been driving this particular component is more the issues with the challenges at the council having to deal with the protest and trying to figure out a way to handle it administratively. So I think we are open to any alternatives, including the city manager's office, or another, the attorney's office being that entity that resolves that. And that way we are still achieving the goal of kind of keeping that off the council docket while still having the objectivity of the process.

>> Councilmember Liccardo: Right. In terms of due process concerns that would be a public hearing right, whatever that final bid hearing appeal would be?

>> Dave Sykes: We certainly could make it that way, absolutely.

>> Councilmember Liccardo: I think you would want it to be that way so the media and members of the public could be there. I think it goes really to Councilmember Rocha's point, about --

>> Dave Sykes: I think that's great input, yeah.

>> Councilmember Liccardo: I just think we need a transparent process even if it doesn't necessarily come to the legislative body. I think that's important. And then finally I really agree strongly with the notion that we need to create sort of a Wiki specifications both and if there's a way for council simply to delegate authority for you to update that on a routine basis and stay online it would certainly be happy not to be delving into those details. I would imagine that the changes in those specifications may have some public impacts so at some point there may be some need for a hearing before you as the director or the City Manager but I don't see why council would need to be involved in that. Anyway thank you very much for all these ideas. Any other questions or concerns? Okay. Should we be accepting -- we have specific recommendations here.

>> Well, we provide feedback to staff and then if you are okay with the time line for the next steps.

>> Councilmember Liccardo: Okay, great.

>> Councilmember Herrera: So I'd move acceptance of this. Are you needing us to approve all the recommendations, or just accept it with the feedback we've given you?

>> Dave Sykes: I think it's more you've given us feedback that we can incorporate into what we develop here, and so.

>> Councilmember Herrera: It will come back.

>> Dave Sykes: It will come back.

>> Councilmember Herrera: Move to accept with noting the recommendations that have been suggested, feedback from council.

>> Councilmember Liccardo: All in favor, that passes unanimously. Thank you gentlemen.

>> Thank you.

>> Councilmember Liccardo: Great, we'll move on to the habitat conservation plan. I knew there was --

>> Joe Horwedel: Trees were harmed.

>> Councilmember Liccardo: I hope you guys paid a nitrogen deposition fee on this.

>> Joe Horwedel: Carbon credit. Thank you. Joe Horwedel, director of Planning, Building, and Code Enforcement and Andrew Crabtree, the division manager in our environmental section. Today we wanted to go through and walk through with the committee the overall habitat conservation plan and it is a major undertaking, as a city who just went through our general plan update and took four years in doing it, this is even a bigger effort than that. I think this is year 10 and the document is twice or three times as thick so it is a very robust set of issues that we're dealing with. And so we've got a series of slides, and I'm actually going to blow through a lot of them pretty quick and kind of slow down on the back end of it a little bit. But a little bit of context. It is a 50-year strategy for dealing with endangered species. 50 years is longer than many of the habitat plans that have been done with other agencies. Usually 30 to 40 years but we felt going into this the certainty was really important. This plan is both a state and federal document Specific Plan, strategy plan, known as the habitat conservation plan for the state or for the federal and the natural communities habitat plan for the local. This plan is a result of three cities, the county, the VTA, and the water district working with the different resource agencies, with the state and federal agencies to put together this plan. It's one that each of our public agencies had a requirement, something that we were working on that we wanted to see happen that the regulatory agencies said in exchange for that you need to do this planning effort. So this is something that we all came to it for different reasons. But as the plan

came together we think there are some benefits around so that is why we have continued to pursue this. There you can see in 2001 the first biological opinions were issued, that go back to the widening of highway 101 from Morgan hill to San José. Working with Cisco for their campus in Coyote valley. The power plant that was built and now generating power in Coyote valley. A number of projects like that, that all triggered this requirement. And as you can see, series of steps. And our plan is for 2013 to actually begin implementing the habitat conservation plan. The area covers essentially southern Santa Clara County, at San José southward. And it's all of San José with the exception of the bay land. So the bay -- Alviso and the area generally north of 237 is not within the plan area. One of the questions that always comes up is why aren't all the other cities in the county in? And it's because they have not had that regulatory hammer put upon them. That their projects have not triggered that type of federal or state nexus requirement. And if there was such a requirement they most likely would be at the table. That is why Morgan hill and Gilroy came into the plan a couple of years later as both of them have projects they were pursuing and the state and federal agencies said you are not going to get permits from us until you agree to do this. It is something that the plan ultimately is to be county wide. It is not something we have pursued with those other agencies. I can tell you candidly when we were working in Coyote valley there was a desire not to have North County cities involved in land use in our city. Which would have come through that process. So some things certainly have changed as we have gone through the plan process that might not be the same strategy today but it was that ten years ago, part of the calculus around that. We still have plans ultimately for those cities to come in and even as we work on things like you're sewage treatment plant master plan rebuilding that may bring in some of the tributary agencies directly or indirectly into this effort because of the permitting needs for the sewage treatment plant as we go through that that's why Morgan hill and Gilroy are involved in that, their sewage treatment plant needs rebuilding and to get the permits they needed to agree to this. Pretty pictures, lots of animals and plants that exist here in the valley. Most people don't realize that in fact this diversity of wildlife does exist. Some of these are species that are only found here in Santa Clara County or in the small part of the county. In some cases they're into double digits, the total population of those animals. The project is a 50-year term, as I said. It has a number of categories that we deal with. You can see there most of what we worry about is urban development but because of the other partners you see all those other categories. Next. It is built upon the general plans and strategic plans of each of the public agencies. So in the plan you'll see a lot of things not covered by the plan. High speed rail that was talked about earlier not covered by this plan that for endangered

species that we did not know how to analyze that project because the routes were still shifting around so it is specifically excluded. They will need to deal with separately their endangered species. There are activities that people do on property like if you are in an area that has endangered species in the area and you are adding onto the building, you may have a requirement depending on the scale of it. You can see the sizes there. But just going and getting electrical permit in a large building will not subject you to it. So we have tried to be very deliberate about what are the things that cause impacts, which is essentially building buildings and grading, versus doing things that don't cause impacts that are like inside the building. We always do ask to remind people it doesn't actually approve development, that still remains with each of the local agencies. While we're showing this map, we've looked at all the different areas in the county that's in the study area and quantified or categorized them by what types of activities occur there. So basically the cream color you see covering a lot of the county is areas where private development is a covered activity, meaning it's subject to the plan. So this is like building home sites, out in the county woodland areas, or slope areas. Building commercial industrial buildings in those areas. The area that is -- where San José is has a crosshatch to it and it says urban development equal or greater than two acres is covered or subject to the plan. Development inside San José that is not in a creek that doesn't have -- on serpentine soil, so that's really Communications Hill would be where that would be. And you're less than two acres, you really don't have an exposure to the plan itself. If you are a redevelopment of an existing property, you have very little exposure to the plan. There are some properties and we'll show some examples here in a few slides that are large sites more than two acres that does have consequence from the plan or coverage by the plan. As you can see there's other categories we looked at across the county, looking at that rural type development. When is it in the plan, when is it out of the plan, a lot of negotiations that occurred through that. But for our world, we're going to focus really on the San José piece of it. The next. The goal at the end of 50 years is to have essentially a 50,000 acre reserve system, it's built on land from willing sellers. The authority that will run the habitat conservation plan does not have eminent domain power. It is one that is really focused on working with lands from the county park system and other county lands, the open space authority and then acquiring lands in key areas around the county. Looking at where we need to provide habitat for burrowing owl, bay checker spot butterfly and other species both in riparian areas and land corridors. It is also strategically built around when we buy land, that land should serve multiple purposes, we shouldn't buy that only serves one need and so there's a whole prioritization that's gone into the plan that looks at high priority, high occupancy or density

of endangered species on that property, and then how it connects to other property. Are there reserves. The goal is to have connectivity so there is that natural genetic diversity that will continue so that we don't create separate kind of islands that for the long term would cause the demise of the species. And we also, as it notes, looked at climate change and how it would affect those reserves and have built that adaptability into the property itself. Next. We are focused on mitigation which is how usually we think of impacts on the plant or animals. We also with this plan because of the California statutes are focused on restoration and rehabilitation, conservation. It's the long term survival and actually recovery of species, as a part of this plan. So there are some differences in how we normally think about how fees get applied or calculated, what an individual project does versus other sources of moneys that might be used from state and federal or foundations of how these are applied to accomplish these goals. And so it's a pretty nuanced plan around that that the goal than it is that you actually have a much stronger population, and that's what the California statutes around, versus just treading water, mitigating it. And there's the acquisition strategy, can you see the yellow lines are the linkages of the corridors about how wildlife would move around from the eastern ridges to the western ridges. Next. Thing everybody is always interested in are the fees. How do you pay for all of this? This plan was at one point over \$900 million. Over 50 years. It's now down into the 460 million or 500 million. It's a -- still a significant effort. But it's a part of how you go through and really look at the plan and how we've looked at this, is that today, development is subject to a wide range of mitigation measures, partly from the city, partly from other resource agencies. So if you have to go visit fish and game for example if you have burrowing owls on your property, the standard mitigation in the past has been for a pair of owls on your property equals seven acres of habitat go by. So developers would have to go off and buy seven acres of land to mitigate that. With the habitat conservation plan it essentially becomes a mechanism where both private projects and public projects would go through and write an impact fee, write a check for that mitigation. And then the entity that would be acquiring the lands and actually putting together the comprehensive strategy. It is a mitigation type bank operation. And it is focused on the more severe the impacts, that's why you see wetlands at potentially \$375,000 an acre. Wetlands are horrendously expensive to go through and mitigate. You talk to a developer that has had to build a wet land, is not only are you dealing with the multiplier of acreage, is that that is an ongoing responsibility for upwards of ten years, that to go in and build the wet land, to go through and get it actually created vegetatively, and then ensure its long term survival. So that that developer is out there, or public agencies, and this is more usually case, on a

sustained basis with contracts for maintenance and replacement of those plant materials. With the survival criteria that if you don't hit it, you start back over. So from a monetization standpoint looked at is, there are real economic advantages, even if that looks like a really big number, is that if you really look and add up the cost when you do a bridge, the cost that you will spend to do mitigation on it, we're think -- have built this as our goal that it actually is the smart decision to go through and kind of separate that long term responsibility and write the check. For San José most of our development is going to be what we call a zone D urban sites that are infill locations, and that's what's affectionately known as the nitrogen air fee. And that's related to bay checker spot butterfly habitat. We have very little of what you see zone A or B, these are green field or open hillside areas. In San José there are Zone C which are sites larger than 10 acres that do exist around the city. We're doing an analysis right now so when we come to council, to actually better quantify or what that looks like into the city itself, give some better examples. But the majority of the city and the development that will be happening in the city is going to be what we call zone D, an impact fee based on vehicle emissions, that's at \$3.60 per vehicle trip. So single family house, ten trips is the normal trip generation rate, so about \$36 a house, what that would work out to. We're going to, as staff, come forward with some proposals to even look at ways to not charge that for, for want of a better term, smart growth. That very much development that's out on the edges of the city that's building the traditional three car garage should very much be responsible for paying this. But we've worked with the home building industry and working with the chamber to find ways to not discourage and put up even a perceived barrier or disincentive. So we're going to come forward with some recommendations to the council around some other ways we can deal with that specific fee. The one thing that I wanted to go through and walk through with the committee a bit because this is when we bring this to county is going to be an important item is how the plan's going to be implemented. It will really operate as a joint powers -- my brain is not working -- JPA. And actually two different layers. Because the cities and the county have land use authority so we are by state law can enact impact fees. The VTA and the Water District do not have that authority under state law. And so there's actually what we'll call a governing board which will be responsible for setting the fees every year. As well as the budget for the JPA. There will also be a larger group which will then bring in VTA and the Water District, that deals with the real running of the habitat conservative plan on a day-to-day basis, how we go through and acquire land, hire the contract staff that would be running this, hire the executive director, that would be the point of the JPA. But it is one that the structure will have councilmembers or elected officials on the governing board, clearly, because it is a

part of the setting of the fees and the budget. On the implementing board there is some flexibility on how this is structured that would only require one councilmember, each agency can have two members on it. But like what we've just recently done with MTC where we can have a -- where you know that you can go through and have either elected or staff person to represent on the implementing board, it gives a little bit different flexibility. So when this comes to council this will be one of the things we'll want to talk to council about, how the council would like to do that. So next. The -- one of the reasons why we agreed to do this plan was to go and streamline the process. And that always seems pretty daunting or pretty like is that even possible? And I still believe it is and that we are achieving that. When we are dealing with endangered species and even things like the burrowing owl which is not technically listed endangered species, it is a species of concern, so down a step. There is time and evident by private developers, by cities in dealing with how to go through and protect that species and working through the CEQA process. And the challenges that come through both in litigation and then through the regulatory is you go back and work with fish and game, fish and wildlife service, the national marine fisheries, and then on top of that the Army Corps of Engineers, the regional water quality control boards, there are a number of groups that all have responsibility or authority. And in the past it has been every one of those groups kind of piles on to the one in front of them. And one of the goals that we've been making real progress around this is, that there are regulatory assurances of what is the structure or the mission the requirements that will come along with it. That's part of the 50-year, the upside of the 50-year time frame is that we're agreeing and saying this is going to be the level of mitigation. This is the level of requirements that go along with it. When you have an acre of impact whether it's today or 50 years from now it will be the same requirement that's out there. We are working, we've gotten as a part of this fish and wildlife service and fish and game say they will not add requirements to their permitting through the life of this permit over what we have built into the plan. We have now been working with the army corps of engineers to obtain their, what we're calling a regional general permit for dealing with wetlands of up to a half-acre that they will go through and give us five years permits matched on what's going on within the plan. That is a very new dynamic that is existed, something that the council when you looked at this about a year and a half ago sent staff off to go negotiate. And we have another meeting with the army corps coming up about a week or so back in San Francisco to continue hammering that out. In parallel -- I have been feeling very good, with the adoption of this plan, we will shortly have behind that a regional general permit that will give us a certainty around that and give a scale of reference a half acre is equivalent to replacing a bridge, the amount of land it

takes when we take a bridge out and put a new bridge in. Those are the types of -- we will be able to follow through that permit process, it's big enough. We are also working with the regional water quality control board, they're further, I would say, behind in the willingness to consider that type of relationship. It is one that is of concern to the local partners. It is of concern to the development community. They are kind of still an outlier. But it is partly of how their statutory -- how they exist that creates that. We are not giving up on that. There will be more discussions around how to get that in better alignment so that what we do with the plan matches up with the regional board even if we have to tweak it a little bit more. Cumulative impact. I just talked about the insurance policy piece. The plan does deal with that. The cumulative involve those little small pieces today. It is argued if you are a project that does not have a butterfly on your property but you have serpentine soil you may not have to do a lot. If you have burrowing owls on your neighbor's property about the not your property you really don't have to do a whole lot. This does equalize that out a little bit. Does put a little bit more responsibility for similar circumstance to not penalize bad behavior or encourage bad behavior. So it is one of the benefits out but it does mean we're kind of we're you jumping up a little bit on some of the mitigation requirements which is always that is of concern and that's where we spend a lot of time making sure that we're not making a big jump as we go to -- into this 50-year horizon of kind of setting this new baseline. So on the schedule, and this is actually going to change a little bit as of a meeting this morning we had, we are bringing this before the CED committee to talk about similar sort of issues. On September 25th we're going to scrub that date and we're actually going to do the study session on September 27th, tentatively scheduled for a 90-minute council discussion where we're going to focus on about probably five issues and work through those and see if there's questions the council has that we can then -- if we're not able to answer it at that meeting, come to the council in October, and be able to finish up any questions that are out there. We are going to the Planning Commission this week to introduce them to the plan as well as the EIR for this and then bringing them through the meetings in October. And the goal is October 23rd, is to be in front of the council for final adoption of the plan, the EIR, if there's a protest of that, if there's some implementing ordinances that go along with this, the selections ideally around the members of the council that would be on the implementing entity. So there's about six or eight actions that will come along as a bigger package. And so I think we'll stop there, and then if there were questions, you -- because that was a lot of territory I covered. Especially after lunch it's kind of tough. Apologize for that. And then see if there's anything else.

>> Councilmember Liccardo: Questions or comments?

>> Councilmember Herrera: You've been doing a good job of kind of bringing us up to date so there's a few things but most of the material we're covering is not new but it sounds like we're making a lot of progress.

>> Joe Horwedel: We're pulling a lot of the loose pieces together, it's now a final document that's distributed four volumes all in one place and coordinated.

>> Councilmember Herrera: Joe I think you -- I know you said it but can you run back one more time the agencies that we do have a firm, kind of interlocking, we feel comfortable with, so fish and game is one of them.

>> Joe Horwedel: Fish and game, fish and wildlife are the ones that are kind of joint permittees with us.

>> Councilmember Herrera: Army corps of engineers.

>> Joe Horwedel: Army corps of engineers we are working with right now, and they are willing to work with us on issuing a permit so we are kind of working our way through what that will look like right now.

>> Councilmember Herrera: But the water, the one that you --

>> Joe Horwedel: The regional board is the one that I think we're going to need to spend the most time with, and that's one that, at the study session, I'd like to talk with the council about, is clearly it's important to us, but I think there's some things that we should think about as a city and then amongst the other agencies here in the county how we deal with them both government to government as well as legislatively. I think there's some discussion we should be having about are there things in their statutory basis that maybe should recognize that habitat conservation plans exist. Because when those, the regional boards are creating, HCPs didn't exist. It is a challenge of CEQA that a lot of things get done over time and they never come back and fix them. Is I think with

the regional board to have some acknowledgment statutorily that these plans exist and can provide a basis for mitigation standardization, so that there's not an impetus to pile on.

>> Councilmember Herrera: And I'm thinking of different types of land and I just wondered what this would be classified, so jobs lands that would be kind of open space, you probably think of job land. I'm thinking of in my district. What would that be classified?

>> Joe Horwedel: So it really depends on what it is today. Meaning physically, so like the Arcadia property is probably what you were thinking about.

>> Councilmember Herrera: I'm thinking about the bird property. Either one.

>> Joe Horwedel: So most of those have ag-type uses on them. So they are showing up on this map I think as green sites greater than ten acre. Either B or C. Actually I think they're going to fall under zone B which has got a conversion fee that's tied to, that today it essentially has habitat value at a minimal level as opposed to something that has been developed in the past, and is being redeveloped, that has no real habitat value. So I think it would fall under that category B.

>> Councilmember Herrera: And if it's going to be commercial buildings that are going there or one of our village plans, is that going to be taken into account, if it's not going to be residential housing but it's going to be something different?

>> Joe Horwedel: Right. I think most of our village plans are only going fall under zone D and be subject to the air fee. And one of the things we're now talking with developers about in villages is how to essentially do smaller redevelopment. That how do you use the residential development to become the economic engine to pay for the infrastructure for the jobs. And part of that infrastructure may be is dealing with -- of these types of fees, whether it is a nitrogen emission type fee or zone C type fee where it's considered vacant site, and you might have a \$4,000 an acre fee to pay for the impacts of that project. You could go through and allocate the cost from the industrial-

commercial onto the residential as a part of an assessment direct. We're looking at some things like that so that cost and benefit are better aligned. That right now the HCP itself wouldn't be the vehicle, it would be what we did in each one of those areas.

>> Councilmember Herrera: I was going to ask is HCP going to encourage job development?

>> Joe Horwedel: It will be revenue neutral.

>> Councilmember Herrera: Those were my questions. Don, do you have question?

>> Councilmember Rocha: Yes, just one general question. It's on the burrowing owl, I guess, and the red legged and then there's the butterfly. So these are generally protected species, which is why we have more emphasis on them. If you wouldn't mind refreshing my memory.

>> Joe Horwedel: Correct. So there are plant and animal species that are already listed as endangered or on the way to becoming endangered. Burrowing owl is an example of on the way to becoming endangered. The bay checker spot butterfly is on the list because it has been severely threatened over the years. When we started this effort about ten years ago, we looked at all the plant and animal species, and said, what are the things we should be covering that are already endangered, or have a risk of being endangered in the next generation or two. And so that became the larger list we started from. Ultimately we went through and took some out. Like the golden eagle was originally in our list. We took it out because it really doesn't affect a lot of development in the county. And the cost to have protection, for any potential impacts to a bald eagle or golden eagle, we said isn't worth it. We took fish out of the plan because of the cost for recovery. Recovery was so high, to the amount of projects the water district was going to do in any of the streams in south county, the cost benefit didn't make sense, we took those out. So we really tried to look at things that we were going to have issues with on a project-by-project basis over the next 50 years and said we would be better served to have that strategic view all in one. It would be more cost effective and it would be more timely.

>> Councilmember Rocha: So how does the plan consider endangered species or threatened species as they go forward that may be removed from the list? I'm sure there are allowances for those to no longer be emphasized as they are here.

>> Joe Horwedel: Well, that is really the goal of the NCCP, the California version of this plan, is recovery. And so to achieve recovery this plan puts forward what recovery would look like here in Santa Clara County, for some species they are really only seen here, the bay checker spot butterfly. I think with this land, we is how grazing is done and working bringing back the plant that supports the butterfly, the goal is that at the end of that you will have a much more vibrant thriving sustainable population for the bay checker spot butterfly. Whether it will be enough to take it off the endangered list and threatened list and kind of back it off there, I think that is something my daughter will go through and maybe get to experience. But it's one that you know that is really the goal. Is how to go through and make it so that it doesn't really need to be endangered. But if you don't keep the land management going on with it, it will go through and disappear again. Just because how grass is growing on the hills out there, it takes that active sustained in perpetuity management to do that.

>> Councilmember Rocha: Thank you. And last question, in terms of an inventory, I'll use the burrowing owl as an example, when was the last one done in terms of identifying where their populations, how many and where was it done?

>> Joe Horwedel: Was it 2006 or 2010?

>> 2010.

>> Joe Horwedel: 2010.

>> Councilmember Rocha: And who did that?

>> Certainly species looked county wide, and projecting it but burrowing owls is one because the population is so small, they have looked in every nook and cranny and counted it. This is one that we have a real vested interest in because of North San José where we've got development sites that have owls on them today that are quite happy they're growing but we would like to grow office buildings there so we've got to kind of get ahead of that, get the owls more successful in other parts North San José and then allow us to move those owls off that property to some better homes up around the bay lands, and so it's built into this plan is how to do that so that we really allow the owls to keep coming back stronger.

>> Councilmember Rocha: Thank you. And I guess to that point, the naps that you provided, in the yellow areas, I guess this is identifying the habitat area or where they are located due to that inventory?

>> Joe Horwedel: Yes. There was one at the end that has an owl icon on it. Is that the Tishman piece?

>> Joe Horwedel: That is the owl icon, on the Tishman piece, they like street improvements. What this is, is a 250 foot radius around the owl nest, they do live underground. That the plan says you can't go through and built within that 250 feet. We do have some exception process and this has been part of the work we've done with fish and game is to work with them to recognize this is not an owl preserve, this area. This is an area that will have development around it. With office development. And fish and game agreed, this is not the place to go and build an owl preserve. The land is too expensive for what you would get for it. It's too -- where we do have owls to really make them much more successful. But to actually go and take advantage of the bay lands where the owls have existed and thrived well is to go through and really give them a much better habitat there and so that's what really the plan is about, to build a very strong owl habitat from East Palo Alto to Newark around the bay and get that population going and bring the population of back to the mid county area in the San Martin area and Gilroy area where they've traditionally have existed previously. So our goal is not to have owls living hear 20 years from now but in the meantime they are there and so we have to work around them and we are meeting with this developer, how he will go and do his project so we've been doing design review on it so it's gotten it reconciled so we're not stopping development. May have some spots where we have to be talk arounds a little bit and phase some things.

>> Councilmember Liccardo: Joe, I just had a question as we're looking at that same slide. Fish and game is not allowing active relocation, right? Not active, active meaning trapping.

>> Councilmember Liccardo: Right.

>> Joe Horwedel: They have not allowed that for probably 15 years, maybe 20 years.

>> Councilmember Liccardo: And I guess then to understand better what passive relocation looks like, is that asking the owls pretty please?

>> Joe Horwedel: Yeah, we give out an invitation -- Passive relocation is when the owl leaves the site for a couple days, which they do kind of -- does happen, to have a biologist go through and make sure the burrow is actually empty and actually collapse it so the owl can't go back into that burrow.

>> Councilmember Liccardo: And that is better than relocating the owl?

>> Joe Horwedel: Well, this is part of the -- the owl may actually have different burrows that it lives in the area. As opposed to picking up in some other area where it doesn't know where it's at.

>> Councilmember Herrera: Its second home.

>> Joe Horwedel: Projecting planner into owl person, that it is less disruptive to do it that way. It is one of the things that is built into this plan and we use this property as an example. That we actually can do a passive relocation, off of this property, if certain circumstances have happened. There's kind of a path to work. It's not a every day solution so it's kind of like granting a variance. But it is recognizing certain unique circumstances that is going to be appropriate to do that. And then it's really or have we set up other places that the owls can relocate into? One of the things that the -- has been found is because that most of the owls have been banded so that's

part of how they are able to track how many owls exist is to go through that's number 23 or whatever, is that there have been owls that have moved back and forth between San José international airport and Moffett field which is about seven miles distance. So there is -- they do have range of where they will travel. It's to make sure that they actually have somewhere that is a good, safe location for them, within kind of those rings. And so that's what the environmental services staff has been working with Audubon society out at the plant to -- they're prototyping some different ideas out there about making it more conducive for ground squirrels, which then makes it more conducive for the burrowing owls. The goal is not to turn all the buffer lands into owl habitat, but it is of -- recognizing we do have owls out there today, how do we go and make it a much more vibrant setting environment for the owls that they succeed and then kind of understanding that use what we learn there to go, move on to like some of the landfills that are in that area the Don Edwards wildlife refuge, what are the things we could do that would make it more possible.

>> Councilmember Liccardo: I guess what I'm getting at, is where I think the fish and game regulations just don't make any sense. Nobody, regardless whether they care most passionately about owls, or making dollars on that development, believes that is a good outcome to have burrows literally feet away from cars on a road. And it just makes no sense at all to believe that any path forward includes having burrows right next to the road. And yet, just in the north part of the Guadalupe park just South of the airport we have ample open space where we could provide for burrows for the owls and in fact it's in the plan and it's been in the plan I guess for ten years. And it just would seem to make sense that if we have the ability to actively relocate the first thing we'd be doing is finding a way to get those owls there into a safer location.

>> Joe Horwedel: Right.

>> Councilmember Liccardo: So I'm wondering in pushing forward with this plan is there any leverage at all we have with state fish and game to be able to say now we're putting a plan in place can you allow us to actively relocate, so that this can be brought to the highest best use which is critical land in the middle of our high tech infrastructure and the owls can actually have actually a safe place to be.

>> Joe Horwedel: I think that's really the discussion to have with the experts, and we will have them at one of the council meetings. I just got an e-mail that I don't think they will be able to be there for the study session because it was a last minute change by us. But I want to have the fish and game staff there to help explain that thought process. I don't think they disagree with the end, which is the lands there at the approach zone as being a place, how to make that you know more conducive for owls to exist there because we know they exist out at the airport. The airport staff was just giving us a call Friday, about wanting to talk about you know, their future plans out at the airport, and how it might impact the owls, and the agreements they have with fish and game. And part of that conversation was, what could we do with the lands there at the end of the approach zone? So you know, it's I think an opportunity, it's just we need to go through and get that better connected. And better understand why, versus just no.

>> Councilmember Liccardo: Okay, thank you. And I just want to say thanks for the work in ensuring that urban infill parcels would be largely exempted and reduced in the nitro deposition fee.

>> Joe Horwedel: We'll find a way to get there.

>> Councilmember Liccardo: I appreciate the work that's been done, I think it's important for our environmental and development goals. Rose.

>> Councilmember Herrera: I just got to ask another question on the burrowing owls on this example. So if we're using passive relocation then basically it's up to the owls if they want to go away for a couple of days --

>> Joe Horwedel: Well --

>> Councilmember Herrera: I mean it's really letting them decide or they leave, they have to leave for enough time to be away for us to actually consider those burrows being able to be --

>> Joe Horwedel: Yes and --

>> Councilmember Herrera: If they don't go then nothing happens right?

>> Joe Horwedel: Right but the owls have their nesting and non-nesting as soon as so the end of August ended the nesting season so between now and I think it's March is the non-nesting season which in a lot of cases is they leave where they nested and go to wintering grounds which is traditionally what we've seen in south county areas. So that is not unusual for them to go through and leave a burrow for a fair amount of time to where you could come back and close the burrows up. We're not allowed to do that during nesting season.

>> Councilmember Herrera: Non-nesting time. You know you'll have an opportunity there's a predictable cycle.

>> Joe Horwedel: Yes.

>> Councilmember Herrera: So that doesn't sound as onerous as --

>> Joe Horwedel: That's why I want to make sure I'm meeting with both of the developers here on Wednesday to talk about their plans for how fast they're going to be doing grading on their sites, anywhere, any conversations they've had in the past with fish and game. Because some of them have had prior agreements with fish and game. I just want to make sure we know the status of those agreements are.

>> Councilmember Herrera: And in the other areas we're hoping them to develop more and have more owls do we have to advertise? Is there some way in owl -- to get across to the owls that this is a good place? How do they know that, do they just -- because there's prey for them to find is that what you're saying?

>> Joe Horwedel: It's a incumbent of things and that's partly what we're testing.

>> Councilmember Herrera: The buffer land --

>> Joe Horwedel: Low interest rates, come on in, move-in special. So for years we have had temporary burrows out at the treatment plant lands but I think kind of uneven use, results. So recently, the plant staff have, working with Audubon started trying some different things with the goal of how to increase the population. So it's where they brought different piles of soil in, different types that was easier for ground squirrels to get in. I don't know if they've been seeding it with crickets out there, but the cricket population is up, which is part of what the owls feed on. So what's everything you need for owls to be successful.

>> Councilmember Herrera: It's a full ecosystem?

>> Joe Horwedel: It's a full ecosystem.

>> Councilmember Herrera: So they'll like it, all the amenities.

>> Joe Horwedel: Not just an individual species.

>> Councilmember Herrera: And I think I remember these bay checker spot butterflies growing up and there used to be a lot of them. I'm thinking they're the ones I remember.

>> Joe Horwedel: Butterfly looks very similar to the bay checker spot butterfly.

>> Councilmember Herrera: I don't see very many butterflies here anymore and I remember lots and lots of butterflies. Growing up, monarchs and other butterflies. So I'm glad -- kind of making little jokes and everything but I'm very, very glad that we are moving forward to save these species because I hope my grandchildren will be able to see a butterfly and see some of these and actually have them in our valley. I think it's very important. How do we know how many butterflies again? I know we want to make sure we have the plants where they'll go, but how do we --

>> Joe Horwedel: There is actually a survey every year. They've been doing it for over ten years. It's started as part of the Kirby canyon landfill, where they count both caterpillars and butterflies. They mark of territory and they sit there and just start counting and extrapolate.

>> Councilmember Herrera: I think I remember biology classes like that, okay, thank you.

>> Councilmember Liccardo: Mr. LeBrun, thank you for your patience sir.

>> Councilmember Herrera: We still got to cover riparian.

>> Councilmember Liccardo: Are we coming back to riparian? Why don't we -- did you want to speak on the whole HCP itself, not on the riparian? Let's go forward, then, thanks.

>> Thank you for the opportunity. I'm going to put my parks hat on today. I'd like to start on highlighting the second paragraph on page 2 of the staff memo which states in 2001, fish and wildlife and fish and game required that then four local partners to come in to undertake the habitat planning effort. What that means is that what people committed to is to study a plan, not necessarily to implement one. And I believe that this is an important distinction because it gives the council a wider range of possible actions whether the item goes to full council. Now if we could go back to I think slide number 7 which shows the between, 291 acres, coming from the county. Right, not yet. No, it actually is -- there you go, there you go. Contribution. Those acres from the, coming from the county are actually county parks. They don't belong to the county. They're part of the park system. It's 25% of the entire county park system. And what this slide doesn't show is that the plan is also to bring in an additional \$50 million of park charter funds to support this plan. And the real issue here is what the voters voted for, when they approved the proposition to reserve 100% of property taxes for county park purposes. Not to streamline the permitting process for building wider freeways, longer and unabated rural development in unincorporated south county. Now I'll give you an example, is Tulare hill, you mentioned Metcalf energy center, that was purchased with \$1.8 million of park charter funds. It's not going to be turned into a park. It's this just there to mitigate for the Metcalf energy center. I'll give you another example, right across the street from where I

live, Santa Teresa park, talking about protecting the checker spot butterfly. What's going to happen there is they are going to fence off half of the park, 800 acres for bashed wires, start drilling for wells and bringing in the cows. It is totally unclear how the wildlife is going to be able to move but somehow we're going to bring checker spot back into Santa Teresa park. In closing I support the conservation of the habitat in responsible way but I find it quite remarkable that the people who are pushing for this plan for the background are the people who killed development in Coyote valley. Thank you.

>> Councilmember Liccardo: Thank you, Mr. LeBrun. Joe did you want to return to the riparian --

>> Joe Horwedel: We had put some slides back in, we didn't we'll talk at the study session riparian.

>> Councilmember Liccardo: Great, I'll ask one last question at least of mine. I had a concern about the area of rural lands, that is not covered by the plan. If you look at slide I think it's slide 10, you're going to see a large swath of land along 101, around Morgan hill and Gilroy that's in that bright green, headed plan coverage areas.

>> Joe Horwedel: Yep.

>> Councilmember Liccardo: Why is that area not covered? It would seem really critical, particularly the wildlife corridors that go right through it.

>> Joe Horwedel: Oh, a couple of things were going on with that. One is the -- the types of wildlife or species that would be in that area, there really was not much there. Most of it is agricultural and ag lands have not had a lot of habitat existing on it. Part of it has been the -- at least when we clarify, it means if there are species on the properties, there is not coverage 50 plan for it, so the property owner -- coverage by the plan for it. So the property owner has got to deal with it individually. Part of it is dealing with the whole world of agriculture, ag is not a covered activity in the plan so where vineyards are going in essentially because that is not a regulated activity by the county, they just said it's not covered, and then there are a number of smaller home sites in that area, that I think it was probably the more concerning part of things. That is an area that doesn't have utilities in there, it's

outside of the city service areas, and the county, includes really -- was it their push, did not want to go through and be kind of dealing with those areas. And it just says it's out of the plan area itself. It is, one of the concerns that San José had in doing this plan early on was to not facilitate or encourage bad development. And I think have kept true to that for most things. But this is one that we just kind of put our focus elsewhere and let the county kind of work through that issue. With the resource agencies to see how they would deal with that, which is their jurisdiction. And kind of said you guys go work it out and we'll stay out of it.

>> Councilmember Liccardo: Right, understand it is not our jurisdiction.

>> Joe Horwedel: But it has one that has consequence. Actually our green belt has that same color in Coyote valley, as opposed to mid Coyote and north Coyote are shown up as private development with covered activity, even though we show mid Coyote and South Almaden urban reserve are not covered activities by this plan because our general plan no longer has them in for the horizon of the general plan, we did take them out of the HCP so it does cover rural development in those areas but does not include essentially building subdivisions in those areas.

>> Councilmember Liccardo: Okay, okay. And just I wanted to sort of echo a concern that was raised by Mr. LeBrun. It does concern me, I wasn't fully aware, and I probably should have been reading more carefully, that probably county park land money would essentially be used for mitigation as county's contribution. And I know it's not entirely within our purview, but that is disconcerting.

>> Joe Horwedel: You know I think -- I guess I'll give one thought about that and then clearly the Board of Supervisors need to be accountable on their side of things.

>> Councilmember Liccardo: Yeah.

>> Joe Horwedel: We have -- are very fortunate in Santa Clara County to have had the park system and the open space authorities acquiring land outside the urbanized areas. Our cities and counties have worked hard

over the years to keep development in urbanized areas. So a lot of the habitat that we want to protect is in places that we have now public ownership around. There certainly is more expectations that county park charter will continue to buy lands and one of the criteria that is looking at is, should those be going in places where there's higher habitat value or not? If you are going to go and buy two properties in the same general area are there some benefits to get out of that? And I think the concerns raised about are there fenced off areas, the because of the obligations to the voters about how those dollars came together. Today, county parks does do habitat restoration protection, is as I think polluting kind of amping that up what's there, it's not like we're taking stuff out of circulation that hasn't been out of circulation. It is one that is an important policy consideration for the region.

>> Councilmember Liccardo: Okay, thank you, Joe. Unless there are other comments or questions?

>> Councilmember Rocha: I was just going to move to approve the proposed schedule and also with the modification to allow passive relocation of San José city council members. Okay, I'll withdraw. Recommend approval of the proposed schedule.

>> Councilmember Herrera: Second.

>> Councilmember Liccardo: Wonder what that would do to our homes?

>> Councilmember Rocha: Don't go on vacation.

>> Councilmember Herrera: Especially moving to Hawaii.

>> Councilmember Liccardo: All in favor, opposed, that passes unanimously. Public comment, I don't have any cards, I don't see anyone leaping to their feet. So the meeting is adjourned.